own budget analysis, shows that it is going to do anything other than increase the debt.

And we are not even talking about paying for the war, the war that we all pray will not come, but it looks like it is; and I am behind my commander in chief 100 percent. But the rhetoric of the economy in the budget does not match the rhetoric of what is needed as the gentleman from Mississippi (Mr. TAYLOR) spoke so eloquently on a moment ago. The debt tax consumed 18 percent of all government revenues to pay interest on the $6.4 trillion debt last year. That debt tax will go up to 19.5 percent by 2008 under the economic game plan that we are being asked to support.

I ask my colleagues as one Democrat who used to vote with you and we passed the balanced budget constitutional amendment in 1995, what has happened to you? What has caused you to suddenly start saying, deficits do not matter, balancing the budget does not matter?

The Blue Dogs stand ready to work with our President and with the majority in seeing that we do not increase the taxes on our children through the debt tax.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Hawaii (Mr. CASE) is recognized for 5 minutes.

(Mr. CASE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

SUPPORTING THE NOMINATION OF MIGUEL ESTRADA

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Tennessee (Mrs. BLACKBURN) is recognized for 5 minutes.

Mrs. BLACKBURN. Mr. Speaker, I rise this morning in support of the nomination of Miguel Estrada. If Miguel Estrada were considered for Federal bench on merits alone, we would not be still debating his qualifications. He would already be serving.

Estrada was given the very highest recommendation by the American Bar Association, not what those who seek to tar and feather him would consider a right wing organization. While we prefer our Tennessee law schools, we do know that some consider Harvard to be a pretty good alternative. Mr. Estrada not only graduated from Harvard, but was the editor of the Law Review. Again, Harvard is not what Estrada's critics would consider a right wing organization. And in what can only be described as a stellar career, he went on to clerk for Supreme Court Justice Anthony Kennedy, who is also not considered by those on the left to be part of the right wing.

I think my point is clear. Partisan politics are behind the attacks on his character and the delay in his nomination.

With the country on alert for terrorist attacks, a potential conflict in Iraq, and effort on the way to enact economic stimulus, it is time to stand behind this extremely qualified candidate.

CHENEY TASK FORCE RECORDS AND GAO AUTHORITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. WAXMAN) is recognized for 5 minutes.

Mr. WAXMAN. Mr. Speaker, last Friday, February 7, the General Accounting Office abandoned its efforts to obtain basic records about the operation of the Vice President's Task Force on Energy Policy. This action received only limited attention, and few people fully understand its profound consequences.

When we have divided government, the public can expect Congress to conduct needed oversight over the executive branch. But today we are living in an era of one-party control. This means the House and the Senate are not going to conduct meaningful oversight of the Bush administration. When there is one-party control of both the White House and Congress, there is only one entity that can hold the administration accountable, and that is the independent General Accounting Office. But now GAO has been forced to surrender this fundamental independence.

When GAO decided not to appeal the District Court decision in Walker v. Cheney, it made a fateful decision. In the Comptroller General's words, GAO will now require ''an affirmative statement of support from at least one full committee with jurisdiction over any records they seek to access prior to any future court action by GAO.'' Translated, what this means is that GAO will bring future actions to enforce its rights to documents only with the blessings of the majority party in Congress.

This is a fundamental shift in our system of checks and balances. For all practical purposes, the Bush administration is now immune from effective oversight by the Congress. Some people say GAO should never have brought legal action to obtain information about the energy task force, but in reality GAO had no choice.

The Bush administration's penchant for secrecy has been demonstrated time and time again. The Department of Justice has issued a directive curtailing public access to information under the Freedom of Information Act. The White House has restricted access to Presidential records. The administration has refused to provide information about the identity of over 1,000 individuals detained in the name of homeland security.

The White House deliberately picked this fight with GAO in order to secure its power to run the government in secret. From the start, the White House assumed a hostile and uncompromising position, arguing that GAO's investigation ''would unconstitutionally interfere with the functioning of the executive branch.'' Even when GAO voluntarily scaled back its request, dropping its demand for minutes and notes, the Vice President's office was intransigent. Faced with an administration that had no interest in reaching an accommodation, GAO was left with no choice. Reluctantly on February 22, 2002, GAO filed its first-ever lawsuit against the executive branch to obtain access to information.

