

GAO

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PRESIDENTIAL SIGNING STATEMENTS

Agency Implementation of Selected Provisions of Law

Statement of Gary L. Kepplinger
General Counsel





Highlights of [GAO-08-553T](#), a testimony before the subcommittee on Oversight and Investigations, Committee on Armed Services, House of Representatives

Why GAO Did This Study

Both Republican and Democratic Presidents have issued signing statements since the early nineteenth century. Signing statements usually take the form of a presidential statement or press release issued in connection with the President's signing of a bill. Some signing statements praise the newly signed law and those involved in its passage. In other signing statements, Presidents have offered their interpretation of or explained how agencies will execute a new law. Presidents have also raised constitutional concerns or objections to new statutes in signing statements.

The Chairmen of the Senate Appropriations Committee and the House Judiciary Committee asked us to examine the fiscal year 2006 appropriations acts and the President's accompanying signing statements to identify the provisions in the acts to which the President took exception, to identify the presidential concern, and to determine how the agencies executed those provisions. We also examined how the federal courts have treated presidential signing statements in their published opinions. In a second request, the same requestors asked us to examine an additional 10 provisions to determine how the agencies were executing them.

Based on this work, the Subcommittee invited GAO's General Counsel to testify on the use of signing statements.

To view the full product, including the scope and methodology, click on [GAO-08-553T](#). For more information, contact Susan Poling at (202) 512-2667 or polings@gao.gov.

PRESIDENTIAL SIGNING STATEMENTS

Agency Implementation of Selected Provisions of Law

What GAO Found

In our opinions, we examined how agencies were implementing certain provisions to which the President objected in the signing statements. In developing our first opinion, we examined all the signing statements accompanying the fiscal year 2006 appropriations acts, identified 160 specific provisions of law to which the President objected, and categorized each provision according to the nature of the President's stated concern. The President's objections to a majority of provisions fell under broad categories, four of which we summarize in the testimony: President's theory of the unitary executive, President's constitutional role, *INS v. Chadha*, and Fifth Amendment.

We then chose 19 provisions to learn whether the agencies were executing the provisions as written. In considering which provisions would be appropriate for further inquiry, we excluded provisions for which it would be difficult to determine whether the President was executing the provision, either because of the breadth of the executive action covered or because the information would not be readily available due to national security or foreign relations concerns. GAO also looked at 10 other provisions from various laws identified by congressional requestors to which the President objected in order to ascertain how agencies were executing the provisions.

In total, GAO examined how 21 agencies executed 29 different provisions of law. GAO determined that in all but 9 cases the agencies had either taken actions to execute the provisions as written, or conditions requiring agency action had not occurred. In the remaining 9 cases, GAO found that the agencies had not executed the provisions as written. We did not assess the merits of the President's objections or examine the constitutionality of the provisions to which the President objected. Although we found that agencies did not execute 9 provisions as written, we could not conclude that agency noncompliance was the result of the President's signing statements. We also examined the extent to which federal courts have relied on signing statements in their interpretation of federal statutes. GAO found that only in rare instances have courts treated presidential signing statements as authoritative sources of statutory interpretation.

While GAO's prior work did not involve any provisions in the recently enacted National Defense Authorization Act (NDAA) for fiscal year 2008, three provisions in the NDAA to which the President objected are similar to provisions we examined in our earlier opinions. We found that agencies had not executed two of these earlier provisions as written.

To reduce any effect signing statements may have on agency execution of statutes, Congress may wish to focus its oversight work to include those provisions to which the President objects to ensure that the laws are carried out.

Chairman Snyder, Representative Akin, and Members of the Subcommittee:

We appreciate the opportunity to be here to participate in today's hearing on the use of presidential signing statements. Signing statements usually take the form of a presidential statement or press release issued in connection with the President's signing of a bill. Some signing statements praise the newly signed law and those involved in its passage. In other signing statements, presidents have offered their interpretation of or have explained how agencies will execute a new law. Presidents have also raised constitutional concerns or objections to new statutes in signing statements. These concerns or objections are rooted in the President's understanding of his constitutional role and powers. Not all laws have accompanying signing statements.

