

The FISA Court Reform Act of 2013 – Summary

Senator Richard Blumenthal

The FISA Court Reform Act of 2013 brings fairness and transparency to the FISA courts by creating a Special Advocate with a duty to protect individual rights, providing an adversarial process in the FISA courts when government surveillance applications raise novel issues of law, enabling appellate review of FISA Court rulings in the government's favor all the way up to the Supreme Court of the United States, and requiring public disclosure of FISA court decisions that involve significant legal interpretations, among other related provisions.

Office of the Special Advocate

The presiding judge of the FISA Court of Review appoints a Special Advocate for a 5-year term from candidates nominated by the Privacy and Civil Liberties Oversight Board. The Special Advocate directs the Office of the Special Advocate (OSA), and the Special Advocate and employees of the OSA are granted appropriate clearance to carry out several duties and prerogatives. The OSA must follow all FISA Court proceedings, and may appeal decisions that involve a new or significant construction or interpretation of law. The OSA is also responsible for advocating in support of legal interpretations that minimize the scope of data collection and surveillance before the FISA Court of Review and may request to do the same in proceedings before the FISA Court.

The FISA Court may appoint the Special Advocate to participate in any proceeding. The Special Advocate may also move the FISA Court to reconsider any decision, and to permit and facilitate participation of interested parties as friends of the court, which can also be done by the court of its own accord.

Appellate Review

The FISA Court of Review is required to review all FISA Court decisions that the Special Advocate appeals, with the Special Advocate appearing as a party before the court. The FISA Court of Review must review FISA Court decisions de novo with respect to issues of law, and must allow amicus participation by interested parties. The Special Advocate may seek a writ of certiorari from the Supreme Court for review of any decision of the FISA Court of Review.

Public Disclosure

The Attorney General is required to declassify or summarize FISA Court and FISA Court of Review decisions involving a significant construction or interpretation of law to the greatest extent consistent with legitimate national security considerations. The Attorney General must declassify documents sufficient to identify with particularity each legal question addressed by the decision and how such question was resolved; to describe in general terms the context in which the matter arises; to describe the construction or interpretation of any statute, constitutional provision, or other legal authority relied on by the decision; and to indicate whether the decision departed from any prior

decision of the FISA Court or FISA Court of Review. The OSA may petition the FISA courts to expand or modify the Attorney General's disclosures.