But I will also continue to strongly oppose any reauthorization of the PATRIOT Act that does not protect the rights and freedoms of law-abiding Americans with no connection to terrorism. This deal does not meet that standard; it doesn't even come close.

The PATRIOT Act conference report, combined with the few changes announced today, does not address the core issues that our bipartisan group of Senators have been concerned about for the last several years. The modest but critical changes we have been pushing are not included. I am not talking about new issues. We are talking about the same issues that concerned us when we first introduced the SAFE Act more than 2 years ago to fix the PATRIOT Act. And we have laid them out in detail in several different letters over the past few months.

First, and most importantly, the deal does not ensure that the government can only obtain the library, medical and other sensitive business records of people who have some link to suspected terrorists. This is the section 215 issue, which has been at the center of this debate over the PATRIOT Act. Section 215 of the PATRIOT Act allows the government to obtain secret court orders in domestic intelligence investigations to get all kinds of business records about people, including not just library records but also medical records and various other types of business records. The Senate bill that this body passed by unanimous consent back in July would have ensured that the government cannot use this power to go after someone who has no connection whatsoever to a terrorist or spy or their activities. The conference report replaces the Senate test with a simple relevance standard, which is not adequate protection against a fishing expedition. And the deal struck today leaves that provision of the conference report unchanged.

Second, the deal does not provide meaningful judicial review of the gag orders placed on recipients of section 215 business records orders and National Security Letters. Under the deal, such review can only take place after a year has passed and can only be successful if the recipient proves that that government has acted in bad faith. The deal ignores the serious first amendment problem with the gag rule under current law. In fact, it arguably makes the law worse in this area.

And third, the deal does not ensure that when government agents secretly break into the homes of Americans to do a so-called sneak and peek search, they tell the owners of those homes in most circumstances within 7 days, as courts have said they should, and as the Senate bill did.

As I understand it, this deal only makes a few small changes. It would permit judicial review of a section 215 gag order, but under conditions that would make it very difficult for anyone to obtain meaningful judicial review. It would state specifically that the government can serve National Security Letters on libraries if the library comes within the current requirements of the NSL statute, a provision that as I read it, just restates current law. And it would clarify that people who receive a National Security Letter would not have to tell the FBI if they consult with an attorney. This last change is a positive step, but it is only one relatively minor change.

So this deal comes nowhere near the significant, but very reasonable, changes in the law that I believe are a necessary part of any reauthorization package. We weren't asking for much. We weren't even asking for changes that would get us close to the bill that this body passed without objection last July. But the White House would not be reasonable and has forced a deal that is not satisfactory in an effort to serve their partisan purposes. I will oppose it, and I will fight it.

ENEMY COMBATANTS

Mr. KYL. Mr. President, I rise today to put into the RECORD a letter that Senator GRAHAM and I recently sent to the Attorney General, and to respond to misrepresentations that have been made in the press and by others regarding the circumstances of the enactment of the Graham amendment to last year's Defense Authorization bill. The letter responds to similar misleading attacks that were made against the Justice Department at the beginning of this year. My office has received several inquiries about this letter, which was sent to the Attorney General on January 18. So that anyone interested in this matter might review the letter, I will ask to have it printed in the RECORD.

I ordinarily would not comment on the meaning of legislation that already has been enacted into law. In this case, however, there has been a considerable amount of post-enactment commentary by others on the meaning of the Graham amendment. Much of this commentary insinuates that the Administration and the backers of the amendment are violating an agreement with members of the minority by characterizing the amendment as governing pending litigation. Since the enactment of the Graham amendment last December, some critics have begun to paint a revisionist history of this legislation. In this new account, the Graham amendment supposedly was intentionally modified by the Senate so as not to affect pending litigation. Also in this version of events, Senators relied on representations that the amendment was modified to carve out pending litigation when they voted in favor of its final passage. This conspiracy theory is without foundation.

