

Sec. 6—Rights and Disabilities of Members

Cl. 1—Compensation and Immunities

who participated in the same activities under the direction of a Member.⁴⁶¹ Thus, in *Kilbourn v. Thompson*,⁴⁶² the sergeant at arms of the House was held liable for false imprisonment because he executed a resolution ordering Kilbourn arrested and imprisoned. *Dombrowski v. Eastland*⁴⁶³ held that a subcommittee counsel might be liable in damages for actions as to which the chairman of the committee was immune. And, in *Powell v. McCormack*,⁴⁶⁴ the Court held that the presence of House of Representatives employees as defendants in a suit for declaratory judgment gave the federal courts jurisdiction to review the propriety of the plaintiff's exclusion from office by vote of the House.

Upon full consideration of the question, however, the Court in *Gravel v. United States*⁴⁶⁵ accepted an argument urged upon it not only by the individual Senator but by the Senate itself appearing by counsel as amicus. This included the contentions that "it is literally impossible, in view of the complexities of the modern legislative process, with Congress almost constantly in session and matters of legislative concern constantly proliferating, for Members of Congress to perform their legislative tasks without the help of aides and assistants; that the day-to-day work of such aides is so critical to the Members' performance that they must be treated as the latter's alter ego; and that if they are not so recognized, the central role of the Speech or Debate Clause . . . will inevitably be diminished and frustrated."⁴⁶⁶ Therefore, the Court held "that the Speech or Debate Clause applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself."⁴⁶⁷

The *Gravel* holding, however, while extending congressional immunity to employees, also narrowed the actual immunity available to both aides and Members in important respects. Thus, the Court said, the legislators in *Kilbourn* who had been found to be immune were protected because adoption of a resolution ordering arrest and

⁴⁶¹ Language in some of the Court's earlier opinions had indicated that the privilege "is less absolute, although applicable," when a legislative aide is sued, without elaboration of what was meant. *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967); *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951). In *Wheeldin v. Wheeler*, 373 U.S. 647 (1963), the Court had imposed substantial obstacles to the possibility of recovery in appropriate situations by holding that a federal cause of action was lacking and remitting litigants to state courts and state law grounds. The case is probably no longer viable, however, after *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

⁴⁶² 103 U.S. 168 (1881).

⁴⁶³ 387 U.S. 82 (1967).

⁴⁶⁴ 395 U.S. 486 (1969).

⁴⁶⁵ 408 U.S. 606 (1972).

⁴⁶⁶ 408 U.S. at 616–17.

⁴⁶⁷ 408 U.S. at 618.