

I conclude by saying that I believe it is my obligation as a Senator—and I hope the obligation of everyone else—to keep relentless, unending pressure on this President to come to grips with reality, to continually push every single day to say: Mr. President, stop; stop this policy of yours.

It is my hope, even though he is likely to veto this bill, that we will keep the pressure on and ultimately convince at least a dozen of our Republican colleagues it is time to stop backing the President and start backing the troops. It is time, Mr. President, to begin to responsibly bring this war to an end.

I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### AMERICA COMPETES ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 761, which the clerk will report.

The bill clerk read as follows:

A bill (S. 761) to invest in innovation and education to improve the competitiveness of the United States in the global economy.

Pending:

Bingaman amendment No. 908, to make certain improvements to the bill.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I am waiting on the Democratic manager of the bill, Senator BINGAMAN, who should be here right away. Following that, we hope to go to the Senator from South Carolina, who has some amendments to offer, but it is not appropriate for me to do that until Senator BINGAMAN is here. That will take a moment. Then we will go forward, if that is all right with the Senator from South Carolina.

We had a good discussion yesterday on the America COMPETES Act. To remind all Senators, this is the Reid-McConnell legislation, with 56 cosponsors, which seeks to help our country keep our brainpower advantage so we can keep our jobs. It is the result of 2 years of work within this body through three committees principally but really five or six.

We asked the National Academy of Sciences to tell us exactly what we need to do to keep our competitive advantage in the world in competition with China and India so our jobs don't go there, so we can keep this remarkable situation we have of producing 30 percent of all the money each year for 5 percent of the people, with at least half of that based on our technological advantage. The National Academy of Sciences gave us a list of recommendations in priority order. The Council on Competitiveness formed the basis of a Lieberman-Ensign bill, the President

made his own recommendations, and all that now has been worked through into this legislation.

I see Senator BINGAMAN. If I may, I would like to finish 3 or 4 minutes of remarks and then go to Senator BINGAMAN.

Yesterday, Senator INOUYE, Senator STEVENS, Senator DOMENICI, all of whom have been leaders on this legislation, spoke on the floor. Senator CHAMBLISS as well spoke on the floor. Senator BINGAMAN, of course, has been a leader from the very beginning, asking the questions that helped produce this result. So we have before us a leadership bill on a subject that is as important as any.

Almost all Members of the Senate over the last 2 years have had plenty of opportunity to influence this bill, and most have in one way or the other. It has been a remarkable exercise. But there still is time today and tomorrow for us to consider more options.

The President, last night by e-mail—someone in the White House—sent a Statement of Administration Policy to Capitol Hill which outlines the administration's views on the pending legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD the President's remarks on January 31, 2006, from his State of the Union Address in which he spoke about the importance of the competitiveness initiative.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ALEXANDER. As a courtesy to the administration, I ask unanimous consent to have printed in the RECORD the administration's Statement of Administration Policy following my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. ALEXANDER. Mr. President, I know how important the President believes this is. I have talked with him about it at least a half dozen times personally, usually in bipartisan sessions with a number of Senators, sometimes individually. I know the Vice President has been deeply involved.

When there is some more time on the floor this afternoon, if we have a lull in the debate, I will go through the Statement of Administration Policy and talk about it a little bit. Basically, it is very helpful to us. It points out that there is not much difference between the amount of money the President proposes to spend over the next 4 years and the amount we would propose to authorize to spend in this bill. As one might expect, the President likes his new programs but doesn't like some other new programs, and there are some other suggestions that are well taken that we can talk about, perhaps accept amendments, at least discuss with the Democratic majority those

amendments, and there will be some amendments that are offered on the Senate floor.

I will reserve my comments on the President's Statement of Administration Policy. It is good to have it. We will make it part of the debate—and taking the President at his word—given the President's statement and the administration policy statement that "The administration looks forward to working with Congress to address these various policy concerns as the legislative process moves forward."

I defer to Senator BINGAMAN, if I may. Senator DEMINT is ready to offer amendments and speak about them whenever that is appropriate.

#### EXHIBIT 1

##### STATE OF THE UNION ADDRESS BY THE PRESIDENT, JAN. 31, 2006

"And to keep America competitive, one commitment is necessary above all: We must continue to lead the world in human talent and creativity. Our greatest advantage in the world has always been our educated, hardworking, ambitious people—and we're going to keep that edge. Tonight I announce an American Competitiveness Initiative, to encourage innovation throughout our economy, and to give our Nation's children a firm grounding in math and science.

First, I propose to double the federal commitment to the most critical basic research programs in the physical sciences over the next 10 years. This funding will support the work of America's most creative minds as they explore promising areas such as nanotechnology, supercomputing, and alternative energy sources.

Second, I propose to make permanent the research and development tax credit—to encourage bolder private-sector initiatives in technology. With more research in both the public and private sectors, we will improve our quality of life—and ensure that America will lead the world in opportunity and innovation for decades to come.

Third, we need to encourage children to take more math and science, and to make sure those courses are rigorous enough to compete with other nations. We've made a good start in the early grades with the No Child Left Behind Act, which is raising standards and lifting test scores across our country. Tonight I propose to train 70,000 high school teachers to lead advanced-placement courses in math and science, bring 30,000 math and science professionals to teach in classrooms, and give early help to students who struggle with math, so they have a better chance at good, high-wage jobs. If we ensure that America's children succeed in life, they will ensure that America succeeds in the world.

Preparing our Nation to compete in the world is a goal that all of us can share. I urge you to support the American Competitiveness Initiative, and together we will show the world what the American people can achieve."

