

**AMENDMENT TO H.R. \_\_\_\_\_**  
**OFFERED BY MR. BIGGS OF ARIZONA**

Strike subsections (b) and (c) of section 5 and insert  
the following:

1           (b) USE OF AMICI CURIAE IN FOREIGN INTEL-  
2   LIGENCE SURVEILLANCE COURT PROCEEDINGS.—

3           (1) EXPANSION OF APPOINTMENT AUTHOR-  
4   ITY.—

5           (A) IN GENERAL.—Section 103(i)(2) of the  
6   Foreign Intelligence Surveillance Act of 1978  
7   (50 U.S.C. 1803(i)(2)) is amended—

8           (i) by striking subparagraph (A) and  
9   inserting the following:

10           “(A) shall, unless the court issues a find-  
11   ing that appointment is not appropriate, ap-  
12   point 1 or more individuals who have been des-  
13   ignated under paragraph (1), not fewer than 1  
14   of whom possesses privacy and civil liberties ex-  
15   pertise, unless the court finds that such a quali-  
16   fication is inappropriate, to serve as amicus cu-  
17   riae to assist the court in the consideration of  
18   any application or motion for an order or review  
19   that, in the opinion of the court—

1 “(i) presents a novel or significant in-  
2 terpretation of the law;

3 “(ii) presents significant concerns  
4 with respect to the activities of a United  
5 States person that are protected by the  
6 first amendment to the Constitution of the  
7 United States;

8 “(iii) presents or involves a sensitive  
9 investigative matter;

10 “(iv) presents a request for approval  
11 of a new program, a new technology, or a  
12 new use of existing technology;

13 “(v) presents a request for reauthor-  
14 ization of programmatic surveillance; or

15 “(vi) otherwise presents novel or sig-  
16 nificant civil liberties issues; and”;

17 (ii) in subparagraph (B), by striking  
18 “an individual or organization” each place  
19 the term appears and inserting “1 or more  
20 individuals or organizations”.

21 (B) DEFINITION OF SENSITIVE INVESTIGA-  
22 TIVE MATTER.—Section 103(i) of the Foreign  
23 Intelligence Surveillance Act of 1978 (50  
24 U.S.C. 1803(i)) is amended by adding at the  
25 end the following:

1           “(12) DEFINITION.—In this subsection, the  
2 term ‘sensitive investigative matter’ means—

3           “(A) an investigative matter involving the  
4 activities of—

5           “(i) a domestic public official or polit-  
6 ical candidate, or an individual serving on  
7 the staff of such an official or candidate;

8           “(ii) a domestic religious or political  
9 organization, or a known or suspected  
10 United States person prominent in such an  
11 organization; or

12           “(iii) the domestic news media; or

13           “(B) any other investigative matter involv-  
14 ing a domestic entity or a known or suspected  
15 United States person that, in the judgment of  
16 the applicable court established under sub-  
17 section (a) or (b), is as sensitive as an inves-  
18 tigative matter described in subparagraph  
19 (A).”.

20           (2) AUTHORITY TO SEEK REVIEW.—Section  
21 103(i) of the Foreign Intelligence Surveillance Act of  
22 1978 (50 U.S.C. 1803(i)), as amended by subsection  
23 (a) of this section, is amended—

24           (A) in paragraph (4)—

1 (i) in the paragraph heading, by in-  
2 serting “; AUTHORITY” after “DUTIES”;

3 (ii) by redesignating subparagraphs  
4 (A), (B), and (C) as clauses (i), (ii), and  
5 (iii), respectively, and adjusting the mar-  
6 gins accordingly;

7 (iii) in the matter preceding clause (i),  
8 as so redesignated, by striking “the amicus  
9 curiae shall” and inserting the following:  
10 “the amicus curiae—  
11 “(A) shall”;

