

## **Reform the FISA Court**

**WHEREAS**, the Foreign Intelligence Surveillance Act ('FISA'), passed in 1978, arose from Senate hearings led by Sens. Frank Church and Sam Ervin into illegal spying on American political and activist groups by the FBI, CIA and NSA, directed by Pres. Nixon, and, with some congressional oversight, established the FISA Court ('FISC') for judicial oversight of covert surveillance of foreign entities and people *in the U.S.* (none needed for surveillance abroad), with secrecy to protect national security; FISA allowed surveillance in the U.S. without court order for up to a year unless it "will acquire the contents of any communication to which a [U.S.] person is a party," which required judicial authorization within 72 hours *after* surveillance begins; but a New York Times investigation and article in late 2005 revealed programs of warrantless wiretapping in the U.S. by the NSA directed by the Bush Administration since 2002; and

**WHEREAS**, recent leaks from NSA contractor Edward Snowden revealed a top-secret FISC 'general warrant' of April 25, 2013, and newspapers' investigations reported others periodically since 2006, ordering telecom companies to provide, and NSA to keep, 'meta-data' – all details of all phone calls and internet activity in the U.S., except content; on July 31, 2013, the Administration released a similar FISC ruling with followup rules for specific warrants for NSA to access content; other leaks revealed NSA's 'XKeyScore' program ability to collect instantly and retain all content from any person, phone number or internet address in the U.S.; and ensuing political and public debate is questioning whether our privacy is being overly sacrificed for supposed security, such that of the 33,949 FISA warrant requests for electronic surveillance from 1979 to 2012, just 11 (0.03%) were denied (with 4 of those later granted in part on reconsideration requests), and 504 (1.5%) were modified and granted; and

**WHEREAS**, the above disclosures now cast doubt on FISC procedure and processes, including use of 'general warrants' to allow entire programs without adequate safeguards, FISC judges' appointment solely by the Supreme Court's Chief Justice, non-adversarial hearings, the secrecy of legal rulings and interpretation of statutes (FISA, PATRIOT Act, their amendments, etc.) and the Constitution's 4<sup>th</sup> Amendment, as well as specific surveillance warrants and general warrants for entire programs, and the lack of effective oversight by Congress; therefore

**BE IT RESOLVED** that Congress should reform FISA and FISC so that, (a) FISC hearings are *adversarial*, with the public's privacy interest and potential targets of specific warrants represented (still in secret) by attorneys (with top-secret security clearance) appointed by the Federal Public Defender; (b) FISC judges be appointed by a super-majority vote of the Supreme Court and/or one each by the chief judge of each federal circuit court of appeals; (c) a 'general warrant' approving an entire program require a FISC judges *en banc* ruling affirmed by the FISC Court of Review, with strong safeguards and followup review; (d) statutory and constitutional interpretation and legal rulings be made available to all members of the Senate and House Intelligence Committees and the majority and minority leaders of the Senate and House and the Speaker, who may in their discretion then make any such ruling public; and (e) congressional oversight be much more vigorous; and

**BE IT FURTHER RESOLVED** that this resolution be sent to all Members of Congress from California.