

EXTENSIONS OF REMARKS

APPOINTMENT OF THE COMPTROLLER GENERAL AND DEPUTY

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 22, 1998

Mr. BURTON of Indiana. Mr. Speaker, today I am introducing legislation to change the appointment process for the Comptroller General and Deputy Comptroller General. These officials are now Presidential appointees even though they are part of the Legislative branch, not the Executive branch. Consistent with their status as Legislative branch officials, my bill provides for their appointment by the Congress. The bill would not alter in any way the independence and non-partisanship of these officials or of the agency they head, the General Accounting Office.

Under current law, the Comptroller General is appointed by the President, with the advice and consent of the Senate, to a 15-year term of office. The law provides for a bipartisan, bicameral Congressional commission to recommend individuals to the President as potential appointees for Comptroller General. The commission is composed of the Speaker of the House, the President pro tempore of the Senate, the majority and minority leaders of the House and Senate, and the chairs and ranking minority members of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs. The same commission, with the Comptroller General as an additional member, makes recommendations to the President for Deputy Comptroller General.

When the General Accounting Office was created in 1921, the Comptroller General was made a Presidential appointee. This was because GAO's original functions were almost entirely "executive" in nature and, therefore, had to be vested in an "officer of the United States" appointed by the President. However, GAO's functions have completely changed since 1921. Over the years, its preeminent role as a Legislative branch agency providing direct support to Congress emerged. At the same time, its "executive" functions virtually disappeared. Indeed, the Supreme Court's 1986 decision in *Bowsher v. Synar*, 478 U.S. 714, held that GAO cannot perform "executive" functions.

Mr. Speaker, the idea that Congress should appoint the leaders of its own Congressional "watchdog" agency is not new. During the mid 1970's, Senator Lee Metcalf and Congressman Jack Brooks sponsored legislation to provide for Congressional appointment of the Comptroller General. This legislation was not enacted due to concern that it could jeopardize GAO's ability to perform the limited "executive" functions it retained at that time. As a compromise, the current appointment process was enacted in 1980 to retain Presidential appointment but establish the bipartisan, bicameral Congressional commission to recommend names to the President.

Congress would have made the Comptroller General a Congressional appointee in 1980 were it not for the lingering concerns about the agency "executive" functions. The Supreme Court's subsequent decision in *Bowsher v. Synar* laid these concerns to rest once and for all, and thereby removed the last vestige of the original rationale for Presidential appointment of the Comptroller General and Deputy Comptroller General.

The time has come to complete the task Congress began years ago. GAO is now firmly established in law and practice as a Congressional support agency that Congress relies upon every day for a wide range of information and advice. It makes no more sense for the President to appoint the leaders of the GAO than it would for Congress to appoint the Director and Deputy Director of OMB. It is particularly incongruous that the President should appoint Congressional officials whose fundamental mission is to support oversight of the very branch of government that the President heads.

As my predecessors recognized, Congress has a strong institutional interest in appointing the Comptroller General. Senator Metcalf described this as "a congressional declaration of independence from the White House." Congressman Brooks said that it "would go a long way toward restoring to Congress some of the power and prestige that have slipped away to the executive branch over the years."

In addition to being sound in concept, changing the appointment process has become a practical necessity since the current process is broken. The term of the last Comptroller General, Charles A. Bowsher, expired on September 30, 1996. Thereafter, in accordance with the current law, the Congressional commission interviewed a number of candidates for Comptroller General and, by majority vote, recommended 3 names to the President. However, the President rejected the commission's recommendations out of hand and with no stated reasons. Unfortunately, the process now appears to be stalemated with no end in sight, and GAO has been without permanent leadership for over 1½ years. Moreover, the current process has never successfully led to the appointment of a Deputy Comptroller General. Due to a series of impasses involving different Congresses and Presidents spanning many years, Mr. Bowsher remained without a Deputy for his entire 15-year term of office.

Finally, I want to reiterate that enactment of this bill will not affect the independence, non-partisanship, and objectivity of the GAO. These attributes are, of course, essential to maintaining the agency's credibility and, therefore, its usefulness to the Congress. It would be self-defeating for Congress to do anything to undercut them, and, indeed, the bill carefully preserves them. The bill retains the current Congressional commission now provided by law and makes it the appointing authority. This ensures bipartisan participation in the appointment process. The bill also retains the current provisions governing the terms of of-

fice of the Comptroller General and the Deputy and severely limiting the means and grounds for their removal from office.

Mr. Speaker, I urge prompt action on this important legislation. The GAO provides invaluable assistance and support to the Congress. We need to provide GAO with the permanent leadership it needs to do its work and serve all of the Congress most effectively. I have attached a series of questions and answers that provide additional background.