□ 1845

In December, the district court in the case issued a sweeping decision in favor of the Bush administration, ruling that GAO had no standing to sue the executive branch. The judge in the case was a recent Bush appointee who served as a deputy to Ken Starr during the Independent Counsel investigation of the Clinton administration. The judge's reasoning contorted the law, and it ignored both Supreme Court and appellate court precedent recognizing GAO's right to use the courts to enforce its statutory rights to information.

Before deciding whether to pursue an appeal, the Comptroller General consulted with congressional leaders. He found no support from Republican leaders for an appeal.

This hypocrisy is simply breathtaking. During the 1990s, it was the Republicans in Congress who embarked on a concerted effort to undermine the authority of the President. Congressional committees spent over $15 million investigating the White House. They demanded and received information on the innermost workings of the White House. They subpoenaed top White House officials to testify about the advice they gave the President. They forced the White House to disclose internal White House documents, memos, e-mails, phone records, and even lists of guests at White House movie showings. They abused congressional powers, and they launched countless GAO investigations.

But now that President Bush and Vice President CHENEY are in office—

The SPEAKER pro tempore (Mr. PEARCE). The time of the gentleman has expired.

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent to proceed for 1 additional minute.

The SPEAKER pro tempore. The Chair cannot entertain the motion. The gentleman's time has expired.

THE BUSH RECESSION AND ITS IMPACT ON MINORITY WORKERS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WATSON) is recognized for 5 minutes.

Ms. WATSON. Mr. Speaker, I yield to the gentleman from California (Mr. WAXMAN).

CHENEY TASK FORCE RECORDS AND GAO AUTHORITY

Mr. WAXMAN. Mr. Speaker, I thank the gentlewoman for yielding, because

I want to make this point very clearly that now that the President is Bush and the Vice President is Cheney, suddenly the priorities of the Republicans have changed. Oversight is no longer of interest to them. In fact, it is something to be avoided at all costs, including sacrificing the independence of GAO. Even when GAO asked for the most basic information, what private interest met with the White House task force, the answer is that GAO is not entitled to ask these questions.

Consider this irony. In their eagerness to undermine the Clinton White House, Republicans in Congress tried to tear down the Presidency. Now, in their eagerness to protect the Bush White House, they are willing to tear down Congress.

The implications of GAO's decision are enormous when they decided not to appeal; and without a realistic threat of legal action, GAO loses most of its leverage. This is a sea change in GAO's mission. It is no longer fundamentally nonpartisan nor fundamentally independent.

Mr. Speaker, I include for the record three short documents into the RECORD. They are an exchange of correspondence with the Comptroller General on this issue and a fact sheet on the Walker versus Cheney case that my staff has provided.

CONGRESS OF THE UNITED STATES, HOUSE OF REPRESENTATIVES, COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, January 31, 2003.

Hon. DAVID M. WALKER,
Comptroller General, General Accounting Office, Washington, DC.

DEAR DAVE: I am writing to follow up on our conversation about the Walker versus Cheney litigation.

I have great admiration for the work you have done as Comptroller General. You have reinvigorated the organization and given it a new sense of purpose, accomplished important restructuring, and addressed pressing human capital needs.

But now you face another—and in some ways even more significant—challenge: how you respond to the district court decision in Walker versus Cheney. This decision goes to the very heart of GAO's independence.

As you have indicated to me (and your lawyers have indicated to my staff), you will read the decision as narrowly as possible if you decide not to appeal. The narrow reading is that the case does not apply when you are acting pursuant to a request from a committee. If you decide not to appeal, you will take the position that GAO can still use the courts to uphold its statutory rights to information when supported by a committee of Congress.

While I understand the desire to minimize the impact of the district court decision, allowing the decision to stand would do irreparable damage to GAO's independence. As Comptroller General, you have a 15-year tenure, so that you can exercise independent judgment and conduct independent investigations. You are not simply an agent of congressional committees: GAO exists, to quote your mission statement, ''to ensure the executive branch's accountability to the Congress under the Constitution and the federal government's accountability to the American people.''

