

May 16, 2001

The Honorable Fred Thompson  
Chairman  
Committee on Governmental Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing to express our opposition to President Bush's nominee to head OMB's Office of Information and Regulatory Affairs, John Graham. We believe Dr. Graham's track record raises serious concerns that warrant the Committee's careful consideration. In particular:

- As director of the Harvard Center for Risk Analysis, which is heavily funded by corporate money, Dr. Graham has been a consistent and reliable ally of almost any industry seeking to hold off new regulation. As OIRA administrator, Dr. Graham will sit in ultimate judgment over regulation affecting his former allies and benefactors. This gives us great concern that OIRA will take a much more activist role in the rulemaking process, reminiscent of the 1980s when the office came under heavy criticism from Congress for continually thwarting crucial health, safety, and environmental protections. At a minimum, this raises serious concerns about his independence, objectivity, and neutrality in reviewing agency rules.
  - In critiquing federal regulation, Dr. Graham has employed questionable analytical methods that have the inevitable effect of deflating benefits relative to costs. For example, he's downplayed the health risks of diesel engines, as well as second-hand smoke, and argued against a ban on highly toxic pesticides (all after receiving funds from affected industries). As administrator of OIRA, Dr. Graham will be in position to implement these analytical methods, which would not bode well for health, safety, and environmental protections.
  - In pushing his case for regulatory reform, Dr. Graham has often invoked a study he conducted with one of his doctoral students. "[B]ased on a sample of 200 programs, by shifting resources from wasteful programs to cost-effective programs, we could save 60,000 more lives per year in this country at no additional cost to the public sector or the private sector," Dr. Graham told the Committee on Sept. 12, 1997. Senators clearly took this to mean existing regulatory programs. Yet in fact, most of the 200 "programs" were never actually implemented, as Lisa Heinzerling, a professor at Georgetown Law Center has recently pointed out. This includes 79 of the 90 environmental "regulations," which, not surprisingly, were scored as outrageously expensive. Despite repeated misrepresentations of his study by the press and members of Congress, Dr. Graham has never bothered to correct the record. In fact, he has perpetuated the myth by continually using the study to criticize our real-world regulatory system.
  - Dr. Graham has taken the view that cost-benefit analysis should be the determinative criteria in deciding whether a rule goes forward. This position is frequently at odds with congressional mandates that place public health considerations as the preeminent
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factor in rulemaking deliberations. This past summer, for instance, Dr. Graham was part of an amicus brief filed before the Supreme Court that argued EPA should consider costs in devising clean air standards (currently costs are considered during implementation), which the Court unanimously rejected. We are concerned that as regulatory gatekeeper, Dr. Graham would elevate the role of cost-benefit analysis in ways Congress never intended.

- Dr. Graham has little to no experience with information issues, which have taken on even greater importance with the advent of the Internet. OIRA was created in 1980 by the Paperwork Reduction Act, which gives the office chief responsibility for overseeing information collection, management, and dissemination. We fear that information policy will suffer with Dr. Graham at the helm, and that he is more likely to focus on regulatory matters – his natural area of interest and expertise. Ironically, Congress has never asked OIRA to review agency regulations. This power flows from presidential executive order.

Dr. Graham's track record does not demonstrate the sort of objectivity and dispassionate analysis that we should expect from the next OIRA administrator. Indeed, he has demonstrated a consistent hostility to health, safety, and environmental protection – once telling the Heritage Foundation that "[e]nvironmental regulation should be depicted as an incredible intervention in the operation of society." Dr. Graham's nomination threatens to bring back the days when OIRA acted as a black hole for crucial public protections. Accordingly, this nomination deserves very careful scrutiny and should be opposed.

Sincerely,

Gary D. Bass  
Executive Director

cc: The Honorable Joseph Lieberman  
Ranking Member  
Committee on Governmental Affairs