Bowsher v. Synar

Supreme Court of the United States, 1986.
478 U.S. 714.

Chief Justice Burger delivered the opinion of the Court.

The question presented by these appeals is whether the assignment by Congress to the Comptroller General of the United States of certain functions under the Balanced Budget and Emergency Deficit Control Act of 1985 violates the doctrine of separation of powers.

I

On December 12, 1985, the President signed into law the Balanced Budget and Emergency Deficit Control Act of 1985, popularly known as the "Gramm-Rudman-Hollings Act." The purpose of the Act is to eliminate the federal budget deficit. To that end, the Act sets a "maximum deficit amount" for federal spending for each of fiscal years 1986 through 1991. The size of that maximum deficit amount progressively reduces to zero in fiscal year 1991. If in any fiscal year the federal budget deficit exceeds the maximum deficit amount by more than a specified sum, the Act requires across-the-board cuts in federal spending to reach the targeted deficit level....

These "automatic" reductions are accomplished through a rather complicated procedure.... Each year, the Directors of the [executive branch] Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) independently estimate the amount of the federal budget deficit for the upcoming fiscal year. If that deficit exceeds the maximum targeted deficit amount for that fiscal year by more than a specified amount, the Directors of OMB and CBO independently calculate, on a program-by-program basis, the budget reductions necessary to ensure that the deficit does not exceed the maximum deficit amount. The Act then requires the Directors to report jointly their deficit estimates and budget reduction calculations to the Comptroller General.

The Comptroller General, after reviewing the Directors' reports, then reports his conclusions to the President. The President in turn must issue a "sequestration" order mandating the spending reductions specified by the Comptroller General.[1] There follows a period during which Congress may by legislation reduce spending

[1] In his signing statement, the President expressed his view that the Act was constitutionally defective because of the Comptroller General's ability to exercise supervisory authority over the President.

to obviate, in whole or in part, the need for the sequestration order. If such reductions are not enacted, the sequestration order becomes effective and the spending reductions included in that order are made....

III

... In light of [precedents like *Myers*, *Humphrey's Executor*, and *Chadha*], we conclude that Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment. To permit the execution of the laws to be vested in an officer answerable only to Congress would, in practical terms, reserve in Congress control over the execution of the laws.... The structure of the Constitution does not permit Congress to execute the laws; it follows that Congress cannot grant to an officer under its control what it does not possess....

The dangers of congressional usurpation of Executive Branch functions have long been recognized. "[T]he debates of the Constitutional Convention, and the Federalist Papers, are replete with expressions of fear that the Legislative Branch of the National Government will aggrandize itself at the expense of the other two branches." *Buckley v. Valeo* (1976).... With these principles in mind, we turn to consideration of whether the Comptroller General is controlled by Congress.

IV

Appellants [(the Comptroller General and others)] urge that the Comptroller General performs his duties independently and is not subservient to Congress. We agree with the District Court that this contention does not bear close scrutiny.

The critical factor lies in the provisions of the statute defining the Comptroller General's office relating to removability. Although the Comptroller General is nominated by the President from a list of three individuals recommended by the Speaker of the House of Representatives and the President *pro tempore* of the Senate, and confirmed by the Senate, he is removable only at the initiative of Congress. He may be removed not only by impeachment but also by joint resolution of Congress "at any time" resting on any one of the following bases: "(i) permanent disability; (ii) inefficiency; (iii) neglect of duty; (iv) malfeasance; or (v) a felony or conduct involving moral turpitude."[2]

This provision was included, as one Congressman explained in urging passage

[2] Although the President could veto such a joint resolution, the veto could be overridden by a two-thirds vote of both Houses of Congress. Thus, the Comptroller General could be removed in the face of Presidential opposition. Like the District Court, we therefore read the removal provision as authorizing removal by Congress alone.

of the [Budget and Accounting Act of 1921, which originally created the position], because Congress "felt that [the Comptroller General] should be brought under the sole control of Congress, so that Congress at any moment when it found he was inefficient and was not carrying on the duties of his office as he should and as the Congress expected, could remove him without the long, tedious process of a trial by impeachment." The removal provision was an important part of the legislative scheme, as a number of Congressmen recognized. Representative Hawley commented: "[H]e is our officer, in a measure, getting information for us.... If he does not do his work properly, we, as practically his employers, ought to be able to discharge him from his office." Representative Sisson observed that the removal provisions would give "[t]he Congress of the United States ... absolute control of the man's destiny in office." The ultimate design was to "give the legislative branch of the Government control of the audit, not through the power of appointment, but through the power of removal." ...