#### EXHIBIT 2

##### EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

*Washington, DC, April 23, 2007.*

##### STATEMENT OF ADMINISTRATION POLICY

S. 761 AMERICA CREATING OPPORTUNITIES TO MEANINGFULLY PROMOTE EXCELLENCE IN TECHNOLOGY, EDUCATION, AND SCIENCE ACT (Sen. Reid (D) Nevada and 55 cosponsors)

One of the more important domestic priorities of the Administration over the last two

years has been the American Competitiveness Initiative (ACI), a comprehensive strategy to keep our Nation the most innovative in the world by increasing investments in research and development (R&D), strengthening education, and encouraging entrepreneurship. Thus, the Administration shares the goals of S. 761 to ensure the continued economic competitiveness of the United States through research and education and has been encouraged by the bipartisan support for addressing this vital topic. However, the Administration has serious concerns with S. 761 in its current form. The Administration believes that the bill does not prioritize basic research, authorizes excessive and inappropriate spending, and creates unnecessary bureaucracy and education programs. The Administration looks forward to working with Congress to address these various policy concerns as the legislative process moves forward.

The research component of the ACI is a targeted effort to focus increased funding on enhancing physical sciences and engineering research at the three highest-leverage agencies—the National Science Foundation (NSF), the Department of Energy's (DOE) Office of Science, and the Department of Commerce's National Institute of Standards and Technology (NIST). Unfortunately, the Senate bill creates at least 20 new programs across many agencies that, if enacted, would divert resources from and undermine and delay the priority basic research. The Senate bill would cost over \$61 billion over the next four years—about \$9 billion more than the President's ACI proposals. The bill conflicts with the Administration's well regarded Research and Development Investment Criteria by diverting funds from critical basic research to commercially-oriented research and other efforts that are less deserving of Federal support.

The education components of the ACI are targeted toward filling clear and specific gaps in the Federal funding portfolio with programs that will improve the quality of math and science education in the Nation's K-12 schools. The Administration appreciates that the bill authorizes most of the Department of Education programs the President called for in the ACI. These include authorizations for: (1) The Advanced Placement Program to increase the number of teachers instructing and students enrolled in advanced placement or international baccalaureate courses in mathematics, science, or critical foreign languages; (2) the Math Now programs to improve instruction in mathematics; and (3) part of the President's National Security Language Initiative proposal to strengthen the teaching and study of critical foreign languages. However, the Administration is disappointed that the bill does not authorize the President's Adjunct Teacher Corps, to encourage math, science, and other professionals to teach in our neediest middle and high schools.

Also, the Administration is concerned that the bill expands many existing science, technology, engineering, and mathematics (STEM) education programs that have not been proven effective and creates new STEM education programs that overlap with existing Federal programs. In its soon-to-be-released report, the Academic Competitiveness Council has identified 105 existing STEM education programs spending over \$3 billion annually, including 45 programs that support training of STEM teachers, and found that very few of these programs demonstrated evidence-based effectiveness. Given this, the Administration believes it is premature to expand or begin new STEM education programs that do not have a plan in place for rigorous, independent evaluation or are duplicative of existing Federal programs.

In addition to the excessive authorization levels, lack of focus on basic research, and unnecessary new bureaucracy, created by S. 761, the specific provisions of serious concern include the following:

Advanced Research Projects Agency—Energy (ARPA-E). The Administration supports the conceptual goal of ARPA-E “to overcome the long-term and high-risk technological barriers in the development of energy technologies.” However, the Administration continues to strongly object to this provision due to serious doubts about the applicability of the national defense model to the energy sector and because a new bureaucracy at the DOE would drain resources from priority basic research efforts. The Administration believes that the goal of developing novel advanced energy technologies should be addressed by giving the Secretary of Energy the flexibility to empower and reward programs within existing DOE offices to fund unique, crosscutting, and high-risk research.

Innovation Acceleration Research. The Administration strongly objects to requiring each Federal science agency to set aside 8 percent of its research and development budget—a new program of over \$10 billion of the Federal R&D budget at dozens of agencies—for projects that are “too novel or span too diverse a range of disciplines to fare well in the traditional peer review process.” Such a large earmark of the agencies' ongoing research efforts would certainly have negative, unintended consequences and could well impede the ability of these agencies to carry out their missions.

Equitable Distribution of New Funds. The Administration strongly objects to a requirement specifying particular funding increases for Education and Human Resources (EHR) activities at NSF. This is especially inappropriate while the Administration is responding to the findings and recommendations of the Academic Competitiveness Council to ensure that funding is targeted toward programs with plans to demonstrate effectiveness.

Experimental Program to Stimulate Competitive Technology. The Administration believes that additional resources provided to NIST should focus on existing internal innovation-enabling research activities and strongly objects to creating new programs that would drain resources from such activities.

Specialty Schools for Mathematics and Science. The Administration strongly objects to creating a responsibility for DOE to establish or expand K-12 schools.

Discovery Science and Engineering Innovation Institutes. The Administration strongly objects to using DOE funds to support State and local economic development activities. In addition to diverting funds from priority research areas, such a focus on commercialization is not a priority of the Federal government and could result in putting the government in the position of competing with private investment and influencing market decisions in potentially inefficient and ineffective ways.

Experiential-Based Learning Opportunities. The Administration objects to creating new K-12 education programs unless the need is clear and compelling, which is not the case for this program. As illustrated by the Academic Competitiveness Council's findings, the solution to improving the Federal government's impact on STEM education must come from identifying what works and improving the effectiveness of existing efforts before starting new programs.

