

**Senator Orrin G. Hatch**  
**“An Innovation Agenda for the 115th Congress”**  
**Senate Republican High-Tech Task Force**  
**February 16, 2017**

Thank you for being here today. As the returning Chairman of the Senate Republican High-Tech Task Force, I'm most appreciative that you would take time out of your busy schedules to hear my thoughts on what we can do this Congress to strengthen and secure America's place as the global leader in innovation.

In my brief time today, I'll describe some broad themes and hit a number of priorities. But I won't have time to hit all my priorities. Please don't take the fact that I don't mention a particular issue to mean that I believe the issue is less pressing. I don't want to keep you here for three hours — and I'm sure you don't want me to keep you here for three hours, either — so my remarks will, of necessity, be somewhat high-level.

Let me begin by addressing our current political climate. We have a Republican President, a Republican House, and a Republican Senate for the first time in a decade. We have a President who is committed to strengthening our economy and to keeping jobs here in the United States. I know that not all of you supported our President in the recent election. But I hope you all recognize that he wants to make America stronger and that he wants to do this by helping American workers and by securing America's place as the global economic leader. I think those are goals we all share.

As one of the earliest Senators to endorse President Trump, I can serve as a bridge between the President and the tech community. I spent nearly an hour in the Oval Office with him last month. Help me help you work with the President to accomplish our shared goals.

### **Enhancing America's Competitive Workforce**

With that in mind, let me talk first about enhancing America's competitive workforce. I need not tell you that we have the best workers in the world here in America. Americans are hard-working, independent, and smart. But even with their innate drive and ingenuity, there are still skills that American workers need to succeed in the information age.

More than ever, our nation is in need of workers with training in science, technology, engineering, and math — the STEM disciplines we hear so much about. This means, of course, a focus in high school and college on hard science and quantitative skills. But it also means providing opportunities for Americans already in the workforce to develop expertise in these fields.

Enhancing our competitive workforce also means improving the process by which high-skilled individuals in other countries come to the United States to fill crucial positions for which there is a shortage of American labor. Researchers estimate that the United States will face a shortage of more than 220,000 workers with STEM degrees by 2018. That means lost productivity, lost innovation, and a less robust economy.

Now, we have a system of H-1B visas to bring in highly qualified workers from other countries to fill these vacancies, but that system is outdated and doesn't respond properly to market demands. We need to reform this process to better identify high-skilled individuals who want to come to the United States — and who want to stay here — to contribute to our economy and our way of life.

At the same time, we need to ensure that this system is not manipulated to undercut domestic wages or displace American workers. Unfortunately, a handful of bad actors has created a great deal of unease about H-1B visas by misusing the system to offshore jobs to foreign workers. We've all seen the news reports. In addition, some of these companies file for way more H-1B visas than they need, squeezing smaller players out of the picture. We cannot allow this small number of bad actors to wreck the system for the responsible companies who want to help American workers and grow our economy.

As many of you know, I introduced the *Immigration Innovation Act*, or I-Squared, in the last two Congresses to modernize our H-1B system. I am currently working on updating this legislation to address some of the problems I have just mentioned and look forward to reintroducing the bill in the near future.

To throw out just a few possible solutions, we could cap the number of H-1B visas any single employer can apply for. We could do multiple waves of lotteries. We could require additional attestations that an employer tried to fill a job with an American worker but was unable to do so. And we could create a shot clock, so that a visa expires and goes back into the lottery pool if it's not used within a certain period. We could also ease some of the pressure on H-1B visas by streamlining the process for green cards. After all, that's the end goal for many of these workers.

These are just a few of many possible solutions. I want you all to work with me to fine-tune these ideas so we can find the right path forward.

I'm also mindful of the angst many in the tech community feel about the President's draft executive order on foreign worker visas. I want you all to know that I will work with the President on this and that I will do my part if you will do yours. That includes not provoking the White House unnecessarily.

### **Protecting American Innovation and Inventiveness**

Let me turn now to protecting American innovation and inventiveness. Hand-in-glove with enhancing our competitive workforce must be safeguarding the thousands of discoveries Americans make each year.

America's system of intellectual property protections is second to none. But that doesn't mean it's perfect. There's a lot we can do to strengthen incentives to innovate and to protect discoveries. Allow me to touch on two issues.

First, patent litigation. As you know, this is a tremendously thorny issue. But I believe there's one area where we can see real progress this year: venue. Abusive litigants have exploited a hole in the law to direct a disproportionate number of suits to plaintiff-friendly forums, and to one such forum in particular. The Supreme Court is currently examining the issue, so we won't have a full view of the landscape until after the Court rules. But no matter what the Court does, we're likely going to need follow-on legislation to prevent future forum-shopping and to ensure that litigants have a meaningful connection to the site of the suit. I intend to take a leading role on this critical issue.

Second, copyright. There have been some controversies lately about the Copyright Office and the administration of our nation's copyright laws. I'm not going to wade into those controversies here, but I do want to say that we need a Copyright Office that is well managed, that is accountable, and that is responsive to Congress's demands. Telling Congress to communicate with the Copyright Office via SurveyMonkey is unacceptable.

