

Congress of the United States
House of Representatives
Washington, D.C. 20515
January 30, 2002

The Vice President
The Eisenhower Executive Office Building
Washington, DC 20501

Dear Mr. Vice President:

This weekend, you appeared on the Sunday morning talk shows and addressed GAO's request for records relating to the White House National Energy Policy Development Group (NEPDG), which you chaired. Unfortunately, some of your statements are at odds with basic facts about GAO's request and past precedents. We are writing to clarify these matters.

GAO's Request for Information

On Fox News Sunday, you said: "what's really at stake here is the ability of the president and the vice president to ... get good, solid, unvarnished advice without having to make it available to a member of Congress."¹ Similarly, on the same program, you said: "What I object to ... and what we've told the GAO we won't do is make it impossible for me or future vice presidents to ever have a conversation in confidence with anybody. ... You just cannot accept that proposition without putting a chill over the ability of the president and the vice president to receive unvarnished advice."²

GAO has been very clear on this point, however. As David Walker, the Comptroller General of the United States, explained in his August 17, 2001, report to Congress and you, GAO is seeking only "limited factual and non-deliberative information." According to the Comptroller General:

[W]e are not asking for any communications involving the President, the Vice President, or the President's senior advisors. We are simply asking for facts that the Vice President, as Chair of the NEPDG, or others representing the group, would be in position to provide. These include the names of attendees, dates and locations, and the subjects of the meetings.³

¹*Fox News Sunday*, Fox TV (Jan. 27, 2002).

²*Id.*

³Report from Comptroller General of the United States David M. Walker to Rep. J. Dennis Hastert, Speaker of the House of Representatives, 4 (Aug. 17, 2001). An identical report was submitted by the Comptroller General to you. Report from the Comptroller General of the United States David M. Walker to the Vice President of the United States (Aug. 17, 2001).

Your assertions on the Sunday talk shows that GAO is seeking “notes and minutes” from the meetings of the energy task force are wrong.⁴ In the August 2001 report, the Comptroller General specifically wrote: “In communications with the Vice President’s Counsel ..., we offered to eliminate our earlier requests for minutes and notes.”⁵

As the Comptroller General has emphasized, the records being sought contain information that you obtained in your “capacity as chairman of the national energy policy development group,” not in your capacity as Vice President. The Comptroller General correctly recognizes that if records of this type could be shielded from Congress by putting the Vice President in charge of every Administration task force, “that’s a loophole big enough to drive a truck through.”⁶

GAO is a non-partisan investigative entity created by Congress to conduct investigations. The question posed by GAO’s request is whether the White House is entitled to keep confidential the policy requests that it receives from large campaign contributors, their lobbyists, and other special interests. We agree that the President and the Vice President are generally entitled to confidentiality when discussing federal policies with senior White House staff. But confidentiality for discussions among the President and the Vice President and their top aides does not extend to external communications to the White House from outside groups.

Precedents

On Fox News Sunday, you said providing the information sought by GAO would be “unprecedented in the sense that that’s not been done before.”⁷ In fact, as the Comptroller General wrote the Speaker and you on August 17, the information sought by GAO has been “commonly provided to GAO for many years.”⁸ The discussion below describes 12 recent precedents where exactly the kind of information about the White House energy task force being sought by GAO was provided to Congress.

⁴*Fox News Sunday*, Fox TV (Jan. 27, 2002); *See also This Week*, ABC (Jan. 27, 2002).

⁵Report from Comptroller General of the United States David M. Walker to Rep. J. Dennis Hastert, Speaker of the House of Representatives, 2 (Aug. 17, 2001).

⁶*Cheney Is Set To Battle Congress To Keep His Enron Papers Secret*, New York Times (Jan. 28, 2002).

⁷*Fox News Sunday*, Fox TV (Jan. 27, 2002).

⁸Report from Comptroller General of the United States David M. Walker to Rep. J. Dennis Hastert, Speaker of the House of Representatives, 5 (Aug. 17, 2001).

