Presidential Action and Statutes

Section 5, chapter 3 of 4

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U.S. HOUSE OF REPRESENTATIVES

Presidential Action and Statutes

Section 5 chapter 3 of 4

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Introduction

The Legislative Process Program materials prior to this packet describe how legislation makes its way through the House and how the House works with the Senate to agree on a final version of a bill to send to the President. This document discusses both the Executive Branch's role in the legislative process and the fate of legislation once it is signed into law.

The packet starts by describing the formal ways the President communicates his positions to Congress (through the State of the Union message and Statements of Administration Policy), moves on to his role in the budget process, and then to his role in signing or vetoing legislation (as well as his use of "signing statements").

Legislation signed by the President, or enacted by Congress over his veto, modifies a body of statutory law consisting of the enactments of prior Congresses, back to 1789. Statute is in turn the starting point for subsequent proposals in the House and Senate: most of what Congress does is aimed at amending, repealing or adding to Federal statute. Consequently, it is important for House staff to understand where statute can be found and in what form.

Influence of the Executive Branch

State of the Union

Excerpt from CRS Report: RS20021 (pages 1-2, 4-5)[1]
Updated March 7, 2006

The President's State of the Union Message: Frequently Asked Questions
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The Constitution mandates that the President "shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient." The President's State of the Union Message and address were known as the President's Annual Message to Congress until well into the 20th century. Presidents Washington and Adams delivered their messages to Congress in person, but President Jefferson abandoned the practice as "monarchical" and time consuming, sending written messages instead. This precedent was followed until President Wilson personally appeared before Congress in 1913. President Franklin Roosevelt adopted Wilson's practice of personal delivery, and it has since become a contemporary tradition. With the advent of radio (1923) and television (1947) coverage of the address, it gained great importance by providing a nationwide platform for the President.

Today, the annual State of the Union Message is usually delivered by the President at an evening joint session of Congress during the second, third, or fourth week of January. However, some Presidents have chosen not to deliver a State of the Union Message the year they were inaugurated, or, in some cases, in the January just prior to their departure from office. Now broadcast and web cast to a "prime time" national and international audience, the address serves several functions: as a report to Congress and the nation on national conditions; as a platform to announce and rally support for the President's legislative agenda for the coming year; and as a unique opportunity for the chief executive to convey personally his vision for the nation to Congress and the American people. In order to ensure continuity of government, one cabinet officer and, as of 2003, selected Members of Congress, are absent from the Capitol during the address.

What is the State of the Union Message?

The State of the Union Message is a communication from the President of the United States to Congress and the nation in which the chief executive reports on conditions in the United States and, sometimes, around the world, recommends a legislative program for the coming session of Congress; and frequently presents his views about and vision for the present and future.

What Section of the Constitution Authorizes the Message?

Article II, Section 3, clause 1 of the United States Constitution authorizes the State of the Union Message, stating: "He [the President] shall from time to time give to the Congress Information on the State of the Union, and recommend to their Consideration such measures as he shall judge necessary and expedient."

What Procedures Are Currently Followed When the President Delivers the Message?

[1] http://www.congress.gov/erp/rs/html/RS20021.html

A concurrent resolution, agreed to by both chambers, sets aside a certain date and time for a joint session of the House of Representatives and the Senate "for the purpose of receiving such communication as the President of the United States shall be pleased to make to them."[2] At the appointed time, the Senators cross the Capitol to the House chamber, where seats are reserved for them at the front of the chamber. The Speaker and the Vice President (in his capacity as President of the Senate) occupy seats at the dais, and the Speaker presides. Aside from reserved places for leadership, seats in the chamber are not assigned to particular Members.[3] The President is then escorted to the chamber by a specially-appointed committee of Members from both houses; upon entering the chamber, he is announced by the House of Representatives' Sergeant-at-Arms. The Speaker then introduces the President, who then delivers his address.

One late 20th century innovation was the opposition response to the State of the Union Message.[4] In 1966, Senator Everett Dirksen and Representative Gerald Ford made a televised joint Republican response to President Johnson's message, a practice that has since become a regular feature, and is usually broadcast shortly after the President has completed his remarks. The format for the opposition response varies, but it usually includes remarks by one or more party leaders (almost always Senators, Representatives, or state governors), who are nationally known, or are considered to be promising emerging political figures. In a more recent innovation, initiated by President Ronald Reagan, the chief executive will frequently invite citizens who have distinguished themselves in some field of service or endeavor to be his personal guests in the gallery. Usually, the achievements or programs for which the President publicly salutes them also serve to underscore some major element of his message.

[2] S.Con.Res. 77, 109th Cong., 2nd sess.
[3] Seats in the well of the House chamber are also reserved for the President's Cabinet, any Justices of the Supreme Court who choose to attend, and the Joint Chiefs of Staff. Members of the diplomatic corps, who are seated in the gallery, also frequently attend.
[4] "Opposition" in this case refers to the party that does *not* control the presidency.

