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Opening Statement

News Conference on the Report and Recommendations of the ABA Task Force on
Presidential Signing Statements and the Separation of Powers Doctrine

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Good morning.

My name is Michael S. Greco, and I am president of the American Bar Association.

In recent months there has been growing public debate about a term unknown to most Americans just a few months ago: *presidential signing statements*.

As first reported by *Boston Globe* reporter Charlie Savage on April 30, the current president has repeatedly declared in such signing statements his intent to ignore, or substantially reinterpret, acts of Congress.

Although signing these bills into law, with respect to approximately 800 provisions of law, he in effect has said he will not enforce them.

Upon reading the *Globe* article it quickly became evident to me that this practice raises grave questions for our constitutional system of government and its delicate system of checks and balances.

I therefore appointed a distinguished, bipartisan ABA Task Force to examine carefully the legal and constitutional issues posed by presidential signing statements as currently used.

Of the several questions I asked the Task Force to consider, the initial ones were these:

- Does the president have authority under the Constitution to ignore a law he has signed, simply by asserting that some or all of that law encroaches on his powers or because he thinks it is unconstitutional?
- If not, what are his alternatives under the Constitution?
- And what should the response of Congress, and other interested parties, be under the Constitution?

Before I address briefly the Task Force's findings, I want to make clear that it is not our intention to single out the current president.

The issue is protecting the U.S. Constitution, and protecting the rule of law in the United States, from any threat, and from any quarter, at any time.

The American Bar Association throughout its history has acted promptly to protect the rights of the American people and the institutions of our democracy whenever they have been threatened.

This is one of those historic moments.

The threat to our republic posed by presidential signing statements is both imminent and real unless immediate corrective action is taken.

The Task Force's report and recommendations provide a roadmap to avoiding a constitutional crisis in our country.

As the report makes clear, other presidents have used signing statements to attempt to thwart laws enacted by Congress.

This has become increasingly, and alarmingly, true in the last 25 years, as presidents from both parties have employed this tactic with increasing aggressiveness.

During the past five years, both quantitatively and qualitatively, the signing statements issued by the current president have assumed more troubling proportions. He has issued in that span of time more signing statements that challenge the constitutionality of laws than all his predecessors combined.

The recent signing statements, unlike the overwhelming majority of those preceding, have been used to announce an intention to disregard rather than comment on newly enacted laws.

The Task Force has determined that such presidential signing statements pose a fundamental threat to the far-reaching vision of our nations' Founders, and that they clearly violate the Constitution.

In particular, they do grave harm to the separation of powers doctrine and the system of checks and balances, which have sustained our democracy for more than two centuries.

The Task Force's report therefore is a call not only to this president—but to all future presidents—to respect the Constitution and the rule of law.

I extend my personal gratitude, and that of the 410,000 members of the American Bar Association, and of the American people, to the eleven members of the ABA Task Force on Presidential Statements and the Separation of Powers Doctrine, chaired by Neal Sonnett.

They have worked heroically under extreme time pressures to produce a comprehensive and authoritative report to address an issue of grave importance to our country.

I acknowledge and introduce those members who are with us today.

The biographies of all the Task Force members are available at the back of the room. The Task Force members represent a broad philosophical spectrum – conservatives and liberals, Republicans and Democrats, and they include former members of all three branches of our government.

Most important, the Task Force's report and recommendations are unanimous.

The recommendations will not be official ABA policy until the 550-member ABA House of Delegates takes action on August 7-8 at our Annual Meeting in Honolulu.

I concur strongly in the Task Force's findings and recommendations, and I will address the House of Delegates to urge their adoption as ABA policy.

Neal Sonnett will join me momentarily to discuss the report's specifics, but I briefly want to emphasize several points.

At the birth of our nation, America's Founders created three branches of government—Congress, the Judiciary and the Executive Branch. Each was given distinct powers, and each was given distinct limits on those powers, in order to prevent their abuse.

Congress's role is to pass laws, to conduct oversight of government, and to override presidential vetoes when appropriate.

The President's role is to execute those laws, and to defend our nation and Constitution from external and internal threats.

The role of the Judiciary is to apply the law in specific cases or controversies and, where necessary, to interpret the Constitution when its meaning is in dispute.

That basic design – which is the essence of the separation of powers doctrine – has seen us through all manner of crises for more than two centuries. It is still fully adequate to meet the needs of the complex world we live in today.

The moment a president signs a law, he or she has a constitutional duty faithfully to uphold it. If the president believes that proposed legislation violates the Constitution, or is otherwise infirm, he or she is bound by the oath of office to resist its passage—by expressing those concerns to Congress, and by use of his or her Constitutional power of veto.

What a president cannot do is sign a law and then refuse to enforce it. This is made clear in Article I of the Constitution, in the so-called "presentment clause," which decrees that a president must accept or reject a law as a whole. He cannot pick and choose the parts he likes.

The Supreme Court of the United States reaffirmed this principle as recently as 1998, when it ruled that a "line-item veto," which the Congress gave the president to enable

him to veto specific items in large-scale spending legislation, was a violation of the U.S. Constitution.

The constitutional principle relied on by the Supreme Court in its decision bears repeating. The president must sign or veto a law as a whole.

This is true whether the president wants to ignore minor provisions of a bill, or whether—as in the case of the bill banning torture by U.S. personnel—the president has constitutional concerns about the very core of the legislation. Signing statements are not a lawful substitute for a veto. When used as such, they violate the Constitution.

Some are now suggesting that the Constitution is too impractical and awkward for modern times, and that it unreasonably hamstring presidents to expect them to veto sprawling omnibus bills when they contain flawed provisions.

I respectfully, but firmly, disagree.

The report we release today outlines ways for the president legally to state any concerns about defective laws; for the people and Congress to know when the president has those concerns; and for the three branches of government to resolve disputes when Congress and president disagree about the constitutionality of a new law.

Our Founders intended that the President and Congress must remain accountable to each other and to the American people. The two branches must negotiate with each other, and neither must unilaterally impose its will on the other.

By using a signing statement to ignore an entire or portions of a new law, the president undermines this entire system of checks and balances.

Because Congress cannot veto a signing statement, and cannot now counter its very dangerous effects, the president with each signing statement issued, usurps a crucial power granted to Congress by the Constitution—the power to override a president’s veto by a two-thirds majority vote.

By declaring in a signing statement that a new law is unconstitutional, the president unlawfully also usurps the constitutional role of the Judiciary. He declares himself to be the chief interpreter of the Constitution, a role clearly reserved for the Supreme Court.

The president thus would be not only president, but also law maker and interpreter of the laws. By purposely separating those immense powers, the Founders clearly intended that this result must be avoided.

In his pamphlet “Common Sense,” the colonial patriot Thomas Paine famously remarked that, in England the king was the law, but in America the law is king.

Yet quietly, but with devastating force, modern presidents are using signing statements to seize that which our nation’s Founders purposely denied — absolute power, without any check or balance, to put themselves above the law.

In America, no one is above the law – not even the president.

Neal Sonnett, Chair of the ABA Task Force on Presidential Signing Statements and the Separation of Powers Doctrine, will now comment in more detail about the Task Force’s report, and the policy recommendations that will be submitted to our House of Delegates two weeks from now.

I will then be pleased to answer your questions.