My testimony today focuses on the practical consequences of the President's objections to particular provisions of certain acts, specifically, (1) categories of presidential concerns or objections, (2) agency actions, (3) courts' use of signing statements, (4) application of our findings to the 2008 National Defense Authorization Act, and (5) observations. These remarks are based on two legal opinions issued last year.¹ In developing our first opinion, we examined the signing statements accompanying the fiscal year 2006 appropriations acts, identified 160 specific provisions of law to which the President objected, and then categorized each of these provisions according to the nature of the President's stated concern. We then chose 19 provisions to find out whether the agencies were executing the provisions as written. In the second opinion, we examined 10 provisions identified by the requestors to which the President objected to determine how the agencies were carrying them out.

In total, we examined how 21 agencies executed 29 different provisions of law. As explained in detail later in my testimony, we determined that in 16 cases the agencies had taken actions to execute the provisions as written. In 5 cases we found that the provisions were not triggered. In the remaining 9 cases we determined that the agencies had not yet executed the provisions or had not executed the provisions as written.² In neither

¹ *Presidential Signing Statements Accompanying the Fiscal Year 2006 Appropriations Acts*, B-308603, June 18, 2007; *Presidential Signing Statements—Agency Implementation of Ten Provisions of Law*, B-309928, Dec. 20, 2007.

² One provision we examined for our second opinion applied to two different agencies, so we examined agency action in 30 instances rather than 29.

opinion did GAO assess the merits of the President's objections or examine the constitutionality of the provisions to which the President objected. Although we found that agencies did not execute some provisions as written, we could not conclude that agency noncompliance was the result of the President's signing statements.

Background

Both Republican and Democratic Presidents have issued signing statements since the early nineteenth century. According to the Congressional Research Service, signing statements became increasingly common since the Reagan Administration and have been used by Presidents to raise constitutional objections to congressional enactments.³

Of particular concern to this committee is the statement issued by the President when he signed the National Defense Authorization Act for Fiscal Year 2008 (2008 NDAA).⁴ In it, the President objected to four provisions of law because they "purport to impose requirements that could inhibit the President's ability to carry out his constitutional obligations to take care that the laws be faithfully executed, to protect national security, to supervise the executive branch, and to execute his authority as Commander in Chief."⁵ The President stated, "The executive branch shall construe such provisions in a manner consistent with the constitutional authority of the President."⁶

Presidential Concerns and Objections

In our prior work on signing statements, we categorized the provisions we examined by the specific wording the President used in his signing statement to identify his concern or objection. We found that the

³ Library of Congress, Congressional Research Service, *Presidential Signing Statements: Constitutional and Institutional Implications*, No. RL33667 (Sept. 17, 2007), at 2. According to CRS, as of September 17, 2007, President Bush had issued 152 signing statements, 118 of which (78%) raised constitutional concerns or objections. In comparison, President Clinton issued 381 statements in 8 years, 70 of which (18%) raised constitutional concerns, and President George H. W. Bush issued 228 signing statements over 4 years, 107 of which (47%) raised constitutional concerns or objections. *Id.*

⁴ Pub. L. No. 110-181, 122 Stat. 3 (Jan. 28, 2008).

⁵ *President Bush Signs H.R. 4986, the National Defense Authorization Act for Fiscal Year 2008 into Law* (Jan. 28, 2008) available at www.whitehouse.gov/news/releases/2008/01/20080128-10.html (last visited Mar. 7, 2008).