Statements of Administration Policy (SAPs)

Excerpt from "Legislative Drafter's Deskbook: A Practical Guide" (pages 277-278)
Tobias A. Dorsey
Alexandria, VA: TheCapitol.Net, 2006.

One document prepared within the Executive Branch, known as a Statement of Administration Policy (SAP), deserves special mention because of its prominence in the legislative process. The purpose of a SAP (usually pronounced "sap") is to communicate to Congress the coordinated views of the President and agencies regarding a piece of legislation. A SAP is a prominent way for the executive branch to tell Congress that the President supports, has concerns about, or might veto legislation. Frequently, the support, concern, or opposition applies only to one or more parts of a bill and not necessarily to the entire bill. However, a SAP typically does not provide a detailed, proposed "fix" for contents that the President has concerns about or opposes. Instead, the executive branch usually follows up with letters and personal contacts to discuss the specifics with Congress. As appropriate, a SAP can also include the executive branch's estimate, or "scoring," carried out by the Office of Management and Budget, of a bill's cost for purposes of "pay-as-you-go" (PAYGO) calculations. A list of SAPs for each session of Congress, in electronic pdf.format, is available at the following website: www.whitehouse.gov/omb/legislative/sap/index.html.

SAPs are prepared within the Office of Management and Budget in coordination with the agency or agencies principally concerned and the White House. Generally, a SAP is prepared for each appropriations bill, for most major bills that are not appropriations bills, and even for some bills seen as minor or non-controversial.

OMB's Legislative Reference Division prepares SAPs for most major non-appropriations bills scheduled for House or Senate floor action in the coming week, including those to be considered by the Committee on Rules of the House. In addition, SAPs are sometimes prepared for "non-controversial" bills considered in the House under suspension of the rules. A SAP is prepared in coordination with other parts of OMB, the agency or agencies principally concerned, and other Executive Office of the President organizations and individuals. For appropriations legislation, OMB's Budget Review Division is responsible for preparing SAPs. While the Legislative Reference Division and Budget Review Division are responsible for coordinating and clearing SAPs through OMB and agencies, OMB's Legislative Affairs Office is responsible for clearing SAPs through the OMB director and the White House's West Wing.

The President's Budget

The Presidential Budget Process

Excerpt from CRS Report: 98-721 (pages 13-15)[5]
Updated December 28, 2004

Introduction to the Federal Budget Process
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The President's budget, officially referred to as the *Budget of the United States Government*, is required by law to be submitted to Congress early in the legislative session, no later than the first Monday in February. The budget consists of estimates of spending, revenues, borrowing, and debt; policy and legislative recommendations; detailed estimates of the financial operations of federal agencies and programs; data on the actual and projected performance of the economy; and other information supporting the President's recommendations.

[5] http://www.congress.gov/erp/rl/pdf/98-721.pdf

The President's budget is only a request to Congress; Congress is not required to adopt his recommendations. Nevertheless, the power to formulate and submit the budget is a vital tool in the President's direction of the executive branch and of national policy. The President's proposals often influence congressional revenue and spending decisions, though the extent of the influence varies from year to year and depends more on political and fiscal conditions than on the legal status of the budget.

The Constitution does not provide for a budget, nor does it require the President to make recommendations concerning the revenues and spending of the federal government. Until 1921, the federal government operated without a comprehensive presidential budget process. The Budget and Accounting Act of 1921, as amended, provides for a national budget system. Its basic requirement is that the President should prepare and submit a budget to Congress each year. The 1921 act established the Bureau of the Budget, now named the Office of Management and Budget (OMB), to assist the President in preparing and implementing the executive budget. Although it has been amended many times, this statute provides the legal basis for the presidential budget, prescribes much of its content, and defines the roles of the President and the agencies in the process.

Formulation and Content of the President's Budget

Preparation of the President's budget typically begins in the spring (or earlier) each year, at least nine months before the budget is submitted to Congress, about 17 months before the start of the fiscal year to which it pertains, and about 29 months before the close of that fiscal year. The early stages of budget preparation occur in federal agencies. When they begin work on the budget for a fiscal year, agencies already are implementing the budget for the fiscal year in progress and awaiting final appropriations actions and other legislative decisions for the fiscal year after that. The long lead times and the fact that appropriations have not yet been made for the next year mean that the budget is prepared with a great deal of uncertainty about economic conditions, presidential policies, and congressional actions.

As agencies formulate their budgets, they maintain continuing contact with the OMB examiners assigned to them. These contacts provide agencies with guidance in preparing their budgets and also enable them to alert OMB to any needs or problems that may loom ahead. Agency requests are submitted to OMB in late summer or early fall; these are reviewed by OMB staff in consultation with the President and his aides. The 1921 Budget and Accounting Act bars agencies from submitting their budget requests directly to Congress. Moreover, OMB regulations provide for confidentiality in all budget requests and recommendations prior to the transmittal of the President's budget to Congress. However, it is quite common for internal budget documents to become public while the budget is still being formulated.

