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 us 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, as 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 the Members of the Senate for the last 2 years have had plenty of opportunity to influence this bill, and must 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 what 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 programs 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 refer 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 alternate 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 parts of the world. We 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 schools. Tonight I propose $70,000 for each of our 7,000 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. 765 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), science, technology, engineering, and mathematics (STEM) education, and encouraging entrepreneurship. Thus, the Administration shares the goals of S. 761 to ensure the continued economic growth of the United States through research and education and has been encouraged by the bipartisan support for addressing this vital topic. However, the Administration believes that the bill does not prioritize targeted, authorized effective and appropriate spending, and creates unnecessary bureaucracy and education programs. The Administration looks forward to working with the Senate 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 bill creates at least 20 new programs across many agencies that, if enacted, would divert resources from and undermine and delay existing research. The Administration believes that the 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 out of areas 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 2005 Administration budget. The Administration strongly objects to requiring each Federal science agency to set aside 8 percent of its development research budget—a new program authorized in the Federal budget at dozens of agencies—for projects that are “too novel or too diverse a subject to receive adequate attention in the traditional peer review process.” Such a large earmark of the agencies’ ongoing research efforts would certainly have negative unintended consequences. 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 development research 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 too diverse a subject to receive adequate attention in the traditional peer review process.” Such a large earmark of the agencies’ ongoing research efforts would certainly have negative unintended consequences. Therefore, it is unreasonable to increase the authorizations of appropriations of the magnitude called for in this provision.

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:

Innovation Acceleration Research. The Administration strongly objects to a requirement specifying further funding for Education and Human Resources (EHR) activities at NSF. This is especially inappropriate since the task force 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.

Experiential 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. The Senator from South Carolina's Amendment would direct the Energy Department to provide EPSCoR grants to States through competitive awards. 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 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, 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 investors to influence market decisions in potentially inefficient and ineffective ways.

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. 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.
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 amendment is as follows:

The Senator from South Carolina [Mr. DEMINT], for himself, Mr. MARTINEZ, Mr. CORNYN, and Mr. ENSHIN, 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. 4873. 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 the report 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 $25,000,000; 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 market 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, 90 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 in 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 investors, both foreign and domestic. We have a need for us to be spending billions and billions of dollars to encourage Americans to do 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. The 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, increased regulation under section 404 is challenging smaller public 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 time to work on it. I think it is one thing I believed 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 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 problem for capital formation. 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. Audit costs 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 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 an amendment that has come 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 support an amendment related to limiting the IRS 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 the Senator's amendment relating to taxes.

Mr. DE MINT. 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. DE MINT] proposes an amendment numbered 929.

Mr. DE MINT. I ask unanimous consent to have 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 on innovation;

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

(12) the extent to which individuals are being

Mr. DE MINT. Mr. President, I have explained what this amendment does. It is very simple. In addition to a study of the commission, the commission should also be studying the impact of the tax code on innovation. 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. DE MINT. Mr. President, I ask unanimous consent for the quorum call to be rescinded.

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

AMENDMENT NO. 930

Mr. DE MINT. 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.

My third amendment, which is amendment No. 930, which we will call up on page 83 of the bill, which says we cannot bring up a bill, an appropriations bill, that contains 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 when 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. DE MINT. Will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. DE MINT. For a clarification. The way this amendment is written, it says it is not to be in any appropriations bill that contains 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 103 of the bill, which Congress enacted in 2007, that Congress has interpreted to require the National Science Foundation to alter its merit-review system or peer-review process or 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 fund for competition, that we start going back to the way we direct these funds, that we put new funds on the table. 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. As I read it, 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 when 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. DE MINT. Will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. DE MINT. For a clarification. The way this amendment is written, it says it is not to be in any appropriations bill that contains congressional earmarks for funds authorized in this bill, S. 761, 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 competitive, merit-based basis. 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 want to get this going faster, 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 in the Senate Appropriations Committee, but I don’t think the problem remains because this bill is far reaching because it is not just a few Washington 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 Department of 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 undeniably 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 get these programs funded. If the funds are appropriated for these purposes nobody can raise an objection that these are not authorized uses of the funds.

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 unprecedented. 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 restricting the freedom or resilience it agencies and try to lay out a blueprint for the Department of 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 were 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 undeniably 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.

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I think it would be foolhardy for us to be requiring that before you can bring a bill to the floor that contained
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 the technological challenges to our country from many different angles. The founder of Microsoft, Bill Gates; the chairman of Intel, Craig Barrett; a journalist, Tom Friedman; and the National Academy of Sciences 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 and understood 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 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. It concerns me that with the 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 parts of 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 in 2001 to 16th worldwide in terms of broadband access. We are now behind South Korea, Belgium, Israel, and Switzerland, among other nations.

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 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 Defense 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 UNITED STATES 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 Ozerdin, 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 Ozerdin to serve on the U.S. District