10-1974

Eastland v. U.S. Servicemen's Fund

Lewis F. Powell Jr.

Court ..... Voted on....., 19...

Argued ....., 19... Assigned ....., 19... No. 73-1923

Submitted ....., 19... Announced ....., 19...

JAMES O. EASTLAND, ET AL., Petitioners

vs.

UNITED STATES SERVICEMEN'S FUND, ET AL.

6/22/74 Cert. filed.

Number of important Qs here: standing; speech & Debate; severin intrusion by Judicial Branch on Legislative Branch.

Grant

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING	
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rehnquist, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Significant

CADC, in a remarkable decision, Grant 10/9
enjoined Senate Sub-Committee on Internal Security, from subpoenaing bank records of Resp., a tax exempt org., organized to promote the "peace movement" among US Service men over-seas by setting up libraries, coffee houses, providing legal counsel, etc.

Senate Committee's Resolution stated purpose is to determine whether Resp is being financed by "foreign powers or agents.

CADC agreed the Congressional interest of securing whether foreign sources were supporting an organization to cause dissension & dissatisfaction in armed services.

Preliminary Memo

Grant
D.B.

Summer List 13, Sheet 2

No. 73-1923

CADC, citing NAACP v Ala, held this would violate 1st Amend. freedoms & that enjoining Senate Committee was only remedy.

EASTLAND (Senator)

V.

UNITED STATES SERVICEMEN'S FUND

Cert. to the D.C. Cir. CADC Timely
Ct. of App.
(Tuttle, Bazelon, MacKinnon) drew absurd
(Tuttle by designation; MacKinnon dissenting) destruction between power
Federal/Civil of Senators under Speech or Debate Clause to authorize a subpoena & power to have it enforced.

Summary: In 1970, the Internal Security Subcommittee of the Senate Judiciary Committee issued a subpoena to a New York bank ordering it to produce all of its records relating to United States Servicemen's Fund ("USSF"). USSF filed a complaint in USDC (Pratt) seeking a TRO against enforcement of the subpoena and a permanent injunction against the bank restraining it

8/9 understand this, the CADC is almost incredible in its failure to consider vital nat. interests.

from complying with the subpoena and against the Senators on the Sub-Committee and the Sub-Committee counsel restraining them from seeking to enforce the subpoenas by contempt of Congress or any other means. The USDC denied the TRO on the grounds of lack of standing and a failure of subject matter jurisdiction. The CA reversed with MacKinnon dissenting. After a hearing, the USDC (Gasch) denied a preliminary injunction but the CA over dissent stayed enforcement of the subpoena. At the hearing on the merits, the USDC denied a permanent injunction, dismissed the Senators as parties defendant, and denied an order compelling the testimony of the Sub-Committee's chief counsel as to certain extra-record matters. (The Senate in S. Res. 478, 91st Cong., 2d Sess. had prohibited the counsel from testifying about any matters not of public record.)

On appeal of this decision, the CA consolidated the USSF case with three related cases involving subpoenas of the House Committee on Internal Security relating to bank records of the (1) Progressive Labor Party (PLP), (2) National Peace Coalition (NPC), and (3) People's Coalition for Peace and Justice (PCPJ). Discussing only the facts in the USSF case, Judges Tuttle and Bazelon reversed the decision below over Judge MacKinnon's dissent. The majority held that in the instant case the organizations could vindicate their rights only through direct injunctive relief, that the court had subject matter jurisdiction,

that the organizations had standing to contest the third party subpoena because they alleged a violation of their First Amendment rights, that the case was not a political question, that the Senators were not immune from an injunction against issuance and service as opposed to authorization of a subpoena as this was not within the Speech and Debate Clause nor a legislative act, that the subpoena was illegal as causing irreparable damage to freedom of association (reversing the balancing test based on Barenblatt applied in USDC), and that the USDC on remand should consider taking testimony from the Sub-Committee counsel and that an actual injunction should issue against the Senators only if declaratory relief would not suffice. The dissent would have held the subpoenas proper under Barenblatt and Uphaus, that the case presented a political question, and that the Senators were immune as acting within the legislative sphere under Doe v. McMillan.

The CA denied en banc a motion for rehearing en banc with Judges Tamm, MacKinnon, and Wilkey dissenting and Judge Robb not participating. Petrs, Senators Eastland, McClellan, Ervin, Bayh, Thurmond, and Cook and the Senate Sub-Committee Counsel, seek cert renewing their arguments below. There is as yet no petition from the House Committee with regard to its subpoenas.

Mootness: Resps argue that the Senate subpoena is 4 years old and that the questions presented in the immediate case are theoretical rather than real since there is no on-going Senate

investigation. Although the petition does not directly respond to this argument, it appears frivolous inasmuch as the Senate resolution authorizing the investigation remains in effect and the on-going litigation in the immediate case is evidence of the Sub-Committee's intent to investigate USSF.

Facts: USSF is a non-profit tax exempt organization whose primary activities include the setting up of coffee houses and libraries around the world for military personnel and the suppling of legal counsel to military personnel in order to aid them in escaping their "repressive environment" and to promote the peace movement generally through activities with U.S. military personnel.

Senate Resolution 341 (91st Cong., 2d Sess., 116 Cong. Rec. 3417-3418) authorized the Sub-Committee to make a continuing investigation of the administration of the Internal Security Act of 1950 and subversive activities in the U.S. under the control of foreign governments or organizations. Pursuant to this power, the Sub-Committee in 1970 adopted a resolution stating that USSF should be the subject of further investigation based on the evidence gathered concerning it and the subpoena was issued under this resolution. The apparent purpose of the subpoena was to learn whether USSF was receiving foreign funding.

Contentions: (1) The petrs argue that anticipatory relief of the type granted in the instant case violates the principle of separation of powers [cf. Hutcheson v. United States, 369 U.S.