Two recent precedents involve White House task forces established by President Clinton. Both are described by the Comptroller General in his August report. One is the White House China Trade Relations Working Group, which was established by President Clinton in February 2000 to coordinate interagency activities associated with the passage of permanent normal trade relations for China. According to the Comptroller General:

GAO reviewed activities of the White House China Trade Relations Working Group, which was established at the request of President Clinton in the exercise of his Constitutional powers. In this review, GAO was provided thousands of documents including copies of e-mails and other information identifying group members' contacts with outside groups and individuals.⁹

The other White House task force discussed by the Comptroller General is President Clinton's Task Force on Health Care Reform. According to the Comptroller General:

[A]t the request of the Republican Ranking Member of the House Committee on Government Operations, GAO reviewed activities of President Clinton's Task Force on Health Care Reform and was provided with an extensive listing of working group participants drawn from the government and outside organizations.¹⁰

⁹Report from Comptroller General of the United States David M. Walker to Rep. J. Dennis Hastert, Speaker of the House of Representatives, 5 (Aug. 17, 2001).

¹⁰Report from Comptroller General of the United States David M. Walker to Rep. J. Dennis Hastert, Speaker of the House of Representatives, 5 (Aug. 17, 2001). You have previously suggested that President Clinton's health care task force can be distinguished from the energy task force because the former was subject to the Federal Advisory Committee Act (FACA):

Cheney: [T]here was this allegation that somehow we did what the Clintons did back in '93 on health. We did not. . . . We were very sensitive to that and very careful of it. . . .

Q: Tell me where the difference is?

Cheney: [W]hen you bring in . . . outsiders and incorporate them in the policy-making process, . . . then certain requirements with respect to federal advisory committees kicks in and certain requirements have to be met. We didn't do that.

Interview with Vice President Cheney on *Nightline*, ABC (July 25, 2001). In fact, the health care task force cannot be distinguished from the energy task force. Contrary to the suggestion that

Moreover, there have many investigations by congressional committees that have sought and obtained communications from outside interests to the White House. In these cases, the communications from outside interests were sought for exactly the same reason that we requested GAO's investigation of the White House energy task force: to determine whether campaign contributors, their lobbyists, or other special interests had an undue influence on federal policy.

These congressional precedents involve numerous House and Senate committees. For example, here is a list of ten additional precedents involving requests from five separate congressional committees:

- **Influence of Occidental Petroleum on U.S. Foreign Policy.** In 1997, the House Government Reform and Oversight Committee investigated whether U.S. policy toward Sudan may have been influenced by campaign contributions from a U.S. oil company, Occidental Petroleum. In response to Committee requests, the White House provided records of communications between Occidental Petroleum and the White House.
- **Influence of Loral on U.S. China Policy.** In 1998, the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China investigated whether a satellite technology company, Loral Space and Communications, influenced export control decisions. In response to Committee requests, the White House provided documents concerning contacts between the White House and Loral.
- **Influence of Indian Tribes on the Wisconsin Dog Track Decision.** In 1997 and 1998, the Senate Governmental Affairs Committee and the House Government Reform Committee investigated whether the Administration's decision to deny one Indian tribe's application for a dog track in Hudson, Wisconsin, was influenced by campaign contributions from an Indian tribe opposed to the dog track. In response to requests from both Committees, the White House provided records concerning contacts between the White House and the tribes and their lobbyists. In addition, White House officials and the Secretary of Interior provided both Committees with testimony in hearings and depositions regarding internal communications and contacts with outside lobbyists.
- **Influence of Environmental Groups on Timber Policy and Forest Service Law Enforcement.** In 1997, the House Resources Committee investigated whether environmental groups had influenced federal policy on timber sales and Forest Service law enforcement. In response to requests from the Committee, the White House provided records of contacts between environmentalists and the White House and White House

FACA applied to the health care task force, the D.C. Circuit Court ruled that the health care task force was not subject to FACA. *Association of American Physicians and Surgeons, Inc. v. Hillary Rodham Clinton*, 997 F.2d 898 (D.C. Cir. 1993).

