

Sec. 6—Rights and Disabilities of Members

Cl. 1—Compensation and Immunities

The Court in more recent cases appears to have narrowed the concept of what constitutes a “legislative act” somewhat. For instance, the Court has held that the clause did not defeat a suit to enjoin the public dissemination of legislative materials outside the halls of Congress.⁴⁴⁸ A committee had conducted an authorized investigation into conditions in the schools of the District of Columbia and had issued a report that the House of Representatives routinely ordered printed. In the report, named students were dealt with in an allegedly defamatory manner. Their parents sued various committee Members and staff and other personnel, including the Superintendent of Documents and the Public Printer, for damages, and sought to restrain further publication, dissemination, and distribution of the report until the objectionable material was deleted. The Court held that the Members of Congress and the staff employees had been properly dismissed from the suit, inasmuch as their actions—conducting the hearings, preparing the report, and authorizing its publication—were protected by the clause.

The Superintendent of Documents and the Public Printer were held, however, to have been properly named, because, as congressional employees, they had no broader immunity than Members of Congress would have. At this point, the Court distinguished between those legislative acts, such as voting, speaking on the floor or in committee, issuing reports, which are within the protection of the clause, and those acts which enjoy no such protection. Public dissemination of materials outside the halls of Congress is not protected, the Court held, because it is unnecessary to the performance of official legislative actions. In other words, dissemination of the report within the body was protected, whereas dissemination in normal channels outside it was not.⁴⁴⁹

Bifurcation of the legislative process in this way resulted in holding unprotected the republication in newsletters and press releases of allegedly defamatory remarks initially made in the Senate.⁴⁵⁰ The clause protects more than speech or debate in either House, the Court affirmed, but in order for the other matters to be covered “they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House pro-

⁴⁴⁸ *Doe v. McMillan*, 412 U.S. 306 (1973).

⁴⁴⁹ It is difficult to assess the effect of the decision because the Justices in the majority adopted mutually inconsistent stands, 412 U.S. at 325 (concurring opinion), and four Justices dissented. *Id.* at 331, 332, 338. The case also leaves unresolved the propriety of injunctive relief. *Compare id.* at 330 (Justice Douglas concurring), *with id.* at 343–45 (three dissenters arguing that separation-of-powers doctrine forbade injunctive relief). *And compare* *Davis v. Passman*, 442 U.S. 228, 245, 246 n.24 (1979), *with id.* at 250–51 (Chief Justice Burger dissenting).

⁴⁵⁰ *Hutchinson v. Proxmire*, 443 U.S. 111 (1979).