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TESTIMONY OF

CHARLES A. BOWSHER

COMPTROLLER GENERAL OF THE UNITED STATES

BEFORE THE

COMMITTEE ON GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

ON

THE SUPREME COURT'S RULING IN BOWSHER V. SYNAR

Mr. Chairman and Members of the Committee:

I am pleased to appear before the Committee to discuss the Supreme Court's recent decision in the case of Bowsher v. Synar. As I shall describe, the immediate consequence of that ruling is clear: because the Comptroller General is removable by joint resolution of the Congress, the General Accounting Office may not carry out the budget reduction responsibilities assigned to it under Gramm-Rudman-Hollings. The longer-term consequences for efforts to reduce the federal deficit and for the General Accounting Office depend to a large degree on how the Congress chooses to respond to the decision.

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This Committee is fully aware of the many functions carried out by GAO. Among these are the responsibilities assigned to the agency at its creation. The Budget and Accounting Act of 1921 established GAO, with the Comptroller General as its head, to provide the Congress with an objective assurance that public funds are spent properly. Under the 1921 Act, GAO was given the authority to investigate and report on the use of public funds by the executive departments. In addition, GAO was provided a number of administrative powers previously held by the Comptroller of the Treasury. These include the power to settle all accounts of the government, to supervise the collection of debts owed to the government, and to render binding decisions on questions of payment submitted by disbursing officers and department heads. The 1921 Act also gave the Comptroller General the responsibility of prescribing accounting principles and standards for the federal government.

The drafters of the 1921 Act conferred these powers on GAO because of their desire to ensure that such functions would be carried out by an officer of the government whose impartiality both the Congress and the President could rely upon. For 65 years, GAO has filled that role as the objective overseer of the expenditure of public funds. The success of the original scheme is reflected in the reliance that both the Congress and the agencies place on the thousands of legal decisions, financial audits, and program evaluations conducted by GAO each year. It is also reflected in the expansion of GAO's functions over the

years. As Chief Justice Burger noted in the majority opinion in Bowsher v. Synar, the Comptroller General has been assigned a variety of new functions since 1921, including the responsibility of bringing suits to require the release of impounded budget authority, membership on the Chrysler Corporation Loan Guarantee Board and the U.S. Railway Association Board of Directors, and the power to consider bid protests under the Competition in Contracting Act.

The drafters of Gramm-Rudman-Hollings also recognized the value of GAO as an impartial decisionmaker, and chose the Comptroller General to hold the all-important trigger mechanism for automatic budget reductions. Although GAO had not sought this new power, years of experience in audit and evaluation made its staff well-equipped to carry out its responsibilities under the act. On January 21, as required by the statute, GAO reported the reductions necessary to meet the fiscal year 1986 deficit target.

The Supreme Court's opinion addressed two principal questions concerning GAO's role under the statute: first, whether it is permissible under the Constitution for an officer of the United States removable by a joint resolution of the Congress to execute the law; and second, whether the role of the Comptroller General under Gramm-Rudman-Hollings constitutes "execution of the law in constitutional terms." The majority opinion, written by Chief Justice Burger, held that the congressional removal power results in control by the Congress

that is incompatible with the "execution of the law." The Court also determined that the powers exercised by the Comptroller General under Gramm-Rudman-Hollings were in fact "executive" in the constitutional sense of that term. The Court therefore struck down the role of the Comptroller General under the statute. Justice Stevens, in a concurring opinion in which Justice Marshall joined, concluded that the Comptroller General acts as an agent of the Congress, and as such could not be delegated the important powers assigned to him under the act. Two justices, White and Blackmun, issued separate dissenting opinions.

The Supreme Court's decision had the immediate effect of invalidating the fiscal year 1986 budget reductions ordered by the President on the basis of GAO's January 21st report. The Court stayed its judgment for a period not to exceed 60 days, in order to permit the Congress to act under the so-called fallback procedures of the statute. Under those procedures, the Congress approved the fiscal year 1986 reductions on July 17th.