Federal Information and Communications Technology Research. The Administration objects to the creation of a new program specifically aimed at “enhancing or facilitating

the availability and affordability of advanced communications services.” Such an industry- and sector-directed program is well beyond NSF's traditional role of advancing the frontiers of knowledge in the academic disciplines.

National Laboratories Centers of Excellence. The Administration objects to the use of DOE funds to establish Centers of Excellence at K-12 schools. The establishment of school-based centers is not a proper role for DOE and would divert national laboratory resources that currently benefit their surrounding communities. The Administration believes that the President's Adjunct Teacher Corps proposal is a more promising approach to bringing subject experts into our neediest schools.

Experimental Program to Stimulate Competitive Research (EPSCoR). The purpose of the EPSCoR program is to build research capacity; it is not an education program. If EPSCoR funds are diverted for the purpose of hiring faculty or providing supplemental K-12 courses to precollege students, there will be less money available for increasing the research capacity in EPSCoR States.

Robert Noyce Teacher Scholarship Program. NSF's Robert Noyce scholarship program is too new to have been evaluated for its impact on improving the efficacy or retention of teachers who are program graduates. Therefore, it is unreasonable to increase the authorizations of appropriations at the pace and magnitude called for in this provision.

NASA Funding for Basic Science and Research and Aeronautics Research Institute. The Administration objects to the redirection of unobligated balances from existing NASA programs, because it would disrupt funding for ongoing activities. The establishment of an Aeronautics Institute for Research within NASA is objectionable because it would be duplicative of the agency's existing Aeronautics Research Mission Directorate.

Constitutional Concerns. Several provisions of the bill incorporate classifications and preferences based on race, national origin, or gender that are subject to the rigorous standards applicable to such provisions under the equal protection component of the Due Process Clause of the Fifth Amendment. (See sections 1405(d), 2003(a) and (d), 4005(b), and 4009.) Unless the legislative record adequately demonstrates that those standards are satisfied, those provisions are objectionable on constitutional grounds.

Mr. BINGAMAN. Mr. President, I thank my colleague and I thank the Senator from South Carolina for their courtesy.

My understanding is that the Senator from South Carolina wishes to set aside the pending amendment and offer an amendment; is that correct?

Mr. DEMINT. Mr. President, the Senator is correct. I wish to bring up three amendments and briefly speak on them, if I can.

Mr. BINGAMAN. Mr. President, I will have to object to offering three amendments. I have no problem if he wants to set aside the pending amendment and bring one amendment up, whichever amendment he would like, and we will deal with them one at a time. I think that will be the appropriate procedure for us to follow.

Mr. DEMINT. That is fine. I thank the Senator.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

## AMENDMENT NO. 928

Mr. DEMINT. Mr. President, I ask unanimous consent to set aside the pending amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DEMINT. I ask unanimous consent to bring up amendment No. 928.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from South Carolina [Mr. DEMINT], for himself, Mr. MARTINEZ, Mr. CORNYN, and Mr. ENSIGN, proposes an amendment numbered 928.

Mr. DEMINT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Sarbanes-Oxley Act of 2002, with respect to smaller public company options regarding internal controls)

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . SMALLER PUBLIC COMPANY OPTION REGARDING INTERNAL CONTROL PROVISION.**

Section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262) is amended by adding at the end the following:

“(c) SMALLER PUBLIC COMPANY OPTION.—

“(1) VOLUNTARY COMPLIANCE.—A smaller issuer shall not be subject to the requirements of subsection (a), unless the smaller issuer voluntarily elects to comply with such requirements, in accordance with regulations prescribed by the Commission. Any smaller issuer that does not elect to comply with subsection (a) shall state such election, together with the reasons therefor, in its annual report to the Commission under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)).

“(2) DEFINITION OF SMALLER ISSUER.—

“(A) IN GENERAL.—For purposes of this subsection, and subject to subparagraph (B), the term ‘smaller issuer’ means an issuer for which an annual report is required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), that—

“(i) has a total market capitalization at the beginning of the relevant reporting period of less than \$700,000,000;

“(ii) has total product and services revenue for that reporting period of less than \$125,000,000; or

“(iii) has, at the beginning of the relevant reporting period, fewer than 1500 record beneficial holders.

“(B) ANNUAL ADJUSTMENTS.—The amounts referred to in clauses (i) and (ii) of subparagraph (A) shall be adjusted annually to account for changes in the Consumer Price Index for all urban consumers, United States city average, as published by the Bureau of Labor Statistics.”.

Mr. DEMINT. Mr. President, I thank the managers of this bill for giving me time to speak on this important issue. The issue of American competitiveness is very important to me, as I know it is to all Americans. It is the security of our jobs and our economic future. I am here today to propose some amendments. I will begin with one that I think will improve the bill.

I wish to first discuss Sarbanes-Oxley and how it relates to competitiveness in America. The bill we are discussing,

which is S. 761, the America COMPETES Act, seeks to improve America’s international competitiveness by strengthening the quality of our labor force. However, labor is only one component of economic growth. Capital investment is another critical component of any vibrant and growing economy. America’s competitiveness is being challenged by other countries, not only on the labor front but with capital formation as well.

We could say, as Senator ALEXANDER mentioned, this bill focuses on brainpower. What we are trying to do is say brainpower plus capital equals success in America.

In 2000, \$9 out of every \$10 in stock offerings from foreign companies were invested inside the United States. In 2005, that number completely flipped, and \$9 of every \$10 in stock offerings from foreign companies were invested outside the United States. Some might argue this is simply the result of foreign companies wishing to list closer to home, but I am afraid that is not the case. Cross-border listings are at an alltime high, and we are losing the competition for foreign capital.

