

116TH CONGRESS  
1ST SESSION

# H. R. 5396

To amend the Foreign Intelligence Surveillance Act of 1978 to require reviews by amici curiae of applications made to the Foreign Intelligence Surveillance Court, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2019

Mr. STEWART (for himself, Mr. NUNES, Mr. CONAWAY, Mr. TURNER, Mr. WENSTRUP, Mr. CRAWFORD, Ms. STEFANIK, Mr. BISHOP of North Carolina, Mr. GAETZ, and Mr. HURD of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Permanent Select Committee on Intelligence, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to require reviews by amici curiae of applications made to the Foreign Intelligence Surveillance Court, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FISA Improvements  
5 Act of 2019”.

1 **SEC. 2. ENHANCED FIDELITY OF FISA APPLICATIONS AND**  
2 **PROCESSES ASSOCIATED WITH THE FOREIGN**  
3 **INTELLIGENCE SURVEILLANCE COURT.**

4 (a) MANDATORY REVIEW BY AMICUS CURIAE.—Sec-  
5 tion 103(i) of the Foreign Intelligence Surveillance Act of  
6 1978 (50 U.S.C. 1803(i)(2)) is amended—

7 (1) in paragraph (2)—

8 (A) in subparagraph (A), by striking “;  
9 and” and inserting a semicolon;

10 (B) in subparagraph (B), by striking the  
11 period at the end and inserting “; and”; and

12 (C) by adding at the end the following new  
13 subparagraph:

14 “(C) shall appoint an individual who has  
15 been designated under paragraph (1) to serve  
16 as amicus curiae to assist such court in the  
17 consideration of any initial application for an  
18 order that seeks to target an identifiable United  
19 States person pursuant to sections 104, 303,  
20 703, or 704.”; and

21 (2) in paragraph (4)—

22 (A) by redesignating subparagraphs (A)  
23 through (C) as clauses (i) through (iii), respec-  
24 tively;

25 (B) by striking “If a court” and inserting

26 “(A) NOVEL OR SIGNIFICANT INTERPRETA-

1 TIONS OF LAW—If a court”, and adjusting the  
2 margins accordingly; and

3 (C) by adding at the end the following new  
4 subparagraph:

5 “(B) INITIAL APPLICATIONS.—If a court  
6 established under subsection (a) appoints an  
7 amicus curiae under paragraph (2)(C), the ami-  
8 cus curiae shall review the submitted applica-  
9 tion for which the individual has been appointed  
10 to assess the sufficiency of evidence supporting  
11 the probable cause determination required to  
12 issue an order pursuant to the application and  
13 provide to the court a written recommendation  
14 regarding such sufficiency.”.

15 (b) DISCLOSURE OF UNVERIFIED INFORMATION.—  
16 Section 104(a) of such Act (50 U.S.C. 1804(a)) is amend-  
17 ed—

18 (1) in paragraph (8), by striking “; and” and  
19 inserting a semicolon;

20 (2) in paragraph (9), by striking the period at  
21 the end and inserting “; and”; and

22 (3) by adding at the end the following new  
23 paragraph:

24 “(10) a statement fully disclosing the use of  
25 any information in the application that the Govern-

1 ment cannot substantiate based on any supporting  
2 intelligence or open-source information available to  
3 the Government at the time of the application, in-  
4 cluding, at a minimum—

5 “(A) the origin of such information;

6 “(B) the means by which the Government  
7 obtained such information;

8 “(C) a summary of each step the Govern-  
9 ment took to verify the information prior to  
10 using the information in the application;

11 “(D) whether the Government has used  
12 such information in any other judicial pro-  
13 ceeding; and

14 “(E) the necessity of using such informa-  
15 tion to support the probable cause determina-  
16 tion required by section 105.”.

17 (c) TRANSCRIPTS OF PROCEEDINGS.—Subsection (c)  
18 of section 103 of such Act (50 U.S.C. 1803) is amended—

19 (1) by inserting “, and shall be transcribed” be-  
20 fore the first period; and

21 (2) by inserting “, transcriptions,” after “appli-  
22 cations made”.

23 (d) WRITTEN RECORD OF INTERACTIONS WITH  
24 COURT.—Such section is further amended by adding at  
25 the end the following new subsection:

1           “(1) WRITTEN RECORD OF INTERACTIONS.—The At-  
2   torney General shall maintain all written communications  
3   with the court established under subsection (a), including  
4   the identity of the employees of the court to or from whom  
5   the communications were made, regarding an application  
6   or order made under this title in a file associated with  
7   the application or order. The Attorney General shall docu-  
8   ment a summary of any oral communications with the  
9   court, including the identity of the employees of the court  
10  to or from whom the communications were made, relating  
11  to such an application or order and keep such documenta-  
12  tion in a file associated with the application or order.”.

13           (e) EXTENSIONS.—Section 105(d)(2) of such Act (50  
14  U.S.C. 1805(d)(2)) is amended by adding at the end the  
15  following new sentence: “To the extent practicable, an ex-  
16  tension of an order issued under this title shall be granted  
17  or denied by the same judge who issued the original  
18  order.”.

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