QUESTIONS AND ANSWERS ON H.R. 4296

Q. What does the bill do?

A. Current law provides for appointment of the Comptroller General and Deputy Comptroller General by the President, with the advice and consent of the Senate. Under the current law, which was last amended in 1980, a bipartisan, bicameral Congressional commission recommends names to the President as potential appointees for Comptroller General and Deputy. The commission is composed of the Speaker of the House, the President pro tempore of the Senate, the majority and minority leaders of the House and Senate, and the chairs and ranking minority members of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs. The commission must submit at least 3 names to the President for Comptroller General. While the President is expected to "give great weight" to the commission's recommendations, he is not bound by them. The President may request additional names, or he may nominate someone not recommended by the commission.

The bill makes the existing bipartisan, bicameral Congressional commission the appointing authority for the comptroller General and the Deputy.

Q. Why is the Comptroller General a Presidential appointee in the first place?

A. When GAO was established in 1921, its core mission was to perform Executive branch auditing and accounting functions that were transferred to GAO from the Treasury Department. Under the Constitution, such "executive" functions can only be vested in an agency headed by an "officer of the United States" appointed in accordance with the Constitution's "appointments clause." Therefore, the Comptroller General had to be a Presidential appointee. This is no longer the case since GAO no longer performs "executive" functions. It is now firmly established in law and practice that the Comptroller General and GAO are part of the Legislative branch and that they can perform only "legislative" functions in support of Congress.

Q. Does shifting appointment of the Comptroller General from the President to Congress pose any legal problems?

A. No. In 1977 testimony addressing Congressional involvement in the Comptroller General's appointment, a Justice Department official stated that—"so long as the Comptroller General is performing functions that are of a legislative nature such as investigating and disseminating information . . . it seems to us pretty clear that . . . his appointment may be handled in whatever manner Congress deems appropriate."

There were concerns over changing the appointment process at that time since GAO still performed some "executive" functions.

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Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

However, the Supreme Court subsequently held in *Bowsher v. Synar*, 478 U.S. 714 (1986), that the Comptroller General could not constitutionally perform "executive" functions notwithstanding his appointment by the President. The Court reasoned that the statutory provisions governing removal of the Comptroller General, which vest removal authority in Congress instead of the President, prevented the Comptroller from being an "officer of the United States" and thereby performing "executive" functions regardless of how he was appointed. Thus, the Comptroller General's status as a Presidential appointee has no legal significance today.

Q. Why change the Comptroller General appointment process now?

A. There are three main reasons to change the appointment process:

(1) The only reason for making the Comptroller General a Presidential appointee in the first place and the only reason Congress has retained the Presidential appointment thus far—to preserve GAO's ability to perform "executive" functions—was eliminated by the Supreme Court's decision in *Bowsher v. Synar*. Following this decision, Congress enacted legislation repealing, modifying, or transferring to the Executive branch virtually all of GAO's remaining "executive" functions. Now is the first opportunity Congress has to complete the task by changing the appointment process.

(2) Given GAO's role as Congress' "watchdog" agency over the Executive branch, it makes no sense for the President to appoint the Comptroller General and it is only natural to shift this responsibility to Congress. On a daily basis, GAO provides information and advice to Congress covering the full range of legislative and oversight issues that Congress faces. Given Congress' reliance on GAO and its close working relationship with GAO, Congress should appoint the head of this agency. Having the President continue to appoint the Comptroller General makes as much sense as it would for Congress to appoint the Director of OMB. It is particularly incongruous for the President to appoint the head of an agency whose exclusive mission is supporting Congressional oversight of the branch of government that the President heads.

(3) The current appointment process is broken and needs repair. Following expiration of former Comptroller General Charles Bowsher's term on September 30, 1996, the Congressional commission was established as provided by law. Working on a bipartisan basis, the commission developed, screened, and interviewed a number of candidates for Comptroller General. By majority vote and in accordance with the current law, the commission recommended 3 names to the President. However, the President rejected the commission's recommendations out of hand and with no stated reasons. As a result, the appointment process appears to be stalemated with no end in sight and GAO has been without permanent leadership for well over 1½ years. Further, the current process has never led to the appointment of a Deputy Comptroller General. Due to a series of impasses involving different Congresses and Presidents spanning many years, Mr. Bowsher remained without a Deputy for his entire 15-year term of office.

Q. Will making the Comptroller General a Congressional appointee detract from GAO's independence and non-partisanship?

A. No. GAO's independence and non-partisanship are, of course, essential to maintaining the agency's credibility and, hence, its usefulness to the Congress. It would be foolish and self-defeating for Congress to do anything to undercut these attributes. There is no reason to think that eliminating the Presidential appointment would have this ef-

fect. The current commission process ensures bipartisan participation in the appointment. The Comptroller's fixed term of office, combined with the severe statutory limits on removal of the Comptroller, provide more than adequate assurance of independence.

