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CREW Cuts

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Speech or Debate Clause Takes Center Stage in Congressional Corruption Cases

In the past year, a much overlooked and under-discussed interpretation of the Speech or Debate Clause of the Constitution has had a significant impact on congressional corruption investigations. Probes into the illegal conduct of Reps. William Jefferson (D-LA) and Rick Renzi (R-AZ) have been impeded by claims that this constitutional privilege prevents their prosecution.



The Speech or Debate Clause was intended to free legislators from executive and judicial oversight that realistically would threaten to control their conduct as legislators. Historically, the Clause has been interpreted narrowly to prevent members from being immunized from prosecution for crimes. All traditional investigative techniques were available to law enforcement agents probing congressional corruption, but legislative material could not be used as evidence against a member in a judicial proceeding.

After Rep. Jefferson claimed the search of his Rayburn House Office Building violated the Speech or Debate Clause, the D.C. Circuit Court of Appeals held that if any legislative information is viewed by investigators during a search, the admissibility of even non-legislative material is in doubt. In a decision strongly criticized by prosecutors, the Court reinterpreted the Clause to find that in addition to preventing the use of legislative material against a member of Congress, it also now prevents the disclosure of information.

Despite this decision, a panel of the Fourth Circuit Court of Appeals refused to dismiss Rep. Jefferson's indictment on Speech or Debate Clause grounds, allowing the case against him to proceed. Rep. Jefferson has asked the full court to reconsider that decision.

Rep. Renzi has asked an Arizona district court to dismiss the indictment against him, also claiming it was obtained in violation of the Clause. Because the Speech or Debate Clause should not allow members to avoid being held accountable for their criminal acts, CREW has filed friend-of-the-court briefs on behalf of the United States in both the Jefferson and Renzi cases. [See CREW briefs here](#)

In contrast, on behalf of the House leadership, the House Counsel also filed a brief in the Renzi case, arguing that the indictment against Rep. Renzi should be dismissed because government agents improperly heard legislative material in violation of the Clause while conducting the investigation of Rep. Renzi.

By arguing for an interpretation of the Speech or Debate Clause that would immunize members of Congress from searches and seizures, Congress is attempting to protect members from criminal prosecution, rather than ensuring they comply with the law. If other courts adopt the position advanced by the House Counsel, members of Congress may never be held to account for their illegal actions.

A Speech or Debate Clause issue has also developed in the Senate. Sen. Saxby Chambliss (R-GA) is currently resisting a subpoena from lawyers requesting information about the senator's contacts with the Imperial Sugar Corporation and why he tried to dissuade victims' families from suing the company following a deadly explosion and fire at a Georgia refinery earlier this year. The Senate Counsel has filed a motion to quash the subpoena, claiming the Clause prevents him from responding. On November 18th, CREW publicly refuted Sen. Chambliss's argument and explained the Clause does not protect the senator from answering questions about meetings with victims' families.

In an era when misconduct among members of Congress is at an all-time high - 12 members are currently under federal investigation - Congress cannot be permitted to, on the one hand, tell the public that it has no tolerance for corruption, while on the other, use the Speech or Debate Clause to prevent prosecution of wrongdoing by members.

[Learn more about Reps. Jefferson and Renzi, and Sen. Chambliss](#)

[Read The Washington Post's Speech or Debate story](#)

[Read The Politico's story on Rep. Jefferson](#)

[Read the AFL-CIO's blog post on Sen. Chambliss](#)

CREW Wins Right to Sue White House in Missing Email Case

On November 10th, the D.C. District Court upheld CREW's lawsuit challenging the White House's failure to properly store and recover millions of missing emails. The timely decision came as the Bush administration prepares to leave office without taking action, potentially rendering these emails irrecoverable.

CREW sued the Executive Office of the President (EOP), the Office of Administration (OA) and the Archivist in September 2007, alleging that they had violated the Federal Records Act by failing to recover emails lost between March 2003 and October 2005. EOP had stopped using the records management system that had been in place automatically backing up emails since 1994 and failed to install a replacement system. Although OA developed a plan to recover the missing emails, it was never implemented and no new electronic records management system has ever been put into place.

By refusing to dismiss CREW's suit, District Court Judge Henry Kennedy dealt a significant blow to the secretive Bush administration and delivered a huge victory for government transparency. The Court held that CREW has the right to sue to force the administration to restore the deleted emails. Judge Kennedy also held that federal courts have the authority to review the adequacy of the White House's recordkeeping practices, and that EOP, the Archivist and OA all have a public duty to prevent the destruction of federal records.

[Learn more](#)

[Read Judge Kennedy's decision](#)

[Read The Washington Post story](#)

Wilsons Vow to Take Case Against Bush Administration to Supreme Court

CREW represents former covert CIA officer Valerie Plame Wilson and her husband, former Ambassador Joseph Wilson, in their lawsuit against Vice President Dick Cheney, I. Lewis "Scooter" Libby, Karl Rove, Richard Armitage and other unnamed officials. The suit alleges these officials revealed Valerie Wilson's classified CIA status to reporters in retaliation against Joe Wilson after he publicly disputed statements President Bush made in his 2003 State of the Union address justifying the war in Iraq. CREW is working with the Wilsons to uncover the truth surrounding the leak, to ensure those officials are held accountable for their unconscionable actions, and to deter future government officials from endangering national security for political purposes. The case was dismissed by the district court, a panel of the D.C. Circuit Court of Appeals upheld that decision, and the full Circuit Court refused to reconsider the matter. As a result, CREW will ask the Supreme Court to review the matter in early 2009.

While the Court of Appeals' decision is disappointing, CREW and the Wilsons remain determined to press the case forward. There must be consequences when government officials abuse their power and endanger national security for political ends.

[Learn more](#)

[Read the Court of Appeals' decision](#)





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