STATEMENT ON PRESIDENTIAL SIGNING STATEMENTS
BY THE COALITION TO DEFEND CHECKS AND BALANCES

AN INITIATIVE OF THE CONSTITUTION PROJECT

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We are members of the Constitution Project's Coalition to Defend Checks and Balances. We are former government officials and judges, scholars, and other Americans who are deeply concerned about the risk of permanent and unchecked presidential power, and the accompanying failure of Congress to exercise its responsibility as a separate and independent branch of government.

We write to express our concerns about certain uses of presidential signing statements that we believe greatly increase this risk. We applaud Senate Judiciary Committee Chairman Arlen Specter for calling a hearing to focus attention on an issue that goes to the very heart of our system of government.

Presidential signing statements – formal expressions of the views of a President regarding legislation that he has just signed into law – are nearly as old as the Republic. There is nothing inherently troubling about them. The question is how they are used.

Throughout history, signing statements have been used to thank supporters, provide reasons for signing a bill, and express satisfaction or, on occasion, displeasure with legislation passed by Congress.

More recently, Presidents Ronald Reagan, George H.W. Bush, and Bill Clinton have used signing statements as a tool to express constitutional and other objections to legislation, influence judicial interpretation, and otherwise advance policy goals.

President George W. Bush has further transformed the use of the presidential signing statement, using it on numerous occasions to challenge or deny effect to legislation that he considers unconstitutional. Since 2001, President Bush has objected on constitutional grounds to over 500 provisions in over 100 pieces of legislation, a number approaching the 575 constitutional statements issued by all of his predecessors combined. One scholar has identified eighty-two instances in which President Bush has disputed a bill's constitutionality on the basis that Article II of the Constitution does not allow Congress to interfere with the President's "power to supervise the unitary executive," seventy-seven instances in which he has claimed that, as President, he has "exclusive power over foreign affairs," and forty-eight instances in which he has claimed "authority to determine and impose national security classifications and withhold information."

These bills cover not only the so-called war on terror, but also affirmative action programs, requirements of statistical compilations by executive agencies, and establishing basic qualifications for executive appointees.

Our government's system of checks and balances is guaranteed by the Constitution's separation of powers among the legislative, executive, and judicial branches. This system has protected the people from tyranny, and the states from federal overreaching, since the earliest days of the Republic.

Article II of the Constitution requires the President to take care that the laws be faithfully executed. The Constitution also gives the President the authority to veto laws that he finds constitutionally suspect. But

the fact that such vetoes may be overridden indicates that, in the final analysis, the Constitution gives greater weight to the collective opinion of congressional super-majorities than it does to the judgment of a sole individual. By signing a particular bill into law, but then issuing a signing statement that declares that he will not give effect to it, or to a provision of it, the President is effectively vetoing the law without affording Congress the opportunity to override the veto, as the Constitution requires. He is effectively asserting unilateral power to repeal and amend legislation. He also displaces the judiciary as the final expositor of the Constitution and undermines the principle of judicial review crucial to our system of checks and balances.

In a democracy, executive branch assertions of power, such as signing statements, should be debated in public, but often are not. As our initial statement declared, "The executive branch, which the Constitution requires 'shall take Care that the Laws be faithfully executed,' should not withhold information from Congress, which needs such information to carry out its constitutional responsibility to enact legislation and to conduct oversight, nor from the public, unless legitimate national security concerns require it."

To restore our system of checks and balances, Congress can, and must, exercise its responsibility as a separate and independent branch of government. Congress has a clear constitutional obligation to make the laws, and when it has made such laws, to ensure through oversight that the executive branch is enforcing those laws and is otherwise carrying out its responsibilities in a manner consistent with the laws and the Constitution.

The President and the Congress, as well as the courts, have a solemn constitutional obligation to protect and defend the system of separation of powers our country's founders envisioned. We therefore urge the President to immediately abandon these uses of the presidential signing statement. We also urge Congress to make unmistakably clear the link between a President's inappropriate use of signing statements and the costs of doing so. Congress can use its "power of the purse" to deny the President appropriations that he has requested; it can refuse to advance legislation that the President favors; or it can repeal legislation authorizing programs that the President supports.

We joined the Coalition to Defend Checks and Balances because:

> [W]e agree that we face a constitutional crisis, not about whether the U.S. should do the things this or any other president proposes, but about who is empowered to make these decisions, and how those decisions are made. In an ongoing war against terror that will endure for decades, the answer to this question is even more important.
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> We are united in our belief that America's greatness is due in no small measure to our system of government in which power and authority are deliberately divided. The separation of powers is not a mere 'technicality.' It is the centerpiece of our Constitution and our freedoms depend upon it.
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> No matter what their political affiliation and philosophy, Americans must never forget these lessons or our freedoms will become a thing of the past, impossible to recover.

The Coalition to Defend Checks and Balances
Endorsing the Constitution Project's:
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