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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 UNITED STATES,

15 Plaintiff,

16 v.

17 RICHARD G. RENZI,
18 et al.,

19 Defendants.

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No. 4:08-cr-00212-TUC-DCB (BPV)

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31 **MEMORANDUM OF AMICUS CURIAE OF CITIZENS FOR RESPONSIBILITY**
32 **AND ETHICS IN WASHINGTON IN SUPPORT OF THE UNITED STATES**

33
34 **STATEMENT OF INTEREST**

35 Citizens for Responsibility and Ethics in Washington (“CREW”) files this memorandum
36 as an amicus curiae in support of the position of the United States. The United States has
37 consented to the filing of this brief; defendant Renzi opposes the filing.

38 CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal
39 Revenue Code. Through a combined approach of research, advocacy, public education and
40 litigation, CREW seeks to protect the rights of citizens to be informed about the activities of
41 government officials and to ensure the integrity of those officials. Among its principle activities,
42 CREW monitors the activities of members of Congress and, where appropriate, files ethics
43 complaints with Congress. CREW also prepares written reports, including a yearly report that it
44 disseminates publicly about the most unethical members of Congress.

1 In addition, Congressman Renzi's claims to the contrary, there is no precedent holding
2 that the Speech or Debate Clause prohibits government agents from gathering legislative material
3 when investigating a member of Congress for illegal activities. To the extent that the District of
4 Columbia Circuit's holding in *United States v. Rayburn House Office Building*, 497 F.3d 654
5 (D.C. Cir. 2007), *cert. denied*, 128 S. Ct. 1738 (2008), may be read to prohibit the incidental
6 discovery of such information, this Court should decline to follow that decision. Instead, this
7 Court should follow the approach of the Third Circuit Court of Appeals, as enunciated in *In re*
8 *Grand Jury Proceedings (Eilberg)*, 587 F.2d 589, 596 (3d Cir. 1978), and *In re Grand Jury*
9 *Proceedings (Cianfrani)*, 563 F.2d 577 (3d Cir. 1977), which has more faithfully adhered to the
10 Supreme Court's interpretation of the Speech or Debate Clause.

11 **I. THE SPEECH OR DEBATE CLAUSE PROTECTS LEGISLATORS ONLY FROM**
12 **INQUIRIES INTEGRAL TO THE LEGISLATIVE PROCESS.**

13 Congressman Renzi argues that his efforts to develop land exchange legislation are
14 protected by the Speech or Debate Clause because successful negotiations eventually would have
15 resulted in legislation. As a result, he argues, any negotiations, discussions and correspondence
16 with private landholders are an integral part of the legislative process and, therefore, protected.
17 Defendant Richard G. Renzi's Motion to Dismiss the Indictment for Speech or Debate Clause
18 Violations at 18 [hereinafter "Def. Br."]. In fact, however, such activities are not within the
19 sphere protected by the Clause.

20 In applying the speech or debate privilege, the Supreme Court has held that the heart of
21 the Clause is speech or debate in either House. *Gravel v. United States*, 408 U.S. 606, 625
22 (1972). Only matters integral to the deliberative and communicative processes by which
23 members of Congress participate in committee and House proceedings -- the consideration and
24 passage or rejection of proposed legislation or other matters that the Constitution places within
25 the jurisdiction of Congress -- are covered. *Id.* Courts have extended the privilege to other
26 matters only "when necessary to prevent direct impairment of such deliberations." *Id.* (*quoting*

1 *United States v. Doe*, 455 F.2d 753, 760 (1st Cir. 1972)). In this way, courts have upheld the
2 fundamental purpose of the Clause: freeing legislators from executive and judicial oversight that
3 realistically threatens to control their conduct as legislators. *United States v. Helstoski*, 442 U.S.
4 477, 492 (1979); *Gravel*, 408 U.S. at 618.

5 While conduct within the sphere of legislative activity is protected, “legislative activity”
6 does not encompass all acts related in any way to the legislative process. *Gravel*, 408 U.S. at 624,
7 n. 15 (citing *Tenney v. Brandhove*, 341 U.S. 367, 376-77 (1951)). “A legislative act has
8 consistently been defined as an act generally done in Congress in relation to the business before
9 it.” *Helstoski*, 442 U.S. at 488. But the Clause does not protect all acts related in any way to the
10 legislative process. Members of Congress “engage in many activities other than the purely
11 legislative activities protected by the Speech or Debate Clause.” *Brewster*, 408 U.S. at 512. In
12 fact, concerned about creating a class immune from prosecution, the *Brewster* Court stated:

13 [w]e would not think it sound or wise, simply out of an abundance
14 of caution to doubly insure legislative independence, to extend
15 the privilege beyond its intended scope, its literal language, and
its history, to include all things in any way related to the legislative
process.

