

U.S. SENATOR PATRICK LEAHY

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VERMONT

Comment Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On The Administration's Policy On The Use Of The State Secrets Privilege

September 23, 2009

I am pleased that the Attorney General is moving in the right direction to better control assertions of the state secrets privilege. The administration policies announced today bring a higher degree of transparency and accountability to a process previously shrouded in darkness.

The Attorney General's announcement includes several concepts drawn from the States Secrets Protection Act (S.417). The new policy adopts the standard that the government can only assert the state secret privilege in relation to information that could cause significant harm to national security. It also increases the number of internal controls, including the creation of a new Department of Justice State Secrets Review Committee, and requires the Attorney General to personally approve the assertion of the state secrets privilege. These checks draw from critical concepts in the legislation. I remain especially concerned with ensuring that the government make a substantial evidentiary showing to a federal judge in asserting the privilege, and I hope the administration and the Department of Justice will continue to work with Congress to establish this requirement.

When properly invoked, the state secrets privilege serves important goals. History shows that where it is abused, there are serious consequences. For the aggrieved parties, it can mean that the courthouse doors are closed forever. For the American people, it can mean that they will not know the mistakes their government has made.

I was pleased to join with Senator Kennedy to introduce the State Secrets Protection Act last year, and he and I, as well as Senators Specter, Feingold, Cardin, Whitehouse, Kaufman have pressed hard to shine a light on the misuse of the state secrets privilege and to create

mechanisms to guide its application. Today's announcement marks progress. I intend to closely monitor the implementation of this new state secrets policy to ensure that it brings the higher level of accountability and reliability pledged by the Attorney General in his announcement. I commend Attorney General Holder for working with us in shaping these improved policies and procedures.

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