

Sec. 6—Rights and Disabilities of Members

Cl. 1—Compensation and Immunities

detention was clearly a legislative act. The execution of the resolution, however, was not a legislative act immune from liability, so that the House officer was in fact liable as would have been any Member who had executed it.⁴⁶⁸ *Dombrowski* was interpreted as having held that no evidence implicated the Senator involved, whereas the committee counsel had been accused of “conspiring to violate the constitutional rights of private parties. Unlawful conduct of this kind the Speech or Debate Clause simply did not immunize.”⁴⁶⁹ And *Powell* was interpreted as simply holding that voting to exclude plaintiff, which was all the House defendants had done, was a legislative act immune from Member liability but not from judicial inquiry.

“None of these three cases adopted the simple proposition that immunity was unavailable to House or committee employees because they were not Representatives or Senators; rather, immunity was unavailable because they engaged in illegal conduct that was not entitled to Speech or Debate Clause protection. . . . [N]o prior case has held that Members of Congress would be immune if they executed an invalid resolution by themselves carrying out an illegal arrest, or if, in order to secure information for a hearing, themselves seized the property or invaded the privacy of a citizen. Neither they nor their aides should be immune from liability or questioning in such circumstances.”⁴⁷⁰

Clause 2. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

DISABILITIES OF MEMBERS

Appointment to Executive Office

As might be expected, there is no judicial interpretation of the language of this clause, sometimes referred to as the “Emoluments Clause,” and indeed it has seldom surfaced as an issue. “The rea-

⁴⁶⁸ 408 U.S. at 618–19.

⁴⁶⁹ 408 U.S. at 619–20.

⁴⁷⁰ 408 U.S. at 620–21.