16 *Id.* at 516. The Clause must be interpreted narrowly to prevent members of Congress from being
17 rendered virtually immune from a wide range of crimes simply because the acts in question were
18 peripherally related to their holding office. *Id.* at 520.

19 Nevertheless, it is clear that the Clause protects legislators from inquiry into legislative
20 acts or the motivation for performing legislative acts. *Brewster*, 408 U.S. at 409; *United States v.*
21 *Johnson*, 383 U.S. 169, 185 (1966). It is not enough, however, for conduct to be merely related to
22 the due functioning of the legislative process to be protected by the Clause. *Brewster*, 408 U.S. at
23 513-14.

24 In *Brewster*, a former United States Senator was charged with accepting bribes in
25 exchange for being influenced in the performance of official acts related to postage rate
26 legislation. 408 U.S. at 502. The defendant moved to dismiss his indictment, citing Speech or
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1 Debate Clause immunity. *Id.* at 503. Citing *Johnson*, the Court explained that a member of
2 Congress may be prosecuted under a criminal statute provided the government’s case does not
3 rely on legislative acts or the motives for legislative acts. *Id.* at 512. That the conduct in question
4 was accepting a bribe in exchange for promises to perform legislative acts did not require
5 dismissal of the indictment because, in proving its case, the government did not need to inquire as
6 to how the senator performed any legislative act. *Id.* at 526.

7 In *Johnson*, the Supreme Court rejected the proposition that the Speech or Debate Clause
8 reaches conduct such as an attempt to influence the Department of Justice. 383 U.S. at 172.
9 *Brewster* extended *Johnson*, explaining that if a member can be prosecuted for attempting to
10 influence another branch of government in return for a bribe, a member can also be prosecuted for
11 a promise relating to a legislative act in return for a bribe. 408 U.S. at 524. Because the
12 government only needed to prove that the defendant sought money with knowledge that the donor
13 was paying him compensation for an official act, the Court found inquiry into defendant’s
14 legislative performance was not itself necessary. *Id.* at 527. Evidence of the member’s
15 knowledge of the alleged briber’s illicit reasons for paying the money was sufficient to carry the
16 case to the jury and did not impinge on the Speech or Debate Clause. *Id.* Thus, defendant’s
17 indictment for taking bribes in connection with his promise to vote on postage rate legislation was
18 not prohibited by the Clause. *Id.* at 528-29.

19 Congressman Richard Renzi is asking this Court to broaden the protections of the Speech
20 or Debate Clause well beyond the parameters set by the Supreme Court. The congressman is
21 suggesting that anything even tangentially related to legislation is protected by the Clause.
22 Under this construction, any illegal activity essentially would be immune from investigation if
23 there is even a mere possibility that it might lead to legislation in the future. Yet in no case has
24 the Court ever treated the Clause as protecting all conduct relating to the legislative process. *Id.*
25 at 515. In fact, the *Brewster* Court declined to expand the breadth of the Clause in the way
26 Congressman Renzi advocates here because the Court had “no doubt that there are few activities
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1 in which a legislator engages that he would be unable to somehow ‘relate’ to the legislative
2 process.” *Id.* at 516. The purpose of the Clause is not, the Court found, “to make Members of
3 Congress super-citizens, immune from criminal responsibility.” *Id.* The Clause applies only if it
4 is necessary to inquire how the member of Congress spoke, debated, voted or did anything else in
5 the chamber or in committee in order to prosecute a criminal violation. *Id.* at 526.

6 Given Supreme Court precedent, the government’s introduction of evidence to prosecute
7 Congressman Renzi here in no way runs afoul of the Clause. If a member of Congress can be
8 prosecuted for attempting to influence a government agency or for promising to take future
9 legislative action in return for money, surely defendant can be prosecuted for using his office to
10 pressure business entities to purchase land at an inflated value from his friend and business
11 partner.

