(B) any other applicable laws.

SEC. 5. GENERAL PROVISIONS.

(a) MAPS AND LEGAL DESCRIPTIONS.—
(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall make available for public inspection in the appropriate offices of the Bureau of Land Management a map and legal description of the Conservation Area and the wilderness areas designated by section 4(a), including any land or interest in land that is acquired by the United States after the date of enactment of this Act.

(b) MANAGEMENT OF WILDERNESS AREAS.—
(1) IN GENERAL.—Subject to valid existing rights, the wilderness areas designated by subsection (a) shall be managed in accordance with—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.); and

(B) any other applicable laws.

(2) WITHDRAWALS.—Subject to valid existing rights, any Federal land within the Conservation Area and the wilderness areas designated by section 4(a), including any land or interest in land that is acquired by the United States after the date of enactment of this Act, is withdrawn from—

(A) entry, appropriation, or disposal under the public land laws;

(B) location, entry, and patent under the mining laws; and

(C) any other applicable laws.

(3) grazin-—Grazing of livestock in the wilderness areas designated by subsection (a), as established before the date of enactment of this Act, shall be administered in accordance with—

(A) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(B) guidance set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101-465).

(c) IN GENERAL.—Nothing in this section creates a protective perimeter or buffer zone around any wilderness area designated by subsection (a).

(2) ACTIVITIES OUTSIDE WILDERNESS AREAS.—The fact that an activity or use on land outside any wilderness area designated by subsection (a) can be seen or heard within the wilderness area shall not preclude the activity or use outside the boundary of the wilderness area.

(f) RELEASE OF WILDERNESS STUDY AREAS.—Congress finds that, for purposes of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land within the San Antonio Wilderness Study Area not designated as wilderness by subsection (a) has been adequately studied for wilderness designation.

Bilingual Act.

S. 875. A bill to regulate the judicial use of presidential signing statements. Section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land within the San Antonio Wilderness Study Area not designated as wilderness by subsection (a) has been adequately studied for wilderness designation.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. SPECTER (for himself, Mr. TESTER, and Mr. GRASSLEY).

S. 875. A bill to regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition today on behalf of myself, Senator GRASSLEY, and Senator TESTER, to introduce the Presidential Signing Statements Act of 2009. The purpose of this bill is to regulate the use of Presidential Signing Statements in the interpretation of Acts of Congress. This bill is similar in substance to two prior versions of this legislation: the Presidential Signing Statements Act of 2007, which I introduced on June 29, 2007; and the Presidential Signing Statements Act of 2006, which I introduced on July 27, 2006.

As I have stated before, I believe that this legislation is necessary to protect our constitutional system of checks and balances. This bill achieves that goal in the following way.

First, it prevents the President from issuing a signing statement that alters the meaning of a statute by instructing federal and state courts not to rely on, or defer to, presidential signing statements as a source of authority when determining the meaning of any Act of Congress.

Second, it grants Congress the power to participate in any case where the construction or constitutionality of an Act of Congress is in question and to issue a presidential signing statement for that Act was issued by allowing Congress to file an amicus brief and present oral argument in such a case; instructing that, if Congress passes a joint resolution declaring its view of the proper interpretation of the statute, the Court must admit that resolution into the case record; and providing for expedited review in such a case.

Since the days of President James Monroe, Presidents have issued statements when signing bills. It is widely agreed that there are legitimate uses for signing statements. For example, Presidents may use signing statements to instruct executive branch officials on how to administer a law or to explain to the public the likely effect of a law. There may be a host of other legitimate uses.

It is clear, however, that the President cannot use a signing statement to rewrite the words of a statute, nor can he make a signing statement to selectively nullify those provisions he does not like. This much is clear from our Constitution. The Constitution grants the President a specific, defined role in enacting legislation. Article I, section 1 of the Constitution vests ‘‘all legislative powers . . . in a Congress.’’ Article I, section 7 of the Constitution provides that, when a bill is presented to the President, he may either sign it or veto it with his objections. He may also choose to do nothing, thus rendering a so-called pocket veto. But the President cannot veto a bill—he cannot veto certain provisions he does not like.

The Framers had good reason for constructing the legislative process as they did. According to The Records of the Constitutional Convention, the veto power was designed to protect citizens from a particular Congress that might enact oppressive legislation. However, the Framers did not write the veto power in a way that was used rarely, and so, in Article I, section 7, they balanced it by allowing Congress to override a veto by 2/3 vote.