The decision also has the immediate effect of precluding GAO's participation in the fiscal year 1987 Gramm-Rudman-Hollings budget reduction process next month. It has been suggested by some that the Supreme Court's 60-day stay effectively retains all statutory provisions of Gramm-Rudman-Hollings in effect until September 5th, and that the Comptroller General is therefore still required to issue a sequestration report for fiscal year 1987 on August 25th. It is clear to us,

however, that the stay was intended to give the Congress a sufficient amount of time to deal with the fiscal year 1986 reductions through the legislative process, and was not otherwise intended to extend a statutory scheme considered to be unconstitutional. Consequently, we have no present plans to issue a report on August 25th.

The longer-term effects of the Supreme Court's ruling depend to a large degree on what action the Congress now takes in response. A number of alternatives have been suggested to replace the automatic sequestration mechanism invalidated by the Supreme Court. Several of these would again assign a role to GAO. We are willing to contribute in any way that the Congress sees fit towards the important goal of deficit reduction, although we would not favor any alternative which would interfere with GAO's ability to advise and assist the Congress.

The first alternative available to the Congress, and the one that we prefer, is to retain the procedures currently in effect under the fallback provision of the statute. The existing procedures ensure that the ultimate authority to determine how budgetary resources are reduced is to be exercised by the Congress itself.

Another alternative would be to create an independent board or commission in the Executive Branch to carry out the functions originally assigned to the Comptroller General under the statute. This alternative would clearly avoid the constitutional problems of the original scheme, and could provide some

degree of assurance of impartiality.

Other alternatives have been suggested which would keep the Comptroller General in the automatic sequestration process, but would essentially make his report advisory to an existing officer of the Executive Branch. If the Congress determines it desirable for GAO to be involved in the process, such proposals are acceptable to us. One of these proposals, however, would also include a provision authorizing the Comptroller General to bring suit to ensure that the President's order complies with the law. After the decision in Bowsher v. Synar, the Comptroller General's authority to bring this type of action is open to constitutional question. The provision also appears to be inconsistent with a statutory scheme designed to place final authority for making budget reductions in the Executive Branch. For these reasons, we would oppose such a provision.

Finally, one alternative would reinstate GAO as the central decisionmaker in Gramm-Rudman-Hollings, by amending the removal provision considered by the Supreme Court to bar his participation in the automatic sequestration process. This approach would amend the 1921 Budget and Accounting Act by providing that the Comptroller General may be removed by the President. The holder of the office would thus no longer be answerable only to the Congress. The Comptroller General would hold the same status as the head of every agency of the Executive Branch, each of whom is removable by the President, either at will or for cause.

Making the Comptroller General removable by the President would result in a fundamental change in an arrangement that has existed for some 65 years. As I have already indicated, both the Congress and the various agencies have viewed GAO since its establishment under the 1921 Act as an impartial and valuable source of advice and information. The Congress especially has come to rely on GAO as an indispensable aid to its oversight requirements. The great amount of resources that the agency devotes to audit work on behalf of congressional committees, including this committee, testifies to the importance of GAO to the work of the Congress. We would oppose any proposal that might result in a change in that status.

With respect to any proposal to amend the 1921 Act, we are concerned that the Congress, in the rush to find a quick "fix" for Gramm-Rudman-Hollings, may choose an alternative that achieves the unintended result of diminishing GAO's effectiveness. We recognize that the Supreme Court's decision in Bowsher v. Synar may also affect some of the other functions carried out by GAO. In our view, however, legislation addressing the broader implications of the decision for GAO should be considered only after careful study of the Court's opinion. Such legislation should not be included in current efforts to cure the constitutional problems of Gramm-Rudman-Hollings, or be appended to emergency legislation such as that currently required to increase the limit on the public debt. In sum, we believe that any change in GAO's relationship to the Congress

and to the President should only be undertaken with great caution and full understanding of the consequences, in order to ensure that the result is consistent with the traditional role that the agency has successfully filled since its creation.

That concludes my prepared remarks, Mr. Chairman and Members of the Committee. I would be glad to answer your questions.