

## Sec. 6—Rights and Disabilities of Members

## Cl. 1—Compensation and Immunities

**Privilege of Speech or Debate**

**Members.**—The text of the Speech or Debate Clause traces back to a clause in the English Bill of Rights of 1689,<sup>436</sup> but its history traces back almost to the beginning of the development of the English Parliament as a political force independent of the monarchy.<sup>437</sup> The Speech or Debate clause represents “the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Commons and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators. Since the Glorious Revolution in Britain, and throughout United States history, the privilege has been recognized as an important protection of the independence and integrity of the legislature.”<sup>438</sup> “In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders.”<sup>439</sup> “The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators.”<sup>440</sup>

The protection of this clause is not limited to words spoken in debate. “Committee reports, resolutions, and the act of voting are equally covered, as are ‘things generally done in a session of the House by one of its members in relation to the business before it.’”<sup>441</sup> Thus, so long as legislators are “acting in the sphere of legitimate legislative activity,” they are “protected not only from the consequence of litigation’s results but also from the burden of defending themselves.”<sup>442</sup> But the scope of the meaning of “legislative activity” has its limits. “The heart of the clause is speech or debate in either House, and insofar as the clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee

<sup>436</sup> “That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament.” 1 W. & M., Sess. 2, c. 2.

<sup>437</sup> *United States v. Johnson*, 383 U.S. 169, 177–79, 180–83 (1966); *Powell v. McCormack*, 395 U.S. 486, 502 (1969).

<sup>438</sup> *United States v. Johnson*, 383 U.S. 169, 178 (1966).

<sup>439</sup> *United States v. Johnson*, 383 U.S. 169, 178 (1966).

<sup>440</sup> *United States v. Brewster*, 408 U.S. 501, 507 (1972). This rationale was approvingly quoted from *Coffin v. Coffin*, 4 Mass. 1, 28 (1808), in *Kilbourn v. Thompson*, 103 U.S. 168, 203 (1881).

<sup>441</sup> *Powell v. McCormack*, 395 U.S. 486, 502 (1969), quoting *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881).

<sup>442</sup> *Tenney v. Brandhove*, 341 U.S. 367, 376–377 (1972); *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967); *Powell v. McCormack*, 395 U.S. 486, 505 (1969); *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 503 (1975).