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20 UNITED STATES DISTRICT COURT
21 DISTRICT OF ARIZONA

22 UNITED STATES OF AMERICA,)	
)	No. 4:08-cr-00212-TUC-DCB (BPV)
23 Plaintiff,)	
)	
24 vs.)	DEFENDANT RICHARD RENZI'S
)	MOTION TO DISMISS HOBBS
25 RICHARD G. RENZI,)	ACT CHARGES
26 JAMES W. SANDLIN,)	(COUNTS 1, 26 & 27)
27 ANDREW BEARDALL)	
)	ORAL ARGUMENT REQUESTED
28 Defendants.)	

29 Defendant Richard G. Renzi, by and through counsel, respectfully moves this
30 Court to dismiss the Hobbs Act charges against him, including the portion of Count 1
31 that alleges the Hobbs Act as an object of the purported conspiracy, and Counts 26 and
32 27, which allege substantive or attempted violations of the Hobbs Act, 18 U.S.C.
33 § 1951. As set forth in more fully below, these charges must be dismissed because the

1 **MEMORANDUM**

2 **INTRODUCTION**

3 The government’s public corruption case against Congressman Renzi does not
4 involve any of the federal criminal statutes targeted toward public corruption. Instead,
5 the government seeks to stretch the Hobbs Act to criminalize the Congressman’s efforts
6 to obtain environmentally-sensitive lands for the benefit of the federal government. But
7 under the Supreme Court’s most recent Hobbs Act decision, that sort of prosecution fails
8 as a matter of law. *See Wilkie v. Robbins*, 127 S. Ct. 2588 (2007).
9

10 Even if the Hobbs Act applied, the Indictment fails to state a violation of the Act.
11 To violate the Act, Congressman Renzi would have had to have wrongfully obtained
12 from another money or property to which he was not entitled. But the Indictment does
13 not allege that anyone was wrongfully deprived of property, such as by paying an
14 inflated or above-market price for James Sandlin’s San Pedro River Property (the “San
15 Pedro Property”). And the Indictment itself alleges that Congressman Renzi was *owed*
16 the money that he allegedly received from Mr. Sandlin.
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19 Finally, by failing to specify which of these alleged payments the Grand Jury
20 relied upon to pass the Indictment, the Hobbs Act charges provide constitutionally
21 inadequate particularity.
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23 **BACKGROUND**

24 In Counts 1, 26, and 27, the Indictment purports to allege, using the sparse words
25 of the Hobbs Act itself, that Congressman Renzi conspired to violate, attempted to
26 violate, or substantively violated the Act by seeking to include the environmentally
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1 sensitive San Pedro Property in federal legislative land exchanges proposed by two
2 different special interest groups.

3 The Southeast Arizona Land Exchange Act (H.R. 2618)

4 According to the indictment, “Company A”— the Resolution Copper Company
5 (“Resolution”), a foreign owned mining company—sought to build a copper mine near
6 Superior, Arizona. *See* Indictment (“Ind.”) ¶ 13. But Resolution did not own the
7 surface rights for this proposed mine; rather, the federal government did. *See id.*
8 Resolution hoped to trade for these federal surface rights by acquiring “private property
9 that would be attractive to the federal government” as part of a legislative land
10 exchange. Ind. ¶ 14.

13 Between January and April 2005, Resolution lobbied Congressman Renzi to gain
14 his support for its proposed land exchange legislation. *See* Ind. ¶¶ 20 & 26(a). During
15 these meetings, Congressman Renzi allegedly informed Resolution that he would only
16 support its proposed legislation if, as part of the exchange, the federal government took
17 title to the San Pedro Property. *See* Ind. ¶ 20. When Resolution allegedly informed
18 Congressman Renzi in April 2005 that it would not include the San Pedro Property in its
19 land exchange proposal, he supposedly replied, “No Sandlin property, no bill.” Ind.
20 ¶ 26(i). According to the government, Congressman Renzi meant by this that he would
21 not introduce Resolution’s legislative proposal unless the San Pedro Property was
22 included in the exchange. But Congressman Renzi introduced Resolution’s bill, which
23 did not include the San Pedro Property, on May 25, 2005. *See* H.R. 2618 (109th Cong.).
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The Petrified Forest-San Pedro River Land Exchange Act

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2 According to the Indictment, a second company, Investment Group B—a
3 consortium apparently led by Philip Aries (“Aries Group”)—approached Congressman
4 Renzi about sponsoring a different land exchange in April 2005. *Id.* ¶¶ 15, 26(j).

