



Can the Constitution Shield a Congressman From an Extortion Probe?

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Federal prosecutors recently responded to an appeal filed by former U.S. Representative Rick Renzi before the U.S. Court of Appeals for the Ninth Circuit, which seeks a dismissal of Renzi's February 2008 extortion indictment. The indictment stems from a government land-swap deal that prosecutors say illegally benefited Renzi's former business partner. Prosecutors claim that Renzi, a Republican from Arizona, 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.

Although Renzi's case has not gone to trial, Renzi is appealing rulings made by U.S. District Judge David Bury earlier this year, denying a constitutional challenge to his indictment raised in six Speech or Debate motions. Normally such appeals would have to wait for the conclusion of the trial, but because one of Renzi's motions involved the Constitution's Speech or Debate clause, Judge Bury's decision is ripe for appeal now. Judge Bury's decision is at odds with the D.C. Circuit's opinion in *United States v. Rayburn House Office Building*, 497 F.3d 654 (D.C. Cir. 2007), which held that the Justice Department violated the Speech or Debate privilege when it executed a search warrant on a congressional office without first allowing the Congressman an opportunity to protect legislative materials from seizure. Judge Bury reasoned that Rayburn carried to its "logical conclusion" would produce illogical results and would create "super-citizens, immune from criminal responsibility and susceptible to corruption."



Renzi's attorneys continue to argue on appeal that the indictment should be dismissed because it violates the constitutional separation of powers. Specifically, they claim that the government violated the Speech or Debate clause by questioning Renzi's aides and by having at least one aide secretly record telephone calls with him. Renzi's attorneys argue that the clause gives members protection for their legislative acts, including immunity from prosecution and a ban on using legislative acts as evidence at trial or before a grand jury. They also contend that the constitutional protections extend to the former member's aides and that Renzi did not waive those protections.

The key question on appeal is whether Renzi's actions related to the land deals fall within the protections of "legislative acts." The Department of Justice maintains that the indictment is constitutionally sound and that Renzi's attorneys have a "fundamental misunderstanding" of the protections of the clause. Louisiana Democratic Representative William Jefferson used the same constitutional argument in seeking to have testimony from one of his aides thrown out in his corruption trial. In Jefferson's case, noted above, the U.S. Court of Appeals for the D.C. Circuit ruled in 2007 that a member of Congress must be provided advance notice and the right to review materials before a search is conducted. The U.S. Supreme Court refused to hear the appeal.

Although the Constitution protects members of Congress from having evidence of their legislative acts used against them, it is highly doubtful that the framers of the Constitution intended the Speech or Debate Clause to provide a cloak of absolute immunity for alleged extortionate acts. Such an expansive reading of the clause would give members who were inclined to engage in corruption every incentive to use their offices as a front for their own personal agendas, confident in the knowledge that their actions would be immune from prosecution.



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Consequently, the Ninth Circuit's decision in *Renzi* —if it chooses to address the issue — may have a major impact on future cases against members of Congress and as state legislators, to whom the Constitutional protection extends as well.

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