

Senator Eric Schmitt
Senate Judiciary Committee
Written Questions for Theodore Wold
Hearing on “Unfit to Serve: How the Biden Cover-Up Endangered America and Undermined the Constitution”
Wednesday, June 18, 2025

As you confirmed in response to questioning in the hearing, guidance from Office of Legal Counsel states that the autopen is permitted only when the President directs an action under his direct authority. You noted that, “assuming that the Biden White House complied with traditional practice of presidential administrations and there was record keeping either from the staff or others, there should be records to indicate [Presidential Approval], either through covering memorandum or briefing books where the President would have signed his signature authorizing this decision.” Despite the fact that these documents would make it “very easy to dispel some of these concerns,” none have come forward. I have several questions related to those documents. Committee in the below refers to the full Senate Judiciary Committee and the role the Subcommittees, particularly the Subcommittee on the Constitution, which I chair.

1. If the Biden Administration adhered to record keeping practices used by prior administrations, would it be likely to find President Biden’s signature authorizing the use of the autopen in briefing books?

The briefing book could be the place to find signatures authorizing autopen use, but a presidential administration could set up other protocols. The answer to this question would be known to members of the presidential staff charged with handling the approval process for presidential papers, particularly within the Staff Secretary’s office.

2. If the Biden Administration adhered to record keeping practices used by prior administrations, would it be likely to find President Biden’s signature authorizing the use of the autopen in covering memoranda?

Yes, this would be a likely place to find an authorizing signature if the Biden Administration adhered to past practices. The answer to question #1 also applies here.

3. If the Biden Administration adhered to record keeping practices used by prior administrations, would it be likely to find President Biden’s signature authorizing the use of the autopen in decision memoranda?

Yes.

4. If the Biden Administration adhered to record keeping practices used by prior administrations, are there any other types of documents where it would be likely to find President Biden’s signature authorizing the use of the autopen?

Yes. There may have been a general policy memorandum(a) outlining appropriate uses of the autopen, (*i.e.*, what types of documents could be autopenned and in what circumstances), declaring who has authorization to operate the autopen, and who had authorization to order use of the autopen to execute the President's orders.

5. According to reporting from Fox News, Neera Tanden testified to the House Oversight Committee that "to get approval for the use of autopen signatures she would send decision memos to members of Biden's inner circle. However, she added that she was not aware of what actions or approvals took place between the time she sent the decision memo and the time she received it back with the necessary approval."¹ If this testimony is accurate, would those members of Biden's inner circle have any record keeping obligations if the Biden Administration adhered to record keeping practices used by prior administrations?

Yes. However, it must be emphasized how different the Biden Administration's practices and procedures appear to be from past-precedent and "normal" Oval Office operations. In past Administrations, the Staff Secretary would have free and routine access to the President. Indeed, in most Administrations the Staff Secretary has "walk-in" privileges meaning he can enter the Oval Office without going through any gatekeepers.

6. Is it unusual for the staff secretary to send a request for autopen usage to an intermediary, rather than to the President directly?

Yes. As discussed above, in an Administration that follows conventional practices, the Staff Secretary and subordinates of that office would often take records directly to and from the President themselves.

For questions 7-17, I respectfully submit it would be most effective to organize and approach document or Special Access Requests by discrete event and presidential action, instead of trying to identify particular custodians. As Ms. Tanden's interview before the House Oversight Committee illustrated, she was incredibly isolated from President Biden. In fact, her access to the President *decreased* once she became Staff Secretary and she testified that she saw him once approximately every six weeks. That lack of access as the Staff Secretary does not match my experiences in the White House.

President Biden kept a notoriously close inner circle of aides who have worked for him for decades during his long tenure in Washington. These individuals may or may not have had the traditional White House titles that comport with their power within the White House staff and access to the President. By organizing potential records requests by custodian, the Committee would be playing the proverbial game of "whack-a-mole" to identify who the real power players and/or decisionmakers were. Since I did not work in

¹ Alec Schemmel and Elizabeth Elkind, *Top Biden aide admits to Congress she directed autopen signatures without knowing who gave final approval*, FOX NEWS (Jun. 24, 2025), <https://www.foxnews.com/politics/top-biden-aide-admits-congress-she-directed-autopen-signatures-without-knowing-who-gave-final-approval>.

the Biden White House, I would be speculating on what particular documents particular custodians would be likely to possess, and I lack the requisite knowledge to offer productive recommendations on what you should request from each custodian listed in questions 7 through 17..

Instead, I suggest organizing document or Special Access Requests by particular use of the autopen as to a non-delegable Presidential power. We know which pardons were signed via autopen. We know which Executive Orders were signed via autopen. The Oversight Project will soon publish findings identifying which Proclamations were signed with an autopen. These events represent a finite universe by which to organize records requests for all relevant communications about those events. By accessing the communications surrounding *each particular* use of the autopen to exercise a nondelegable Presidential power, the Committee should be able to identify each person's role in the deployment of the autopen in a given instance.

