

H.C. p1

Pending

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve the amendment.

IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.

H. R. 2048

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AMENDMENT N^o. 1451

By McConnell

To: Amdt. No. 1450

Referrec

5

Page(s)

GPO: 2014-91-623 (mac)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by
_____ to the amendment (No.
_____) proposed by _____

Viz:

- 1 At the end, add the following:
- 2 **(b) NONEFFECT OF CERTAIN PROVISIONS.**—Section
- 3 401 of this Act, relating to appointment of amicus curiae,
- 4 shall have no force or effect.
- 5 **SEC. 110A. APPOINTMENT OF AMICUS CURIAE.**
- 6 Section 103 (50 U.S.C. 1803) is amended by adding
- 7 at the end the following new subsections:
- 8 “(i) AMICUS CURIAE.—

1 “(1) AUTHORIZATION.—A court established
2 under subsection (a) or (b) is authorized, consistent
3 with the requirement of subsection (c) and any other
4 statutory requirement that the court act expedi-
5 tiously or within a stated time—

6 “(A) to appoint amicus curiae to—

7 “(i) assist the court in the consider-
8 ation of any application for an order or re-
9 view that, in the opinion of the court, pre-
10 sents a novel or significant interpretation
11 of the law; or

12 “(ii) provide technical expertise in any
13 instance the court considers appropriate;
14 or

15 “(B) upon motion, to permit an individual
16 or organization leave to file an amicus curiae
17 brief.

18 “(2) DESIGNATION.—The courts established by
19 subsection (a) and (b) shall each designate 1 or
20 more individuals who may be appointed to serve as
21 amicus curiae and who are determined to be eligible
22 for access to classified national security information
23 necessary to participate in matters before such
24 courts (if such access is necessary for participation
25 in the matters for which they may be appointed). In

1 appointing an amicus curiae pursuant to paragraph
2 (1), the court may choose from among those so des-
3 ignated.

4 “(3) EXPERTISE.—An individual appointed as
5 an amicus curiae under paragraph (1) may be an in-
6 dividual who possesses expertise on privacy and civil
7 liberties, intelligence collection, communications
8 technology, or any other area that may lend legal or
9 technical expertise to the court.

10 “(4) DUTIES.—An amicus curiae appointed
11 under paragraph (1) to assist with the consideration
12 of a covered matter shall carry out the duties as-
13 signed by the appointing court. That court may au-
14 thorize the amicus curiae to review any application,
15 certification, petition, motion, or other submission
16 that the court determines is relevant to the duties
17 assigned by the court.

18 “(5) NOTIFICATION.—A court established under
19 subsection (a) or (b) shall notify the Attorney Gen-
20 eral of each exercise of the authority to appoint an
21 amicus curiae under paragraph (1).

22 “(6) ASSISTANCE.—A court established under
23 subsection (a) or (b) may request and receive (in-
24 cluding on a non-reimbursable basis) the assistance

1 of the executive branch in the implementation of this
2 subsection.

3 “(7) ADMINISTRATION.—A court established
4 under subsection (a) or (b) may provide for the des-
5 ignation, appointment, removal, training, or other
6 support of an amicus curiae appointed under para-
7 graph (1) in a manner that is not inconsistent with
8 this subsection.

9 “(j) REVIEW OF FISA COURT DECISIONS.—Fol-
10 lowing issuance of an order under this Act, a court estab-
11 lished under subsection (a) shall certify for review to the
12 court established under subsection (b) any question of law
13 that may affect resolution of the matter in controversy
14 that the court determines warrants such review because
15 of a need for uniformity or because consideration by the
16 court established under subsection (b) would serve the in-
17 terests of justice. Upon certification of a question of law
18 under this subsection, the court established under sub-
19 section (b) may give binding instructions or require the
20 entire record to be sent up for decision of the entire matter
21 in controversy.

22 “(k) REVIEW OF FISA COURT OF REVIEW DECI-
23 SIONS.—

24 “(1) CERTIFICATION.—For purposes of section
25 1254(2) of title 28, United States Code, the court

1 of review established under subsection (b) shall be
2 considered to be a court of appeals.

3 “(2) AMICUS CURIAE BRIEFING.—Upon certifi-
4 cation of an application under paragraph (1), the
5 Supreme Court of the United States may appoint an
6 amicus curiae designated under subsection (i)(3), or
7 any other person, to provide briefing or other assist-
8 ance.”.