12 **A. This Court Must Determine Whether Congressman Renzi’s Conversations**
13 **And Correspondence Were, In Fact, Legislative In Nature.**

14 Congressman Renzi claims the Speech or Debate Clause prohibits inquiry into acts a
15 legislator claims are legislative, even for the purpose of discovering whether they are, in fact,
16 legislative, but this proposition cannot be reconciled with the Supreme Court case of *Helstoski*.
17 In *Helstoski*, the government argued that the Speech or Debate Clause did not prohibit it from
18 introducing evidence of discussions and correspondence that referred to and discussed legislative
19 acts as long as those discussions and correspondence did not occur during the legislative process.
20 442 U.S. at 486. The Supreme Court held that the Clause prohibited the government from
21 introducing evidence of past legislative acts, but not of promises to perform legislative acts in the
22 future. *Id.* at 488. Addressing a concern expressed by Justice Stevens, the majority also noted
23 that a member of Congress could not effectively immunize himself from conviction simply by
24 inserting references to past legislative acts in all communications, thereby rendering them
25 inadmissible. *Id.* n 7. Nothing, the Court stated, “prohibits excising references to legislative acts,
26 so the remainder of the evidence would be admissible.” *Id.* Thus, the *Helstoski* Court clearly
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1 envisioned courts making determinations as to whether particular materials actually are legislative
2 in nature and, therefore, protected by the Speech or Debate Clause.

3 The Third Circuit Court of Appeals has addressed this issue directly. In *Gov't of the*
4 *Virgin Islands v. Lee*, 775 F.2d 514, 519 (3rd Cir. 1985), the Third Circuit considered whether the
5 Speech or Debate Clause barred the government from inquiring into whether the actions of a
6 Virgin Islands legislator while on an alleged business trip were, in fact, legislative in nature. The
7 Court agreed with the Ninth Circuit and the D.C. Circuit that investigative activities by
8 lawmakers are protected by the Clause. *Id.* at 521 (citing *Miller v. Transamerican Press, Inc.* 709
9 F.2d (9th Cir. 1983); *McSurely v. McClellan*, 553 F.2d 1277 (D.C. Cir. 1976)). But the Court
10 disagreed with the proposition that if a legislative function is *apparently* being performed, the
11 propriety and motivation, as well as details of the acts performed are immune from inquiry.

12 The Court found that cases interpreting the Speech or Debate Clause in which legislative
13 immunity has been triggered have involved “manifestly legislative acts; acts which were so
14 clearly legislative in nature that no further examination had to be made to determine their
15 appropriate status.” *Lee*, 775 F.2d at 522. Examples include introducing proposed legislation,
16 *Helstoski*, 442 U.S. 477; subpoenaing records for a committee hearing, *Eastland v. U.S.*
17 *Serviceman’s Fund*, 421 U.S. 491 (1975); inserting material into the Congressional Record, *Doe*
18 *v. McMillan*, 412 U.S. 306 (1973); introducing evidence during a committee hearing, *Gravel*, 408
19 U.S. 606; delivering a speech on the House floor, *Johnson*, 383 U.S. 169 (1966); questioning a
20 witness during a committee hearing, *Tenney*, 341 U.S. 367; and voting on resolutions, *Kilbourn v.*
21 *Thompson*, 103 U.S. 168 (1881). The Court noted that it was the essential legislative character of
22 these acts that triggered the protection of legislative immunity. 775 F.2d at 522.

23 In contrast, in *Lee*, the defendant argued that conversations and meetings he had with
24 various officials were protected by the Clause. *Id.* The Court explained that “private
25 conversations do not, in and of themselves, trigger the legislative privilege because they are not
26 manifestly legislative acts.” *Id.* It is the content of the conversations, not the mere fact that such
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1 conversations took place, that determines whether they are entitled to legislative immunity. *Id.*
2 Similarly, Congressman Renzi maintains that his communications were official in nature and
3 involved information gathering. Such self-serving claims, however, without more, do not
4 establish that the congressman's communications are protected by the Clause. Rather, it is the
5 role of this Court to make that determination.

6 Congressman Renzi relies on *United States v. Dowdy*, 479 F.2d 213 (4th Cir.), *cert.*
7 *denied*, 414 U.S. 823 (1973), to support his argument that the Speech or Debate Clause forbids
8 inquiry into acts that are purportedly or apparently legislative, even to determine if they really are
9 legislative. The *Lee* Court, however, read *Dowdy* more narrowly. In *Dowdy*, the chairman of the
10 House Subcommittee on Investigations for the Committee on the District of Columbia was
11 charged with orchestrating a sham investigation. The Third Circuit found that, per *Brewster*, 408
12 U.S. at 525, because a committee investigation is exactly the sort of activity protected by the
13 Speech or Debate Clause, an inquiry into the defendant's motive for holding the hearing was
14 clearly precluded. Therefore, whatever Congressman Dowdy's motives for holding the hearing,
15 the act of conducting a hearing was still legislative. 775 F.2d at 524.

