

Statement of Senator Susan M. Collins

Nomination of Cass Sunstein to be Administrator,

Office of Information and Regulatory Affairs

**U.S. Senate Committee on Homeland Security and Governmental
Affairs**

May 12, 2009

★ ★ ★

I welcome Professor Cass Sunstein to our Committee today as we consider his nomination to be Administrator of the Office of Information and Regulatory Affairs.

OIRA is one of the alphabet soup of government offices that few people outside of Washington would recognize. Nevertheless, it can have an enormous influence on regulations that affect the everyday lives of

millions of Americans. Through the process of regulatory review, OIRA plays an integral role in the rule-making process. OIRA both informally advises agencies as rules are developed and then formally reviews the rigor of methodologies used to develop these rules.

Professor Sunstein is a prolific author who has conducted an extensive study of government regulation and of the various methods that can be used to evaluate regulatory effectiveness. Today, however, he steps from the world of theory into the realm of practice, where not every idea discussed in the classroom can be easily turned into government policy – nor should it be. This can be a challenging transition for those leaving the academic realm for the world of the executive branch where their views and decisions have real consequences.

In general, some of the core principles that seem to guide Professor Sunstein's work appear to be appropriate for the OIRA position.

- Professor Sunstein is an advocate of greater transparency. I am particularly interested in his recommendation that agencies be required to explain a decision to regulate when the costs exceed the benefits.
- Professor Sunstein strongly supports the use of cost-benefit analysis as a tool for evaluating regulation, while recognizing that such analysis cannot always be the sole criterion for evaluating regulation.
- In one of his most recent books, *Nudge*, Professor Sunstein makes a compelling case for regulation that does not dictate actions but

instead encourages certain behavior without limiting personal freedoms. This “nudging” can promote societal goals without depriving individuals or organizations of other choices. While certainly not universally applicable, this idea bears exploring as an alternative to more draconian and costly “command-and-control” regulations.

Professor Sunstein has, however, also written some provocative and controversial statements that warrant scrutiny. His suggestion that hunting should be banned is particularly troubling to those of us who represent states where hunting and fishing are part of the heritage of many families.

Finally, I want to note that, in the past, OIRA has played a significant role in setting government-wide privacy policy. Since 2001, however, it has not been clear who in OMB directs privacy policy. As this Administration seeks to use information technology in innovative new ways, OMB should make the protection of personal information a top priority. An important first step will be to designate an individual – whether within OIRA or elsewhere – who will be directly responsible for privacy policy and who will be accountable to Congress and the American people.