

A victory for government by stealth: US congressional arm abandons suit against Cheney

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The General Accounting Office (GAO), the investigative arm of the US Congress, decided earlier this month to abandon its legal efforts to force US Vice President Dick Cheney to turn over information relating to the development of the Bush administration's energy policy. The decision amounts to a self-abdication of congressional oversight on the part of the GAO and Congress as a whole, and marks a major step in the Bush administration's drive to arrogate sweeping and unconstitutional powers to the executive branch of the federal government.

The GAO filed suit after Cheney and the White House refused to release information about meetings of Cheney's Energy Task Force with representatives and lobbyists of major energy corporations. These meetings took place during the formulation of the administration's energy policy in the early part of 2001. The policy recommendations, eventually made in May of that year, consisted largely of a wish list of Enron and other energy giants, with which the administration had very close ties.

The GAO did not request any information about the substance of the meetings, nor did it demand access to notes, agendas or minutes of the secret consultations. It limited its request to the names of those who participated in closed-door meetings of the Energy Task Force.

On December 9, 2002, US District Court Judge John Bates—a Bush appointee and former Whitewater prosecutor—dismissed the GAO lawsuit in a ruling that barely concealed its partisan political motivation. In legal circles, the ruling was widely considered a travesty, and it was generally assumed that the GAO would file an appeal.

Bates's decision stated simply that the GAO was not directly harmed by the withholding of documents, and therefore had no standing in the case. The ruling ignored the constitutionally rooted mandate of the GAO and its legal right, under federal statutes, to seek such documents.

However, Comptroller General David Walker, who heads the GAO, announced on February 7 that he would not appeal Bates's decision. "Further pursuit of the [energy task force] information," Walker said, "would require investment of significant time and resources over several years," and the GAO decided the case was not worth either the time or the money.

The decision not to appeal was politically extraordinary, given the fundamental constitutional issues at stake, and their

implications for democratic rights.

The December ruling by Bates amounted to a far-reaching abridgment of the GAO's ability to monitor the activities of the executive branch. By law, the GAO is authorized to oversee "all matters related to the receipt, disbursement, and use of public money." Traditionally, this has been interpreted to include most activities of the executive branch. While the president has the right to claim executive privilege under certain circumstances, even this privilege does not allow him complete secrecy. Moreover, executive privilege applies exclusively to the president, and does not extend to the vice president or Cabinet officials.

In their defense against the GAO suit, Cheney and the White House did not attempt to invoke executive privilege. Instead, they argued for a much broader and more amorphous principle of government secrecy and unaccountability to Congress or the public, claiming that the vice president should be able to conduct any meeting or consultation in complete secrecy, in order to preserve the integrity of the information received. This was an unprecedented assertion, but was in line with the anti-democratic methods employed by the Bush administration throughout its tenure.

The lawsuit filed by the GAO noted, "For decades, GAO has monitored and investigated myriad executive branch activities. During that period, the executive branch has complied with countless GAO requests for information.... GAO's previous reviews of White House activities and operations have included the activities of a variety of presidential task forces and a range of presidential advisers."

The refusal of Cheney to comply with the GAO request posed such fundamental constitutional issues, it was widely assumed that if some agreement between the two sides could not be reached the case would eventually go before the Supreme Court. The GAO noted the significance of the proceedings in its arguments before the district court, arguing that if Cheney's position were accepted, it would be "literally devastating to the General Accounting Office's ability to obtain any information from the executive branch under any circumstances."

Judge Bates has a long association with the Bush administration and the Republican right. Bush appointed Bates in December of 2001. Between 1995 and 1997, Bates served as deputy independent counsel under Kenneth Starr, helping the latter mount

a quasi-legal political witch-hunt against the Clinton administration.

