



Office of the Attorney General  
Washington, D.C. 20530

DEC 30 1985

Honorable George Rush  
President of the Senate  
Washington, D.C. 20515

Dear Mr. President:

This is written to advise you of litigation initiated by several Members of Congress to challenge the constitutionality of portions of the Balanced Budget and Emergency Deficit Control Act of 1985, also known as the Gramm-Rudman-Hollings Amendment, Pub. Law No. 99-177, and to inform you of the position of the Department of Justice in this litigation.

The circumstances of this case place certain limitations on the manner in which the Department of Justice can proceed in this litigation. In this we are guided by the provisions of Section 21 of Pub. L. No. 96-132, 93 Stat. 1049-50, as continued by various subsequent acts. Under that section, the Attorney General is directed to "transmit a report to each House of the Congress" in any case in which the Attorney General determines that the Department of Justice "will refrain from defending . . . any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional."

As you are aware, on December 12, 1985, the President signed H.J. Res. 372, which included the Balanced Budget and Emergency Deficit Control Act of 1985. The principal purpose of the Act is to create a mechanism by which the federal deficit can be reduced below the levels otherwise anticipated for the next six years, with the objective of achieving a balanced budget by fiscal year 1991. While strongly endorsing this landmark legislation, the President's signing statement noted serious constitutional questions raised by some of its provisions.

Shortly after the bill was enacted, a suit was filed challenging the constitutionality of sections 251 and 252. Representative Mike Synar v. United States, No. 85-3945 (D.D.C., filed Dec. 12, 1985). Generally speaking, sections 251 and 252 establish a mechanism for across-the-board spending

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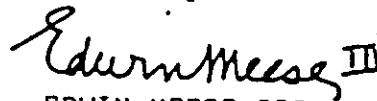
reductions to take effect through a Presidential sequestration order, if a determination is made that the spending levels in existing legislation, less anticipated revenues, will not meet the deficit target for each year as specified in the Act. The sections set forth separate and distinct roles for the Director of the Office of Management and Budget, the Director of the Congressional Budget Office and the Comptroller General that lead up to formulation of the Presidential Order. The plaintiffs allege, inter alia, that the role prescribed for the Comptroller General and the Director of the Congressional Budget Office in this process is unconstitutional and that the Act constitutes an excessive delegation of legislative authority to the President. The suit has been filed pursuant to paragraph 1 of subsection 274(a) of the Act, which purports to give Members of Congress standing to challenge the constitutionality of any Presidential order that might be issued pursuant to section 252.

For the reasons the Solicitor General has set forth in the Petition for Certiorari filed in Burke v. Barnes, No. 85-781 (U.S., filed Nov. 5, 1985), it is our view that the plaintiffs in Synar have no standing to sue and that section 274(a)(1) cannot confer such standing in the absence of a case or controversy as required by Article III of the Constitution. Accordingly, the Department intends to file a motion to dismiss the Synar action on December 30, 1985, the date when the three-judge court hearing the matter has called for the government's response to the complaint.

In the event that the case is not dismissed, you should be advised of our view that the role prescribed for the Comptroller General in sections 251 and 252 of the Act is not constitutional. As explained in Attorney General Smith's letter to you dated November 21, 1984, concerning the Competition in Contracting Act of 1984, it is the position of the Department of Justice that the Comptroller General is a legislative officer who may not perform duties that are inconsistent with that status. Because the role assigned to the Comptroller General under sections 251 and 252 exceeds this limitation, the Department cannot defend this aspect of the law. We also believe that the same constitutional limitation applies to the role that the Director of the Congressional Budget Office may perform pursuant to sections 251 and 252.

I should emphasize that our position on this issue will not prevent the important purposes of the Act from being accomplished in a timely fashion. As the President's signing statement noted, the Act provides a constitutionally valid alternative mechanism should the procedure involving the Comptroller General be held invalid. We look forward to working cooperatively with the Congress in carrying out the objectives of this landmark legislation.

Sincerely,

A handwritten signature in dark ink, reading "Edwin Meese III". The signature is written in a cursive style with a large, stylized "E" and "M".

EDWIN MEESE III  
Attorney General

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