in this area at the Federal Reserve. In response to these questions, he undertook to once again carefully review and examine Board policy and to intensify their efforts to ensure more diversity in the workings of the Federal Reserve System.

I urge his confirmation to my colleagues. I very much hope, when he comes before us for a vote, we will have very strong support for his reappointment to the Federal Reserve System.

We need to get these members into place at the Federal Reserve Board because there are a couple of vacancies there.

One of the Board of Governors also announced his intention to retire. The President has announced his intention to nominate a couple of members. Those nominations have not yet been sent to us, thus we have not yet received them.

In an effort to keep the Board of Governors of the Federal Reserve in sufficient number, I urge my colleagues to approve the Ferguson nomination when it comes before us later tonight.

I yield the floor.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF JOHN D. GRAHAM OF MASSACHUSETTS TO BE ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

Mr. DASCHLE. Mr. President, we are still attempting to come to some resolution about the sequencing of other legislative priorities for the balance of the week. Until that time, under a prior agreement, the Senate had the understanding that we would move to the consideration of the John Graham nomination, Calendar No. 104.

Pursuant to that agreement, I ask unanimous consent that the Senate now move to executive session to consider Calendar No. 104, the nomination of John Graham to be the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, and that immediately following the consideration of Calendar No. 104, pursuant to the agreement, we consider Calendar No. 223, the nomination of Roger Walton Ferguson to be a member of the Board of Governors of the Federal Reserve for a term of 14 years.

The PRESIDING OFFICER. Without objection, it is so ordered.

The assistant legislative clerk read the nomination of John D. Graham of Massachusetts, to be Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget.

Mr. DASCHLE. Mr. President, for the information of Senators interested in the schedule this evening, it is our intention to complete the debate on the two nominations. I know of no interest in debate on the Ferguson nomination, but there is, of course, debate on the Graham nomination.

Following completion of debate on the nominees, it is my expectation and determination to move to the legislative branch appropriations bill, and that would be the final piece of business to be completed tonight.

Tomorrow, it is my hope—and this matter has yet to be completely resolved—that we move to three judicial nominations and then proceed to the Transportation appropriations bill. We will have more to say about that later in the evening.

For now, I hope we could begin the debate on the Graham nomination.

UNANIMOUS CONSENT AGREEMENT—H.R. 2299

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Appropriations Committee be discharged from consideration of H.R. 2299 and that the Senate then proceed to its consideration; that once the bill is reported, Senator MURRAY be recognized to offer the text of S. 1178 as a substitute amendment; that no further amendments be in order during today's session; that once the action has been completed, the bill be laid aside until Friday, July 20; the Senate resume consideration of the bill upon returning to legislative session, following any rollcall votes with respect to the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. I thank my colleagues. For the information of our colleagues, Senator MURRAY will now be recognized simply to lay down the Transportation bill, and we will proceed then immediately to the Graham nomination.

The PRESIDING OFFICER. The Senator from Washington.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

The PRESIDING OFFICER. Under the previous order, the clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2299) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2002, and for other purposes.

Mrs. MURRAY. Mr. President, I send an amendment to the desk in the nature of a substitute.

AMENDMENT NO. 1025

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 1025.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

The PRESIDING OFFICER. Under the previous order, the measure will be set aside.

NOMINATION OF JOHN D. GRAHAM OF MASSACHUSETTS TO BE ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET—Resumed

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I rise in support of the nomination of Dr. John Graham for the position of Administrator of OMB's Office of Information and Regulatory Affairs.

On May 23, the Governmental Affairs Committee reported the nomination of Dr. Graham with a vote of 9–3 or 11–4, if you count proxies. The bipartisan vote included Republican members of the committee, as well as Senators LEVIN, CARPER, and CARNAHAN. I urge my colleagues on both sides of the aisle to join us in support of the confirmation of Dr. Graham.

The Office of Information and Regulatory Affairs, or OIRA, as we will refer to it, was established in 1980 by the Paperwork Reduction Act, legislation developed to address policy issues that Congress was concerned were being neglected by the executive branch. OIRA is primarily charged with being a leader on regulatory review, reducing unnecessary paperwork and red tape, improving the management of the executive branch, reviewing information policy, and guiding statistical policy proposals.

The decisions and actions of the OIRA administrator are very important to the public and should be made by a particularly capable and dedicated individual. John Graham fits this profile.

John Graham has been a professor of policy and decision sciences at the Harvard School of Public Health since 1985. He is the founder and director of the Harvard Center for Risk Analysis. He has worked with various Federal agencies through his research, advisory committees, and as a consultant. He holds a bachelor's degree in public affairs from Duke University and a Ph.D. in urban and public affairs from Carnegie Mellon University with an emphasis on decision sciences.

In addition, the EPA funded his postdoctoral fellowship in environmental science and public policy, and he completed course work in research training and human health risk assessment.

In 1995, Dr. Graham was elected president of the International Society

for Risk Analysis, a membership organization of 2,000-plus scientists, engineers, and scholars dedicated to advancing the tools of risk analysis.

We have received testimonials attesting to the credentials and integrity of Dr. Graham from hundreds of esteemed authorities in the environmental policy, health policy, and related fields. William Reilly, the former Administrator of EPA, said that ''over the years, John Graham has impressed me with his vigor, his fair-mindedness, and integrity.''

Dr. Lewis Sullivan, former Secretary of the Department of Health and Human Services said that ''Dr. Graham is superbly qualified to be the IORA administrator.''

Former OIRA Administrators from both Democratic and Republican administrations have conveyed their confidence that John Graham is not an opponent of all regulation but, rather, he is deeply committed to seeing that regulation serves broad public purposes as effectively as possible.

Dr. Robert Leiken, a respected expert on regulatory policy at the Brookings Institution, stated that Dr. Graham is the most qualified person ever nominated for the job of OIRA Administrator.

About 100 scholars in environmental and health policy and related fields joined together to endorse John Graham's nomination stating:

> While we don't always agree with John or, for that matter, with one another on every policy issue, we do respect his work and his intellectual integrity. It is very regrettable that some interest groups that disagree with John's views on the merits of particular issues have chosen to impugn his integrity by implying that his views are for sale rather than confronting the merits of his argument. Dialog about public policy should be conducted at a higher level.

Having dealt with this nomination for many months, I think that quote really hits the nail on the head. Some groups oppose Dr. Graham because they don't agree with his support for sound science and better regulatory analysis. But they have chosen to engage in attacks against him instead of addressing the merits of his thinking.

It is especially unfortunate since this nominee has done so much to advance an important field of thought that can help us achieve greater environmental health and safety protection at less cost.

While some groups oppose the confirmation of Dr. Graham, I believe their concerns have been addressed and should not dissuade the Senate from confirming Dr. Graham. For example, Joan Claybrook, the President of Public Citizen, has charged that Dr. Graham's views are antiregulation. Yet Dr. Graham's approach calls for smarter regulation based on science, engineering, and economics, not necessarily less regulation. He has shown that we can achieve greater protections than we are currently achieving.

Opponents have charged that Dr. Graham is firmly opposed to most environmental regulations. In fact, Dr. Graham and his colleagues have produced scholarships that supported a wide range of environmental policies, including toxic pollution control at coke plants, phaseout of chemicals that deplete the ozone layer, and low-sulfur diesel fuel requirements. Dr. Graham also urged new environmental policies to address indoor pollution, outdoor particulate pollution, and tax credits for fuel-efficient vehicles.

Dr. Graham believes that environmental policy should be grounded in science, however, and examined for cost-effectiveness. Dr. Graham and his colleagues have also developed new tools for chemical risk assessment that will better protect the public against noncancer health effects, such as damage to the human reproductive and immune systems.

Dr. Graham's basic regulatory philosophy was adopted in the Safe Drinking Water Act amendments of 1996, a life-saving law that both Democrats and Republicans overwhelmingly supported, including most of us here today.

Critics have claimed that Professor Graham seeks to increase the role of economic analysis in regulatory decisionmaking and freeze out intangible and humanistic concerns. This is inaccurate. In both of his scholarly writings, and in congressional testimony, Professor Graham rejected purely numerical monetary approaches to cost-benefit analyses. He has insisted that intangible contributions, including fairness, privacy, freedom, equity, and ecological protection be given way in both regulatory analysis and decisionmaking.

Dr. Graham and the Harvard Center have shown that many regulatory policies are, in fact, cost-effective, such as AIDS prevention and treatments; vaccination against measles, mumps, and rubella; regulations on the sale of cigarettes to minors; enforcement of seatbelt laws; the mandate of lead-free gasoline; and the phaseout of ozone-depleting chemicals.

Critics also claimed that Professor Graham's views are extreme because he has indicated that public health resources are not always allocated wisely under existing laws and regulations. Yet this is not an extreme view. It reflects the thrust of the writings on risk regulation by Justice Stephen Breyer, for example—President Clinton's choice for the Supreme Court—as well as consensus statements from diverse groups such as the Carnegie Commission, the National Academy of Public Administration, and the Harvard Group on Risk Management Reform.

Professor Graham made crystal clear at his confirmation hearing that he will enforce the laws of the land, as Congress has written them. He understands that there is significant differences between the professor's role of questioning all ways of thinking and the OIRA Administrator's role of implementing the laws and the President's policy. I believe Dr. Graham will make the transition from academia to Government service smoothly, and that he will use his valuable experience to bring more insight to the issues that confront OIRA every day.

A fair review of the deliberations of the Governmental Affairs Committee, and the entire record, lead me and many of my colleagues to conclude that Dr. John Graham has the qualifications and the character to serve the public with distinction.

A respected professor at the University of Chicago put it this way. He says:

> John Graham cannot be pigeonholed as conservative or liberal on regulatory issues. He is unpredictable in the best sense. I would not be surprised at all if in some settings he turned out to be a vigorous voice for aggressive governmental regulation. In fact, that is exactly what I would expect. When he questions regulations, it is because he thinks we can use our resources in better ways. It is because he thinks that we can use our resources in ways that do not necessarily meet the eye. On this issue, he stands as one of the most important researchers and most promising public servants in the Nation.

I urge prompt confirmation of John Graham.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Illinois is recognized.

Mr. DURBIN. Madam President, before beginning my remarks, I would like to have a clarification, if I can, as to the allocation of time in this debate.

The PRESIDING OFFICER. There is 1 hour under the control of Mr. LIEBERMAN, 3 hours under the control of Mr. THOMPSON, 2 hours under the control of Mr. DURBIN, 2 hours under the control of Mr. WELLSTONE, and 15 minutes under the control of Mr. KERRY.

Mr. DURBIN. I thank the Chair. Madam President, I rise to speak in opposition to the nomination of John Graham for the position of Administrator for the Office of Information and Regulatory Affairs at OMB.

This is a rare experience for me. I think it is the first time in my Senate career, in my congressional career, where I have spoken out against a nominee and attempted to lead the effort to stop his confirmation. I do this understanding that the deck is not stacked in my favor. Many Members of the Senate will give the President his person, whoever it happens to be, and that is a point of view which I respect but disagree with from time to time. I also understand from the Governmental Affairs Committee experience that the Republican side of the aisle—the President's side of the aisle—has been unanimous in the support of John Graham, and that is understandable, both out of respect for the nominee and the President himself.

Having said that, though, the reason I come to the floor this evening and the reason I asked for time in debate is because I believe this is one of the most

dangerous nominations that we are going to consider—dangerous in this respect: Although the office which Mr. John Graham seeks is obscure by Washington standards, it is an extremely important office. Few people are aware of the Office of Information and Regulatory Affairs and just how powerful the office of regulatory czar can be. But this office, this senior White House staff position, exercises enormous authority over every major Federal regulation the Government has under consideration. Because of this, the OIRA Administrator must have a commitment to evenhandedness, objectivity, and fair play in analyzing and presenting information about regulatory options.

Do you often sit and wonder, when you hear pronouncements from the Bush White House, for example, on arsenic in drinking water and increasing the acceptable level of arsenic in drinking water, who in the world came up with that idea? There might be some business interests, some industrial and corporate interests, who have a specific view on the issue and have pushed it successfully in the administration. But somebody sitting in the Bush White House along the way said: That sounds like a perfectly sound idea. And so they went forward with that suggestion.

Of course, the public reaction to that was so negative that they have had time to reconsider the decision, but at some time and place in this Bush White House, someone in a position of authority said: Go forward with the idea of allowing more arsenic in drinking water in the United States.

I do not understand how anyone can reach that conclusion at all, certainly not without lengthy study and scientific information to back it up, but it happened. My fear is, John Graham, as the gatekeeper for rules and regulations concerning the environment and public health, will be in a position to give a thumbs up or a thumbs down to suggestions just like that from this day forward if he is confirmed.

I think it is reasonable for us to step back and say: If he has that much power, and we already have seen evidence in this administration of some rather bizarre ideas when it comes to public health and the environment, we have a right to know what John Graham believes, what is John Graham's qualification for this job, what is his record in this area? That is why I stand here this evening.

I want to share with my colleagues in the Senate and those who follow the debate the professional career of Mr. John Graham which I think gives clear evidence as to why he should not be confirmed for this position.

Let me preface my remarks. Nothing I will say this evening, nothing I have said, will question the personal integrity of John Graham. I have no reason to do that, nor will I. What I will raise this evening relates directly to his professional experience, statements he has made, views he holds that I think are central to the question as to whether or not we should entrust this important and powerful position to him.

Some in the Governmental Affairs Committee said this was a personal attack on John Graham. Personal in this respect: I am taking his record as an individual, a professional, and bringing it to the Senate for its consideration. But I am not impugning his personal integrity or his honesty. I have no reason to do so.

I assumed from the beginning that he has done nothing in his background that will raise questions along those lines. I will really stick this evening to things he has said in a professional capacity, and in sticking to those things, I think you will see why many have joined me in raising serious questions about his qualifications.

On the surface, John Graham strikes some of my colleagues in the Senate as possessing the qualities of objectivity and evenhandedness we would expect in this position. He is seen by many as eminently qualified for the position. After all, he is a leading expert in the area of risk analysis and has compiled a lengthy list of professional accomplishments.

I have heard from colleagues on both sides of the aisle, whom I respect, that they consider him the right man for the job. So I think it is important for me this evening to spell out in specific detail why I believe that is not the case, why John Graham is the wrong person to serve as the Nation's regulatory czar.

Professor Graham's supporters painted a picture of him as evenhanded and objective. They say he supports environmental regulations as long as they are well drafted and based on solid information. My colleague, the Senator from Tennessee, said as much in his opening statement.

A casual glance at Dr. Graham's record may lead one to conclude this is an accurate portrayal. As they say, the devil is in the details. A careful reading of the record makes several things absolutely clear: Dr. Graham opposes virtually all environmental regulations. He believes that many environmental regulations do more harm than good. He also believes that many toxic chemicals—toxic chemicals—may be good for you. I know you are wondering, if you are following this debate, how anyone can say that. Well, stay tuned.

John Graham favors endless study of environmental issues over taking actions and making decisions—a classic case of paralysis by analysis. Dr. Graham's so-called objective research is actually heavily influenced by policy consideration, and he has had a built-in bias that favors the interest of his industrial sponsors.

He has been connected with Harvard University, and that is where his analysis has been performed, at his center. He has had a list of professional clients over the years.

Madam President, I ask unanimous consent that this list of clients be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNRESTRICTED GRANTS TO THE HARVARD CENTER FOR RISK ASSESSMENT

3M.
Aetna Life & Casualty Company.
Air Products and Chemicals, Inc.
Alcoa Foundation.
American Automobile Manufacturers Association.
American Chemistry Council.
American Crop Protection Association.
American Petroleum Institute.
Amoco Corporation.
ARCO Chemical Company.
ASARCO Inc.
Ashland Inc. Foundation.
Association of American Railroads.
Astra AB.
Astra-Merck.
Atlantic Richfield Corporation.
BASF.
Bethlehem Steel Corporation.
Boatmen's Trust.
Boise Cascade Corporation.
BP America Inc.
Cabot Corporation Foundation
Carolina Power and Light.
Cement Kiln Recycling Coalition.
Center for Energy and Economic Development.
Chevron Research & Technology Company.
Chlorine Chemistry Council.
CIBA-GEIGY Corporation.
Ciba Geigy Limited.
CITGO Petroleum Company.
The Coca-Cola Company.
Cytec Industries.
Dow Chemical Company.
DowElanco.
DuPont Agricultural Products.
Eastman Chemical Company.
Eastman Kodak Company.
Edison Electric Institute.
E.I. DuPont de Nemours & Company.
Electric Power Research Institute.
Emerson Electric.
Exxon Corporation.
FBC Chemical Corporation.
FMC Corporation.
Ford Motor Company.
Fort James Foundation.
Frito-Lay.
General Electric Fund.
General Motors Corporation.
The Geon Company.
Georgia-Pacific Corporation.
Glaxo-Wellcome, Inc.
The Goodyear Tire & Rubber Company.
Grocery Manufacturers of America.
Hoechst Celanese Corporation.
Hoechst Marion Roussel.
Hoffman-LaRoche Inc.
ICI Americas Inc.
Inland Steel Industries.
International Paper.
The James Riber Corporation Foundation.
Janssen Pharmaceutical.
Johnson & Johnson.
Kraft Foods.
Louisiana Chemical Association.
Lyondell Chemical Company.
Mead Corporation Foundation.
Merck & Company.
Microban.
Millenium Chemical Company.
Mobil Foundation, Inc.
Monsanto Company.
National Food Processors Association.
National Steel.
New England Power Service—New.
England Electric System.

Nippon Yakin Kogyo.
North American Insulation Manufacturers Association.
Novartis Corporation.
Novartis International.
Olin Corporation Charitable Trust.
Oxford Oil.
Oxygenated Fuels Association.
PepsiCo Inc.
The Pittston Company.
Pfizer.
Pharmacia Upjohn.
Potlatch Corporation.
Praxair, Inc.
Procter & Gamble Company.
Reynolds Metals Company Foundation.
Rhone-Poulenc, Inc.
Rohm and Haas Company.
Schering-Plough Corporation.
Shell Oil Company Foundation.
Texaco Foundation.
Union Carbide Foundation.
Unocal.
USX Corporation.
Volvo.
Westinghouse Electric Corporation.
Westvaco.
WMX Technologies, Inc.
Zeneca.
(Source: Harvard Center for Risk Assessment).

Mr. DURBIN. I thank the Chair. I will not go through all of the companies on this list. It reads like, as they say, a veritable list of who's who of industrial sponsors in America: Dow Chemical Company, all sorts of institutes, the Electric Power Research Institute, oil companies, motor companies, automobile manufacturers, chemical associations—the list goes on and on.

These corporate clients came to Professor Graham not to find ways to increase regulation on their businesses but just for the opposite, so that he can provide through his center a scientific basis for resisting Government regulation in the areas of public health and the environment.

I am an attorney by profession, and I understand that when there is balance in advocacy you have an objective presentation: Strong arguments on one side and strong arguments against, and then you try to reach the right conclusion. So I am not going to gainsay the work of Dr. Graham in representing his corporate clients over the years, but it is important for us to put this in perspective.

If Dr. Graham is appointed to this position, his clients will not be the corporations of America, his clients will be the 281 million Americans who count on him to make decisions in their best interest when it comes to environmental protection and protection of the health of their families.

When we look at his professional background, it raises a question about his objectivity. He has had little respect for the environmental concerns of most Americans—concerns about toxic chemicals in drinking water, pesticides in our food, or even the burial of radioactive waste. To John Graham, these are not major concerns. In fact, as you will hear from some of his statements that I will quote, he believes they reflect a paranoia in American culture.

Dr. Graham's supporters have taken issue with my categorizing his views as antiregulatory. They say, and it has been said on the floor this evening, John Graham supports environmental regulations: just look at the statements he has made about removing lead from gasoline. That was said this evening: John Graham supports removing lead from gasoline.

I certainly hope so. And my colleagues know, it is true, John Graham has stated clearly and unequivocally that he thought removing lead from gasoline was a good idea. Do my colleagues know when that decision was made? Decades before John Graham was in any position to have impact on the decision. It is a decision in which he had no involvement in any way whatsoever.

What has he done for the environment lately? What does he think of the recent crop of environmental regulations? On this matter, his opinions are very clear. According to John Graham, environmental regulations waste billions, if not trillions, of taxpayers' dollars. According to John Graham, our choice of environmental priorities actually kills people through a process Mr. Graham calls ''statistical murder,'' something that pops up in his work all the time.

According to John Graham, we should massively ship resources away from environmental problems such as toxic chemicals to more important activities that he has identified, such as painting white lines on highways and encouraging people to stop smoking.

This is a recent quote from Dr. Graham:

> The most cost-effective way to save lives generally is to increase medical treatment, and somewhat second, to curb fatal injuries. Trying to save lives by regulating pesticides or other toxins generally used up a lot of resources.

I can recall during the time we were debating the potential of a nuclear holocaust, there was a man named Richard Perle in the Reagan administration who said he didn't think we should be that frightened because if we did face a nuclear attack, in his words, ''with enough shovels,'' we could protect ourselves.

When I read these words of Dr. Graham who says, ''The most cost-effective way to save lives generally is to increase medical treatment, and somewhat second, to curb fatal injuries,'' and then he says that ''regulating pesticides and toxins uses up a lot of resources'' can you see why I believe he has been dismissive of the basic science which he is going to be asked to implement and enforce in this office?

This quote is a little bit understated. In other documents, Mr. Graham refers to spending money on control of toxins as ''an outrageous allocation of resources.'' This captures the very heart of Graham's philosophy. Environmental regulations to control toxic chemicals are an enormous waste of resources, in the mind of John Graham. It makes little sense, according to Graham, to focus on environmental problems. Instead, we should use our scarce public policy dollars for other more important issues.

Why does John Graham hold such strong views opposing environmental regulations? Because he believes toxic chemicals just are not that toxic. Dr. Graham has said the so-called ''toxic chemicals'' may actually be good for us. I will read some of the transcript from his hearing on the whole question of dioxin.

Now, Dr. Graham supports these beliefs based on what he calls ''a new paradigm,'' the idea that there may well be an optimum dose for toxic chemicals or for other environmental hazards such as radiation. The idea behind this optimum dose theory is there is an exposure that is good for people in small amounts even if the chemical or radiation is harmful in larger quantities.

In a conference on this new paradigm at which Graham was a featured speaker, he urged his colleagues:

> Advocates of the new paradigm need to move beyond empiricism to explanation if we can explain why low doses are protective, the prospects of a genuine scientific revolution are much greater.

A scientific revolution inspired by John Graham.