For those unfamiliar with the Graham amendment, the disputed provision in the legislation changes the Federal habeas code by adding a subsection providing as follows: ''Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba.'' The amendment also provides that ''[t]his section shall take effect on the date of the enactment of this Act.'' In addition, the amendment establishes substantive standards for limited judicial review of CSRT determinations and military-commission decisions, and provides that the paragraphs creating those review standards ''shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.''

Some critics now assert that nothing in the amendment prevents pre-enactment habeas actions from going forward in their previous form. For reasons explained in the letter to the Attorney General, I believe that such an interpretation is untenable. In addition to the points made in the letter, I would also add the following: the amendment states that the changes that it makes to the habeas code ''shall take effect on the date of the enactment of this Act.'' If the current pack habeas cases are allowed to go forward in their current form, the law's provision that ''no court, justice, or judge shall have jurisdiction'' to hear those cases in that form will not be effective on the date of the law's enactment. Rather, the courts still would have jurisdiction over these cases after the date of enactment, and the law's all-encompassing jurisdictional bar would become effective only when the current litigation would exhaust itself—a date that likely would come only years in the future. Such a result would not be consistent with the requirement that the law's total jurisdictional prohibition ''take effect of the date of the enactment of this Act.''

Of those critics who argue that the amendment carves out pre-enactment habeas cases, I would simply ask, what part of ''no court, justice or judge'' do you not understand? How could this language possibly be more comprehensive? And how could any Senator possibly have been misled as to its effect?

Some of the recent criticism of the amendment in the press has taken a new tack. A few critics have begun to suggest that even if the legislative text of the Graham amendment does wipe out the pending habeas cases, Senators were affirmatively misled about this aspect of the final amendment. The allegation is that Senators were led to understand that the amendment that they were voting on would not affect pending cases. I have reviewed the legislative record from the days leading up to the vote on final passage of the Graham amendment, and find this suggestion wanting. Allow me to describe what was actually said about the original version of the amendment—the Graham/Kyl amendment—as well as the final version, the Graham/Levin/Kyl amendment, prior to their passage.

On November 10, Senator LEVIN stated with regard to the original Graham/Kyl amendment, ''I read the language as to how broad it is. It eliminates explicitly any appeal: No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus, and that is the way an appeal goes to a court from one of these people. It is eliminated.'' (151 Cong. Rec. S12665.) Similarly, later that day, Senator BINGAMAN characterized the original Graham amendment as follows: ''It essentially denies all courts anywhere the right to consider any petition from any prisoner being held at Guantanamo Bay.'' (151 Cong. Rec. S12667.) And later, on November 15, Senator DURBIN said the following about the original Graham/Kyl amendment: ''the amendment would eliminate habeas for detainees at Guantanamo Bay. . . . It would strip Federal courts, including the U.S. Supreme Court, of the right to hear any challenge to any practice at Guantanamo Bay, other than a one-time appeal to the D.C. Circuit. . . . It applies retroactively, and therefore also likely would prevent the Supreme Court from ruling on the merits of the Hamdan case, a pending challenge to the legality of the administration's military commissions.'' (151 Cong. Rec. S12799.)

Thus from the beginning, Senators recognized and emphasized to their colleagues that the original Graham amendment language was comprehensive. They also recognized and emphasized that the amendment barred pending cases from going forward, including the Hamdan case in the Supreme Court. These aspects of the original amendment not only were generally acknowledged, but were a point of controversy during the Senate debate.

Had the subsequent Graham/Levin/Kyl amendment departed from the original amendment by carving out pending cases, this would have been a momentous change. Aside from the fact that such a change would have gutted the amendment, it also would addressed one of the issues about which opposing Senators had expressed sharp concern. Surely, had such a change been made or even intended to be made, the fact would have been noted. Instead, it is the dog that did not bark.

