

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3731

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

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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

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## 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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