Well, the obvious question I had of Mr. Graham when he came to the Governmental Affairs Committee was as follows:

> Mr. DURBIN: Dr. Graham, when I look at your resume, I'm curious; do you have any degrees or advanced training in the field of chemistry, for example?
> Mr. GRAHAM: No, sir.
> Mr. DURBIN: Biology?
> Mr. GRAHAM: No, sir.
> Mr. DURBIN: Toxicology?
> Mr. GRAHAM: No.
> Mr. DURBIN: What would you consider to be your expertise?
> Mr. GRAHAM: I have a Ph.D. in public affairs from Carnegie Mellon, with an emphasis in the field of management science called ''decision science.'' At the School of Public Health, I teach analytical tools and decision science like risk assessment, cost-effective analysis, and cost-benefit analysis.
> Mr. DURBIN: No background in medical training?
> Mr. GRAHAM: No. I do have a postdoctoral fellowship funded by the Environmental Protection Agency where I studied human health risk assessment and had research experience in doing human health risk assessment on chemical exposures.
> Mr. DURBIN: Does your lack of background in any of these fields that I have mentioned give you any hesitation to make statements relative to the danger of chemicals to the human body?
> Mr. GRAHAM: I think I have tried to participate in collaborative arrangements where I have the benefit of people who have expertise in some of the fields that you have mentioned.
> Mr. DURBIN: Going back to the old television commercial, ''I may not be a doctor but I play one on TV,'' you wouldn't want to assume the role of a doctor and public health expert when it comes to deciding the safety or danger over the exposure to certain chemicals, would you?
> Mr. GRAHAM: Well, I think our center and I personally have done significant research

in the area of risk assessment of chemicals and oftentimes my role is to provide analytical support to a team and then other people on the team provide expertise, whether it be toxicology, medicine, or whatever.

The reason I raise this is there is no requirement that a person who takes this job be a scientist, a medical doctor, a chemist, a person with a degree in biology or toxicology. That is not a requirement of the job. And very few, if any, of his predecessors held that kind of expertise.

But when you consider carefully what Mr. Graham has said publicly in the field of science, you might conclude that he has much training and a great degree in the field.

That is not the case. He has held himself out time and again, and I will not go through the specifics here, and made dogmatic statements about science that cannot be supported. And he wants to be the gatekeeper on the rules and regulations of public health and the environment in America.

Mr. Graham is, as I said earlier, trying to create a scientific revolution but he acknowledges it is an uphill battle. Why do so few mainstream scientists buy into his theories? Because, says Graham, science itself has a built-in bias against recognizing the beneficial effects of low-dose exposures to otherwise dangerous chemicals such as dioxin.

Scientific journals don't like to publish new paradigm results. In his written works, Dr. Graham goes so far to say the current classification scheme used by the EPA and others to identify cancer-causing chemicals should be abolished and replaced with a scheme that recognizes that all chemicals may not only not cause cancer but may actually prevent cancer, as well.

Perhaps he opposes environmental regulation because he is so convinced that regulations generally do more harm than good. Some of this harkens back, of course, to his new paradigm, his scientific revolution. If we restrict toxic chemicals that are actually preventing, rather than causing, cancer, we wind up hurting, rather than helping, the population at large, according to Dr. Graham. Think about that. He is arguing that some of the things we are trying to protect people from we should actually encourage people to expose themselves to.

If he had scientific backing for this, it is one thing. He doesn't have the personal expertise in the area and very few, if any, come to rally by his side when he comes up with the bizarre views.

He argues environmental regulations hurt us in other ways. They siphon off resources from what he considers the real problem of society, and they introduce new risks of their own, so according to Dr. Graham the cure is worse than the disease. The side effects of environmental regulation are so problematic and many that he refers to them as ''statistical murder.'' Our environmental priorities are responsible for the statistical murder of tens of thousands of American citizens every year, according to Mr. GRAHAM.

Take his well-known example, and he has used it in writings of chloroform regulation. Mr. GRAHAM estimates that chloroform regulation costs more than $1 trillion to save a single life, $1 trillion. And he uses this in an illustration of how you can come up with a regulation that is so expensive you could never justify it—$1 trillion to save one life. What he doesn't say—and the EPA looked at his analysis—that cost of $1 trillion is over a period of time of 33,000 years. Just a little footnote that I think should have been highlighted. How can patently absurd numbers such as this make a contribution to cost-benefit consideration?

There is a bigger problem. The chloroform regulation he refers to doesn't exist and never did. I asked the Congressional Research Service to find out about this regulation on chloroform that Dr. Graham used as an example of statistical murder, where we will spend $1 trillion as a society to save one life. Find out where that took place.

Guess what. It doesn't exist. This is a hypothetical case study for an academic exercise. It is not a regulation. It was never proposed as a regulation nor was it ever considered seriously by anyone. Someone invented this scenario and John Graham seized on it as his poster child of how you can go to ridiculous extremes to protect people from environmental exposure.

Even when Dr. Graham studies the costs and benefits of actual environmental regulations, ones that are truly being considered, his controversial practice of ''discounting'' automatically trivializes the benefits of environmental regulation.

We have been through this debate in the Governmental Affairs Committee. There are people on the committee, Democrats and Republicans, who say—and I think this is a perfectly reasonable statement—before you put in a rule or regulation, find out what it is going to cost: What is the cost to society? What is the benefit? I think that is only reasonable. There are certain things we can do to save lives, but at such great expense, society could never bear that burden. The problem you have is in drawing up the statistics, in trying to quantify it, in saying what a life is worth and over what period of time.

Dr. Graham gets into this business and starts discounting human lives in exactly the same way economists and business advisers discount money. A life saved or a dollar earned today, according to Dr. Graham, is much more valuable than a life saved or a dollar earned in the future. Dr. Graham's so-called scientific results led him to conclude that when the Environmental Protection Agency says a human life is worth $4.8 million, by their calculations, they are 10 times too high. That is Dr. Graham's analysis.

How many of us in this Senate Chamber today can honestly say they agree with Dr. Graham's discounting the value of a human life to 10 percent of the amount we have used to calculate many environmental regulations? That is a starting point. If you are representing industrial clients who do not want to be regulated, who suggest environmental regulations and public health regulations are, frankly, outlandish, you start by saying lives to be saved are not worth that much.

Discounting may make sense when it comes to money, but it trivializes the value of human lives and the lives of our next generation and creates an automatic bias against environmental regulations meant to provide protections over a long period of time.

I will be the first to admit there are inefficiencies in our current environmental regulations, but Professor Graham's research hasn't found them. Instead, he consistently identified phantom costs of nonexistent regulations and for years referred to them as if they were the real cost of real environmental regulations. He has played a game with the facts for his purposes, for his clients. But when it comes to the OMB, in this capacity it will be the real world where decisions you make will literally affect the health and future of Americans and their families.

He has introduced misleading information that has really distorted many of the elements of an important policy debate. There are organizations that absolutely love research results that show billions of dollars being wasted by unnecessary environmental regulations—groups such as the Cato Institute, the Heritage Foundation, the American Enterprise Institute, all of whom have made ample use of Professor Graham's scientific studies, scientific revolution—statistical murder; results to strengthen their antiregulatory arguments.

To sum up Dr. Graham's belief, toxic chemicals can be good for you, environmental regulations can be very bad for you.

Not everyone accepts these beliefs, of course. What does Dr. Graham think of those with a different set of priorities? In his mind, it is a sign of collective paranoia, a sign of pervasive weakness and self-delusion that pervades our culture.

If you think I have overstated it, I think his own words express his sentiments more accurately. I would like to refer to this poster, quotes from Dr. Graham.

Interview on CNN, 1993:

We do hold as a society, I think, a noble myth that life is priceless, but we should not confuse that with reality.

Dr. Graham said that. Then:

Making sense of risk: An agenda for Congress in 1996.

John Graham said:

The public's general reaction to health, safety and environmental dangers may best be described as a syndrome of paranoia and neglect.

''Medical Waste News,'' that he has written for, in 1994:

. . . as we've grown wealthier, we've grown paranoid.

Testimony to the House Science Committee in 1995:

We should not expect that the public and our elected officials have a profound understanding of which threats are real and which are speculative.

So the very institution to which we are being asked to confirm this man's nomination has been really dismissed by John Graham as not having sound understanding of threats that are real.

Then he goes on to say, in Issues in Science and Technology, in 1997:

It may be necessary to address the dysfunctional aspects of U.S. culture. . . . The lack of a common liberal arts education . . . breeds ignorance of civic responsibility.

So John Graham can not only portray himself as a doctor, a toxicologist, a biologist, and a chemist, he can also be a sociologist and general philosopher. The man has ample talents, but I am not sure those talents will work for America when it comes to this important job.

I would like to take a look at two issues in detail to give a clearer picture of Dr. Graham's approach to environmental issues of great concern to the American people. I want to examine his record on pesticides and on dioxin. It is not unreasonable to believe if his nomination is confirmed that John Graham will consider rules and regulations relating to these two specific items, pesticides and dioxin.

The Food Quality Protection Act of 1996 passed Congress unanimously—and not just any session of Congress, the 104th Congress, one of the most contentious in modern history, a Congress that could hardly agree on anything. Yet we agreed unanimously to pass this important new food safety law. A key purpose of the law was to provide the public with better protection against pesticides. In particular, the law aimed to provide increased protections to our most vulnerable segment of the population, our children. President Clinton remarked that the Food Quality Protection Act would replace a patchwork of standards with one simple standard: If a pesticide poses a danger to our children, then it won't be in our food.

This groundbreaking legislation received the unanimous support of Congress. What does John Graham, Dr. John Graham, think about the importance of protecting our children from pesticide residues on food? Let me tell you what he said in his work.

The Food Quality Protection Act suffers from the same failings that mark most of our other environmental laws and regulations. Our attempts at regulating pesticides and food are a terrible waste of society's resources. We accept risks from other technologies like the automobile, why should we not accept risks from pesticides? When we regulate, or worse, when we ban pesticides, we often wind up doing more harm than good.

Let me tell you a case in point. I think it is an interesting one. It was a book which Mr. Graham wrote called ''Risk versus Risk.'' This is a copy of his cover. It was edited by John Graham and Jonathan B. Weiner.

I might also add the foreword was written by Cass Sunstein, who is a professor at the University of Chicago School of Law and has one of the letters of support which has already been quoted on the floor. He was a colleague of Mr. Graham, at least in writing the foreword to this book. This goes into the whole question of pesticides and danger. The thing I find curious is this. On page 174 of this book, Mr. Graham, who is asked to be in charge of the rules and regulations relative to pesticides, started raising questions about whether we made the right decision in banning DDT—banning DDT. He says:

Many of the organophosphate pesticides that have been used in place of DDT have caused incidents of serious poisoning among unsuspecting workers and farmers who had been accustomed to handling the relatively nontoxic DDT.

That is a quote—''relatively nontoxic DDT.''

I read an article the other day in the New Yorker which was about DDT and its discovery. Let me read a part of this article—I want to make sure of the sources quoted: Malcolm Gladwell, ''The Mosquito Killer,'' New Yorker, July 2, 2001. If I am not mistaken, that is the same gentleman who wrote the book ''The Tipping Point,'' which I found very good and recommend.

In his article about DDT, he says as follows:

Today, of course, DDT is a symbol of all that is dangerous about man's attempts to interfere with nature. Rachel Carson, in her landmark 1962 book ''Silent Spring,'' where she wrote memorably of the chemical's environmental consequences, how much its unusual persistence and toxicity had laid waste to wildlife in aquatic ecosystems. Only two countries, India and China, continue to manufacture the substance, and only a few dozen more still use it.

In May, at the Stockholm Convention on Persistent Organic Pollutants, more than 90 countries signed a treaty placing DDT on a restricted use list and asking all those still using the chemical to develop plans for phasing it out entirely. On the eve of its burial, however, and at a time when the threat of insect-borne disease seems to be resurging, it is worth remembering that people once felt very differently about DDT, and between the end of the Second World War and the beginning of the 1960s, it was considered not a dangerous pollutant but a lifesaver.

Mr. Gladwell, in this article, in summarizing the history of DDT, really points to the fact that those who have analyzed it around the world, with the exception of India and China—some 90 nations—abandoned it. John Graham, who wants to be in charge of the rules and regulations on pesticides, the environment, and public health, wrote:

It was relatively nontoxic.

This is a man who wants to make a decision about pesticides and their impact on the health of America.

According to Dr. Graham, it may have been an ill-advised decision to take DDT off the market. He cites in this book that I quoted how DDT was particularly effective in dealing with malaria. No doubt it was. But it was decided that the environmental impact of this chemical was so bad that countries around the world banned it.

Let me offer some direct quotes from Dr. Graham from various reports he has written over the years and from the many statements that he has made.

Before I do that, I see my colleague, Senator WELLSTONE, is in the Chamber. At this time, I would like to yield to him with the understanding that I can return and complete my remarks. I thank him for joining me this evening. I will step down for a moment and return.

I yield to Senator WELLSTONE.

Mr. WELLSTONE. Mr. President, I thank Senator DURBIN. I am very proud to join him. I have a lot of time reserved tonight. I say to colleagues who are here in the Chamber and who are wondering what our timeframe is that I can shorten my remarks.

I am speaking in opposition to the nomination of Mr. John Graham to be Administrator of the Office of Information and Regulatory Affairs, within the Office of Management and Budget.

I believe the President should have broad latitude in choosing his cabinet. I have voted for many nominees in the past with whom I have disagreed on policy grounds. I have voted for a number during this Administration, and I'm sure I will vote for more nominees with whom I disagree on policy, sometimes very sharply.

Mr. Graham has been nominated to a sensitive position: Administrator of the Office of Information and Regulatory Affairs (OIRA). In this role Mr. Graham would be in a position to delay, block or alter rules proposed by key federal agencies. Which agencies?

Let me give you some examples. One would be OSHA. This happens to be an agency with a mandate that is near and dear to my heart. Over the years, I have had the opportunity to do a lot of community organizing, and I have worked with a lot of people who unfortunately have been viewed as expendable. They do not have a lot of clout—political, economic, or any other kind. They work under some pretty uncivilized working conditions.

The whole idea behind OSHA was that we were going to provide some protection. Indeed, what we were going to be saying to companies—in fact, we did the same thing with environmental protection—is, yes, maximize your profits in our private sector system. Yes, organize production the way you choose to do. You are free to do it any way you want to, and maximize your profit any way you want to—up to the point that you are killing workers, up to the point that it is loss of limbs, loss of lives, harsh genetic substances, and people dying early of cancer. Then you can't do it. Thank God, from the point

of view of ordinary people, the Government steps in, I would like to say, on our side.

We had a perfect example of that this year in the subcommittee that I chair on employment, safety, and training. I asked Secretary Chao to come. She didn't come. I wanted to ask her about the rule on repetitive stress injury, the most serious problem right now in the workplace. It was overturned. The Secretary said she would be serious about promulgating a rule that would provide protection for the 1.8 million people, or thereabouts, who are affected by this. I wanted to know what, in fact, this administration is going to do.

So far it is really an obstacle.

As Administrator of OIRA, Mr. Graham can frustrate any attempt by OSHA to address 1.8 million repetitive stress injuries workers suffer each year, as reported by employers.

I will just say it on the floor of the Senate. I think it is absolutely outrageous that rule was overturned. I see no evidence whatsoever that this administration is serious about promulgating any kind of rule that would provide workers with real protection.

The Mine Safety and Health Administration, MSHA. The Louisville Courier Journal conducted a comprehensive investigation of illnesses suffered by coal miners due to exposure to coal dust—workers who are supposed to be protected by MSHA regulation. We urgently need vigorous action by MSHA.

As a matter of fact, I couldn't believe it when I was down in east Kentucky in Harlan and Letcher Counties. I met with coal miners. That is where my wife, Sheila, is from. Her family is from there. I hate to admit to colleagues or the Chair that I actually believed that black lung disease was a thing of the past. I knew all about it. I was shocked to find out that in east Kentucky many of these miners working the mines can't see 6 inches in front of them because of the dust problem.

Senator DURBIN's predecessor, Senator Simon, worked on mine safety. It was one of his big priorities.

Part of the problem is the companies actually are the ones that monitor coal dust. MSHA has been trying to put through a rule—we were almost successful in getting it through the last Congress—to provide these miners with some protection.

From the point of view of the miners, they don't view themselves as expendable.

The Food and Drug Administration regulates the safety of prescription drugs for children, for the elderly, for all of us. The Environmental Protection Agency (EPA) regulates pollution of the water and air. For example, EPA will determine what level of arsenic is acceptable in American drinking water. The Food Safety and Inspection Service (FSIS) is charged with the task of protecting us to the extent possible from salmonella, foot and mouth disease, BSE and other food-borne illnesses.

These and other important Federal regulatory agencies exist to protect Americans and to uphold standards that have been fought for and achieved over decades of struggle.

It is not true that people in Minnesota and people in the country are opposed to Government regulations on their behalf and on behalf of their children so that the water is not poisoned, so that the mines they work in are safe, so that the workplace they work in is safe, so that there are civilized working conditions, so that they don't have too much arsenic in the water their children drink, and so that the food their children eat is safe. Don't tell me people in Minnesota and in the country aren't interested in strong regulation on behalf of their safety and their children's safety.

The Administrator of OIRA must be someone who stands with the American public, someone who sees it as his or her mission to protect the public interest. In my view, John Graham's evident hostility to regulation that protects the public interest, in particular his over-reliance on tools of economic analysis that denigrate the value of regulatory protections, is disqualifying.

This is particularly troublesome when it comes to workplace safety, for example, because his approach flies in the face of statutory language requiring OSHA—again I am fortunate to chair the subcommittee with jurisdiction over OSHA—to examine the economic feasibility of its regulations, as opposed to undertaking the cost/benefit analyses upon which he over-relies.

As the Supreme Court noted in the so-called Cotton Dust Case, embedded in the statutory framework for OSHA is Congress' assumption ''that the financial costs of health and safety problems in the workplace were as large as or larger than the financial costs of eliminating these problems.'' Instead of cost/benefit analyses to guide standard setting, OSHA is statutorily bound to promulgate standards ''which most adequately assur[e], to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.''

In its 30 years of existence the Occupational Safety and Health Administration has made its presence felt in the lives of tens of millions of Americans at all levels of the workforce. OSHA and its related agencies are literally the last, best hope for millions of American workers whose lives would otherwise be put on the line, simply because they need to earn a paycheck. Experience has shown, over and over, that the absence of strong government-mandated safeguards results in workplace exposure to everything from odorless carcinogens to musculoskeletal stress to combustible grain dust to other dangers too numerous to mention.

Since its founding, hundreds of thousands of American workers did not die on the job, thanks to OSHA. Workplace fatalities have declined 50 percent between December of 1970 and December 2000, while occupational injury and illness rates have dropped 40 percent.

Not surprisingly, declines in workplace fatalities and injuries have been most dramatic in precisely those industries where OSHA has targeted its activities. For example, since OSHA came into existence, the manufacturing fatality rate has declined by 60 percent and the injury rate by 33 percent. At the same time, the construction fatality rate has declined by 80 percent and the injury rate by 52 percent.

It is not a coincidence that these two industries have received some of OSHA's closest attention. OSHA's role in assuring so far as possible that every worker is protected from on-the-job hazards cannot be denied.

Unfortunately, however, compared to the demand, there is still a whole lot of work to be done. Indoor air quality, hexavalent chromium, beryllium, permissible exposure limits for hundreds of chemicals in the workplace—this list goes on and on—not to mention repetitive stress injuries. The unfinished agenda is huge. It is precisely this unfinished agenda that should give us pause in confirming, as head of OIRA, someone whose entire professional history seems aimed at frustrating efforts to regulate in the public interest. That is my disagreement. It is a different framework that he represents than the framework that I think is so in the public interest.

Let me just give one example: the chromium story.

Chromium is a metal that is used in the production of metal alloys, such as stainless steel, chrome plating and pigments. It is also used in various chemical processes and it is a component of cement used to manufacture refractory bricks.

The first case of cancer caused by chromium was reported in 1890. Since then, the evidence that it causes cancer continued to grow. Chromium has been declared a carcinogen by the EPA, the National Toxicology Program, and the International Agency for Research on Cancer.

In the early 1980s, it was estimated that 200,000 to 390,000 workers were exposed to hexavalent chromium in the workplace—200,000 to 390,000. Lung cancer rates among factory workers exposed to hexavalent chromium are almost double the expected cancer rate for unexposed workers. Lung cancer rates for factory workers exposed to hexavalent chromium are also double the expected cancer rate for unexposed workers.

OSHA has known the risks associated with exposure to this dangerous carcinogen since its inception but has failed to act. OSHA's assessment, conducted by K.S. Crump Division of ICG Kaiser, was that between 9 percent and

34 percent of workers exposed at half the legal limit for a working lifetime would contract lung cancer as a result of this exposure.

On April 24, 2000, OSHA published its semiannual agenda, which anticipated a notice of proposed rulemaking would be published in June 2001. If confirmed as Administrator of OIRA within the Office of Management and Budget, however, John Graham's actions could affect OSHA's stated willingness to undertake a proposed rule this year, as the agency has finally promised and as is urgently needed.

I will finish by just giving a few examples of how Mr. Graham could negatively impact the process.

No. 1, reduce OSHA's ability to collect information in support of a new standard.

To develop a new hexavalent chromium standard, OSHA would likely need to survey scores of businesses for information about their use of the chemical and about workplace exposures. During the committee hearing on his nomination, Graham said that he supports requiring the federal agencies to do cost-benefit analyses of information requests sent to industry in preparation for a rulemaking. Under the Paperwork Reduction Act, before an information request can be sent to ten entities or more, it must be approved by OMB. Because it is very difficult to judge the value of the information being collected prior to receiving it, Graham could use the paperwork clearance requirement to tangle up the agency in justifying any information requests needed to support a new rule on chromium.

No. 2, insist upon a new risk assessment, despite compelling evidence that chromium poses a cancer risk.

OSHA has conducted its own risk assessment of chromium and reviewed numerous studies documenting that workers working with or around the chemical face considerable increased risk of lung cancer. But it is likely that Graham could exercise his power at OMB to require a new risk assessment of hexavalent chromium, which could further delay the issuance of a rule.

Graham has supported requiring every risk-related inquiry by the federal government to be vetted by a panel of peer review scientists prior to its public release, which would be costly and create significant delays in the development of new regulations. He has argued that the risk assessments done by the federal agencies are flawed, and that OMB or the White House should develop its own risk assessment oversight process. This would allow economists to review and possibly invalidate the findings of scientists and public health experts in the agencies.

No. 3, flunk any rule that fails a stringent cost-benefit test.

Graham is a supporter, for example, of strict cost-efficiency measures, even in matters of public health. Because he views regulatory choices as best driven by cost-based decisionmaking, the worthiness of a rule is determined at least partly by the cost to industry of fixing the problem. This is the opposite of an approach that recognizes that workers have a right to a safe workplace environment.

The OSHA mission statement is ''to send every worker home whole and healthy every day.''

Under the law as it now stands, OSHA is prohibited from using cost-benefit analysis to establish new health standards. Instead, OSHA must set health standards for significant risks to workers at the maximum level that the regulated industry, as a whole, can feasibly achieve and afford. This policy, set into law by the OSHA Act, recognizes the rights of workers to safe and healthful workplaces, and provides far more protection to workers than would be provided by any standards generated under a cost-benefit analysis.