7. Jessica Hertz was former Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Hertz, in her position as Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Jessica Hertz?
 - i. If so, which documents?
8. Neera Tanden was former Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Tanden, in her position as Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Neera Tanden?
 - i. If so, which documents?
9. Stefanie Feldman was former Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Feldman, in her position as Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Stefanie Feldman?
 - i. If so, which documents?
10. Michael Hochman was former Deputy Staff Secretary to President Biden. Based on the record keeping practices of prior administrations, would it be likely that Hochman, in his position as Deputy Staff Secretary, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Michael Hochman?
 - i. If so, which documents?
11. Garrett Lamm was former Director of Presidential Correspondence under President Biden. Based on the record keeping practices of prior administrations, would it be likely that Lamm, in his position as Director of Presidential Correspondence, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Garrett Lamm?

- i. If so, which documents?
- 12. Eva Kemp was former Director of Presidential Correspondence under President Biden. Based on the record keeping practices of prior administrations, would it be likely that Kemp, in her position as Director of Presidential Correspondence, was at any time the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Eva Kemp?
 - i. If so, which documents?
- 13. Michael Donilon was former Senior Advisor to the President under President Biden. Based on the record keeping practices of prior administrations and public reporting that Donilon was a member of the “Politburo” – President Biden’s inner circle,² do you believe that it is possible that Donilon could have been the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Michael Donilon?
 - i. If so, which documents?
- 14. Bruce Reed was former Deputy Chief of Staff for Policy under President Biden. Based on the record keeping practices of prior administrations and public reporting that Reed was a member of the “Politburo” – President Biden’s inner circle,³ do you believe that it is possible that Reed could have been the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Bruce Reed?
 - i. If so, which documents?
- 15. Steve Ricchetti was former Counselor to the President under President Biden. Based on the record keeping practices of prior administrations and public reporting that Ricchetti was a member of the “Politburo” – President Biden’s inner circle,⁴ do you believe that it is possible that Ricchetti could have been the custodian of documentation where Biden would have authorized the use of the autopen?
 - a. Should this Committee request documents from Steve Richetti?
 - i. If so, which documents?
- 16. There are a number of other persons of interest who may be relevant to this investigation and the reform effort.
 - a. Should this Committee request documents from Anthony Bernal?
 - i. If so, which documents?
 - b. Should this Committee request documents from Ashley Williams?
 - i. If so, which documents?
 - c. Should this Committee request documents from Annie Tomasini?
 - i. If so, which documents?
 - d. Should this Committee request documents from Ron Klain?

² Ryan King, *Here are the ‘politburo’ members who were really running the Biden White House, according to ‘Original Sin’ authors*, NEW YORK POST (May 25, 2025), <https://nypost.com/2025/05/25/us-news/the-politburo-members-who-were-really-the-biden-white-house-according-to-original-sin/>.

³ *Id.*

⁴ *Id.*

- i. If so, which documents?
- e. Should this Committee request documents from Kate Bedingfield?
 - i. If so, which documents?
- f. Should this Committee request documents from John Anzalone?
 - i. If so, which documents?
- g. Should this Committee request documents from Julie Chávez Rodríguez?
 - i. If so, which documents?
- h. Should this Committee request documents from Rachel Cotton?
 - i. If so, which documents?
- i. Should this Committee request documents from Richard Sauber?
 - i. If so, which documents?
- j. Should this Committee request documents from Michael LaRosa?
 - i. If so, which documents?
- k. Should this Committee request documents from William Daley?
 - i. If so, which documents?
- l. Should this Committee request documents from Anita Dunn?
 - i. If so, which documents?
- m. Should this Committee request documents from TJ Ducklo?
 - i. If so, which documents?
- n. Should this Committee request documents from Ed Siskel?
 - i. If so, which documents?
- o. Should this Committee request documents from Jeff Zients?
 - i. If so, which documents?
- p. Should this Committee request documents from Kevin O'Connor?
 - i. If so, which documents?
- q. Should this Committee request documents from Geoffrey "Geoff" Garin?
 - i. If so, which documents?
- r. Should this Committee request documents from Brooke Goren?
 - i. If so, which documents?
- s. Should this Committee request documents from John F. Kirby?
 - i. If so, which documents?
- t. Should this Committee request documents from Ben LaBolt?
 - i. If so, which documents?
- u. Should this Committee request documents from Jennifer "Jen" O'Malley Dillon?
 - i. If so, which documents?
- v. Should this Committee request documents from Jennifer "Jen" Psaki?
 - i. If so, which documents?
- w. Should this Committee request documents from Becca Siegel?
 - i. If so, which documents?
- x. Should this Committee request documents from Jacob "Jake" Sullivan?
 - i. If so, which documents?

17. Are there any career staff in the White House, possibly those referenced by Neera Tanden in her Transcribed Interview with the House Oversight Committee, that would have documents that would be helpful to this Committee?

I also have several questions related to reforms that can be implemented.

1. What reforms do you recommend to ensure presidential authority isn't quietly outsourced in times of incapacity?

One effective strategy would be for members of Congress to question administration officials testifying under oath in oversight hearings: "When was the last time you interacted with the President? How often do you interact with the President? Do you have concerns about the President's mental acuity or fitness to carry out the duties of his office?" These questions would go a long way toward shining a light on a President's capacity and control of the executive branch and inviting public scrutiny.

