

113TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To create two additional judge positions on the court established by the Foreign Intelligence Surveillance Act of 1978 and modify the procedures for the appointment of judges to that court, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

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## **A BILL**

To create two additional judge positions on the court established by the Foreign Intelligence Surveillance Act of 1978 and modify the procedures for the appointment of judges to that 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 Judge Selection  
5       Reform Act of 2013”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) FISA COURT.—The term “FISA Court”  
2       means the court established under section 103(a) of  
3       the Foreign Intelligence Surveillance Act of 1978  
4       (50 U.S.C. 1803(a)).

5           (2) FISA COURT OF REVIEW.—The term  
6       “FISA Court of Review” means the court of review  
7       established under section 103(b) of the Foreign In-  
8       telligence Surveillance Act of 1978 (50 U.S.C.  
9       1803(b)).

10 **SEC. 3. REFORMS TO THE FOREIGN INTELLIGENCE SUR-**  
11 **VEILLANCE COURT.**

12       (a) FISA COURT JUDGES.—

13           (1) NUMBER AND DESIGNATION OF JUDGES.—  
14       Section 103(a)(1) of the Foreign Intelligence Sur-  
15       veillance Act of 1978 (50 U.S.C. 1803(a)(1)) is  
16       amended to read as follows:

17       “(1)(A) There is a court (referred to in this para-  
18       graph as the ‘FISA Court’) which shall have jurisdiction  
19       to hear applications for and to grant orders approving  
20       electronic surveillance anywhere within the United States  
21       under the procedures set forth in this Act.

22       “(B)(i) The FISA Court shall consist of 13 judges,  
23       one of whom shall be designated from each judicial circuit  
24       (including the United States Court of Appeals for the Dis-

1    trict of Columbia and the United States Court of Appeals  
2    for the Federal Circuit).

3           “(ii) The Chief Justice of the United States shall—

4               “(I) designate each judge of the FISA Court  
5           from the nominations made under subparagraph  
6           (C); and

7               “(II) make the name of each judge of the FISA  
8           Court available to the public.

9           “(C)(i) When a vacancy occurs in the position of a  
10   judge of FISA Court from a judicial circuit, the chief  
11   judge of the circuit shall propose a district judge for a  
12   judicial district within the judicial circuit to be designated  
13   for that position.

14          “(ii) If the Chief Justice does not designate a district  
15   judge proposed under clause (i), the chief judge shall pro-  
16   pose 2 other district judges for a judicial district within  
17   the judicial circuit to be designated for that position and  
18   the Chief Justice shall designate 1 such district judge to  
19   that position.

20          “(D) No judge of the FISA Court (except when sit-  
21   ting en banc under paragraph (2)) shall hear the same  
22   application for electronic surveillance under this Act which  
23   has been denied previously by another judge of the FISA  
24   Court.

1       “(E) If any judge of the FISA Court denies an appli-  
2 cation for an order authorizing electronic surveillance  
3 under this Act, such judge shall provide immediately for  
4 the record a written statement of each reason for the  
5 judge’s decision and, on motion of the United States, the  
6 record shall be transmitted, under seal, to the court of  
7 review established in subsection (b).”.

8               (2) TENURE.—Section 103(d) of the Foreign  
9 Intelligence Surveillance Act of 1978 (50 U.S.C.  
10 1803(b)) is amended by striking “redesignation,”  
11 and all that follows through the end and inserting  
12 “redesignation.”.

13               (3) IMPLEMENTATION.—

14               (A) INCUMBENTS.—A district judge des-  
15 ignated to serve on the court established under  
16 section 103(a) of the Foreign Intelligence Sur-  
17 veillance Act of 1978 (50 U.S.C. 1803(a)) be-  
18 fore the date of enactment of this Act may con-  
19 tinue to serve in that position until the end of  
20 the term of the district judge under section  
21 103(d) of such Act, as in effect on the day be-  
22 fore the date of enactment of this Act.

23               (B) INITIAL APPOINTMENT AND TERM.—  
24 Notwithstanding any provision of section 103 of  
25 the Foreign Intelligence Surveillance Act of

1           1978 (50 U.S.C. 1803), as amended by para-  
2           graphs (1) and (2), and not later than 180 days  
3           after the date of enactment of this Act, the  
4           Chief Justice of the United States shall—

5                   (i) designate a district court judge  
6                   who is serving in a judicial district within  
7                   the District of Columbia circuit and pro-  
8                   posed by the chief judge of such circuit to  
9                   be a judge of the FISA Court for an initial  
10                  term of 7 years; and

11                  (ii) designate a district court judge  
12                  who is serving in a judicial district within  
13                  the Federal circuit and proposed by the  
14                  chief judge of such circuit to be a judge of  
15                  the FISA Court for an initial term of 4  
16                  years.

17           (b) COURT OF REVIEW.—Section 103(b) of the For-  
18           eign Intelligence Surveillance Act of 1978 (50 U.S.C.  
19           1803(b)) is amended—

20                   (1) by striking “The Chief Justice” and insert-  
21                   ing “(1) Subject to paragraph (2), the Chief Jus-  
22                   tice”

23                   (2) by adding at the end the following:

24                   “(2) The Chief Justice may designate a district court  
25                   judge or circuit court judge to a position on the court es-

1 tablished under paragraph (1) only if at least 5 associate  
2 justices approve the designation of such individual.”.

3 **SEC. 4. STUDY AND REPORT ON DIVERSITY AND REP-**  
4 **RESENTATION ON THE FISA COURTS.**

5 (a) STUDY.—The Committee on Intercircuit Assign-  
6 ments of the Judicial Conference of the United States  
7 shall carry out a study on how to ensure judges are ap-  
8 pointed to the FISA Court and the FISA Court of Review  
9 in a manner that ensures such Courts are diverse and rep-  
10 resentative.

11 (b) REPORT.—Not later than 1 year after the date  
12 of the enactment of this Act, the Committee on Intercir-  
13 cuit Assignments shall submit to Congress a report on the  
14 study carried out under subsection (a).