If you do not appeal, you will in effect have sacrificed the independent that is essential to your mission. At best, you will be able to pursue effective investigations only when your work is supported by the majority in Congress. Investigations that are requested by the minority would become second-class investigations because GAO would have no ability to compel—or to threaten credibly to compel—the production of information in the face of executive branch recalcitrance.

Allowing the district court decision to stand would also do permanent damage to the Comptroller General's statutory authority to conduct self-initiated work. Under Walker versus Cheney, this essential independence is crippled because you would have no standing to assert your independent rights of access to agency information.

Now is exactly the time when an independent GAO is most important. When the White House is controlled by one party and Congress by another party, the public can rely on Congress to conduct oversight of the administration. But when—as now—there is one-party control of both the White House and Congress, congressional oversight will be minimal. If GAO is not available to conduct independent oversight, there simply won't be any.

The need for GAO independence is especially important given the inclinations of the current Administration. This Administration has taken a uniquely hostile approach to oversight and public disclosure. The Administration regularly ignores requests from members of Congress for information, resists GAO efforts to obtain records, and has even issued a directive curtailing public access to information under the Freedom of Information Act. This penchant for secrecy makes GAO's independence of paramount importance.

Given the current political alignment in Washington, it is clear what the easy decision would be: don't appeal. But the core values of GAO are ''accountability, integrity, and reliability.'' I urge you to make your final decision on the basis of these core principles.

Sincerely,

HENRY A. WAXMAN,
Ranking Minority Member.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, February 7, 2003.

Hon. HENRY B. WAXMAN,
Ranking Minority Member, Committee on Government Reform, House of Representatives.

DEAR MR. WAXMAN: Thank you for your letter dated January 31, 2003, regarding the district court decision in *Walker* v. *Cheney* and your kind words on GAO's performance during my tenure as Comptroller General of the United States (CG).

I am announcing my decision today and have attached a copy of our press statement for your information (attachment). This decision, like my initial decision to file suit last February, was by no means an easy one to make because many factors needed to be considered, including legal, institutional and other issues. In addition, there were good arguments to be made both for and against an appeal. Please be assured that my decision was based on what, in my best judgment, is in the best overall interests of the Congress, the GAO, and the American public. I also feel comfortable that it is fully consistent with GAO's core values of ''accountability, integrity, and reliability.''

As noted in the attached statement, we strongly disagree with the district court decision. We do not, however, agree with your characterization of the opinion. In addition, we do not believe that the district court opinion will have a significant adverse effect on our ability to serve the Congress and the American people. Furthermore, with regard to GAO's policy of not disenfranchising the minority, the Court's decision did not address, and does not affect, our engagement acceptance policy or the CG's authority to conduct self-initiated work.

As you know, in enacting 31 U.S.C. §716, the Congress gave GAO the independent right to sue to compel the production of information irrespective of whether the request is made by a committee, a member, or is self-initiated by the CG. As the attachment notes, the district court's decision in *Walker* v. *Cheney* does not set a binding precedent on GAO's overall right to sue in the future. Importantly, it does not affect GAO's statutory audit authority, access rights, or the obligation of agencies to provide GAO information. As a result, we remain willing and able, should the facts and circumstances warrant, to file suit to press our access rights in connection with a different matter in the future. In addition, the court's decision does not affect GAO's ability to issue demand letters and statutory reports to the Congress in connection with an agency's refusal to disclose information to which we are entitled. There are also traditional remedies available to the Congress that can, have, and, we trust, will continue to be employed to aid our audit and access authority. However, as I noted when we met, given the district court's decision, and other considerations, as a matter of procedural prudence, I believe it would be appropriate to have an affirmative statement of support from at least one full committee with jurisdiction over any records access matter prior to any future court action by GAO. Furthermore, now that I have been in office for over four years, I believe it is appropriate to work with you and other Congressional leaders to review and update our current Congressional protocols and address certain other related matters.

We appreciate your past understanding and support and we trust that we can count on that same understanding and support in the future. I would be pleased to meet with you to discuss my decision should you so desire. In addition, I look forward to meeting with you soon to discuss our Congressional protocols and related matters.

Sincerely yours,

DAVID M. WALKER,
Comptroller General of the United States.

Attachment.

