

Flaws in the District Court Decision in GAO's Lawsuit Against the Vice President

On December 9, 2002, District Court Judge John Bates held that the Comptroller General lacked standing to sue the Vice President to obtain records of the White House energy task force. The decision contains a number of flaws:

- The district court says that the General Accounting Office has only an “institutional interest” in enforcing its right to information and so lacks standing. If this is true, then the EPA Administrator lacks standing to enforce environmental laws and the Attorney General lacks standing to enforce criminal laws. Their interest is just as “institutional” as GAO’s interest.
- The district court completely ignores the most important and relevant Supreme Court decision: Bowsher v. Merck, 460 US 824 (1983). That case upheld GAO’s statutory right to obtain access to drug company documents. It cannot be squared with the district court’s decision that GAO cannot enforce its statutory rights to information.
- The district court has history and precedent all wrong. The decision makes much of the fact that no Comptroller General has previously sued the executive branch for access to information. What is unprecedented is not GAO’s request for this information, however, but the Administration’s refusal to provide the information. The reason that there has never been a case like this is that every other Administration has released this kind of information. There is ample precedent for GAO’s request, but none for the Administration’s refusal.

For example, the previous Administration provided GAO with thousands of documents regarding President Clinton’s China Trade Relations Working Group, including e-mails and other information identifying contacts with outside groups and individuals. GAO also reviewed the activities of President Clinton’s healthcare task force and was provided by the White House with an extensive listing of working group participants drawn from the government and outside organizations.

More detailed information on these and other GAO precedents can be found at www.house.gov/reform/min/pdfs/pdf_inves/pdf_energy_cheney_jan_30_let.pdf.

Copies of the opinion may be found at www.dcd.uscourts.gov/02-340.pdf.

Prepared by the Minority Staff of the House Committee on Government Reform