This chart demonstrates how the United States is doing compared to others when it comes to attracting foreign capital. We begin in 2002 when Sarbanes-Oxley took effect. One can see this dark-blue line at the bottom is the U.S. exchanges, which have stayed basically flat, while markets in Hong Kong, London, and Singapore have continued to grow. There is no reason we should continue to lose ground to these other countries when it comes to investing.

We need to remember as Americans that the dollars which are used for research and development come from investment capital. There is no need for us to be spending billions and billions of dollars to encourage Americans to be better at math and science if the research and development is moving to other countries.

Some say these trends are simply the result of more sophisticated markets springing up abroad, but the evidence suggests otherwise. When one speaks with international CEOs making the decisions to list on foreign exchanges, they repeatedly cite Sarbanes-Oxley as the reasons they have listed abroad. That is why a report commissioned by Senator SCHUMER and Mayor Bloomberg cited section 404 of Sarbanes-Oxley as the reason international companies are no longer bringing their capital to the United States.

Section 404 requires public companies to conduct an additional audit on their internal controls. These audits are most expensive for smaller companies. Numerous reports have found that section 404 produced a heavy cost upon small, publicly traded companies without a proportional benefit. As a result, the regulatory burdens of section 404 on small businesses and companies—well, companies are choosing to raise capital in other markets.

A recent GAO study, requested by Senator SNOWE, found the cost for small public companies to comply with Sarbanes-Oxley has been disproportionately higher than for large companies. Small businesses in the United States, afraid of complying with the complicated provisions of Sarbanes-Oxley, are choosing not to grow by listing publicly and are, instead, staying small and remaining private. This prevents capital formation, it stunts job growth, and it makes our country less competitive in the global economy.

This is why Alan Greenspan recently said:

One good thing; Sarbox requires a CEO to certify the financial statement. That’s new and that’s helpful. Having said that, the rest we could do without. Section 404 is a nightmare.

This is not a politically inspired amendment. This is an amendment that recognizes we are hurting ourselves and we need to fix it. This is why an SEC advisory committee recommended that small businesses be exempt from section 404, and this is why I am offering the amendment today.

My amendment, No. 928, would make section 404 of Sarbanes-Oxley optional for smaller companies with market capitalization of less than \$700 million, revenue of less than \$125 million, or fewer than 1,500 shareholders. Section 404 reporting would be optional for these smaller companies, but they would have to notify their shareholders in their annual report.

The Senate’s Committee on Small Business held a hearing on this topic this past week, and I applaud Senator KERRY for looking into this important issue. As my colleagues may know, both Republicans and Democrats have suggested the need for reform, which makes my amendment consistent with the bipartisan nature of this bill. My proposal has been introduced as a free-standing bill in this Congress as well as the last Congress. It has also been introduced as part of a bill in the House by Representative GREGORY MEEKS, Democrat from New York, and enjoys broad bipartisan support.

Despite broad bipartisan support for my amendment, I expect some will object to it based on timing. They may believe the Securities and Exchange Commission is preparing to deal with this problem, so we should give them more time to work. This is something I believed several years ago. But that is not only a weak excuse, it is a complete copout. It has been 5 years since Sarbanes-Oxley was enacted, and each year that goes by we are chasing more capital out of our country.

The SEC has a responsibility to address this issue, but so do we. We wrote the law. Congress created this problem, and we should not hide behind some regulation when we have the ability to fix it. Furthermore, it is not clear that future action by the SEC will solve the problem. According to the Independent Community Bankers of America, the proposed internal control guidance

under section 404 is unlikely to reduce audit costs, particularly for smaller public companies.

Some may also object because this provision has not been fully examined in the committee of jurisdiction. This is a poor excuse as well. American competitiveness should not suffer because a committee in Congress has failed to do its job. A bill such as Senate Bill 761, which seeks to improve the competitiveness of our labor force but does nothing for capital formation, may result in a highly qualified labor force but without capital to spur economic growth and create the jobs they need to make.

This is a competitiveness issue. It should be debated on this bill and we should all support it. There is no plan to consider this legislation later this year, and it is probably the last opportunity we will have to address it before the next election. My amendment is cosponsored by Senators MARTINEZ, CORNYN, and ENSIGN, and I urge my colleagues to support it.

Mr. President, I yield the floor.

Mr. BINGAMAN. Mr. President, I appreciate the thought that has gone into the amendment, but, frankly, this is an amendment that is in the jurisdiction of the Banking Committee. Obviously, the Sarbanes-Oxley legislation came out of the Banking Committee and it is squarely within their jurisdiction. We are informed they have not had a chance to review the amendment, have not had a chance to have hearings on the amendment, and wish a chance to come to the floor and discuss it before there is any vote. There is some objection to going to any kind of vote on it at this point, so I am not prepared to discuss the merits of it. I do believe we need to provide an opportunity for those Senators on the Banking Committee who want to come and discuss the merits to come and engage in that debate.

However, I mention to the Senator from South Carolina, I am informed he also has an amendment related to looking at the Tax Code for possible problems with barring innovation; is that correct?

Mr. DEMINT. Yes, I do.

Mr. BINGAMAN. Mr. President, we are not in a position to say yet—we are trying to talk to the Finance Committee, because, of course, they have jurisdiction over tax issues—but we are trying to determine if there is any objection to Senator DEMINT's amendment relating to taxes.