Putting John Graham in the regulatory gatekeeper post would create a grave risk that OSHA protections, such as the hexavalent chromium standard, will not be set at the most protective level that regulated industry can feasibly achieve. We know from his own statements that John Graham will require OSHA to produce economic analyses that will use antiregulation assumptions, and will show protective regulations to fail the cost-benefit tests.

It is true that OSHA is technically authorized to issue standards that fail the cost-benefit test. However, it would be politically nearly impossible for an agency to issue a standard that has been shown, using dubious methodologies, to have net costs for society.

Unfortunately, although I would like nothing better than to be proven wrong, I fear this is not a farfetched scenario. And let there be no question—such steps would absolutely undermine Congress' intent when it passed the Occupational Health and Safety Act 30 years ago.

Let me quote again from the Supreme Court's Cotton Dust decision:

> Not only does the legislative history confirm that Congress meant ''feasible'' rather than ''cost-benefit'' when it used the former term, but it also shows that Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business. Senator Yarborough, a cosponsor of the [OSH Act], stated: ''We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America.''

There is one final point I want to make. I will tell you what really troubles me the most about this nomination. And let me just kind of step back and look at the bigger picture, which really gives me pause.

The essence of our Government—small ''d'' democracy—is to create a framework for the protection of the larger public as a whole. I believe in that. And I believe a majority of the people believe in that. It is the majority's commitment to protect the interests of those who cannot protect themselves that sets this great Nation apart from others. That is the essence of our democratic way of life. That is the core of this country's incredible heritage.

But there are a series of things happening here in the Nation's Capitol—stacked one on top of another—that fundamentally undermine the capacity of our Government to serve this purpose of being there for the public interest. I think we have a concerted effort on the part of this administration—and I have to say it on the floor of the Senate—and its allies to undermine the Government's ability to serve the public interest.

First, there was a stream of actual or proposed rollbacks of regulations designed to protect the health and well-being of the people of this country—arsenic in drinking water, global warming emissions, ergonomics—or repetitive stress injuries in the workplace, drilling in the wilderness, energy efficiency standards—it goes on and on.

Then there was the tax cut, making it absolutely impossible for us to protect Social Security and Medicare, or to do near what we should do for children or for the elderly, for the poor or for the vulnerable, for an adequate education or for affordable prescription drugs—no way—in other words, to fund Government, to do what Government is supposed to do, which is to protect the interests of those who cannot protect themselves.

And then, finally, the administration seeks to place in key gatekeeper positions individuals whose entire professional careers have been in opposition to the missions of the agencies they are now being nominated to advance.

I am troubled by this. I think people in the country would be troubled by this if they really understood John Graham's background and the power of his position and, unfortunately, the capacity not to do well for the public interest. This is unacceptable. This is a concerted, comprehensive effort to undermine our Government's ability to protect and represent the interests of those who don't have all the power, who don't have all the capital.

The goal is clear: Roll back the regulations that they can. That is what this administration is about: Defund government programs and place in pivotal positions those with the will and the determination to block new regulations from going forward—new regulations that will protect people in the workplace, new regulations that will protect our environment, new regulations that will protect our children from arsenic in the drinking water, new regulations that will protect the lakes and the rivers and the streams, new regulations that will make sure the food is safe for our children. This is not acceptable. We should say no. That is why I urge my colleagues to join me in defeating this nomination.

I include as part of my statement a letter in opposition from former Secretary of Labor Reich and other former agency heads.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MAY 17, 2001.

Re John D. Graham nomination.

Hon. FRED THOMPSON,
Chairman, Senate Governmental Affairs Committee,
Washington, DC.

Hon. JOSEPH I. LIEBERMAN,
Ranking Democrat, Senate Governmental Affairs Committee,
Washington, DC.

DEAR SENATORS: We write as former federal regulators in response to the nomination of John D. Graham, Ph.D., to direct the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB). As OIRA Administrator, Dr. Graham would oversee the development of all federal regulations and he would help shape federal regulatory policy. His decisions will have profound effects on the health, welfare, and environmental quality of all Americans. We are concerned by many of Dr. Graham's expressed views and past actions as Director of the Harvard Center for Risk Analysis, and encourage the committee to conduct a thorough investigation into Dr. Graham's suitability for this position.

Since the early 1980s, both Republican and Democratic Presidents have issued Executive Orders granting the OIRA Administrator exceptionally broad authority to approve, disapprove, and review all significant executive agency regulations. In addition, under the Paperwork Reduction Act, the OIRA Administrator has the responsibility to approve and disapprove agency information collection requests, which agencies need to evaluate emerging public health and environmental threats. These powers give the OIRA Administrator a considerable role in determining how important statutes are implemented and enforced.

In his written work and testimony before Congress, Dr. Graham has repeatedly argued for an increased reliance on cost-benefit and cost-effectiveness analysis in the regulatory process. We agree that economic analysis generally plays an important role in policy making. But increasing the role that economic analysis plays in rulemaking threatens to crowd out considerations of equal or perhaps greater importance that are harder to quantify and to put in terms of dollars—for example, what is the dollar value of making public spaces accessible so a paraplegic can participate fully in community activities? How should we quantify the worth of protecting private medical information from commercial disclosure? Why is the value of preventing a child from developing a future cancer worth only a small fraction of the value of preventing her from dying in an auto accident? How do you quantify the real value of a healthy ecosystem?

In addition, we are concerned that Dr. Graham may have strong views that would affect his impartiality in reviewing regulations under a number of statues. He has claimed that many health and safety statutes are irrational because they do not allow the agencies to choose the regulatory option that maximizes economic efficiency where doing so would diminish public protections. He has repeatedly argued, in his written work and testimony before Congress, that requirements to take the results of cost-benefit and cost-effectiveness analyses into account could supercede congressional mandates that do not permit their use, such as some provisions of the Clean Air Act. [John D. Graham, ''Legislative Approaches to Achieving More Protection Against Risk at Less Cost,'' 1997 Univ. of Chi. Legal Forum 13, 49.] It is important to assure that he can in good conscience carry out the will of Congress even where he has strong personal disagreements with the law.

We are also concerned about Dr. Graham's independence from the regulated community. At the Harvard Center for Risk analysis, Dr. Grahams' major source of funding has been from unrestricted contributions and endowments of more than 100 industry companies and trade groups, many of which have staunchly opposed the promulgation and enforcement of health, safety and environmental safeguards. At HCRA, Dr. Graham's research and public positions against regulation have often been closely aligned with HCRA's corporate contributors. In coming years these same regulated industries will be the subject of federal regulatory initiatives that would be intensively reviewed by Dr. Graham and OIRA. It is thus fair to question whether Dr. Graham would be even-handed in carrying out his duties, including helping enforce the laws he has criticized. Might he favor corporations or industry groups who were more generous to his Center? Will he have arrangements to return to Harvard? Is there an expectation of further endowments from regulated industries? There is the potential for so many real or perceived conflicts of interest, that this could impair his ability to do the job.

We urge the Government Affairs Committee to conduct a thorough inquiry into each of these areas of concern. We believe that the health, safety and quality of life of millions of Americans deserves such an appropriate response. Thank you for your consideration.

Sincerely,

Robert B. Reich, Former Secretary of Labor; Ray Marshall, Former Secretary of Labor; Edward Montgomery, Former Deputy Secretary of Labor; Charles N. Jeffress, Former Assistant Secretary of Labor for Occupational Safety & Health; Eula Bingham, Former Assistant Secretary of Labor for Occupational Safety & Health; Davitt McAteer, Former Assistant Secretary for Labor for Mine Safety and Health.

Lynn Goldman, Former Assistant Administration for Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency; J. Charles Fox, Former Assistant Administrator for Water, Environmental Protection Agency; David Hawkins, Former Administrator, for Air Noise and Radiation, Environmental Protection Agency; Joan Claybrook, Former National Highway Traffic Safety Administration; Anthony Robbins, Former Director, National Institute for Occupational Safety and Health.

Mr. WELLSTONE. There are any number of former Federal regulators who have signed on, along with former Secretary Reich. One paragraph:

In his written work and testimony before Congress, Dr. Graham has repeatedly argued for an increased reliance on cost-benefit and cost effectiveness analysis in the regulatory process. We agree that economic analysis plays an important role in policy making. But increasing the role that economic analysis plays in rulemaking threatens to crowd out considerations of equal or perhaps greater importance that are harder to quantify and to put in terms of dollars—for example, what is the dollar value of making public spaces accessible so a paraplegic participate fully in community values? How should we quantify the worth of protecting private medical information from commercial disclosure? Why is the value of preventing a child from developing a future cancer worth only a small fraction of the value of preventing her from dying in an auto accident? How do you quantify the real value of a healthy ecosystem?

That is what is at issue here. Did you notice the other day the report about how children are doing better but not with asthma? Where is the protection going to be for these children? In this cost-benefit analysis, the thing that is never looked at is the cost to the workers who suffer the physical pain in the workplace. What about the cost of a worker who has to quit working and can't support his family because he has lost his hearing or because of a disabling injury in the workplace? What about people who have years off their life and end up dying early from cancer when they shouldn't have, but they were working with these carcinogenic substances? What about the cost to children who are still exposed to lead paint who can't learn, can't do as well in school? What about the cost to all of God's children when we don't leave this Earth better than the way we found it? We are all but strangers and guests in this land. What about the cost of values when we are not willing to protect the environment, we are not willing to be there for our children?

I believe Senators should vote no. Frankly, the more people in the country who find out about this agenda of this administration, they are going to find it to be extreme and harsh and not in the national interest and not in their interest and not in their children's interest. This nomination is a perfect example of that.

I urge my colleagues to vote no and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THOMPSON. Mr. President, I yield 5 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The assistant Republican leader.

Mr. NICKLES. Mr. President, I thank my friend and colleague Senator THOMPSON for yielding to me. I will be brief.

I have heard our colleagues. I heard part of Senator Wellstone's statement. He said he thought Mr. Graham would be extreme, out of the mainstream, as far as regulating a lot of our industries. I totally disagree.

I am looking at some of the people who are stating their strong support for Dr. John Graham. I will just mention a couple, and I will include for the RECORD a couple of their statements. One is former EPA Administrator William Reilly. No one would ever call him extreme. He said that John Graham has ''impressed me with his rigor, fairmindedness and integrity.'' Dr. Lewis Sullivan, former Secretary of Health and Human Services, said ''Dr.

Graham is superbly qualified to be the OIRA administrator.''

Former administrators from both Democrat and Republican administrations conveyed their confidence that John Graham ''is not an 'opponent' of all regulation but rather is deeply committed to seeing that regulation serves broad public purposes as effectively as possible.''

I looked at this letter. It is signed by Jim Miller and Chris DeMuth, Wendy Gramm, all Republicans, but also by Sally Katzen, who a lot us got to know quite well during a couple of regulatory battles, and John Spotila, both of whom were administrators during President Clinton's reign as President. They served in that capacity. They said he is superbly qualified.

Dr. Robert Leiken, a respected expert on regulatory affairs at the Brookings Institution said that Dr. Graham is ''the most qualified person ever nominated for the job.'' That is a lot when you consider people such as Chris DeMuth and Wendy Gramm, Sally Katzen and others, all very well respected, both Democrats and Republicans. If you had statements by people who have served in the job, both Democrats and Republicans, when you have people who have been former heads of EPA—incidentally, when we passed the clean air bill, I might mention, Administrator Reilly—when they are strongly in support of him, they say he is maybe the most qualified person ever, that speaks very highly of Dr. Graham.

If I believed all of the statements or thought that the statements were accurate that claim he would be bad for the environment, and so on, I would vote with my colleagues from Illinois and Minnesota. I don't happen to agree with that. It just so happens that several former Administrators don't agree with it either.

Dr. Graham is supported by many people who are well respected. He is more than qualified. I believe he will do an outstanding job as OIRA Administrator.

I urge our colleagues, both Democrats and Republicans, to give him an overwhelming vote of support.

I thank my colleagues, Senator THOMPSON and Senator LEVIN, for allowing me to speak.

I ask unanimous consent to print in the RECORD the letters I referenced.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

APRIL 27, 2001.

Hon. FRED THOMPSON,
Chairman.
Hon. JOSEPH I. LIEBERMAN,
Ranking Minority Member, Committee on Governmental Affairs,
Senate Dirksen Office Building, Washington, DC.

DEAR SENATORS THOMPSON AND LIEBERMAN: I am writing to support the nomination of John Graham to head OMB's Office of Information and Regulatory Affairs.

Throughout a distinguished academic career, John has been a consistent champion for a risk-based approach to health, safety and environmental policy. He is smart, he has depth, and he is rigorous in his thinking. I think that he would bring these qualities to the OIRA position and would help assure that the rules implementing our nation's health and environmental laws are as effective and as efficient as they can be in achieving their objectives.

There is a difference between Graham's work at Harvard's Center on Risk Analysis and the responsibilities which he would exercise at OIRA/OMB, and I think he understands that. At Harvard, he has concentrated on research about the elements of risk and their implications for policymakers, as well as on communicating the findings. At OMB, the charge would be quite different, involving the implementation of laws enacted by Congress, working with the relevant federal agencies—in short, taking more than cost-effectiveness into account.

I have no doubt that you and your colleagues on the Committee will put tough questions to him during his confirmation hearing and set forth your expectations for the position and his tenure should he be confirmed by the Senate. And I expect he will give the reassurances you require, of impartial and constructive administration of OIRA, and of avoiding the stalemates that have characterized OIRA–EPA relations, for example, in years past. The position at OIRA is fraught with potential for conflict and obstruction, but the advent of a thoroughgoing professional who has committed his career to the analysis and exposition of risk should be seen as positive. In sum, my interactions over the years with John Graham have impressed me with his rigor, fairmindedness and integrity.

With every good wish,
Sincerely yours,

WILLIAM K. REILLY.

MAY 3, 2001.

Hon. FRED THOMPSON,
Chairman.
Hon. JOE LIEBERMAN,
Ranking Democrat, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR LIEBERMAN: The undersigned are former administrators of the Office of Information and Regulatory Affairs (OIRA), which was established within the Office of Management and Budget by the Paperwork Reduction Act of 1980. We are writing to urge prompt and fairminded Senate review of Professor John D. Graham's nomination to be OIRA Administrator.

The ''R'' in OIRA involves the regulatory aspects of the Office. These are in an important part of the OIRA Administrator's overall responsibilities. The five of us—like the Presidents we worked for—have differing views of the appropriate role of government regulation in the economy and society. All of us, however, came to appreciate three essential features of regulatory policy during our tours at OIRA.

First, regulation has come to be a highly important component of federal policy-making, with significant consequences for public welfare. Second, the importance of regulatory policy means that individual rules should be subject to solid, objective evaluation before they are issued. Third, the regulatory process should be open and transparent, with an opportunity for public involvement, and final decisions should be clearly and honestly explained. In our view, objective evaluation of regulatory costs and benefits, and open and responsive regulatory procedures, serve the same purpose: to avert policy mistakes and undue influence of narrow interest groups, and to ensure that federal rules provide the greatest benefits to the widest public.

We believe that John Graham understands and subscribes to these principles. His professional field, risk assessment, lies at the heart of many of the most important health, safety, and environmental rules. Despite some of the criticisms of Professor Graham's work that have appeared since his nomination was announced, we are confident that he is not an ''opponent'' of all regulation but rather is deeply committed to seeing that regulation serves broad public purposes as effectively as possible.

The Senate's role in the appointment process is a critical one, and Professor Graham's nomination merits careful scrutiny and deliberation in the same manner as other senior Executive Branch appointments. At the same time, the President is entitled to the services of qualified appointees as soon as possible—and this is a particularly important factor today, when many regulatory issues of great public importance and heated debate are awaiting decision by the President's political officials. We therefore urge prompt and fair-minded Senate review of Professor Graham's nomination.

Respectfully,

JAMES C. MILLER III.
CHRISTOPHER DEMUTH.
WENDY L. GRAMM.
SALLY KATZEN.
JOHN SPOTILA.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I yield time to the Senator from Michigan. I ask how much time he would require?

Mr. LEVIN. Perhaps 15 minutes.

Mr. THOMPSON. I yield 15 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, at the heart of this debate on the nomination of John Graham to be Administrator of the Office of Information and Regulatory Affairs is the issue of cost-benefit analysis and risk assessment in agency rule making. Some of the groups opposed to this nomination, I believe, are concerned that Dr. Graham will live up to his promise and actually require agencies to do competent and comprehensive cost-benefit analyses and risk assessments of proposed rules. I hope he will. The goal of competent cost-benefit analysis and risk assessment is to ensure that the public will be able to get the biggest bang for its buck when it comes to federal regulation and that the requirements agencies impose to protect the environment and public health and safety will do more to help than to hurt. That is what we should all want.

I have been at odds over the past 20 years with some of my closest friends in the environmental, labor, and consumer movements over this notion of cost-benefit analysis. I have supported legislation to require cost-benefit analysis by agencies when issuing regulations since I first came to the Senate because, while I believe Government can make a positive difference in people's lives, I also know that Government can waste money on a good cause.

When we waste money on lesser needs, when we waste our resources on

things where the benefits do not justify the costs, it seems to me that we, at a minimum, have an obligation to tell the public why we are regulating them. If we don't do that, if we do not take the time to analyze benefits, analyze costs, and explain why, if benefits don't justify the costs, we are regulating, then we jeopardize public support for the very causes that so many of us came here to fight for—the environment, health, and safety, including workplace safety.

I came out of local government. I fought hard for housing programs, programs to clean up the environment, neighborhood protection programs, public safety programs. I spent a good part of my life in local government fighting for those programs. Too often, I found my Federal Government wasting resources and failing to achieve the very ends which those programs were supposed to achieve. Too often. When that happens, we jeopardize public support for the very programs of which we profess to be so supportive. When we waste dollars—in whatever the program is—on things which cannot be justified, as when we spend thousands of dollars with OSHA regulations, as we used to do before some of us got involved in getting rid of hundreds of OSHA regulations that made no sense, when we spent money telling people in OSHA regulations that when climbing a ladder you had to face forward, that doesn't protect public health. It doesn't protect workplace safety; it wastes resources on things that are useless, and it brings disrepute to the regulatory process—a process I believe in. I don't make any bones about that. I believe in regulation.

We need regulation to protect people against abuse, to protect their health and safety. But we don't do that if we waste money and if we are not willing to at least ask ourselves: What are the benefits of a proposed regulation? What are the costs of a proposed regulation? Do the benefits justify the costs? And if they don't, why are we regulating then?

I have fought on this floor against regulatory reform measures which I thought went too far. I have filibustered against regulatory reform measures on this floor which I thought went too far, and which, in fact, would have required that agencies do some things which I thought they should not have to do. For instance, we had a regulatory reform bill here which said, even though the law said you could not consider the cost, you would have to do it anyway. No, I don't buy that. If the law says you may not consider cost, that is the law of the land and that must be enforced, and no regulatory reform bill should override that legislative intent.

By the way, I have also opposed measures which said you have to quantify benefits. As my good friend from Minnesota points out, there are hundreds of benefits which cannot be quantified, at least in terms of dollars. You cannot say what the value of a life is. We don't know the value of a life. We don't know the value of a beautiful, unrestricted view in a national park. We don't know the value, in dollars, of a child who is disabled being able to get to a higher floor because of the Americans with Disabilities Act. We cannot put a dollar value on those benefits. And we should not. But we should weigh the benefit of that and ask ourselves whether or not, with the same resources, we can get more kids a better education, or more kids to a higher floor in a building—not to quantify in dollars those benefits, but to know what those benefits are.

If we spend a billion dollars to save a life, if that is my loved one's life, it is worth it. But if we can spend that same billion dollars and save a thousand lives, or 10,000 lives, do we not want to know that before we spend a billion dollars? Is that not worth knowing? Are we afraid of knowing those facts? Not me. I am not afraid of knowing those facts. I think we want to know those facts.

We should want to know the costs and benefits of what we propose to do. The people who should want to know them the most are the people who believe in regulation as making a difference, because if the same amount of resources can make a greater difference, people who believe in regulation should be the first ones to say let's do more with the same resources, let's not waste resources.

We know that effective regulatory programs provide important benefits to the public. We also know from recent studies that some of our regulations cost more than the benefits they provide, and that cost-benefit analysis when done effectively can result in rules that achieve greater benefits at less cost.

OMB stated in their analysis of costs and benefits of federal regulations in 1997, ''The only way we know to distinguish between the regulations that do good and those that cause harm is through careful assessment and evaluation of their benefits and costs.'' In a well-respected analysis of 12 major EPA rules and the impact of cost-benefit analysis on those rules, the author, Richard Morgenstern, former Associate Assistant Administrator of EPA and a visiting scholar at Resources for the Future, concluded that in each of the 12 rule makings, economic analysis helped reduce the costs of all the rules and at the same time helped increase the benefits of 5 of the rules. Report after report acknowledges the importance of good cost-benefit analysis and risk assessment for all agencies.

Yet some of the groups that support regulations to protect public health and safety appear to be threatened by cost-benefit analysis and risk assessment. They seem to fear it will be used as an excuse to ease up on otherwise tough standards. But I think to fear cost-benefit analysis and risk assessment is to fear the facts, and when it comes to these vitally important issues of the environment and public health and worker safety, we shouldn't be afraid of the facts. We shouldn't be afraid to know whether the approach an agency may want to take to solving an environmental or public health problem is not as effective as another approach and one that may even be less expensive.

Justice Stephen Breyer wrote about the value of cost-benefit analysis in his book called ''Breaking the Vicious Circle.'' He describes one example of the need for cost-benefit analysis in what he calls ''the problem of the last 10 percent.'' It was written by Justice Breyer when he served on the First Circuit Court of Appeals:

> He talks about a case ''. . . arising out of a ten-year effort to force cleanup of a toxic waste dump in southern New Hampshire. The site was mostly cleaned up. All but one of the private parties had settled. The remaining private party litigated the cost of cleaning up the last little bit, a cost of about $9.3 million to remove a small amount of highly diluted PCBs and ''volatile organic compounds'' . . . by incinerating the dirt. How much extra safety did this $9.3 million buy? The 40,000-page record of this ten-year effort indicated (and all the parties seemed to agree) that, without the extra expenditure, the waste dump was clean enough for children playing on the site to eat small amounts of dirt daily for 70 days each year without significant harm. Burning the soil would have made it clean enough for the children to eat small amounts daily for 245 days per year without significant harm. But there were no dirt-eating children playing in the area, for it was a swamp. Nor were dirt-eating children likely to appear there, for future building seemed unlikely. The parties also agreed that at least half of the volatile organic chemicals would likely evaporate by the year 2000. To spend $9.3 million to protect nonexistent dirt-eating children is what I mean by the problem of ''the last 10 percent.''