12 (iv) in subparagraph (A)(i), as so re-  
13 designated, by inserting before the semi-  
14 colon at the end the following: “, including  
15 legal arguments regarding any privacy or  
16 civil liberties interest of any United States  
17 person that would be significantly im-  
18 pacted by the application or motion”; and

19 (v) by striking the period at the end  
20 and inserting the following: “; and

21 “(B) may seek leave to raise any novel or  
22 significant privacy or civil liberties issue rel-  
23 evant to the application or motion or other  
24 issue directly impacting the legality of the pro-  
25 posed electronic surveillance with the court, re-

1            regardless of whether the court has requested as-  
2            sistance on that issue.”;

3            (B) by redesignating paragraphs (7)  
4            through (12) as paragraphs (8) through (13),  
5            respectively; and

6            (C) by inserting after paragraph (6) the  
7            following:

8            “(7) AUTHORITY TO SEEK REVIEW OF DECI-  
9            SIONS.—

10           “(A) FISA COURT DECISIONS.—

11           “(i) PETITION.—Following issuance of  
12           an order under this Act by the Foreign In-  
13           telligence Surveillance Court, an amicus  
14           curiae appointed under paragraph (2) may  
15           petition the Foreign Intelligence Surveil-  
16           lance Court to certify for review to the  
17           Foreign Intelligence Surveillance Court of  
18           Review a question of law pursuant to sub-  
19           section (j).

20           “(ii) WRITTEN STATEMENT OF REA-  
21           SONS.—If the Foreign Intelligence Surveil-  
22           lance Court denies a petition under this  
23           subparagraph, the Foreign Intelligence  
24           Surveillance Court shall provide for the

1 record a written statement of the reasons  
2 for the denial.

3 “(iii) APPOINTMENT.—Upon certifi-  
4 cation of any question of law pursuant to  
5 this subparagraph, the Court of Review  
6 shall appoint the amicus curiae to assist  
7 the Court of Review in its consideration of  
8 the certified question, unless the Court of  
9 Review issues a finding that such appoint-  
10 ment is not appropriate.

11 “(B) FISA COURT OF REVIEW DECI-  
12 SIONS.—An amicus curiae appointed under  
13 paragraph (2) may petition the Foreign Intel-  
14 ligence Surveillance Court of Review to certify  
15 for review to the Supreme Court of the United  
16 States any question of law pursuant to section  
17 1254(2) of title 28, United States Code.

18 “(C) DECLASSIFICATION OF REFER-  
19 RALS.—For purposes of section 602, a petition  
20 filed under subparagraph (A) or (B) of this  
21 paragraph and all of its content shall be consid-  
22 ered a decision, order, or opinion issued by the  
23 Foreign Intelligence Surveillance Court or the  
24 Foreign Intelligence Surveillance Court of Re-

1 view described in paragraph (2) of section  
2 602(a).”.

3 (3) ACCESS TO INFORMATION.—

4 (A) APPLICATION AND MATERIALS.—Sec-  
5 tion 103(i)(6) of the Foreign Intelligence Sur-  
6 veillance Act of 1978 (50 U.S.C. 1803(i)(6)) is  
7 amended by striking subparagraph (A) and in-  
8 serting the following:

9 “(A) IN GENERAL.—

10 “(i) RIGHT OF AMICUS.—If a court  
11 established under subsection (a) or (b) ap-  
12 points an amicus curiae under paragraph  
13 (2), the amicus curiae—

14 “(I) shall have access, to the ex-  
15 tent such information is available to  
16 the Government, to—

17 “(aa) the application, certifi-  
18 cation, petition, motion, and  
19 other information and supporting  
20 materials, including any informa-  
21 tion described in section 901,  
22 submitted to the Foreign Intel-  
23 ligence Surveillance Court in con-  
24 nection with the matter in which  
25 the amicus curiae has been ap-

1 pointed, including access to any  
2 relevant legal precedent (includ-  
3 ing any such precedent that is  
4 cited by the Government, includ-  
5 ing in such an application);