599, 622] and will cripple the use of congressional process through allowing a judicial challenge without risk of contempt. They argue that the CA justification of this as the only possible remedy where the records are in the hands of a third party is not rational in light of Donaldson v. United States, 400 U.S. 517 and Couch v. United States, 409 U.S. 322 holding that there is only a permissive and not a manditory right to intervene in the case of third party subpoenas. They argue that the instant decision constitutes a gross abuse of judicial power based on an ill defined constitutional allegation and constitutes the first instance of injunctive relief against Congress itself.

Resps argue that the instant case like United States v. Nixon is one of the small class of cases fitting within the exception in Perlman v. United States, 247 U.S. 7 (1918) allowing review of a subpoena prior to contempt because review afterwards would be impossible. The CA majority while recognizing that such an anticipatory remedy was extraordinary and unprecedented held it justified in the immediate case by the total absence of any alternate means to vindicate resps' rights.

(2) Petrs argue that they are immune from suit to enjoin them from the issuance or enforcement of their subpoena by reason of the Speech and Debate Clause which immunizes them in the performance of such legislative action. The issuance and serving of the subpoena are "things generally done in a session of the

House by one of its members in relation to the business before it" [Kilbourn v. Thompson, 103 U.S. 168, 204 quoted in Doe v. McMillan, 412 U.S. 306, 311] and unlike the arrest in Kilbourn are not beyond the apparent needs of the due functioning of the legislative process. Doe, supra at 311. Unlike other cases allowing suits against legislators, relief here can not be afforded "without proof of a legislative act or the motives or purposes underlying such an act." Gravel v. United States, 408 U.S. 606, 621. The result of the CA action is that whenever a congressional subpoena is issued, Congressmen will have to come into court to defend their action. Cf. Dombrowski v. Eastland, 387 U.S. 82.

The resps rely on language from Gravel, supra at 621 to show the absence of immunity and reason generally that immunity from suit is not really involved in the instant case -- merely the timing of review of congressional subpoenas with anticipatory relief justified here by the impossibility of post-contempt review and the evasion of a judicial test through the third party subpoena. The CA analogizing the instant case to Doe, supra concluded that while the authorization of an unconstitutional subpoena is within the legislative sphere and hence immune, the service of such a subpoena is not.

(3) Finally, the petrs argue that the subpoena was not violative of First Amendment rights. They point out that the CA did not find an illicit motive behind their actions, that foreign funding of a

I should say so!

tax-exempt organization devoted to promulgating opposition to U.S. foreign policy among military personnel abroad during a foreign war is directly relevant to a number of legitimate legislative objectives, that the records sought belong to the bank and not the USSF [cf. California Bankers Assn v. Schultz, ____ U.S. (decided April 1, 1974); Donaldson, supra at 537 (Douglas, J concurring)], and that such commercial financial records sought for legitimate legislative inquiry are not like the membership lists in Powell or other cases sought for illicit purposes. Both USDC judges and the CA dissenter, balancing under Barenblatt v. United States, 360 U.S. 109 (1959), found that the need for the information outweighed any effect on free association.

The CA majority held that the subpoena would act to chill First Amendment rights of free association in a controversial political organization (relying on the NAACP v. Alabama cases) particularly through deterring potential donors. It concluded that the subpoena was unconstitutional. Resps generally repeat the reasoning of the CA relying particularly on Gibson v. Florida Legislative Investigating Committee, 372 U.S. 539 (1962).

(4) It is uncertain from petrs' rather unclear petition whether they intend to renew here other arguments made below such as lack of standing in resps to challenge a third party subpoena and characterization of the case as a political question. If they do, they have not lucidly stated them in their brief.

Resps below raised a question as to whether the subpoena was defective because of a lack of specificity and failure of nexus with the original resolution on which the CA expressly reserved judgement.

Discussion: The case is obviously certworthy. Unless Barenblatt is negated by Gibson, the decision below was error to the extent that it failed to consider the substantial governmental interests asserted by petrs but merely found an encroachment of freedom of association and concluded that the subpoena was therefore unconstitutional. If Gibson does govern, and the bank records are the same as NAACP membership lists, it may be argued that the error if any was harmless since the government could not possibly meet Gibson's requirement of a "compelling interest".

The extremely narrow reading of congressional immunity under the Speech and Debate Clause achieved by distinguishing between authorization of subpoenas (within the legislative sphere) and serving subpoenas (outside the legislative sphere) is an artificial and dubious one.

Finally, the case answers the question expressly left open in Powell v. McCormack and holds that coercive injunctive relief may be applied against members of Congress although only after they have failed to heed declaratory relief.

The decision below is an extraordinary one with unanswered legal issues of significance meriting review by this Court.

There is a response.

BENCH MEMORANDUM

TO: MR. JUSTICE POWELL

FROM: Ron Carr

No. 73-1923 Eastland, et al. v. United States Servicemen's Fund, et al.

I recommend that you vote to reverse, on either of two grounds: first, that there was no proper party defendant, and second, if that ground is rejected, that the subpoena's incidental consequences on respondent's members exercise of ~~its~~ their First Amendment associational rights are outweighed by the Committee's need for the information in performing its legitimate legislative functions.

1. The problem arises because of the peculiar problems posed by third-party subpoenas, particularly when directed to banks. Respondent itself possesses copies of the information subpoenaed here. If the Committee had subpoenaed respondent, respondent could have refused to comply. The Committee could then have voted a contempt resolution, which, if approved by the Senate, would have been referred to the Justice Department for prosecution. If Justice decided to prosecute, respondent could have defended on the ground that the subpoena violated the First Amendment.

But the subpoena was directed to the bank. There is, apparently, no recognized bank-depositor privilege. Hence, the bank has no incentive to refuse to comply and thus risk a contempt

prosecution. Respondent, therefore, has no recourse but to attempt to prevent the bank's compliance; otherwise the alleged violation of its associational rights cannot be vindicated.

Petitioners raise here only obliquely two arguments vigorously pressed below - that the district court was without jurisdiction, and that the case is non-justiciable. I think it clear that there was subject-matter jurisdiction under 1331. Nor is the case non-justiciable. Justiciability depends on the nature of the question on the merits. First, even assuming that respondent would not have standing to raise a Fourth Amendment claim, having no possessory interest in the bank's records, it does have standing to assert its associational rights. Pollard v. Roberts, 283 F. Supp. 248, aff'd without opinion, 393 U.S. 14 (1968). Second, the First Amendment issue is in no sense a political question; exactly that sort of question may be, and has been, resolved by courts in congressional contempt suits.

2. This Court has often stated that the Speech and Debate Clause protects not only against legal liability (e.g., in damages) but also against even having to defend against suits contesting actions taken within the ambit of the Clause's protection. From this it follows that application of the Clause cannot depend on whether the action was or was not constitutional. See Tenney v. Brandhove, 341 U.S. 367. From this it follows that whether the subpoena here violates respondent's First Amendment rights is irrelevant to the question

whether the Senators or the Committee Counsel are immune from suit.

In this Court' Speech and Debate immunity cases - Kilbourn, Powell, Gravel, and Doe v. McMillan - the distinction is drawn between legislative functions, which are immune, and non-legislative functions, which are not. Thus, in Kilbourn, the legislators who voted the arrest were immune; the sergeant-at-arms making the arrest was not. In Powell, the legislators who voted the exclusion were immune; the doorkeeper and sergeant-at-arms, who refused to pay Powell and physically barred him from the House, were not. In Gravel, the Court made clear that the distinction was not between the legislators themselves and their employees. On the contrary, if an aide did something that, if done by the legislator himself, would have been "legislative" and hence immune, the immunity also attaches to the aide. This analysis was followed in MacMillan.

The majority opinion below purports to follow this analysis. It holds that authorizing the subpoena is legislative and immune; but issuing and serving the subpoena is not. App. at 68. Under Kilbourn and the other cases, this distinction makes some sense. The court remanded the case on this point, on the ground that the record was insufficient to determine whether and as to which of the defendants immunity would attach. App. at 89-80.

The problem with this analysis, however, (assuming it is otherwise valid) is that when this suit was brought, the subpoena had already been issued and served. Hence an injunction was sought, not against issuance and service, but against enforcement of the subpoena. But enforcement, I should think, is clearly a legislative act. It is accomplished by resolution of the Committee and then of the Senate. In short, the question here is not whether the marshal or other functionary can be enjoined from serving the subpoena, but whether, once the subpoena is served, the Committee and its counsel can be enjoined from enforcement. I would hold that they cannot, enforcement being a legislative act.

If this is so, respondent would appear to be without remedy. They ask for an injunction against enforcement by the Committee and its counsel and against compliance by the bank. The suit against the bank is derivative from that against the Committee; only the Government can violate First Amendment associational rights. I think that a creative lawyer might be able to devise an independent cause of action against a bank. For example, one could conceive of a state action against the bank on privacy grounds for complying with an allegedly invalid subpoena; the bank could defend on the ground of the subpoena's validity, and remove to the federal court,

whereupon the Committee could intervene. Or perhaps a federal right of action could be implied (with difficulty) from the Bank Privacy Act. But the claim against the bank here was entirely dependent on the claim against the Committee.

3. If you decide that the Committee members and counsel are not immune - either because issuance and service are non-legislative and are still in the case, or because enforcement is non-legislative, I recommend that you vote to hold that the subpoena here did not violate respondent's associational rights. Most of the association cases respondent and the court below cite are distinguishable on the ground that, in those cases, there was no clear connection between the material sought and a legitimate, articulated state need. Here, I think it obvious that the contrary is the case. The financial records were clearly and directly relevant to the Committee's legitimate investigative and legislative purposes. See Branzburg v. Hayes, 408 U.S. 665, 700 (1972). There is language in Gibson v. Legislative Investigative Comm., 372 U.S. 539, arguably to the effect that the state's interest must be compelling. If this is the standard, then I would hold it satisfied here. But I don't think it is the correct standard. There is here no direct attempt to infringe on associational rights. Instead, the infringement, if any, is incidental to the Committee's attempt to perform functions clearly within the scope of its

legislative duties. In such cases, a majority of this Court has consistently held that the First Amendment question must be decided by balancing the consequences on associational interests against the reasons and need for the Government action. I would hold that the subpoena here passes this test.

I have expressed my views in this case at greater length than you directed for two reasons. First, the case is novel and of substantial importance. Second, I am somewhat disturbed by my own conclusion that respondent has no remedy. Of course, that remedy would not do respondent much good if, as I think, there is no First Amendment violation. But I find it quite disturbing that a person whose bank records are subpoenaed has no way of having the First Amendment question adjudicated. There is, I think, some legitimate expectation of privacy with respect to ones dealings with a bank, as you stated in California Bankers, 416 U.S. at 78-79. But I see no way of protecting that interest in a suit against a congressional committee and counsel to bar enforcement that is consistent with this Court's previous Speech and Debate cases.

9 agree

Yes

73-1923 EASTLAND v. U.S. SERVICEMEN'S FUND Argued 1/22/75

Reverse
dc from
case

The subpoena was served on 3rd party - a bank.
There is no bank-customer privilege.
There is justiciability - Resp. has the
requisite interest in asserted rights.

Speech + Debate (S+D) Clause protects
against civil damages + even having to
defend a suit on a privileged exercise
of leg. authority. See Tenney v. Brandhove

That 1st Amend. issue is irrelevant
to Q whether Senators + Committee Counsel
are immune from suit.

When suit was brought, subpoena had
been issued + served. Hence, the injunction
was sought against the enforcement of subpoena.

Enforcement is clearly a legislative
act.

And the purpose of subpoena is
clearly relevant to a legitimate Congressional
purpose. Difficult to think of more
fundamental legislative right - indeed duty
- to determine whether foreign sources
are financing disaffection in Armed
Services.

x x x

(There should be legislation
according a bank standing to
object to subpoena of its customers
records)

Herbert Miller (for Eastland) { 9 + 9 write, should read Miller argument.
Case not moot.
At issue is subpoena [redacted] of Sub. Committee.
Complaint avers Subp. is void – that its purpose is to chill 1st amend Rts.

Resp is non-profit, tax exempt slatter org. Purpose of [redacted] Resp. Committee was to persuade servicemen to oppose V/War

Dombrowski v Eastman 387 U.S. 82 is relevant – look at Record: allegations are quite similar to those here. Read also CA opinion. Thus case is a flat holding that conduct here at issue is protected by 5 + D Clause.

Contributions to Resp came from corps which were "fronts". [redacted]

If Resp wins on 5+D Clause, other issues [redacted] become irrelevant (J. White questioned this).

No 1st Amend issue here. If records of banks can be immunized under 1st Amend, this will impair severely our new legislation as to campaign contributions, tax enforcement, [redacted] hampers of currency, etc.

Gutman (for Reps)

Nothing that adds to Brief

Mr Stamm (for Reps)

Relies on Nixon v U.S.

S & D clause does not prevent a court for examining a subpoena on court. grounds.

S & D clause doesn't apply to declaratory judgments. (citing Gravel - erroneously I believe). No personal lesibly. (But J White noted senators would have to hire lawyer, lobby, etc).

Not really a S & B clause case.

Neiler (Rebuttal)

S & D clause protects against having to defend suit

The Chief Justice Reverse

CADC made no effort to balance S & D claim interests with those of 1st Amend.

No est. that Bank's Rescinder will reveal list of members.

Allegations of irreparable injury in nature a conclusion — or not well pleaded fact. (What is relevance of this?).

Cases relied upon by CADC simply do not support the decision.

Douglas, J. Reverse Senate Case 8-0
Dismiss House Case 8-0

Dent

Brennan, J. Reverse Senate Case
Dismiss or Moot the House Case - as Committee has been disbanded & the particular Congress no longer exists.

Only case here is Senate case — & under Dombrowski can't call Senate or staff to defend law suit.

Grauel doesn't support CADC

Stewart, J. Dismiss House case
Reverse Senate
Agree with Brennan

Dismiss House case for 2 reasons

Can't sue Senators or their aides when acting in legislative capacity.

Do not reach 1st Amend.

Bank is not a party.. If it were, there would be a 1st Amend issue. Bank was never served with valid service.

Reverse Senate case.

Vacate & Remand House cases to determine mootness ~~to~~ – because there may be something left to damage claim. Bank in party to one of House cases.

Reverse Senate Case.

Vacate Remand House cases

Blackmun, J. Reverse - Senate

If this were a 1st Amend case, would be concerned. But would apply Barenblatt balancing test – & would come out in favor of Committee. But need not reach 1st amend issue.

Powell, J. Reverse Senate Case

See my argument notes.

Congress clearly has power to investigate organizations.

S & D clause protects us being sued when members of Congress are acting in leg. capacity.

I don't reach 1st Amend.

~~#~~ I agree with Brennan as to Dismissing House Case – altho ~~of~~ possibly I'd go with Byron on Remand.

Rehnquist, J. Reverse Senate Dismiss House

If writers S & D Clause, claim of Court. rights makes no difference

Subpoena - May 1970

I may write a brief Concurrence noting - more strongly than CJ does on p 19 - that these Resp. won their law suit by dragging it out for 5 years - while our Country (rightly or wrongly) was at War. The Courts below were grossly neglectful in my view.

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

LFP

From: The Chief Justice

Circulated: APR 4 1975

Recirculated:

1st DRAFT

Reviewed LFP 4/7/75

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al., Petitioners, v. United States Servicemen's Fund et al. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[April —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether a federal court may enjoin the issuance or implementation by Congress of a subpoena *duces tecum* that directs a bank to produce the bank records of an organization which claims a First Amendment privilege status for those records on the ground that they are the equivalent of confidential membership lists. The Court of Appeals for the District of Columbia Circuit held that compliance with the subpoena "would invade the constitutional rights" of the organization, and that judicial relief is available to prevent implementation of the subpoena.

I

In early 1970 the Senate Subcommittee on Internal Security was given broad authority by the Senate to "make a complete and continuing study and investigation of . . . the administration, operation and enforcement of the Internal Security Act of 1950. . . ." S. Res. 341, 91st Cong., 2d Sess., 116 Cong. Rec. 3419 (January 30, 1970). The authority encompassed discovering the "extent, nature and effect of subversive activities in

John Probably

(See pp 15, 19

This draft sweeps broadly - in an area with which I'm not too familiar.

the United States," and the resolution specifically directed inquiry concerning "infiltration by persons who are or may be under the control of foreign governments. . . ." *Ibid.* See also S. Res. 366, 81st Cong., 2d Sess. Pursuant to that mandate the Subcommittee began an inquiry into the activities of respondent herein, the United States Servicemen's Fund, Inc. (USSF).

USSF describes itself as a nonprofit membership corporation supported by contributions.[1] Its stated purpose is "to further the welfare of persons who have served or are presently serving in the military." To accomplish its declared purpose USSF has engaged in various activities[2] directed at United States servicemen. It established "coffeehouses" near domestic military installations, and aided the publication of "underground" newspapers for distribution on American military installations throughout the world. The coffeehouses were meeting places for servicemen, and the newspapers were specialized publications which USSF claims dealt with issues of concern to servicemen. Through these operations USSF attempted to communicate to servicemen its philosophy and attitudes concerning United States involvement in South East Asia. USSF claims the coffeehouses and newspapers "became the focus of dissent and expressions of opposition within the military toward the war in Southeast Asia."[3]

In the course of its investigation of USSF, the Subcommittee concluded that a prima facie showing had been made of the need for further investigation, and it resolved that appropriate subpoenas, including subpoenas

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[1] USSF is, or has been, listed with the Internal Revenue Service as a tax exempt charitable organization.

[2] According to the complaint filed in this action USSF has helped provide civilian legal defense for military personnel, and books, newspapers and library material on request. App., at 11.

[3] App., at 11.

duces tecum could be issued. Petitioner Eastland, a United States Senator, is, as he was then, Chairman of the Subcommittee. On May 28, 1970, pursuant to the above authority, he signed a subpoena *duces tecum*, issued on behalf of the Subcommittee, to the bank where USSF has an account. The subpoena commanded the bank to produce on June 4, 1970,

> "any and all records appertaining to or involving the account or accounts of [USSF]. Such records to comprehend papers, correspondence, statements, checks, deposit slips and supporting documentation, or microfilm thereof within [the bank's] control or custody or within [its] means to produce."

From the record it appears the subpoena was never actually served on the bank.[4] In any event, before the June 4, 1970, return date, USSF and two of its members brought this action to enjoin implementation of the subpoena *duces tecum*.

The complaint named as defendants Chairman Eastland, eight other Senators, the Chief Counsel to the Subcommittee, and the bank.[5] The complaint charged that the authorizing resolutions and the Subcommittee's actions implementing them were an unconstitutional

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[4] The subpoena at issue here directed "Any U. S. Marshal" to serve and return, but there is no proof of service in the record. The Subcommittee had issued two previous subpoenas *duces tecum* to the bank, but they had been withdrawn because of procedural problems. Apparently, at least one of those subpoenas actually was served on the bank. App., at 13. The other subpoena also may have been served because the bank informed respondents of its existence. App., at 14. Respondents claim all three subpoenas are substantially identical.

[5] Apparently, at least partially because the bank was never served, Tr. of Oral Arg. 22, 46, it has not participated in the action. Tr. of Oral Arg. 15, 19-20, 22-23. Therefore, as the case reaches us only the Senators and the Chief Counsel are active participants.

abuse of the legislative power of inquiry, that the "sole purpose" of the Subcommittee investigation was to force "public disclosure of beliefs, opinions, expressions and associations of private citizens which may be unorthodox or unpopular," and that the "sole purpose" of the subpoena was to "harass, chill, punish and deter [USSF and its members] in their exercise of their rights and duties under the First Amendment and particularly to stifle the freedom of the press and association guaranteed by that Amendment."[6] The subpoena was issued to the bank rather than to USSF and its members, the complaint claimed, "in order to deprive [them] of their right to protect their private records, such as the sources of their contributions, as they would be entitled to do if the subpoena had been issued against them directly." The complaint further claimed that financial support to USSF is obtained exclusively through contributions from private individuals, and if the bank records are disclosed "much of that financial support will be withdrawn, and USSF will be unable to continue its constitutionally protected activities."[7]

For relief USSF and its members, the respondents, sought a permanent injunction restraining the members of the Subcommittee and its Chief Counsel from trying to enforce the subpoena by contempt of Congress or other means and restraining the bank from complying with the subpoena.[8] Respondents also sought a declaratory judgment declaring the subpoena and the Senate resolutions void under the Constitution. No damage claim was made.

Since the return date on the subpoena was June 4, 1970, three days after the action was begun, enforcement

[6] App., at 16.
[7] App., at 17–18.
[8] App., at 18.

Enforcement of subpoena stayed June 4, 1970 — Case here on appeal immunity for 5 yrs.

of the subpoena was stayed [9] in order to avoid mootness and to prevent possible irreparable injury. The District Court then held hearings and took testimony on the matter. That court ultimately held [10] that respondents had not made a sufficient showing of irreparable injury to warrant an injunction. The court also purported to strike a balance between the legislative interest and respondents' asserted First Amendment rights, *NAACP* v. *Alabama*, 357 U. S. 449 (1958). It concluded that a valid legislative purpose existed for the inquiry because Congress was pursuing its functions, under Art. I, § 8, of raising and supporting an army, and had a legitimate interest in "scrutiniz[ing] closely possible infiltration of subversive elements into an organization which directly affects the armed forces of this country." [11] Rely-

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[9] On June 1, the District Court refused to enter a temporary restraining order, but on June 4 the Court of Appeals stayed enforcement of the subpoena pending expedited consideration of the matter by the District Court. The Court of Appeals reasoned that the threat of irreparable injury if the subpoena was honored, and the significance of the issues involved, necessitated "the kind of consideration and deliberation that would be provided by . . . a hearing on an application for an injunction." App., at 22. One judge dissented.

[10] After the Court of Appeals stayed enforcement of the subpoena the District Court held an expedited hearing on respondents' motion for a preliminary injunction and petitioners' motion to dismiss. Afterwards the District Court denied both motions; however, the Court of Appeals again stayed enforcement of the subpoena pending further order. At that time the Court of Appeals ordered the District Court to proceed to final judgment on the merits, with a view to consolidating any appeal from that judgment with the appeal on the denial of a preliminary injunction. The District Court then took testimony on the merits and, finally, denied respondents' motion for a permanent injunction of the subpoena. Appeal from that decision apparently was consolidated with the appeal from the denial of the preliminary injunction.

[11] App., at 31.

ing on *Barenblatt* v. *United States*, 360 U. S. 109 (1959), the District Court concluded that the legislative interest must prevail over respondents' asserted rights; it denied respondents' motions for preliminary and permanent injunctions. It also dismissed as to the defendant Senators after concluding that the Speech or Debate Clause immunizes them from suit. *Dombrowski* v. *Eastland*, 387 U. S. 82 (1967).

The Court of Appeals reversed, holding first that, although courts should hesitate to interfere with congressional actions even where First Amendment rights clearly are implicated, such restraint could not preclude judicial review where no alternative avenue of relief is available other than "through the equitable powers of the court." 488 F. 2d, at 1259. Here the subpoena was directed to a third party who could not be expected to refuse compliance; unless respondents could obtain judicial relief the bank might comply, the case would become moot, and the asserted violation of respondents' constitutional rights would be irreparable. Because the subpoena was not directed to respondents, the Court of Appeals noted, the traditional route for raising their defenses by refusing compliance and testing the legal issues in a contempt proceeding was not available to them. *Ansara* v. *Eastland*, — U. S. App. D. C. —, 442 F. 2d 751 (1971).

Second, the Court of Appeals concluded that if the subpoena was obeyed respondents' First Amendment rights would be violated. The court said:

> "The right of voluntary associations, especially those engaged in activities which may not meet with popular favor, to be free from having either state or federal officials expose their affiliation and membership absent a compelling state or federal purpose has been made clear a number of times. See *NAACP* v.

Alabama, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U. S. 293 (1962); *Gibson* v. *Florida Legislative Committee*, 372 U. S. 539 (1962); *Pollard* v. *Roberts*, 393 U. S. 14 (1968), affirming the judgment of the three-judge district court for the Eastern District of Arkansas, 283 F. Supp. 248 (1968)." 488 F. 2d, at 1264.

In this case that right would be violated, the Court of Appeals held, because discovery of the identities of donors was the admitted goal of the subpoena, 488 F. 2d, at 1267, and that information could be gained as easily from bank records as from membership lists. Moreover, if donors' identities were revealed, or if donors reasonably feared that result, USSF's contributions would decrease substantially, as had already occurred merely because of the threat posed by the subpoena.[12]

The Court of Appeals then fashioned a remedy to deal with the supposed violation of rights. It ordered the District Court to "consider the extent to which committee counsel should properly be required to give evidence as to matters without the legislative sphere." 488 F. 2d, at 1270.[13] It also ordered that the court should

[12] It appears that the District Court finding of failure to show irreparable injury was held clearly erroneous. 488 F. 2d, at 1267. See Fed. Rule Civ. Proc. 52 (a).

[13] Respondents had made a motion in the District Court to compel petitioner Sourwine, the subcommittee counsel, to give testimony. The Senate passed a resolution, S. Res. 478, October 14, 1970, authorizing Sourwine to testify only as to matters of public record. Respondents moved to compel further testimony from Sourwine, but the District Court denied the motion. The court ruled Sourwine's information "has been received by him pursuant to his official duties as a staff employee of the Senate . . . [a]s such the information is within the privilege of the Senate . . *Senate Rule 301, Senate Manual, Senate Document No. 1 of the 90th Congress, First Session.*" App., at 38. The court also ruled that the Senate made a timely

"be liberal in granting the right of amendment" to respondents to add other parties if thereby "the case can better proceed to a decision on the validity of the subpoena." *Ibid.* Members of Congress could be added as parties, the Court of Appeals said, if their presence is "unavoidable if a valid order is to be entered by the court to vindicate rights which would otherwise go unredressed." *Ibid.* The Court of Appeals concluded that declaratory relief against Members is "preferable" to "any coercive order." *Ibid.* The clear implication is that the District Court was authorized to enter a "coercive order" which in context could mean that the Subcommittee could be prevented from pursuing its inquiry by use of a subpoena to the bank.

One judge dissented on the ground that the membership list cases were distinguishable because in none of them was there a "showing that the lists were requested for a proper purpose." 488 F. 2d, at 1277. Here, on the other hand, the dissenting judge concluded, "there is a demonstrable relationship between the information sought and the valid legislative interest of the federal Congress" in discovering whether any money for USSF activities "came from foreign sources or subversive organizations," 488 F. 2d, at 1277–1278, whether USSF activities may have constituted violations of 18 U. S. C. § 2387 (a) which prohibits interference with the loyalty, discipline or morale of the armed services, or whether the anonymity of USSF donors might have disguised persons who had not complied with the Foreign Agents Registration Act, 22 U. S. C. § 611 *et seq.* Finally, he noted that the prime purpose of the Subcommittee's inquiry was to

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and appropriate invocation of its privilege. Thus information held by Sourwine was not discoverable. Fed. Rule Civ. Proc. 26 (b) (1). Respondents' appeal from this ruling was heard by the Court of Appeals with their appeals from the denial of injunctive relief. 488 F. 2d, at 1258.

investigate application of the Internal Security Act, 50 U. S. C. § 781 *et seq.*, and that too provided a legitimate congressional interest.

The dissenting judge then balanced the congressional interests against private rights, *Barenblatt* v. *United States, supra; Watkins* v. *United States*, 354 U. S. 178, 198, and struck the balance in favor of the investigative role of Congress. He reasoned that there is no right to secrecy which can frustrate a legitimate congressional inquiry into an area where legislation may be had. 488 F. 2d, at 1278–1279, 1282. Absent a showing that the information sought could not be used in the legislative sphere, he concluded, judicial interference was unwarranted.

We conclude the actions of the Senate Subcommittee, the individual Senators, and the Chief Counsel are protected by the Speech or Debate Clause of the Constitution, Art. I, § 6, cl. 1, and are therefore immune from judicial interference. We reverse.

II

The question [14] to be resolved is whether the actions of the petitioners fall within the "sphere of legislative activity." If they do, the petitioners "shall not be questioned in any other place" about those activities since the prohibitions of the Speech or Debate Clause are absolute, *Doe* v. *McMillan*, 412 U. S. 306, 312–313;

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[14] The Court of Appeals correctly held that the District Court properly entertained this action initially. As the Court of Appeals indicated, 488 F. 2d 1259–1260, there is a significant difference between a subpoena that seeks information directly from a party and one that seeks the same information from a third person. In the former case, of course, the party can resist and thereby test the subpoena. In the latter case, however, unless a court may inquire to determine whether a legitimate legislative purpose is present the third person may comply and render impossible all judicial inquiry.

United States v. *Brewster*, 408 U. S. 501, 516 (1972); *Gravel* v. *United States*, 408 U. S. 606, 623 n. 14 (1972); *Powell* v. *McCormack*, 395 U. S. 486, 502–503 (1969); *Dombrowski* v. *Eastland*, 387 U. S. 82, 84–85 (1967); *United States* v. *Johnson*, 383 U. S. 169, 184–185 (1966); *Barr* v. *Mateo*, 360 U. S. 564, 569 (1959). Without exception, our cases have read the Speech or Debate Clause broadly to effectuate its purposes. *Kilbourn* v. *Thompson*, 103 U. S. 168, 204 (1881); *United States* v. *Johnson*, 383 U. S. 169, 179 (1966); *Powell* v. *McCormack*, 395 U. S. 486, 502–503 (1969); *United States* v. *Brewster*, 408 U. S. 501, 508–509 (1972); *Gravel* v. *United States*, 408 U. S. 606, 617–618 (1972); cf. *Tenney* v. *Brandhove*, 341 U. S. 367, 376–378 (1951). The purpose of the Clause is to insure that the legislative function the Constitution allocates to Congress may be performed independently.

> "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." *United States* v. *Brewster*, 408 U. S. 501, 507 (1971).

In our system "the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders." *United States* v. *Johnson*, 383 U. S., at 178.

The Clause is a product of the English experience. *Kilbourn* v. *Thompson*, 103 U. S. 168 (1881); *United States* v. *Johnson*, 383 U. S. 169, 177–179 (1966). Due to that heritage our cases make it clear that the "central role" of the Clause is to "prevent intimidation of legislators by the Executive and accountability before a possible hostile judiciary, *United States* v. *Johnson*, 383 U. S. 169, 181 (1966)," *Gravel* v. *United States*, *supra*,

at 617. That role is not the sole function of the Clause, however, and English history does not totally define the reach of the Clause. Rather, it "must be interpreted in light of the American experience, and in the context of the American constitutional scheme of government. . . ." *United States* v. *Brewster*, *supra*, 408 U. S. 508. Thus we have long held that when it applies the Clause provides protection against civil as well as criminal actions, and against actions brought by private individuals as well as those initiated by the Executive Branch. *Kilbourn* v. *Thompson*, *supra*; *Tenney* v. *Brandhove*, *supra*; *Doe* v. *McMillan*, *supra*; *Dombrowski* v. *Eastland*, 387 U. S. 82 (1967).

The applicability of the Clause to private civil actions is supported by the absoluteness of the terms "shall not be questioned," and the sweep of the terms "in any other place." In reading the Clause broadly we have said that legislators acting within the sphere of legitimate legislative activity "should be protected not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski* v. *Eastland*, *supra*, 387 U. S., at 85. Just as a criminal prosecution infringes upon the independence which the Clause is designed to preserve, a private civil action, whether for an injunction or damages, creates a distraction and forces Members to divert their time, energy, and attention from their legislative tasks to defend the litigation. Private civil actions also may be used to delay and disrupt the legislative function. Moreover, whether a criminal action is instituted by the Executive Branch, or a civil action is brought by private parties, judicial power is still brought to bear on Members of Congress and legislative independence is imperiled. We reaffirm that once it is determined that Members are acting within the "legitimate legislative sphere" the Speech or Debate

Clause is an absolute bar to interference. *Doe* v. *McMillan, supra,* 402 U. S., at 314.

III

In determining whether particular activities other than literal speech or debate fall within the "legitimate legislative sphere" we look to see whether the activities are "done in a session of the House by one of its members in relation to the business before it." *Kilbourn* v. *Thompson, supra,* 103 U. S., at 204. More specifically, we must determine whether the activities are

> "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,* 408 U. S. 606, 625 (1972).

See *Doe* v. *McMillan, supra,* 412 U. S., at 313.

The power to investigate and to do so through compulsory process plainly falls within that definition. This Court has often noted that the power to investigate is inherent in the power to make law because "[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *McGrain* v. *Daugherty,* 273 U. S. 125, 175 (1927). See *Anderson* v. *Dunn,* 6 Wheat. 204 (1811). *United States* v. *Rumely,* 345 U. S. 41, 46 (1952).[15] Issuance of subpoenas

[15] Although the power to investigate is necessarily broad it is not unlimited. Its boundaries are defined by its source. *Watkins* v. *United States,* 354 U. S. 178, 197 (1957). Thus, "the scope of the power of inquiry is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Baren-*

such as the one in question here has long been held to be a legitimate use by Congress of its power to investigate. *Watkins* v. *United States, supra,* 354 U. S., at 188.

> "[W]here the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed." *McGrain* v. *Daugherty, supra,* 273 U. S., at 175.

It also has been held that the subpoena power may be exercised by a committee acting, as here, on behalf of one of the Houses. *Id.,* 273 U. S., at 158. Cf. *Tenney* v. *Brandhove,* 341 U. S. 367, 377–378 (1951). Without such power the subcommittee may not be able to do the task assigned to it by Congress. To conclude that the power of inquiry is other than an integral part of the legislative process would be a miserly reading of the Speech or Debate Clause in derogation of the "integrity of the legislative process." *United States* v. *Brewster,* 408 U. S. 501, 545–546 (1971); and *United States* v. *Johnson,* 383 U. S. 169, 172 (1966).