The format and content of the budget are partly determined by law, but the 1921 act authorizes the President to set forth the budget "in such form and detail" as he may determine. Over the years, there has been an increase in the types of information and explanatory material presented in the budget documents. In most years, the budget is submitted as a multi-volume set consisting of a main document setting forth the President's message to Congress and an analysis and justification of his major proposals (the *Budget*) and supplementary documents providing account and program level details, historical information, and special budgetary analyses (the *Budget Appendix*, *Historical Tables*, and *Analytical Perspectives*), among other things.

Much of the budget is an estimate of requirements under existing law rather than a request for congressional action (more than half of the budget authority in the budget becomes available without congressional action). The President is required to submit a budget update (reflecting changed economic conditions, congressional actions, and other factors), referred to as the *Mid-Session Review*, by July 15 each year. The President may revise his recommendations any time during the year.

Executive Interaction With Congress

The President and his budget office have an important role once the budget is submitted to Congress. OMB officials and other presidential advisors appear before congressional committees to discuss overall policy and economic issues, but they generally leave formal discussions of specific programs to the affected agencies.

Agencies thus bear the principal responsibility for defending the President's program recommendations at congressional hearings. Agencies are supposed to justify the President's recommendations, not their own. OMB maintains an elaborate legislative clearance process to ensure that agency budget justifications, testimony, and other submissions are consistent with presidential policy.

Increasingly in recent years, the President and his chief budgetary aides have engaged in extensive negotiations with Congress over major budgetary legislation. These negotiations sometimes have occurred as formal budget "summits" and at other times as less visible, behind-the-scenes activities.

The Veto

Excerpt from CRS Report: RS21750 (pages 1-3)
Updated February 27, 2004

The Presidential Veto and Congressional Procedure
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Presidential vetoes are a rejection of legislation approved by majorities in both houses of Congress. Vetoes and congressional efforts to override them are often the reason for, or a reflection of, conflict between Congress and the President. The threat of a presidential veto can prompt the modification of bills moving through the legislative process.

Veto Process

When presented with legislation passed by both houses of Congress, the President may sign it into law within the 10-day period prescribed in the Constitution,[6] let it become law without his signature, or issue a regular or "pocket" veto. All bills and joint resolutions, except those proposing amendments to the Constitution, require presentment to the President before they become law. Amendments to the Constitution, which require a two-thirds vote of approval in each chamber, are sent directly to the states for ratification.[7] When Congress is in session, the President must exercise his veto within the prescribed 10-day period and return the rejected bill to Congress with the reasons for his veto. If the President neither signs nor vetoes legislation sent to him, it will become law without his signature at the end of the period. If, however, Congress has adjourned, preventing the return of a bill, the President may withhold his signature and the bill does not become law. This latter practice is known as a "pocket veto." Unlike the return of a vetoed bill, Congress does not have the opportunity or constitutional authority to override a pocket veto.[8]

[6] U.S. Constitution, Art. I, sec. 7.
[7] Ibid., Art. V.
[8] Beginning in 1929, there have been several judicial decisions that have attempted to clarify when an adjournment by Congress "prevents" the President from returning a veto. For information on these cases, see CRS Report RL30909, *The Pocket Veto: Its Current Status,* by Louis Fisher.

Veto Override Procedure in the House and Senate

CRS Report: RS22654[9]
Updated April 30, 2007

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Summary

A bill or joint resolution that has been vetoed by the President can become law if two-thirds of the Members voting in the House and the Senate each agree to pass it over the President's objection. The chambers act sequentially on vetoed measures; the House acts first on House-originated measures (H.R. and H.J. Res.) and the Senate acts first on Senate-originated measures (S. and S.J. Res.). If the first-acting chamber fails to override the veto, the measure dies and the other chamber does not consider it. The House typically considers the question of overriding a presidential veto for an hour, with time controlled and allocated by the chair and ranking member of the committee with jurisdiction over the bill. The Senate usually considers the question of overriding a veto under the terms of a unanimous consent agreement.

According to Article 1, Section 7 of the Constitution, when the President chooses not to sign a bill[10] and returns it instead to the chamber that originated it, the chamber shall enter the message of the President detailing the reasons for the veto in its *Journal* and then "proceed to reconsider" the bill.[11] A vetoed bill can become law if two-thirds of the Members voting in each chamber agree, by recorded vote, a quorum being present, to repass the bill and thereby override the veto of the President.

The chamber that originated the bill sent to the President acts first on the question of its reconsideration; in other words, the House acts first on vetoed bills that carry an "H.R." or "H.J. Res." designation, and the Senate acts first on vetoed bills that carry an "S." or "S.J. Res." designation. If the chamber of origin votes to repass the bill, then the bill with the veto message is transmitted to the second chamber, which then also reconsiders it.

Nothing in the Constitution requires that either chamber vote directly on the question of repassing a vetoed bill; the chambers have, for example, referred a vetoed bill to committee instead. If either chamber fails to vote on the question, then the measure dies. Both chambers will not necessarily even have a chance to take up the question. If two-thirds of the Members of the chamber of origin do not agree to override a veto, then the measure dies and the other chamber does not have an opportunity to vote on the question of repassing the bill.