[T]he dissent is simply in error to suggest that the political realities reveal that the Comptroller General is free from influence by Congress. The Comptroller General heads the General Accounting Office (GAO), "an instrumentality of the United States Government independent of the executive departments," which was created by Congress in 1921 as part of the Budget and Accounting Act of 1921, Congress created the office because it believed that it "needed an officer, responsible to it alone, to check upon the application of public funds in accordance with appropriations." H. Mansfield, The Comptroller General: A Study in the Law and Practice of Financial Administration (1939). It is clear that Congress has consistently viewed the Comptroller General as an officer of the Legislative Branch. The Reorganization Acts of 1945 and 1949, for example, both stated that the Comptroller General and the GAO are "a part of the legislative branch of the Government." Similarly, in the Accounting and Auditing Act of 1950, Congress required the Comptroller General to conduct audits "as an agent of the Congress." Over the years, the Comptrollers General have also viewed themselves as part of the Legislative Branch....

Against this background, we see no escape from the conclusion that, because Congress has retained removal authority over the Comptroller General, he may not be entrusted with executive powers. The remaining question is whether the Comptroller General has been assigned such powers in the Balanced Budget and Emergency Deficit Control Act of 1985.

V

The primary responsibility of the Comptroller General under the instant Act is the preparation of a "report." This report must contain detailed estimates of

projected federal revenues and expenditures. The report must also specify the reductions, if any, necessary to reduce the deficit to the target for the appropriate fiscal year. The reductions must be set forth on a program-by-program basis.

In preparing the report, the Comptroller General is to have "due regard" for the estimates and reductions set forth in a joint report submitted to him by the Director of CBO and the Director of OMB, the President's fiscal and budgetary adviser. However, the Act plainly contemplates that the Comptroller General will exercise his independent judgment and evaluation with respect to those estimates. The Act also provides that the Comptroller General's report "shall explain fully any differences between the contents of such report and the report of the Directors.

Appellants suggest that the duties assigned to the Comptroller General in the Act are essentially ministerial and mechanical so that their performance does not constitute "execution of the law" in a meaningful sense. On the contrary, we view these functions as plainly entailing execution of the law in constitutional terms. Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of "execution" of the law. Under § 251, the Comptroller General must exercise judgment concerning facts that affect the application of the Act. He must also interpret the provisions of the Act to determine precisely what budgetary calculations are required. Decisions of that kind are typically made by officers charged with executing a statute.... Indeed, ... the President himself [must] carry out, without the slightest variation (with exceptions not relevant to the constitutional issues presented), the directive of the Comptroller General as to the budget reductions....

[O]nce Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation. By placing the responsibility for execution of the Balanced Budget and Emergency Deficit Control Act in the hands of an officer who is subject to removal only by itself, Congress in effect has retained control over the execution of the Act and has intruded into the executive function. The Constitution does not permit such intrusion....

We conclude that the District Court correctly held that the powers vested in the Comptroller General under § 251 violate the command of the Constitution that the Congress play no direct role in the execution of the laws....

Justice Stevens, with whom Justice Marshall joins, concurring in the judgment.

... The Court concludes that the Gramm-Rudman-Hollings Act impermissibly assigns the Comptroller General "executive powers." Justice White's dissent agrees

that "the powers exercised by the Comptroller under the Act may be characterized as 'executive' in that they involve the interpretation and carrying out of the Act's mandate." This conclusion is not only far from obvious but also rests on the unstated and unsound premise that there is a definite line that distinguishes executive power from legislative power.

"The great ordinances of the Constitution do not establish and divide fields of black and white." *Springer v. Philippine Islands* (1928) (Holmes, J., dissenting)…. One reason that the exercise of legislative, executive, and judicial powers cannot be categorically distributed among three mutually exclusive branches of Government is that governmental power cannot always be readily characterized with only one of those three labels. On the contrary, as our cases demonstrate, a particular function, like a chameleon, will often take on the aspect of the office to which it is assigned. For this reason, "[w]hen any Branch acts, it is presumptively exercising the power the Constitution has delegated to it." *INS v. Chadha*.