⁶ *Id.*

President's objections to a majority of provisions fell under broad categories, four of which I will briefly summarize.⁷

The President's Theory of the Unitary Executive

In signing statements the President has often objected to provisions on the ground that the provisions interfere with "the President's constitutional authority to supervise the unitary executive branch."⁸ The Constitution does not mention the "unitary executive," nor do the signing statements in which the term appears explain its meaning. The theory of the unitary executive is rooted in Article II of the Constitution and, specifically, in the vesting in the President of the executive power⁹ and the President's duty to "take Care that the Laws be faithfully executed."¹⁰ The Office of Legal Counsel has asserted that because the Constitution entrusts the President with the executive power, executive branch employees and officers exercise this power through delegation from the President. Thus, the President has an exclusive right to supervise and rely on his subordinates which may not be burdened by the other branches of government without impermissibly interfering with the President's constitutional authority.¹¹ Provisions to which the President objects on this ground require some action, such as transmittal of information to Congress or consultation with Congress or its committees.

The President's Constitutional Role

Many of the President's objections relate to government functions for which the President asserts primary constitutional authority. For example, the President commonly objects to provisions regarding command and control of the Armed Forces and the handling of intelligence information on the grounds that such provisions impermissibly burden his authority as

⁷ Other presidential objections are discussed in greater detail in our two opinions.

⁸ See, e.g., *Statement on Signing the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006*, 41 Weekly Comp. Pres. Doc. 1800 (Dec. 5, 2005).

⁹ U.S. Const. art. II, § 1, cl. 1.

¹⁰ U.S. Const. art. II, § 3.

¹¹ Letter Opinion for the General Counsel, Department of Health and Human Services, *Authority of Agency Officials to Prohibit Employees from Providing Information to Congress*, OLC Opinion, May 21, 2004, available at www.usdoj.gov/olc/crsmemoresponses.htm (last visited Feb. 22, 2008); *Statute Limiting the President's Authority to Supervise the Director of the Centers for Disease Control in the Distribution of an AIDS Pamphlet*, 12 Op. Off. Legal Counsel 47 (1988).

The U.S. Supreme Court
Decision *INS v. Chadha*

Commander-in-Chief.¹² The President also asserts that his authority as Commander-in-Chief grants him control over the disclosure of information related to national security.¹³

The President has also asserted a primary constitutional role in the conduct of the foreign relations of the United States. No single constitutional provision establishes such authority, although the President does have specific constitutional authority to make treaties and appoint ambassadors with the advice and consent of the Senate, and to receive ambassadors.¹⁴ The President in his signing statements often objects to provisions that “purport to direct or burden the President’s constitutional authority to conduct foreign relations.”¹⁵ The President also has stated that decisions on deployment and redeployment of law enforcement officers are constitutionally vested in the President. The signing statement states that statutory provisions that dictate such decisions are advisory rather than mandatory.¹⁶

In our previous work, we have identified 170 provisions to which the President objected in signing statements. The President objected to 70 of these on the grounds that they were inconsistent with the Constitution’s bicameralism and presentment clause, as interpreted by the U.S. Supreme Court in its 1983 decision *Immigration and Naturalization Service v. Chadha*.¹⁷ The bicameralism and presentment clause provides that before a bill becomes law it must pass both the House of Representatives and the

¹² See, e.g., *Statement on Signing the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006*, 41 Weekly Comp. Pres. Doc. 1918 (Jan. 2, 2006) (stating that “the executive branch shall construe [two provisions regarding command and control relationships within the Armed Forces] as advisory, as any other construction would be inconsistent with the constitutional grant to the President of the authority of Commander in Chief”).

¹³ See, e.g., *Statement on Signing the Department of Homeland Security Appropriations Act, 2006*, 41 Weekly Comp. Pres. Doc. 1558 (Oct. 24, 2005) (declaring that “the executive shall construe [a provision relating to access to national security information] in a manner consistent with the President’s exclusive constitutional authority . . . to classify and control access to national security information”).

¹⁴ U.S. Const. art. II, § 2, cl. 2; § 3.

¹⁵ *Statement on Signing the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006*, 41 Weekly Comp. Pres. Doc. 1718 (Nov. 21, 2005).