Congress should also take up the problem of a dual vacancy and the order of succession. This has long been a concern given the possibility, God forbid, of a catastrophic event or confluence of events that would render both the President and the Vice President incapable of exercising Article II power. Who becomes President when both of the democratically-elected executives are incapacitated?

2. Could the Congress impose any statutory reforms on the use of the autopen, consistent with Article II?

Impositions of this kind are fraught with constitutional separation-of-powers problems. Recognizing that, Congress can simply make a regular or standing request for any supporting documents that affirm an executive action as having the endorsement of the President. The President would refuse such a request at his peril because doing so would cast doubt on legitimacy (and therefore invite scrutiny) of exercises of Presidential authority.

3. Do you think that judicial review is, or should be, available to challenge the validity of a statute or other executive actions signed by autopen?

Any official action is always subject to review when it is implicated in a judicial proceeding. While there is no freestanding cause of action to challenge a Presidential action, *see, e.g., Forthingham v. Mellon*, 262 U.S. 447, 483-485 (1923), that is not the end of the matter. It is well established that both Congress and the Executive have at least *some* ability independent from the Judiciary to review and pass upon the legality of actions. *See, e.g.,* Richard H. Fallon, Jr., *Judicial Supremacy, Departmentalism, and the Rule of Law*, 96 Tex. L. Rev. 87 (2018). Thus, the Executive Branch is already reviewing the legality of the pardons pursuant to President Trump's Memoranda. *See Reviewing*

Certain Presidential Actions (June 4, 2025) found at <https://www.whitehouse.gov/presidential-actions/2025/06/reviewing-certain-presidential-actions/> (last visited July 29, 2025). Presumably, interested groups may at some point petition the Executive and through that mechanism be involved in the process to investigate the validity of these Executive actions.

4. If it is true that individuals other than the President were making decisions to sign laws or executive actions, independent of the President's approval, what remedy is there? If it were proven that a pardon was signed totally independently by a staffer, would that pardon, for instance, be void?

Assuming the action in question is non-delegable that action would be utterly void.

Take the power of the pardon. The Constitution is explicit that “[t]he President” and only the President “shall have Power to grant Reprieves and Pardons for Offences against the United States . . .” U.S. Const. art. II, § 2, cl. 1. “To the executive alone is entrusted the power of pardon . . .” *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147 (1871). It is well established that the pardon power is non-delegable. *See, e.g., Relation of the President to the Executive Department*, 7 Op. Att’y Gen. 452, 464–65 (“Thus it may be presumed that he, the man discharging the presidential office, and he alone, grants reprieves and pardons for offences against the United States, not another man, the Attorney General or anybody else, by delegation of the President.”); *Presidential Succession and Delegation in Case of Disability*, 5 Op. O.L.C. 91, 94 (1981) (“A study prepared by this Office in the 1950s reaches the same conclusions. This study and our research suggest that the following are nondelegable functions of the President: . . . 4. The power to grant pardons. U.S. Const. Art. II, §2, cl. 1.”); *United States v. Batchelor*, 22 C.M.R. 144, 155 (Ct. Mil. App. 1956) (“It is the general rule that this pardon power is nondelegable and cannot be shared with another person or official when the power is granted in terms similar to those used in our Constitution.”).

Any Branch of Government may examine whether a pardon is in fact valid—that power is not the exclusive province of the judiciary. *See, e.g., In re DePuy*, 7 F.Cas. 506, 512–513 (S.D.N.Y. 1869) (Case No. 3,814) (affirming Executive’s position that pardon issued by President Andrew Johnson and revoked by President Ulysses S. Grant prior to delivery was not operative); *cf., e.g., Attorney Generals Survey of Release Procedures*, Vol. III Pardon 130–132 (1939) (A.G. Pardon Survey) (collecting federal and state authorities holding judiciary has the power inquire into lawfulness of pardon); *id.* at 181–88 (collecting same).

It follows from these principles that a pardon never actually authorized by the President Biden is void. *See, e.g., A.G. Pardon Survey* at 32 (collecting English law that forged pardons are void); *id.* at 130–132 (collecting American authorities reviewing validity of pardons); *id.* at 192–192–93 (collecting American authorities invalidating pardons for lack

of proper form and authorization); *cf. Henry v. State*, 10 Okla. Crim. 369, 987–91 (1913) (holding that commutation of all death sentences due to moral opposition rather than on a case specific basis would be an unlawful suspension of the law).

5. Generally, what is to stop this widespread use of the autopen, and potential lack of Presidential approval, from happening again? Is there anything to stop this from happening again?

The only prospective remedy is accountability. The American people are entitled not only to an investigation to understand the Biden Administration's use of the autopen; they are entitled to have punished anyone who purported to exercise Article II executive authority without the President's personal authorization. Forging a signature on an official document is a serious crime. Regular Americans know they could not do so and expect to avoid punishment if caught. The matter is far more serious when it strikes at the heart of our democracy. Accountability is the only way to prevent autopen abuses going forward.