The powers delegated to the Comptroller General by § 251 of the Act before us today have a similar chameleon-like quality. The District Court persuasively explained why they may be appropriately characterized as executive powers. But, when that delegation is held invalid, the "fallback provision" provides that the report that would otherwise be issued by the Comptroller General shall be issued by Congress itself [in a joint resolution, which would be subject to presidential veto]. In the event that the resolution is enacted, the congressional report will have the same legal consequences as if it had been issued by the Comptroller General. In that event, moreover, surely no one would suggest that Congress had acted in any capacity other than "legislative." …

Under the District Court's analysis, and the analysis adopted by the majority today, it would therefore appear that the function at issue is "executive" if performed by the Comptroller General but "legislative" if performed by the Congress…. Thus, I do not agree that the Comptroller General's responsibilities under the Gramm-Rudman-Hollings Act must be termed "executive powers," or even that our inquiry is much advanced by using that term….

…. [The constitutional problem, rather, is that] the Comptroller General's statutory duties under Gramm-Rudman-Hollings do not follow the constitutionally prescribed procedures for congressional lawmaking…. [E]ven though it is well settled that Congress may delegate legislative power to independent agencies or to the Executive, and thereby divest itself of a portion of its lawmaking power, when it elects to exercise such power itself, it may not authorize a lesser representative of the Legislative Branch to act on its behalf…. As we emphasized in *Chadha*, when Congress legislates, when it makes binding

policy, it must follow the procedures prescribed in Article I, …. through enactment by both houses and presentment to the President.

I concur in the judgment.

Justice White, dissenting.

… I cannot accept … that the exercise of authority by an officer removable for cause by a joint resolution of Congress is analogous to the impermissible execution of the law by Congress itself, nor would I hold that the congressional role in the removal process renders the Comptroller an "agent" of the Congress, incapable of receiving "executive" power….

The deficiencies in the Court's reasoning are apparent… Congress may remove the Comptroller only through a joint resolution, which by definition must be passed by both Houses and signed by the President. In other words, a removal of the Comptroller under the statute *satisfies the requirements of bicameralism and presentment*…. [T]he proposition that Congress may only control the acts of officers of the United States "by passing new legislation" in no sense casts doubt on the legitimacy of the removal provision, for that provision allows Congress to effect removal only through action that constitutes legislation….

That a joint resolution removing the Comptroller General would satisfy the requirements for legitimate legislative action … does not fully answer the separation of powers argument, for it is apparent that even the results of the constitutional legislative process may be unconstitutional if those results are in fact destructive of the scheme of separation-of-powers. *Nixon v. Administrator of General Services* (1977). The question to be answered is whether [the Act's removal mechanism] renders the Comptroller sufficiently subservient to Congress that investing him with "executive" power can be realistically equated with the unlawful retention of such power by Congress itself….

Common sense indicates that the existence of the removal provision poses no such threat to the principle of separation of powers. The statute does not permit anyone to remove the Comptroller at will; removal is permitted only for specified cause, with the existence of cause to be determined by Congress following a hearing…. [Moreover,] the substantial role played by the President in the process of removal through joint resolution reduces to utter insignificance the possibility that the threat of removal will induce subservience to the Congress. [A] joint resolution must be presented to the President and is ineffective if it is vetoed by him, unless the veto is overridden by the constitutionally prescribed two-thirds majority of both Houses of Congress[—]a feat of bipartisanship more difficult than that required to impeach and convict….

The practical result of the removal provision is not to render the Comptroller unduly dependent upon or subservient to Congress, but to render him one of the most independent officers in the entire federal establishment. Those who have studied the office agree that the procedural and substantive limits on the power of Congress and the President to remove the Comptroller make dislodging him against his will practically impossible....

The wisdom of vesting "executive" powers in an officer removable by joint resolution may indeed be debatable—as may be the wisdom of the entire scheme of permitting an unelected official to revise the budget enacted by Congress—but such matters are for the most part to be worked out between the Congress and the President through the legislative process, which affords each branch ample opportunity to defend its interests....

WORTH NOTING

Justice Blackmun dissented on the ground that any problem with the Act's provision for congressional removal of the Comptroller General should be cured by refusing to recognize such removal, if it were ever tried.
