

109TH CONGRESS
2^D SESSION

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Presidential Signing
5 Statements Act of 2006”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following—

8 (1) While the executive branch has a role in en-
9 acting legislation, it is clear that this is a limited
10 role. Article I, section 7 of the Constitution provides

1 that when a bill is presented to the President, he
2 may either sign it or veto it with his objections, and
3 his veto is subject to a congressional override by
4 two-thirds majorities in the House of Representa-
5 tives and Senate.

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

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

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

21 (5) This judicial use of presidential signing
22 statements is inappropriate, because it in effect gives
23 these statements the force of law. As the Supreme
24 Court itself has explained, Article I, section 7, of the
25 Constitution provides a “single, finely wrought and

1 exhaustively considered, procedure” for the making
2 of Federal law. *I.N.S. v. Chadha*, 462 U.S. 919, 951
3 (1983). Presidential signing statements are not
4 passed by both Houses of Congress pursuant to Ar-
5 ticle I, section 7, so they are not the supreme law
6 of the land. It is inappropriate, therefore, for courts
7 to rely on presidential signing statements as a
8 source of authority in the interpretation of Acts of
9 Congress.

10 (6) The Supreme Court’s reliance on presi-
11 dential signing statements has been sporadic and
12 unpredictable. In some cases, such as *Bowsher v.*
13 *Synar*, 478 U.S. 714, 719 n.1 (1986), the Supreme
14 Court has relied on presidential signing statements
15 as a source of authority, while in other cases, such
16 as the recent military tribunals case, *Hamdan v.*
17 *Rumsfeld*, 126 S.Ct. 2749 (2006), it has conspicu-
18 ously declined to do so. This inconsistency has the
19 unfortunate effect of rendering the interpretation of
20 Federal law unpredictable.

21 (7) As the *Hamdan* case demonstrates, the Jus-
22 tices of the Supreme Court appear to disagree with
23 one another on the propriety of reliance on presi-
24 dential signing statements in the interpretation of
25 Federal law. The Supreme Court, with its nine com-

1 peting perspectives and its jurisdictional restriction
2 to cases and controversies, may remain unable to re-
3 solve this difference of opinion and establish a clear
4 rule abjuring such reliance.

5 (8) As recently explained in the Harvard Law
6 Review, Congress has power to resolve judicial dis-
7 putes such as this by enacting Federal rules of stat-
8 utory interpretation. Nicholas Quinn Rosenkranz,
9 Federal Rules of Statutory Interpretation, 115
10 Harv. L. Rev. 2085 (2002). This power flows from
11 Article I, section 8, cl. 18, which gives Congress the
12 power “To make all laws which shall be necessary
13 and proper for carrying into execution the foregoing
14 powers, and all other powers vested by this Constitu-
15 tion in the government of the United States, or in
16 any department or officer thereof”. Federal rules of
17 statutory interpretation are necessary and proper to
18 bring into execution the legislative power.

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

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

1 **SEC. 3. DEFINITION.**

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

6 **SEC. 4. JUDICIAL USE OF PRESIDENTIAL SIGNING STATE-**
7 **MENTS.**

8 In determining the meaning of any Act of Congress,
9 no State or Federal court shall rely on or defer to a presi-
10 dential signing statement as a source of authority.

11 **SEC. 5. CONGRESSIONAL STANDING TO OBTAIN DECLARA-**
12 **TORY JUDGMENT.**

13 Any court of the United States, upon the filing of
14 an appropriate pleading by the United States Senate,
15 through the Office of Senate Legal Counsel, and/or the
16 United States House of Representatives, through the Of-
17 fice of General Counsel for the United States House of
18 Representatives, may declare the legality of any presi-
19 dential signing statement, whether or not further relief is
20 or could be sought. Any such declaration shall have the
21 force and effect of a final judgment or decree and shall
22 be reviewable as such.

23 **SEC. 6. CONGRESSIONAL RIGHT TO INTERVENE OR SUBMIT**
24 **CLARIFYING RESOLUTION.**

25 Chapter 9D of title 2, United States Code, is amend-
26 ed by adding at the end the following:

1 **“§ 288o**

2 “(a) NOTICE TO CONGRESS.—In any action, suit, or
3 proceeding in the Supreme Court of the United States,
4 wherein the construction or constitutionality of any Act
5 of Congress in which a presidential signing statement was
6 issued, the Supreme Court shall certify such fact to the
7 Office of Senate Legal Counsel and to the Office of Gen-
8 eral Counsel for the United States House of Representa-
9 tives.

10 “(b) CONGRESSIONAL RIGHT TO INTERVENE.—In
11 any suit referenced in subsection (a), the Supreme Court
12 shall permit the United States Senate, through the Office
13 of Senate Legal Counsel, and/or the United States House
14 of Representatives, through the Office of General Counsel
15 for the United States House of Representatives, to inter-
16 vene for presentation of evidence, if evidence is otherwise
17 admissible in the case, and for argument on the question
18 of the Act’s construction and/or constitutionality. The
19 United States Senate and House of Representatives shall,
20 subject to the applicable provisions of law, have all the
21 rights of a party and be subject to all liabilities of a party
22 as to court costs to the extent necessary for a proper pres-
23 entation of the facts and law relating to the question of
24 constitutionality. Nothing in this chapter shall be con-
25 strued to confer standing on any party seeking to bring,
26 or jurisdiction on any court with respect to, any civil or

1 criminal action, including suit for court costs, against
2 Congress, either House of Congress, a Member of Con-
3 gress, a committee or subcommittee of a House of Con-
4 gress, any office or agency of Congress, or any officer or
5 employee of a House of Congress or any office or agency
6 of Congress.

7 “(c) CONGRESSIONAL RIGHT TO SUBMIT CLARI-
8 FYING RESOLUTION.—In any suit referenced in subsection
9 (a), the full Congress may pass a concurrent resolution
10 declaring its view of the proper interpretation of the Act
11 of Congress at issue, clarifying Congress’s intent, and/or
12 clarifying Congress’s findings of fact. If Congress does
13 pass such a concurrent resolution, the Supreme Court
14 shall permit the United States Congress, through the Of-
15 fice of Senate Legal Counsel, to submit that resolution
16 into the record of the case as a matter of right.”.

17 **SEC. 7. AUTHORIZATION FOR SENATE LEGAL COUNSEL.**

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

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

1 (c) Section 288j(a)(2) of title 2, United States Code,
2 is amended by inserting “or section 2403 of title 28 of
3 the United States Code” after “pursuant to section
4 288b(a) of this title”.

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