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UNITED STATES GENERAL ACCOUNTING OFFICE

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TESTIMONY OF

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BEFORE THE COMMITTEE ON GOVERNMENT OPERATIONS

U.S. HOUSE OF REPRESENTATIVES



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We are pleased to be here this morning to testify on H.R. 6225, a bill to validate all the currently existing reorganization plans.

Mr. Chairman, we strongly endorse this bill, with a few technical amendments which we have discussed with your staff. I understand that you intend at a later time to offer an amendment to H.R. 6225 in the nature of a substitute which addresses most of our concerns.

In our view legislation of this kind is both timely and necessary. Since 1932, Presidential authority to restructure the executive branch of government has been consistently conveyed in statutes containing a congressional control mechanism of the type commonly called a "legislative veto." Last year, in Immigration and Naturalization Service v. Chadha, ___U.S.___, 103 S.Ct. 2764 (1983), the Supreme Court declared legislative vetoes generally to be unconstitutional. In so doing, it called into question the validity of some 200 statutes. The Reorganization Act of 1977, now codified in title 5 at sections 901-912, is among them. By implication, all of the expired reorganization laws are also suspect as well. The Federal courts have already been asked to rule on the validity of reorganization plans promulgated under the authority in these questioned laws.

As you know, the Court of Appeals for the Second Circuit recently declared Reorganization Plan No. 1 of 1978, 92 Stat.

3781, to be unconstitutional. EEOC v. CBS, Inc., No. 84-6063, slip op. (2d Cir. Aug. 28, 1974). As a consequence, it also found null and void the actions taken by Federal officials pursuant to authority conveyed by that Plan. The court did observe that the Plan could be ratified by Congress, and that such ratification would validate the previously unauthorized Federal action. The court based this conclusion on a 1937 Supreme Court decision which held that an Executive Order reorganizing the Shipping Board was ratified by the later express statutory vesting of the Shipping Board's responsibilities in the Maritime Board. The court then enforced the Shipping Board's administrative order. Isbrandtsen-Moller Co. v. United States, 300 U.S. 139 (1937). The Second Circuit has stayed its decision in CBS until December 31, 1984 to give the Congress an opportunity to ratify the unconstitutional Plan.

The decision discussed above accounts in part for the urgency for ratification, but does not fully explain the necessity for ratification. There is considerably more at stake here than the validity of one Plan.

If pursued, the logical extension of the CBS decision could invalidate Federal actions taken under any of the 86

reorganization plans which have been implemented since 1949, as well as the earlier-promulgated plans and any surviving reorganizations accomplished by Executive Order in the 1930's. To determine the constitutional viability of such Federal actions, it would be necessary in each case to determine whether the particular plan had been ratified by an explicit reference to its content in a later statute.

Mr. Chairman, vast amounts of authority have been created and shifted by reorganization plans over the years. We have prepared three charts which outline some of the major changes accomplished by reorganization plans. Just a few examples drawn from the charts will illustrate the breadth of authority involved. Agencies created by reorganization plans include, the Department of Health, Education and Welfare, The Office of Management and Budget, the Office of Personnel Management, and the Federal Emergency Management Agency. Functions which have been transferred between agencies include the administration of immigration and naturalization laws, the control of mineral deposits on Federal lands, and urban mass transportation.

Perhaps the most frequently reorganized segment of the executive branch has been the Executive Office of the President. The National Security Council and the Council of Economic Advisers are two groups which remain in the Executive

Office. They were created by and transferred to the Executive Office by reorganization plans. Others, the Office of Emergency Preparedness, the Office of Telecommunications Policy, and the Domestic Council, to name a few, were created, abolished and their functions transferred to other executive agencies--all by reorganization plan.

Ironically, the District of Columbia Council, D.C.'s first organ of self-government was created by reorganization plan. The later D.C. Home Rule Act, which might have ratified the Plan, has been challenged in court because it contains a legislative veto.

In addition, there remains yet another unaccounted for variable in this situation. It is clear from the CBS decision that continued appropriations for an activity do not constitute a sufficient expression of congressional ratification. The mention of the questioned activity in a substantive law can effectively ratify it, according to the Supreme Court in Isbrandtsen-Moller Co. However, the Supreme Court hinted rather broadly in that opinion that it might have reached a different result had substantive rights (not merely an administrative order to file documents) been affected. This leads us to question whether the mere updating or conforming of

statutory references to reorganized entities would be sufficient ratification to bind parties whose substantive rights have been affected by reorganizations. It may well prove that the express intent to ratify the content of the plans must be demonstrated. H.R. 6225 would provide a clear expression of intent to ratify the contents of existing reorganization plans. Moreover, no comprehensive, systematic effort has ever been made to revise statutes altered or affected by the reorganization plans. We cannot even begin to predict how many reorganized functions (both critical and insignificant) remain unratified at this time.

Mr. Chairman, our examples plainly show the tidal wave of confusion which could engulf Federal officials in all three branches if effective comprehensive ratification of currently existing Reorganization Plans is not undertaken. The time frame established by the Second Circuit also necessitates prompt action on this matter. When implemented, the reorganization plans were uniformly and legitimately believed to be effective. The results which might obtain if Congress does not ratify the plans could be harsh on parties whose substantive rights are affected, extraordinarily delicate for Federal officials who continue to exercise authority conveyed by reorganization and unusually difficult for the judicial branch

to sort out. We hope the Congress will avoid this legal morass by promptly ratifying the existing reorganization plans.