That was Justice Breyer speaking. As I have indicated, I have tried for the last 20 years just to get consideration of costs and benefits into the regulatory process. I have worked with Senator THOMPSON most recently, and I worked with Senators Glenn and Roth and GRASSLEY in previous Congresses. Each time we have tried, we have been defeated, I believe, by inaccurate characterizations of the consequences of the use of cost-benefit analysis and risk assessment.

That is what is happening, I believe, with Dr. Graham's nomination. Dr. Graham's nomination presents us with the question of the value of cost-benefit analysis and risk assessment in agency rule making once again. That's because Dr. Graham's career has been founded on these principles. He believes in them. So do I. And, Dr. Graham sees cost-benefit analysis not as the be-all and end-all in regulatory decisionmaking; rather, like many of us, he sees it as an important factor to consider. Dr. Graham supported the regulatory reform bill Senator THOMPSON and I sponsored in the last Congress—which was also supported by Vice President Gore—that would require an agency to perform a cost-benefit analysis and risk assessment and

state to the public whether the agency believes, based on that analysis, that the benefits of a proposed regulation justify the costs. If the agency believes they don't, then the agency would be required to tell the public why it has decided to regulate under those circumstances. It doesn't hold an agency to the outcome of a strict cost-benefit analysis. It doesn't diminish an agency's discretion in deciding whether or not to issue a regulation. It does mandate, though, that the agency conduct a comprehensive cost-benefit analysis and, where appropriate, risk assessment before it issues a proposed rule. I believe that is a reasonable, fair and appropriate standard to which to hold our federal agencies accountable. And of course our bill also required that in doing cost-benefit analysis agencies take into account both quantifiable and nonquantifiable benefits, a principle in which Dr. Graham firmly believes.

So how do Dr. Graham's opponents attack him? They attack him by saying his science has been influenced by the donors to his Center and that he supports industry in its opposition to environmental, health and safety regulation. And they attack him by taking many of his statements out of context to create what appears to be an extremist on the role of environmental and health regulation but which is really a fabricated character that doesn't reflect reality. I think Dr. Graham is a fair, thoughtful, and ethical person who believes in the value of cost-benefit analysis and risk assessment as tools we can and should use for achieving important public policy decisions. I believe Dr. Graham has also found it useful to be provocative when it comes to understanding risk, in an effort to shake us out of our customary thinking and see risks in a practical and real-life dimension.

Let me first discuss the allegation of bias with respect to funding sources. When various groups have questioned John Graham's independence, they have suggested that his science has been skewed by his corporate sponsorship. Frank Cross, Professor of Business and Law at the University of Texas, said "this criticism is unwarranted, unfair and inconsistent with the clear pattern and practice of most (if not all) similarly situated research centers." Yes, Dr. Graham's center received significant sums of money from corporate sponsors. But it also established a conflict of interest policy in line with Harvard University School of Public Health's conflict of interest policy, requiring peer review of research products disseminated publicly by the Center and a complete disclosure of all sponsors. The policy requires that any restricted grants received by the Center adhere to all applicable Harvard University rules including the freedom of the Center's researchers to design projects and publish results without prior restraint by sponsors. I asked Dr. Graham a number of questions on this subject during our committee hearing and found his answers to be forthright and satisfactory. Dr. Graham confirmed for the record that he has never delayed the release of the results of his studies at the request of a sponsor, never failed to publish a study at the request of a sponsor, and never altered a study at the request of a sponsor. Moreover, there are numerous studies where the conclusions Dr. Graham or the Center reached were contrary to the interests of the Center's sponsors.

The other line of attack against Dr. Graham is taking Dr. Graham's statements out of context, to unfairly paint him as an extremist, and I would like to go over just a few examples where this has happened.

Opponents say, "[John Graham] has said that dioxin is an anticarcinogen" and that he said that "reducing dioxin levels will do more harm than good."

Those are quotes. Standing alone, that sounds pretty shocking, but let's look at what John Graham actually said. The issue came up while Dr. Graham was participating as a member of the EPA's Science Advisory Board, Dioxin Reassessment Review Subcommittee, when the subcommittee was reviewing EPA's report on dioxin. Here is what he said during one of the meetings:

> (T)he conclusion regarding anticarcinogenicity . . . [in the EPA report on dioxin] should be restated in a more objective manner, and here's my suggestive wording, "It is not clear whether further reductions in background body burdens of [dioxin] will cause a net reduction in cancer incidence, a net increase in cancer incidence, or have no net change in cancer incidence." And I think there would be also merit in stating not only that [dioxin] is a carcinogen—

That is John Graham speaking—

> And I think there would be also merit in stating not only is dioxin a carcinogen, but also I would put it in a category of a likely anticarcinogen using the draft guidelines in similar kinds of criteria that you have used as classifying it as a carcinogen.

He said this at another point in the meeting: "I'd like to frame it"— referring to a subcommittee member's comment—"in a somewhat more provocative manner in order to stimulate some dialogue."

He discusses two studies that look at different levels of dioxin and identified some anticarcinogenic effects. Dr. Graham said the following:

> If, as body burdens of dioxin decline the adverse effects disappear more rapidly than the adaptive or beneficial effects, and this is as suggested by certain experimental data both the Pitot study I mentioned and the Kociba study. As the dose comes down, the adverse effects go away faster than the anticarcinogenic effects. Then it's possible that measures to reduce current average body burdens of dioxin further could actually do more harm for public health than good.

"Possible," "if," as two studies suggest. I want to repeat that. "If" something occurs, as two studies—not his—two studies "suggest," then it is "possible" that at low levels there are anticarcinogenic effects. That is what he said in the meeting.

Then he went on to say the following:

> The alternative possibility which EPA emphasizes is that the adverse effects outweigh these beneficial or adaptive effects. And I think that they're clearly right at the high doses. For example, total tumor counts are up so even if there's some anticarcinogenicity in there, the overall tumor effects are adverse. The question is, what happens when the doses come down.

Mr. President, I ask for 7 additional minutes. I do not know what time agreement we are under. What is the time agreement? What are the constraints?

The PRESIDING OFFICER. The Senator from Tennessee controls 3 hours, of which there are 150 minutes remaining.

Mr. THOMPSON. I yield an additional 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I thank my friend from Tennessee.

Mr. President, Dr. Graham has consistently said, as he stated in the above quotations, dioxin is a known carcinogen. What he went on to suggest as an EPA subcommittee member is that there be an additional comment, supported by two studies, that very low levels of dioxin may reduce the risk of cancer, calling for full disclosure about two studies. It turns out, Mr. President, that in the final report of that EPA subcommittee, his suggestions were adopted.

The final report—not his, but the EPA subcommittee—says:

> There is some evidence that very low doses of dioxin may result in decreases in some adverse responses, including cancer . . .

That may sound absurd to us, but we are not experts—at least I am not an expert—and it seems to me that where you have somebody of this reputation who, as part of an EPA subcommittee, points to two studies which he says suggests that it is possible that at low levels dioxin could actually be an anticarcinogen, and then the EPA subcommittee actually adopts that suggestion, for that to be characterized that he thinks dioxin is good, or something similar to that, is a serious mischaracterization of what happened.

I am not in a position to defend the dioxin studies, nor am I arguing the substance of their outcome. I am pointing out, however, that Dr. Graham, when he discussed this point, wasn't making it up; he was bringing two scientific studies to the attention of the EPA subcommittee, and in the final review report by the EPA Science Advisory Panel, Dr. Graham's suggestion and the two studies to which he refers are mentioned.

Who would have thought in the year 2000 that cancer victims would be taking thalidomide and actually seeing positive results. That is counterintuitive to me. I was raised believing thalidomide to be the worst, deadly substance just about known. The idea that last year people would be taking thalidomide as an anticarcinogen is surely

counterintuitive to me, but we must not be afraid of knowing cost-benefits. It must not strike fear in our hearts, those of us who believe that regulation can make such a positive difference in the lives of people.

We should not be terrorized by labels, by characterizations which are not accurate. We should, indeed, I believe more than anybody, say: We want to know costs and benefits. We do not want to quantify the value of a human life. That is not what this is about. We should not quantify in dollars the value of a human life. It is invaluable—every life.

There is no dollar value that I can put on any life or on limb or on safety or on access. But we should know what is produced by a regulation and what is the cost of that regulation and what resources we are using that might be better used somewhere else to get greater benefits and still then make a judgment—not be prohibited from regulating, but at least know cost-benefit before we go on.

Lets look at another issue where John Graham has been quoted out of context by his critics. Critics say that Dr. Graham has said that the risk from pesticides on food is ''trivial.'' In January 1995, Dr. Graham participated in a National Public Radio broadcast discussing upcoming congressional hearings on regulatory reform. At the time, he was attempting to bring to light the importance of risk-based priorities, the importance of identifying and understanding the most serious risks vis a vis less significant risks. In putting this comment in the right context, lets look at what he actually said:

> It [the federal government] suffers from a syndrome of being paranoid and neglectful at the same time. We waste our time on trivial risks like the amount of pesticides residues on foods in the grocery store at the same time that we ignore major killers such as the violence in our homes and communities.

It was a provocative statement, and Dr. Graham did refer to pesticide residues as ''trivial,'' but it was done in the context of a larger discussion of overall risks. Dr. Graham was making a statement to make people think about risk-based priorities. Dr. Graham has consistently stated that since we have limited funds, there should be ''explicit risk-based priority setting'' of regulations. In other words, we have to make smart choices and strongly supported decisions and we need full disclosure of the differing risks to do this.

Dr. Graham's statements from an op-ed that he wrote for the Wall Street Journal on the merits of conducting cost-benefit analysis have also been mischaracterized. Critics say that John Graham has said that banning pesticides that cause small numbers of cancers is ''nutty.'' In the op-ed, Dr. Graham was opining on the adequacy of EPA's risk assessments supporting proposals to ban certain pesticides. Dr. Graham points out that the EPA did not look at all the costs and benefits associated with banning or not banning certain pesticides. He wrote:

> Pesticides are one example of the problem at EPA. EPA chief Carol Browner has proposed banning any pesticide that poses a theoretical lifetime cancer risk to food consumers in excess of one in a million, without regard to how much pesticides reduce the cost of producing and consuming food. (The best estimates are that banning all pesticides that cause cancer in animals would raise the price of fruits and vegetables by as much as 50%). This is nutty. A baby's lifetime risk of being killed on the ground by a crashing airplane is about four in a million. No one has suggested that airplanes should be banned without regard to their benefits to consumers.

Dr. Graham was making the point that we do not live in a risk-free world and that some risks are so small that while they sound bad, relatively speaking, they are minor compared to other risks we live with every day. Dr. Graham believes we should consider all the facts, that we should disclose all the costs and benefits associated with proposed regulations so we make smart common sense decisions.

Dr. Graham writes in the same article that ''One of the best cost-benefit studies ever published was an EPA analysis showing that several dollars in benefits result from every dollar spent de-leading gasoline.'' His critics don't quote that part.

Continuing with the pesticides issue, critics say that Dr. Graham has said that ''banning DDT might have been a mistake.'' This is not what Dr. Graham said. He actually said:

> Regulators need to have the flexibility to consider risks to both consumers and workers, since new pesticide products that protect consumers may harm workers and vice versa. For example, we do not want to become so preoccupied with reducing the levels of pesticide residues in food that we encourage the development and use of products that pose greater dangers to farmers and applicators. As an example, consider the pesticide DDT, which was banned many years ago because of its toxicity to birds and fish. The substitutes to DDT particularly organophosphate products, are less persistent in food and in the ecosystem but have proven to be more toxic to farmers. When these substitutes were introduced, a number of unsuspecting farmers were poisoned by the more acutely toxic substitutes for DDT.

These statements were part of Dr. Graham's testimony for a joint hearing on legislative issues pertaining to pesticides before the Senate Committee on Labor and Human Resources and the House Subcommittee on Health and Environment in September 1993. Dr. Graham was addressing his concerns on the lack of disclosure and review of the costs and benefits associated with the proposal of certain pesticides regulations. To properly show where Dr. Graham is on the pesticide issue, let me quote Dr. Graham's summary comments on risk analysis he made at that hearing. Dr. Graham testified:

> Pesticides products with significant risks and negligible benefits should be banned. Products with significant benefits and negligible risks should be approved. We should not give much attention to products whose risks and benefits are both negligible. When the risks and benefits are both significant, the regulator faces a difficult value judgement. Before approving use of a pesticide, the regulator should certainly assure himself or herself that promising alternatives of the pesticide are not available. If they are not, a conditional registration may be the best course of action—assuming that the benefits to the consumer are significant and the health risks are acceptable (even if non-negligible). There is nothing unjust or unethical about a society of consumers who subject themselves to some degree of involuntary risk from pesticide use in exchange for consumer benefits. If possible, its preferable to let each consumer make this judgement. But our society certainly accepts a considerable amount of (irreducible) involuntary risk from automobiles and electric power production in exchange for the substantial benefits these technologies offer the consumer.

In other words, Dr. Graham is saying that risks need to be disclosed and weighted based on the level of risk to make a fair decision. We need to have full disclosure and consideration of all the costs and benefits to make smart common sense decisions. In that same testimony, Dr. Graham also said:

> Each year thousands of poisonings occur to pesticide users, often due to application and harvesting practices that violate safety precautions. Recent studies suggest that the rates of some types of cancer among farmers may be associated with the frequency of herbicide use. It is not yet known whether or not these associations reflect a cause-and-effect relationship. Congress should examine whether EPA's recent occupational health rule is adequate to protect the health of farmworkers and applicators.

But his opponents don't mention those statements.

Dr. Graham was criticized in a recent op-ed for saying that our nation is overreacting ''in an emotional gush'' to school shootings at places such as Columbine High School. But the Sunday New York Times article in which those words are quoted, has a completely different context. It is an article about real dangers for teenagers, and whether schools are now dangerous places to be. The article notes that while homicide is the second leading cause of death among youngsters, according to the Centers for Disease Control and Prevention, ''fewer than 1 percent of the child homicides occur in or around schools.'' The article quotes Dr. Jim Mercy, associate director for science in the division of violence prevention at the Centers for Disease Control and Prevention, as saying, ''The reality is that schools are very safe environments for our kids.'' Later on in the article the other risks to adolescents are discussed and that's where Dr. Graham comes in. The article says:

> When public health experts look at risks to young people, homicides, which account for 14 percent of all deaths among children, come in second. The biggest threat is accidents, primarily car crashes, which are responsible for 42 percent of childhood deaths. Dr. Graham of Harvard says there is a danger to the ''emotional gush'' over Littleton: ''It diverts energies from the big risks that adolescents face, which are binge drinking, traffic crashes, unprotected sex''.

The last mischaracterization I would like to discuss relates to Dr. Graham's

work on cell phones. Dr. Graham's critics say that he has said that ''there is no need to regulate the use of cell phones while driving, even though this causes a thousand additional deaths on the road each year.'' The Executive Summary of the Harvard Center for Risk Analysis (HCRA) report, entitled, ''Cellular Phone Use While Driving: Risks and Benefits'' states that there is a risk of using a cell phone while driving, although the level of that risk is uncertain. It states:

The weight of scientific evidence to date suggests that use of a cellular phone while driving does create safety risks for the driver and his/her passengers as well as other road users. The magnitude of these risks is uncertain but appears to be relatively low in probability compared to other risks in daily life.

Look at the stated objective of the cell phone study. The report states, ''The information in this report does not provide a definite resolution of the risk-benefit issue concerning use of cellular phones while driving. The objective of the report is to stimulate greater scientific and public policy discussion of this issue.'' Dr. Graham states up-front that the study is promoting further discussion and research on the issue of cell phone use. The report also does not completely rule out the need for regulation; it states that further study is necessary. The Executive Summary states:

Cellular phone use while driving should be a concern of motorists and policymakers. We conclude that although there is evidence that using a cellular phone while driving poses risks to both the drivers and others, it may be premature to enact substantial restrictions at this time. Indecision about whether cellular phone use while driving should be regulated is reasonable due to the limited knowledge of the relative magnitude of risks and benefits. In light of this uncertainty, government and industry should endeavor to improve the database for the purpose of informing future decisions of motorists and policymakers. In the interim, industry and government should encourage, through vigorous public education programs, more selective and prudent use of cellular phones while driving in order to enhance transport safety.

Here, as is in the other examples, Dr. Graham is recommending that all data be considered so we can make a smart, common sense decision on any proposed regulation. There is no doubt that as a college professor, Dr. Graham has made some provocative statements on different issues. And I don't agree with all of the statements or considerations he has made, but, I do believe, these statements are within the context of reasonable consideration of the risks and that he has made these statements to promote free thinking to generate thoughts and ideas so we can make the best decisions.

Mr. President, I don't take any pleasure today in opposing some of my good friends and colleagues on a matter about which they appear to care so much. They have characterized the nomination of John Graham as a threat to our progress in protecting the environment, consumer safety and the safety of the workplace. If I believed that, I would vote ''no'' in an instant. But, contrary to what has been said by his opponents, I find John Graham to be a balanced and thoughtful person. So do other individuals in the regulatory field whom I respect. Dr. Graham has received letters of support from, among others, former EPA Administrator and now head of the Wilderness Society, William Reilly; five former OIRA Administrators from both Republican and Democratic Administrations; 95 academic colleagues; Harvey Fineberg, the Provost of Harvard College, numerous Harvard University professors, and Cass Sunstein, University of Chicago Law Professor. Professor Sunstein has written a particularly compelling letter of support which I would like to read.

Dr. Graham has supported common sense, well-analyzed regulations because they use resources wisely against the greatest risks we face. That is the best way to assure public support for health and safety regulatory programs. I think Dr. Graham will serve the public well as Administrator of OIRA, and I look forward to working with him on these challenging issues.

Mr. President, I ask unanimous consent to print in the RECORD the letter from Professor Sunstein.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, IL, March 28, 2001.

Senator JOSEPH LIEBERMAN,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing to express the strongest possible support for John Graham's nomination to be head of the Office of Information and Regulatory Affairs. This is an exceptional appointment of a truly excellent and nonideological person.

I've known John Graham for many years. He's a true believer in regulatory reform, not as an ideologue but as a charter member of the ''good government'' school. In many ways his views remind me of those of Supreme Court Justice, and Democrat, Stephen Breyer (in fact Breyer thanks John in his most recent book on regulation). Unlike some people, John is hardly opposed to government regulation as such. In a number of areas, he has urged much more government regulation. In the context of automobile safety, for example, John has been one of the major voices in favor of greater steps to protect drivers and passengers.

A good way to understand what John is all about is to look at his superb and important book (coauthored with Jonathan Wiener), Risk vs. Risk (Harvard University Press). A glance at his introduction (see especially pp. 8–9) will suffice to show that John is anything but an ideologue. On the contrary, he is a firm believer in a governmental role. The point of this book is to explore how regulation of some risks can actually increase other risks—and to ensure that government is aware of this point when it is trying to protect people. For example, estrogen therapy during menopause can reduce some risks, but increase others at the same time. What John seeks to do is to ensure that regulation does not inadvertently create more problems than it solves. John's concern about the possible problems with CAFE standards for cars—standards that might well lead to smaller, and less safe, motor vehicles—should be understood in this light. Whenever government is regulating, it should be alert to the problem of unintended, and harmful, side effects. John has been a true pioneer in drawing attention to this problem.

John has been criticized, in some quarters, for pointing out that we spend more money on some risks than on others, and for seeking better priority-setting. These criticisms are misplaced. One of the strongest points of the Clinton/Gore ''reinventing government'' initiative was to ensure better priority-setting, by focusing on results rather than red-tape. Like Justice Breyer, John has emphasized that we could save many more lives if we used our resources on big problems rather than little ones. This should not be a controversial position. And in emphasizing that environmental protection sometimes involves large expenditures for small gains, John is seeking to pave the way toward more sensible regulation, not to eliminate regulation altogether. In fact John is an advocate of environmental protection, not an opponent of it. When he criticizes some regulations, it is because they deliver too little and cost too much.

John has also been criticized, in some quarters, for his enthusiasm for cost-benefit analysis. John certainly does like cost-benefit analysis, just like President Clinton, whose major Executive Order on regulation requires cost-benefit balancing. But John isn't dogmatic here. He simply sees cost-benefit analysis as a pragmatic tool, designed to ensure that the American public has some kind of account of the actual consequences of regulation. If an expensive regulation is going to cost jobs, people should know about that—even if the regulation turns out to be worthwhile. John uses cost-benefit analysis as a method to promote better priority-setting and more ''bang for the buck''—not as a way to stop regulation when it really will do significant good.

I might add that I've worked with John in a number of settings, and I know that he is firmly committed to the law—and a person of high integrity. He understands that in many cases, the law forbids regulators from balancing costs against benefits, or from producing what he would see as a sensible system of priorities. As much as anyone I know, John would follow the law in such cases, not his own personal preferences.

A few words on context: I teach at the University of Chicago, in many ways the home to free market economics, and I know some people who really are opposed to regulatory programs as such. As academics, these people are excellent, but I disagree with them strongly, and I believe that the nation would have real reason for concern if one of them was nominated to head OIRA. John Graham is a very different sort. He cannot be pigeonholed as ''conservative'' or ''liberal''; on regulatory issues, he's unpredictable in the best sense. I wouldn't be at all surprised if, in some settings, he turned out to be a vigorous voice for aggressive government regulation. In fact that's exactly what I would expect. When he questions regulation, it is because he thinks we can use our resources in better ways; and on this issue, he stands as one of the most important researchers, and most promising public servants, in the nation.

From the standpoint of safety, health, and the environment, this is a terrific appointment, even an exciting one. I very much hope that he will be confirmed.

Sincerely,

CASS R. SUNSTEIN.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, we have speakers in support. I see my friend from Connecticut. In the interest of balance, if the Senator desires time, I yield. Not my time, of course.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from Tennessee for his graciousness and fairness. I yield myself up to 15 minutes from the time I have under the prevailing order.

Mr. President, the nomination of John Graham to administer the Office of Information and Regulatory Affairs, known as OIRA, is an important nomination, although the office is little known. I say that because the office, though little known, has a far reach throughout our Government. It particularly has a significant effect on a role of Government that is critically important and cherished by the public. That is the protective role. This responsibility, when applied to the environment or the health and safety of consumers and workers, is worth a vigorous defense. It is a role which the public wants and expects the Government to play. I fear it is a role from which the present administration seems to be pulling away. It is in that context I view this nomination.

With that in mind, I have weighed Dr. Graham's nomination carefully. I have reviewed his history and his extensive record of advocacy and published materials. I listened carefully to his testimony before the Governmental Affairs Committee. I did so, inclined, as I usually am, to give the benefit of the doubt to the President's nominees. In this case, my doubts remained so persistent and the nominee's record on issues that are at the heart of the purpose of the office for which he has been nominated are so troubling that I remain unconvinced that he will be able to appropriately fulfill the responsibilities for which he has been nominated. I fear in fact, he might—not with bad intentions but with good intentions, his own—contribute to the weakening of Government's protective role in matters of the environment, health, and safety. That is why I have decided to oppose Dr. Graham's nomination.