Perhaps the right thing to do, since the majority leader has tried—not just on this bill but as a general matter—to avoid the circumstance where we are bringing up amendments, setting aside amendments; bringing up amendments, setting aside amendments, without ever having disposed of anything for a long period, perhaps the Senator could go ahead and describe this other amendment related to taxes. By the time he has completed that, we might know whether we are in a position to proceed to some kind of action on that.

Mr. DEMINT. So the Senator would prefer my not bringing it up but only describing it?

Mr. BINGAMAN. As I say, if it is another amendment that is going to require a debate and vote here, I think maybe we would want to go ahead and try to get the Banking Committee people here to deal with the Sarbanes-Oxley amendment before we get the Finance Committee people here to deal with the Tax Code amendment.

Perhaps the Senator could put the Senate on notice as to what the amendment entails, and by the time he is through with that discussion, we may know enough to be able to tell him whether we could accept the amendment or whether there is going to be objection.

Mr. DEMINT. Mr. President, I thank the Senator, and I think he will find this amendment has a lot of bipartisan support. It actually was a part of the original bill. It is amendment No. 929, and it expands the study on barriers to innovation, which is in section 1102 of the bill.

What we do is ask that this study include the impact of the IRS Tax Code on innovation. It is very consistent with the bill. My amendment does not remove anything currently called for in the study, it simply adds the provision that allows this study to include the effect of our Tax Code on innovation in America.

Specifically, the amendment calls on the Director of the Office of Science and Technology, through the National Academy of Sciences, to study all provisions of the Internal Revenue Code of 1986, including tax provisions, compliance costs, and reporting requirements that discourage innovation.

The IRS code increasingly overwhelms Americans with its growing complexity. It stymies entrepreneurship and economic growth, and it threatens to prevent future generations of Americans from enjoying the sort of upward mobility their parents and grandparents enjoyed. This important provision was originally included in the study in last year's bill but it was dropped. My amendment puts it back in, and it will help us identify ways the IRS Tax Code is discouraging innovation and weakening American competitiveness.

I ask the Senator if he would still prefer I not bring it up? In the interest of time, it may be helpful to have it on the table, and we could perhaps then agree to it at a later time. Would the Senator still prefer I wait to bring it up?

Mr. BINGAMAN. Mr. President, I know the Senator from Tennessee has some comments on the amendment. Maybe we could continue with that discussion and debate for a few more minutes to see if we can get a little more of a response from people in the Finance Committee.

Mr. DEMINT. I thank the Senator, and I yield the floor for the Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I want to thank the Senator from South Carolina for his amendments and for his initiative for being here and offering them. He is helping us jump-start the discussion, and I want him to know what we are doing is working on ways to get to action on his bills, not the reverse.

In fact, as far as his suggestion about considering the impact of taxes as barriers to innovation, I think he is right about that. That was a part of the original legislation. It had 70 sponsors at one time, the PACE Act. It was the Domenici-Bingaman act at that time. It is also a part of the Augustine report. These were the recommendations of the National Academy of Sciences team, which included 21 individuals who spent the entire summer and early fall of 2005 looking at exactly what we needed to do, and they recommended tax incentives for U.S.-based innovation.

This was a practical group, this Augustine committee. They made 20 recommendations. They knew there were a number of things that, if they recommended them, we wouldn't pass because we would have differences of opinion about them. So they stayed away from some areas. For example, since kindergarten through the 12th grade was their No. 1 priority in terms of improving education and encouraging innovation there, they might have felt giving low-income families scholarships or vouchers to go to private schools would be a good thing to do. But they didn't put that in their top 20 because they knew it was unlikely we would be able to agree on that here.

I think the same is true here with taxes. They specifically said on page 10 of the summary of their "Rising Above the Gathering Storm" that while they recommended making permanent the research and development tax credit as one change in tax policy, they realized that wasn't enough to consider it. They mention other alternatives that should be examined to see if it would be beneficial to the United States. These alternatives, the summary said:

... could include changes in overall corporate tax rates and special tax provisions providing research of high-technology and manufacturing equipment, treatment of capital gains, and incentives for long-term investment innovation. The Council of Economic Advisers and the Congressional Budget Office should conduct a comprehensive analysis to examine how the United States compares with other nations as a location for innovation and related activities with a view to ensuring the United States is one of the most attractive places in the world for long-term innovation related investment and the jobs relating from that investment from a tax standpoint.

That is not now the case, is what the Augustine report said. So I believe the Senator from South Carolina is making a real contribution to the debate here. His amendment which he proposes to bring up would improve the bill, in my

opinion. It was once a part of the legislation that was similar, and I am hopeful the Finance Committee will recognize this simply amends a study that is already in the bill so tax barriers can be included as part of that study.

Mr. President, I look forward to the response by the Democratic manager as to how we shall proceed.

Mr. BINGAMAN. Mr. President, I am informed we do not have a clear response from the Finance Committee. I agree with the substance of what the Senator from Tennessee said. I don't see this causes any difficulty in the overall thrust of the legislation, so I would be inclined to urge the Senator from South Carolina to go ahead and ask permission to set aside the pending amendment, bring this up, and then conclude any debate he wants to on this amendment related to the study, and then we can dispose of it—by voice vote, as far as I am concerned, unless the Senator wants a recorded vote.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

AMENDMENT NO. 929

Mr. DEMINT. Mr. President, I ask unanimous consent to call up amendment No. 929.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes an amendment numbered 929.

