

# Obama signing statement weakens “whistleblower” protections

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When he signed into law a \$410 billion omnibus spending bill on March 10, President Barack Obama included a "signing statement" weakening a rider in the bill that would have given protection to government officials who turn over information to Congress.

As a candidate for the presidency, Obama campaigned in favor of broad protection for federal whistleblowers and against the sort of presidential signing statements that, under the Bush administration, had eviscerated the intent of congressional legislation.

The traditional purpose of signing statements was largely symbolic or pertained to the practical implementation of new laws by federal employees. President Bush used this mechanism more than 1,200 times—a record by far—to interpret and substantially alter the intent of laws, effectively usurping power from both the legislative branch of the government, which the Constitution tasks with creating laws, and from the judicial, which is invested with the power to interpret laws.

Prior to the Reagan administration, all previous presidents used the signing statement only 75 times combined—mostly for celebratory purposes. The scope and scale of the practice accelerated rapidly under the Reagan administration, who issued 250 such statements. A young staff attorney in Reagan's Office of Legal Counsel, Samuel Alito—now a US Supreme Court Justice—argued in 1986 that "interpretive signing statements" could be used to "increase the power of the Executive to shape the law." The practice continued under George H.W. Bush (228 statements) Clinton (381 statements), and increased enormously under George W. Bush.

Obama's signing statement on the omnibus spending bill suggests that he will carry on Bush's policy, in spite

of his campaign pledges to the contrary. In reference to the congressional rider, which had appeared on appropriations bills since the mid-1990s, Obama wrote, "I do not interpret this provision to detract from my authority to direct the heads of executive departments to supervise, control and correct employees' communications with the Congress in cases where such communications would be unlawful or would reveal information that is properly privileged or otherwise confidential."

The signing statement asserts broad executive privilege over the control of information. Its vague reference to Obama's ability to "supervise, control and correct employees' communications," and to "information that is properly privileged" are clearly designed to have a chilling effect on any government employee that might step forward to expose the ways in which government appropriations are being used.

A top Republican lawmaker, Senator Charles Grassley of Iowa, has drawn attention to the whistleblower signing statement to embarrass Obama. Grassley cites specific Obama campaign promises, including his pledge to only "sign legislation in the light of day without attaching signing statements that undermine the legislative intent," and that he would not "use signing statements as a way of doing an end run around Congress."

Yet Obama's use of the signing statement to usurp powers of the legislative and judicial branches is only secondarily a partisan issue, as Bush's rampant use of the stratagem shows. Rather, its use by recent administrations is bound up with the development of the "imperial presidency."

Since at least the 1960s, presidents—whether Democrat or Republican—have progressively accumulated ever greater powers in the executive

branch, and within that, to the office of the presidency. In essence, the growth of the imperial presidency is an expression of the incompatibility of democratic forms of governance with heightening social inequality.

Among the powers that the presidency has effectively arrogated to itself is the power to declare war, which the Constitution insists belongs to the legislature. Though the US has engaged in numerous military engagements in recent decades, the last congressional approval of a declaration of war was issued against the Axis powers during World War Two.

Since the Nixon administration, the office of the presidency has also been the conspiratorial center of attacks on the democratic rights of the people. This function accelerated markedly under the Bush administration. Bush claimed the right to arrest and hold indefinitely without trial anyone, anywhere in the world, including US citizens.

Obama's signing order aiming to silence whistleblowers is one further sign that he intends to maintain the powers of the imperial presidency intact.



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