16 In contrast, because a trip -- as opposed to a committee hearing -- is not inherently a
17 legislative activity, it was necessary for the Court to consider defendant Lee's purpose or motive
18 in taking the trip to determine whether or not it was legislative in nature. *Id.* In other words, the
19 government did not need to inquire into the motives for a legislative act -- something
20 impermissible under the Clause -- but instead was questioning whether non-legislative acts had
21 been misrepresented as legislative. *Id.* Finding this narrow reading of *Dowdy* supported by
22 Supreme Court precedent, the Third Circuit rejected the more expansive reading of the decision
23 urged by defendant Lee and, to the extent *Dowdy* bars inquiry into purportedly legislative acts to
24 determine whether they are, in fact, legislative, declined to follow it. *Id.*

1 This Court should follow *Helstoski* and *Lee* and determine whether each communication
2 Congressman Renzi claims is protected by the Speech or Debate Clause privilege was, in reality,
3 legislative.

4 **B. Negotiations, Discussions and Correspondence Are Not Necessarily**
5 **Legislative Acts Protected By the Speech or Debate Clause**

6 Defendant argues that the Speech or Debate Clause prevents the government from
7 introducing evidence of “negotiations, discussions, and correspondence” with a private
8 landholder because they constitute legislative material. Def. Br. at 18. Generally, however,
9 conversations a congressman has with private landholders and businesspeople are not the sort of
10 activities protected by the Clause. Rather, these activities are similar to what *Brewster* describes
11 as “political matters” that have never seriously been considered to have the protection afforded by
12 the Speech or Debate Clause. 408 U.S. at 512. Such unprotected activities include constituent
13 services, making appointments with government agencies, assistance in securing government
14 contracts, preparing newsletters and news releases and delivering speeches. *Id.* Under this
15 precedent, Congressman Renzi’s conversations regarding matters such as easements, boundaries
16 and appraisal, Def. Br. at 17-18, are not legislative activities protected by the Speech or Debate
17 Clause.

18 In addition, the Supreme Court’s holding in *Helstoski* -- that while communications
19 concerning past legislative acts are protected, communications about future acts are not -- also
20 should inform this Court’s decision as to whether Congressman Renzi’s communications
21 preceding the land swap legislation are protected by the Speech or Debate Clause. *Helstoski*
22 holds that the protections of the Clause extend “only to an act that has already been performed. A
23 promise to deliver a speech, to vote, or to solicit other votes at some future date is not ‘speech or
24 debate.’” 442 U.S. at 490. At the time Congressman Renzi was engaged in communications
25 about conservation easements, boundaries and appropriate appraisal values, he was trying to
26 reach an agreement about the terms of *future* legislation. The land swap had not yet occurred.

1 Rather, the conversations and correspondence on which the government appears to be relying
2 were all about land swap legislation Congressman Renzi was planning to introduce at a future
3 date, not legislation that already had been introduced. As a result, *Helstoski* dictates that any
4 communications in which Congressman Renzi may have engaged about his efforts to negotiate
5 land swap legislation are not protected by the Speech or Debate Clause.

6 **II. THE SPEECH OR DEBATE CLAUSE PROHIBITS NON-EVIDENTIARY USE,
7 NOT NON-DISCLSOURE**

8 The Speech or Debate Clause privilege is not one of non-disclosure, as Congressman
9 Renzi argues, but one of non-evidentiary use. *Cianfrani*, 563 F.2d at 584. This privilege,
10 contrary to those of husband and wife and lawyer and client, is not one of non-disclosure because
11 frequently, the utterances at issue or legislative acts are already public. *Id.* Moreover, the Clause
12 was not created to promote the development of socially desirable confidential relationships as is
13 the aim of other privileges. *See Eilberg*, 587 F.2d at 596. In the legislative context, no effort has
14 been made to maintain secrecy in communications. Therefore, for the privilege to be meaningful,
15 it must prohibit not disclosure, but admission into evidence. In this way, the privilege permits
16 free, unfettered legislative debate and legislative action without exposing the legislator to criminal
17 liability. *Cianfrani*, 563 F.2d at 584.