FACT SHEET—WALKER V. CHENEY

In December 2002, federal district court Judge John Bates issued a ruling in Walker verses Cheney that holds that GAO lacks ''standing'' to enforce its statutory rights to information. This ruling may do serious damage to GAO's ability to serve Congress. The court's ruling is so sweeping that the issue in the case is no longer about the actions of the Cheney energy task force: it's about the role of GAO.

GAO's ability to assist Congress in overseeing the executive branch is imperiled. Under the logic employed in the court's ruling. GAO has no standing to compel the executive branch to provide any documents or information. Thus, federal agencies may use the decision to argue that GAO cannot enforce its requests for information. In effect, agencies are likely to take the position that they—not GAO—can dictate what information is shared with GAO. According to the Congressional Research Service, the decision ''could greatly limit the ability of GAO to compel production of information from the executive branch'' and ''the executive branch could become significantly less responsive to future GAO inquiries.''

Other core GAO powers are also in jeopardy. GAO has statutory authority to demand important records from the private sector, such as information from Medicare or

Medicaid providers or from federal contractors. Using the logic in the court's ruling, private companies being audited by GAO may argue that GAO does not have standing to enforce these rights.

Another important function of GAO is its role in preventing improper ''impoundments'' by the executive branch. The Impoundment Control Act sets forth the limited circumstances under which the executive branch can defer expending appropriated funds. To ensure compliance with these limits, the law authorizes GAO to sue the executive branch if the law is violated. This core GAO authority could also be challenged by the executive branch under the court's ruling.

The court's decision even challenges Congress' ability to sue the executive branch. The opinion says that ''no court has ever ordered the Executive Branch to produce a document to Congress or its agents'' and dismisses Department of Justice opinions which conceded Congress' ability to sue to enforce a subpoena. According to CRS, the decision ''casts doubt on the ability of committees of the Senate and of the House of Representatives to bring suit to enforce subpoenas.'' If the decision is not reversed, CRS says that it ''conceivably could be cited by the executive branch—or even a private party—for the broad proposition that the legislative branch does not have standing to enforce its demands for information in the courts.''

No congressional remedy is available. In effect, the court ruled that Congress violated Article III of the Constitution when it authorized GAO to sue for access to information. This is not an issue that Congress can rectify by enacting more explicit legislation. If the opinion stands, a constitutional amendment could be required to revive GAO's powers.

There is a significant likelihood that the district court's decision will be overturned on appeal. The court's opinion is not well reasoned or well supported:

1. The court failed to recognize that heads of executive agencies routinely assert ''institutional'' injuries in litigation. The court rejects the Comptroller General's standing because the Comptroller General is asserting an ''institutional'' interest in obtaining information, not a personal injury. But heads of agencies always assert ''institutional'' interests in litigation. If standing required a ''personal'' stake in the litigation, the Attorney General and heads of other executive agencies could not bring legal action to assert federal rights. The court never explains why GAO's institutional interests asserted by agencies when they bring lawsuits to enforce their statutory rights to information.

2. The court improperly dictates to Congress how it must collect information needed for legislative purposes. The court's decision relies heavily on the fact that Congress did not vote to authorize the Walker v. Cheney litigation. The court does not hold that such a vote would be sufficient to gave GAO standing, but it does hold that GAO cannot have standing without such a vote. This is an unprecedented intrusion into the internal operations of the legislative branch. Congress determined by statute that it was appropriate to create GAO to assist members in collecting information and conducting oversight, just as Congress has created CBO to assist members on budget issues and CRS to assist members with their research needs. Congress also determined by statute that GAO should have the power to sue agencies for information, if necessary. No provision of the Constitution forbids Congress from creating congressional agencies to assist members in carrying out their duties, and no provision bars Congress from giving these agencies authorities, such as the ability to sue to obtain information, necessary to carry out their assigned duties. There is no precedent for the district court to prohibit Congress from doing so in this case.

3. The court ignored key precedents. The district court completely ignore Bowsher versus Merck, 460 U.S. 824 (1983). In this case, the Supreme Court upheld GAO's rights to obtain certain records from a drug company, rejecting the company's request for a declaratory judgment that GAO was not entitled to the records. The district court's holding that enforcing GAO's rights to information would violate the standing requirements of Article III conflicts fundamentally with the Supreme Court's decision to enforce these very rights in Bowsher versus Merck. The district court also ignores United States versus McDonnell Douglas Corp., 751 F.2d 220 (8th Cir, 1984), and United States versus Abbott Laboratories, 597 F.2d 672 (7th Cir. 1979), which upheld GAO's statutory right to bring a lawsuit to compel a contractor to provide records.

