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### DOJ Picks up Support in Prosecution of Former Congressman

A watchdog group in Washington is supporting the U.S. Justice Department in the prosecution of former Rep. Richard Renzi (R-Ariz.), charged in an extortion case in Arizona that is raising constitutional issues of separation of powers.

Citizens for Responsibility and Ethics in Washington wants to file a friend-of-the-court appellate court brief backing the government in its effort to keep the prosecution of Renzi moving forward in the U.S. District Court for the District of Arizona. The prosecution has stalled—the case is pending in the U.S. Court of Appeals for the 9th Circuit—as the government and Renzi’s defense lawyers appeal trial court rulings.

DOJ is challenging the dismissal of wiretap evidence stemming from taped phone calls that a judge said violate the attorney-client privilege. Renzi’s lawyers, who have the support of lawyers for the U.S. House of Representatives, want the indictment dismissed on the ground that prosecutors impermissibly used protected legislative activity in building the case.

CREW focuses its proposed amicus brief—a copy was filed Aug. 25 for the court’s review—on the issue of protected legislative activity. The speech or debate clause of the Constitution protects members of Congress from prosecution of legislative activity—including, for instance, bills that have been introduced.

Renzi’s lawyers, according to CREW, oppose the filing of the proposed amicus brief. The Justice Department has agreed to it. Steptoe & Johnson partners Reid Weingarten and Brian Heberlig, among the lawyers who represent Renzi, were not immediately reached for comment today.

Central in the Renzi case is the extent to which activity associated with the preparation of legislation—for instance, where a congressman discusses potential future legislation with a citizen—is protected under the speech or debate clause. The extortion case against Renzi centers on his role in a land deal that required congressional approval.

“Congressman Richard Renzi is asking this Court to broaden the protection of the Speech or Debate Claim well beyond the parameters set by the Supreme Court,” CREW director Melanie Sloan said in the amicus brief. “In no case has the Court ever treated the Clause as protecting all conduct relating to the legislative process.”

Sloan said in court papers the speech or debate clause “must be interpreted narrowly to prevent members of Congress from being rendered virtually immune from a wide range of crimes simply because the acts in question were peripherally to their holding office.” The clause was never meant to give “blanket protection,” Sloan said.

In June, Renzi’s lawyers said in appellate court papers that the government “used constitutionally protected evidence to shape every aspect of its investigation against Congressman Renzi.” The attorneys said the government secretly questioned Renzi’s aides about legislative activity and that aides stole documents from Renzi’s office.

Earlier this month, federal prosecutors defended the case against Renzi. DOJ lawyers said Renzi’s attorneys have a “fundamental misunderstanding” of the protections of the speech or debate clause. Acts of extortion “are not legislative acts protected by the Clause,” prosecutors said in the Justice Department appellate brief, signed by Andrew Levchuk, a Public Integrity Section trial attorney.

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