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HEADLINE: Alito Once Made Case For Presidential Power

BYLINE: Christopher Lee, Washington Post Staff Writer

BODY:

As a young Justice Department lawyer, Supreme Court nominee Samuel A. Alito Jr. tried to help tip the balance of power between Congress and the White House a little more in favor of the executive branch.

In the 1980s, the Reagan administration, like other White Houses before and after, chafed at the reality that Congress's reach on the meaning of laws extends beyond the words of statutes passed on Capitol Hill. Judges may turn to the trail of statements lawmakers left behind in the Congressional Record when trying to glean the intent behind a law. The White House left no comparable record.

In a Feb. 5, 1986, draft memo, Alito, then deputy assistant attorney general in the Office of Legal Counsel, outlined a strategy for changing that. It laid out a case for having the president routinely issue statements about the meaning of statutes when he signs them into law.

Such "interpretive signing statements" would be a significant departure from run-of-the-mill bill signing pronouncements, which are "often little more than a press release," Alito wrote. The idea was to flag constitutional concerns and get courts to pay as much attention to the president's take on a law as to "legislative intent."

"Since the president's approval is just as important as that of the House or Senate, it seems to follow that the president's understanding of the bill should be just as important as that of Congress," Alito wrote. He later added that "by forcing some rethinking by courts, scholars, and litigants, it may help to curb some of the prevalent abuses of legislative history."

The Reagan administration popularized the use of such statements and subsequent administrations continued the practice. (The courts have yet to give them much weight, though.)

President Bush has been especially fond of them, issuing at least 108 in his first

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term, according to presidential scholar Phillip J. Cooper of Portland State University in Oregon. Many of Bush's statements rejected provisions in bills that the White House regarded as interfering with its powers in national security, intelligence policy and law enforcement, Cooper wrote recently in the academic journal Presidential Studies Quarterly.

The Bush administration "has very effectively expanded the scope and character of the signing statement not only to address specific provisions of legislation that the White House wishes to nullify, but also in an effort to significantly reposition and strengthen the powers of the presidency relative to the Congress," Cooper wrote in the September issue. "This tour d' force has been carried out in such a systematic and careful fashion that few in Congress, the media, or the scholarly community are aware that anything has happened at all."

Bush may be acting without fanfare for a reason. As Alito noted in his memo, the statements "will not be warmly welcomed" on Capitol Hill.

"The novelty of the procedure and the potential increase of presidential power are two factors that may account for this anticipated reaction," he wrote. "In addition, and perhaps most important, Congress is likely to resent the fact that the president will get in the last word on questions of interpretation."

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