

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Judiciary Committee
Hearing on Presidential Signing Statements
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Today, the Committee turns its attention to the important issue of presidential signing statements. The evolving use of these statements by the Bush-Cheney Administration has become a serious concern of mine and I commend the Chairman for holding this hearing.

We are at a pivotal moment in our Nation's history, where Americans are faced with a President who makes sweeping claims for almost unchecked Executive power. One of the most troubling aspects of such claims is the President's unprecedented use of signing statements. Historically, these statements have served as public announcements containing comments from the President, on the enactment of laws. But this Administration has taken what was otherwise a press release and transformed it into a proclamation stating which parts of the law the President will follow and which parts he will simply ignore.

I have long objected to this President's broad use of signing statements to try to rewrite the laws crafted and passed by the Congress, because I firmly believe that this practice poses a grave threat to our constitutional system of checks and balances. During his five years in office, President Bush has quietly -- yet consistently -- used his bill signing statements to assign his own interpretations to laws passed by Congress, and signal which provisions he intends follow and which ones he does not. As if to say it, makes it so.

According to a review of these statements conducted by The Boston Globe, President Bush has employed signing statements to ignore or disobey more than 750 laws enacted by the Congress since 2001 more than all previous presidents in the history of our Nation combined. That is breathtaking.

In 2002, when the President signed the Sarbanes-Oxley law combating corporate fraud, he used his signing statement to attempt to narrow a provision protecting corporate whistle-blowers in a way that would have afforded them very little protection. Senator Grassley and I wrote a letter to the President stating that his narrow interpretation was at odds with the plain language of the statute, and the Administration reluctantly relented on this view but only after much protest. We also witnessed the President's fondness for signing statements earlier this year, when after months of debate and negotiations in Congress, the President issued a signing statement for the USA PATRIOT ACT Reauthorization language in which he stated his intentions not to follow the reporting and oversight provisions contained in that bill. I noted this abuse at the time.

This President has also used signing statements to challenge laws banning torture, on affirmative action and prohibiting the censorship of scientific data. In fact, time and again, this President has stood before the American people, signed laws enacted by their representatives in Congress, while all along crossing his fingers behind his back. And, while this President proudly boasts being the first modern President to have never vetoed a bill, he has cleverly used his signing statements as a de facto line-item veto to cherry-pick which laws he will enforce in a manner not contemplated by our Constitution.

Under our constitutional system of government, when Congress passes a bill and the President signs it into law, that should be the end of the story. It is the law of the land unless and until repealed by Congress or invalidated by the

courts. For this reason, there are grave and inherent dangers to the extensive and unprecedented use of signing statements.

When the President uses signing statements to unilaterally rewrite the laws enacted by the people's representatives in Congress, he creates doubt about what the rule of law means in our Nation.

The excessive use of signing statements also creates a novel, and perhaps, dangerous view of the appropriate role of the President in the legislative process. Signing statements intrude upon the legislative function and also upon the constitutional role of our courts. Under our system of government, the President is to faithfully execute the laws enacted by Congress. He may veto or sign a bill. If he signs it, it is the law. If he vetoes it and his veto is overridden, it is the law. He does not get to act as a super-legislator with a line-item veto. He is not the final word on its constitutionality.

These signing statements are a diabolical device and the President will continue to use and abuse them, if Congress lets him. So far, this Congress has done exactly that. Whether it is torture, warrantless eavesdropping on American citizens, or the unlawful detention of military prisoners, this Republican-led Congress has been more than happy to turn a blind eye and rubber-stamp the questionable actions of this Administration regardless of the consequences to our Constitution or civil liberties. But, we in Congress have a constitutional duty to conduct meaningful oversight on behalf of all Americans. Artful deception is no substitute for the rule of law.

I approached this hearing with the hope that it would signal a new beginning. Instead, we see the low regard with which this Administration holds the Congress, the Senate and, in particular, this Committee.

Not only does the Vice President intervene to instruct witnesses not to testify and to tell Republican Senators what oversight he will allow, but, we have an Attorney General who will not answer our legitimate questions after having assured us at his confirmation hearing that he would be responsive.

Today, again, the Department of Justice and the Administration have treated our concerns contemptuously. We will not be joined by the Attorney General -- or even the Deputy Attorney General -- who we confirmed in a bipartisan way. We will not hear from a spokesperson for the White House, although they are all too willing to spin to the press or to friendly audiences. We will not even hear from the acting Assistant Attorney General for the Office of Legal Policy, who we were initially told would be attending. Instead, the Administration is, again, seeking to send forward a young deputy to parrot the Administration's line, not answer our questions, witness our frustration and hear our criticisms. I wish her well and believe that she is being abused by her superiors in this role and this Committee is being shown utter contempt.

I thank our other witnesses for coming and the American Bar Association for its work and views in connection with these important matters.

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