First, neither Senator GRAHAM nor I ever said anything in the days leading up to the final vote on the amendment that could possibly suggest to anyone that the modified amendment exempted pending cases. Senator GRAHAM is the lead sponsor and I am an original cosponsor of the amendment that passed the Senate on November 10. We controlled the amendment. No one was in a better position than we were to describe what the amendment does and does not do. Had such a major change to the amendment been made, it is inconceivable that one of us would not at least have commented on it. No such comment or even the suggestion of such a change was made by either one of us.

Indeed, the few statements that Senator GRAHAM did make prior to passage of Graham/Levin/Kyl that describe the amendment's reach tend to confirm that the amendment does not treat detainees differently based on when they filed their claims. For example, on the evening of November 14, when the final amendment was introduced, Senator GRAHAM noted that ''[i]nstead of having unlimited habeas corpus opportunities under the Constitution, we give every enemy combatant, all 500, a chance to go to Federal court, the Circuit Court of Appeals for the District of Columbia.'' (151 Cong. Rec. S12754.) ''What we have done, working with Senators LEVIN, KYL, and others, we have created that same type of appeals process for all military commission decisions.'' Ibid.

During that same evening, Senator LEVIN also commented on the new amendment. Although he said that the amendment did not ''strip jurisdiction'' from the courts, he made clear that he meant that jurisdiction remained in place because the pending cases—including challenges to military-commission decisions—could go forward as claims invoking the substantive review standards of the new amendment. Senator LEVIN stated: ''What we have done in this amendment, we have said that the standards in the amendment will be applied in pending cases, but the amendment will not trip the courts of jurisdiction over those cases. For instance, the Supreme Court jurisdiction in Hamdan is not affected.'' (151 Cong. Rec. S12755.) Again, later: ''what our amendment does, as soon as it is enacted and the enactment is effective, it provides that the standards we set forth in our amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this amendment.'' Ibid. And again: ''because it would not strip courts of jurisdiction over these matters where they have taken jurisdiction, it does, again, apply the substantive law and assume that the courts would apply the substantive law if this amendment is agreed to.'' Ibid.

Whether the amendment, by barring one type of claim and authorizing another type to take its place, strips the courts of jurisdiction, is, to some extent, a matter of perspective. It is a question of whether the glass is half empty or half full. On the operative issue, however, Senator LEVIN's remarks on November 14 are consistent not only with my own and Senator GRAHAM's characterization of the amendment (see, e.g. 151 Cong. Rec. S14263), but also with the interpretation now advanced by the Justice Department: that the current claims can go forward, but only as claims for review under the substantive standards created by the new act.

It bears mention that the revised amendment's authorization of judicial review of military-commission decisions, though narrow and venue-restricted, was a substantial departure from the original amendment. As Senator LEVIN had emphasized on November 10, the original amendment ''eliminates court review of the sentences of enemy combatants before these commissions.'' (151 Cong. Rec. S12664.) He stated that the amendment even ''eliminates the appeal of a conviction that led to a capital offense.'' (151 Cong. Rec. S12665.) Under the original Graham amendment, no appeal of any kind would have been permitted from the military-commission verdict in the Hamdan case.

The revised amendment does allow limited appeals of final military-commission decisions. In fact, this change was described to Senators as the principal difference between the original and revised Graham amendments. Senator LEVIN noted on the morning of November 15, before the vote on Graham/Levin/Kyl:

> The amendment which was approved last Thursday, which is the one now awaiting this amendment, would have provided for review only for status determinations and not of convictions by military commissions. . . . One of the reasons I voted against the amendment last Thursday is that it did not provide for that direct judicial review of convictions by military commissions. That is the major change in the amendment before the Senate, the so-called Graham-Levin-Kyl amendment which is before the Senate. There are a number of other changes as well, but of all the changes, what this amendment does is add . . . a direct appeal for convictions by military commissions. (151 Cong. Rec. S12754.)