(5) other applicable laws.
As I stated when I initially introduced this legislation in 2006, this is a finely structured constitutional procedure that goes straight to the heart of our system of checks and balances. Any action by the President that circumvents this constitutional process is an unconstitutional attempt to usurp legislative authority. If the President is permitted to re-write the bills that Congress passes and cherry pick those provisions he likes and does not like, he subverts the constitutional process designed by the Framers. The Supreme Court has affirmed that the constitutional process for enacting legislation must be safeguarded. As the Court explained in INS v. Chahda, "It emerges clearly that the prescription for legislative action in Article I, Section 7 represents the Framers decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered procedure." 462 U.S. 284, 297 n.9 (1983).

It is well within Congress's power to enact rules of statutory interpretation intended to preserve this constitutional structure. This power flows from Article I, section 7 clause 18 of the Constitution, which gives Congress the power "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department thereof." Rules of statutory interpretation are "necessary and proper" to execute the legislative power.

Several scholars have agreed: Jefferson B. Fordham, a former Dean of the University of Pennsylvania Law School, said, "[I]t is within the legislative power to lay down rules of interpretation for the future;" Mark Tushnet, a Professor at Harvard Law School explained, "In light of the obvious congressionally prescribed statute's terms (and so its meaning), congressional power to prescribe interpretive methods seems to me to follow;" Michael Stokes Paulsen, an Associate Dean of the University of Minnesota Law School noted, "Congress is the master of its own statutes and can prescribe rules of interpretation governing its own statutes as surely as it may alter or amend the statutes directly." Finally, J. Sutherland, the author of the treatise on the Constitution, said, "There should be no question that an interpretive clause operating prospectively is within legislative power."

Indeed, recent experience shows why such legislation is "necessary." The use of signing statements has risen dramatically in recent years. President Clinton issued 105 signing statements; President Bush issued 161. What is more alarming than the sheer numbers, is that President Bush's signing statements are constitutional concerns and other objections to several provisions of a law. The President used those statements in a way that threatens legislation. This bill does not seek to limit the President's power, and it does not seek to expand Congress's power. Rather, this bill simply seeks to safeguard our Constitution. In this Congress, it has a better chance of mustering a majority vote, and being signed into law by the new President.

That said, two days after criticizing President Bush's signing statements, President Obama issued one of his own regarding the Omnibus Appropriations Act of 2009. Citing among others his "commitment to order in the White House and in our foreign affairs" powers, he refused to be bound by at least eleven specific provisions of the bill including one long-standing rider to appropriations bills designed to aid congressional oversight. As I told The Wall Street Journal, "We are having a repeat of what Democrats bitterly complained about under President Bush." I hope this will be the exception rather than the rule.

In the meantime, this bill seeks to implement measurement to safeguard the constitutional structure of enacting legislation. In preserving this structure, this bill reinforces the system of checks and balances and separation of powers set out in our Constitution.

Mr. President, I ask unanimous consent that the text of the Bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 875

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "Presidential Signing Statements Act of 2009".

SEC. 2. DEFINITION.
As used in this Act, the term "presidential signing statement" means a written statement by the President of the United States, issued after signing a bill, amendment to a bill, or joint resolution, asserting that the Administration or the President believes that the bill or amendment or joint resolution, as enacted, is unconstitutional, or violates the separation of powers, or is otherwise inappropriate or contrary to the Constitution, or that the President will not enforce certain provisions of the bill, amendment, or joint resolution.

SEC. 3. JUDICIAL USE OF PRESIDENTIAL SIGNING STATEMENTS.
In determining the meaning of any Act of Congress, no Federal or State court shall rely on or defer to a presidential signing statement as a source of authority.

SEC. 4. CONGRESSIONAL RIGHT TO PARTICIPATE IN COURT PROCEEDINGS OR SUBMIT CLARIFYING RESOLUTION.
(a) Congressional Right To Participate as Amicus Curiae.—In any action, suit, or proceeding in any Federal or any State court (including the Supreme Court of the United States), regarding the construction or constitutionality, or both, of any Act of Congress which a presidential signing statement was issued, the Federal or State court shall permit the United States Senate, through the Office of Senate Legal Counsel, as authorized in section 701 of the Ethics in Government Act of 1978 (2 U.S.C. 288), or the United States House of Representatives, or both, to participate as an amicus curiae, and to present an oral argument on the question of the Act's construction or constitutionality, or both. The permission shall be construed to confer standing on any party seeking to bring, or jurisdiction on
any court with respect to, any civil or criminal action, including suit for court costs, against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of Congress, any office or agency of Congress, or any officer or employee of a House of Congress or any office or agency of Congress.