5 According to the Indictment, Congressman Renzi “insisted” during this first meeting in
6 April that the Aries Group include the San Pedro property in its proposed exchange,
7 allegedly adding that the bill would receive a “free pass” in the House of
8 Representatives Natural Resources Committee if it included the property. *Id.* ¶ 26(k).

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10 The next day, a representative of the Aries Group allegedly advised someone in
11 the Congressman’s office (not the Congressman) that he had the funds committed to
12 purchase a “Conservation Easement” from Mr. Sandlin. *Id.* ¶ 26(m). The Aries Group
13 allegedly put up earnest money with respect to the purchase of the San Pedro Property in
14 early May, but did not close on the property. *See id.* ¶ 26(p).

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17 In September, having still not closed on the San Pedro Property, a representative
18 of the Aries Group “sought and received assurances” from Congressman Renzi that the
19 San Pedro Property was “an important part” of the potential land exchange. *Id.* ¶ 26(t).
20 Congressman Renzi allegedly also said that he was prepared to introduce the land
21 exchange legislation sought by the Aries Group. *See id.* Purportedly as a result of these
22 statements, the Aries Group closed on the San Pedro Property in October 2005, agreeing
23 to pay in total \$4.6 million to Mr. Sandlin. *Id.* ¶ 26(n).

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25 The Indictment does not allege that this purchase price was unfair, inflated, or in
26 any way above-market. Nor could it: as the government’s discovery confirms, just
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1 weeks after the Aries Group purchased the San Pedro Property for \$4.6 million, an
2 unrelated third party offered to buy it from the Group for \$12,000 an acre, or roughly
3 \$5.7 million. *See* Sealed Ex. 68, at 3-4. In other words, the Aries Group, the supposed
4 victim of extortion, could have made more than a million dollars by “flipping” the
5 property. As Mr. Aries later admitted, he thought that his investors “wish they would’ve
6 taken [the offer] but uh (laughs) uh, *you know everyone gets greedy in a hot market.*”
7 *Id.* at 3-4 (emphasis added).
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9 ARGUMENT

10 The Hobbs Act charges cannot stand for at least the following reasons: (i) the
11 Hobbs Act does not reach a federal employee’s effort to acquire land for the benefit of
12 the federal government; (ii) the Indictment does not allege a violation of the Hobbs Act;
13 and (iii) the Indictment does not specify what transaction gives rise to the purported
14 offense.
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16 **I. THE HOBBS ACT DOES NOT REACH EFFORTS TO ACQUIRE LAND 17 FOR THE BENEFIT OF THE UNITED STATES**

18 According to the Indictment, Congressman Renzi told Resolution and the Aries
19 Group that he would not support their (controversial) efforts to obtain title to federal
20 lands unless the federal government took title to the San Pedro Property as part of the
21 exchange. Even if these allegations were true, they would not make out a Hobbs Act
22 violation, because the Supreme Court held just a year ago that the Hobbs Act does not
23 apply when federal employees seek to acquire lands for the benefit of the federal
24 government. *See Wilkie v. Robbins*, 127 S. Ct. 2588 (2007).
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1 In *Wilkie*, a private land owner alleged that employees of the Bureau of Land
2 Management had violated the Hobbs Act by attempting to extort rights to an easement
3 for public use across the landowner’s private ranch in response to persistent efforts by
4 environmentalists and outdoor enthusiasts to secure a public right of access to the ranch.
5 *See id.* at 2593-94. As part of the Bureau’s efforts to obtain the easement, the Bureau
6 trespassed on the land owner’s ranch; filed administrative suits against him; threatened
7 permit revocation actions; and even convinced federal prosecutors to bring criminal
8 charges against the land owner, of which he was acquitted by a jury that deliberated for
9 fewer than 30 minutes. *See id.* at 2595-96.
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11 The Court recognized that the Bureau’s employees had engaged in hard
12 bargaining and that their actions may have been motivated in part by malice. *See id.* at
13 2602 & n.10. But the Court also recognized that the Bureau’s employees had acted
14 within their rights as a representative of the government. As a land owner, the Court
15 explained, the federal government is entitled to negotiate with other land owners, and to
16 seek benefits from others by insisting on valuable consideration for anything in return.
17 *See id.* As part of such negotiations, the Court reasoned that the Bureau and its
18 employees were entitled to capitalize on their discretionary enforcement authority by
19 using such authority—or by promising *not* to use such authority—to coerce the ranch
20 owner into granting the government an easement. *See id.*
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24 Against this background, the Court concluded that Congress could not have
25 intended for the Hobbs Act to apply when Bureau employees sought to acquire land for
26 the benefit of the federal government. *See id.* at 2605-06. The Court reasoned that the
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1 Congress would not have wanted to extend the Hobbs Act to reach the conduct of
2 federal officials who sought to drive hard bargains with private landowners when the
3 federal government itself would be the beneficiary of the bargain. *See id.* The Court
4 added that Congress could well have meant to prohibit extortionate acts in the interests
5 of private entities, but to ignore them when the government was the intended beneficiary
6 of the acts. *See id.* Drawing that line between public and private beneficiaries, the
7 Court explained, would “prevent[] suits (not just recoveries)” against public officials
8 who sought to obtain property for the federal government. *Id.* at 2607.