¹⁶ *Statement on Signing the Department of Homeland Security Appropriations Act, 2006*.

¹⁷ 462 U.S. 919 (1983).

Senate (bicameralism) and be presented to the President for his signature (presentment). At issue in *Chadha* was a statute allowing a resolution passed by the House of Representatives to override decisions of the Attorney General made pursuant to statutory authority. The Court held the statute unconstitutional as it allowed one house to overrule the executive branch's lawful action instead of requiring a bicameral vote to overturn the action, followed by presentment to the President for signature.

Many provisions to which the President objects on *Chadha* grounds require executive agencies to obtain congressional approval prior to making certain expenditures. Others direct agencies to submit reports to Congress for congressional approval.

The Fifth Amendment

The Fifth Amendment to the Constitution prohibits the federal government from depriving anyone of life, liberty, or property without due process of law.¹⁸ The U.S. Supreme Court has held that if a law categorizes people by certain traits such as race, ethnicity, or gender, the law may implicate the Fifth Amendment.¹⁹ The President has noted in signing statements that the executive branch will construe provisions relating to race, ethnicity, or gender consistent with the Fifth Amendment's due process requirement.²⁰

Mr. Chairman, I would now like to turn to how GAO approached the work it issued to provide some perspective on what we found when we looked at presidential signing statements.

Agency Actions

In our opinions, we examined how agencies were implementing certain provisions to which the President objected in signing statements. In developing our first opinion, we examined all the signing statements accompanying the fiscal year 2006 appropriations acts, identified 160 specific provisions of law to which the President objected, and then categorized each of these provisions according to the nature of the

¹⁸ U.S. Const. amend. V.

¹⁹ *Johnson v. California*, 543 U.S. 499 (2005) (race); *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006) (ethnicity); *United States v. Virginia*, 518 U.S. 515 (1996) (gender).

²⁰ See, e.g., *Statement on Signing the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006*, 41 Weekly Comp. Pres. Doc. 1918 (Jan. 2, 2006).

President's stated concern. We then chose 19 provisions to learn whether the agencies were executing the provision as written.

In considering which provisions would be appropriate for further inquiry, we excluded provisions for which it would be difficult to determine whether the President was executing the provision, either because of the breadth of the executive action covered by the provision or because the information would not be readily available due to national security or foreign relations concerns. As a result, we did not examine any provisions to which the President objected solely on the grounds that they interfered with his authority as Commander-in-Chief. We then chose a provision for each appropriation act and representing each type of objection from the President. These 19 provisions represented at least one provision from each appropriations act for which the President issued a signing statement²¹ and, as far as possible, at least one provision representing the various grounds for objection we identified, as discussed above. In the second opinion, we examined 10 provisions identified by the requestors to which the President objected to determine how the agencies were carrying them out.

For both opinions, we contacted the agencies responsible for implementing the provisions. Based on their responses, we determined that in 16 cases the agencies had taken actions to execute the provisions as written. In 5 cases we found that the provisions were not triggered. In the remaining 9 cases we determined that the agencies had not yet executed the provisions or had not executed the provisions as written.²²

These nine instances are summarized below, sorted by the grounds on which the President objected.

- **Unitary Executive:** Section 8100 of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act directed the President to include in his budget for fiscal year 2007 separate budget justification documents for costs of the Armed Forces' participation in contingency

²¹ The President did not issue a signing statement for the fiscal year 2006 Legislative Branch Appropriations Act.

²² One provision we examined for our second opinion applied to two different agencies, so we examined agency action in 30 instances rather than 29.

operations.²³ DOD submitted a separate budget justification document for contingency operations as part of its fiscal year 2007 budget submission to Congress, but this document contained data only for operations in the Balkans and Guantanamo Bay. It did not contain information for operations in such locales as Iraq and Afghanistan.