Let me speak first about the protective role of Government. Among the most essential duties that Government has is to shield our citizens from dangers from which they cannot protect themselves. We think of this most obviously in terms of our national security or of enforcement of the law at home against those who violate the law and commit crimes. But the protective function also includes protecting people from breathing polluted air, drinking toxic water, eating contaminated food, working under hazardous conditions, being exposed to unsafe consumer products, and falling prey to consumer fraud. That is not big government; that is responsible, protective government. It is one of the most broad and supportive roles that Government plays.

OIRA, this office which Dr. Graham has been nominated to direct, is the gatekeeper, if you will, of Government's protective role. OIRA reviews major rules proposed by agencies and assesses information on risk, cost, benefits, and alternatives before the regulations can go forward. Then if the Administrator of OIRA finds an agency's proposed rule unacceptable, they return the rule to the agency for further consideration. That is considerable power.

This nominee would continue the traditional role but charter a further, more ambitious role by declaring that he intends to involve himself more in the front end of the regulatory process, I assume. That is what he said before our committee. I assume by this he meant he will take part in setting priorities in working with agencies on regulations even before they have formalized and finalized their own ideas to protect the public.

So his views on regulation are critically important, even more important because of this stated desire he has to be involved in the front end of the process. It also means he could call upon the agencies to conduct time-consuming and resource-intensive research and analysis before they actually start developing protections needed under our environmental statutes.

Some others have referred to this as paralysis by analysis; in other words, paralyzing the intention, stifling the intention of various agencies of our Government to issue regulations which protect the environment, public health, safety, consumers, by demanding so much analysis that the regulations are ultimately delayed so long they are stifled.

OIRA, looking back, was implicated during earlier administrations in some abuses that both compromised the protective role of Government and undermined OIRA's own credibility. There was a history of OIRA reviewing regulations in secret, without disclosure of meetings or context with interested parties. Rules to protect health, safety, and the environment would languish at OIRA, literally, for years. I am not making that up. Regulations would be stymied literally for years with no explanation. Then OIRA would return them to the agencies with many required changes, essentially overruling the expert judgment of the agencies, which not only compromised the health and safety of the public which was unprotected by those regulations for all that time but also frustrated the will of Congress which enacted the laws that were being implemented by those regulations.

To be fair, of course, it is too soon to say whether similar problems will occur at OIRA during the Bush administration, and Dr. Graham himself expressed a desire to uphold the transparency of decisionmaking at OIRA. However, the potential for abuse remains. That is particularly so for delaying the process, with question after question, while the public remains unprotected.

Let me turn directly to Dr. Graham's record. In the hearing on his nomination, Dr. Graham acknowledged, for instance, his opposition to the assumptions underlying our landmark environmental laws —that every American has a ''right'' to drink safe water and breathe clean air. Indeed, Dr. Graham has devoted a good part of his career to arguing that those laws mis-allocate society's resources, suggesting we should focus more on cost-benefit principles, which take into consideration, I think, one view of the bottom line, but may sacrifice peoples' right to a clean and healthy environment and a fuller understanding of the bottom-line costs involved when people are left unprotected. Dr. Graham has written generally, for example, that the private sector should not be required to spend as much money as it does on programs to control toxic pollution, that he believes, on average, are less cost-effective than medical or injury-prevention efforts, where presumably more money should be spent. But why force us to make such a choice when both are necessary for the public interest?

Dr. Graham has said society's resources might be better spent on bicycle helmets or violence prevention programs than on reducing children's exposure to pesticide residues or on cutting back toxic pollution from oil refineries. This is the kind of result that his very theoretical and I would say, respectfully, impractical, cost-benefit analysis produces. Bicycle helmets save lives, and violence is bad for our society. But the problem is that Dr. Graham's provocative theorizing fails to answer the question of how to protect the health of, for instance, the family that lives next to the oil refinery or in the neighborhood. His rational priority setting may be so rational that it becomes, to those who don't make it past the cost-benefit analysis, cruel or inhumane, although I know that it is not his intention.

Dr. Graham sought to allay concerns by explaining that his provocative views were asserted as a university professor, and that in administering OIRA he would enforce environmental and other laws as written. I appreciate his assurances. But for me, his longstanding opinions and advocacy that matters of economy and efficiency supersede the environmental and public health rights of the citizenry still leave me unsettled and make him an unlikely nominee to lead OIRA.

Dr. Graham's writings and statements are controversial in their own right, but they are all the more so in light of the actions the Bush Administration has already taken with regard to protective regulations. It began with the so-called Card memo—written by the President's Chief of Staff, Andrew Card—which delayed a number of protective regulations issued by the Clinton administration. The Card memo was followed by a series of troubling

decisions—to reject the new standard for arsenic in drinking water; to propose lifting the rules protecting groundwater against the threat of toxic waste from ''hard-rock'' mining operations on public lands; to reconsider the rules safeguarding pristine areas of our national forests; and to weaken the energy-efficiency standard for central air conditioners.

So his views are disconcerting. In the context of this administration and the direction in which it has gone, they are absolutely alarming.

We have received statements from several respected organizations opposing this nomination. I do at this time want to read a partial list of those because they are impressive: the Wilderness Society, the League of Conservation Voters, the Sierra Club, the National Resources Defense Council, Public Citizen, National Environmental Trust, OMB Watch, AFL–CIO, American Federation of State, County and Municipal Employees, American Rivers, Center for Science and the Public Interest, Defenders of Wildlife, Earthjustice Legal Defense Fund, Friends of the Earth, Greenpeace, Mineral Policy Center, Physicians for Social Responsibility, Southern Utah Wilderness Alliance, the United Auto Workers, the United Food and Commercial Workers International Union, The United States Public Interest Research Group.

We have received, Members of this body, letters from many of these organizations and others urging us to oppose this nomination. We have also received letters against the nomination from over 30 department heads and faculty members at medical and public health schools across the United States, from numerous other scholars in the fields of law, economics, science, and business, and from former heads of Federal departments and agencies that have been referred to earlier in this debate.

I ask unanimous consent that these various letters of opposition to Dr. Graham's nomiantion be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OMB WATCH,
Washington, DC, June 8, 2001.

U.S. Senate,
Washington, DC.

DEAR SENATOR: 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 your 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 from 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 affecting 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 conducting 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 Governmental Affairs 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 promoted the view that cost-benefited 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 factor in rulemaking deliberations. For instance, Dr. Graham was recently 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 intent. 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 inspections. Accordingly, this nomination deserves very careful scrutiny and should be opposed.

Sincerely,

GARY D. BASS,
Executive Director.

Re: Oppose the nomination of Dr. John Graham to be OIRA administrator.

JULY 17, 2001.

U.S. Senate,
Washington, DC.

DEAR SENATOR, The League of Conservation Voters (LCV) is the political voice of the national environmental community. Each year, LCV publishes the National Environmental Scorecard, which details the voting records of Members of Congress on environmental legislation. The Scorecard is distributed to LCV members, concerned voters nationwide, and the press.

LCV opposes the nomination of Dr. John D. Graham to direct the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. The Administrator of OIRA plays an extremely powerful role in establishing regulatory safeguards for every agency of our government. This position requires a fair and even-handed judge of the implications of regulatory policies: John Graham's record makes him an unsuitable choice for this important position.

OIRA is the office in the Executive Office of the President through which major federal regulations and many other policies must pass for review before they become final. The office has great leeway in shaping proposals it reviews or holding them up indefinitely. One of the principal ways in which OIRA influences rulemakings is through its use of risk assessment and cost-benefit analysis. Graham has a perspective on the use of risk assessment and cost-benefit analysis that would greatly jeopardize the future of regulatory policies meant to protect average Americans. He advocates an analytical framework that systematically reinforces the worst tendencies of cost-benefit analysis to understate benefits and overstate costs. As head of OIRA, he would be in a position to impose this approach throughout the government.

Graham's approach has led him to challenge—either directly or through his support of others who use the approach—some of the most valuable environmental requirements that exist, including regulations implementing the Clean Air Act and the Food Quality Protection Act. He has used comparative risk assessments to rank different kinds of risk and to argue that society should not take actions to reduce environmental risks as long as there are other risks that can be reduced more cheaply. His approach makes no distinction between risks that are assumed voluntarily and those that are imposed involuntarily.

Graham's considerable financial support from industry raises serious questions about potential conflicts of interest and his ability to be truly objective. His close ties to regulated industry will potentially offer these entities an inside track and make it difficult for Dr. Graham to run OIRA free of conflicts of interests and with the public good in mind.

For these reasons, we strongly urge you to oppose the nomination of Dr. Graham to be the Administrator of OIRA. LCV's Political Advisory Committee will consider including votes on these issues in compiling LCV's 2001 Scorecard. If you need more information, please call Betsy Loyless in my office at 202/785–8683.

Sincerely,

DEB CALLAHAN,
President.

NATIONAL ENVIRONMENTAL TRUST,
Washington, DC, May 15, 2001.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LIEBERMAN: I am writing on behalf of the National Environmental Trust (NET) to urge your opposition to the nomination of John Graham to head OMB's Office of Information and Regulatory Affairs. As Ranking Member on the Senate Government Affairs Committee, Mr. Graham's scheduled to come before you at a confirmation hearing on May 16, 2001.

Mr. Graham's approach to regulation includes heavy reliance on business friendly ''risk analysis'' and ''cost-benefit analysis'' creating a higher barrier for agencies to overcome in order to issue a rule other than the one which is most ''cost effective''. Furthermore, Mr. Graham is hostile to the very idea of environmental regulation. In 1996, Graham told political strategists at the Heritage Foundation that ''environmental regulation should be depicted as an incredible intervention in the operation of society.'' He has also stated that support for the regulation of chemicals in our water supply shows the public's affliction with ''a syndrome of paranoia and neglect.'' (''Excessive Reports of Health Risks Examined,'' The Patriot Ledger, Nov. 28, 1996, at 12.)

We are also greatly concerned that Mr. Graham is being considered for this position given the Harvard Center for Risk Analysis' record of producing reports that strongly match the interests of those businesses and trade groups that fund them. For instance a 1999 Risk Analysis Center report found that banning older, highly toxic pesticides would lower agricultural yields and result in an increase in premature childhood deaths, because food production would be hampered. This widely criticized report was funded by the American Farm Bureau Federation, which opposes restrictions on pesticides.

In 1999, Mr. Graham supported the Regulatory Improvement Act of 1999 (S. 746). The late Senator John Chafee, then chairman of the Senate Environmental and Public Works Committee promised to vehemently oppose this bill due to its omnibus approach to ''regulatory reform''. Under S. 746, regulations would have been subject to just the type of cost-benefit analysis and risk assessments that Mr. Graham advocates, across the board, regardless of the intent of the proposed regulation. This bill was strongly opposed by environmental, consumer, and labor groups.

For these reasons and more, Mr. Graham's appointment to the Office of Information and Regulatory Affairs within OMB represents a serious threat to public health and environmental protections. Please oppose his nomination to head OIRA.

Sincerely,

PHILIP F. CLAPP,
President.

NATURAL RESOURCES DEFENSE COUNCIL,
Washington, DC, May 15, 2001.

Hon. FRED THOMPSON,
Chairman, Senate Governmental Affairs Committee,
Washington, DC.

Hon. JOSEPH LIEBERMAN,
Ranking Minority Member, Senate Governmental Affairs Committee, Washington, DC.

DEAR CHAIRMAN THOMPSON AND RANKING MINORITY MEMBER LIEBERMAN. I am writing on behalf of the over 400,000 members of the Natural Resources Defense Council to make clear our strong opposition to the nomination of Dr. John D. Graham to direct the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. We encourage you to very carefully consider his anti-regulatory record and controversial risk management methodology during your confirmation proceedings.

The Administrator of OIRA plays an extremely powerful role in establishing regulatory safeguards for every agency of our government. This position requires a fair and even-handed judge of the implications of regulatory policies. Upon close review, we believe that you will agree that John Graham's record makes him an unsuitable choice for this important position.

Dr. Graham possesses a decision-making framework that does not allow for policies that protect public health and the environment. He has consistently applied controversial methodology based on extreme and disputable assumptions without full consideration of benefits to public health and the environment. Graham's record puts him squarely in opposition to some of the most important environmental and health achievements of the last two decades. His record of discounting the risks of well-documented pollutants raises questions about his ability to objectively review all regulatory decisions from federal agencies.

Complicating matters further, John Graham and his colleagues at the Harvard Center for Risk Analysis have been handsomely rewarded by industry funders who oppose regulations protective of public health and the environment and have directly benefited from Dr. Graham's work. These relationships form a disturbing pattern that makes it very difficult to imagine how Dr. Graham could effectively run this office free of conflicts of interests and with the public view in mind.

Dr. Graham's inherently biased record clearly demonstrates that he is not an objective analyst of regulatory policies and would not be a proper choice for this position. We therefore strongly urge you to oppose the nomination of Dr. Graham to be the Administrator of OIRA.

Sincerely,

JOHN H. ADAMS,
President.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, May 17, 2001.

Hon. FRED THOMPSON,
Chairman, Senate Committee on Governmental Affairs, Dirksen Senate Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to convey the opposition of the AFL–CIO to the nomination of John D. Graham, Ph.D. to direct the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB).

As Administrator of OIRA, Dr. Graham would be the gatekeeper for all federal regulations. In our view, Dr. Graham, with his very strong anti-regulatory views, is simply the wrong choice to serve in this important policy making position.

For years as Director of the Harvard Center for Risk Analysis, Dr. Graham has repeatedly taken the position that cost and economic efficiency should be a more important, if not the determinative consideration, in settling standards and regulations. He has argued for the use of strict cost-benefit and cost-efficiency analysis, even though for many workplace safety and environmental regulations, such analyses are not appropriate or possible or are explicitly prohibited by the underlying statute. If Dr. Graham's views dictated public policy, workplace regulations on hazards like benzene and cotton dust would not have been issued because the benefits of these rules are hard to quantify and are diminished because they occur over many years. Similarly, regulations pertaining to rare catastrophic events such as chemical plant explosions or common sense requirements like these for lighted exit signs couldn't pass Dr. Graham's strict cost-benefit test.

In enacting the Occupational Safety and Health Act, the Clean Air Act and other safety and health and environmental laws, Congress made a clear policy choice that protection of health and the environment was to be the paramount consideration in setting regulations and standards. Dr. Graham's views and opinions are directly at odds with these policies.

We are also deeply concerned about Dr. Graham's close ties to the regulated community. The major source of Dr. Graham's funding at the Harvard Center for Risk Analysis has been from companies and trade associations who have vigorously opposed a wide range of health, safety and environmental protections. Much of Dr. Graham's work has been requested and then relied upon by those who seek to block necessary protections.

Given Dr. Graham's extreme views on regulatory policy and close alliance with the regulated communities, we are deeply concerned about his ability to provide for a fair review of regulations that are needed to protect workers and the public. If he is confirmed, we believe that the development of important safeguards to protect the health and safety of workers across the country would be impeded.

Therefore, the AFL–CIO urges you to oppose Dr. Graham's confirmation as Administrator of the Office of Information and Regulatory Affairs.

Sincerely,

WILLIAM SAMUEL,
Director, Department of Legislation.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO,
Washington, DC, June 7, 2001.

DEAR SENATOR: On behalf of the 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), I write to express our strong opposition to the nomination of John D. Graham, Ph.D. to serve as director of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB).

As gatekeeper for all federal regulations, the Administrator of OIRA has an enormous impact on the health and safety of workers and the public. Yet Dr. Graham's record as Director of the Harvard Center for Risk Analysis demonstrates that he would minimize consideration of worker and public health in evaluating rulemaking and instead rely almost exclusively on considerations of economic efficiency.

Dr. Graham's approach to regulatory analysis frequently ignores the benefits of federal regulation, indicating that reviews under his leadership will lack balance. His anti-regulatory zeal causes us to question whether he will be able to implement regulations that reflect decisions by Congress to establish health, safety and environmental protections. We are also deeply concerned that Dr. Graham's extreme views and close alliance with regulated entities will prevent the OIRA from providing a fair review of regulations that are needed to protect workers and the public.

For the foregoing reasons, we urge you to oppose Dr. Graham's confirmation as Administrator of the Office of Information and Regulatory Affairs.

Sincerely,

CHARLES M. LOVELESS,
Director of Legislation.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,

Washington, DC, May 11, 2001.

Hon. FRED THOMPSON,
Chair, Committee on Governmental Affairs,
U.S. Senate, Washington, DC

DEAR CHAIRMAN THOMPSON: On May 17, 2001, the Committee on Governmental Affairs is holding a hearing on the nomination of John Graham to head the Office of Information and Regulatory Analysis of the Office of Management and Budget. On behalf of 1.3 million active and retired UAW members and their families, we urge you to oppose the nomination of John Graham. In this critical job, he would oversee the promulgation, approval and rescission of all federal administrative rules protecting public health, safety, and the environment as well as those concerning economic regulation. We believe his extreme positions on the analysis of public health and safety regulations render him unsuited for this job.

The UAW strongly supports Occupational Safety and Health Administration standards to protect against workplace hazards. We are also concerned about clean air, clean water, toxic waste, food, drug and product safety, and consumer protection rules. The OIRA serves as the gatekeeper for these standards and rules as well as for government collection of information on which to base public health protections.

The Harvard Center for Risk Analysis, which John Graham founded, has been the academic center for the deconstruction of our public health structure. Mr. Graham and his colleagues have advocated the full range of obstruction of new public protections: cost-benefit, cost-per-lives saved, comparative risk analysis, substitution risk, and so-called ''peer review'' which would give regulated industries a privileged seat at the table before the public could comment on a rule. Mr. Graham has testified before Congress in favor of imposing such obstacles on all public health agencies and all public health laws. His academic work is entirely in support of this agenda as well.

It already takes decades to set a new OSHA standard. Our members and their families need stronger public health protections, and Mr. Graham has demonstrated his opposition to such protections. We are concerned that, with Mr. Graham as the head of OIRA, public health and safety regulations will be further delayed, protections on the book now will be jeopardized, and the interests of workers and consumers will not be given adequate weight.

For these reasons, we urge you to vote against the nomination of John Graham to head OIRA.

Sincerely,

ALAN REUTHER,
Legislative Director.

PUBLIC CITIZEN,

Washington, DC, March 13, 2001

Hon. FRED THOMPSON,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Shortly, the Senate will consider the nomination of John Graham for a position as the regulatory czar at the head of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). We are writing to call your attention to the threat that Graham's nomination poses to the environment, consumer safety, and public health, and to urge his rejection by the committee.

Graham's appointment to OIRA would put the fox in charge of the henhouse. His agenda is no secret. Over the past decade, Graham has amply demonstrated his hostility—across the board—to the system of protective safeguards administered by the federal regulatory agencies. In 1996, Graham told an audience at the Heritage Foundation that ''environmental regulation should be depicted as an incredible intervention in the operation of society.''

Graham has repeatedly advocated for sweeping regulatory rollback bills that would trump the statutory mandates of all the regulatory agencies. He would also impose rigid, cost-benefit analysis criteria well beyond that which has been used in previous administrations, virtually guaranteeing that many new regulations will fail to see the light of day. Moreover, his special White House clearance procedures may make it likely that virtually any agency response to public health hazards, such as the Surgeon General's pronouncements on the dangers of tobacco use, will not be made. At OMB, Graham would undoubtedly be the new master of ''paralysis by analysis.''

Grahm has represented himself as a neutral academic ''expert'' from the Harvard School of Public Health when testifying before Congress and speaking on risk issues to the media. In fact, as our investigative report indicates, his Harvard-based Center accepts unrestricted funding from over 100 major industrial, chemical, oil and gas, mining, pharmaceutical, food and agribusiness companies, including Kraft, Monsanto, Exxonmobil, 3M, Alcoa, Pfizer, Dow Chemical and DuPont.

As just one example of the connections between his funding and his agenda, in the early 1990s Graham solicited money for his activities from Philip Morris, while criticizing the Environmental Protection Agency's conclusion that second-hand smoke was a Class A carcinogen. In short, Graham has long fostered deep roots throughout an entire network of corporate interests that are hostile to environmental and public health protections, who would expect to call upon his sympathy at OIRA.

A major area of controversy between Congress and the Reagan and Bush I administrations concerned the use of back channels in the OIRA office by major corporations and trade associations to delay, eviscerate or block important public health protections that federal agencies had promulgated following Congress' statutory authorization and open government procedures. The head of OIRA should be an honest broker, reviewing regulatory proposals from federal agencies and deferring to agency expertise on most scientific and technical matters. Inviting Graham to head that office, given his close connections to broad sectors of the regulated industries, would signal a return to back-door intervention by special interests.

We urge you to read the attached report detailing Graham's shoddy scholarship and obeisance to his corporate funders, and to vigorously oppose his nomination to OIRA. As a start, Congress should request full access to Graham's and the Harvard Center for Risk Analysis' funding records and records as to speaking and consulting fees from the industries that he could not be charged with regulating.

Graham's confirmation would constitute a serious threat to our tradition of reasonable and enforceable health, safety and environmental safeguards, and should be rejected.

Sincerely,

JOAN CLAYBROOK,
President, Public Citizen.

FRANK CLEMENTE,
Director, Public Citizen, Congress Watch.

UFCW,

Washington, DC, June 28, 2001.

Hon. JOSEPH I. LIEBERMAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LIEBERMAN: On behalf of the 1.4 million members of the United Food and Commercial Workers International Union (UFCW), I am writing to express our opposition to President Bush's nomination of John D. Graham, Ph.D., to head the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

As Administrator of OIRA, Dr. Graham would be the gatekeeper for all federal regulations, including those dealing with environmental protection, workplace safety, food and drug safety, and consumer safety. He has consistently viewed cost-benefit analysis as the determinative criteria in deciding whether a rule goes forward—a position that is frequently at odds with congressional mandates that place public health considerations as the preeminent factor in rule-making deliberations. In addition to our concerns regarding the fairness of Dr. Graham, we have strong concerns about his extreme versions of regulatory reform, which the Senate has considered but never approved and which we sought to defeat.

Furthermore, we are also concerned with Dr. Graham's close ties to industry. As Director of the Harvard Center for Risk Analysis, he has received financial support from more than 100 corporations and trade associations over the last 12 years. At the same time, Dr. Graham has produced numerous reports, given testimony, and provided media commentary that directly benefited those who have funded the Center, which include food processors, oil and chemical companies, and pharmaceutical industries. In addition, many of these companies have staunchly opposed new regulatory initiatives and have been leading proponents of extreme regulatory reform.

Dr. Graham's track record does not demonstrate the sort of objectivity and dispassionate analysis that we should expect from the next OIRA Administrator. Given his extreme views on regulatory policy, and his close ties with the regulated communities, we are deeply concerned about his ability to provide for a fair review of regulations that are needed to protect workers and the public.

For these reasons, the UFCW urges you to oppose confirmation of John D. Graham, Ph.D., as Administrator of the Office of Information and Regulatory Affairs.