18 In *Eilberg*, the government filed an ex parte motion for an order authorizing a subpoena
19 duces tecum to the Clerk of the House of Representatives for production of records reflecting
20 telephone toll calls from Congressman Joshua Eilberg's office. 587 F.2d at 591. Congressman
21 Eilberg intervened, seeking to quash the subpoena in part on the grounds that the Speech or
22 Debate Clause prohibited use of such records. *Id.* The district court denied Congressman
23 Eilberg's motion and he appealed. *Id.* Congressman Eilberg conceded that the bills included
24 calls that were not protected by the Speech or Debate Clause, but argued that when a House
25 document contains both privileged and unprivileged material, the entire document is privileged.
26 *Id.* at 596. While the Third Circuit rejected the government's argument that such toll records
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1 Clause, the District of Columbia Circuit issued an opinion inconsistent with Supreme Court
2 precedent. As a result, this Court should decline to follow *Rayburn*.

3 In *Rayburn*, Congressman William Jefferson sought the return of materials seized from his
4 Capitol Hill office, contending that the search violated the Speech or Debate Clause. 497 F.3d at
5 655. The Department of Justice had conducted the search, pursuant to a valid warrant, in
6 connection with a bribery investigation in which the congressman was implicated. *Id.* at 656.
7 After the district court denied his motion, the congressman sought emergency relief in the District
8 of Columbia Circuit. The Court of Appeals barred the government from reviewing the material
9 pending appeal and remanded the case back to the district court, ordering the Government to
10 provide copies of the seized materials to Congressman Jefferson. Then, once the congressman
11 had made his privilege claims, the district court was to “review in camera any specific documents
12 or records identified as legislative and make findings regarding whether the specific documents or
13 records are legislative in nature.” *Id.* at 658.

14 The District of Columbia found that, based on prior District of Columbia precedent, the
15 Speech or Debate Clause “includes a non-disclosure privilege.” *Id.* at 660 (*citing Brown &*
16 *Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 415 (D.C. Cir. 1995)). The Court
17 rationalized its decision, stating:

18 a key purpose of the privilege is to prevent intrusions in the legislative process and
19 [] the legislative process is disrupted by the disclosure of legislative material,
20 regardless of the use to which the disclosed materials are put. (citation omitted).
The bar on compelled disclosure is absolute.

21 *Id.*

22 In *Rayburn*, as in the case before this Court, the search inevitably resulted in the
23 disclosure of legislative materials to government agents. Indeed, in both cases, the warrant
24 applications contemplated such discovery. The District of Columbia Circuit found that FBI
25 agents reviewing documents, some of which related to legislative acts, constituted compelled
26 disclosure that might “chill the exchange of views with respect to legislative activity.” *Id.* at 661.

1 As a result, the Court found the search ran afoul of the Speech or Debate Clause. *Id.*
2 Congressman Renzi urges this Court to follow *Rayburn* and find that the government can never
3 review privileged material without the consent of a member of Congress. Def. Br. at 11. He
4 argues that the seizure of any legislative materials through wiretaps and search warrants violates
5 the Clause. *Id.*

6 Contrary to D.C. Circuit’s holding in *Rayburn*, although the Speech or Debate Clause
7 prohibits members from being questioned about legislative activity, there is no Supreme Court
8 case suggesting that the executive branch is prohibited from taking any action that might lead to
9 the unintentional discovery of such evidence. Clearly, evidence of legislative conduct cannot be
10 used to develop a criminal case against a member. In *Johnson*, the Court held that evidence
11 related to the authorship, content and motivation of speech defendant made on the floor of the
12 House could not serve as the basis of a criminal charge for conspiracy to defraud the United
13 States. 383 U.S. at 180. In *Gravel*, the Court held that a senator could not be questioned about
14 committee reports or votes. 408 U.S. at 624. In *Helstoski*, the Court held that a member of
15 Congress’s introduction of private bills could not be admitted to prove bribery. 442 U.S. at 489.

16 Yet while all of these cases unequivocally state that evidence of legislative activity cannot
17 be admitted against a member, not one prohibits the government from gathering and reviewing
18 such material. In fact, *Helstoski* anticipated the possibility of discovery of a communication
19 including both protected and unprotected material and allowed that the legislative portion could
20 be excised and the remainder admitted as evidence. 442 U.S. at 488 n. 7. If the Supreme Court
21 did not imagine that the government might incidentally discover protected legislative material,
22 this holding would be irrelevant: the government cannot delete protected legislative material that
23 it cannot seize in the first place. Thus, according to *Helstoski*, the proper course here is for the
24 government to excise the portions of such communications protected by the Speech or Debate
25 Clause, and use only the unprotected portions in prosecuting the case. To the extent that *Rayburn*
26 holds otherwise, it is wrong.