The Constitution does not otherwise address how Congress should consider a vetoed bill, and it is therefore House and Senate rules and practices that additionally govern the treatment of bills vetoed and returned by the President.

House Procedure

[9] http://www.congress.gov/erp/rs/html/RS22654.html
[10] In this report, the word "bill" is used to refer to all measures that are presented to the President, which includes bills as well as joint resolutions that do not propose constitutional amendments.
[11] Section 7 of Constitution gives the President 10 days, excluding Sundays, after the receipt of a measure from Congress to choose one of three options: sign the measure into law, veto it and return it to the Congress, or take no action. If the President takes no action and Congress is in session, the bill becomes law without his signature. If, however, the Congress adjourns sine die before the 10 day period has expired, and the President takes no action, then the bill is "pocket vetoed." For more information, see CRS Report RS22188, *Regular Vetoes and Pocket Vetoes: An Overview,* by Kevin R. Kosar; and CRS Report RL30909(pdf), *The Pocket Veto: Its Current Status,* by Louis Fisher.

Overview

The consideration of a vetoed bill is a matter of high privilege in the House, and the chamber generally votes to override or sustain the veto shortly after the message is received from the President or the Senate. Time for debate on the question is usually controlled and allocated by members of the committee of jurisdiction, and a majority of the House can vote to bring consideration to a close. To repass the bill over the veto of the President requires the support of two-thirds of the Members voting, a quorum being present.

Beginning Reconsideration of a Vetoed Bill in the House

On the day a vetoed bill and accompanying presidential message are received, the Speaker lays the message before the House. The veto message is read and entered in the *House Journal.* It is not necessary for a Member to make a motion to reconsider the vetoed bill. If no Member seeks recognition after the message is read, the Speaker will put the question of overriding the veto before the House by stating:

> The pending question is whether the House will, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding.

If Members do not wish immediately to debate the question, several preferential motions can be made before the Speaker states it. The House can agree by motion (or unanimous consent) to postpone the consideration of a veto message to a named day or to refer it to committee.[12] The House may also agree to a nondebatable motion to lay the vetoed bill on the table. While the motion to table usually permanently and adversely disposes of a matter, that is not true in the case of a vetoed bill; a motion to remove the bill from the table could be made at any time.

House Debate on Veto Override

Debate on the question of overriding a veto takes place under the hour rule. In practice, the Speaker recognizes the chair of the committee with jurisdiction over the vetoed bill for an hour of debate, and the chair in turn yields 30 minutes to the ranking minority member for purposes of the debate only.[13] The chair and ranking member of the committee serve as floor managers of the debate, yielding portions of time to other Members who wish to speak. Typically, after the hour is consumed or yielded back, the majority floor manager moves the previous question. If a majority of the House votes to order the previous question, the vote immediately occurs on the question of overriding the veto.

Voting in the House

To override a veto, two-thirds of the Members voting, a quorum being present, must agree to repass the bill over the President's objections. The Constitution requires that the vote be by the "yeas and nays," which in the modern House means that Members' votes will be recorded through the electronic voting system. The vote on the veto override is final because, in contrast to votes on most other questions in the House, a motion to reconsider the vote on the question of overriding a veto is not in order.

If the override vote on a House or Senate bill is unsuccessful, then the House informs the Senate of this fact and typically refers the bill and veto message to committee. If the House votes to override a veto of a bill that originated in the House (H.R. or H.J. Res.), the bill and veto message are sent to the Senate for action. If the House successfully overrides a veto of a bill that

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[12] The motion to postpone consideration of a veto message and the motion to refer a veto message are debatable under the hour rule. Both motions can be adversely disposed of with little or no debate by a nondebatable motion to table.

[13] Because time on the question is controlled by the majority floor manager, other motions are typically not in order unless the majority floor manager makes the motions or yields to someone else for that purpose.

originated in the Senate (S. or S.J. Res.), then the bill becomes law because two-thirds of both chambers have agreed to override the veto.[14]

Senate Procedure

Overview

If the Senate wishes to reconsider a vetoed bill, Senators generally enter into a unanimous consent agreement that the message be considered as read, printed in the *Congressional Record,* and, as required by the Constitution, entered in the *Senate Journal*. Senators often also agree, by unanimous consent, to limit time for debate on the question of overriding the veto. When the Senate receives a vetoed measure from the President or the House,[15] it is quite common for it to be "held at the desk" for several days and considered only after unanimous consent has been reached on the terms of its consideration. When the vote on the question occurs, it must be taken by rollcall vote and receive support from two-thirds of the Senators voting, a quorum being present.