Mr. DEMINT. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the study on barriers to innovation to include an examination of the impact of the Internal Revenue Code of 1986 on innovation)

On page 8, strike lines 7 through 9, and insert the following:

(10) all provisions of the Internal Revenue Code of 1986, including tax provisions, compliance costs, and reporting requirements, that discourage innovation;

(11) the extent to which Federal funding promotes or hinders innovation; and

(12) the extent to which individuals are being

Mr. DEMINT. Mr. President, I have explained what this amendment does. It is very simple. In addition to a study, if we are commissioning a study and paying for it, to find out what obstacles we have to innovation, the Tax Code is certainly something that is cited often by folks who invest and do the research and development, who are actually associated with innovation in the marketplace, so it makes sense that we include any obstacles in the Tax Code or any opportunities we may have, as the Senator from Tennessee suggested, to create incentives for investment and innovation.

There is a relationship between this amendment and the first one I brought up. I think we all know that investment, incentives for investment, are

the catalyst for the research and development that results in innovation in the marketplace. As a nation, if we do not do more to attract capital, if we do not do more to encourage investment in our country, then those investments are not going to be here.

For many years we have been concerned that because of certain trade policies and other things we do internally, we have lost low-wage jobs. But increasingly we are hearing that because the investment dollars are moving overseas, behind those investment dollars go the high-tech jobs that are involved with research and development.

Both of these amendments are important. I would particularly like votes on this because it was stripped out once. I am concerned that if we do not have a vote and give the Members an opportunity to show support, particularly for this tax study, it will disappear again in conference.

My hope is we can have a vote and the yeas and nays on these amendments.

I yield the floor.

Mr. BINGAMAN. Mr. President, we need to determine when we would want to go ahead since, as I understand the Senator, he wishes a rollcall vote. We want to have a chance to check with our floor managers, the assistant majority leader, and determine when this is appropriate, so I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CASEY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 930

Mr. DEMINT. Mr. President, in the interest of time—I know we are discussing two other amendments and the bill managers have asked me not to bring up a third. I will not bring it up at this time but I wish to speak on it, if that would expedite procedures here on the floor.

My third amendment, which is amendment No. 930, which we will bring up at a later time, establishes a 60-vote point of order against appropriations bills that contain congressional earmarks for funds authorized in this bill, S. 761, the America COMPETES Act.

The goal of this amendment is to ensure that funds authorized in the bill are allocated according to a competitive or merit-based process. As my colleagues know, congressional earmarks circumvent the normal competitive or merit-based process and award funds based on politics. My amendment is consistent with the stated intent of the bill, which says on page 183 that nothing in divisions A or D shall be interpreted to require the National Science Foundation to "alter or modify its merit-review system or peer-review

process" or "exclude the awarding of any proposal by means of the merit-review or peer-review process."

My goal here is to make sure this new fund does not become a new pot for earmarks, that we start directing this new money back to our States or congressional districts because we put new funds on the table. If these and other funds authorized in the bill are going to be allocated in the most efficient and most competitive way, the Senate must take steps to discourage the use of earmarks when appropriating funds for these programs. My amendment will not only preserve the integrity of the competitiveness allocation process but it will make America more competitive by making these programs more effective.

In a bill that is about competition, this amendment makes sure the money is allocated on a merit-based competitive system instead of turning it into a new slush fund for Congress.

Out of respect for the managers, I will not bring that amendment up at this point but I hope to do that at a later time.

I yield the floor.

Mr. BINGAMAN. Mr. President, let me briefly speak to the amendment of the Senator from South Carolina related to earmarks. I obviously would have to object to it. I think he will find probably any and all Senators involved with appropriations would have to object to it. The way I read it, it says it is not in order to consider any bill that proposes a congressional earmark on appropriated funds unless you have 60 votes. The definition of a congressional earmark is contained in the legislation, but any appropriations bill that comes to the floor virtually by definition is going to contain something that falls into this definition of congressional earmark. It is one thing to be concerned about the addition of earmarks once the Appropriations Committee has presented legislation to the Congress or to the full Senate. But to say we cannot bring up a bill, an appropriations bill, if it has anything in it that might meet this definition is substantially more onerous than I would think would be good policy.

Mr. DEMINT. Will the Senator yield? Mr. BINGAMAN. I am glad to yield.

Mr. DEMINT. For a clarification. The way this amendment is written, it is not all appropriations bills, just appropriations bills that are appropriating money for this act, the America COMPETES Act. We are not bringing in all the appropriations bills that will be brought to the floor.

The point is, we are creating this new fund for competition. Instead of us in the future redirecting these funds in all directions, the bill has been very careful to lay out where this money will go in a way that we think is most efficient. This money will be allocated on a merit-based system. We have seen some of it before, how the National Science Foundation and others are merit based. We want to keep it that

way. What we are trying to do is avoid, in the future, that this new money we have authorized starts being redirected. If something comes up that is important, that we agree on, we can always overcome a 60-vote point of order. But if we allow this to fester, as we have seen in the past, instead of going to create competition in America, it will be going off to special projects. So it focuses on this bill and prevents politically driven earmarks.

Certainly we have directed the money for this whole bill. It doesn't change that. This is all authorized. We are not talking about authorized dollars, we are talking about redirecting it based on political motives in the future.

I thank the Senator for allowing that clarification.

Mr. BINGAMAN. Mr. President, I thank the Senator for the clarification, but I do think the problem remains because this bill is far reaching because this bill covers quite a few Federal agencies and tries to lay out a blueprint for what we hope we will be able to provide by way of appropriations to these agencies in the future, whether it is the National Science Foundation, whether it is the Office of Science in the Department Energy, whether it is the Department of Education, Health and Human Services—there are various agencies that would obtain funding to carry out the purposes of this legislation if we are successful through the appropriations process.

