

TO VETO OR NOT TO VETO By Tara Ross

Contributed by Scott Bennett
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The Boston Globe recently reported that the President believes he has the authority, by virtue of his office, to disregard more than 750 newly enacted laws. The President has made such a power grab quietly, The Globe states, by relying heavily upon a little document called a presidential signing statement.

Many Americans have probably never heard of presidential signing statements, but these documents are rather common. Indeed, signing statements have been used for centuries, although the vast majority of this usage has occurred since the Reagan administration.

Signing statements, by definition, are typically issued when a president signs a bill that has been approved by Congress. Normally, such a statement has several possible purposes.

First, the statement may contain an explanation of the likely effects of the bill. Second, it may contain instructions to administrative agencies regarding implementation of the bill's logistical aspects. Third, presidents may hope that their views will be given some weight if and when a court is asked to interpret one of the bill's provisions. Last, and perhaps more controversially, the signing statement may contain presidential disclaimers that one or more provisions are believed by the Executive Branch to be unconstitutional, although perhaps only in specified situations.

According to Jennifer Van Bergen, writing for Findlaw, presidents before Bush issued a total of 322 presidential signing statements. Of these, 247 were issued by Ronald Reagan, George H.W. Bush, and Bill Clinton. In sharp contrast, George W. Bush had already issued 435 statements at the conclusion of his first term in office.

But the difference isn't only in the numbers. The Globe reports that Bush has sometimes entered into intense negotiations with Congress, worked out a compromise, then used his signing statement to take back that compromise after the bill's approval by lawmakers. He simply declares that the provision containing the compromise is unconstitutional and won't necessarily be enforced.

Keep in mind that President Bush has not vetoed a single piece of legislation during his 5½ years in office. Yet his use of presidential signing statements is more expansive and more aggressive than that of any other president in American history.

The President certainly has the right to announce his own view on the constitutionality of legislation and to act accordingly. The Constitution divides power among three branches of government: the Legislative Branch, the Executive Branch, and the Judicial Branch. No single branch is given the sole authority to uphold the Constitution. Each branch bears some responsibility in this regard. These constitutional checks and balances help to make the American system so successful.

A president could, for instance, sign a bill that is constitutional in some of its applications, but not in others. He could then issue a signing statement clarifying that the law will be enforced only in the constitutional scenarios. Ultimately, then, the only fair way to evaluate the legal validity of Bush's signing statements is to evaluate them on a case-by-case basis.

Yet there is more to be considered here than legality. An action can be technically legal, but still a poor idea. For this latter reason, the President should reconsider the aggressiveness with which he has been using signing statements.

During his tenure as president, Bush has repeatedly made one small, but critical error. This President continuously pushes for more and more executive power. In and of itself, this isn't always bad. What is worrisome is the frequency with which Bush touts, "But you can trust me! I won't abuse this power," as adequate grounds for voters to support his expansion of presidential authority.

Most notably, Bush seems to have this attitude toward many anti-terrorism powers that he has sought. Last fall, the President took this attitude during the Harriet Miers nomination debacle. He seems to be taking this stance, once again, as he issues his signing statements.

The President sometimes fails to give adequate consideration to the precedents that he is setting for his successors. He doesn't seem to get that his own trustworthiness is not the issue. The problem is that his expansions of power will be used—perhaps extended even further—by future administrations. For this reason, the precedents that Bush sets should always be "one-size-fits all." The Constitution, the laws, and administrative procedures should be effective when trustworthy people are in power, but they should also protect freedom when untrustworthy individuals weasel their way into office.

The President's broad use of presidential signing statements is problematic for one additional reason. Bush seems to see his signing statements as an alternative to the veto, despite the fact that the Constitution explicitly provides the latter venue as the primary route by which presidents may overrule Congress.

This President does not like to be contradicted. He does not like to be told that he can't have his way. It's not surprising that someone with his personality has defaulted upon expansive use of signing statements. If he were to use vetoes, it would leave the door open for Congress to tell the President, "No." Bush does not like to be defied. With signing statements, Bush always gets the last word.

How convenient.

The President has impacted the nation positively in many ways during his time in office. However, his stubbornness and arrogance continue to be liabilities that will cause future generations to suffer.