

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
March 15, 2006

Opening Statement of Senator Patrick Leahy  
Ranking Member, Judiciary Committee  
Executive Business Meeting  
March 15, 2006

Last week, the USA PATRIOT Improvement and Reauthorization Act of 2005 was signed into law. I was one of ten Senators who voted against this legislation. As a co-author of the original PATRIOT Act, and as someone who supported reauthorizing an improved version of the Act, this was a difficult vote. I would have liked to have voted for the provisions that I felt improved the law, and against the provisions that give the government too much power with too little accountability. But that is not the way the process works. When it is time to vote, we have to vote the whole bill "up or down." So, with some regret, I voted against the defective reauthorization legislation.

As I said in a floor statement during the debate, the defects in the reauthorization legislation are particularly dangerous because we currently have an Administration that does not believe in checks and balances and prefers to do everything in secret. We know that the Bush-Cheney Administration has engaged in secret, warrantless wiretapping of Americans' emails and telephone calls contrary to the FISA law; we know that it attempted to rush the Dubai Ports deal through in secret, without following legally required review procedures; and we have reason to suspect that it has secretly engaged in extraordinary rendition and created conditions for torture of prisoners, again contrary to law.

I also remarked on the President's claims that he need not fulfill his constitutional responsibility to faithfully execute the laws but can pick and choose among the laws he decides to recognize. Confronted with claims of inherent and unchecked powers, I concluded, the restraints we were able to include in this reauthorization of the PATRIOT Act were not sufficient.

It took no time at all for the Administration to prove me right. In the very act of signing the reauthorization bill into law, the President signaled that he intends to follow that law only insofar as it suits him, and to ignore its minimal requirements of public accountability.

When the bill reached the President an ambush was waiting. In his signing statement, the President declared that he would "withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties." At the same time, the President also brushed off the requirement that the Attorney General submit to the Congress recommendations for further legislation. In other words, contrary to the express requirements of the law he himself was signing into effect, the President declared that he will pick and choose the provisions he chooses to execute faithfully.

His unorthodox and repeated references of the unitary executive theory are more like a unilateral executive theory. This President appears to believe that he can pick and choose which laws to obey and need never submit to congressional oversight. As we learned in an earlier signing statement, the President believes that the law against torture that he signed does not entirely bind him. And as we were reminded by Attorney General Gonzales's recent stonewalling on the Administration's domestic spying program, the Administration's approach to congressional oversight is that it will tell Congress only what it chooses to tell Congress, and will refuse to divulge the "evolution" of its activities and legal theories.

The Constitution provides that legislation shall be presented by Congress to the President, who shall then either sign it into law or veto it. In other words, to borrow a familiar phrase, he must "vote it up or down" in its entirety, just as we do in Congress. If he vetoes it, a two-thirds majority in both Houses can override his veto.

Despite various threats on stem cells and Dubai Ports, for example, and despite having signed profoundly irresponsible fiscal and other legislation that should never have been enacted, this President has not vetoed a single bill in five years. Instead, he has repeatedly waited until legislation is final to issue "signing statements" that purport to pick and choose - usually on "unitary executive" grounds - which provisions he will deem himself bound by.

These signing statements are a clever device. As he did with the torture legislation, the President can publicly take credit for signing popular legislation while in fact fighting it all the way and refusing to commit to abide by it. At the same time, he can sidestep a veto override. Instead of engaging constructively with Congress in the process of drafting and negotiating legislation, he can duck the responsibility of voting it up or down and ambush the congressional compromise after the fact.

The President's signing statements are not the law, and we should not allow them to be the last word. The President's constitutional duty is to faithfully execute the laws as written by the Congress.

In connection with the legislation we are now considering I have also recently written the Attorney General asking what this Administration's theories of executive power mean in connection with our immigration laws. I ask that a copy of that letter be made part of the record. I have not received a timely reply for purposes of this Committee's consideration of this legislation.