



9th Circuit to D.C. Circuit: We'll see you in [The Supreme] Court!

June 24, 2011

Yesterday, the US Court of Appeals for the 9th Circuit cleared the way for the extortion case against Former Rep. Rick Renzi (R-Ariz.) to proceed to trial. In the process, they flatly disagreed with a 2007 Ruling by the Court of Appeals for the D.C. Circuit on a US representative's right to advance notice for search and seizure. Given this conflict between two appeals courts – on an issue that pits congressional privilege against efforts to prosecute public corruption, we predict the U.S. Supreme Court will ultimately hear this case and sort out the issues.

On June 23, 2011, the U.S. Court of Appeals for the 9th Circuit squarely rejected arguments made by attorneys for former Rep. Rick Renzi (R-Ariz.) and held that an extortion case against Renzi can proceed to trial. Renzi had argued that the Constitution's "speech or debate" clause shields him from prosecution because the allegedly corrupt acts he is charged with fall under the category of "legislative acts" that are protected by that clause.

As we wrote on this blog nearly a year ago, the indictment stems from a government land-swap deal that prosecutors say illegally benefited Renzi's former business partner. Renzi allegedly used his seat in Congress to strong-arm people into land deals with the former partner, who then kicked back money to Renzi in complicated financial transactions.

The appeals court found that Supreme Court precedent compels the conclusion that allegedly corrupt acts by a legislator are not protected by the clause as "legislative acts."

"Despite Renzi's best efforts to convince us otherwise, we agree with the district court that the alleged choices and actions for which he is being prosecuted lie beyond those limits. We affirm the district court's denial of relief on each of the issues properly raised on appeal," the 9th Circuit held.

The unanimous ruling by a panel of the 9th Circuit not only permits the Renzi case to go forward and sets forth an interpretation of the "speech or debate" clause that is favorable to prosecutors looking into corruption in the national legislature. It also sets up a direct conflict with the U.S. Court of Appeals for the D.C. Circuit's 2007 ruling in a case involving Rep. William Jefferson (D-La.) There, the appeals court held that a member of Congress must be provided advance notice and the right to review materials before a search of his office is conducted by prosecutors.



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“Simply stated, we cannot agree with our esteemed colleagues on the D.C. Circuit. We disagree with both [the Jefferson ruling’s] premise and its effect and thus decline to adopt its rationale,” the 9th Circuit wrote.

We would not be surprised to see the U.S. Supreme Court agree to hear this case and sort out the issues.

Crime in the Suites is authored by the Ifrac Law Firm, a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

The commentary and cases included in this blog are contributed by Jeff Ifrac and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrac and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!