Council on Environmental Quality.

- **Influence of Campaign Contributors and Political Supporters on Molten Metal Decision.** In 1997, the House Commerce Committee investigated whether the Administration's decision to fund a technology developed by Molten Metal Technology, Inc., was inappropriately influenced by political supporters of the Administration. To investigate this matter, the Committee requested "all records within the Executive Office of the President (including, but not limited to, the Office of the Vice President) relating in any way to Molten Metal." In response, the White House provided records of communications between the White House or Office of the Vice President and outside entities.
- **Influence of the Lippo Group on the Clinton Administration.** In 1997 and 1998, the House Government Reform Committee investigated allegations regarding the access and influence the Lippo Group, an Indonesian conglomerate, and associated individuals had during the Clinton Administration. In response to requests from the Committees, the White House provided records of contacts between the White House and individuals associated with the Lippo Group.
- **Influence of Campaign Contributors and Political Supporters on Presidential Pardon Decisions.** In 2001, the House Government Reform Committee investigated whether pardon decisions by President Clinton were influenced by communications from campaign contributors and political supporters. In response to requests from the Committee, the White House authorized the release of records relating to contacts between White House and outside parties on these matters.
- **Influence of Energy Capital Partners on Department of Housing and Urban Development Contract Award.** In 1997, the Senate Governmental Affairs Committee and the House Government Reform Committee investigated White House contacts with Alan Leventhal and Fred Siegel, following media reports that Mr. Leventhal's and Mr. Siegel's firm, Energy Capital Partners, won a contract from HUD after Mr. Leventhal and Mr. Siegel raised funds for the Clinton-Gore campaign. In response to requests from the Committees, the White House provided records of White House contacts with Mr. Leventhal and Mr. Siegel.
- **Influence of Campaign Contributors and Political Supporters on the Portals Lease.** In 1997 and 1998, the House Energy and Commerce Committee investigated whether an Administration decision to lease office space for the Federal Communications Commission in the Portals building in the District of Columbia was influenced by campaign contributors and political supporters who were hired as lobbyists for the Portals project. In response to requests from the Committee, the White House provided records of contacts the White House had with relevant outside individuals.

- **Decision to Grant Clemency to Puerto Rican Nationalists.** In 1999, the House Government Reform Committee investigated whether President Clinton's decision to offer clemency to members of radical Puerto Rican nationalist groups, the FALN and Los Machateros, had been improperly influenced by political considerations. The Committee issued a subpoena for all White House records related to the clemency process for these individuals. The White House claimed executive privilege with respect to records bearing on the President's decision making process. At the same time, it produced over 11,000 pages of documents to the Committee, including records detailing contacts between outside organizations and both the White House staff and the Interagency Working Group on Puerto Rico.

In each of these cases, incidentally, no wrongdoing by the White House was ultimately established.¹¹

You and your legal advisors in the White House may disagree with these 12 recent precedents in which the White House provided GAO and congressional committees with information received by the White House from outside groups. However, it is inaccurate for you to assert that complying with GAO's current request would be "unprecedented." What lacks precedent is your insistence that communications from campaign contributors, lobbyists, and other special interests are subject to a constitutional privilege.

The Authority of GAO

You also questioned GAO's legal authority during your appearances on the talk shows. On Fox News Sunday, for example, you said: "GAO is a creature of the Congress. ... Their jurisdiction extends to agencies created by statute. That's not me. ... [A]s part of the office of the president and the vice president of the United States, I'm a constitutional officer. And the authority of the GAO does not extend in that case to my office."¹²

In fact, GAO does have clear statutory authority to investigate the White House energy task force. Under 31 U.S.C. sec. 712, GAO is an extension of Congress and has authority to investigate "all matters related to ... the use of public money." As the Comptroller General pointed out in his August report, "there is no doubt that public money was used to fund the

¹¹See Minority Staff Report, *Unsubstantiated Allegations of Wrongdoing Involving the Clinton Administration*, House Government Reform Committee (March 2001). In at least one instance, the investigation by the House Government Reform Committee into President Clinton's pardons, the investigation did reveal extraordinarily poor judgment by the President.

