



Written by [Joe Wolverton, II, J.D.](#) on May 28, 2011

Obama “Signs” Patriot Act Extension From Afar — Via Autopen

The House of Representatives and the Senate rushed the votes through their respective bodies, following the futile, though noble, efforts of several of their colleagues to prevent the passage of this post-9/11 package of unconstitutional measures. In the name of fighting the Global War on Terror and keeping the “homeland” safe, the protections placed by the Constitution around the civil liberties of Americans were removed, the parchment barrier shredded by the purveyors of fear.



Of course, there was one part of the Constitution that was followed by the Congress. Per the requirements set forth in Article I, Section 7 of the Constitution, before becoming law, bills passed by the legislature must be signed by the President. Following the 250-153 affirmative vote in the House of Representatives, which completed congressional action, the measure was sent to the President for his signature, just under the midnight deadline when that the provisions extended by the measure would have expired.

There was one problem, however. While normally just a matter of messengering a package down the street to the White House, the Patriot Act extension has a bit longer of a journey. As [described](#) by the Associated Press:

With Obama currently in France, the White House said the president would use an autopen machine that holds a pen and signs his actual signature. It is only used with proper authorization of the president. Minutes before the midnight deadline, the White House said Obama had signed the bill.

It goes without saying that President Obama expressed great pleasure at being able to sign this extraordinary abolition of rights into law.

"It's an important tool for us to continue dealing with an ongoing terrorist threat," he said after a meeting with French President Nicolas Sarkozy.

The leader of the charge to block the Patriot Act extension from being railroaded through a complicit Congress was Republican freshman Senator Rand Paul (R-Ky.). Paul, definitely his father's son, recognized the powers granted by this law as the Constitution-busting hammers of tyranny that they



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are.

While fighting the good fight for freedom and limited government, Senator Paul delayed the final vote on the legislation for several days while soliciting (demanding) an opportunity to amend the bill in such a way as to reduce the grant to the federal government of the power to monitor the lives of individuals where probable cause of criminal activity has not been established.

Despite Paul's best effort, the Senate passed the bill 72-23.

What of this [autopen](#) and its allegedly groundbreaking use to sign away constitutional liberties?

Simply, an autopen is a device used to facilitate the automatic signing of a signature.

President Obama employed the device, the first version of which was invented by Englishman John Isaac Hawkins in 1803, to ostensibly comply with constitutional mandates, an act of deference that seems unnatural to decades of Oval Office occupants. The following [history](#) of getting unsigned legislation into the hands of Presidents quickly is provided by the *New York Times*:

In 1947, President Harry Truman signed a Greek-Turkish aid bill in the Hotel Muelbach in Kansas City, Mo., after the legislation was "flown to him by courier," according to a report in *The New York Times*.

In 2005, President George W. Bush raced to Washington in Air Force One from his Texas ranch to sign a bill to make doctors keep feeding Terri Schiavo, the comatose Florida woman whose husband was fighting to end her life.

Last year, vacationing in Hawaii, Mr. Obama signed into law several bills passed by the lame-duck Democratic Congress, including legislation providing health care benefits to Sept. 11 rescue workers.

After Senator Rand Paul threw a (temporary) wrench into the works of the Senate, the bill wasn't available for the President's approval until 11:45 p.m. on Thursday, May 26 11:45 p.m. in Washington. That was just 15 minutes before the expiration of the Patriot Act provisions extended by the legislation, which obviously did not allow sufficient time to get the legislation to the President in France, where the local time was 5:45 a.m.

According to published reports, "Mr. Obama was awakened, officials said. He reviewed the final legislation and directed that the autopen be used." The White House said that the Patriot Act extension represented the "first time any president had used an autopen to sign legislation."

This "historic" event was not universally ignored or accepted as Constitutionally valid. Congressman Tom Graves (R-Ga.) wrote a [letter](#) to President Obama on Friday challenging the legality of using an autopen to sign legislation. Cited by Graves was the aforementioned Article 1, Section 7 of the Constitution, wherein the procedure required for enactment of a bill is that it be "presented to the president of the United States; if he approve he shall sign it."

The text of the brief letter is printed here:

I thought it was a joke at first, but the President did, in fact, authorize an autopen to sign the Patriot Act extension into law. Consider the dangerous precedent this sets. Any number of circumstances could arise in the future where the public could question whether or not the president authorized the use of an autopen. For example, if the president is hospitalized and not fully alert, can a group of aggressive Cabinet members interpret a wink or a squeeze of the hand



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as approval of an autopen signing? I am very concerned about what this means for future presidential orders, whether they be signing bills into law, military orders, or executive orders.

I am aware of a 2005 Office of Legal Counsel opinion that using an autopen is Constitutional, but I believe this is debatable, and have requested that President Obama provide a detailed explanation of his authority to delegate this responsibility to a surrogate, whether it is human, machine, or otherwise.

In the present case, there is no argument that the bill was not presented to the President of the United States. Rather, the bill remained in Washington and mechanical and digital means were used to convert the President's gestures into his signature, thus manifesting his approval of the bill.

Responding to the constitutional questions posed by Representative Graves, Obama administration officials said that their decision was indeed based on the 2005 memorandum issued by the George W. Bush Justice Department mentioned by Congressman Graves. In that memo, the Justice Department asserted that "the president need not personally perform the physical act of affixing his signature to a bill to sign it.

Again from the *New York Times*:

Instead, the president's lawyers said at the time, "We emphasize that we are not suggesting that the president may delegate the decision to approve and sign a bill, only that, having made this decision, he may direct a subordinate to affix the president's signature to the bill."

That is the position taken today, but incrementalism is one of the most often-employed weapons in the arsenal of the armies arrayed in the battle to eradicate all constitutional protections and prohibitions.

Regardless of the existence of favorable Justice Department memos to the contrary, the Constitution must be obeyed in every particular if we are to expect to benefit from the blessings of the republican form of government guaranteed to the states by Article IV, Section 4.

Photo: Barack Obama

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