Beginning Reconsideration of a Vetoed Bill in the Senate Without a Unanimous Consent Agreement

Although generally the Senate reconsiders a vetoed bill under the terms of a unanimous consent agreement, it is not necessary to secure the support of all 100 Senators to consider a vetoed bill in the Senate. Absent an arrangement to hold the veto message at the desk, it would be read and then entered into the *Journal* after its receipt from the President or the House. The presiding officer would then state:

Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

Several debatable motions are in order, however, that could displace consideration of the veto message. The message could be referred to committee, for example, or postponed to a specific time. Alternatively, the majority leader might make a motion to proceed to another matter. If the Senate takes any of these actions, then the question of overriding the veto can only be brought before the Senate by unanimous consent or a nondebatable motion to proceed.

Finally, once the veto message has been laid before the Senate, it could also be tabled or indefinitely postponed, which would normally preclude any further action on the matter.

Senate Debate on Veto Override

The question of overriding a veto is debatable under the regular rules of the Senate. The question could be debated as long as any Senator sought recognition to discuss it.

Debate on the question of overriding a veto can be limited by unanimous consent or by invoking cloture. To end debate through a cloture motion requires the support of three-fifths of

[14] For additional information on the House action on vetoed bills, see (1) William Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2003), chapter 57, pp. 901-907; and (2) U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 109th Congress*, H.Doc. 108-241, 108th Cong., 2nd sess. (Washington: GPO, 2005), sec. 104-110a.

[15] Except by unanimous consent, consideration of a veto message would not interrupt consideration of a measure being considered under the terms of a unanimous consent agreement (Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure,* 101st Cong., 2nd sess., S. Doc. 101-28 (Washington: GPO, 1992) (hereafter *Riddick's Senate Procedure),* p. 1384.

Senators duly chosen and sworn, or 60 Senators if there are no vacancies.[16] Cloture is rarely used to end debate on overriding a Presidential veto. The number of Senators required to end debate is less than the number required to override a veto (assuming that there are no vacancies and more than 90 Senators vote on the override question).

Voting in the Senate

Two-thirds of the Senators voting, a quorum being present, must agree to pass the bill to override the veto. The vote must be a rollcall vote, and not a voice vote, due to the constitutional requirement that the vote be by the "yeas and nays." A motion to reconsider the vote on the question of overriding a veto is in order only if the Senate fails to override the veto. In other words, if two-thirds of the Senators agree to override the veto, a motion to reconsider that vote is not in order.

If the Senate fails to override a veto of a Senate-originated bill (S. or S.J. Res.), then the question of override never reaches the House. The Senate simply informs the House that the override vote on a House or Senate bill was unsuccessful. If the override vote on a Senate-originated measure (S. or S.J. Res.) is successful in the Senate, the bill and veto message are sent to the House for action. If the override vote on a House-originated measure (H.R. or H.J. Res.) is successful, then the bill becomes law because two-thirds of both chambers have agreed to override the veto."[17]

Presidential Signing Statements: Constitutional and Institutional Implications

Excerpt from CRS Report: RL33667 (pages 4-6)[18]
Updated September 17, 2007

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Presidential signing statements are official pronouncements issued by the President contemporaneously to the signing of a bill into law that, in addition to commenting on the law generally, have been used to forward the President's interpretation of the statutory language; to assert constitutional objections to the provisions contained therein; and, concordantly, to announce that the provisions of the law will be administered in a manner that comports with the Administration's conception of the President's constitutional prerogatives.[19] While the history of presidential issuance of signing statements dates to the early 19th century, the practice has become the source of significant controversy in the modern era as Presidents have increasingly employed the statements to assert constitutional and legal objections to congressional enactments.[20] President Reagan initiated this practice in earnest, transforming the signing statement into a mechanism for the assertion of presidential authority and intent. President Reagan issued 250 signing statements, 86 of which (34%) contained provisions objecting to one or more of the statutory provisions signed into law. President George H. W. Bush continued this practice, issuing 228 signing statements, 107 of which (47%) raised objections. President Clinton's conception of presidential power proved to be largely consonant with that of the preceding two administrations. In turn, President Clinton made aggressive use of the signing

[16] For more information on ending debate in the Senate, see CRS Report RL30360, *Filibusters and Cloture in the Senate,* by Richard S. Beth and Stanley Bach.
[17] For additional information on Senate action on vetoed bills, see U.S. Congress, Senate, Riddick's Senate Procedure, pp. 1381-1389.
[18] http://www.congress.gov/erp/rl/html/RL33667.html
[19] Philip J. Cooper, "George W. Bush, Edgar Allen Poe and the Use and Abuse of Presidential Signing Statements," Presidential Studies Quarterly 35, no. 3, at p. 517 (September 2005).
[20] Christopher N. May, "Presidential Defiance of 'Unconstitutional' Laws: Reviving the Royal Prerogative," 21 Hastings Const. L.Q. 865, 932 (1994).

statement, issuing 381 statements, 70 of which (18%) raised constitutional or legal objections. President George W. Bush has continued this practice, issuing 152 signing statements, 118 of which (78%) contain some type of challenge or objection. The significant rise in the proportion of constitutional objections made by President Bush is compounded by the fact that these statements are typified by multiple objections, resulting in more than 1,000 challenges to distinct provisions of law. The number and scope of such assertions in the George W. Bush Administration has given rise to extensive debate over the issuance of signing statements, with the American Bar Association (ABA) recently publishing a report declaring that these instruments are "contrary to the rule of law and our constitutional separation of powers" when they "claim the authority or state the intention to disregard or decline to enforce all or part of a law ... or to interpret such a law in a manner inconsistent with the clear intent of Congress.[21]

