

SUPPORTERS OF USA FREEDOM IGNORE THE COURTS

The National Journal reports that Leahy's USA Freedom Act probably won't move until after the election, if not next year.

A bill that would curtail the government's broad surveillance authority is unlikely to earn a vote in Congress before the November midterms, and it might not even get a vote during the postelection lame-duck session.

The inaction amounts to another stinging setback for reform advocates, who have been agitating for legislation that would rein in the National Security Agency ever since Edward Snowden's leaks surfaced last summer. It also deflates a sudden surge in pressure on Congress to pass the USA Freedom Act, which scored a [stunning endorsement](#) from Director of National Intelligence James Clapper last week.

Of course, contrary to what the NJ keeps reporting, that letter is not a stunning endorsement. On the contrary, it's a signal James Clapper would change – at a minimum – the FISA Advocate position, and probably the Call Detail Record provision as well.

And even while the story suggests timing is the problem, further down the story suggests the bill doesn't have the votes.

But beyond the calendar squeeze and geopolitical tensions, the Freedom Act has never had a clear path forward. It was not embraced by defense hawks such as Senate Intelligence Committee Chairwoman Dianne Feinstein or Sens. Ron Wyden and Mark Udall, who have become

icons of the surveillance-reform movement. The two Democrats said they wanted to strengthen the bill to require warrants for “backdoor” searches of Americans’ Internet data that can be incidentally collected during foreign surveillance hauls. Sources indicated that their support for the Freedom Act remains a bridge too far.

“We were told to go after Republicans,” one industry said.

Wyden and Udall’s reticence to publicly back Leahy’s bill may stem from a conviction that they can get a better deal next Congress, with Section 215 of the USA Patriot Act—the legal underpinning for the NSA’s phone-records collection—due to expire on June 1, 2015.

Without the left flank of the Senate, this wasn’t going to pass. But so long as this bill endorsed warrantless back door searches of Americans at the assessment stage, it wasn’t going to get those votes.

The story ends with a solitary quote purportedly representing the voices of “many” people.

But many see an NSA reform debate that rolls into next year as no sure bet, regardless of what party holds control of the Senate.

“If the USA Freedom Act is not passed this Congress, we are really in uncharted territory, and the process has to start all over again,” said Harley Geiger, senior counsel at the Center for Democracy & Technology, a pro-reform group. “All the elements for reform are in place now, but it just happens that we don’t have much time.”

Geiger is the same purpose mis-reading Clapper’s

letter as a complete endorsement of the bill.

Note what doesn't get mentioned in any of this, though?

The Courts.

Last we heard from the 2nd Circuit, it sounded very very skeptical that it was constitutional to, "collect everything there is to know about everybody and have it all in one big government cloud." And while SCOTUS was happy to reverse precisely this court in Section 702, both ACLU's standing and the details of the program are much clearer this time. Had Congress legislated quickly, it likely would moot this and several other challenges to this dragnet.

This way, at least, the courts will be forced to determine whether it is actually legal for the government to conduct dossiers of every American and store them on a cloud.