Other Senators speaking about the amendment prior to the final vote did not even view the detainee's glass as half full. On the morning of November 15, Senator SPECTER exhorted his colleagues to oppose the amendment, stating: ''On the face of the Graham amendment, it . . . even takes away jurisdiction from the Supreme Court of the United States.'' (151 Cong. Rec. S12799.) He later stated that the amendment would ''strip Federal courts of the authority to consider a habeas petition from detainees being held in U.S. custody as enemy combatants,'' (151 Cong. Rec. 12801), and reiterated that the Graham/Levin/Kyl amendment was an amendment ''which on the face takes away jurisdiction of the Supreme Court of the United States.'' Ibid. Senator SPECTER's remarks should at least have placed any Senator on inquiry notice that the final amendment might affect pending cases.

Finally, Senator DURBIN also spoke about the final Graham amendment prior to the vote. As I mentioned earlier, on the morning of November 15, Senator DURBIN expressed concern that the original Graham/Kyl amendment's jurisdictional bar would apply ''retroactively,'' and that it ''likely would prevent the Supreme Court from ruling on the merits of the Hamdan case.'' (151 Cong. Rec. S12799.) Almost immediately after these words, Senator DURBIN also commented on the revised Graham amendment. He stated:

The Graham-Levin substitute amendment would somewhat improve the underlying amendment by expanding the scope of review in the D.C. Circuit Court to include whether CSRT's are legal, but not whether a particular detainee's detention is legal. It would also allow for post-conviction review of military commission convictions. However, the amendment would still eliminate habeas review and overrule Rasul.

(151 Cong. Rec. S12799.) Again, no suggestion was made that the new amendment might carve out pending cases, despite the Senator's expressed concern about retroactivity. The Senator gave no hint that he expected the new amendment to treat pending cases any differently than did the old amendment. Senator DURBIN does not appear to have been misled about the effect of the final Graham amendment, nor did he mislead anyone else.

To be sure, two statements that do appear in the RECORD prior to the final vote on the Graham amendment both assert that the amendment would not ''strip jurisdiction''—and both of these statements are unleavened by Senator LEVIN's accompanying clarification that pending cases would proceed under the substantive review standards of the new law. Both of these statements, however, appear to have been introduced into the record following the final vote—both refer to that vote in the past tense. Neither Senator thus could have misled other Members about the effect of the amendment prior to the vote. Senator KERRY made clear in his statement that his remarks were made only after the November 15 vote: ''Today, I voted in favor of Senator BINGAMAN's amendment No. 2523, because it would have preserved judicial review . . . When the Bingaman amendment failed, I voted for a second-degree amendment.'' (151 Cong. Rec. S12799.) Similarly, Senator REID also emphasized that his statement did not precede the actual vote: ''the Senate has voted to deny the availability of habeas corpus to individuals held by the United States at Guantanamo Bay, Cuba. I rise to explain . . . my votes in favor of the Bingaman amendment and the Graham-Levin amendment earlier today.'' (151 Cong. Rec. S12802.) Neither of these statements was part of the information that was presented to Senators prior to the final vote on the Graham amendment.

To summarize, the legislative record is utterly devoid of any evidence that Senators were led to believe that the Graham/Levin/Kyl amendment would carve out pending cases. Prior to the vote, several Senators spoke of the original amendment's breadth and the fact that it would terminate pending cases. Senator GRAHAM, drawing no distinction between pre- and post-enactment filers, stated that the revised amendment would apply a uniform standard to all 500 Guantanamo detainees. Senator LEVIN made clear that ''the standards we set forth in our amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this amendment.'' Senator SPECTER pointedly warned that the final amendment would ''strip Federal courts of the authority to consider a habeas petition from detainees'' and ''even take[] away jurisdiction from the Supreme Court of the United States.'' Other Members who condemned the original amendment for terminating pending cases gave no hint that they viewed the new amendment any differently. Quite simply, there is no evidence that anyone misled anyone else about the fact that the Graham amendment would only allow pending cases to go forward under the limited review standards of the new law.