However, in analyzing the constitutional basis for, and legal effect of, presidential signing statements, it becomes apparent that no constitutional or legal deficiencies adhere to the issuance of such statements in and of themselves. Rather, it appears that the appropriate focus of inquiry in this context is on the assertions of presidential authority contained therein, coupled with an examination of substantive executive action taken or forborne with regard to the provisions of law implicated in a presidential signing statement. Applying this analytical rubric to the current controversy, it seems evident that the issues involved center not on the simple issue of signing statements, but rather on the view of presidential authority that governs the substantive actions of the Administration in question.

Historical Usage and Constitutional Basis

There is no explicit constitutional provision authorizing the issuance of presidential signing statements. Article I of the Constitution provides only that the President "shall sign" a bill of which he approves, while in vetoing a measure the President is required to return the measure "with his Objections to that House in which it shall have originated."[22] However, Presidents have issued such statements since the Monroe Administration, and there is little evident constitutional or legal support for the proposition that the President may be constrained from issuing a statement regarding a provision of law.

The first controversy arising in this context stemmed from a signing statement issued by Andrew Jackson in 1830 that raised objections to an appropriations bill that involved internal improvements.[23] The bill specifically addressed road examinations and surveys. In his signing statement President Jackson declared that the road in question, which was to reach from Detroit to Chicago, should not extend beyond the territory of Michigan.[24] A subsequently issued House report criticized Jackson's action, characterizing it as in effect constituting a line item veto.[25] Likewise, a signing statement issued by President Tyler in 1842 expressing doubts about the constitutionality of a bill regarding the apportionment of congressional districts was characterized by a select committee of the House as "a defacement of the public records and archives."[26] Perhaps sensitized by this rebuke, Presidents Polk and Pierce apologized for the issuance of signing statements, noting that such action departed from the traditional practice of notifying Congress of the approval of a bill via an oral message from the President's private secretary.[27] This conception of a signing statement as an unusual instrument was again noted by President Grant in 1875, when he declared that his use of a signing statement was an "unusual method of

[21] American Bar Association, Report of the Task Force on Presidential Signing Statements and the Separation of Powers Doctrine at p. 5 (August 2006).

[22] U.S. Const., Art I, sec. 7 cl. 2; *see also*, May, n. 2, *supra*, at 929.
[23] Louis Fisher, "Constitutional Conflicts Between Congress and the President," University Press of Kansas, 4th Ed., at p. 132 (1997).
[24] *See* Christopher S. Kelley, "A Comparative Look at the Constitutional Signing Statement," 61st Annual Meeting of the Midwest Political Science Association, at p. 5 (2003).
[25] Fisher, n. 5, *supra*, at 132.
[26] Fisher, n. 5, *supra*, at 133.
[27] May, n. 2, *supra*, at 929-930.

conveying the notice of approval...."[28] Signing statements remained comparatively rare through the end of the 19th century, but had become common instruments by 1950. President Truman, for instance, issued nearly 16 signing statements per year, on average, with the figure steadily increasing up to the modern day. Concurrent with the rise in the number of statements issued, the usage of signing statements to voice constitutional objections Power," 23 Const. Comment. 307, 323 (2006).

[28] May, n. 2, *supra*, at 930.

Statutes

Excerpt from CRS Report: RL30812 (pages 4-7)[29]
Updated December 27, 2007

Federal Statutes: What They are and Where to Find Them
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When Congress passes a law, it may amend or repeal earlier enactments or it may write on a clean slate. Newly enacted laws are published chronologically, first as separate statutes in "slip law" form and later cumulatively in the bound volumes of the *Statutes at Large*. Additionally, most statutes are also incorporated into the *United States Code* (*U.S.C.*). The *U.S.C.* and its commercial counterparts, *United States Code Service* (*U.S.C.S.)* and *United States Code Annotated* (*U.S.C.A.)* take the federal statutes that are of a general and permanent nature and arrange them by subject into fifty separate titles. As the statutes that underlie the *Code* are revised, superseded, or repealed, the provisions of the *Code* are updated to reflect these changes.

Public Laws and Private Laws

When a piece of legislation is enacted under the procedures set forth in Article 1, Section 7 of the Constitution, it is characterized as a "public law" or a "private law." Each new statute is assigned a number according to its order of enactment within a particular Congress (e.g., the 10th public law enacted in the 109th Congress was numbered as Public Law 109-10; the 10th private law was numbered Private Law 109-10). Private laws are enacted for the benefit of a named individual or entity (e.g., due to exceptional individual circumstances, Congress enacts a law providing a government reimbursement to a named person who would not otherwise be eligible under general law). In contrast, public laws are of general applicability and permanent and continuing in nature. Public laws form the basis of the *Code*. All other laws must be researched in the slip laws/*Statutes at Large* format.

