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Hutchinson v. Proxmire, 443 U.S. 111 (1979)

Senator William Proxmire of Wisconsin gained notoriety for exposing government waste. In pursuit of that mission, he periodically gave out the "Golden Fleece" award to agencies that were engaged in particularly wasteful projects. Among the recipients were several federal agencies that had provided grants to Ronald Hutchinson to support his research on aggression in animals. Although Hutchinson protested that his research was being misrepresented, Proxmire called Hutchinson's research "nonsense" and "worthless[]" in a speech on the Senate floor, which was summarized in a press release and newsletter, and Proxmire's aide was tasked with calling the agencies involved to discuss Hutchinson's future research grants.

Hutchinson filed a libel suit in federal district court. Proxmire argued that the case should be dismissed because (among other reasons) the senator enjoyed immunity from the speech and debate clause of Article I of the U.S. Constitution, which states that members of Congress "shall not be questioned in any other Place" regarding "any Speech or Debate in either House." The trial court agreed and dismissed the suit, and a Court of Appeals panel affirmed that ruling. Although the floor speech in the Senate was readily protected by the speech and debate clause, the more difficult question was whether Proxmire's other efforts to publicize his opinion of Hutchinson's research were likewise protected. In an 8–1 decision, the U.S. Supreme Court reversed the lower courts and sent the case back for trial. The Court concluded that Proxmire's press releases, newsletters, and media appearances were not constitutionally protected from legal liability. Hutchinson eventually received a financial settlement and a public apology from Proxmire to drop the suit. Proxmire continued to give out the Golden Fleece award and denounce specific projects for the rest of his Senate career.

What is the purpose of the speech and debate clause? Should senators only be protected when performing their legislative function? What other functions do legislators perform? Are public speeches and writings part of the official functions of a legislator? Why should a speech by a senator be protected from suit if it is made on the chamber floor but not if it is made at a town hall meeting with his constituents? Are legislators hampered in their ability to perform their constitutional function if their public speeches are not protected? Does it make sense to extend the speech and debate clause to include statements at committee meetings but not statements in a news conference?

CHIEF JUSTICE BURGER delivered the opinion of the Court.

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In *United States v. Brewster* (1972), we acknowledged the historical roots of the Clause going back to the long struggle between the English House of Commons and the Tudor and Stuart monarchs when both criminal and civil processes were employed by Crown authority to intimidate legislators. Yet we cautioned that the Clause

> "must be interpreted in light of the American experience, and in the context of the American constitutional scheme of government rather than the English parliamentary

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> system. . . . [Their] Parliament is the supreme authority, not a coordinate branch. Our speech or debate privilege was designed to preserve legislative independence, not supremacy."

Nearly a century ago, in *Kilbourn v. Thompson* (1880), this Court held that the Clause extended "to things generally done in a session of the House by one of its members *in relation to the business before it*." [Emphasis added.] More recently we expressed a similar definition of the scope of the Clause:

> "Legislative acts are not all-encompassing. The heart of the Clause is speech or debate in either House. 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 and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House. . . ." *Gravel v. United States* (1972).

Whatever imprecision there may be in the term "legislative activities," it is clear that nothing in history or in the explicit language of the Clause suggests any intention to create an absolute privilege from liability or suit for defamatory statements made outside the Chamber. . . .

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[T]he precedents abundantly support the conclusion that a Member may be held liable for republishing defamatory statements originally made in either House. We perceive no basis for departing from that long-established rule.

Justice Story in his *Commentaries*, for example, explained that there was no immunity for republication of a speech first delivered in Congress:

> "Therefore, although a speech delivered in the house of commons is privileged, and the member cannot be questioned respecting it elsewhere; yet, if he publishes his speech, and it contains libelous matter, he is liable to an action and prosecution therefor, as in common cases of libel. And the same principles seem applicable to the privilege of debate and speech in congress. No man ought to have a right to defame others under color of a performance of the duties of his office. And if he does so in the actual discharge of his duties in congress, that furnishes no reason, why he should be enabled through the medium of the press to destroy the reputation, and invade the repose of other citizens. It is neither within the scope of his duty, nor in furtherance of public rights, or public policy. . . ."

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We reach a similar conclusion here. A speech by Proxmire in the Senate would be wholly immune and would be available to other Members of Congress and the public in the *Congressional Record*. But neither the newsletters nor the press release was "essential to the deliberations of the Senate" and neither was part of the deliberative process.

Respondents, however, argue that newsletters and press releases are essential to the functioning of the Senate; without them, they assert, a Senator cannot have a significant impact on the other Senators. We may assume that a Member's published statements exert some influence on other votes in the Congress and therefore have a relationship to the legislative and deliberative process. . . .

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We are unable to discern any "conscious choice" [by the founders] to grant immunity for defamatory statements scattered far and wide by mail, press, and the electronic media.

Respondents also argue that newsletters and press releases are privileged as part of the "informing function" of Congress. Advocates of a broad reading of the "informing function" sometimes tend to confuse two uses of the term "informing." In one sense, Congress informs itself collectively by way of hearings of its committees. . . .

The other sense of the term, and the one relied upon by respondents, perceives it to be the duty of Members to tell the public about their activities. Valuable and desirable as it may be in broad terms, the transmittal of such information by individual Members in order to inform the public and other Members is not a part of the legislative function or the deliberations that make up the legislative process. As a result, transmittal of such information by press releases and newsletters is not protected by the Speech or Debate Clause.

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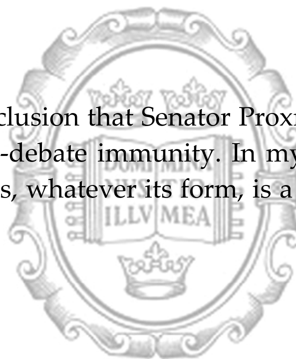
We therefore *reverse* the judgment of the Court of Appeals. . . .

JUSTICE STEWART joins [in part].

JUSTICE BRENNAN, dissenting.

I disagree with the Court's conclusion that Senator Proxmire's newsletters and press releases fall outside the protection of the speech-or-debate immunity. In my view, public criticism by legislators of unnecessary governmental expenditures, whatever its form, is a legislative act shielded by the Speech or Debate Clause. . . .



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