I also think it would be a good idea to make the Register of Copyrights a presidentially appointed, Senate-confirmed position. This would bring certainty to a position whose chain of authority is, at present, a bit unclear.

We also need a registration system that is easily accessible and easily searchable. Digitization seems like a reasonable step. There are many details to work out, but suffice it to say, we need a copyright system that works for everyone.

### **Supporting Responsible Data Stewardship at Home and Abroad**

Another critical issue is data privacy. This is a topic with both domestic and foreign dimensions.

On the domestic front, it is past time to update the *Electronic Communications Privacy Act*, or ECPA, to require a warrant for all email content in the United States, in line with current best practices.

There's also a more pressing, international aspect of data privacy, as demonstrated by recent government actions against Microsoft and Google.

In our interconnected world, electronic data can be stored pretty much anywhere. Microsoft, for example, stores data in 100 facilities spread across 40 countries. This can create complications when U.S. law enforcement wishes to access electronic data related to a criminal investigation — the contents of emails, for instance. If the data is stored in the U.S., the legal standards are straightforward. But for data stored overseas, the situation can be extremely fraught. Countries have vastly divergent data privacy laws. What may be legal to disclose to law enforcement in one country may be illegal in another.

Thus, while a judge in the U.S. may think it reasonable to ask a company like IBM or Google to pull the contents of an email stored in Europe, European officials may disagree. They may sanction the company for violations of applicable European data privacy laws or seek in turn to compel the company to produce data stored in the U.S. to European officials. We need a regime

to determine standards for disclosure of electronic data no matter where it is stored — in the U.S. or abroad.

Last Congress I introduced legislation to do just that — the *International Communications Privacy Act*. I intend to engage closely with stakeholders and law enforcement this Congress to refine the bill so that we can come up with a workable solution to this pressing problem. I'm optimistic that we can get this bill across the finish line and enacted into law, and I intend to do so.

Also, let's not forget encryption. This is a hugely important issue. In many ways, our mobile devices have become extensions of ourselves. They contain our emails, our contacts, our calendars, our photos, our social media — basically everything about our lives. Protecting these devices against unauthorized access is critical. Congress, not the courts, needs to drive this issue.

### **Spurring High-Tech Investment Through Tax System Reforms**

A few words on tax reform.

Our taxes are too high. We have the highest corporate tax rate in the developed world. This deters growth and disincentivizes entrepreneurship. We need to reduce our corporate tax rate to help keep American tech companies globally competitive and to encourage innovators to do business here in the United States.

In addition, we should look at moving to a territorial tax system. Currently, American companies are taxed on their worldwide income, regardless of where that income is made. Many of our trading allies, by contrast, have moved to a territorial system in which they tax corporations in their home country based only on the profits those corporations make at home. This puts America at a competitive disadvantage and makes it a less attractive place to do business.

### **New Frontiers in Innovation: The “Internet of Things” and New Transportation Technologies**

I'd like to touch briefly now on two areas where we're seeing a lot of promising developments. First is the so-called Internet of Things, where we're seeing embedded software and device-to-device connectivity change the way we share information, make decisions, and run our households. Second is transportation technology, where autonomous vehicles and unmanned aircraft have the potential to revolutionize how we get from point A to point B and make deliveries.

I mention these topics in tandem because they present a similar challenge: How do we create a sound regulatory framework that adequately protects safety and privacy without stifling the tremendous advances we're seeing? There's no simple path forward on these issues, but one point I believe is clear. It's the same principle that guides our medical profession: first, do no harm. Yes, we must protect safety and privacy, but we also shouldn't rush in. When problems arise, let's address them. But let's not regulate just for the sake of regulating. Let's not smother these emerging technologies while they're yet in infancy.

I'd like you to weigh in with me on this subject. These technologies are the wave of the future.

### **Fostering a Modern, Competitive, and Open Internet**

Allow me to close with a few thoughts on internet freedom. The explosion of the internet over the last twenty-five years has produced one of the greatest technological revolutions in human history. Billions of people are now connected in a way no one would have thought possible fifty years ago.

The rapid growth of the internet — and America's role in driving that growth — has come about in large part because we have maintained a light regulatory touch. We should maintain this approach, which has brought us so far so fast.

We should also do what we can to promote the free flow of data internationally. A number of companies have expressed significant concerns to me about barriers to cross-border data flows. We need to work with our trading partners to ensure that electronically delivered goods and services are not discriminated against or hampered by data localization requirements. We should also resist efforts by our trading partners to use competition laws to favor home-grown businesses over American companies, particularly when such favoritism flies in the face of international commitments.

### **Conclusion**

I'll stop there. As I hope is clear, I have a lot more I could say. You all have a copy of my full innovation agenda, which touches on a number of topics I simply haven't had time to review with you today.

We've got a lot of work to do. I'll be looking to you and your colleagues for guidance and for assistance in carrying forward the agenda I've laid out.

And don't forget: As I said at the outset, I can be your bridge with the Trump administration. I think the President trusts me. And I can help impress upon him the importance of the issues I've been discussing with you. Thank you for your time.

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