

May Helen

MEMO

Date: July 17, 1979

TO: PET & Staff

FM: Rich

RE: IMPLICATIONS OF SUPREME COURT DECISION IN HUTCHINSON V. PROXMIRE

The Supreme Court held, by an 8 to 1 vote that Members are protected only for statements made in the chamber itself or in committee under the Speech or Debate Clause of the Constitution.

The following information is based on a legal memorandum from the Chief Counsel of the Senate Rules Committee prepared for Senator Pell, the Chairman.

1. Newsletters and press releases to tell the public about a Member's activities are not part of the legislative function or the deliberations of the legislative process and are not protected by the Speech or Debate Clause.
2. Regardless of whether and to what extent the Speech or Debate Clause may protect calls to the federal agencies seeking information, it does not protect attempts to influence the conduct of executive agencies or libelous comments made during the conversations.
3. The Chief Counsel additionally states, "It could be concluded that apparently a Senator, under the Court's reasoning could be sued for the cost of preparing and mailing newsletters on the theory that such was a political rather than a legislative act."
4. The Supreme Court distinguished sharply between collective expressions and actions of the body, such as committee reports, and the views and expressions of a single Member.
5. Additionally, the Court brought into question whether there is protection now for activities long thought to be protected by the Speech or Debate Clause, although the Court did not rule specifically on these matters. For example, the Court did not pass clearly on whether a speech inserted into the Record, but not actually delivered is covered by immunity.
6. The Court ruled separately that the Constitution did not protect Senator Proxmire's legislative assistant from a libel action.
7. The Chief Counsel also warns, " It would seem without question that Senators should use realistic abundance of caution hereafter in phrasing and releasing statements to the press or constituents by news releases

and newsletters, as well as in any use of Senate recording facilities, local television or radio appearances or other electronic media and in any communications with other government officials on the basis that the Constitution does not protect a Senator who may libel any individual in a press release, newsletter, television show or telephone call to a Federal agency.

cc: Dennis
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