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American Bar Association Urges Halt to 'Signing Statements'

Presses protection of checks and balances
by Charlie Savage

WASHINGTON - The American Bar Association's House of Delegates voted yesterday to call on President Bush and future presidents not to issue "signing statements" that claim the power to bypass laws, and it urged Congress to pass legislation to help courts put a stop to the growing practice.

Meeting in Hawaii, the policy-making body for the world's largest organization of attorneys endorsed the findings of its bipartisan task force, which last month issued a unanimous report portraying signing statements as an unconstitutional power grab by presidents. Under the Constitution, the report said, presidents have only two options when presented with a bill Congress has passed: sign it and enforce all its components, or veto it.

After an hour's debate, the ABA voted to declare that it "opposes, as contrary to the rule of law and our constitutional system of separation of powers, the misuse of presidential signing statements by claiming the authority . . . to disregard or decline to enforce all or part of a law the president has signed, or to interpret such a law in a manner inconsistent with the clear intent of Congress."

The ABA also urged Congress to pass legislation giving courts greater jurisdiction to review signing statements in which a president asserts that some parts of a bill unconstitutionally infringe on his executive powers and need not be obeyed. Senate Judiciary Committee chairman Arlen Specter, Republican of Pennsylvania, has already filed such a bill.

No individual tally was recorded of the ABA vote, but several witnesses said the overwhelming majority of the 550-member House of Delegates favored the resolution. The body represents more than 400,000 ABA members.

Outgoing ABA President Michael Greco, a Boston attorney who created the task force following a Globe report on Bush's use of signing statements, said the ABA had acted to protect the American system of checks and balances that divides power between the

executive, legislative, and judicial branches of government.

“We're not saying a president doesn't have the right to express his opinion about what is constitutional,” Greco said. “But what he doesn't have is the awesome power of declaring something unconstitutional and not enforcing it -- of accruing under himself the powers of all three branches.”

Incoming ABA president Karen Mathis, a Denver attorney, said the organization will now urge Congress and the executive branch to curb the use of presidential signing statements.

The Justice Department did not return a call yesterday evening. But administration attorneys have vigorously defended the use of signing statements, noting that previous presidents used them as well and arguing that the practice was more “respectful” of Congress than a veto because it preserved other parts of a bill.

The use of presidential signing statements dates back to the 19th century, but they were very rare until the 1980s, when President Ronald Reagan began issuing them more frequently. Reagan's successors continued the practice, including President Bill Clinton, who challenged 140 laws over eight years.

Under the current administration, however, the practice has reached a new level of intensity.

Bush has used signing statement to challenge more than 800 laws -- more than all previous presidents combined. At the same time, Bush has vetoed just one bill -- the fewest number of vetoes since the 1800s, sharply limiting Congress's ability to override his judgments.

Among the laws Bush has challenged are a torture ban, oversight provisions in the USA Patriot Act, restrictions against using US soldiers to fight Colombian rebels, whistleblower protections for executive branch employees, safeguards against political interference in federally funded scientific research, and numerous other statutory restrictions or requirements on his powers.

The ABA itself has come under fire from some liberal law professors -- including Laurence Tribe of Harvard Law School -- who say that it should have focused its criticism on Bush for his use of signing statements to advance a controversial view of his own powers. The ABA's critics argued that it distorted the issue because it wanted to appear bipartisan.

Because Congress often lumps many separate laws into a single bill, skeptics of the ABA's report said, it is sometimes impractical to veto the entire package because a few of its components have constitutional problems.

Signing statements, the critics argued, can be useful and appropriate when wielded by a president with more mainstream views about what is unconstitutional.

But Greco insisted yesterday that the Constitution requires presidents to veto bills if they think some of the components are unconstitutional. And he praised the ABA for "keeping the debate at the higher level" of what powers any president can wield.

Neal Sonnett, a former federal prosecutor who chaired the signing statements task force, said the group had sent a strong message that society needs to push back against what has been an under-the-radar but escalating arrogation of executive power.

"I think the American people should understand that the ABA has spoken strongly in defense of our system of separation of powers," Sonnett said. "No president is above the law, and the president cannot decide to enforce a law or not to enforce a law at his whim."

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