One highlight of Bates's career in the Office of the Independent Council underscores the bad faith and double-dealing that underlies his ruling of last December against the GAO. In 1997 he successfully argued that White House lawyers had to turn over notes of Whitewater conversations with the first lady, Hillary Rodham Clinton. At that time, when the target was a Democratic administration and the legal action was mounted as part of a right-wing conspiracy to destroy the Clinton presidency, Bates argued that the executive branch should be stripped of virtually all claims to legal privilege, including the lawyer-client privilege that normally adheres for individuals under US law.

The contrast between the Republican Party's position during the Clinton administration and Bates's decision in the case of *Walker v. Cheney* could hardly be more striking. The Republican right argued that the independent counsel had the right to view any and every internal document produced by the White House in the course of the independent council's multiyear investigation of Whitewater, the Monica Lewinsky affair and a host of other manufactured scandals. As early as 1993, in the first months of the Clinton administration, the Republican Party and the right-wing media attempted to scandalize the White House over the fact that Hillary Clinton's health care task force held its meetings behind closed doors.

During the Whitewater and Lewinsky investigations, Starr, the Republican Party and the media characterized any attempt by the Clinton administration to invoke executive privilege as an illicit maneuver to stonewall the investigation and an implicit admission of guilt. Now, the media passes over in silence the refusal of the Bush White House, backed by Judge Bates, to turn over to Congress the names of energy moguls with whom Cheney met in secret to draw up far-reaching plans that will affect the lives of millions of Americans, and countless millions of others around the world.

According to the congressional newspaper, *The Hill*, Walker's decision to abandon the case came after intense pressure from the Republican Party. The newspaper wrote on February 19, "Sources familiar with high-level discussions at the GAO said Sen. Ted Stevens (R-Alaska), chairman of the Appropriations Committee, met with GAO Comptroller General David Walker earlier this year and 'unambiguously' pressured him to drop the suit or face cuts in [the GAO's] \$440 million budget."

According to *The Hill*, Walker denied that Senator Stevens had made specific threats of funding cuts, but he did say he had met with Stevens and had received such threats from other congressmen. The newspaper writes that Walker acknowledged, "[T]he budget threat was among a number of factors that tipped [his] Feb. 7 decision to halt litigation."

Walker, a Republican, is a former aide to President Reagan. However, he would not be able to so casually abandon the suit if it were not for the implicit assent of the Democratic Party. Individuals within the Democratic Party originally pressed the GAO to take up the case when the Democrats were in control of the Senate.

However, the reaction from congressional Democrats to

Walker's abandonment of the GAO suit barely rises to the level of a whimper. Congressmen Henry Waxman of California and John Dingell of Michigan issued perfunctory protests, and that has been it. There have been no significant statements from the Democratic leadership in either house of Congress, and a deafening silence from such "liberals" as Edward Kennedy.

According to Walker, his decision to abandon the case came only after consultations with representatives of both parties. Walker said there was "significant bipartisan support" for dropping the suit.

The Democratic Party is once again demonstrating that it is indifferent to the defense of democratic principles. This is entirely in line with the party's conduct over the past several years, from the Clinton impeachment, to the theft of the 2000 election, to its support for the Patriot Act and other anti-democratic measures of the Bush administration.

The outcome is a major step in the direction of secret government and a form of presidential despotism. It also furthers the official cover-up of the links between the current administration and former Enron chairman Kenneth Lay. When that company collapsed into bankruptcy in late 2001, public outrage led to a number of revelations concerning close ties between Bush, Cheney and other administration officials and Lay.

Since then the issue has been swept off the public radar screen, with neither the Democrats nor the media seeking to pursue it. The Energy Task Force consultations revealed the enormous influence that Enron wielded in the Bush administration. While not releasing any details, Cheney eventually acknowledged that he or his aides met with Enron representatives at least six times in the months preceding the release of the energy policy recommendations.

The combination of the Enron cover-up and the abrogation of democratic processes is not accidental. The Bush administration represents the most corrupt and criminal sections of corporate America, which is moving ever more openly in the direction of authoritarian rule.



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