Sincerely,

DOUGLAS H. DORITY,
International President.

U.S. PUBLIC INTEREST RESEARCH GROUP,

Washington, DC, June 13, 2001.

DEAR SENATOR: The U.S. Public Interest Research Group (U.S. PIRG), as association of state-based organizations that are active in over 40 states, urges that you oppose the nomination of Dr. John Graham to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), and that you support closer scrutiny of his suitability to lead OIRA. As Administrator of OIRA, Dr. Graham could use a closed-door process to stop much-needed protections prior to any public debate, and to construct regulatory procedures that would weaken consumer, environmental or public health protections contemplated by any federal agency.

Dr. Graham has a long history of espousing highly controversial and academically suspect positions against protections for consumers, public health, and the environment. He also has a history of taking money from

corporations with a financial interest in the topics on which he writes and speaks. Unfortunately, this pattern of soliciting money from polluting corporations, taking controversial positions that are favorable to his benefactors, and failing to fully disclose conflict of interests calls into question his fitness to be the Administrator of OIRA.

Dr. Graham's positions are based on theories of risk assessment that fall far outside of the mainstream, and in fact, are contrary to positions taken by esteemed academics and scientists. Widespread opposition to Dr. Graham's nomination from well-respected professionals is indicative of his unbalanced approach. Indeed, eleven professors from Harvard (where Dr. Graham is employed) and 53 other academics from law, medicine, economics, business, public health, political science, psychology, ethics and the environmental sciences drafted letters of opposition to Dr. Graham's nomination. These experts all concluded that Dr. Graham is the wrong person to supervise the nation's system of regulatory safeguards.

Overwhelming opposition to Dr. Graham reflects deep concern regarding his pattern of pushing controversial and unsupported theories, combined with his failure to disclose financial conflicts of interests. In constructing his positions on regulatory affairs, Dr. Graham has employed dubious methodologies and assumptions, utilized inflated costs estimates, and failed to fully consider the benefits of safeguards to public health, consumers and the environment. Dr. Graham has used these tools when dealing with the media to distort issues related to well-established dangers, including cancer-causing chemicals (such as benzene), the clean up of toxic waste sites (including Love Canal), and the dangers of pesticides in food. In each instance, Mr. Graham's public statements failed to include an admission that he was being paid by corporate interests with a financial stake in rulemaking related to those topics.

Widespread opposition to Dr. Graham is buttressed by the unquestioned need for a balanced leader at OIRA. This office is the gatekeeper of OMB's regulatory review process, and dictates the creation and use of analytical methodologies that other agencies must employ when developing protections for public health, consumers, and the environment. In his role as gatekeeper, Dr. Graham will have the ability to stop much-needed protections before they ever see the light of day. In his role as director of analysis, he will be able to manipulate agency rulemakings—without Congressional approval or adequate public discussion—by issuing new OMB policies that force other agencies to conform to his narrow and highly controversial philosophy. This could result in a weakening of current protections, and a failure to create adequate future safeguards.

OIRA needs a fair and balanced individual at its helm. A review of Dr. Graham's record demonstrates an unmistakable pattern of placing the profits of polluters, over protections for public health, the environment, and consumers. In the interests of balance and accountability, we urge you to oppose Dr. Graham's nomination, and to support ongoing Congressional efforts to carefully scrutinize his record.

Sincerely,

GENE KARPINSKI,
Executive Director.

Mr. LIEBERMAN. As a Senator reviewing a President's nominee, exercising the constitutional advice and consent responsibility we have been given, I always try not to consider whether I would have chosen this nominee because it is not my choice to make. However, it is my responsibility to consider whether the nominee would appropriately fulfill the responsibilities of this office; whether I have sufficient confidence that the nominee would do so to vote to confirm him.

Where we are dealing, as we are here, with what I have described as the protective role of government, where people's safety and health and the protection of the environment is on the line, I approach my responsibility with an extra measure of caution because the consequences of confirming a nominee who lacks sufficient commitment to protecting the public health and safety through protective regulations are real and serious to our people and to our principles.

Dr. Graham, in the meetings I have had with him, appears to me to be an honorable man. I just disagree with his record and worry he will not adequately, if nominated, fulfill the responsibilities of this office.

So taking all of those factors into account, I have reached the conclusion that I cannot and will not support the nomination of Dr. Graham to be the Director of OIRA.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I had spoken to Senator DURBIN and Senator THOMPSON. I ask unanimous consent that all time but for 1 hour on this nomination be yielded back and that there be, following the conclusion of that debate, which would be evenly divided between Senator THOMPSON and Senator DURBIN, with Senator THOMPSON having the ability to make the final speech—he is the mover in this instance—following that, there will be 1 hour evenly divided and we will have a vote after that.

Mr. DURBIN. Reserving the right to object, if I could ask Senator THOMPSON, could we agree that in the last 10 minutes before debate closes we each have an opportunity to speak, with Senator THOMPSON having the final 5 minutes?

Mr. THOMPSON. Yes. I have no objection.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. REID. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Who yields time?

Mr. THOMPSON. Mr. President, I yield 8 minutes to the Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today to wholeheartedly support the nomination of Dr. John Graham to be Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

I view the Office of Information and Regulatory Affairs, or, OIRA, as a key office in the Federal Government. It is charged, among other things, with ensuring that cost-benefit analyses are completed on major Federal rules.

Fortunately, President Bush has nominated an individual who has the experience, the knowledge and the integrity to uphold the mission of OIRA and who will be a first-rate Administrator.

Dr. John Graham is a tenured professor at Harvard University. He has published widely, has managed the Harvard Center for Risk Analysis at the Harvard School of Public Health, and is considered a world-renowned expert in the field of risk analysis.

When I was active in the National Governors' Association, I had the pleasure of meeting Dr. Graham and hearing his testimony about risk assessment and cost benefit analysis. He is, by far, one of the most qualified people ever to be nominated for this position.

As my colleagues know, I served as Governor of Ohio for 8 years. I know what it's like to operate in an environment of scarce resources where tough choices have to be made on resource allocation among a state's various programs.

In many instances, new federal regulations have a habit of costing state and local governments tremendous sums of money to implement. That is why it is so important to have an OIRA Administrator who understands the significance of sound regulations and the usefulness of cost-benefit analysis when determining how federal regulations will be applied to our state and local governments.

As one who was very involved in the development of the passage of the Unfunded Mandates Reform Act of 1995, I believe it is important that the OIRA Administrator work to encourage agencies to consult with State and local governments while developing new Federal rules. OIRA is an enforcer of UMRA and a protector of the principle of federalism.

It is important that OIRA produces accurate cost-benefit analyses for major Federal regulations. For governments, businesses, and those concerned with protecting the environment, accurate accounting of the costs and benefits of Federal regulations is a critical tool in formulating both public and private decisions.

And accurately assessing risks, costs and benefits is what John Graham has done successfully throughout his career, and he will bring this experience to OIRA as its Administrator.

Given his background and his years of experience, I am confident that Dr. Graham will bring a reasoned approach to the federal regulatory process.

Dr. Graham is widely respected and his nomination has received support from many of his colleagues and public health officials at Harvard, from numerous business groups, from dozens of academics, from labor unions such as the International Brotherhood of Boilermakers and from environmental advocates such as former Environmental Protection Agency Administrator William Reilly.

Robert Litan, a Democrat who heads economic studies for the Brookings Institution, has said that Graham ''is the most qualified person ever nominated for the job.''

John Graham is so well-qualified for this job that the last five OIRA administrators, Democrats and Republicans alike, wrote to the Governmental Affairs Committee on May 3rd, saying that ''We are confident that [John Graham] is not an 'opponent' of all regulation but rather is deeply committed to seeing that regulation serves broad public purposes as effectively as possible.''

These five individuals know what it takes to be an effective Administrator because they have done the job themselves. In their view, Dr. Graham has the skills and he has the qualifications to be a responsible steward of the public interest.

I agree with their assessment.

John Graham makes objective analyses. He throws the ball right over the plate, contrary to what some of my colleagues have said about his record this evening. Dr. Graham has a distinguished record. He makes well-reasoned judgments about the use of public resources.

For example, Dr. Graham has supported additional controls on outdoor particulate pollution while also highlighting the need to give some priority to indoor air quality.

The American Council on Science and Health has stated that ''the comparative risk methods that Professor Graham and his colleagues have pioneered have been particularly useful to our organization and others in efforts to highlight the health dangers of smoking.''

Maria New of Cornell University Medical School has stated that ''Graham has dedicated his life to pursuing cost-effective ways to save lives (and) prevent illness. . . .''

According to Cass Sunstein, a Professor at the University of Chicago Law School, ''. . . [Graham] is seeking to pave the way toward more sensible regulation, not to eliminate regulation. In fact [Graham] is an advocate of environmental protection, not an opponent of it.''

And the American Trauma Society has concluded that, ''Graham cares about injury prevention and has made many important and significant contributions to the field of injury control.''

Before I conclude, I would like to raise one other point about John Graham's nomination.

There has been strong support for Dr. Graham's nomination from a variety of sources. However, there have also been some criticism of Dr. Graham and the Harvard Center for Risk Analysis regarding their corporate funding. I see this criticism as totally unfounded.

While some corporate funding has been provided to the Harvard Center, what is generally not revealed is the fact that Federal agencies also fund Dr. Graham's work.

Moreover, John Graham and the Harvard Center for Risk Analysis have financial disclosure policies that go beyond even that of Harvard University.

The Harvard Center for Risk Analysis has a comprehensive disclosure policy, with the Center's funding sources disclosed in the Center's Annual Report and on their Web Site.

You just turn on your computer, get in their Web site, and it is all there for everyone to see. They do not hide one thing.

If reporters, activists, or legislators want to know how the Harvard Center is funded, the information is publicly available. It is well known that the Harvard Center has substantial support from both private and public sectors.

The Harvard Center also has an explicit, public conflict-of-interest policy, and as for Dr. Graham, he has a personal policy that goes beyond even Harvard's as he does not accept personal consulting income from companies, trade associations, or other advocacy groups.

We should publicly thank individuals such as Dr. Graham who are willing to serve our Nation, even when they are put through our intense nomination process. I know this has been very hard on his family.

As my mother once said, ''This too will pass.''

I am sure my colleagues will see through the smokescreen that is being put out here this evening by some of my colleagues.

Dr. Graham has answered his critics. It is now time for the Senate to get on with the business of the people. It is time to confirm Dr. Graham as the next Administrator of OIRA.

The PRESIDING OFFICER. Who yields time?

Mr. THOMPSON. Mr. President, I yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I wanted to come over and speak on this nomination for several reasons.

One, OIRA is an office I know something about. My wife held this position during the Reagan administration. It is a very powerful position. It is the M in OMB. If there is one position in Government where we want someone who understands cost-benefit analysis and who is committed to rationality, it is at OIRA.

As I have listened to Dr. Graham's critics, it strikes me that, first of all, there is a broad misunderstanding about what cost-benefit analysis is. Cost-benefit analysis is not the dollars of cost versus the dollars of benefits. Cost-benefit analysis is when you are a kid and you climb over this wall and your momma comes out and says, Phil, get off that wall; so you weigh, A, you are liable to get a beating if you do not do it; B, you might fall off and break your neck; or, C, Sally is next door and might see you on the wall and figure that you actually are cool. And you weigh that in a rational way and decide whether to get off the wall. That is cost-benefit analysis.

In reality, what Dr. Graham's opponents object to is rationality. That is what they object to. If there is a garbage dump in the middle of the desert that no one has been close to in 50 years, they object to the fact that someone will stand up and say, ''We could probably do more for child safety by improving traffic safety, by buying helmets for people who ride bicycles than by going out in the desert and digging up this garbage dump.''

They object to that statement because it is rational. And they are not rational. They want to dig up that garbage dump not because it makes sense in a society with limited resources, not because it is a better use than sending kids from poor neighborhoods to Harvard University—a better use of money than that—but it is because it is their cause.

Let me also say there is something very wrong with the idea that someone who takes the scientific approach is dangerous in terms of setting public policy. It seems to me that you can agree or disagree with the finding, but the fact that somebody tries to set out systematically what are the benefits of an action, and what are the costs of an action, and puts those before the public in a public policymaking context—how can society be the loser from that? It seems to me society must be the winner from that process.

Let me make two final points.

First of all, I take strong exception to this criticism, which I think is totally unfair, that Dr. Graham, in his center at Harvard University, is somehow tainted because corporate America is a supporter of that center—along with the EPA, the National Science Foundation, the Center for Disease Control, the Department of Agriculture, and numerous other sources of funding. Where do you think money comes from? Who do you think supports the great universities in America? Corporate America supports the great universities.

I have to say, I think there is something unseemly about all these self-appointed public interest groups. I always tell people from my State: Anybody in Washington who claims to speak for the public interest, other than I, be suspicious. But these self-appointed public interest groups, where do they get their money from? They don't tell you. You don't know where their money comes from. Harvard University tells you, and they are corrupted. All of these self-appointed special interest groups don't tell you where their money comes from, and they are pure. How does that make any sense?

Finally, let me just say I have heard a lot of good speeches in this Senate Chamber, and have heard many weak ones, and given some of them, but I congratulate our colleague, Senator LEVIN. Senator LEVIN is one of our smartest Members in the Senate. I

have often heard him make very strong statements, but I have never heard him better than he was tonight. I think there has been no finer debate in this Senate Chamber, certainly in this Congress, than CARL LEVIN's statement tonight. It was a defense of rationality. That is what this debate is about.

The opposition to Dr. John Graham of Harvard University is opposition to rationality in setting public policy, because there are many people who believe—I do not understand it, but they believe it—that there are some areas where rationality does not apply, that rationality should not apply in areas such as the environment and public safety. I say they should because the world operates on fixed principles and we need to understand it.

The PRESIDING OFFICER (Mr. CORZINE). The Senator's time has expired.

Mr. GRAMM. I appreciate the Chair's indulgence.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Illinois.

Mr. DURBIN. Mr. President, I have listened very carefully to the defenders of John Graham this evening. I listened very carefully to CARL LEVIN, the Senator from Michigan. I respect him very much. It is a rare day when Senator CARL LEVIN and I disagree on an important issue such as this, but we do disagree.

Senator LEVIN, Senator VOINOVICH, Senator GRAMM, and others have come to this Chamber and have talked about the fact that when you enact a rule or regulation in America to protect public health or the environment or workers' safety, you should take into consideration the cost of that rule. I do not argue with that at all. You cannot argue with that. There has to be some rationality, as the Senator from Texas says, between the rule and the perceived protection and result from it.

I do not quarrel with the fact that John Graham is capable of understanding the value of a dollar. What I quarrel with is the question of whether he is capable of understanding the value of sound science and the value of human life. That is what this is all about. When you make this mathematical calculation—which he makes as part of his daily responsibilities at his center for risk studies; he can make that mathematical calculation; I am sure he can; we can all make it—the question is, What do you put into the calculation?

Let me give you an example. People have come to this Chamber to defend John Graham, but very few of them have tried to defend what he has said on the record throughout his public career.

Here he is quoted in a magazine called Priorities, in 1998:

> The evidence on pesticide residues on food as a health problem is virtually nonexistent. It's speculation.

John Graham, in 1998: Pesticides on food as a health problem is virtually nonexistent; speculation.

We asked him the same question at the hearing. He took the same position. He backed off a little bit, but he does not believe that pesticides on food present a health hazard.

Let's look at the other side of the ledger. You decide whether these people are credible people or whether, as the Senator from Texas has suggested, they have their own special interest at stake.

Here is one. Here is a really special interest group, the National Academy of Sciences. They released a study entitled ''Pesticides in the Diets of Infants and Children'' in 1993. They concluded:

> Changes needed to protect children from pesticides in diet.

Not John Graham, the gatekeeper for the rules of public health in America, he doesn't see it; the National Academy of Sciences does.

Take a look at Consumers Union. I read the Consumers Union magazine. I think it is pretty credible. And they go straight down the center stripe. They tell you about good products and bad ones. That is why they are credible and we buy their magazines.

In their report of February 1999 entitled ''Do You Know What You're Eating,'' they said:

> There is a 77% chance that a serving of winter squash delivers too much of a banned pesticide to be safe for a young child.

Well, obviously, the Consumers Union knows nothing about risk analysis. They don't understand John Graham's idea of the world, his scientific revolution, his paradigm.

John Graham said: Pesticides on food? Virtually nonexistent as a health problem—not to the Consumers Union. They got specific: Winter squash, young children, 77-percent chance that they will have a serving of pesticide they should not have in their diet.

How can a man miss this? How can John Graham, who has spent his professional life in this arena, miss this? This is basic. And he wants to go to OMB and decide what the standards will be for pesticides in food for your kids, my grandson, and children to come, for generations?

Do you wonder why I question whether this is the right man for the job?

Here is the last group—another ''special interest'' group—the Environmental Protection Agency. Here is what they said:

> EPA's risk assessment showed that methyl parathion could not meet the FQPA [Food Quality Protection Act] safety standard. . . . The acute dietary risk to children age one to six exceeded the reference dose (or amount that can be consumed safely over a 70-year lifetime) by 880%.

Methyl parathion—this was applied to crops in the field. After we came out with this protective legislation, they had to change its application so it did not end up on things that children would consume.

The EPA knew it. The National Academy of Sciences knew it. The Consumers Union knew it. But John Graham, the man who is being considered this evening, he did not know it. So what minor job does he want in the Bush administration? The last word at the OMB on rules and regulations on the environment and public health and safety. That is why I oppose his nomination.

I at this point am prepared to yield the floor to the Senator from Massachusetts. I do not know if there will be a request at this point from the Senator from Nevada, but I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have spoken to Senator THOMPSON. The Senator from Massachusetts wishes to speak for up to 15 minutes. The way we have been handling this is, whatever time is used on this side would be compensated on the other side. So I ask unanimous consent for an additional 15 minutes for this side. And for the information of everyone, maybe everyone will not use all the time because there are people waiting around for the vote. But I ask unanimous consent there be an additional 30 minutes for debate on this matter, equally divided.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the distinguished majority whip and the Senator from Tennessee for his courtesy. I will try not to use all that time. I cannot guarantee it.

I obviously rise to discuss the nomination of John Graham. Having served now for a number of years as chairman or ranking member, in one role or the other, of the Committee on Small Business, I have watched firsthand and listened firsthand to the frustration of a great many business owners dealing with Federal regulation. I think all of us have heard these arguments at one time or another.

I have obviously also witnessed, as many of you have, how needlessly complex and redundant regulations can stifle economic growth and innovation and also how regulation that was designed for a large corporate entity is often totally incompatible with small firms.

Always the intention of the underlying rule or law is sound, whether it is protecting the environment or public health or worker safety or consumers, but too often the implementation becomes excessive, overzealous, onerous, restrictive and, in the end, it is harmful.

Recognizing this problem, I have supported a range of efforts to ensure that regulations are reasonable, cost effective, market based, and business friendly. In particular, I supported the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. Since its passage, the RFA has played an increasingly important role in protecting our Nation's small businesses from the unintended consequences of Government regulation.

Additionally, with the passage of SBREFA, small businesses have been given valuable new tools to help ensure that their special needs and circumstances are taken into consideration. The RFA and SBREFA, if used as intended, work to balance the very real need of our Federal agencies to promulgate important and needed regulations with those of small business compliance costs. They can differ substantially from those of large business cousins.

The Small Business Administration reports that these laws I just mentioned have saved over $20 billion in regulatory compliance costs between 1998 and 2000 alone without sacrificing needed safeguards.

On the other side of the ledger, though, I also believe very strongly that the Federal Government has a responsibility to protect the environment, public health, consumers, and workers. It was 6 years ago that I joined with others in the U.S. Senate to oppose the enactment of a bill that was incorrectly called the Comprehensive Regulatory Reform Act, a bill which, for many of us who looked at it closely and examined what were good intentions, we determined would have undermined important Federal protections.

I listened to the Senator from Texas a moment ago ask how society can be the loser for looking at cost-benefit. I support looking at cost-benefit. I support looking at the least-intrusive, most effective, least-cost solution to a number of enforcement measures which we seek to put in place.

But to answer the question of the Senator from Texas, how can society be a loser, the answer is very simple. Society can be a loser when people bring you a bill such as the Comprehensive Regulatory Reform Act that pretended to do certain things but actually, both in intent and effect, would have done an enormous amount of damage to the regulatory scheme.

The reason society can be a loser, in answer to the question of the Senator from Texas, is that if you apply the wrong standards, if you apply the wrong judgments about how you make your cost analysis, you can completely skew that analysis to obliterate the interests of health, of the environment, of workers, and of consumers.

Some of my colleagues may have forgotten that there are people in the Senate and the House of Representatives who voted against the Clean Air Act, who voted against the Clean Water Act, who voted against the Safe Drinking Water Act. There are people who have voted against almost every single regulatory scheme that we seek to implement in the interest of protecting clean water, clean air, hazardous waste, and a host of others. There has long been a movement in this country by those people who have most objected to those regulations in the first place to create a set of criteria that empower them, under the guise of reform, to actually be able to undermine the laws that they objected to in the first place. That is how society can be a loser, a big loser.

In point of fact, what came to us called the Comprehensive Regulatory Reform Act was, in fact, the planks of the Contract with America, championed by Speaker Newt Gingrich, that began with the premise that they wanted to undo the Clean Water Act altogether. When we looked at this act and began to read through it very closely, we learned that what was purported to be a straightforward attempt to streamline the regulatory process and ensure that Federal and private dollars were spent efficiently and to consider the costs as well as benefits of Federal safeguards, while that may have been the stated purpose, that would not have been the impact of that legislation.

In fact, I stood on the floor of the Senate with a group of colleagues who defined those differences, and we stopped that legislation. It would have upended Federal safeguards impacting clean air, clean water, public health, workers, air travel, cars, food, medicine, and potentially every other area regulated for the common good.

It did this by creating a complex scheme of decisional criteria, cost-benefit analysis, and judicial review that skewed the entire process away from the balance that we tried to seek in the regulatory reform that many of us have talked about.

I am in favor of regulatory reform. Do I believe there are some stupid environmental laws that have been applied in stupid ways by overzealous bureaucrats? The answer is yes, I do. Does it make sense to apply exactly the same clean air standard of a large powerplant to smaller entities, and so forth? I think most people would agree there are ways to arrive at a judgment about cost and analysis that is fair.

In working on that legislation, I saw how the regulatory process under the guise of regulatory reform can be weakened to the point that the laws of the Congress that we have enacted to protect the public would be effectively repealed. It is partly because of the work that I did at that time that I join my colleague from Illinois and others. I congratulate my colleague from Illinois for his steadfast effort. We know where we are on this vote, but we also know where we are in what is at stake.

I have serious concerns with this nomination because during that period of time, this nominee strongly supported and helped draft the regulation that I just described and other omnibus regulatory rollback measures that I strongly opposed in the 104th Congress.

