

# TELL US HOW THE SIGNING STATEMENTS WERE USED

Charlie Savage has an article reporting—first of all—that Obama has warned those in the executive branch to check before relying on one of Bush’s Presidential signing statements. (h/t BSL)

President Obama on Monday ordered executive officials to consult with Attorney General Eric H. Holder Jr. before relying on any of them to bypass a statute.

Savage (who of course wrote the book on this stuff) goes on to explain the background of Bush’s abuse of signing statements, and to note that Obama says he will use signing statements, "with caution and restraint" (whatever that means).

Here’s Obama’s memo, and some excerpts:

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.

Not that it's a surprise, but Obama's warning that executive branch officials ought not rely on Bush's signing statements without checking (aside from a signal that we're just supposed to guess which Holder wants to keep and which he wants to get rid of), pretty much confirms that Bush Administration officials have been relying on signing statements when they decide to ignore a law.

So while I appreciate Obama's promise of

"caution and restraint," I want to know...

Which signing statements have executive officials been using? The one overriding the McCain amendment prohibiting torture? The one telling Congress to feck off in its requests for data on the uses and abuses of the PATRIOT Act? Or my personal favorite, the one saying that, even though Congress cut off funding for such things, the Administration could still use funds to data mine American citizens?

Really. I'm glad Obama is promising all this "caution and restraint." But aren't we owed some accounting for how these have been used in the last eight years?