Q. Will making the Comptroller General a Congressional appointee politicize the appointment process?

A. No. Congress has a strong institutional interest in making the Comptroller General a Congressional appointee that should transcend politics. In fact, the leading proponents of Congressional appointment of the Comptroller General have been prominent Democratic Members of Congress.

In 1975, Senator Lee Metcalf, then a senior member of the Senate Governmental Affairs Committee and Vice Chairman of the Joint Committee on Congressional Operations, introduced legislation to provide for Congressional appointment of the Comptroller General as well as other Legislative branch officials. Senator Metcalf described his legislation as "a congressional declaration of administrative independence from the White House" and noted that "there are compelling reasons from an institutional perspective why we should take a hard look at the manner in which [these officials] are appointed." He concluded that "the time has come to provide for their appointment by and for the Congress of which they are a part."

Congressman Jack Brooks, then Chairman of the Government Operations Committee, introduced similar legislation on the House side. Chairman Brooks also stressed the importance of his bill from an institutional perspective, noting that the bill "would go a long way toward restoring to Congress some of the power and prestige that have slipped away to the executive branch over the years." He added: "... The doctrine of separation of powers is basic to our system of government and Congress contributes to the weakening of that system when it permits the President to exercise authority in the legislative domain."

When both GAO and the Justice Department resisted direct Congressional appointment of the Comptroller General based on the then-existing concerns about GAO's ability to retain "executive" functions, Chairman Brooks sought to require the President to appoint a Comptroller General from names recommended by the Congressional commission. GAO supported this approach, but Justice objected that even this limitation on the President's appointment authority would be unconstitutional. Chairman Brooks finally had to settle for the current process, whereby a Congressional commission submits nonbinding recommendations to the President but the President remains free to nominate whomever he wishes.

Q. Since some other Congressional officials are appointed by the President, why not the Comptroller General?

A. The Librarian of Congress probably needs to be a Presidential appointee since the Library performs "executive" functions under the copyright laws. Similarly, the Public Printer performs functions that could be considered "executive" in nature. One could question the current status of the Architect of the Capitol. In any event, however, the Architect's functions are not at all analogous to those of the Comptroller General and GAO. The Congressional agency that is most analogous to GAO is the Congressional Budget Office, whose head is appointed by Congress.

IN RECOGNITION OF THE GSS FAMILY THRIFT STORE

HON. LOIS CAPP

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 22, 1998

Mrs. CAPP. Mr. Speaker, I rise to bring to the attention of my colleagues the remarkable work of Curtis Foreman, John Carnell, and the GSS Family Thrift Store. Since it opened in October of 1989, the thrift store has raised three-quarters of a million dollars to help support a local homeless shelter in Santa Maria, California.

All of the merchandise in the store is available to residents of the shelter. Free clothes, furniture, and household goods are made accessible to those who do not have these essential items. In addition, shelter residents are employed at GSS Family Thrift Store when possible. There are currently three shelter residents employed as full-time workers.

I ask my colleagues to join with me, the county of Santa Barbara, and the city of Santa Maria in commending the work of Mr. Foreman and Mr. Carnell. The GSS Family Thrift Store is truly a model for this community and the entire nation. I commend the noble work of this unique establishment.

AIDS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 22, 1998

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, July 22, 1998 into the CONGRESSIONAL RECORD.

AIDS IN AMERICA

Recent legal and medical developments concerning the Acquired Immune Deficiency Syndrome (AIDS) have renewed interest in the disease around the world. Since the discovery of the disease in 1981, much has changed. Here are some frequently asked questions regarding AIDS:

What is AIDS? AIDS is a fatal disease that attacks the immune system, destroying the body's ability to fight off infections and cancers. The disease is believed to be caused by a virus called human immunodeficiency virus (HIV) which is spread through bodily fluids. AIDS is the syndrome that develops after someone is infected with HIV and the immune system is unable to fight off common infections. After initial infection with HIV, it takes an average of eight to ten years for the virus to develop into full-blown AIDS. The life expectancy of AIDS victims varies in accordance with availability of various drug therapies, but typically ranges from one to four years. No cure currently exists for HIV/AIDS.

What is the extent of the problem? HIV/AIDS is one of the greatest threats to public health in America, especially among youth. AIDS is currently the second leading cause of death among Americans between the ages of 25 and 44. The greatest threat can be seen in the rising HIV infection rates among minorities, women, and teenagers.

Nearly 370,000 Americans have died from AIDS-related illnesses. An estimated 650,000 to 900,000 Americans have been infected with HIV since 1981. Approximately 5,200 cases of AIDS have been reported in Indiana since