1 **III. EXPANDING THE SPEECH OR DEBATE CLAUSE TO PRECLUDE THE**
2 **SEIZURE OF EVIDENCE WOULD GRAVELY COMPROMISE FUTURE**
3 **INVESTIGATIONS OF CRIMINAL MISCONDUCT.**

4 The holding in *Rayburn* makes it exponentially more difficult for the government to
5 investigate and prosecute members of Congress who engage in criminal conduct. Although when
6 using wiretaps the government uses minimization techniques to identify non-responsive or
7 privileged communications and stops surveillance when such communications are identified, it is
8 virtually impossible for government agents to avoid hearing any privileged communications.
9 Petition for Writ of Certiorari at 12, *U.S. v. Rayburn House Office Building*, No. 07-816 (Dec. 19,
10 2007), available at <http://www.usdoj.gov/osg/briefs/2007/2pet/7pet/2007-0816.pet.aa.pdf>. The
11 absolute non-disclosure Congressman Renzi advocates would strip the government of the right to
12 use wiretaps and otherwise gather information about the criminal activities of members of
13 Congress, essentially depriving the executive branch of the power to investigate and prosecute
14 members of Congress for criminal acts. Members of Congress essentially would be beyond the
15 reach of the law and the consequences would be grave.

16 For example, a member of Congress in possession of cocaine could store the illegal drugs
17 in an office drawer where he also keeps legislative materials and insulate the evidence of his
18 crime from detection. A member of Congress believed to be guilty of treason could hide behind
19 the Speech or Debate Clause to prevent a search of his office for evidence of his crimes. A
20 member of Congress under suspicion of soliciting minors for sex over the Internet could shield
21 the evidence from law enforcement simply because that information is commingled with
22 legislative materials. A member of Congress suspected of conspiracy to commit murder could
23 plan his crime freely over the telephone as long as he made sure to mention legislative acts such
24 as committee votes or floor speeches as well.

25 Continuing along this vein, any place legislative materials might be stored would be off-
26 limits to investigators. The government's intent in searching each location, be it home, car,
27 office, or telephone line, is the same -- to uncover evidence of criminal misconduct unrelated to a
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1 member of Congress's legislative functions. But in each location there is a risk that such
2 evidence may be commingled with legislative materials which, although not sought by the United
3 States, could be examined by investigators.

4 Similarly, a member of Congress could just as easily store evidence of his criminal
5 misconduct in a briefcase -- again commingled with legislative materials -- that travels with him
6 wherever he goes. If the possibility that a search of the briefcase could unwittingly turn up
7 commingled legislative materials were enough to bar the search, the United States would have
8 very few investigative tools at its disposal.

9 Under the interpretation of the Clause promoted by Congressman Renzi, in those
10 instances, as in the instant case, the legitimate interests of the executive and judicial branches in
11 enforcing the laws would yield to the incidental interest of a legislator in not having legislative
12 materials unwittingly swept up in the seizure of materials that have nothing whatsoever to do with
13 his legislative functions, but demonstrate criminal activity. The Speech or Debate Clause,
14 however, was never intended to "render Members of Congress virtually immune from a range of
15 crimes simply because the acts in question were peripherally related to their holding office."
16 *Brewster*, 408 U.S. at 520. Barring the government from using evidence obtained from
17 communications because the government incidentally discovered protected legislative material
18 will not enhance legislative independence, the very purpose for which the speech or debate
19 privilege was designed. *Brewster* at 508. Rather, it will turn legislators into "super-citizens,
20 immune from criminal responsibility." *Id.* at 516. Because "[l]egislators ought not to stand
21 above the law they create but ought generally to be bound by it as are ordinary persons," *Gravel*,
22 408 U.S. at 615(*citing* T. Jefferson, *Manual of Parliamentary Practice*, S. Doc No. 92-1, p. 437
23 (1971)), this Court should reject Congressman Renzi's arguments.

1 **CONCLUSION**

2 For the above stated reasons, as well as those set forth in the government’s brief, this
3 Court should deny Congressman Renzi’s motion to dismiss the indictment.

4
5 Respectfully submitted,

6
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28 Counsel for Amicus Curiae

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on November 5, 2008, a true and correct copy of the foregoing,
3 Amicus Curiae Citizens for Responsibility and Ethics in Washington's Motion for Leave to File
4 as Amicus Curiae and Memorandum in Support of the United States, was electronically
5 transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice
6 of Electronic Filing to the following CM/ECF registrants:

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