- **Unitary Executive:** DOD was required to respond to questions or inquiries from the Chairman of the Subcommittee on Military Quality of Life and Veterans Affairs, House Committee on Appropriations, within 21 days.²⁴ DOD identified two inquiries it received subject to this requirement. DOD responded to one such inquiry in 38 days.
- **Unitary Executive:** The Energy Policy Act of 2005 extended certain whistleblower protections to Department of Energy (DOE) employees and required DOE to post information about the new protections in DOE offices.²⁵ DOE had not yet posted such notification at the time of GAO's inquiry into the matter.
- **Primary Constitutional Role:** The Department of Homeland Security Appropriations Act, 2006, required the Customs and Border Patrol (CBP) to relocate its checkpoints in the Tucson sector every 7 days to minimize detection of the checkpoints.²⁶ CBP did not relocate its checkpoints in this manner. CBP told us that such relocations were not always consistent with CBP's mission requirements, because its checkpoints were stationary and could not be relocated to other spots. Instead, CBP shut down its checkpoints for short periods in an effort to comply with what CBP termed the "advisory provision" in the appropriations act.
- **Chadha:** The Pension Benefit Guaranty Corporation (PBGC) was required to obtain approval from the Office of Management and Budget (OMB) and the congressional appropriations committees before incurring obligations greater than \$296,978,000 for administrative

²³ Pub. L. No. 109-148, § 8100, 119 Stat. 2680, 2721 (Dec. 30, 2005).

²⁴ Military Quality of Life and Veterans Affairs Appropriations Act, 2006, Pub. L. No. 109-114, § 126, 119 Stat. 2372, 2380 (Nov. 30, 2005).

²⁵ Pub. L. No. 109-58, § 629, 119 Stat. 594, 785 (Aug. 8, 2005).

²⁶ Pub. L. No. 109-90, title II, 119 Stat. 2064, 2067 (Oct. 18, 2005).

expenses.²⁷ Although PBGC obtained OMB approval as required by statute, PBGC only notified the committees after incurring obligations for administrative expenses beyond the specified level.

- **Chadha:** The Department of Agriculture was required to obtain prior approval from the congressional appropriations committees for a transfer of funds to the Office of the Chief Information Officer.²⁸ The Department did not seek approval as required by statute, but it did notify the committees prior to transferring the funds and responded to a subsequent congressional request for information.
- **Chadha:** The Federal Emergency Management Agency (FEMA) was required to submit for appropriations committee approval a proposal and expenditure plan for housing.²⁹ FEMA did not submit such a plan because, according to FEMA, it does not normally produce such plans.
- **Fifth Amendment:** FEMA was directed to take reasonable steps to ensure diversity in the student body of a new graduate-level homeland security program.³⁰ The program was designed to provide educational opportunities to senior federal officials and selected state and local officials with homeland security and emergency management responsibilities.³¹ Fourteen months after this provision was enacted, FEMA had not taken steps to ensure diversity in the student body.
- **Fifth Amendment:** FEMA was required to create a registry of contractors willing to perform certain disaster or emergency relief services.³² The registry was to list, among other information, whether the contractor is a small business owned and controlled by socially or

²⁷ Department of Labor, Health and Human Services and Education, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-149, title I, 119 Stat. 2833, 2837 (Dec. 30, 2005).

²⁸ Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-97, § 716, 119 Stat. 2120, 2151 (Nov. 10, 2005).

²⁹ Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Hurricane Recovery, 2006, Pub. L. No. 109-234, title II, ch. 4, 120 Stat. 418, 459 (June 15, 2006).

³⁰ Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, § 623, 120 Stat. 1355, 1418 (Oct. 4, 2006).

³¹ *Id.*

³² *Id.* §697, 120 Stat. at 1461.

economically disadvantaged individuals or women, among others.³³ Fourteen months after this provision was enacted, FEMA had not yet created this registry.

Of the 29 provisions we looked at in our previous work, 3 involved DOD. We found that DOD did not execute 2 of these provisions as written, as noted in the first two bullets above. The President objected to both of these provisions on unitary executive grounds.

