

THE SENATE STATE SECRETS BILL

I linked earlier to the House version of the State Secrets Bill. Here's Leahy's announcement about the Senate version.

Leading members of the Senate Judiciary Committee have joined together to introduce the State Secrets Protection Act, a bill that provides guidance to federal courts considering cases in which the government has asserted the state secrets privilege. **Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), Ranking Member Arlen Specter (R-Pa.), and Committee Member Russ Feingold (D-Wis.)** joined with former Committee Chairman and Member **Edward Kennedy (D-Ma.)** to introduce the bill Wednesday.

The legislation was initially proposed in the 110th Congress in response to the government's assertions of the state secrets privilege in cases challenging the constitutionality of several of the Bush administration's national security programs, including the warrantless wiretapping, rendition and interrogation programs.

Leahy said, "The State Secrets Protection Act will help guide the courts to balance the government's interests in secrecy with accountability and the rights of citizens to seek judicial redress. The bill does not restrict the Government's ability to assert the privilege in appropriate cases. In light of the pending cases where this privilege has been invoked, involving issues including torture, rendition and warrantless wiretapping, we can ill-afford to delay consideration of this important legislation. I hope

all Senators will join us in supporting this bill."

Specter said, "While national security must be protected, there must also be meaningful oversight by the courts and Congress to ensure the Executive branch does not misuse the privilege," Senator Specter said. "This bipartisan legislation provides guidance to the federal courts in handling assertions of the privilege. It is designed to protect state secrets from disclosure, while preventing misuse of the privilege and enabling litigants to achieve justice in court, regardless of which party occupies the White House."

Feingold said, "A country where the government need not answer to allegations of wrongdoing is a country that has strayed dangerously far from the rule of law. We must ensure that the state secrets privilege does not become a license for the government to evade the laws that we pass. This bill accomplishes that goal, while simultaneously providing the strongest of protections to those items of evidence that truly qualify as state secrets."

Senator Sheldon Whitehouse (D-R.I.) and Senator Claire McCaskill (D-Mo.) are also cosponsors of the legislation. The Leahy-Specter-Feingold-Kennedy legislation would:

- *Provide a uniform set of procedures for federal courts considering claims of the state secrets privilege*
- *Codify many of best practices that are*

already available to courts but that often go unused, such as in camera hearings, non-privilege substitutes, and special masters

- **Require judges to look at the evidence that the government claims is privileged, rather than relying solely on government affidavits**
- **Forbid judges from dismissing cases at the pleadings stage, before there has been any document discovery, while protecting innocent defendants by allowing cases to be dismissed when they would need privileged evidence to establish a valid defense**
- **Require judges to order the government to produce unclassified or redacted versions of sensitive evidence when possible to allow cases to move forward safely**
- **Establish security procedures to ensure that secrets are not leaked during litigation, including closed hearings,**

security clearance requirements, sealed orders, and expedited appeals

- ***Establish congressional reporting requirements***
- ***Address the crisis of legitimacy surrounding the privilege by setting clear rules that take into account both national security and the Constitution***

The legislation was first introduced in January 2008, and was ordered reported by the Senate Judiciary Committee in April 2008. A Committee report was filed with the legislation.

They've got more firepower here than they do in the House—having Haggis may be very useful. And having centrists like McCaskill may win some votes.

Now let's see if Harry Reid ever lets this get to the floor.