(b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING RESOLUTION.—In any suit referenced in subsection (a), the full Congress may pass a concurrent resolution declaring its view of the proper interpretation of the Act of Congress at issue, clarifying Congress’s intent or clarifying Congress’s findings of fact, or both. If Congress does pass such a concurrent resolution, any Federal or State court shall permit the United States Congress, through the Office of Senate Legal Counsel, to submit that resolution into the record of the case as a matter of right.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of each Federal or State court, including the Supreme Court of the United States, to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

By Mr. SPECTER (for himself and Mr. WHITEHOUSE):

S. 876. A bill to provide for the substitution of the United States in certain actions relating to electronic service providers and FISA; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to reintroduce legislation that would substitute the United States for electronic communications service providers who were sued for violating the Foreign Intelligence Surveillance Act, FISA, and other statutory and constitutional provisions.

FISA reform legislation passed the Senate in February and July of 2008, both times by a vote of 68 to 29, before being signed into law by President Bush on July 10, 2008. This legislation made many necessary changes to FISA to enhance intelligence collection capabilities, but it also included a controversial provision giving retroactive immunity to telecommunications companies for their alleged cooperation with the warrantless surveillance program authorized by the President after September 11, 2001. The legislation stripped the Federal courts of jurisdiction to decide more than 40 consolidated cases involving claims of violations of FISA and related statutes, even though most Members of Congress had not been briefed on the program, and despite the fact that the judge handling the cases, Chief Judge Vaughn Walker of the Northern District of California, had questioned the legality of the program in a related opinion issued just days before the final Senate debate.

During the February and July FISA debates, I sought to keep the courts open as a way to check executive branch excesses. Through both a stand-alone bill, S. 2462, considered by the Senate Intelligence Committee, and an amendment, SA 3927 to S. 2248, offered during the Senate’s February debate on the FISA reform bill, I proposed to substitute the U.S. Government for the telephone companies facing lawsuits for their alleged cooperation with the Terrorist Surveillance Program, TSP. Just as in 2008, I propose legislation that would place the Government in the shoes of the companies, refund Congress with the same defenses no more and no less. Thus, under the bill, plaintiffs get their day in court and may hold the Government accountable for unlawful activity, if any, related to the surveillance program. The companies themselves avoid liability stemming from their efforts to be good citizens.

I fought hard in 2008 to keep courts open on the question of the TSP, and urged my colleagues to improve the FISA bill. I continue that fight today with a new Administration in office. During the prior floor debate I said: “Although I am prepared to stomach this bill, if I must, I am not yet ready to concede that the debate is over. Contrary to the conventional wisdom, I don’t believe it is too late to make this bill better.”

As I observed on the floor last year, it is necessary for Congress to support intelligence collection efforts because of the continuing terrorist threat. No one wants to be blamed for another 9–11. Indeed, as I acknowledged during the debate, my own briefing on the telephone companies’ cooperation with the Government convinced me of the program’s value. Nevertheless, I tried to impress upon my colleagues the importance and historical context of our actions. I said:

“We are dealing here with a matter that is of historic importance. I believe that years from now, historians will look back on this period from 911 to the present as the greatest expansion of Executive authority in history—uncheked expansion of authority. The President disregards the National Security Council and consults with the National Intelligence Committee; he doesn’t do it. The President takes legislation that is presented by Congress and then he issues a signing statement disagreeing with key provisions. There is nothing Congress can do about it.”

The Supreme Court of the United States has gone absent without leave on the issue, in my legal opinion. When the Detroit Federal judge found the terrorist surveillance program unconstitutional, it was (reversed) by the Sixth Circuit on a 2-to-1 opinion on grounds of lack of standing. Then the Supreme Court refused to review the case. But the very opinion language laid out all of the grounds where there was ample basis to grant standing. Now we have Chief Judge Walker declaring the [surveillance illegal]. The Congress ought to let the courts fulfill their constitutional function.

It is not too late to provide for judicial review of controversial post-9/11 intelligence surveillance activities. Although the TSP itself is still pending and, even if he were to dismiss them under the statutory defenses dubbed retroactive immunity, Congress can and should permit the cases to be refiled against the Government standing in the shoes of the carriers.

This legislation substitutes the U.S. in place of any electronic communication service provider who provided communications in connection with an intelligence activity that was—authorized by the President between September 11, 2001, and January 17, 2007; and designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and described in a written request or directive from the Attorney General or the