On November 15, the Graham/Levin/Kyl amendment passed the Senate by a vote of 84–14. That same day, the entire Defense Authorization bill passed the Senate by unanimous consent and the Senate appointed conferees. One month later, on December 16, the House and Senate conferees agreed to file a conference report. In the days that followed, a new slew of statements were made in the Senate and even in the House commenting on the meaning of the Graham amendment. Many of these statements are simply the usual effort by the losers of legislative battles to rewrite legislative history. The majority of the Senators, for example, who announced in these statements that the Graham amendment was not intended to affect pending cases also were among the 14 Senators who voted against the final Graham/Levin/Kyl compromise. No one can seriously suggest that these members relied on any representations made by the backers of the amendment. And more importantly, given the marked disagreement between the statements that were made at this late stage about the effect of the amendment on pending cases, no one could justifiably have relied upon one view rather than another to learn what the amendment does. Rather, it is up to members to examine the actual language of the amendment.

I hope that this review of the circumstances of the enactment of the Graham amendment will put to rest any accusation that members of Congress were misled about the amendment's impact on pending cases. Whether the amendment does in fact govern pending cases is another matter. For the reasons expressed here and in the January 18 letter to the Attorney General, I believe that it does so, but that, of course, is a matter for the courts to decide. In the event that the courts concur with my and Senator GRAHAM's interpretation of the amendment, however, no Member should be heard to complain that they were led to believe that the amendment would operate differently.

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

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

U.S. SENATE,
Washington, DC, January 18, 2006.

Hon. ALBERTO GONZALES,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR MR. ATTORNEY GENERAL: We understand that the Justice Department has been criticized recently in the press and by members of Congress for asserting in court proceedings that a provision in the Fiscal Year 2006 Defense appropriations bill that regulates legal actions brought by Guantanamo detainees—the so-called ''Graham Amendment''—affects pending litigation. Critics contend that the Administration's actions violate an agreement with Members of Congress by arguing that the Graham Amendment makes no exception for pending cases.

We are the lead sponsor and an original cosponsor of the Graham Amendment. We write to assure you that the attorneys under your supervision have correctly interpreted the disputed provision.

The Graham Amendment states in relevant part that ''effect[ive] on the date of enactment of this Act,'' except pursuant to special review procedures specified in the Act, ''no court, justice, or judge shall have jurisdiction to hear or consider'' a habeas application or any other action relating to the detention of a Guantanamo detainee. All Members of the Senate had access to this language before the Senate voted on the final Graham Amendment and the final Defense appropriations bill. The language cannot reasonably be construed to leave intact any power in the courts to entertain the current barrage of habeas petitions and other actions brought by Guantanamo detainees. The Defense appropriations bill was signed into law on December 30, 2005. As of that date, literally ''no court, justice, or judge'' has jurisdiction to entertain these lawsuits. That is what we intended.

Had we intended to preserve some power in the courts to continue to hear the current flurry of legal actions, we would have done so. We did not. Moreover, as we made clear when the final defense bill passed the Senate, we are well aware that for over a century, American courts consistently have interpreted legislation removing a court's jurisdiction over a type of case to also remove its ability to hear pending cases. Surely, this long line of precedent negates any ambiguity as to the effect of the Graham Amendment on pending cases.

We also note that a contrary interpretation of the Amendment's effect would be inconsistent with the structure of the Amendment. As mentioned above, other sections of the Graham Amendment create special standards and procedures for judicial review of the detention and trial of Guantanamo detainees. The Amendment also states that these special standards and procedures shall apply not only to relevant claims filed after enactment, but also those ''*pending on . . .* the date of the enactment of this Act.'' (Emphasis added.) Obviously, no claim pending at the time of enactment sought to invoke the review standards created by the same Act. This provision calls on the courts and parties to construe pending actions that challenge either the fact of detention or a military trial as requests for review pursuant to the special standards in the new law. And just as obviously, if all pending lawsuits were exempted from the new law, no pending case would be governed by the new review standards. To adopt the construction advocated by the critics—that courts retain jurisdiction to continue to hear all current lawsuits in their current form—would render the statutory language applying the new standards to pending cases a dead letter.

The original Graham-Kyl Amendment stated that its jurisdiction-removing provisions

''apply to [actions] pending on or after the date of the enactment of this Act.'' This language later was replaced with language specifying that the Amendment ''shall take effect on the date of the enactment of this Act.'' There were two reasons for this substitution: first, the jurisdiction-removing provision technically does not apply any new standards to the pending cases. Rather, it eliminates the forum in which those cases can be heard. Second, the original language ''applying'' jurisdiction removal to pending cases appeared to require that those cases be dismissed outright. Such a result would have conflicted with subparagraph (h)(2), which is designed to allow current cases to continue in the D.C. Circuit as requests for review pursuant to the new standards. Altering the effective-date language eliminated this internal inconsistency and clarified that, rather than requiring that pending cases be dismissed, the new law allows the courts to construe those cases as requests for review under the new standards and, where necessary, transfer them to the appropriate forum.

This is all that we intended by this modification of the Graham Amendment's effective-date language and, more importantly, this is all that the language does. Nothing in this modification preserves any jurisdiction in the courts to continue the current actions in their present form after the date of the enactment of the Act.

To the extent that anyone construing the Graham Amendment might be tempted to subordinate actual statutory text to expressions of Senators' private intent, two points are in order: first, we are two of the three cosponsors on the ''Graham-Levin-Kyl Amendment'' that was introduced in the Senate on November 14, and one of us is the lead sponsor. Both of us made clear in the Congressional Record at the time that the final law passed the Senate that we understood, in light of standard rules of statutory construction, that removal of jurisdiction would eliminate pending cases—the same interpretation now espoused by the Justice Department.

In addition, on November 14, the other cosponsor of the amendment, Senator Levin, stated that ''[w]hat our Amendment does, as soon as it is enacted and the enactment is effective, it provides that the substantive standards we set forth in our Amendment will be the substantive standards which we would expect would be applied in all cases, including cases which are pending as of the effective date of this Amendment.'' 151 Cong. Rec. 12755. He also stated that day: ''the standards in the Amendment will be applied in pending cases.'' Ibid. The effective-date and pending-claims language in the Amendment introduced on November 14 is identical to that in the enacted statute. Thus, on the day of introduction, all three original cosponsors of the Graham Amendment understood it to operate in the same way: the pending Guantanamo cases can go forward, but only under the special review standards and procedures established by the Amendment.

Finally, we should comment on the various other legislative statements purporting to explain the intent behind the Graham Amendment. By our count, at least nine Members of the minority have introduced statements in the Congressional Record announcing that the Graham Amendment was meant to have no effect on pending litigation. For the record, the only one of these Members who played any role in crafting the Amendment is Senator Levin. Negotiations with Senator Levin resulted in a substantial expansion of the scope of the judicial review permitted under the special review procedures established by the Amendment. None of the other Members commenting on the intent behind the Amendment's effective-date subsection played any significant drafting role of which we are aware. Indeed, some of these minority Members who purport to define the authorial intent also complain that the Amendment was ''negotiated largely behind closed doors by the White House and a select few majority Members of Congress'' (151 Cong. Rec. 12201), or that ''all negotiations on this provision have occurred in back rooms, without the involvement of the vast majority of Congress, and without even consulting most of the conferees.'' 151 Cong. Rec. 14170. Such complaints are not consistent with the ''insider'' perspective that these Members purport to share with the reader. Several of these Members also are among the 14 Senators who even voted against the final Graham-Levin-Kyl Amendment when it was offered in the Senate on November 15. Clearly, it would be inappropriate to allow those who opposed the amendment to define the intent of the authors of the amendment.

Of course, more important than any private intent harbored by any Member of Congress is the actual legislative text that was passed by both houses of Congress and signed into law by the President. As we noted previously, absent repudiation by the federal courts of over a century of precedent construing like statutes, the Graham Amendment unambiguously eliminates the federal courts' power to hear Guantanamo detainees' cases in their current form. Notwithstanding the accusations made by some critics, your litigators have, in our view, properly interpreted the Graham Amendment. And, at the end of the day, we anticipate that the courts will make these jurisdictional determinations in accord with their own rules, procedures, precedent, and the plain language of the statute.

Sincerely,

LINDSEY O. GRAHAM,
U.S. Senator.
JON KYL,
U.S. Senator.

GLOBAL NUCLEAR ENERGY PARTNERSHIP

Mr. CRAIG. Mr. President, I rise today to express my agreement with President Bush's belief that our country's security depends in large part on a diverse energy portfolio, one that is not overly reliant on any one energy source, especially sources of foreign origin. I agree with the President that this country is overly dependent on foreign oil. Consistent with that belief, the Bush administration has just announced a potentially far-reaching energy program known as the Global Nuclear Energy Partnership or GNEP. This program provides a wide-reaching, long-term plan for establishing a robust and sustainable future for nuclear energy in this country and abroad.

The Global Nuclear Energy Partnership promises to provide abundant energy, without emitting greenhouse gases; to recycle used nuclear fuel in order to minimize waste; to safely and securely allow developing nations to deploy nuclear power to meet their energy needs, while reducing proliferation risks; to assure maximum energy recovery from still-valuable used nuclear fuel; and to allow the U.S. to rely on a single geologic waste repository for the rest of this century.

Nuclear energy currently provides about 20 percent of this Nation's electricity, and does so without emitting any carbon, greenhouse gases, or other air pollutants. All the waste generated by commercial nuclear powerplants is securely managed and destined for safe, permanent disposal in a geologic repository.

However, according to current law, that repository can contain only slightly more than the amount of waste already stored at existing reactor sites. Even if the law is changed, the repository at Yucca Mountain can only accommodate about the amount of spent nuclear fuel that will be generated by the existing reactors in this country over their lifetimes. If nuclear power is to have a future in this country, even to maintain its current 20 percent share of electricity generation, either a second repository will need to be developed soon—with many more to follow—or an alternative means of managing this waste is needed.

After a single use, spent nuclear fuel retains more than 95 percent of its energy potential. That energy potential could be tapped by reprocessing the spent fuel, recycling the useable part and disposing of the rest as waste, which makes up only about 3–4 percent of the spent fuel. This could substantially reduce the amount of long-lived nuclear waste requiring burial in a geologic repository, and could extend the lifetime of the Yucca Mountain repository many fold.

But efforts to recycle spent fuel were abandoned in this country back in the 1970s, largely because of concerns about nuclear proliferation. Those concerns stemmed from the fact that, at that time, the method used to recycle spent fuel, the ''PUREX'' process, separated out pure plutonium, which might be used to construct a nuclear bomb.

During the 30-plus years since then, the U.S. has—through research at its National Laboratories—made considerable progress in developing new methods for reprocessing spent fuel that are much less prone to proliferation risks, because they do not separate out pure plutonium, but keep it mixed with other actinides. This mixture is not readily used for nuclear weapons.

Reintroducing recycling into this country's strategy for managing spent fuel is a major change in policy, and one that deserves serious discussion. That discussion should be based on fact and not emotion; should address current technologies, not those from more than a generation ago; and should consider reasonable alternatives to maintaining nuclear energy as a viable part of our Nation's energy supply.

And what reasonable alternatives are there? Total electricity consumption in the U.S. is projected to increase by about 40 percent by 2025. Wind and solar energy cannot provide large-scale, base-load electricity, because they are intermittent energy sources. Hydro provides about 10 percent of our electricity right now, but building new