¹²*Fox News Sunday*, Fox TV (Jan. 27, 2002).

activities of the NEPDG.”¹³ Moreover, GAO has independent authority to investigate under 31 U.S.C. sec. 717, which authorizes GAO to investigate “the results of a program or activity the Government carries out under existing law.” According to the Comptroller General, “the meetings that are the focus of our review were the result of a government activity -- the establishment of the NEPDG.”¹⁴

Indeed, Congress specifically anticipated that disputes could arise between the White House and GAO over access to documents when it enacted 31 U.S.C. sec. 716, which establishes a procedure for resolving these disputes. Under this section, GAO is directed to file a report with the President and Congress if GAO is denied access to information. After 20 days, GAO can file suit to obtain the information unless “the President ... certifies to the Comptroller General and Congress” that (1) the records could be withheld under the deliberative process or law enforcement exceptions of the Freedom of Information Act and (2) “disclosure reasonably could be expected to impair substantially the operations of the Government.”

In this case, the Comptroller General filed the required report on August 17, 2001. But the President did not make -- and could not reasonably have made -- the certification required under section 716 for withholding the information. As a result, GAO is expressly authorized to go to court to seek the information.

While you have conceded in theory that GAO is entitled to financial records relating to the task force and have publicly stated that you are cooperating with that limited inquiry, you have failed to provide GAO with the information it needs to understand the task force’s finances. On Sunday, you asserted that “we’ve given him an awful lot. We’ve given him all the financial records, the work that was done by the agency, all of that’s gone to the GAO.”¹⁵ Yet as the Comptroller General stated in his August report, all you have actually provided to GAO are:

77 pages of miscellaneous documents purporting to relate to direct and indirect costs incurred in the development of the National Energy Policy. As we have advised the Vice President’s representatives, the submission is incomplete and is not fully responsive. Moreover, it is virtually impossible to analyze the documentation. We cannot do a meaningful review without an explanation of the nature and purposes of these costs and the appropriation that was charged. Thus far, we have sought to obtain adequate, relevant records and explanations without success.¹⁶

¹³Report from Comptroller General of the United States David M. Walker to Rep. J. Dennis Hastert, Speaker of the House of Representatives, 6 (Aug. 17, 2001).

¹⁴*Id.*

¹⁵*Fox News Sunday*, Fox TV (Jan. 27, 2002).

¹⁶Report from Comptroller General of the United States David M. Walker to Rep. J. Dennis Hastert, Speaker of the House of Representatives, 8 (Aug. 17, 2001).

GAO “Backed Off”

You maintained that GAO “backed off” last August from going to court and that the dispute is being “reenergized” by Democrats to “create a political issue.”¹⁷ According to the Comptroller General, however, this is “absolutely false.”¹⁸ In reality, GAO filed the report required under section 716 on August 17 and was prepared to go to court after the 20-day statutory waiting period ended in early September. GAO held off, however, because of the September 11 attacks and the war on terrorism. Three weeks later, the Comptroller General released a statement that said:

We remain very concerned regarding the failure of the Vice President to provide the information that we requested in connection with the National Energy Policy Development Group. This matter involves important transparency and accountability issues that are essential in a democracy and are fundamental to our republic. However, given our current national focus on combating terrorism and enhancing homeland security, this matter is not a current priority. We will determine whether and when we should proceed to court on this matter in due course.¹⁹

As this statement makes clear, the Comptroller General properly deferred a decision on whether to proceed to court in September so as to avoid detracting from the fight against terrorism. The Comptroller General never “backed off” from his determination that the records should be provided to GAO and that GAO would proceed to court if necessary to settle the matter.