For us to be putting a provision in this authorizing bill saying you cannot bring an appropriations bill to the floor that contains anything we would define as a congressional earmark is unduly restricting the authority and the prerogatives of the Appropriations Committee in putting together legislation they think makes sense.

I am well aware there are three sort of distinct hurdles that need to be surmounted in order for us to actually get funds to be spent on these good purposes that are outlined in this bill. One of those hurdles is the Budget Act. We need to be sure there is room in the Budget Act for the funding we are calling for in this legislation. We offered an amendment to do that. We got very good support here in the Senate. Senator ALEXANDER and I offered that and I think that was a major step forward.

The second hurdle, of course, is trying to authorize these programs so if the funds are appropriated for these purposes nobody can raise an objection that these are not authorized uses of the funds.

Then the third and perhaps most difficult is, each year over the next several years, the period that is covered by the legislation—each year we are going to have to try to see that the funds are properly appropriated for these agencies to carry out the work as outlined in this bill.

I think it would be foolhardy for us to be requiring that before you can bring a bill to the floor that contained

funding related to this authorization bill, if it could be construed to fall under this definition of congressional earmark, you would have to have 60 votes to proceed to that appropriations bill. That would be an unprecedented procedure for us in the Senate and one that would be very wrongheaded. As I say, people involved in the appropriations process would probably see it that way as well.

I yield the floor.

Mr. DURBIN. Can I make a comment?

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. It is my understanding the Senator is not calling up the amendment but is only speaking to it for the RECORD.

Mr. DEMINT. Could I make one additional comment?

Again, I appreciate the Senator's remarks, and obviously we don't want to tie the hands of Congress unnecessarily, but when we are speaking of earmarks—and we defined it in this amendment ourselves. When we take this bill that was created for the purpose of improving competitiveness in America and we earmark, which means we target it to a specific State, locality, or congressional district other than through a statutory or administrative formula-driven or competitive award process—when we take what we have done and basically pervert it into a system where I want it to go to South Carolina, or the Senator wants it to go to Tennessee, that has nothing to do with the original intent of the bill, we call that an earmark. We would like to prevent that if we could with this one bill, but I appreciate the courtesy of both managers to allow us to explain. I hope we will have an opportunity to bring it up and offer it later.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am honored to be a cosponsor of this legislation. All of us understand we have an obligation in Congress to devise policies and means by which the American economy can compete and create good-paying jobs. Whether one lives in Pennsylvania or Illinois or New Mexico or Tennessee, we have lost a lot of good manufacturing jobs over the last few years. We know there have been growth industries. We can look at the whole Silicon Valley phenomena. Whether it is information technology or computers, the United States has taken a leadership position. But in many areas, we are not in leadership positions.

Senators ALEXANDER and BINGAMAN came together over a year ago to sit down with some of the experts in Washington and talk about what we needed to do to make America more competitive, the next generation of good-paying jobs, the horizons we ought to look to to build for the future. They put together a strong bipartisan bill. If Members read the cosponsors, they will find plenty of support on both sides of the

aisle. This may be one of the best examples of bipartisan cooperation we have had in the Senate so far this session. I hope we have more. I am honored to support it and be a cosponsor.

I hope we can move beyond the many amendments that are going to be offered and consider this bill on a timely basis. It is the nature of the Senate that it is a deliberative body. Occasionally, when there is a lapse, we actually break into real debate on the Senate floor. People across the Nation applaud when they hear that happen. In this situation, I am not suggesting that we should not debate amendments to the bill. In fact, I will describe one in a moment. But I am prepared to pull my amendment back because I don't want to stop this bill. I want it to pass the Senate and the House. I want it enacted into law. I hope other Members who have a positive belief about this legislation will think twice about whether they need to gild the lily and add something to a positive and substantive bill.

The issue I would like to speak to is one I believe in very strongly. I have an amendment, but I won't stop this bill to offer it. If it appears to have any objection or resistance, I will save it for another day. It is one that fits into this competitiveness issue.

The United States graduates some of the world's best engineers, scientists, and mathematicians. However, countries such as China and India are catching up. They are educating a higher proportion of their students in these fields.

We have heard the statistics from the National Academy of Sciences report "Rising Above the Gathering Storm." In 2004, China graduated 600,000 engineers. India graduated 350,000 engineers. The United States graduated 70,000. In 2004, only a third of the undergraduate degrees awarded in the United States were in science or engineering. In China, the number was 59 percent; in Japan, 66 percent in science and engineering.

Our country can understand when our economic security and our future are at stake, and we have risen to the occasion. I remember back in the 1950s when the Russians launched Sputnik. We didn't think they were capable of that. When they put the first satellite in space, it caused great fear across the United States. As a result, Congress did something it had never done before: It created Federal assistance to higher education. It created a loan program to encourage students to go to college. I know about that program because that is the way I went to college. It was called the National Defense Education Act. I borrowed enough money to get through college and law school, paid it back at a modest interest rate, and believe it was a good investment. I have had a pretty good life as a result of it and maybe have added something to this great country in the process. Thousands of others went through the same experience. Congress responded.

We knew we needed to invest in our country by first investing in education.

The same thing is true with competitiveness. We can talk about a lot of actions that might achieve our goals, but education is the starting point. We have documented the technological challenges to our country from many different angles. The founder of Microsoft, Bill Gates; the chairman of Intel, Craig Barrett; a journalist, writer Tom Friedman; and the National Academy of Sciences have all told us this. All agree we need to strengthen students' proficiency in science, technology, engineering, math, and foreign languages. The America COMPETES Act invests in the R&D and education our country needs to make sure we remain the world's technological innovator.

