

Sec. 6—Rights and Disabilities of Members

Cl. 1—Compensation and Immunities

and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.”⁴⁴³

In *Kilbourn v. Thompson*,⁴⁴⁴ Members of the House of Representatives were held immune in a suit for false imprisonment based on a plaintiff’s arrest and detainment. Because the actions were pursuant to a resolution charging contempt of one of its committees, the Members were held protected even though the Court found the contempt resolution was wrongly voted. *Kilbourn* was subsequently relied on in *Powell v. McCormack*,⁴⁴⁵ in which Adam Clayton Powell, Jr. was not allowed to maintain an action for declaratory judgment against certain Members of the House of Representatives to challenge his exclusion by a vote of the entire House.

Congressional investigations are also protected from interference under this clause. The Court held that, because the power of inquiry is so vital to performance of the legislative function, a suit against the chairman and members of a Senate subcommittee and staff personnel to enjoin enforcement of a subpoena directed to a third party (a bank) to obtain the financial records of the suing organization was precluded. The investigation was a proper exercise of Congress’ power of inquiry, the subpoena was a legitimate part of the inquiry, and the clause therefore was an absolute bar to judicial review of the subcommittee’s actions prior to the possible institution of contempt actions in the courts.⁴⁴⁶ And in *Dombrowski v. Eastland*,⁴⁴⁷ the Court affirmed the dismissal of an action against the chairman of a Senate committee brought on allegations that he wrongfully conspired with state officials to violate the civil rights of the plaintiff.

⁴⁴³ *Gravel v. United States*, 408 U.S. 606, 625 (1972). The critical nature of the clause is shown by the holding in *Davis v. Passman*, 442 U.S. 228, 235 n.11 (1979), that when a Member is sued under the Fifth Amendment for employment discrimination on the basis of gender, only the clause could shield such an employment decision, and not the separation-of-powers doctrine or emanations from it. Whether the clause would be a shield the Court had no occasion to decide, and the case was settled on remand without a decision being reached.

⁴⁴⁴ 103 U.S. 168 (1881). *But see* *Gravel v. United States*, 408 U.S. 606, 618–19 (1972).

⁴⁴⁵ 395 U.S. 486 (1969). The Court found sufficient the presence of other defendants to enable it to review Powell’s exclusion but reserved the question whether in the absence of someone the clause would still preclude suit. *Id.* at 506 n.26. *See also* *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881).

⁴⁴⁶ *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491 (1975).

⁴⁴⁷ 387 U.S. 82 (1967). *But see* the reinterpretation of this case in *Gravel v. United States*, 408 U.S. 606, 619–20 (1972). *See also* *McSurely v. McClellan*, 553 F.2d 1277 (D.C. Cir. 1976) (en banc), *cert. dismissed as improvidently granted, sub nom. McAdams v. McSurely*, 438 U.S. 189 (1978).