We also examined one provision that DOD did implement as written, section 1205 of the 2005 national defense authorization act.³⁴ The provision required the Secretary of Defense to issue guidance on how DOD would manage contractor personnel who support deployed forces. The President noted in his signing statement that the “executive branch shall construe . . . [section 1205] . . . in a manner consistent with the President’s constitutional authority as Commander in Chief and to supervise the unitary executive branch.”³⁵ We found that DOD’s issuance of Instruction 3020.41 and revised Instruction 7730.64 satisfied the statutory requirement.³⁶

Federal Courts Have Rarely Used Signing Statements to Aid Their Interpretation of the Law

As part of our first signing statements opinion, we examined the extent to which federal courts have referred, or cited, to signing statements. We found that between 1945 and May 2007, 137 federal court decisions referred in some way to signing statements. The courts have used the signing statements for various purposes, such as supplementing legislative history, establishing a law’s enactment date, or as factual evidence that the President objected to a provision. Only in rare instances have courts treated signing statements as sources of statutory interpretation.

For example, a federal district court used President George H. W. Bush’s signing statement accompanying the Civil Rights Act of 1991³⁷, combined

³³ *Id.*

³⁴ Ronald W. Reagan National Defense Authorization Act for Fiscal year 2005, Pub. L. No. 108-375, § 1205, 118 Stat. 1811, 2083 (Oct. 28, 2004).

³⁵ *Statement on Signing the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005*, 40 Weekly Comp. Pres. Doc. 2673-74 (Nov. 1, 2004).

³⁶ B-309928 at 15.

³⁷ Pub. L. No. 102-166, 105 Stat. 1071 (Nov. 21, 1991).

with an EEOC policy statement and a highly conflicted legislative history, to interpret whether that Act applied retroactively.³⁸

National Defense Authorization Act for Fiscal Year 2008

In his signing statement accompanying the 2008 NDAA, the President proclaimed that:

“Provisions of the Act, including sections 841, 846, 1079, and 1222, purport to impose requirements that could inhibit the President’s ability to carry out his constitutional obligations to take care that the laws be faithfully executed, to protect national security, to supervise the executive branch, and to execute his authority as Commander in Chief. The Executive Branch shall construe such provisions in a manner consistent with the constitutional authority of the President.”³⁹

The President’s objections were general, conditional (“could inhibit”), and did not relate particular objections to the four provisions listed. Indeed, the signing statement suggests that the President objects to numerous provisions in the 2008 NDAA, and the four listed provisions are but examples.

Three of the provisions in the 2008 NDAA to which the President objected are similar to provisions we examined in our prior work. For example, section 1079 of the 2008 NDAA requires certain members of the intelligence community to respond to Armed Services Committee requests for existing intelligence assessments, reports, estimates, or legal opinions within 45 days, subject to presidential assertion of privilege.⁴⁰ In our previous work, we examined a provision with time frames that required DOD to respond to certain questions or inquiries from a congressional committee within 21 days. We determined that DOD had not executed this provision as written because it responded to one of the two inquiries covered by the provision in 38 days.

Section 846 of the 2008 NDAA increased certain whistleblower protections for DOD contractors.⁴¹ In our work we examined a provision extending

³⁸ *Ribando v. United Airlines, Inc.*, 787 F. Supp. 827 (N.D. Ill. 1992).

³⁹ *President Bush Signs H.R. 4986, the National Defense Authorization Act for Fiscal Year 2008 into Law.*

⁴⁰ Pub. L. No. 110-181, § 1079, 122 Stat. 3, 334 (Jan. 1, 2008).

⁴¹ Pub. L. No. 110-181, § 846, 122 Stat. at 241.

certain whistleblower protections to employees of the Department of Energy. At the time of our work, we found that the Department of Energy had not implemented this provision.