In our increasingly global economy, we need more youth to pursue math, science, engineering, technological, and critical foreign language degrees. Our young people also need an appropriate knowledge and understanding of the world beyond our borders. You have heard me speak many times on the floor about one of our Nation's greatest public servants, my predecessor, the late Senator Paul Simon. Paul understood that our country needed to invest in math and science. He also envisioned a United States populated by a generation of Americans with a greater knowledge of the world, a generation of our Nation's future leaders that has been abroad and has a personal connection to another part of the world.

In the months before his untimely death, Senator Simon came to Washington. I met with him. We talked as well with his former colleagues about the need to strengthen our Nation's international understanding in the 21st century. Paul Simon knew that America's security, global competitiveness, and diplomatic efforts in working toward a peaceful society rest on our young people's global competence and ability to appreciate language and culture beyond the United States.

I filed as an amendment to this bill an amendment which we have entitled the "Senator Paul Simon Study Abroad Foundation Act." It is an initiative that honors Paul's commitment to international education and brings his vision one step closer to reality. The Simon Act encourages and supports the experience of studying abroad in developing countries, countries where people with a different culture, language, government, and religion will give a person a different life experience. It aims to have at least 1 million undergraduate students study abroad annually within 10 years and expands study-abroad opportunities for students currently underrepresented.

The Simon Act establishes study abroad as a national priority and provides the catalyst for the education community to commit to making study abroad an institutional priority. An independent public-private entity, the Senator Paul Simon Foundation,

would carry out the goal of making studying abroad in high-quality programs in diverse locations around the world routine rather than the exception. Students who were previously unable to study abroad due to financial constraints would be eligible for grants. The grants would also provide colleges and universities and other nongovernmental institutions financial incentives to develop programs that make it easier for college students to study abroad.

We can't afford not to invest in thoughtful Federal initiatives that foster innovation. We must ensure that future leaders understand science and engineering and the world in which they live. The future of our country depends on having globally literate citizens. I believe the Paul Simon Study Abroad Foundation Act would help to achieve that goal.

There is one other area that would be helpful when it comes to competitiveness. Most of us know today what a miracle computers have turned out to be. They really bring so much information to our fingertips which long ago was hard to find. I can recall as a college student walking across the street to the Library of Congress, sending in the little slips of paper and ordering a big stack of books and searching through them to find information which I can now Google in a matter of seconds. That is great. That information is helpful. But if one is going to be able to take advantage of that opportunity, one needs to have access to high-speed computers.

There are many parts of America—Washington and Capitol Hill would be good examples—that have broadband access now. We take it for granted. I represent a diverse State, Illinois, which has the great city of Chicago as our largest city but also has a lot of small towns and rural areas, not unlike Tennessee or New Mexico. It is important for the development of education, health care, and business for us to expand broadband access in America to areas that are currently not served.

I have introduced a bill, which is being considered before the Senate Commerce Committee, on broadband access. I would like to share a statistic which Members might consider. According to the OECD, the United States fell from 4th in the world in broadband access per capita in 2001 to 12th in 2006. As of 2006, the International Telecommunication Union listed the United States 16th worldwide in terms of broadband access. We are now behind South Korea, Belgium, Israel, and Switzerland, among other nations.

In today's highly competitive international markets, our children, businesses, and communities are competing with their peers around the world for jobs, market share, business, and information. It concerns me that with the size and dynamism of our economy, we are falling behind in an area where we should have a natural advantage. As we committed ourselves to a National De-

fense Education Act to make sure we had trained people, educated people to compete against the Soviet Union in that era and now in the world, we also need to make sure the tools for competition are available.

I will be offering this broadband access act not as an amendment to this bill but at a later date. I hope those representing States across the Nation who believe there are digital divides will join me in making sure this important tool is available to every American.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from New Mexico.

**MR. BINGAMAN.** Mr. President, I ask unanimous consent that at 2:17 p.m., the Senate proceed to vote on or in relation to amendment No. 929; that at 2:15 p.m., there be 2 minutes of debate equally divided between Senators BAUCUS and DEMINT or their designees and that no amendment be in order to the amendment prior to the vote; that upon the conclusion of the vote, Senator KENNEDY be recognized to speak on the bill; that following Senator KENNEDY, Senator COBURN be recognized as provided for under the previous order.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

**The Senator from Mississippi.**

**MR. LOTT.** Mr. President, let me inquire of the parliamentary situation. I believe, under the agreement, we will now go off this legislation, and we are ready to have some remarks with regard to the judicial nomination for the Southern District of Mississippi.

**THE PRESIDING OFFICER.** Under the previous order, that is to begin at noon.

**MR. LOTT.** So are we ready to proceed? I ask unanimous consent that I be allowed to begin my remarks in support of this nominee.

#### EXECUTIVE SESSION

#### NOMINATION OF HALIL SULEYMAN OZERDEN TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

**THE PRESIDING OFFICER.** Under the previous order, the hour of 12 noon having arrived, the Senate will proceed to executive session to consider Calendar No. 76, which the clerk will report.

The legislative clerk read the nomination of Halil Suleyman Ozerden, of Mississippi, to be United States District Judge for the Southern District of Mississippi.

**THE PRESIDING OFFICER.** Under the previous order, there will be 10 minutes of debate equally divided between the chairman and ranking member or their designees.

**The Senator from Mississippi.**

**MR. LOTT.** Mr. President, it is my pleasure be here to speak on behalf of the confirmation of Halil Suleyman Ozerden to serve on the U.S. District