President Barack Obama  
The White House  
1600 Pennsylvania Avenue NW  
Washington D.C. 20500  

Mr. President:  

On May 26, 2011, the United States Senate and House of Representatives passed S. 990, the “PATRIOT Sunsets Extensions Act of 2011.” Shortly before midnight, the White House press secretary released a statement that you signed the bill into law.  

However, your Administration later confirmed that you authorized the use of an autopen to sign S. 990. Mr. President, your use of the autopen appears contrary to the Constitution.  

Article I, section 7 of the United States Constitution states:  

“Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it...”  

On May 27, 2011, Congressman Tom Graves wrote you to request an explanation for your Constitutional authority to assign a surrogate the responsibility of signing bills passed by Congress into law. As of today, Congressman Graves has yet to receive a response from the White House.  

While the July 7, 2005, opinion of the Office of Legal Counsel (OLC) to President George W. Bush on using a surrogate to sign bills into law was apparently the basis for your decision, we are compelled to point out that the memorandum provides a long list of dissenting opinions. On pages 25-26, the OLC memorandum cites the following:  

- “See Rehnquist Letter at 2 (concluding that ‘with the exception of signing bills passed by Congress, there is no legal impediment to the delegation of the act of signing and that the question of which documents the President should personally sign is largely one of propriety rather than of law’) (emphasis added)”  
- “Scalia Memorandum at 1 (citing Rehnquist Memorandum and stating that ‘[t]he signing of bills passed by the Congress is one exception which may require the President’s personal signature’) (emphasis added)”
“Memorandum to Files from Ralph W. Tarr, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Presidential Signing of Bankruptcy Extension Act at 9-10 (June 13, 1984) (‘Tarr Memorandum’) (‘We therefore concluded that it was necessary for the President physically to sign the bill in order for it to become a law.’)”

“Wilkey Memorandum at 10 (‘a bill would seem to present an a fortiori case in which under the Constitutional provision the signification of the President’s approval requires an exercise of personal discretion and therefore cannot be delegated’)”

“Rehnquist Memorandum at 2 (‘the requirement for the President’s signature as well as his decision approving a bill would appear to be non-delegable’)”

“Indeed, on at least two occasions, a bill was flown halfway around the world, on the advice of this Office, so that the President could personally affix his signature to it. See Tarr Memorandum at 9 (China) see also Memorandum to File from Jeffrey P. Singdahlsen, Attorney-Adviser, Office of Legal Counsel, Re: Preliminary Advice and Consideration Regarding Proposal to Fax Continuing Resolution to the President While He Was Abroad at 1 (Dec. 22, 1999) (Turkey).”

Despite the 2005 opinion of the OLC, neither President George W. Bush nor any of your predecessors assigned a surrogate, or autopen, to sign a bill into law.

Mr. President, it is clear that assigning a surrogate the responsibility of signing bills passed by Congress is a debatable issue, and could be challenged in court. That being the case, our request is that, out of an abundance of caution, you affix your signature to S. 990 by personally re-signing the enrolled bill. We recall you retaking the Oath of Office on January 21, 2009, over similar concerns for adhering to the Constitution, and believe your signing legislation passed by the United States Congress is of equal importance. Furthermore, we ask that you commit to ending the practice of using an autopen to sign bills passed by Congress.

Thank you for your consideration of this matter. We look forward to your response.

Sincerely,

Tom Graves
Member of Congress

Justin Amash
Member of Congress
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Jeff Duncan
Member of Congress

Jason Chaffetz
Member of Congress

Allen B. West
Allen West
Member of Congress

Jack Kingston
Member of Congress

Tom Reed
Member of Congress

Raúl Labrador
Member of Congress

Jeff Landry
Member of Congress

Steve Scalise
Member of Congress

Patrick McHenry
Member of Congress

Bill Posey
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Phil Gingrey
Member of Congress

Marlin Stutzman
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Roscoe Bartlett
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Rob Bishop
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Steve Pearce
Member of Congress

Bill Flores
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Tom Rooney
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