4. Raines v. Byrd is distinguishable. The district court relies on Raines versus Byrd, 521 U.S. 811 (1997), a case in which several members sued to challenge the constitutionality of the line-item veto. But there are three fundamental differences between the Raines case and this one. First, GAO is seeking access to information and not trying to prevent an abstract, generalized harm like diminution of congressional authority. The Supreme Court has held that the denial of information is a concrete injury that conveys standing. Second, the line-item veto at issue in the Raines case had not yet been exercised. In essence, the congressional plaintiffs were seeking an advance ruling that any exercise of the authority would be unlawful. In this case, there is a specific dispute over specific documents that is being litigated. Third, the Raines decision placed some importance on the fact that the members were not authorized to represent Congress, and in fact both houses of Congress opposed their lawsuit. Here, by contrast, Congress has specifically delegated to GAO the power to sue.

As a practical matter, GAO may be bound by the ruling if it does not appeal. Under GAO's statute, the D.C. district court is the only court where GAO can litigate claims against agencies for refusing to provide information, so this is not a situation in which GAO can gain a strategic advantage by looking for another venue to litigate the issues in question. If the decision is not appealed and GAO files another access suit in the future, the district court judge might rule that the issue of GAO's standing has been decided and cannot be re-litigated. Even if the judge allows the question of standing to be re-argued, the judge is likely to follow the precedent set by Judge Bates's ruling, and any appellate court would question why GAO did not appeal the initial ruling. If no appeal is taken, GAO could be permanently bound by the decision.

An appeal leaves open other grounds for decision. The government offered many arguments in the litigation, including statutory claims such as the one that GAO's authority to obtain ''agency'' records does not extend to the Office of the Vice President. These other issues go the merits of the dispute about GAO's right to the energy task force records. A decision on these other grounds, even if adverse to GAO, would not have the profound impact on the operations of GAO that the district court's ruling potentially has.

Ms. WATSON. Mr. Speaker, the American economy has been mired in recession since March of 2001. This past December saw the unemployment rate rise to 6 percent, meaning that one in every 17 American workers was out of work.

One of the most troubling aspects of this rescission is the amount of time that workers have been idle. During the Clinton economic expansion of the 1990s, America dramatically reduced long-term unemployment, those workers who had been out of work 27 weeks or more. From February of 1993 until February of 2001, roughly the amount of time Bill Clinton was in office, long-term unemployment fell by two-thirds. That is 1.2 million long-term unemployed Americans who went back to work.

But in less than 2 years of this administration, there is a recession and the administration has managed to completely erase those gains. By this past December, the administration's economic mismanagement has managed to push long-term unemployment back up to where it was when his father was in office.

I remember feeling a certain amount of deja vu after having another President Bush in office. But I do not think that many people realized that this administration would mismanage the economy so badly that we would return to economic stagnation reminiscent of the early 1990s.

But these broader economic statistics only tell half the story. During the Clinton expansion of the 1990s, minority communities made enormous strides in breaking out of poverty, as more African Americans, Asian Americans, and Latinos found good jobs in the prosperous economy.

Since the beginning of this recession, however, these numbers have turned around sharply. More than one in 10 African American workers are now out of a job. American workers of minority heritage have historically worked at the edges of the economy. Because of the jobs they possess, too many of these workers are forced to bear the full brunt of swings in the labor market.

We need to get America back to work. We have to help this President realize that his fiscal and economic policies have not helped America out of the recession, and it is possible that it has been prolonged.

The budget that this President has submitted to Congress is a sweetheart deal for the President's wealthiest supporters. Meanwhile, budgets at all levels of government, Federal, State and local, are swimming in red ink. The President's budget, in effect, hides a $1 trillion tax increase. His budget borrows against the future, leaving us with a $1 trillion bill that Americans will have to pay over the next decade in higher taxes, higher interest rates, and lower growth.

We will only get out of this recession when average Americans get money back into their pockets. I urge the President to rethink his failed economic policies and get America back to work.