President Bush announced on April 4, 2007 that he was giving a recess appointment to Susan Dudley, crowning her the role of administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

Although the leader of the Senate committee with jurisdiction over the nomination promised to give Dudley a fair hearing, President Bush decided not to face up to Dudley’s controversial record. Instead, he snuck her into office through the backdoor — not once, but twice — giving her power to weaken and delay all regulatory protections.

About the Position: Why It Matters

The OIRA administrator has enormous power to change, weaken, and delay protections of the public health, safety, civil rights, privacy, environment, and consumers — power Congress never gave that office.

Congress created OIRA in 1980 with the Paperwork Reduction Act, which charged OMB with implementing several information policy duties, such as promoting public access to information, coordinating statistical policies, reviewing agency mandates for information collection and reporting, and overseeing information security, privacy, and technology.¹

From the very beginning, OIRA has failed to meet crucial obligations in information security and information technology, focusing instead on interfering with substantive policymaking.²

OIRA gained enormous new powers over regulation — not by law, but by executive fiat. In 1981 the Reagan administration issued Executive Order No. 12,291, which gave OIRA the power to review all federal regulations, proposed or final, and order changes to be made before they could be published in the Federal Register. The review power was slightly modified in 1993 with Exec. Order No. 12,866, which limited the scope of required review from all regulations to only “significant” regulations.

The OIRA administrator gained even more breathtaking power in 2007, when the Bush administration amended Exec. Order No. 12,866. Now, the OIRA administrator can review not only drafts of significant regulations but also drafts of significant “guidance documents,” an amorphous category of information that the Bush order and an accompanying bulletin define to include essentially any information (including not just interpretations of rules but also scientific and technical information, such as risk assessments) that the White House decides it wants to influence.³

OIRA administrators have used these powers to weaken and delay much-needed protections, to the public’s detriment.⁴ In so doing, OIRA administrators have sometimes ordered agencies to contravene the law,⁵ raising questions about administrative and constitutional law that beg for congressional oversight.⁶

About Dudley: Controversial Recess Appointee

Dudley is an anti-regulatory extremist best known for her work at the industry-funded think Mercatus Center, based at George Mason University.

While at Mercatus, Dudley filed comments and wrote articles about a range of regulatory topics, displaying a consistent hostility to regulatory protections of the public interest.
Dudley’s record is detailed more extensively in the Public Citizen/OMB Watch report *The Cost Is Too High: How Susan Dudley Threatens Public Protections.* Among the key points about her record:

- **She will demand the impossible from agencies.** Dudley will demand that agencies justify the need for a regulation — but she what she will expect from the agencies will be impossible to satisfy. For example, she will expect proof of market failure... but, in her view, markets never fail.

- **She has a tendency to uncritically accept anti-regulatory talking points.** Industry groups and the think tanks they fund produce reams of junk science and even junkier economics to disprove the need for regulatory safeguards. Dudley has a record of swallowing it hook, line, and sinker. Case in point: she relied on obviously bogus industry studies to argue that smog is good for you, and that EPA should swallow it hook, line, and sinker. 

- **She is intellectually inconsistent in order to be consistently anti-regulatory.** For example, she has often argued that more information is a superior response to problems than regulation... except when it comes to programs like the Toxics Release Inventory, which simply requires industry to report the toxics they emit in our back yards.

### Through the Back Door to Power

Dudley was originally nominated in the 109th Congress, but the Senate opted not to allow the nomination to leave committee. Bush then resubmitted the nomination in the 110th Congress, but the Senate opted not to allow the nomination to leave committee. Bush then resubmitted the nomination to the Senate; Senate Majority Leader Harry Reid announced that he would not consider the nomination. Instead of facing up to Dudley’s record and the prospect of significant harm to the public from a Dudley-led OIRA, Pres. Bush simply handed her this enormously powerful office.

We need Congress to keep an eye on Dudley and the workings of OIRA. The threat is too grave.

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8. See id. at 15-28.
9. See id. at 19-20, 26.
10. See id. at 25-28.