Presidential Signing Statements

July 13, 2007

Bruce Fein, part of this week’s panel on impeachment, recently testified before the Senate Judiciary Committee about the constitutional implications of presidential signing statements.

Often under the radar, these statements are beginning to gain attention, as scholars and critics debate their effect on constitutional checks and balances. How much do you know about signing statements?

What is a signing statement?

When signing a bill, the President often issues a written comment about how he interprets the bill and how he plans to execute it. Many statements are straightforward, simply expressing the President’s opinions about the specific legislation.

Yet others are more controversial, when they dictate which portions of a bill the President decides he will not execute because he believes they infringe on the executive powers granted in the Constitution.

For reference, see Article 1 and Article 2 of the Constitution.

Is President Bush the first to issue signing statements?

No. Many scholars designate James Monroe as the first President to issue a "signing statement," yet his message bears little resemblance to modern-day statements.

In 1822, Monroe wrote a "special message" to Congress informing the body of discrepancies he deemed between a recent bill and the Constitution. Other Presidents including Andrew Jackson and James Polk issued similar statements but it was not until Ronald Reagan that signing statements began to become much more frequent, and more influential.

Reagan and the modern signing statement

Before Reagan, the Presidency had only ever issued a total of 75 signing statements in almost 200 years, yet with the guidance of his Attorney General Edwin Meese III, Reagan launched a concerted policy to start to use signing statements as a means of reinforcing the executive’s message and consolidating its power.”

Meese, with the help of young Justice Department Lawyer, Samuel Alito, sought to make Presidential signing statements more frequent and also carry more weight in the interpretation of the law. Now associate Supreme Court Justice Alito once wrote:

"It seems likely that our new type of statement will not be warmly welcomed by
Congress. The novelty of the procedure and the potential increase of Presidential power are two factors that may account for this anticipated reaction. In addition, and perhaps most important, Congress is likely to resent the fact the President will get in the last word on questions of interpretation.

**Clinton and the line-item veto**

President Clinton frequently issued signing statements, and in 1996, signed into law the Line Item Veto Act, which sought to curb pork barrel spending, allowing the President to veto specific portions of a bill yet still sign the remaining portions into law. The law was declared unconstitutional two years later in Clinton v. New York (1998), which states, "If this Act were valid, it would authorize the President to create a law whose text was not voted on by either House or presented to the President for signature."

Many scholars describe the modern signing statement as a de facto line-item veto, as the President is, in essence, stating that he will not execute certain portions of a bill, even though legally he is forced to either sign an entire bill or send Congress a veto. By not allowing Congress the opportunity to override a veto, creating law despite Presidential objection, signing statements seem to then drastically reduce legislative control over the rule of law.

**President Bush and the Growth of the Executive**

President Bush has issued over 108 signing statements, which mostly remain unreported until early 2006, when the President issued a statement in conjunction with his signing of a torture statute, pushed through by Senator John McCain. After signing the statute, which was crafted in order to make illegal approved torture by the executive branch, President Bush wrote the following statement:

"The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the Constitutional authority of the President to supervise the unitary executive branch and as Commander-in-Chief and consistent with the Constitutional limitations on the judicial power which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks."

President Bush has most often asserted his deemed constitutional duty "to supervise the unitary executive," as reason why his Administration has chosen not to execute a specific aspect of a law.

As Bruce Fein explained before the Senate Judiciary Committee:

"If all other avenues have proved unavailing, Congress should contemplate impeachment for signing statements that systematically flout the separation of powers and legislative prerogatives. The epitome of an impeachable offense, as Alexander Hamilton amplified in the Federalist Papers, is a political crime against the Constitution."

Click here to read many of President Bush's recent signing statements.

**REFERENCES AND READING:**


American Presidency Project
Consult this comprehensive history of Presidential signing statements from the University of California, Santa Barbara.

Task Force on Presidential Signing Statements and the Separation of Powers Doctrine
In August 2006, an American Bar Association Task Force tackled the constitutional question of Presidential signing statements. Read their report and findings here.

Alito Once Made Case For Presidential Power
By Christopher Lee, WASHINGTON POST, January 2, 2006
"As a young Justice Department lawyer, Supreme Court nominee Samuel A. Alito Jr. tried to help tip the balance of power between Congress and the White House a little more in favor of the executive branch."

Sign Here
By Dahlia Lithwick, SLATE, January 30, 2006
"Unless you spent New Year's weekend trolling the White House Web site or catching

http://www.pbs.org/moyers/journal/07132007/signing_statements.html
up on your latest U.S. Code Congressional and Administrative News as you waited for the ball to drop, you probably missed the little ‘P.S.’ the President tacked onto the McCain anti-torture bill."

**President Relents, Backs Torture Ban**
By Josh White, WASHINGTON POST, December 16, 2005
"President Bush reversed position yesterday and endorsed a torture ban crafted by Sen. John McCain (R-AZ) after months of White House attempts to weaken the measure, which would prohibit the ‘cruel, inhuman, or degrading’ treatment of any detainee in U.S. custody anywhere in the world..."

**Read President Bush’s signing statement about the McCain torture statute.**

**Presidential Signing Statement: Constitutional and Institutional Implications**

**Read the Georgetown Law School Faculty Blog Discussion on Signing Statements**

**Bush and the Presidential Signing Statement**
ALL THINGS CONSIDERED, NPR, January 8, 2006

**The Problem With Presidential Signing Statements**

**Read Senator Arlen Specter’s recent statement on his legislation to limit Presidential signing statements.**

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