6 “(bb) an unredacted copy of  
7 each relevant decision made by  
8 the Foreign Intelligence Surveil-  
9 lance Court or the Foreign Intel-  
10 ligence Surveillance Court of Re-  
11 view in which the court decides a  
12 question of law, without regard  
13 to whether the decision is classi-  
14 fied; and

15 “(cc) any other information  
16 or materials that the court deter-  
17 mines are relevant to the duties  
18 of the amicus curiae; and

19 “(II) may make a submission to  
20 the court requesting access to any  
21 other particular materials or informa-  
22 tion (or category of materials or infor-  
23 mation) that the amicus curiae be-  
24 lieves to be relevant to the duties of  
25 the amicus curiae.



1                   “(ii) SUPPORTING DOCUMENTATION  
2                   REGARDING ACCURACY.—The Foreign In-  
3                   telligence Surveillance Court, upon the mo-  
4                   tion of an amicus curiae appointed under  
5                   paragraph (2) or upon its own motion,  
6                   may require the Government to make  
7                   available the supporting documentation de-  
8                   scribed in section 902.”.

9                   (B) CLARIFICATION OF ACCESS TO CER-  
10                  TAIN INFORMATION.—Section 103(i)(6) of the  
11                  Foreign Intelligence Surveillance Act of 1978  
12                  (50 U.S.C. 1803(i)(6)) is amended—

13                   (i) in subparagraph (B), by striking  
14                   “may” and inserting “shall”; and

15                   (ii) by striking subparagraph (C) and  
16                   inserting the following:

17                   “(C) CLASSIFIED INFORMATION.—An ami-  
18                   cus curiae designated or appointed by the court  
19                   shall have access, to the extent such informa-  
20                   tion is available to the Government, to  
21                   unredacted copies of each opinion, order, tran-  
22                   script, pleading, or other document of the For-  
23                   eign Intelligence Surveillance Court and the  
24                   Foreign Intelligence Surveillance Court of Re-  
25                   view, including, if the individual is eligible for

1 access to classified information, any classified  
2 documents, information, and other materials or  
3 proceedings.”.

4 (4) EFFECTIVE DATE.—The amendments made  
5 by this section shall take effect on the date of enact-  
6 ment of this Act and shall apply with respect to pro-  
7 ceedings under the Foreign Intelligence Surveillance  
8 Act of 1978 (50 U.S.C. 1801 et seq.) that take place  
9 on or after, or are pending on, that date.

Strike section 10 and insert the following (and re-  
designate the succeeding sections accordingly):

10 **SEC. 10. REQUIRED DISCLOSURE OF RELEVANT INFORMA-**  
11 **TION IN FOREIGN INTELLIGENCE SURVEIL-**  
12 **LANCE ACT OF 1978 APPLICATIONS.**

13 (a) IN GENERAL.—The Foreign Intelligence Surveil-  
14 lance Act of 1978 (50 U.S.C. 1801 et seq.) is amended  
15 by adding at the end the following:

16 **“TITLE IX—REQUIRED DISCLO-**  
17 **SURE OF RELEVANT INFOR-**  
18 **MATION**

19 **“SEC. 901. DISCLOSURE OF RELEVANT INFORMATION.**

20 “The Attorney General or any other Federal officer  
21 or employee making an application for a court order under  
22 this Act shall provide the court with—

1           “(1) all information in the possession of the  
2 Government that is material to determining whether  
3 the application satisfies the applicable requirements  
4 under this Act, including any exculpatory informa-  
5 tion; and

6           “(2) all information in the possession of the  
7 Government that might reasonably—

8                   “(A) call into question the accuracy of the  
9 application or the reasonableness of any assess-  
10 ment in the application conducted by the de-  
11 partment or agency on whose behalf the appli-  
12 cation is made; or

13                   “(B) otherwise raise doubts with respect to  
14 the findings that are required to be made under  
15 the applicable provision of this Act in order for  
16 the court order to be issued.”.