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10 The Court’s logic in *Wilkie* applies with full force here. According to the
11 indictment, Congressman Renzi used his position as a United States Representative to
12 bargain with two different private parties who sought to acquire title to lands owned by
13 the federal government. These parties had no right to the federal government’s land, so
14 they had to bargain with the government by finding private property “that would be
15 attractive to the federal government” in the context of a trade. *Ind.* ¶ 14. Congressman
16 Renzi, as a representative of the government, allegedly told those private parties that he
17 would not be willing to trade the federal government’s land unless the government took
18 title to the San Pedro Property as part of the exchange. *See, e.g., id.*, ¶¶ 20 & 21. Since
19 Representative Renzi was trying to obtain the San Pedro Property for the benefit of the
20 federal government, the Hobbs Act does not apply as a matter of law to his alleged
21 conduct.
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25 Moreover, since the Congress intended to “prevent[] suits (not just recoveries)”
26 against public officials in this context, *Wilkie*, 127 S.Ct. at 2607, the Court must not
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1 permit the Hobbs Act allegations to proceed to trial. Instead, the charges should be
2 dismissed outright.

3 **II. THE INDICTMENT FAILS TO ALLEGE A HOBBS ACT VIOLATION**

4 In 1991 and 1992, the Supreme Court reviewed two Hobbs Act cases involving
5 elected officials. *See Evans v. United States*, 504 U.S. 255 (1992); *McCormick v.*
6 *United States*, 500 U.S. 257 (1991). In both cases, the Court analyzed the history of the
7 Act, including its common law antecedent, the property crime of extortion. *See, e.g.,*
8 *Evans*, 504 U.S. at 259-65. Based on that historical analysis, the Court held that, to
9 make out a violation, an indictment must allege that a public official: (i) wrongfully
10 obtained property from another; (ii) to which he knew he was not entitled; (iii) in return
11 for taking official action. *See id.* at 268.

14 The Indictment here fails to allege a Hobbs Act violation because it does not
15 allege, *first*, that the Congressman received anything to which he was not entitled and,
16 *second*, that anyone was wrongfully deprived of property.

18 **A. Congressman Renzi Is Not Alleged To Have Received Anything to 19 Which He Was Not Already Entitled**

20 To state a Hobbs Act violation, an indictment must allege that a public official
21 received “a payment to which he was not entitled....” *Evans*, 504 U.S. at 268. If the
22 public official was entitled to the payment, or if the public official erroneously but in
23 good faith believed that he was entitled to the payment, then there is no Hobbs Act
24 violation. *See id.* at 268 & 277 (“a public official who labors under the good-faith but
25 erroneous belief that he is entitled to [the] payment ... does not violate the statute.”)
26 (Kennedy, J., concurring).
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1 The Hobbs Act charges fail because the Indictment does not allege that
2 Congressman Renzi received money to which he was not entitled. According to the
3 Indictment, Mr. Sandlin purchased Congressman Renzi's interest in a Kingman, Arizona
4 real estate company in June 2003. *See* Ind., ¶ 5. In connection with that purchase, Mr.
5 Sandlin allegedly took on an \$800,000 note. *See id.* According to the Indictment, Mr.
6 Sandlin finished paying off that note in September 2005. *See id.*

8 According to the Indictment, the only money that Congressman Renzi received
9 was money due to him under the terms of the note. Congressman Renzi is not alleged to
10 have received a single penny to which he was not already entitled. Since the Indictment
11 does not allege that the Congressman received any money to which he was not entitled,
12 the Hobbs Act counts should be dismissed in their entirety.

