

## Sec. 6—Rights and Disabilities of Members

## Cl. 1—Compensation and Immunities

ing to 1967, congressional pay was determined directly by Congress in specific legislation setting specific rates of pay. In 1967, a law was passed that created a quadrennial commission with the responsibility to propose to the President salary levels for top officials of the government, including Members of Congress.<sup>427</sup>

In 1975, Congress legislated to bring Members of Congress within a separate commission system authorizing the President to recommend annual increases for civil servants to maintain pay comparability with private-sector employees.<sup>428</sup> These devices were attacked by dissenting Members of Congress as violating the mandate of clause 1 that compensation be “ascertained by Law.” However, these challenges were rejected.<sup>429</sup> Thereafter, prior to ratification of the amendment, Congress, in the Ethics Reform Act of 1989,<sup>430</sup> altered both the pay-increase and the cost-of-living-increase provisions of law, making quadrennial pay increases effective only after an intervening congressional election and making cost-of-living increases dependent upon a specific congressional vote. A federal court of appeals panel ruled that the cost-of-living-increase provision did not violate the Twenty-Seventh Amendment, and that a challenge to the quadrennial pay raise provision was not ripe.<sup>431</sup>

### Privilege From Arrest

The clause immunizing Members from arrest is practically obsolete. It applies only to arrests in civil suits, which were still common in this country at the time the Constitution was adopted.<sup>432</sup> It does not apply to service of process in either civil<sup>433</sup> or criminal cases.<sup>434</sup> Nor does it apply to arrest in any criminal case. The phrase “treason, felony or breach of the peace” is interpreted to withdraw all criminal offenses from the operation of the privilege.<sup>435</sup>

<sup>427</sup> Pub. L. 90–206, § 225, 81 Stat. 642 (1967), as amended, Pub. L. 95–19, § 401, 91 Stat. 45 (1977), as amended, Pub. L. 99–190, § 135(e), 99 Stat. 1322 (1985).

<sup>428</sup> Pub. L. 94–82, § 204(a), 89 Stat. 421.

<sup>429</sup> *Pressler v. Simon*, 428 F. Supp. 302 (D.D.C. 1976) (three-judge court), *aff’d summarily*, 434 U.S. 1028 (1978); *Humphrey v. Baker*, 848 F.2d 211 (D.C. Cir.), *cert. denied*, 488 U.S. 966 (1988).

<sup>430</sup> Pub. L. 101–194, 103 Stat. 1716, 2 U.S.C. § 31(2), 5 U.S.C. § 5318 note, and 2 U.S.C. §§ 351–363.

<sup>431</sup> *Boehner v. Anderson*, 30 F.3d 156, 163 (D.C. Cir. 1994).

<sup>432</sup> *Long v. Ansell*, 293 U.S. 76 (1934).

<sup>433</sup> 293 U.S. at 83.

<sup>434</sup> *United States v. Cooper*, 4 U.S. (4 Dall.) 341 (C.C. Pa. 1800).

<sup>435</sup> *Williamson v. United States*, 207 U.S. 425, 446 (1908).