17           (b) CLERICAL AMENDMENT.—The table of contents  
18 of the Foreign Intelligence Surveillance Act of 1978 is  
19 amended by adding at the end the following:

                  “TITLE IX—DISCLOSURE OF RELEVANT INFORMATION

                  “Sec. 901. Disclosure of relevant information.”.

20 **SEC. 11. CERTIFICATION REGARDING ACCURACY PROCE-**  
21 **DURES.**

22           (a) CERTIFICATION REGARDING ACCURACY PROCE-  
23 DURES.—Title IX of the Foreign Intelligence Surveillance

1 Act of 1978, as added by section 10, is amended by adding  
2 at the end the following:

3 **“SEC. 902. CERTIFICATION REGARDING ACCURACY PROCE-**  
4 **DURES.**

5 “(a) DEFINITION OF ACCURACY PROCEDURES.—In  
6 this section, the term ‘accuracy procedures’ means specific  
7 procedures, adopted by the Attorney General, to ensure  
8 that an application for a court order under this Act, in-  
9 cluding any application for renewal of an existing order,  
10 is accurate and complete, including procedures that en-  
11 sure, at a minimum, that—

12 “(1) the application reflects all information that  
13 might reasonably call into question the accuracy of  
14 the information or the reasonableness of any assess-  
15 ment in the application, or otherwise raises doubts  
16 about the requested findings;

17 “(2) the application reflects all material infor-  
18 mation that might reasonably call into question the  
19 reliability and reporting of any information from a  
20 confidential human source that is used in the appli-  
21 cation;

22 “(3) a complete file documenting each factual  
23 assertion in an application is maintained;

24 “(4) the applicant coordinates with the appro-  
25 priate elements of the intelligence community (as de-

1        fined in section 3 of the National Security Act of  
2        1947 (50 U.S.C. 3003)), concerning any prior or ex-  
3        isting relationship with the target of any surveil-  
4        lance, search, or other means of investigation, and  
5        discloses any such relationship in the application;

6            “(5) before any application targeting a United  
7        States person is made, the applicant Federal officer  
8        shall document that the officer has collected and re-  
9        viewed for accuracy and completeness supporting  
10       documentation for each factual assertion in the ap-  
11       plication; and

12           “(6) the applicant Federal agency establish  
13       compliance and auditing mechanisms on an annual  
14       basis to assess the efficacy of the accuracy proce-  
15       dures that have been adopted and report such find-  
16       ings to the Attorney General.

17        “(b) STATEMENT AND CERTIFICATION OF ACCURACY  
18       PROCEDURES.—Any Federal officer making an applica-  
19       tion for a court order under this Act shall include with  
20       the application—

21           “(1) a description of the accuracy procedures  
22       employed by the officer or the officer’s designee; and

23           “(2) a certification that the officer or the offi-  
24       cer’s designee has collected and reviewed for accu-  
25       racy and completeness—

1           “(A) supporting documentation for each  
2           factual assertion contained in the application;

3           “(B) all information that might reasonably  
4           call into question the accuracy of the informa-  
5           tion or the reasonableness of any assessment in  
6           the application, or otherwise raises doubts  
7           about the requested findings; and

8           “(C) all material information that might  
9           reasonably call into question the reliability and  
10          reporting of any information from any confiden-  
11          tial human source that is used in the applica-  
12          tion.

13          “(3) NECESSARY FINDING FOR COURT OR-  
14          DERS.—A judge may not enter an order under this  
15          Act unless the judge finds, in addition to any other  
16          findings required under this Act, that the accuracy  
17          procedures described in the application for the order,  
18          as required under subsection (b)(1), are actually ac-  
19          curacy procedures as defined in this section.”.

20          (b) TECHNICAL AMENDMENT.—The table of contents  
21          of the Foreign Intelligence Surveillance Act of 1978, as  
22          amended by section 10, is amended by inserting after the  
23          item relating to section 901 the following:

“Sec. 902. Certification regarding accuracy procedures.”.

