April 8, 2020

Honorable William Barr
Attorney General of the United States
U.S. Department of Justice
Washington, DC

Honorable Pat Cipollone
Counsel to the President
The White House
Washington, DC

Dear Messrs. Barr and Cipollone:

In 2006 the American Bar Association convened a Task Force to study the legal and practical implications of presidential signing statements, concluding in its Report that the Constitution empowers the President to sign and implement bills approved by both Houses of Congress or to veto them. The association’s policy-making House of Delegates followed with a Resolution opposing, as contrary to the rule of law and our constitutional system of separation of powers, the issuance of presidential signing statements that claim the authority or state the intention to disregard or decline to enforce all or part of a law the President has signed, or to interpret such a law in a manner inconsistent with the clear intent of Congress.

Taking note of President Trump’s Signing Statement accompanying his signing of the CARES Act, in which he stated that his administration did not intend to be bound by certain congressional mandates in that legislation, I am writing to express once again the concern that the ABA has with the use of such statements in an attempt to nullify the constitutionally enacted directions of Congress.

In December 2011 the ABA expressed our concern over the use of signing statements by President Obama in a letter to the President:

Where a signing statement is used to nullify a provision of law, the President is effectively usurping the power of the legislative branch by denying Congress the opportunity to override a veto of that law and may be abrogating the power of the judicial branch to make a determination of constitutionality. Clearly, the original intent of the Framers of the Constitution was to give the President the choice of signing or vetoing a bill presented by the Congress – in its entirety. The Constitution does not contemplate or accommodate a line-item veto, yet that is precisely the effect of a signing statement announcing the President’s intent to disregard, for any reason (constitutional or policy), a provision of the legislation that he is signing into law.
We recognize that Congress may insert what the President considers objectionable language into omnibus, must-pass legislation, where a veto could disrupt the operation of government. However, the ABA’s commitment to the constitutional principles of “separation of powers” and “checks and balances” leads us to reassert respectfully that a veto, and not a signing statement, is the constitutionally appropriate avenue for any and every President to respond to an objectionable provision inserted in a bill by Congress.

These same concerns apply today. The ABA urges this administration to communicate objections to provisions in legislation to the Congress before legislation is enacted and to work to avoid the kind of constitutional confrontation portended when the President endeavors to rewrite legislation through the issuance of presidential signing statements after the legislation is enacted by Congress.

Sincerely,

Judy Perry Martinez
President