

110TH CONGRESS
1ST SESSION

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.

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 2007”.

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

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

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

23 **SEC. 3. DEFINITION.**

24 As used in this Act, the term “presidential signing
25 statement” means a statement issued by the President

1 about a bill, in conjunction with signing that bill into law
2 pursuant to Article I, section 7, of the Constitution.

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

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

8 **SEC. 5. CONGRESSIONAL RIGHT TO PARTICIPATE IN**
9 **COURT PROCEEDINGS OR SUBMIT CLARI-**
10 **FYING RESOLUTION.**

11 (a) CONGRESSIONAL RIGHT TO PARTICIPATE AS
12 AMICUS CURIAE.—In any action, suit, or proceeding in
13 any Federal or State court (including the Supreme Court
14 of the United States), regarding the construction or con-
15 stitutionality, or both, of any Act of Congress in which
16 a presidential signing statement was issued, the Federal
17 or State Court shall permit the United States Senate,
18 through the Office of Senate Legal Counsel, as authorized
19 in section 701 of the Ethics in Government Act of 1978
20 (2 U.S.C. 288), or the United States House of Represent-
21 atives, through the Office of General Counsel for the
22 United States House of Representatives, or both, to par-
23 ticipate as an amicus curiae, and to present an oral argu-
24 ment on the question of the Act's construction or constitu-
25 tionality, or both. Nothing in this section shall be con-

1 strued to confer standing on any party seeking to bring,
2 or jurisdiction on any court with respect to, any civil or
3 criminal action, including suit for court costs, against
4 Congress, either House of Congress, a Member of Con-
5 gress, a committee or subcommittee of a House of Con-
6 gress, any office or agency of Congress, or any officer or
7 employee of a House of Congress or any office or agency
8 of Congress.

9 (b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING
10 RESOLUTION.—In any suit referenced in subsection (a),
11 the full Congress may pass a concurrent resolution declar-
12 ing its view of the proper interpretation of the Act of Con-
13 gress at issue, clarifying Congress’s intent or clarifying
14 Congress’s findings of fact, or both. If Congress does pass
15 such a concurrent resolution, the Federal or State court
16 shall permit the United States Congress, through the Of-
17 fice of Senate Legal Counsel, to submit that resolution
18 into the record of the case as a matter of right.

19 (c) EXPEDITED CONSIDERATION.—It shall be the
20 duty of each Federal or State court, including the Su-
21 preme Court of the United States, to advance on the dock-
22 et and to expedite to the greatest possible extent the dis-
23 position of any matter brought under subsection (a).

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