

Administration of Barack H. Obama, 2009

Memorandum on Presidential Signing Statements

March 9, 2009

Memorandum for the Heads of Executive Departments and Agencies

Subject: Presidential Signing Statements

For nearly two centuries, Presidents have issued statements addressing constitutional or other legal questions upon signing bills into law (signing statements). Particularly since omnibus bills have become prevalent, signing statements have often been used to ensure that concerns about the constitutionality of discrete statutory provisions do not require a veto of the entire bill.

In recent years, there has been considerable public discussion and criticism of the use of signing statements to raise constitutional objections to statutory provisions. There is no doubt that the practice of issuing such statements can be abused. Constitutional signing statements should not be used to suggest that the President will disregard statutory requirements on the basis of policy disagreements. At the same time, such signing statements serve a legitimate function in our system, at least when based on well-founded constitutional objections. In appropriately limited circumstances, they represent an exercise of the President's constitutional obligation to take care that the laws be faithfully executed, and they promote a healthy dialogue between the executive branch and the Congress.

With these considerations in mind and based upon advice of the Department of Justice, I will issue signing statements to address constitutional concerns only when it is appropriate to do so as a means of discharging my constitutional responsibilities. In issuing signing statements, I shall adhere to the following principles:

1. The executive branch will take appropriate and timely steps, whenever practicable, to inform the Congress of its constitutional concerns about pending legislation. Such communication should facilitate the efforts of the executive branch and the Congress to work together to address these concerns during the legislative process, thus minimizing the number of occasions on which I am presented with an enrolled bill that may require a signing statement.

2. Because legislation enacted by the Congress comes with a presumption of constitutionality, I will strive to avoid the conclusion that any part of an enrolled bill is unconstitutional. In exercising my responsibility to determine whether a provision of an enrolled bill is unconstitutional, I will act with caution and restraint, based only on interpretations of the Constitution that are well-founded.

3. To promote transparency and accountability, I will ensure that signing statements identify my constitutional concerns about a statutory provision with sufficient specificity to make clear the nature and basis of the constitutional objection.

4. I will announce in signing statements that I will construe a statutory provision in a manner that avoids a constitutional problem only if that construction is a legitimate one.

To ensure that all signing statements previously issued are followed only when consistent with these principles, executive branch departments and agencies are directed to seek the advice of the Attorney General before relying on signing statements issued prior to the date of

this memorandum as the basis for disregarding, or otherwise refusing to comply with, any provision of a statute.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the *Federal Register*.

BARACK OBAMA

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NOTE: This memorandum was published in the *Federal Register* on March 11.

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