14 **B. Congressman Renzi Is Not Alleged To Have Wrongfully Deprived**
15 **Anyone of Property**

16 The Hobbs Act criminalizes the wrongful taking of property from another by a
17 public official. *See* 18 U.S.C. § 1951(b)(2). The Act has been read to criminalize
18 kickback schemes in which public officials receive money through the sale of property
19 at inflated rates. *See, e.g., United States v. Millet*, 123 F.3d 268 (5th Cir. 1997). But we
20 know of no cases holding that the purchase of property *at a market price* constitutes a
21 wrongful deprivation of property within the ambit of the Hobbs Act.

23 In *Millet*, the President of a Louisiana Parish (akin to an Arizona county)
24 arranged for his friend, a real estate broker, to be appointed to sell a property in the
25 Parish, for which the broker earned a \$479,000 commission. *See* 123 F.3d at 270.
26 Shortly after this sale closed, the Parish President demanded that the broker share a
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1 portion of the commission by paying him a wildly inflated price for one of his
2 properties. *See id.* at 271. On appeal, the Parish President argued that no one had been
3 deprived of property because the broker could easily recover the (inflated) purchase
4 price by developing and subdividing the land. *See id.* at 275. The Fifth Circuit rejected
5 this claim, but only because overwhelming evidence demonstrated that the undeveloped
6 land had in fact been purchased at an inflated price. *See id.* at 276.¹

8 Unlike in *Millet*, there is no allegation here that the purchase price for the San
9 Pedro Property was unfair, inflated, or in any way above-market. To the contrary,
10 within weeks of the closing, an independent third party offered the Aries Group \$5.7
11 million to purchase the property, which would have generated more than a million
12 dollars in profits for the Aries Group, but the Aries Group turned the offer down because
13 its investors got “greedy in a hot market.” Sealed Ex. 68. Accordingly, while the
14 Indictment alleges that the Aries Group *purchased* property, it does not allege that
15 anyone was *wrongfully deprived* of property. Because the Indictment fails to allege a
16 wrongful deprivation of property, it also fails to allege a Hobbs Act violation.
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24 ¹ Other Hobbs Act cases have concluded that the Act does not reach payments when the
25 putative victim obtains in return valuable property or services. For example, in *Viacom*
26 *Int’l, Inc. v. Ichan*, for example, the United States District Court for the Southern District
27 of New York found that Carl Ichan did not violate the Hobbs Act by “greenmailing”
28 Viacom into repurchasing stock at a \$60 million premium, because the Court concluded
that Viacom obtained in exchange for this premium payment valuable rights including a
standstill agreement. *See* 747 F. Supp. 205 at 213-14 (S.D.N.Y. 1990).

1 **III. THE HOBBS ACT CHARGES ARE CONSTITUTIONALLY**
2 **INADEQUATE BECAUSE THEY FAIL TO IDENTIFY THE “MONEY”**
3 **THAT WAS ALLEGEDLY WRONGFULLY OBTAINED**

4 Counts 26 and 27 allege, in the sparse words of the Hobbs Act itself, that
5 Congressman Renzi and Mr. Sandlin committed Hobbs Act embezzlement because they
6 either attempted to obtain or actually obtained “money not due” to the Congressman, his
7 office, or Mr. Sandlin from Resolution (Ind. ¶ 49) or Aries Group (*id.* ¶ 51). The
8 indictment never identifies, however, what money it is that was allegedly “not due” to
9 Congressman Renzi or to Mr. Sandlin. As a result, it is impossible to determine whether
10 the Grand Jury was led to believe that the “money not due” involved the alleged
11 payments by Mr. Sandlin to Congressman Renzi under the note or, alternatively,
12 whether the “money not due” was the payments, or proposed payments, by the private
13 parties to Mr. Sandlin for the San Pedro Property.
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15 That Counts 26 and 27 track the language of the statute does not insulate the
16 charges from constitutional scrutiny:
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18 It is an elementary principle of criminal pleading, that where the definition
19 of an offense [*sic*], whether it be at common law or by statute, “includes
20 generic terms, it is not sufficient that the indictment shall charge the
21 offense [*sic*] in the same generic terms as in the definition; but it must
22 state the species, -- it must descend to particulars.”

