



S. 2369 – Sen. Specter’s “New” PATRIOT Bill

I. Overview: Shortly before reauthorization of the PATRIOT Act, Senator Arlen Specter introduced a new bill (S.2369) designed to “restore” some of the provisions dropped from the Senate-passed PATRIOT reauthorization bill during conference negotiations with the House. The bill would also add some additional civil liberties protections, over and above those added to the conference report via legislation introduced by Senator John Sununu (S.2271).

- a. Currently, S.2369 has 13 cosponsors, including the following Judiciary Committee members: Patrick Leahy, Richard Durbin, Dianne Feinstein, and Russell Feingold.
- b. The specific changes contemplated by Sen. Specter’s bill are outlined below.

II.



III. Applications for Section 215 Orders: Includes “3-part test” to obtain a Section 215 order. The records sought must: (1) pertain to a foreign power or an agent of a foreign power; (2) be relevant to the activities of a suspected agent of a foreign power who is the subject of an authorized investigation, or (3) pertain to an individual in contact with a suspected agent of a foreign power.

- a. PATRIOT Reauthorization creates a presumption in favor of requests that satisfy this 3-part test, but gives the FISA court flexibility to issue other relevant orders.

IV.



V. Judicial Review of Section 215 Nondisclosure Requirement: Eliminates both the “conclusive presumption” and the 1-year waiting period for challenges to the non-disclosure requirement.

- a. PATRIOT Reauthorization includes an explicit right to challenge Section 215 orders.
- b. As passed, Sen. Sununu’s bill (S. 2271) adds a right to challenge the Section 215 “gag” order, but requires a 1-year waiting period and incorporates the “conclusive presumption.”

VI.



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