

Wolfe: Congress holds Attorney General in contempt



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Gavel to Gavel: Contempt of Justice

What a week! Arizona's immigration legislation: cut down. Affordable Care Act: upheld, with Chief Justice John G. Roberts Jr., of all people, teaming with the liberals. Lost somewhat in the noise of these rulings was U.S. Attorney General Eric Holder being held in contempt by Congress – the first time in history for a cabinet member.

I think we can agree there are political elements at play in the contempt proceeding, but what does it really mean for Holder? As it turns out, basically nothing.

First, the contempt finding amounts to the House of Representatives authorizing criminal action. However, the decision on whether to bring charges is left up to the U.S. attorney for D.C., who happens to answer to Holder. The chances of the U.S. attorney actually filing charges? He's already said no.

Second, the law governing contempt says it's the "duty" of the U.S. attorney to bring "the matter before the grand jury." However, the U.S. attorney serves in the executive branch and doesn't take orders from Congress. The question is whether it's mandatory for the U.S. attorney to go to a grand jury. Many think it's discretionary.

Third, there is a history of no follow-through when administration officials are held in contempt. In 2008, a Democratic Congress held both White House counsel and chief of staff in contempt for failing to turn over documents related to the dismissal of federal prosecutors. Neither was ever charged by the Bush administration's Justice Department. The House, thus thwarted, could move forward on civil contempt charges or seek appointment of a special prosecutor. If a civil case is pursued, it's likely to result in a settlement, long after the public has lost interest and, more importantly, after the November elections.

It's interesting that the House vote on such a historically significant issue was scheduled for the afternoon after the Supreme Court said it would release its health care opinion. Did House leaders bury it, because they were pursuing it only to appease the most strident in the party?

In these days of unbridled political acrimony, I'm reminded of John Lennon's question of Paul McCartney, after the Beatles breakup: "You must have learned something in all those years/Ah, how do you sleep?/Ah, how do you sleep at night?"