Another provision that the President objected to in the 2008 NDAA was section 841, establishing a Commission on Wartime Contracting in Iraq and Afghanistan.⁴² Section 841 specifies that congressional leaders will appoint six of the eight Commission members, and the President will appoint the remaining two in consultation with the Secretaries of Defense and State. As part of our earlier work, we examined a provision establishing the Rio Grande Natural Area Commission.⁴³ The Secretary of the Interior was directed to appoint all nine Commission members, each of whom was to have certain qualifications. The President objected to this provision on the grounds that it might impinge on his powers under the Appointments Clause of the Constitution. We learned that 2 years after the provision establishing the Rio Grande Natural Area Commission was enacted, its members still had not been appointed.

Given our findings regarding these similar provisions, the Subcommittee may wish to stay abreast of DOD's implementation of the provisions in the 2008 NDAA to which the President objected in his signing statement.

Concluding Observations

In summary, Mr. Chairman, we found that many agencies executed the laws as written, some provisions were not triggered and, in some instances, agencies did not execute the laws as written. In our review, we did not assess the merits of the President's objections, nor did we examine the constitutionality of the provisions to which the President objected.

Our inquiry was limited to only 30 instances of agency action and did not include a close examination of provisions involving national security, intelligence, or foreign relations matters, because of our limited access to such information and the time constraints on our work. We found that in 9 of these 30 instances, agencies had not executed the provisions as written. Importantly, we also found that federal courts are not using signing statements as common sources of authority for statutory interpretation.

⁴² Pub. L. No. 110-181, § 841, 122 Stat. at 230.

⁴³ B-309928 at 16-17.

To reduce any effect signing statements may have on agency execution of statutes, Congress may wish to focus its oversight work to include those provisions to which the President objects to ensure that the laws are carried out. We note that the Attorney General is required to submit a report to Congress of any instances in which the Attorney General or the Department of Justice implements a formal or informal policy to refrain from enforcing or defending a federal law or regulation on the grounds that such provision is unconstitutional.⁴⁴ This reporting requirement also extends, albeit more narrowly, to the President himself with respect to any unclassified executive order or similar memorandum, and to the heads of executive agencies and military departments that establish or implement a nonenforcement policy.⁴⁵

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or the committee may have.

⁴⁴ 28 U.S.C. § 530D. For examples where the Department of Justice has submitted litigation reports to Congress under section 530D, see Letter to the Honorable Patrick J. Leahy, Chairman, Committee on the Judiciary, U.S. Senate, from Richard A. Hertling, Acting Assistant Attorney General at 103–8, January 18, 2007, responding to Questions for the Record for Attorney General Alberto Gonzales, Senate Judiciary Committee DOJ Oversight Hearing on July 18, 2006.

⁴⁵ President Bush objected to 28 U.S.C. § 530D in a signing statement when he signed the provision into law and stated that “[t]he executive branch shall construe section 530D of title 28 . . . in a manner consistent with the constitutional authorities of the President to supervise the unitary executive branch and to withhold information the disclosure of which could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties.” *Statement on Signing the 21st Century Department of Justice Appropriations Authorization Act*, 38 Weekly Comp. Pres. Doc. 1971-73 (Nov. 11, 2002). Interestingly, the Office of Legal Counsel, citing to a prior, narrower version of section 530D, states that the Attorney General “must” notify Congress if the Attorney General decides not to defend the constitutionality of certain provisions. Memorandum Opinion for the Attorney General, *Recommendation that the Department of Justice not defend the Constitutionality of Certain Provisions of the Bankruptcy Amendments and Federal Judgeship Act of 1984*, 8 Op. O.L.C. 183 (1984).

GAO Contacts And Staff Acknowledgments

For further information about this testimony please contact Susan A. Poling, Managing Associate General Counsel, at 202-512-2667 or at polings@gao.gov. Other key contributors to this statement were Pedro Briones, Carlos Diz, Wesley Dunn, and A.J. Stephens.

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