23 *Russell v. United States*, 369 U.S. 749, 765 (1962) (quoting *United States v. Cruikshank*,
24 92 U.S. 542, 558 (1876)); *see also United States v. Hinkle*, 637 F.2d 1154, 1157 (7th
25 Cir. 1981) (holding indictment insufficient despite charging offense in language of
26 statute); *Ornelas v. United States*, 236 F.2d 392, 393 (9th Cir. 1956) (quoting *United*
27 *States v. Carll*, 105 U.S. 611, 612 (1882)) (“The fact that the statute in question, read in
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1 the light of the common law, and of other statutes on the like matter, enables the court to
2 infer the intent of the legislature, does not dispense with the necessity of alleging in the
3 indictment all the facts necessary to bring the case within that intent.”)

4 This particularity requirement is derived from the Fifth and Sixth Amendments,
5 which provide, in turn, that no person may be charged with a serious criminal offense
6 except upon indictment of a grand jury, *see* U.S. CONST. AMEND. V, and that any
7 indictment the grand jury does return must adequately inform a defendant of the nature
8 of the charges against him. *See* U.S. CONST. AMEND. VI. These dual guarantees, which
9 together act as a check on the power of the prosecution, must be read in conjunction.
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11 *See Russell*, 369 U.S. at 760-61.

13 The Sixth Amendment implements, in part, the protections of the Fifth
14 Amendment’s Grand Jury Clause: ambiguous indictments impermissibly permit the
15 prosecution, and indeed the courts, to seek or affirm convictions on grounds not passed
16 upon by the grand jury. *See id.* at 766-68. Ambiguous indictments allow the
17 prosecution to “fill in the gaps of proof by surmise or conjecture,” *id.* at 766, and leave it
18 “free to roam at large -- to shift its theory of criminality so as to take advantage of each
19 passing vicissitude of the trial and appeal.” *Id.* at 768.

22 The risk of a roving prosecution is palpable here. To secure a conviction, the
23 government must prove that the Congressman extorted or attempted to extort money.
24 But the indictment does not specify whether the Grand Jury based the Hobbs Act
25 charges on the money involved in the purchase of the San Pedro Property, or whether
26 the Grand Jury based the charges on the money involved in satisfying the note. As a
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1 result, the Indictment creates a risk that the defendants could be convicted “on the basis
2 of facts not found by, and perhaps not even presented to, the grand jury which indicted
3 him.” *Russell*, 369 U.S. at 770.

4 The ambiguity in these counts cannot be cured by a bill of particulars, which
5 would, in effect, allow the government to make an election concerning the “money not
6 due” element of the offense.² The Grand Jury, to have issued this Indictment, must have
7 identified some particular “money not due,” but that property is not identified in Counts
8 26 and 27, making it impossible to determine the Grand Jury’s intent. Neither the
9 prosecutor nor the court may now make “a subsequent guess as to what was in the minds
10 of the grand jury at the time they returned the indictment. . . .” *Id.* at 770. To do so
11 would be to deprive Congressman Renzi of “a basic protection which the guaranty of the
12 intervention of a grand jury was designed to secure.” *Id.*

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26 ² Should the Court disagree, and allow the government the opportunity to identify the
27 specific property the Grand Jury relied upon to satisfy the “contrary to law” element of the
28 offense, Congressman Renzi respectfully requests an opportunity further to attack the
legal sufficiency of these counts in light of any new information.

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CONCLUSION

For the reasons set forth above, the Court should dismiss the Hobbs Act allegations of Counts 26 and 27 and strike all references to the Hobbs Act in Count One.

DATED this 15th day of October, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2008, a true and correct copy of Defendant Richard G. Renzi’s Motion To Dismiss Hobbs Act Charges (Counts 1, 26 & 27) was electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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