S. 3731

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

IN THE SENATE OF THE UNITED STATES

JULY 26, 2006

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 2006”.

SEC. 2. FINDINGS.

Congress finds the following—

(1) While the executive branch has a role in en-
acting 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 Representatives 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 including James Monroe, Andrew Jackson, John Tyler, Franklin Delano Roosevelt, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, Richard 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 resolve this difference of opinion and establish a clear rule abjuring such reliance.

(8) As recently explained in the Harvard Law Review, Congress has power to resolve judicial disputes such as this by enacting Federal rules of statutory interpretation. Nicholas Quinn Rosenkranz, Federal Rules of Statutory Interpretation, 115 Harv. L. Rev. 2085 (2002). This power flows from Article I, section 8, cl. 18, 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 or officer thereof”. Federal 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 systematic and comprehensive manner.

(10) Congress hereby exercises this power to forbid judicial reliance on presidential signing statements 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 State or Federal court shall rely on or defer to a presidential signing statement as a source of authority.

SEC. 5. CONGRESSIONAL STANDING TO OBTAIN DECLARATORY JUDGMENT.

Any court of the United States, upon the filing of an appropriate pleading by the United States Senate, through the Office of Senate Legal Counsel, and/or the United States House of Representatives, through the Office of General Counsel for the United States House of Representatives, may declare the legality of any presidential signing statement, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

SEC. 6. CONGRESSIONAL RIGHT TO INTERVENE OR SUBMIT CLARIFYING RESOLUTION.

Chapter 9D of title 2, United States Code, is amended by adding at the end the following:
§ 288o

“(a) NOTICE TO CONGRESS.—In any action, suit, or proceeding in the Supreme Court of the United States, wherein the construction or constitutionality of any Act of Congress in which a presidential signing statement was issued, the Supreme Court shall certify such fact to the Office of Senate Legal Counsel and to the Office of General Counsel for the United States House of Representatives.

“(b) CONGRESSIONAL RIGHT TO INTERVENE.—In any suit referenced in subsection (a), the Supreme Court shall permit the United States Senate, through the Office of Senate Legal Counsel, and/or the United States House of Representatives, through the Office of General Counsel for the United States House of Representatives, to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of the Act’s construction and/or constitutionality. The United States Senate and House of Representatives shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality. Nothing in this chapter 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 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.

“(c) 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, and/or clarifying Congress's findings of fact. If Congress does pass such a concurrent resolution, the Supreme 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.”

SEC. 7. AUTHORIZATION FOR SENATE LEGAL COUNSEL.

(a) Section 288b(c) of title 2, United States Code, is amended by inserting “or section 2403 of title 28 of the United States Code” after “under section 288e of this title”;

(b) Section 288j(a)(1) of title 2, United States Code, is amended by inserting “or section 2403 of title 28 of the United States Code” after “pursuant to section 288b of this title”; and
(c) Section 288j(a)(2) of title 2, United States Code, is amended by inserting “or section 2403 of title 28 of the United States Code” after “pursuant to section 288b(a) of this title”.

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