

A U.S. senator made a speech on the floor of the Senate accusing a low-level purchasing officer employed by a federal agency of wasting millions of dollars of taxpayer money by purchasing many more office supplies than the agency needed. The accusation was demonstrably false, and the senator was negligent in making it.

The purchasing officer has sued the senator for defamation, alleging only that the accusation was false and that the senator was negligent.

What is the most appropriate ground for the court to dismiss the purchasing officer's complaint?

- A. The federal government is constitutionally immune from suit without its consent, and it has not consented to suits of this kind.
- B. The First Amendment guarantees members of Congress an unqualified right to speak on matters of public concern at any place and time without having to fear adverse legal consequences.
- C. The First Amendment protects public officials from defamation liability for statements made in their official capacity, unless the plaintiff alleges and proves that the statement was false and uttered with actual malice.
- D. The speech or debate clause of Article I, section 6 of the Constitution wholly insulates members of Congress from tort liability for statements made on the floor of Congress.

Explanation:

Speech or debate clause

(immunity for members of Congress & their aides)

Conduct	Examples	Immunity
Legislative activity	<ul style="list-style-type: none">• Statements made on House or Senate floor• Drafting & enacting legislation• Conducting investigations & research• Committee hearings & reports• Preparing & distributing reports within Congress	Immunity from criminal & civil liability
Nonlegislative activity	<ul style="list-style-type: none">• Statements made outside Congress• Republishing statements made in Congress• Writing newsletters & press releases• Bribery	No immunity

Under the **speech or debate clause** of Article I, section 6, **members of Congress** are **immune from criminal and civil liability** for any **official legislative activity**—eg, speeches given on the House or Senate floor. This ensures that members of Congress are free to represent their constituents' interests without fear that they will later be liable in court for that representation.

Here, the senator made a speech on the Senate floor that falsely and negligently accused the purchasing officer of wasting millions of dollars of taxpayer money. Therefore, the most appropriate ground for the court to dismiss the officer's complaint is that the speech or debate clause wholly insulates the senator from tort liability.

(Choice A) The federal *government* is constitutionally immune from suit without its consent. However, this immunity does not extend to suits against federal *legislators* in their individual capacities (as seen here).

(Choice B) Members of Congress do *not* have an unqualified right to speak on matters of public concern without fear of adverse legal consequences. But the speech or debate clause insulates them from liability for any speech that occurs in the course of official legislative activity.

(Choice C) The First Amendment heightens the standard for proving **defamation** when the plaintiff is a prominent public official. In that case, the plaintiff must prove that the defendant's statement was false and made with actual malice. But the speech or debate clause protects members of Congress from defamation liability for statements made in their official capacity—regardless of whether the plaintiff can meet that heightened standard.

Educational objective:

The speech or debate clause immunizes members of Congress from criminal and civil liability for official legislative activities—eg, speeches given on the House or Senate floor.

References

- *Hutchinson v. Proxmire*, 443 U.S. 111, 130 (1979) (stating that a speech made on the Senate floor would be wholly immune from a defamation suit).
- 77 Am. Jur. 2d United States § 7 (2019) (explaining that the speech or debate clause grants legislative immunity).

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