Of course, H.R. 6225 will not, nor was it intended, to provide a sound constitutional basis for future reorganization plans which the President wishes to propose. It will be necessary to provide new reorganization authority to the President to promulgate such plans which does not contain the legislative veto provision which the courts have struck down. H.R. 1314 or similar legislation would accomplish this purpose. We hope that the Senate will consider it favorably in the near future.

I will now be pleased to answer any questions.

CHART #1 ENTITIES CREATED BY REORGANIZATION

ENTITY	PLAN NO.	YEAR	STAT.	
			VOL.	PAGE
Office of U.S. Trade Rep.	3	79	93	1381
U.S. Int'l. Dev. Cooperation Agency	2	79	93	1378
Federal Emergency Management Agency ^{1/}	3	78	92	3788
OPM (incl. MSPB & Fed. Labor Rel. Auth.)	2	78	92	3783
International Communication Agency ^{2/}	2	77	91	1636
Drug Enforcement Administration ^{3/}	2	73	87	1091
ACTION	1	71	85	819
Nat'l. Oceanic & Atmospheric Admin. ^{4/}	4	70	84	2090
Environmental Protection Agency	3	70	84	2086
Office of Management & Budget	2	70	84	2085
Federal Maritime Commission ^{5/}	1	61	75	840
Foreign Claims Settlement Commission	1	54	68	1279
Department of Health, Education & Welfare	1	53	67	631
Bureau of Land Management	3	46	60	1097

- 1/ FEMA's authority was gathered from HUD, Commerce, Defense and GSA. Civil Defense functions have been repeatedly reorganized since the 1950's.
- 2/ ICA's predecessor, the U.S. Information Agency was established by Reorganization Plan No. 8 of 1953, 67 Stat. 642.
- 3/ Control over narcotics had earlier been transferred to the Department of Justice from the Treasury & HEW Departments by Reorganization Plan No. 1 of 1968, 82 Stat. 1368.
- 4/ NOAA's predecessor, the Environmental Science Service Admin., was established by Reorganization Plan No. 2 of 1965, 79 Stat. 1318.
- 5/ The Federal Maritime Board was the antecedent of the Maritime Commission. It was created by Reorganization Plan No. 21 of 1950, 67 Stat. 1273. That Board's antecedent was itself reorganized by Reorganization Plan No. 6 of 1949, 63 Stat. 1069.

REORGANIZATION PLANS VESTING POWERS IN THE HEAD OF AN AGENCY

CHART #2

AGENCY	PLAN NO.	YEAR	VOL.	STAT. PAGE
Nuclear Reg. Commission ^{1/}	1	80	94	3585
Interstate Commerce Commission	1	69	83	859
Federal Home Loan Bank Board	6	61	75	838
Export-Import Bank	4	53	67	637
Department of Agriculture	2	53	67	663
Department of the Treasury	26	50	64	1280
National Security Resources Board	25	50	64	1280
Civil Aeronautics Board ^{2/}	13	50	64	1266
Securities & Exchange Commission	10	50	64	1265
Federal Trade Commission ^{3/}	8	50	64	1264
Department of Labor	6	50	64	1263
Department of Commerce	5	50	64	1263
Department of the Interior	3	50	64	1262
Department of Justice	2	50	64	1261
Federal Maritime Board	6	49	63	1069

^{1/} Authority to issue orders and to make adjudications was retained in the Commission as a whole and not transferred to the Chairman by this Reorganization Plan.

^{2/} Additional authority was given to the CAB Chairman under Reorganization Plan No. 3 of 1961, 75 Stat. 837.

^{3/} Additional authority was given to the FTC Chairman under Reorganization Plan No. 4 of 1961, 75 Stat. 837.

CHART #3 MAJOR TRANSFERS OF AUTHORITY ACCOMPLISHED BY REORGANIZATION PLAN

FUNCTION	ACTION	PLAN NO.	YEAR	STAT.	
				VOL	PAGE
Immigration & Nat. Service	Transf. from Labor to Justice	5	40	54	1238
Control of mineral rights on Fed. lands	Transf. from USDA to Interior	3	46	60	1097
Munitions Bd., R&D Bd., Defense Supp. Mgmt. Agcy., Director of Install.	Abolished. Transf. to Secty. of Def.	6	53	67	638
Bureau of Customs	Abolished. Transf. to Secty. of Treas.	1	65	79	1317
Comm. Relations Service	Trans. fr. Justice to Commerce	1	66	80	1607
Water pollution control responsibility	Trans. fr. HEW to Interior	2	66	80	1608
Public Health Service	put under auth. of HEW Secty.	3	66	80	1610
Urban Mass Transport.	Transfer. from HUD to DOT	2	68	82	1369
Enforcement of certain anti-discrimination laws	Transf. fr. Labor to EEOC.	1	78	92	3781
Enforcement of ERISA	Respon. traded between Labor & Treasury	4	78	92	3790