Comments from the Sierra Club

This week, in an interview with NBC news, you were asked about the appearance that energy companies may have had undue influence on the development of the task force’s report. You replied, “Let’s talk about undue influence for a minute. The Sierra Club put out a set of energy policy recommendations, 12 points. Our energy recommendations, put out by our task force, includes 11 of those. Now, were we unduly influenced by the Sierra Club? Of course not.”²⁰

¹⁷*This Week*, ABC (Jan. 27, 2002).

¹⁸*Cheney Is Set To Battle Congress To Keep His Enron Papers Secret*, New York Times (Jan. 28, 2002).

¹⁹United States General Accounting Office, *Statement of Comptroller General David M. Walker, U.S. General Accounting Office, on the National Energy Policy Development Group* (September 28, 2001).

²⁰*NBC Nightly News*, NBC (Jan. 28, 2002).

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This is revisionist history. During the formulation of the task force's report, environmental organizations had virtually no access to the White House energy task force, despite repeated requests for a meeting. For example, environmental and consumer advocates have stated that you claimed you were too busy to meet with them and that the task force's executive director met with them "but did not ask for substantive comments."²¹

Further, the Sierra Club vehemently opposes the White House energy plan. On May 17, 2001, the Sierra Club Executive Director, Carl Pope, reacted to the substance of the White House energy plan with the following statement: "The energy plan President Bush unveiled won't work, because it makes the wrong choices. We can't drill, dig and destroy our way to energy independence."²²

In fact, the Sierra Club rebuts as a "smokescreen" the Administration's assertion that the White House energy plan reflects the Sierra Club's recommendations.²³ The Sierra Club has released a detailed analysis contrasting its recommendations with the White House energy plan.²⁴ The Sierra Club recommends numerous specific policies to enhance energy efficiency, promote renewable energy, and make fossil fuel production cleaner and more efficient. Their analysis shows that the White House energy plan fails to adopt the vast majority of the Sierra Club's specific recommendations, and, as a consequence, the energy plan fails to achieve the Sierra Club's overarching goals of efficiency, renewable energy, and cleaner fossil fuel production.²⁵

Conclusion

We understand the extraordinary demands you face as Vice President and that the range of your responsibilities might make it difficult for you to study in great detail the issues involved here. Nonetheless, regardless of how the inaccuracies resulted, it serves no one's interest to provide information that is subsequently proven to be erroneous on significant points.

²¹Natural Resources Defense Council, *The Bush-Cheney Energy Plan: Players, Profits, and Paybacks* (June 2001) (on line at <http://nrdc.org/air/energy/aplayers.asp>).

²²*President's Energy Plan Makes the Wrong Choices: Sierra Club Urges Balanced Approach that's Quicker, Cleaner, Cheaper, Safer*, Statement of Carl Pope, Sierra Club Executive Director (May 17, 2001). The Sierra Club even ran newspaper ads in six states opposing the White House energy plan. Information available on line at: http://www.sierraclub.org/energy/bush_plan/ads/.

²³*Fleischer Fact Check*, Sierra Club (Jan. 22, 2002) (press release) (available on line at: <http://lists.sierraclub.org/SCRIPTS/WA.EXE?A2=ind0201&L=ce-scnews-releases&D=1&T=0&H=1&O=D&F=&S=&P=593>).

²⁴Sierra Club, *12 Key Benchmarks for Achieving a Sound Energy Plan* (June 1, 2001).

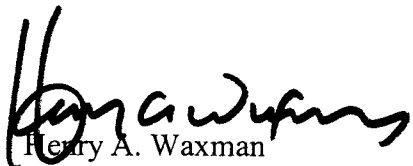
²⁵*Id.*

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Notwithstanding factual errors, the implications of your statements are serious. Under your view, this and future White Houses would be virtually immune from routine oversight. Indeed, executive privilege would never have to be invoked. Future Presidents could simply rely on your precedent that no White House could be required to provide information or submit to oversight.

Our entire nation is deeply grateful to the leadership you and the President have provided in the war on terrorism. We do not believe, however, that the American people – despite their gratitude – support radically changing our system of government so that the White House is accountable to no one.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform



John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce