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## **Senator Specter Fights for Constitution**

*By Joel S. Hirschhorn*

On the Friday before July 4 Republican Senator Arlen Specter showed his respect for the U.S. Constitution and his anger about President Bush's repeated pissing on it by introducing the Presidential Signing Statements Act of 2007. What happens to this crucial bill will test both congressional integrity and courage.

Specter had the honesty to call President Bush's abuse of signing statements an "unconstitutional attempt to usurp legislative authority." "The president cannot use a signing statement to rewrite the words of a statute nor can he use a signing statement to selectively nullify those provisions he does not like," said Specter.

"Presidential signing statements can render the legislative process a virtual nullity, making it completely unpredictable how certain laws will be enforced. This legislation reinforces the system of checks and balances and separation of powers set out in our Constitution," said Specter.

Commenting on the legislative process, Specter noted: "This is a finely structured constitutional procedure that goes straight to the heart of our system of check and balances. Any action by the president that circumvents this finely structured procedure is an unconstitutional attempt to usurp legislative authority. If the president is permitted to rewrite the bills that Congress passes and cherry-pick which provisions he likes and does not like, he subverts the constitutional process designed by our framers." Subversion of our Constitution – pissing on it: that's what Bush has gotten away with. Bush-the-ruler has made a mockery of our sacred rule of law.

This bill would prevent the president from issuing a signing statement that alters a statute's meaning by "instructing federal and state courts not to rely on presidential signing statements in interpreting a statute."

This is Specter's second attempt at preventing Bush and any future president from disrespecting the Constitution. His similar bill in 2006 went nowhere. But he had some support. Senator Patrick Leahy said: "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. ... These signing statements are a diabolical device and the President will continue to use and abuse them, if Congress lets him."

From a historical perspective, Specter noted that "while signing statements have been commonplace since our country's founding, we must make sure that they are not being used in an unconstitutional manner; a manner that seeks to rewrite legislation, and exercise line item vetoes." An unconstitutional manner is exactly what Bush is guilty of.

In 2006 the Congressional Research Service came up with these summary statistics on constitutional objections in signing statements: Reagan 26 percent, Bush I 68 percent, Clinton 27 percent, and George W. Bush the winner at 86 percent. But the

way the current president has used signing statements to nullify laws is unique.

Many people have said that Bush's use of signing statements allows him and federal agencies to blatantly ignore provisions of laws and congressional intent. The Government Accountability Office found in mid-June that in several cases the administration did not execute laws as Congress intended when Bush attached a signing statement to them. GAO found that the statements have the effect of nullifying the law in question in about 30 percent of cases. In July 2006, a bipartisan task force of the American Bar Association described the use of signing statements to modify the meaning of duly enacted laws as "contrary to the rule of law and our constitutional system of separation of powers." And still Congress has not acted to stop this behavior!

The New York Times in 2006 editorialized about Bush's use of signing statements: And none have used it so clearly to make the president the interpreter of a law's intent, instead of Congress, and the arbiter of constitutionality, instead of the courts. Indeed, what Bush has done (and gotten away with) is unprecedented in American history.

Let's be clear. There is no constitutional provision, federal statute, or common-law principle that explicitly permits or prohibits signing statements. But two constitutional provisions are pertinent. Article I, Section 7 (in the Presentment Clause) empowers the president to veto a law in its entirety, or to sign it. And many aspects of Bush's signing statements amount to line item vetoes. The Supreme Court has held that line item vetoes are unconstitutional. In 1988, in *Clinton v. New York*, the Court said a president must veto an entire law. And Article II, Section 3 requires that the executive "take care that the laws be faithfully executed." Thus, the Bush style of signing statement has no constitutional support.

Interestingly, Supreme Court Justice Samuel A. Alito, when a staff attorney in the Justice Department's Office of Legal Counsel, wrote a 1986 memorandum making the case for "interpretive signing statements" as a tool to "increase the power of the Executive to shape the law." Alito warned that "Congress is likely to resent the fact that the President will get in the last word on questions of interpretation."

Here is another dimension to Bush's scummy behavior: "He agrees to a compromise with members of Congress, and all of them are there for a public bill-signing ceremony, but then he takes back those compromises -- and more often than not, without the Congress or the press or the public knowing what has happened," noted Christopher Kelley, a Miami University of Ohio professor who studies executive power. Phillip Cooper, a leading expert on signing statements, has called Bush's signing statements "excessive, unhelpful, and needlessly confrontational." Legal scholar Lawrence Tribe wrote that what is objectionable is "the president's failure to face the political music by issuing a veto and subjecting that veto to the possibility of an override in Congress."

Famed attorney John W. Dean has added yet another reason to question Bush's behavior: "The frequency and the audacity of Bush's use of signing statements are troubling. Enactments by Congress are presumed to be constitutional - as the Justice Department has often reiterated. For example, take what is close to boilerplate language from a government brief (selected at random): 'It is well-established that Congressional legislation is entitled to a strong presumption of constitutionality. See *United States v. Morrison* ('Every possible presumption is in favor of the validity of a

statute, and this continues until the contrary is shown beyond a rational doubt.')."  
But Bush puts himself above the Constitution, Supreme Court and the law.

Will Specter's second attempt succeed in a Democrat controlled Congress? And if so, will Bush sign it into law – without using a signing statement to refute its meaning and intent? Though it should be a no-brainer for every American that respects our Constitution, I bet that neither Congress nor Bush will come through and quickly make Specter's bill law of the land.

If it does not become law, common sense says it should be considered as a possible constitutional amendment. In fact, it is a perfect illustration of why more politically engaged Americans should support the national campaign to obtain the nation's first Article V convention for proposing amendments. When good and necessary laws cannot be obtained through the normal but untrustworthy legislative process, then lawmaking through constitutional amendments is absolutely necessary and appropriate. Our Framers knew what they doing when they created the Article V convention option. Learn more about it at [www.foavc.org](http://www.foavc.org).