S. 1747

To regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2007

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress.

Be it enacted by the Senate and House of Representa-
tives 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 2007”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) While the executive branch has a role in en-
anting legislation, it is clear that this is a limited role. 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, and
his veto is subject to a congressional override by
two-thirds majorities in the House of Representa-
tives and Senate.

(2) As the President signs a bill into law, the
President sometimes issues a statement elaborating
on his views of a bill.

(3) This practice began in the early 1800s, and
such statements have been issued by Presidents in-
cluding James Monroe, Andrew Jackson, John
Tyler, Franklin Delano Roosevelt, Dwight D. Eisen-
hower, John F. Kennedy, Lyndon B. Johnson, Rich-
ard Nixon, Gerald Ford, Jimmy Carter, Ronald
Reagan, George H.W. Bush, Bill Clinton, and
George W. Bush.

(4) Much more recently, some courts have
begun using presidential signing statements as a
source of authority in the interpretation of Acts of
Congress.

(5) This judicial use of presidential signing
statements is inappropriate, because it in effect gives
these statements the force of law. As the Supreme
Court itself has explained, Article I, section 7, of the
Constitution provides a “single, finely wrought and
exhaustively considered, procedure” for the making of Federal law. I.N.S. v. Chadha, 462 U.S. 919, 951 (1983). Presidential signing statements are not passed by both Houses of Congress pursuant to Article I, section 7, so they are not the supreme law of the land. It is inappropriate, therefore, for courts to rely on presidential signing statements as a source of authority in the interpretation of Acts of Congress.

(6) The Supreme Court’s reliance on presidential signing statements has been sporadic and unpredictable. In some cases, such as Bowsher v. Synar, 478 U.S. 714, 719 n.1 (1986), the Supreme Court has relied on presidential signing statements as a source of authority, while in other cases, such as the recent military tribunals case, Hamdan v. Rumsfeld, 126 S.Ct. 2749 (2006), it has conspicuously declined to do so. This inconsistency has the unfortunate effect of rendering the interpretation of Federal law unpredictable.

(7) As the Hamdan case demonstrates, the Justices of the Supreme Court appear to disagree with one another on the propriety of reliance on presidential signing statements in the interpretation of Federal law. The Supreme Court, with its nine com-
peting perspectives and its jurisdictional restriction
to cases and controversies, may remain unable to re-
solve this difference of opinion and establish a clear
rule abjuring such reliance.

(8) Congress has the power to resolve judicial
disputes such as this by enacting rules of statutory
interpretation. This power flows from Article I, sec-
tion 8, clause 18, which gives Congress the power
“To make all laws which shall be necessary and
proper for carrying into execution the foregoing pow-
ers, and all other powers vested by this Constitution
in the government of the United States, or in any
department or officer thereof”. Rules of statutory
interpretation are necessary and proper to bring into
execution the legislative power.

(9) Congress can and should exercise this power
over the interpretation of Federal statutes in a sys-
tematic and comprehensive manner.

(10) Congress hereby exercises this power to
forbid judicial reliance on presidential signing state-
ments as a source of authority in the interpretation
of Acts of Congress.

SEC. 3. DEFINITION.

As used in this Act, the term “presidential signing
statement” means a statement issued by the President
about a bill, in conjunction with signing that bill into law pursuant to Article I, section 7, of the Constitution.

SEC. 4. 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. 5. 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 State court (including the Supreme Court of the United States), regarding the construction or constitutionality, or both, of any Act of Congress in 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, through the Office of General Counsel for 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. Nothing in this section shall be con-
strued 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 a House 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, the 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).