The Government Printing Office (GPO) publishes the first official text of a new statute, the slip law, in pamphlet form. Individual slip laws in print format can be obtained from the GPO. Federal Depository Libraries, located throughout the United States, also provide free public access to copies of federal publications and other information. A list of Federal Depository Libraries and their locations is accessible on the Internet at http://www.gpoaccess.gov/libraries.html. Some private and public libraries compile the laws in looseleaf binders or in microfiche collections.

Commercial Sources of Public Laws (Print Format)

The *United States Code Congressional and Administrative News* (*U.S.C.C.A.N.*) compiles and publishes public laws chronologically in their slip law version. *U.S.C.C.A.N.*'s annual bound volumes and monthly print supplements include the texts of new enactments and selected Senate, House, and/or conference reports. The *U.S.C.S.* and the *U.S.C.A.* publish new public laws chronologically as supplements.

The United States Statutes At Large

Slip laws (both public laws and private laws) are accumulated, corrected and published at the end of each session of Congress in a series of bound volumes entitled *Statutes at Large*. The laws are cited by volume and page number (e.g., 96 Stat. 1259 refers to page 1259 of volume 96 of the *Statutes at Large***)**. Researchers are most likely to resort to this publication when they are

[29] http://www.congress.gov/erp/rl/html/RL30812.html

interested in the original language of a statute or in statutes that are not codified in the *Code*, such as appropriations and other temporary or private laws.

Public Laws, as Amended

Most statutes do not initiate new programs. Rather, most statutes revise, repeal, or add to existing statutes. Consider the following sequence of enactments.

- In 1952, Congress passed the Immigration and Nationality Act of 1952 (P.L. 82-414, 66 Stat. 163). This law generally consolidated and amended federal statutory law on the admission and stay of aliens in the U.S. and how they may become citizens. The Immigration and Nationality Act of 1952 was codified at Title 8 of the *U.S.C.* §§ 1 et seq.

- In 1986, Congress passed the Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). Section 101 of this act amended Section 274 of the Immigration and Nationality Act of 1952 (codified at 8 U.S.C § 1324) by adding Section 274a (codified at 8 USC § 1324a). This new section (Section 274a) made it unlawful for a person to hire for employment in the United States an illegal alien.

- In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208 (Division C), 110 Stat. 3009). Section 412 of the 1996 Act amended the employer sanctions process by requiring an employer to verify that a new employee is not an illegal alien. As with the 1986 Act, the 1996 Act expressly amended the Immigration and Nationality Act of 1952 (Section 274A in this case) and Section 1324a in Title 8 of the U.S.C. (8 U.S.C. § 1324a).

As the above sequence illustrates, the canvas upon which Congress works is often an updated, stand-alone version of an earlier public law (e.g., Immigration and Nationality Act of 1952, as amended), and not the *U.S. Code*. On the "Titles of *United States Code*" page of the *Code* an asterisk appears next to some of the titles. The asterisks refer to a note that states: "This title has been enacted as positive law." If the title is asterisked, the *Code* provides the authoritative version of the public law, as amended. For example, there is no asterisk beside Title 42 of the *U.S.C*. Thus, the provisions codified in Title 42 are not authoritative. Should there be a discrepancy, a court will accept the language in the *Statutes at Large* as the authoritative source and not the *Code*. It should be noted that there is no substantive difference between the language of the public law as published in the *Statutes at Large* and that of the *Code*.

It is often difficult to find current, updated versions of frequently amended public laws in print. Many congressional committees periodically issue committee prints containing the major public laws within their respective jurisdictions. Alternatively, the various commercial publishers, discussed herein, print updated versions of major public laws. In addition, the amended versions of some major public laws can be found on the Internet.

U.S. Code and the Office of Law Revision Counsel

The *United States Code* is the official government codification of federal legislation. This resource has been printed by the United States Government Printing Office since 1926. The *U.S.C*. is published every six years and supplemented by annual cumulative bound volumes. The latest edition is dated 2000.

In the *U.S.C.*, statutes are grouped by subject into fifty titles. Each title is further organized into chapters and sections. A listing of the titles is provided in each volume. Unlike the statutes, the *Code* is cited by title and section number (e.g., 28 U.S.C. Sec. (or §) 534 refers to Section 534 of Title 28). Notes at the end of each section provide additional information, including statutory origin of the *Code* provision (both by public law number and *Statutes at Large* citation), the effective date(s), a brief citation and discussion of any amendments, and cross references to related provisions.

Annotated Editions of the United States Code

The *United States Code Annotated* (*U.S.C.A.*) published by Thomson/West and the *United States Code Service* (*U.S.C.S.*) published by LexisNexis are unofficial, privately published editions of the *Code*. These publications include the text of the *Code*, annotations to judicial decisions interpreting the *Code* sections, cross references to the *Code of Federal Regulations* (*C.F.R.*) provisions and historical notes. Both also provide references to selected secondary sources. For example, the *U.S.C.S*. includes selected law review articles.