As Administrator, Dr. Graham will be in a position to profoundly impact a wide range of issues and to execute administratively some of the failed proposals that he has supported previously legislatively.

We all understand what this office is. We understand that OMB Director Daniels has already signaled the amount of increased power that Dr. Graham will have over his predecessor in the Clinton administration.

Let me give an example of one of the ways this would have an influence. The way in which these rules can be obviously skewed to affect things is clear in the work that we have already seen of Dr. Graham. For instance, his approach to risk assessment and cost-benefit analysis, in my judgment, has been weighed, if you look at it carefully, against a fair and balanced judgment of what also ought to be measured about public health and environmental protection itself.

For instance, he focuses on the age of a person saved by a particular safeguard. In doing so, he argues that the life of an elderly person is inherently less valuable than that of a younger person and thus less worthy of protection.

Now, I don't know how many Americans want to make a judgment about their family, their grandmother, or grandfather on that basis. But if you weight it sufficiently, you could come out with a judgment on cost that clearly diminishes the level of protection. In addition to that, you make a judgment that people who die in the future are deemed less valuable than people who die in the present.

The doctor has neglected benefits from avoided injury alone, such as the prevention after nonfetal adverse health effects or ecological damage. These are things many of us believe ought to be weighted as a component in the balance, and they are not. That is how you wind up skewing the consequences.

I am not telling you that it is inherently wrong, if you want to make a hardnosed statistical judgment, but I am saying that when the value of life, health, and our environment are discounted too far, then even reasonable protections don't have a prayer of passing muster under any such analysis.

I am concerned that Dr. Graham's preferred methodology in this area, such as comparative risk analysis, would make it extraordinarily difficult for a new generation of safeguards to be approved under his or anybody else's tenure.

In addition, Dr. Graham made his views known on a range of issues, and it is apparent that if the past is a prelude to the future, he would be hostile to a number of important public safeguards. For example, he argued against the EPA's determination that dioxin is linked to serious health problems—a hypothesis that EPA's Deputy Assistant Administrator for Science called ''irresponsible and inaccurate.'' Those are the words of the Deputy Administrator of EPA.

In 1999, Dr. Graham's center published a report funded by the American Farm Bureau Federation that concluded that banning certain highly toxic pesticides would actually increase the loss of life because of disruptions to the food supply caused by a

shortage of pesticides to protect crops. If anybody thinks that is an analysis on which we ought to base the denial of regulations, I would be surprised.

However, the report also ignored readily available, safer substitutes. Dr. Graham's center concluded that the EPA overestimated the benefits of clean air protections because most acute air pollution deaths occur among elderly persons with serious preexisting cardiac respiratory disease. Under Dr. Graham's approach, the benefits would be lowered to reflect his view that older citizens are worth less in raw economic terms.

Dr. Graham's center issued a study funded by AT&T Wireless Communications that argued against a ban on using cellular phones while driving. An independent 1997 study published in the New England Journal of Medicine found that the risk of car crashes is four times greater when a driver uses a cell phone.

In 1995, while debating the merits of the Comprehensive Regulatory Reform Act, I said then that I was prepared to embrace a legitimate effort to streamline and improve the regulatory process. We worked very hard to find a compromise to do that. I believe that with SBREFA and other measures we have made good progress. I still believe we can make more progress. But I am deeply concerned that the record suggests this balance that we look for, which we want to be sensitive and fair, would be absent with this nominee.

In closing, let me acknowledge the fact that Dr. Graham is from my home State of Massachusetts. My office has been contacted by residents who support and residents who oppose this nomination. I have deep respect for many of those who took the time to discuss this with me and my office. I am grateful for friends of mine and friends of Dr. Graham's who have suggested that I should vote for him. I note that I was contacted by several individuals from Harvard University, which is home to Dr. Graham's center. I heard both points of view. I thank each and every person who took the time to contact my office. I intend to cast my vote absolutely not on personal terms at all but exclusively on the experience I had with the Comprehensive Regulatory Reform Act and based on what I believe is an already-declared intention and a declared willingness of this administration to disregard important safeguards with respect to the environment.

I would like to see a nominee who has a record of a more clear balance, if you will, in the application of those laws. I thank the Chair for the time, and I thank my colleagues.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

Mr. DURBIN. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Illinois controls 25 minutes. The Senator from Tennessee has 31 minutes.

Mr. DURBIN. I say to the Senator from Tennessee, I don't know if a UC is necessary, but I would be prepared to reduce the amount of remaining time if he will join me. I suggest—and he can amend it if he would like—that we ask unanimous consent that we each have 10 minutes and I am given 5 minutes to close and you are given 5 minutes to close. Unless you have other speakers, I would like to make that request.

Mr. THOMPSON. Reserving the right to object, I ask my friend, are you suggesting a total of 15 minutes on each side?

Mr. DURBIN. Yes.

Mr. THOMPSON. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, as I understand it, if we can keep to the time we have agreed to, in about a half hour we should reach a vote. I also thank my colleague from Massachusetts, Senator KERRY, for joining me in opposing this nomination.

I will tell you about dioxin. I am not a scientist, and I don't pretend to be. I am a liberal arts lawyer who has practiced politics and political science for a long time. But let me tell you what I have learned about dioxin.

Dioxin is a highly toxic and deadly chemical. According to the National Toxicology Program at the National Institutes of Health, dioxin is the "most toxic manmade chemical known." It is not just very toxic—extremely toxic—it is the most toxic chemical human beings know how to create. It is not manufactured deliberately. There are no commercial uses for it. It is a waste product, a contaminant, the most deadly manmade toxic chemical in existence. And astonishingly, small amounts of dioxin can kill people and animals.

One of the insidious features of dioxin is your body accumulates it, and over time it can reach a toxic level. The World Health Organization and the NIH brand it as a "human carcinogen." If a man came before us and asked to be in charge of the OMB, which rules on safety for the public health and environmental standards of chemicals and pesticides and residues, you would think there would be no doubt in his mind about the danger of dioxin. There doesn't seem to be a doubt in the minds of any credible scientist.

John Graham, the man we are considering this evening, not only doesn't question the toxicity of dioxin; he actually thinks it has medicinal qualities. Let me read what John Graham, the nominee before us this evening, has said about dioxin, the most dangerous chemical created by the human race known today:

> It's possible that measures to reduce current average body burdens of dioxin further could actually do more harm for public health than good.

That is interesting. Then he goes on to say:

> I think there would be also merit in stating not only that TCDD (dioxin) is a carcinogen, but also I would put it in the category of a likely anti-carcinogen.

Where did he say that? Was that a casual statement that someone picked up on a tape recorder? No. It was a statement to the EPA Science Advisory Board on November 1 and 2 of the year 2000. John Graham, gatekeeper, rules and regulations, protecting American families from health risks—he thinks dioxin, the most dangerous chemical known to man, a known carcinogen, actually stops cancer.

Let's see what others have said.

The National Institutes of Health: "Dioxin is a known human carcinogen."

EPA: "The range for cancer risk indicates about a ten-fold higher chance than estimated in EPA's earlier assessment, in terms of the damage and danger."

EPA: "The promulgation of this theory—

They are referring to the statement by Mr., Dr., Professor John Graham.

"The promulgation of this theory that dioxin is an anti-carcinogen hypothesis is irresponsible and inaccurate."

That John Graham, whom President Bush's wants to put in a position to judge questions of public health and safety, who has said on the record and he acknowledges he is not a chemist, not a biologist, he is not a toxicologist, not a medical doctor, could stand before the EPA's Science Advisory Board and tell them dioxin could stop cancer is almost incredible. It is incredible he would be nominated for this job after he said it. That is what we face this evening.

People have come before us and said it is all about measuring the dollar value of rules and regulations with the risk involved. Let me repeat, I do not quarrel with that premise, but I do believe the person making the measurement should be engaged in sound science, and in this situation we have a man with advanced degrees in public policy who goes around telling us that dioxin, the most dangerous chemical created on the Earth, can cure cancer.

I do not know how we can really look at that statement and this nomination and ignore the simple fact. Why would he say things such as that? Because he has made his life work representing corporate interests, industries, and manufacturers who want to reduce the standards when it comes to environmental protection. He has been in States such as Louisiana, Alabama, and Maine testifying on behalf of one of his major clients, the paper industry—which, incidentally, discharges dioxin from paper mills—saying you should not be that concerned about dioxin. He is a chorus of one in that belief.

Thank goodness the State of Maine rejected his point of view and said that they would have zero tolerance for dioxin, despite John Graham's arguments to the contrary.

In his testimony for these companies, Graham stated:

Based on a comparison of breast cancer screening programs and other cancer prevention programs, dioxin standards ''would be a poor investment in cancer prevention.''

That is what it comes down to. He does not want to get into this argument on the merits of dioxin, and cancer, other than these few outrageous statements. He says there is a better way to spend the dollars. In Maine and other States they were trying to decide what is a safe amount of dioxin that we might release in streams that may accumulate in the fish or the children who eat the fish or the people who drink the water. He could find a way out for his corporate clients.

Thank goodness the State of Maine rejected his point of view. The New York Times said it came out with the toughest standards in the Nation when it came to protecting the people of Maine from dioxin contamination.

The same man who said pesticides on fruits and vegetables were not a public health hazard, the same man who finds in dioxin some medical merit, wants to now be the last word in Washington on rules and regulations on safety and public health.

Excuse me; I think President Bush can do better; I think America can do better, better than this man.

A lot of people have talked about the endorsements he received. No doubt he has. We received a letter originally sent to Senator THOMPSON on May 17, 2001, from those who are members of the faculty who work with John Graham and know of him at Harvard University, and others who have worked with him in the past. This group which signed the letter includes Dr. Chivian, director of the Center for Health and the Global Environment at Harvard Medical School, who shared the 1985 Nobel Peace Prize, and the list goes on and on, from Johns Hopkins to the University of Pittsburgh School of Medicine, dean of the School of Public Health at UCLA. What do they have to say about John Graham?

It is a cardinal rule of scientific research to avoid at all costs any conflict of interest that could influence the objectivity of one's findings. This rule takes on added significance in the context of biomedical and public health research, for peoples' lives are at stake.

For more than a decade, John Graham, Director of the Center for Risk Analysis at the Harvard School of Public Health and candidate for position of Director of the Office of Information and Regulatory Affairs at the Office of Management and Budget, has repeatedly violated this rule. Time and again, Professor Graham has accepted money from industries while conducting research and policy studies on public health regulations in which those same industries had substantial vested interests. Not surprisingly, he has consistently produced reports, submitted testimony to the Congress, and made statements to the media that have supported industry positions, frequently without disclosing the sources of his funding.

They give some examples:

Soliciting money from Philip Morris while criticizing the EPA's risk assessment on the dangers of secondhand smoke;

Greatly overestimating the costs of preventing leukemia caused by exposure to benzene in gasoline while accepting funds from the American Petroleum Institute;

Downplaying EPA's warnings about cancer risk from dioxin exposure while being supported by several major dioxin producers, including incinerator, pulp, and paper companies;

While simultaneously talking on cell phones in research underwritten by a $300,000 grant by AT&T Wireless communications.

Major spokesman before Congress on behalf of industries' ''regulatory reform'' agenda, while being supported by large grants of unrestricted funds from chemical, petroleum, timber, tobacco, automobile—automobile—electric power, mining, pharmaceutical, and manufacturing industries.

They continue:

We, the undersigned, faculty members at schools of medicine and public health across the United States, go to great pains to avoid criticizing a colleague in public. Indeed, in most circumstances we would rejoice over the nomination of a fellow public health professional for a senior position. . . . Yet, in examining the record of John Graham, we are forced to conclude there is such a persistent pattern of conflict of interest, of obscuring and minimizing dangers to human health with questionable cost-benefit analyses, and of hostility to governmental regulation in general that he should not be confirmed for the job. . . .

The PRESIDING OFFICER (Mr. DORGAN). The Chair advises the Senator from Illinois he has 5 minutes remaining.

The Chair recognizes the Senator from Tennessee.

Mr. THOMPSON. I thank the Chair.

Mr. President, in listening to the criticism of Dr. Graham and the implicit suggestion that he is a little less than a menace to society and that his opinions are for sale, my first reaction is that it is a very bad reflection on Harvard University that has let this kind of individual roam the streets for the last 15 years. They obviously are not aware of what he is doing.

It makes me wonder also why a professor at the University of Chicago Law School would say ''in emphasizing that environmental protection sometimes involves large expenditures for small gains, Graham is seeking to pave the way with more sensible regulation.''

I wonder, in listening to why former EPA Administrator Mr. Reilly would say: Graham would help ensure the rules implementing our environmental laws are as effective and efficient as they can be in achieving their objectives.

I am wondering in light of this man's ridiculous notions concerning scientific matters, matters of chemistry, for example, which we acknowledge we do not know anything about—we are not experts—we criticize him for not being an expert in his area; we criticize this Ph.D. scientist from Harvard for not knowing his subject matter, then we launch into a rendition of his deficiencies for his scientific analysis.

Mr. President, we are wading in way over our heads in criticizing Dr. Graham for his scientific analysis based upon excerpts, based upon false characterizations, based upon unfair characterizations of what he has said and what he has done, and we will deal with some of those.

Again, I wonder if there is any semblance of truth of this man who has headed up the Harvard Center for Risk Analysis, who has been associated with Harvard for 15 years, who has received the endorsements of Democrats and Republicans alike, who has received the endorsements of the last two people who served in this position, who are from the Clinton administration, who has received endorsements from some of the foremost authorities in the areas involved, who has received endorsements from noted scientists from around the country, and I wonder why the dean of academic affairs for the Harvard School of Public Health would say that Dr. Graham is an excellent scientist who has encouraged rationality in the regulatory process.

I wonder why a professor at Rollins School of Public Health would say: Often these public health issues are approached in a partisan way, but Dr. Graham is dedicated to using careful analysis to weigh the costs and benefits, et cetera. Dr. Hemmingway, director of Harvard Injury Control Research Center: Dr. Graham's interest is in improving the Nation's health in the most cost-effective manner.

I am wondering how all these people could be so wrong. You are going to find people who disagree with anybody, and I respect that people have differences of opinion. I wish it were sufficient to argue on the basis of those differences of opinion, on the basis of the science that is involved to the extent that we can, as nonscientists, but instead of doing that, what we are being introduced to here is an unfair rendition, what I would call basically a know-nothing kind of approach to a very complex series of scientific decisions with which we are dealing, and placing an unfair characterization on them.

I guess the one dealt with the most is dioxin. We would be led to believe that Dr. Graham's statements with regard to dioxin are outrageous. Why? Not because of any scientific knowledge we have or that has been presented on the floor of the Senate but because everybody knows dioxin is a bad thing. If he says any amount of it is not carcinogenic, he must not know what he was talking about.

I was looking at the testimony that Dr. Graham gave before our committee. He was asked by Senator DURBIN:

Do you believe that exposure to dioxin can increase your likelihood of cancer?

Mr. GRAHAM: Thank you for reminding me. I think that at high doses in laboratory animals, there is clear evidence that dioxin causes cancer.

Then he says:

In humans, I think the database is more mixed and difficult to interpret.

With regard to the low levels of dioxin not being carcinogenic, I refer to the Science Advisory Board. Their conclusion is as follows: There is some evidence that very low doses of dioxin may result in decreases in some adverse responses, including cancer, but can produce other adverse effects at the same or similar doses.

The Science Advisory Board panel recommends that the totality of evidence concerning this phenomenon continues to be evaluated by the agencies as studies become available.

This consensus conclusion by the panel is almost exactly in accord with Mr. GRAHAM's stated position at the public meeting: the other adverse effects at the very low doses we are talking about are noncancerous. He is trying to be a responsible scientist.

By placing so much emphasis on the low doses, we, because of the cancer issue, are missing the boat on the noncancer problems that dioxin causes. I don't have enough time to go into all of the detail on this, but I think we can see how unfair the characterization has been with regard to this complicated issue. We have a counterintuitive situation that Senator LEVIN pointed out with regard to thalidomide. Who would think doctors today would prescribe thalidomide under certain circumstances?

At a Governmental Affairs Committee hearing a couple of days ago, a couple of scientists attending from the National Academy of Sciences had just done a study on global warming. They pointed out certain aerosols released into the atmosphere, which we all know is a bad thing, can actually have a cooling effect in the atmosphere. We are all concerned about global warming, and this has a cooling effect. Does this mean we need to release a lot of additional aerosol? Of course not. It does not mean that. It is a scientific fact that needs to be taken into consideration.

I am sure, somewhere, if ever nominated for office, their opponents will take that statement from our hearings yesterday saying that these idiots believe we ought to be releasing aerosols in the atmosphere because it can have a cooling effect. I hope that does not happen. Unfortunately, it is sometimes the cost of public service today.

It is pointed out this man is anti-EPA and that some official somewhere at some time in the EPA has disagreed with his assessment. EPA partially funded this man's education. EPA contracts with him to do work, as we speak—not since he has been nominated. The center at Harvard has been hired by EPA to do work.

I should rest my case at that point. Of course, we never do when we should, so I will continue that fine tradition. I do have another point to make, in all seriousness, that is what this is about, which is Dr. Graham has been caught up in the debate over cost-benefit analysis. There are certain people in this country—I am sure their intentions are noble—who band together, who believe all regulations are good by definition; that there should be no questions asked about those regulations; that we should not take into account possible costs to society, whether they be tangible costs in dollars and cents or intangible costs; should not take into account whether resources could be better used for more significant environmental problems; should not take into account unintended consequences or any of those things; and that no one should ever bring up anything that challenges the common wisdom with regard to these issues, and we should only listen to sciences and promote the regulations.

When times like this come about, they band together and pull excerpts together to try to defeat people who want to bring rationality to the regulatory process.

I think they harm sensible, reasonable legislation, where moderate, reasonable people certainly want to protect us, protect this country, and protect our citizens, but, at the same time, know we are not doing our citizens any favor if we are using our resources in a way not most productive.

For example, it is proven we have been spending money on regulations pertaining to water, when the real risk was not being addressed. Some of the money should have been placed elsewhere in our water program.

How much time remains?

The PRESIDING OFFICER. Four minutes.

Mr. THOMPSON. I think that is what has happened. It has to be recognized we make the cost-benefit tradeoffs all the time. If we really wanted to save lives at the exclusion of consideration of cost to society, we would take all the automobiles off the streets and not allow anybody to drive. We know the examples, I am sure, all of us, by heart. Or we would make people drive around in tanks instead of automobiles.

There are tradeoffs we have to make. They need to be done in the full context of the political discourse by responsible people with proven records. I suggest that is the nominee we have before the Senate.

I yield the floor.

Mrs. CARNAHAN. Mr. President, the Administrator of the Office of Information and Regulatory Affairs, OIRA, within the Office of Management and Budget has the important duty of reviewing the regulations issued by all Executive Branch agencies. These regulations are critical to environmental protections, worker safety, public health, and a host of other issues. I have carefully reviewed the credentials of Dr. John Graham for this position and his testimony before the Governmental Affairs Committee. I support Dr. Graham's nomination to be the Administrator of OIRA.

Dr. Graham brings a wealth of experience and expertise to this position, including the use of cost-benefit analysis as a tool in evaluating regulations. As my colleagues know, the Clinton administration issued an Executive Order requiring the use of cost-benefit analysis to inform regulatory decision-making. I have no objections to the use of cost-benefit analysis as long as it is not carried too far. After all, we should not implement regulations if the costs of compliance grossly exceed the benefits the regulation would produce. It is appropriate for cost-benefit analysis to be one factor, but not the exclusive factor, in making regulatory decisions. Dr. Graham's testimony indicates that he shares this approach.

While I may not agree with Dr. Graham's application of cost-benefit analysis in every instance, I believe that President Bush is entitled, within the bounds of reason, to have someone in this position that shares his approach to governing. In my view, Dr. Graham falls within this criteria.

Mr. SMITH of New Hampshire. Mr. President, I rise in support of the confirmation of John D. Graham to be Administrator of the Office of Information and Regulatory Affairs.

Dr. Graham has been a Professor of Policy & Decision Sciences at the Harvard School of Public Health since 1991, and is the Director of the Harvard Center for Risk Analysis. Prior to that, he was an assistant professor and then associate professor at Harvard. Graham holds a B.A. in Economics and Politics from Wake Forest University, an M.A. in Public Affairs from Duke University, and a Ph.D. in Urban and Public Affairs from Carnegie-Mellon University where he was an assistant professor for the 1984–1985 academic year. Given OIRA responsibility's for ensuring that government regulations are drafted in a manner that reduces risk without unnecessary costs, Dr. Graham's qualifications to head the agency are unquestionable.

Since his nomination, he has come under fire for his work at the Harvard Center for Risk Analysis. Some who have opposed Dr. Graham have charged that he and the Center have a pro-business bias. Typically, those same people who oppose Dr. Graham, also oppose the use of comparative risk as one of many tools to be used in determining environmental policy. That is unfortunate, because the use of science and cost/benefit analysis is vital if we are to adequately focus resources on our most challenging environmental concerns.

I believe risk analysis and comparative risks give us much needed information to better understand the potential consequences and benefits of a range of choices. We all recognize that there aren't enough resources available to address every environmental threat. The Federal Government, States, local communities, the private sector, and even environmental organizations all have to target their limited resources on the environmental problems that present the greatest threat to human

health and the environment. Our focus, therefore, is, and should be, on getting the biggest bang for the limited bucks.

Comparative risk is the tool that enables us to prioritize the risks to human health and the environment and target our limited resources on the greatest risks. It provides the structure for decision-makers to: One, identify environmental hazards; two, determine whether there are risks posed to humans or the environment; and three, characterize and rank those risks. Risk managers can then use that analysis to achieve greater environmental benefits.

Last year, as the Chairman of the Environment & Public Works Committee, I held a hearing on the role of comparative risk in setting our policy priorities. During that hearing, we heard how many states and local governments are already using comparative risk assessments in a public and open process that allows cooperation, instead of confrontation, and encourages dialogue, instead of mandates. States are setting priorities, developing partnerships, and achieving real results by using comparative risk as a management tool. They are using good science to maximize environmental benefits with limited resources. I believe we should encourage and promote these successful programs.

It is important that this nation have someone like Dr. Graham to lead the OIRA. We must use reliable scientific analysis to guide us in our decision making process when it comes to environmental regulations. Dr. Graham's resume and record proves that he is the optimal person to head the office that will be making many of those decisions. Every person, Republican and Democrat, who has held the position of OIRA Administrator, except for two who are now federal judges and prohibited from doing so, have urged Senate action on his behalf. They state in a letter to the Committee Chairman and Ranking Member that, ''we are confident that [Dr. Graham] is not an 'opponent' of all regulation but rather is deeply committed to seeing that regulation serves broad public purposes as effectively as possible.''

