

A senator made a speech on the floor of the U.S. Senate in which she asserted that a federal civil servant with minor responsibilities was twice convicted of fraud by a state. In making this assertion, the senator relied wholly on research done by her chief legislative assistant.

In fact, it was a different man with the same name, and not the civil servant, who was convicted of these crimes in the state court proceedings. This mistake was the result of carelessness on the legislative assistant's part.

No legislation affecting the appointment or discipline of civil servants or the program of the federal agency for which the civil servant works was under consideration at the time the senator made her speech about him on the floor of the Senate.

The civil servant sues the senator and her legislative assistant for defamation. Both defendants move to dismiss the complaint.

As a matter of constitutional law, how should the court proceed on the defendants' motion?

- A. Deny it as to both defendants, because any immunity of the senator under the speech or debate clause does not attach to a speech that is not germane to pending legislative business, and her legislative assistant is entitled to no greater immunity than the legislator he was assisting.
- B. Deny it as to the legislative assistant, because he is not a legislator protected by the speech or debate clause; but grant it as to the senator, because she is immune from suit for her speech by virtue of that clause.
- C. Grant it as to both defendants, because the senator is immune to suit for any speech she makes in the Senate under the speech or debate clause of Article I, section 6, and her legislative assistant may assert the senator's immunity for his assistance to her in preparing the speech.
- D. Grant it as to the legislative assistant, because he is protected by the freedom of speech guarantee against defamation actions by government officials based on his mere carelessness; but deny it as to the senator, because, as an officer of the United States, she is a constituent part of the government and, therefore, has no freedom of speech rights in that capacity.

## Explanation:

### Federal government immunities

Branch	Actor	Immunity	Applicable suit
Legislative	Member of Congress	<ul style="list-style-type: none"><li>Absolute immunity for official legislative acts</li></ul>	Civil & criminal
	Aide	<ul style="list-style-type: none"><li>Absolute immunity for acts that would be immune if performed by member of Congress</li></ul>	
Executive	President	<ul style="list-style-type: none"><li>Absolute immunity for official executive acts</li><li>No immunity for acts before taking office or unrelated to executive function</li></ul>	Civil
	Aide/official	<ul style="list-style-type: none"><li>Qualified immunity for discretionary acts</li></ul>	
Judicial	Judge/prosecutor	<ul style="list-style-type: none"><li>Absolute immunity for official judicial acts unless clearly lacks subject matter jurisdiction</li></ul>	Civil
	Officer/employee	<ul style="list-style-type: none"><li>Absolute immunity for acts pursuant to court order</li><li>Qualified immunity for discretionary acts</li></ul>	

The Article I, section 6 **speech or debate clause** gives **members of Congress absolute immunity** from criminal and civil liability for official **legislative activities**. This includes *any* speech made on the House or Senate floor—regardless of whether the speech relates to pending legislative business (**Choice A**). And this immunity **extends to legislative aides** who engage in activities that would be immune if performed by a member of Congress.

Here, the senator relied on the legislative assistant's careless research and falsely asserted that the civil servant had previously been convicted of fraud. The civil servant then sued both for **defamation**. But since the senator made the assertion during a speech on the Senate floor, she is immune from suit for that speech. And the legislative assistant may assert the senator's immunity for his assistance to her in preparing that speech. Therefore, the court should grant the motion to dismiss as to both defendants (**Choice B**).

(**Choice D**) All persons—including legislators—have freedom of speech. But defamatory statements fall outside First Amendment protections. And though *prominent* government

officials can only prevail in a defamation action if they prove actual malice, *minor* government officials need only prove negligence (as seen here). Therefore, only the speech or debate clause will immunize the defendants' conduct.

**Educational objective:**

Under the speech or debate clause, members of Congress are immune from criminal and civil liability for any official legislative activity (eg, a speech given on the floor of Congress). And this immunity extends to legislative aides who engage in conduct that would be immune if performed by a member of Congress.

**References**

- Gravel v. United States, 408 U.S. 606, 621–22 (1972) (holding that the speech or debate clause grants immunity to members of Congress and legislative aides for certain conduct).
- 77 Am. Jur. 2d United States § 7 (2019) (explaining that the speech or debate clause grants legislative immunity).

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