Bound volumes of the *U.S.C.A.* and the *U.S.C.S.* are updated by annual inserts ("pocket parts") and supplements. These updates include newly codified laws and annotations. Both *U.S.C.A.* and *U.S.C.S.* issue pamphlets containing copies of recently enacted public laws arranged in chronological order. Since there is a time lag in publishing the official *U.S.C.*, codified versions of new enactments usually appear first in the *U.S.C.A.* and *U.S.C.S.* supplements.

General Index

Each edition of the *Code* has a comprehensive index which is organized by subject. For example, to locate the provision of law establishing a review committee for farm marketing quotas, search the term "farm marketing quotas," in the index. There are references to several other subject headings, including the Agricultural Adjustment Assistance Act of 1938. Turning to that heading and looking under the subheading "farm marketing quotas," there is a reference to a "committee for review" codified at 7 U.S.C. § 1363. The index is updated in each annual supplement to the *Code*.

Popular Name Table

Each edition of the *Code* also has a table which can be used to find an act if its citation is not known. The public laws are arranged alphabetically and can be searched under their commonly known names. This reference also provides the public law number and the citations to the *Statutes at Large* and the *U.S.C.* If the original laws have been amended, the same information is provided for each amendment. For example, searching for the "Special Drawing Rights Act" in the table shows that it has been codified at 22 U.S.C. § 286q.

Law Revision Counsel

Appointed by the Speaker of the House. Under the direction of the law revision counsel, the Office of the Law Revision Counsel prepares, publishes, and keeps current the United States Code, a consolidation and codification by subject matter of the general and permanent laws of the United States http://uscode.house.gov.[30]

Statutes at Large

The *Statutes at Large* table is one of the most useful research tools because it shows the relationship between public laws, the *Statutes at Large*, and the *U.S.C.*. A researcher who has either a public law number or a *Statutes at Large* citation can use this table to ascertain where that law is codified and its present status. The table is particularly useful when searching in one section of a law that contains many subsections because it can be used to find where individual sections and subsections of a public law have been codified. For example, the table indicates that Public Law No. 99-661, Section 1403 is codified in the *U.S.C.* at 20 U.S.C. § 4702.

U.S.C.A. and the *U.S.C.S.* also have their own versions of the research tools discussed above.[31]

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[30] Lorraine H. Tong. "House Administration Officers and Officials," CRS Report: 98-401, March 14, 2007, p. 1. http://www.congress.gov/erp/rs/html/98-401.html.

[31] Cassandra Foley. "Federal Statutes: What They Are and Where to Find Them," CRS Report: RL30812, December 27, 2007, p.5. http://www.congress.gov/erp/rl/html/RL30812.html

Reenactment or Positive Law Codification

As discussed above, a measure sent to the President and signed into law is assigned a public law number and published as a stand-alone pamphlet called "slip law." After each Congress is over, all of the slip laws for that particular Congress are assembled in chronological order and published as the Statutes At Large. At this stage, because the laws are all in chronological order instead of arranged by subject matter, and because each Congress has its own set of Statutes At Large, the Statutes At Large is very difficult to use. (E.g., all of the federal statutes having to do with highways are spread out among shelves worth of volumes of the Statutes At Large spanning decades of Congresses. A highway bill signed into law during the 105th Congress might amend a bill enacted in the 97th Congress, which amends a prior statute, and so on.) The U.S. Code solves this problem by rearranging and splicing together all of the statutes into subject matter order, with each subject matter covered in one of the 50 titles of the U.S. Code. (E.g., all of the federal statutes having to do with highways are codified, in a logical order, in Title 23).

There is a small wrinkle in all of this publishing and republishing: occasionally, as parts of the statutes are rearranged, renumbered and reprinted in order to fit the format and order of the U.S. Code, typographical errors or other mistakes result in the U.S. Code version of a statute having a different meaning and legal effect than the version originally passed and signed into law. When such a conflict exists, the version actually signed into law (as found in slip law and then in the Statutes At Large) controls. There have been instances where the outcome of a court case or a regulatory decision has turned on such unintended differences between the Statutes At Large and the U.S. Code.

The Office of Law Revision Counsel is responsible for going through the U.S. Code and – without changing the meaning or legal effect of any of the statutory provisions – resolving ambiguities and contradictions and removing inconsistencies, redundancies, obsolete content and other imperfections. Once Law Revision Counsel has completed this process for an individual title of the U.S. Code, or, sometimes, a piece of an individual title, Congress can "reenact" that title as law – that is, put the title's new, edited language into a bill and pass it, and send it to the President – making it the official law, superseding the Statutes At Large.

An example of a positive law codification bill in the 110th Congress is H.R. 4779, which would reenact Title 41 on public contracts. This bill was drafted by Law Revision Counsel, introduced by Judiciary Chairman Conyers and referred to the Judiciary Committee (where all positive law codification measures are referred). Another example is H.R. 4780, which would create a whole new, 51st title in the U.S. Code devoted to space.