I am a strong proponent of protecting and preserving our environment—my record proves that fact. I am also a strong believer that we must use sound science, comparative risk analysis and cost/benefit in making environmental decisions. Science, not politics, should be our guide. We must focus our efforts in a manner that assures the maximum amount of environmental protection given the resources available. Scientific analysis allows us to make good decisions and determine where to focus our resources to ensure that our health and a clean environment are never compromised.

Mr. President, I urge my colleagues to support John Graham for Administrator of the Office of Information and Regulatory Affairs.

Mr. FEINGOLD. Mr. President, today the Senate will vote to confirm John Graham to be the head of the Office of Information and Regulatory Affairs at the Office of Management and Budget. Though I will vote for Mr. Graham, much of the information that has been presented during the nominations process to the Governmental Affairs Committee by labor, environmental and public health organizations and other respected academics creates concerns regarding this nominee and I want to share my views on the concerns that have been raised.

The individual charged with the responsibility to head OIRA will indirectly set the direction of our national policies for our natural resources, labor and safety standards. I have tried, as a member of this body, to cast votes and offer legislation that fully reflects the importance and lasting legacy of America's regulatory decisions. I also have another tradition to defend and uphold. I have committed myself to a constructive role in the Senate's duty to provide advice and consent with respect to the President's nominees for Cabinet positions. I believe that the President should be entitled to appoint his own advisors. I have evaluated Presidential nominees with the view that, except in rare of cases, ideology alone should not be a sufficient basis to reject a Cabinet nominee. Mr. Graham is not a nominee for a Cabinet post. The Office of Management and Budget, OMB, is housed within the Executive Office of the President, making Mr. Graham one of the President's closest advisors. I believe that the President should be accorded great deference by the Senate on the appointment of this advisor.

During the nominations process, I have been disturbed to learn of the fears that Mr. Graham will not live up to his responsibility to fully implement regulatory protections. I am particularly troubled by concerns that he may allow special interests greater access to OMB, and therefore greater influence in OMB's deliberations. The concerns that have been raised are that Mr. Graham will allow special interests another opportunity to plead their case during final OMB review of regulations and may permit changes to be made to regulatory proposals that those interests were unable to obtain on the merits when the regulations were developed and reviewed by the federal agency that issued them. I also have been concerned about allegations that Mr. Graham's background might cloud his judgement and objectivity on a number of regulatory issues and place him at odds with millions of Americans including members of the labor, public interest and conservation community and with this Senator.

During the 1980s, OIRA came under heavy criticism for the way in which it conducted reviews of agency rules. The public was concerned that agency rules would go to OIRA for review and sometimes languish there—for years in some cases—with little explanation to the public. Rather than a filter for regulation, it became a graveyard.

Shortly after taking office, President Clinton responded to this problem by issuing Executive Order 12866. This order set up new guidelines for transparency—building on a June 1986 memorandum by former OIRA Administrator Wendy Gramm—that have helped bring accountability to OIRA.

With my vote for this nominee, I am calling for a commitment from him. I believe that it is essential that he maintain this transparency, and even strengthen it, in this Administration. Mr. Graham, having been the center of a controversial nominations proceeding, should be the first to call for letting sunshine disinfect OIRA under his watch.

At his confirmation hearing before the Senate Governmental Affairs Committee, the new OMB Director Mitch Daniels expressed general support for transparency and accountability, but refused to endorse specifically key elements of President Clinton's executive order. At that time, Mr. Daniels would only commit to work with the Committee should the Administration decide to alter Executive Order 12866.

Now that President Bush has nominated John Graham as administrator of OIRA, and he is being confirmed today, this Senate must receive more specific assurances regarding transparency and accountability. OIRA is an extremely powerful office that has the power to approve or reject agency regulations. This makes it critical that OIRA's decision-making be open to public scrutiny. I agree strongly with the sentiments expressed in today's Washington Post editorial:

> . . . conflicts of interest must be taken seriously if there is to be any chance of building support for more systematic cost-benefit efforts. At a minimum, the experts who carry out these analyses need to disclose their financial interests (as Mr. Graham's center did), and analysts with industry ties should not dominate government advisory panels. There may be room for dispute as to what constitutes 'ties'—should an academic who accepted a consultancy fee 10 years ago be viewed as an industry expert?—but conflict-of-interest rules should err on the strict side.

The Post editorial continues,

> Mr. Graham's acceptance of industry money opened him to opportunistic attacks from those who favor regulation almost regardless of its price. The lesson is that those who would impose rigor on government must observe rigorous standards themselves. Even apparent conflicts of interest can harm the credibility of the cost-benefit analyses that Mr. Graham champions.

In the days following his confirmation, Mr. Graham should aggressively affirm OIRA's public disclosure policies and make clear the office's continued commitment to transparency. Executive Order 12866 requires that OIRA maintain a publicly available log containing the status of all regulatory actions, including a notation as to whether Vice Presidential and Presidential consideration was requested, a notation of all written communications between OIRA and outside parties, and the dates and names of individuals involved in all substantive oral

communications between OIRA and outside parties. Moreover, once a regulatory action has been published or rejected, OIRA must make publicly available all documents exchanged between OIRA and the issuing agency during the review process. Mr. Graham must continue this disclosure policy, and he should expand it to make the information more widely accessible, and make the logs available through the Internet.

Executive Order 12866 gives OMB 90 days to review rules. OMB may extend the review one time only for 30 days upon the written approval of the OMB Director and upon the request of the agency head. Mr. Graham should make clear that OIRA will stick to this time frame for reviews. Moreover, OMB has invested in making this 90 day clock an action that can be tracked by the public, which must continue. Currently, the OMB web site documents when a rule is sent to OIRA, the time it took to act on the rule, and the OMB disposition. Mr. Graham has the ability to improve the public's access to this information by making the web site searchable by agency, rule, and date, rather than posting the information in simple tabular form.

Executive Order 12866 requires OMB to provide a written explanation for all regulations that are returned to the agency, ''setting forth the pertinent provision of the Executive Order on which OIRA is relying.'' OIRA must continue to provide written justification for returned rules, and Mr. Graham should consider expanding this policy to require written justification for any modifications that are made to a rule.

Mr. Graham must take particular care in the area of communications with outside interests and set the tone for OIRA staff actions in this regard. Executive Order 12866 directs that only the administrator of OIRA can receive oral communications from those outside government on regulatory reviews. Mr. Graham should continue this standard and be stringent that this standard be employed for all personnel working in OIRA. Present policy directs OIRA to forward an issuing agency all written communications between OIRA and outside parties, as well as ''the dates and names of individuals involved in all substantive oral communications.'' Moreover, affected agencies are also to be invited to any meetings with outside parties and OIRA. These are important procedures that protect the integrity of our regulatory system.

Beyond this, however, Mr. Graham should rigorously guard against contacts that present the appearance of a conflict of interest. He is entering into a position that will, in many ways, act as judge and jury for the fate of proposed regulations. He should, like those arbiters, guard carefully his objectivity and his appearance of objectivity.

I have reviewed these procedural issues because they are critical to maintaining public confidence in OIRA's functioning. I hope that Mr. Graham will be mindful of my concerns, and that he will embrace his duty to take into account the future and forseeable consequences of his actions. I also hope that he will be guided by the knowledge that this Senator will scrutinize those consequences, and will look very carefully at the question of special interest access to OMB at every appropriate time.

Ms. COLLINS. Mr. President, I support the nomination of Dr. John Graham to be Administrator of the Office of Information and Regulatory Analysis at the Office of Management and the Budget. Dr. Graham has been a leader in the nonpartisan application of analytical tools to regulations in order to ensure that such rules really do what policymakers intend and that they represent the most effective use of our Government's limited resources.

As a professor at the Harvard School of Public Health and founder of the Harvard Center for Risk Analysis, Dr. Graham has devoted his life to seeing that regulations are well crafted and effective—and that they help ensure that our world is truly a safer and cleaner place.

The alleged ''conflicts of interest'' argued by some of Dr. Graham's opponents are clearly baseless. The Harvard Center has some of the strictest conflict of interest rules in academia, and Dr. Graham has complied fully with them. It is absurd to suggest that the bare fact of corporate research sponsorship creates a conflict. By that standard, most of the studies produced in America's universities and colleges are worthless, and few academics can ever again be found suitable for public office. Dr. Graham's critics miss their mark.

I have had the opportunity to receive input from many knowledgeable sources about Dr. Graham's nomination. One of these is Maine State Toxicologist Andrew Smith. Dr. Smith studied with Dr. Graham at Harvard, and subsequently served as a staff scientist at an organization opposed to the Graham nomination. He has told us, however, that Dr. Graham approaches regulatory analysis with an open mind and is ''by no means an apologist for anti-regulation.'' Even a quick glance at Dr. Graham's record bears this out.

Like other members of the Governmental Affairs Committee, I do not need to rely solely on second-hand information about Dr. Graham. I myself was able to work with Dr. Graham on regulatory reform legislation that had strong bi-partisan support. My personal experience in working with him confirms that what his supporters say is true: he has the experience, integrity, and intelligence to be an excellent Administrator the Office of Information and Regulatory Analysis has ever had.

Mr. President, the Senate should vote to confirm John Graham.

Mr. REID. Mr. President, I rise today to express my strong concerns regarding the President's nominee to head the Office of Information and Regulatory Affairs at the Office of Management and Budget—John Graham.

This office oversees the development of all Federal regulations. The person who leads it holds the power to affect a broad array of public health, worker safety and environmental protections.

While John Graham has impressive professional credentials, his body of work raises serious questions concerning his ability to assume the impartial posture this job demands.

To do it, this nominee would be required to put aside his passionate and long-standing opposition to public health, worker safety and environmental protections.

As any of us who have felt passionately about an issue know, this is often difficult—if not impossible—to do.

It might be like asking me to argue against nuclear safety controls and protections. I can tell you I couldn't do it.

And my concern today is that John Graham will not be able to put aside his passionate and long-held views opposing those protections.

As some of my colleagues have outlined, the nominee has argued in his writings that certain regulations are not cost-effective and don't protect the public from real risks.

He makes that judgment based upon radical assumptions about what a human life is worth—assumptions that fail to account for the benefits of regulation. His assumptions are well outside of the mainstream.

The nominee concludes that those who fail to reallocate government resources to other more cost-effective actions are, in his words, guilty of ''statistical murder.''

And who did John Graham find to be guilty of statistical murder—opponents of Yucca Mountain.

This is what the nominee had to say about it:

> The misperception of where the real risks are in this country is one of the major causes of what I call statistical murder. . . . We're paranoid about . . . nuclear waste sites in Nevada, and that preoccupation diverts attention from real killers.

Can Nevadans rely upon John Graham to impartially weigh decisions regarding Yucca Mountain when he views their concerns as ''paranoid'' and considers measures to address those concerns through public health protections as equivalent to murder?

And the nominee's strong views aren't limited to Yucca Mountain.

He holds strong views in opposition to many other public health, environmental and worker safety protections broadly supported by my colleagues and the American people—from reducing dioxin levels to protecting children from toxic pesticides.

My concerns about those views are also informed by the context in which we weigh his nomination today.

Beginning with the Card Memorandum issued the day after President Bush's inauguration—which placed important public health, worker safety and environmental protections on hold—we have seen one important public protection after another eroded.

By sending up a nominee who has dedicated the better part of his career to fighting those broadly supported protections, the President sends an unfortunate signal that the public health and environmental rollback is not at an end.

Mr. DASCHLE. Mr. President, I am voting today against the nomination of Dr. John Graham to head the Office of Information and Regulatory Affairs, OIRA, at the Office of Management and Budget.

I do not take this action lightly. I respect the tradition that deference should be given to a President's nominations for posts within an administration. Nevertheless, it is the role of the Senate to provide advice and consent to the President, and I take this responsibility seriously as well.

OIRA is a little known department that has some of the most sweeping authority in the Federal Government. It is the gatekeeper for all new regulations, guiding how they are developed and whether they are approved. Its actions affect the life of every American, everyday.

The director of this office must have unquestioned objectivity, good judgement and a willingness to ensure that the laws of the Nation are carried out fairly and fully. I regret to say that Dr. Graham's record has led me to conclude that he cannot meet these high standards.

Dr. Graham currently heads the Harvard Center for Risk Analysis, and in this capacity he has produced numerous studies analyzing the costs and benefits of Federal regulations. These studies raise serious and troubling questions about the way in which Dr. Graham would carry out his duties.

First and foremost, I am concerned that Dr. Graham has consistently ignored his own conflicts-of-interest in the studies he has conducted, and that he had not demonstrated an ability to review proposed regulations in an evenhanded manner. Time after time, he has conducted studies of regulations affecting the very industries providing him with financial support. Virtually without fail, his conclusions support the regulated industry.

Dr. Graham downplayed the risks of second-hand smoke while soliciting money from Philip-Morris. He overestimated the cost of preventing leukemia caused by exposure to benzene in gasoline while accepting funds from the American Petroleum Institute. He even downplayed the cancer risk from dioxin exposure while being supported by several major dioxin producers.

This last item is perhaps the most troubling of all. Virtually since entering Congress, I have fought on behalf of the victims of Agent Orange who have suffered from cancer and other terrible illnesses due to their exposure to dioxin. There is absolutely no question that this chemical is a known carcinogen with many devastating health effects. Yet remarkably, with funding from several dioxin producers, Dr. Graham suggested that exposure to dioxin could actually protect against cancer.

I also question the analytical methods Dr. Graham uses in his studies. He contends that the cost of regulations should be the primary factor we consider, instead of the benefits they provide for health or safety. This position is totally inconsistent with many of our basic health, workplace safety and environmental laws. After all, we may be able to calculate the value of putting a scrubber on a smokestack, but how do you assign a value to a child not getting asthma? We can calculate the value of making industries treat their waste water, but what is the value of having lakes and streams in which we can swim and fish?

If Dr. Graham brings this way of thinking to OIRA, I can only conclude that it will lead to a profound weakening of the laws and regulations that keep food safe, and our air and water clean. As over two dozen of Dr. Graham's colleagues in the public health community wrote, ''We are forced to conclude that there is such a persistent pattern of conflict of interest, of obscuring and minimizing dangers to human health with questionable cost-benefit analyses, and of hostility to governmental regulation in general that [Dr. Graham] should not be confirmed for the job of Director of the Office of Information and Regulatory Affairs.''

Mr. DURBIN. It is my understanding I have 5 minutes remaining.

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Mr. President, of all the people who live in America who might have been considered for this position, I find it curious this man, John Graham, is the choice of President Bush to head up a sensitive office, this office which literally will make a decision on rules and regulations which will have an impact on families not only today but for generations to come.

During the course of this debate, we have come to the floor and spelled out how Mr. John Graham has been more than just a person making a mathematical calculation about the cost of a regulation and whether it is warranted. He has held himself out to have scientific knowledge about things that are, frankly, way beyond his education. He is a person who has written in one of his books with the forward by Cass Sunstein, who has been quoted at length on the floor here supporting Mr. Graham, that he thinks in comparison to today's fertilizers, DDT is relatively nontoxic.

Of course, that is a view that has been rejected not only by the World Health Organization but by 90 nations, and banned with only two nations in the world making DDT.

For John Graham, there is doubt. He sees no health hazard on pesticides for fruit and vegetables, but the National Academy of Sciences, the National Institutes of Health, Consumers Union, and others say he is just plain wrong.

We have heard and read his statements on dioxin, which the Senator from Tennessee has valiantly tried to reconstruct here so they do not sound quite as bad, but it is the most dangerous toxic chemical known to man, and John Graham, the putative nominee here, thinks it has medicinal qualities. He is alone in that thinking. The EPA said his statement was irresponsible and inaccurate. They read it, too. He did not have his defense team at work there. They just read it and said from a scientific viewpoint it was indefensible.

What is this all about? What is the bottom line? Why is this man being nominated? Don't take my word for it. Go to the industry sources that watch these things like a hawk: the Plastic News, the newsletter of the plastic industry in America, May 7, 2001, about Mr. Graham:

> He could lend some clout to plastics in his new job. The job sounds boring and inside the beltway, but the office can yield tremendous behind-the-scenes power. It acts as a gatekeeper of Federal regulations ranging from air quality to ergonomics. It has the power to review them and block those if it chooses to. The Harvard Center for Risk Analysis, which Graham founded and directed until Bush nominated him, gets a significant part of its $3 million annual budget from plastics and chemical companies. The Center's donor list reads like a who's who of the chemical industry.

And they go on to list some of the sponsors of Dr. Graham's institute.

Graham is well thought of by the plastics industry. A person from the industry said the Bush administration intends to make this office more important than it was in the Clinton administration, elevating it to its intended status.

They have a big stick. If the President in office allows them to use it and if they have someone in office who knows how to use it. How would they possibly use it?

Do you remember arsenic in drinking water, how the administration scrambled away from it as soon as they announced it, and the American people looked at it in horror and disgust, that they would increase the tolerance levels of arsenic in drinking water? During the course of the Governmental Affairs hearing, we asked Dr. Graham, who tells us all about DDT and pesticides and dioxin, what he thought about arsenic. He said he didn't have an opinion.

Let me give you a direct quote. I want the RECORD to be complete on exactly what he said here. I asked him:

> You have no opinion on whether arsenic is a dangerous chemical?

Professor Graham replied:

I haven't had any experience dealing with the arsenic issue, neither the scientific level nor the cost-effectiveness level of control.

You have an open mind, my friend. Give him this job and he will have an open mind about arsenic in drinking water. He has an open mind about pesticides on fruits and vegetables. He has an open mind about dioxin and its medicinal purposes. He has an open mind about the future of DDT in comparison with other chemicals. And this is the man we want to put in control, the gatekeeper on rules and regulations about public health and safety and the environment?

That is why I have risen this evening to oppose this nomination. I thank my colleagues and all those who participated in this debate. I appreciate their patience. I know we have gone on for some time, but this much I will tell you. If Mr. Graham is confirmed, and it is likely he will be, he can rest assured that many of us in this Senate will be watching his office with renewed vigilance. To put this man in charge of this responsibility requires all of us who care about public health and safety and environmental protection to stay up late at night and read every word, to watch what is going on.

We don't need any more arsenic in drinking water regulations. We don't need to move away from environmental protection. We don't need to second-guess the medical experts on the dangers of pesticide residues on fruits and vegetables and the danger of dioxin. We need sound science and objectivity, and, sadly, John Graham cannot bring them to this position, and that is why I will vote no on his confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee has 3 minutes.

Mr. THOMPSON. Mr. President, let's listen to the scientists on the Science Advisory Board to which the Senator referred.

Dr. Dennis Passionback:

I think John's point [meaning John Graham] is what you thought his point was, Mort, and that is in several studies and hypotheses over the years that there are some hormonic beneficial effects associated with dioxin and related chemicals for certain disease influences. Of course that is at very low dose of course.

These are scientists. It is easy for the rhetoric to get out of hand here, and I want to try to do my part to not engage in escalating, but I find some of the statements attributed to this man amazing. I think our colleagues know better. I think the letters of endorsement and the public endorsements belie this. I think the reflection on Harvard University is unfair. It is not uncommon for centers doing work similar to Harvard's center to receive 40 to 60 percent of their funding from the private sector.

I think what we have here is just a back and forth with regard to a man whose opponents are desperately trying to undermine this nomination. I think we have here a question concerning public service and whether or not we are going to get decent people to come into these thankless jobs to do them if we are going to see the confluence of scientific work on the one hand and the political process on the other produce such an ugly result.

I think we need to ask ourselves that question. I think we need to ask ourselves also whether or not we want to have these decisions based upon sound scientific analysis, one that is endorsed by all of the people who endorsed Dr. Graham, and say that analysis, that sound analysis that will work to our benefit.

I have a chart of all the areas where lead and gasoline, sludge, drinking water—where Dr. Richard Morganstern, economic analyst at the EPA, has shown where cost-benefit analysis, the kind that Dr. Graham proposes, has been beneficial both from a cost standpoint and increasing benefits. Let's not get into an anti-intellectual no-nothing kind of mode here and try to label these fine scientists and this fine institution with labels that do not fit and are not deserved.

I sincerely hope my colleagues will vote for this nomination.

Mr. REID. Is all time yielded back?

The PRESIDING OFFICER (Mr. BAYH). All time has expired.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate now resume legislative session.

The PRESIDING OFFICER. Without objection it is so ordered.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the Senate turn to the consideration of the legislative branch appropriations bill, S. 1172; that the only amendments in order be a managers' amendment and an amendment by Senator SPECTER; that there be 10 minutes for debate on the bill and the managers' amendment, equally divided between the two managers, Senators DURBIN and BENNETT; that there be 5 minutes for debate for Senator SPECTER; that upon the disposition of these two amendments, the Senate proceed to third reading and vote on final passage of S. 1172; that when the Senate receives from the House of Representatives their legislative branch appropriations bill, the Senate proceed to its immediate consideration; that the text of the bill relating solely to the House remain; that all other text be stricken and the text of the Senate bill be inserted; provided that if the House inserts matters relating to the Senate under areas under the heading of ''House of Representatives'' then that text will be stricken; that the bill be read the third time and passed, and the motion to reconsider be laid on the table; that following the vote tonight on the Senate legislative branch appropriations bill, the Senate return to executive session and vote on the Graham nomination, followed by a vote on the Ferguson nomination, with 2 minutes for debate equally divided between these two votes; that the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action; the Senate then return to legislative session, that S. 1172 remain at the desk and that once the Senate acts on the House bill, passage of the Senate bill be vitiated and it be returned to the calendar.

I further ask unanimous consent that after the first vote, the subsequent two votes be limited to 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Tennessee.

Mr. THOMPSON. At the appropriate time I will ask for the yeas and nays on the Graham nomination.

LEGISLATIVE BRANCH APPROPRIATIONS ACT, 2002

The PRESIDING OFFICER. Under the previous order, the clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1172) making appropriations for the Legislative Branch for the fiscal year ending September 30, 2002, and for other purposes.

Mr. DURBIN. Mr. President, pursuant to the unanimous consent request which was just allowed regarding procedures for the remainder of the evening, I will give a brief summary of this bill.

I am pleased to present to the Senate the fiscal year 2002 legislative branch appropriations bill, as reported by the full committee.

I thank Chairman BYRD for his support and the high priority he has placed on this bill. He has provided an allocation which has ensured we could meet the highest priorities in the bill. In addition, I wish to thank the ranking member of the full Committee Senator STEVENS who has been actively involved in and very supportive of this bill.

I am grateful to my ranking member, Senator BENNETT, for his important role in this process and his excellent stewardship of this subcommittee for the past 4½ years.

The fact is that this bill bears the imprint of Senator BENNETT and his hard work in keeping an eye on this particular appropriations bill. I was happy to join him in bringing this bill to the floor. I couldn't have done it without him. I appreciate all of his assistance.

The bill before you today totals $1.94 billion in budget authority and $2.03 billion in outlays. This is $103 million—5.6 percent—over the fiscal year 2001 enacted level and $104 million or 5 percent below the request level.

The bill includes $1.1 billion in title I, Congressional Operations, which is $88 million below the request and $123 million above the enacted level.