



## AG Holder: Obama Will Add Signing Statement to NDAA

Although the President initially signaled he would veto the measure, the TPM Muckraker continued:

Holder said the language of the NDAA had been moved in a "substantial way" from some of the original language which led the president to issue a veto threat.

"So we are in a better place, I think the regulations, procedures that will help, and we'll also have a signing statement from the president" which will help clarify how they view the law, Holder said.



This type of "stroke of the pen, law of the land" despotism is [nothing new to President Obama](#). More on that in a moment. In the present case, the President's original opposition to the NDAA had nothing to do with preserving liberty, but with preserving the President's preeminence in matters relating to who has the final say on the tracking and torturing of those suspected of threatening the security of the homeland.

It is likely, therefore, that President Obama's signing statement will give the Federal Bureau of Investigation plenary power over the disposition of issues related to the custody and prosecution of all terror suspects detained domestically.

The Obama administration warned earlier that cutting out the FBI would reduce the overall effectiveness of investigations, as well as hamstringing the efforts of intelligence officers to gather reliable intel from those believed to be fighting against the United States in Afghanistan or Iraq. That will undoubtedly be prevented in the terms of his unconstitutional interpretations tacked onto the NDAA.

The bottom line is, the President was just satisfied enough with the acquiescence of congress to let the bill get to his desk, but he wants to make sure everyone knows (especially the legislative branch) just who is the arbiter of who is and is not an "enemy combatant" and just how "critical intelligence" will be wrung from those suspects and by whom.

Interestingly, during his campaign for President in 2008, Barack Obama criticized (and rightly so) former President Bush for his dictatorial usurpation of legislative power via the signing statement. Upon ascending to his seat of power, however, President Obama found that his own personal experience with the mounting congressional resistance to his agenda has given him second thoughts, and now he is as keen as his predecessor to sidestep congressional impediments to the achievement of his legislative goals by using executive orders and signing statements.

A presidential signing statement is a pronouncement that the President appends to a bill he signs into law. Nowadays, this executive addendum sets forth the President's understanding of the law and gives



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guidance to the myriad departments under the executive branch umbrella on how to carry out the requirements of the new legislation.

Signing statements change the laws, revoking parts of them or adding provisions to them, at the same time redefining the Constitution and nullifying its checks and balances. Using them, the President assumes all power — executive, legislative, and judicial — unto himself and does so in a manner that is beyond question, beyond debate, beyond vote, and thus beyond the reach of the American people.

Constitutionally speaking, if a President does not like a piece of legislation, the only recourse allowed him is a veto. Modern Presidents, however, have two self-perpetuating habits that obviate the use of veto: engorging themselves with power not delegated to them by the Constitution and disregarding the Constitution altogether.

Given the recent run of success that previous Presidents have enjoyed with the “signing statement as law of the land” gambit, it is easy to understand why a President zealous for the codification of his own vision would not want to risk the public scrutiny which would accompany a veto. After all, why go to all that bother when a President can accomplish the same end by issuing a signing statement that will never be discussed?

President Obama has learned well the lessons taught him by his hero and founder of the modern American welfare state, Franklin Delano Roosevelt.

Roosevelt, facing perhaps the most milquetoast Congress of the modern era, removed all obstacles which impeded his program to drag the United States into the mire of his socialistic New Deal scheme. In a signing statement attached to the Emergency Price Control Act of 1942, which contained a provision he opposed that was intended to protect American farmers, Roosevelt adamantly declared, “There is nothing contained therein which can be construed as a limitation upon the existing powers of governmental agencies, such as the Commodity Credit Corporation, to make sales of agricultural commodities in the normal conduct of their operations.”

In addition to this edict, Roosevelt promised Congress that if it did not remove the “offensive” portion of the bill, he would ignore it and treat it as nonexistent and inapplicable to his administration. Congress capitulated, and the protection for American farmers was removed from the bill. Roosevelt was supported by a sympathetic legal adviser who assured him that if he decided “that a certain course of action is essential as a war measure, it supersedes congressional action.”

Signing statements gained teeth with the aid of a lackluster, inattentive Supreme Court. In the case of *United States v. Lovett* (1946), the Court agreed with Roosevelt's signing statement that the Urgency Deficiency Appropriations Act of 1943 contained restrictions on his management of the executive branch and struck down the restrictions citing the signing statement; the Court accepted Roosevelt's signing statements as persuasive and held in dictum that presidential signing statements merited consideration and mention in their decision.

Presidential signing statements amount to “cherry-picking” the parts of a law that Presidents wish to follow or ignore. The uses that signing statements have been put to since they began to flourish in earnest during the Reagan administration show that no matter the “getting things done” tenor used to pronounce them by an ostensibly frustrated President, their clear intent is to subvert the law and slam the weighty wrecking ball of “executive discretion” into the paper barricades that divide the three provinces of power.

With all due respect to Attorney General Holder and his boss in the White House, ruling by fiat is not



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historically sound, and another more appropriate focus of historical research would be to ponder the words and warnings of our Founding Fathers and their political and philosophical influences regarding the primacy of the separation of powers in a good government.

James Madison, writing as "Publius," wrote in *The Federalist*, No. 47: "The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny." Madison himself was restating in his inimitable style, one facet of federalism that was universally considered to be an essential pillar of liberty.

If the opinions of these men are a worthy metric of the size of the impending threat of despotism, then President Obama is filling the shoes of a tyrant heel to toe.

His latest decision to unilaterally demolish the walls of history, law, and constitutional barriers that separate the executive and legislative powers demonstrates his intent to persist down the path of despotism by decree so well trodden by many of his forerunners.



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