We have already held that the "act of authorizing an investigation pursuant to which . . . materials were gathered" is an integral part of the legislative process. *Doe* v. *McMillan,* 412 U. S. 306, 313 (1973). The routine implementation of the subpoena power pursuant to

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blatt v. *United States,* 360 U. S. 109, 111 (1959); *Sinclair* v. *United States,* 279 U. S. 263, 291–292 (1929). We have made it clear, however, that Congress is not invested with a "general power to inquire into private affairs." *McGrain* v. *Daugherty,* 273 U. S., at 173. The subject of any inquiry always must be one "on which legislation could be had." *Id.,* at 177.

an authorized investigation is similarly an indispensable ingredient of lawmaking; without it our recognition that the "act of authorizing" is protected would be meaningless. To hold that Members of Congress are protected for authorizing an investigation, but not for implementing that authorization through the subpoena power, would be a contradiction denigrating the power granted to Congress in Art. I and would "indirectly impair the delibrations of Congress." *Gravel, supra,* 408 U. S., at 625.

The particular investigation at issue here is related to and in furtherance of a legitimate task of Congress. *Watkins* v. *United States, supra,* 354 U. S., at 187. On this record the pleadings show that the actions of the Members and the Chief Counsel fall within the "sphere of legitimate legislative activity." The Subcommittee was acting under an unambiguous resolution from the Senate authorizing it to make a complete study of the "administration, operation, and enforcement of the Internal Security Act of 1950. . . ." S. Res. 341, 91st Cong., 2d Sess., 116 Cong. Rec. 3419 (January 30, 1970). That grant of authority is sufficient to show that the investigation upon which the Subcommittee had embarked concerned a subject on which "legislation could be had." *McGrain* v. *Daugherty,* 273 U. S., at 177; see *Communist Party* v. *Subversive Activities Control Board,* 367 U. S. 1 (1961).

The propriety of making USSF a subject of the investigation and subpoena is a subject on which the scope of our inquiry is narrow. *Hutcheson* v. *United States,* 369 U. S., at 618–619. See *Sinclair* v. *United States,* 279 U. S. 263, 294–295 (1929). "The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Tenney* v. *Brandhove, supra,* 341 U. S., at 378

(1950). Cf. *Doe* v. *McMillan*, *supra*, 412 U. S. 315 n. 10. Even the most cursory look at the facts presented by the pleadings reveals the legitimacy of the USSF subpoena. Inquiry into the sources of funds used to carry on activities suspected by a Subcommittee of Congress to have a potential for undermining the morale of the armed forces is within the legitimate legislative sphere. Indeed, the complaint here tells us that USSF operated on or near military and naval bases, and that its facilities became the "focus of dissent" to declared national policy. Whether USSF activities violated any statute is not relevant; the inquiry was intended to inform Congress in an area where legislation may be had. USSF asserted it does not know the sources of its funds; in light of the Senate authorization to the Subcommittee to investigate "infiltration by persons who are or may be under the control of foreign governments," *supra*, at 1, and in view of the pleaded facts, it is clear that the subpoena to discover USSF's bank records "may fairly be deemed within [the Subcommittee's] province." *Tenney* v. *Brandhove*, *supra*.

We conclude that the Speech or Debate Clause provides complete immunity for the Members for the issuance and implementation of this subpoena. We draw no distinction between the Members and the Chief Counsel. In *Gravel*, *supra*, we made it clear that "the day-to-day work of such aides is so critical to the Members' performance that they must be treated as [the Members'] alter egos. . . ." *Id.*, at 616–617. See 408 U. S., at 621. Here the Chief Counsel has been charged in the complaint only with implementing the subpoena in the same fashion as the Senators. Contrast *Dombrowski* v. *Eastland*, 387 U. S., at 84. Since the Members are immune because implementation of the subpoena is "essential to legislating" their aide shares that immunity. *Gravel* v. *United*

in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it. *Watkins* v. *United States*, 354 U. S. 178, 200 (1957); *Hutcheson* v. *United States*, 369 U. S. 599, 614 (1961). In *Brewster, supra*, we said "the Speech or Debate Clause protects against inquiry into acts that occur in the regular course of the legislative process *and into the motive for those acts.*" *Id.*, at 525 (emphasis added). And in *Tenney* v. *Brandhove* we said that, "[t]he claim of an unworthy purpose does not destroy the privilege." 341 U. S., at 377. If the mere allegation that a valid legislative act was undertaken for an unworthy purpose would lift the protection of the Clause then the Clause simply would not provide the protection historically undergirding it. "In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed." *Tenney* v. *Brandhove, supra*, 341 U. S., at 379. The wisdom of congressional approach or methodology is not open to judicial veto. *Doe* v. *McMillan, supra*, at 313. Nor is the legitimacy of a congressional inquiry to be defined by what it produces. The very nature of the investigative function—like any research—is that it takes the searchers up some "blind alleys" and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.

Finally, respondents argue that the purpose of the subpoena was to "harass, chill, punish and deter them" in the exercise of their First Amendment rights, App., at 16, and thus that the subpoena cannot be protected by the Clause. Their theory seems to be that once it is alleged that First Amendment rights may be infringed by congressional action the judiciary may intervene to protect those rights; the Court of Appeals seems to have subscribed to that theory. That approach, however, ignores

the absolute nature of the speech or debate protection [16] and our cases which have broadly construed that protection.

"Congressmen and their aides are immune from liability for their actions within the 'legislative

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[16] In some situations we have balanced First Amendment rights against public interests, *Watkins* v. *United States*, 345 U. S. 178 (1957); *Barenblatt* v. *United States*, 360 U. S. 109 (1959), but those cases did not involve attempts by private parties to impede congressional action where the Speech or Debate Clause was raised by Congress by way of defense. Cf. *United States* v. *Rumely*, 345 U. S. 41, 46 (1953). The cases were criminal prosecutions where defendants sought to justify their refusals to answer congressional inquiries by asserting their First Amendment rights. Different problems were presented then here. Any interference with congressional action had already occurred when the cases reached us, and Congress was seeking the aid of the judiciary to enforce its will. Our task was to perform the judicial function in criminal prosecutions, and we properly scrutinized the predicates at the criminal prosecutions. *Watkins*, *supra*, 354 U. S., at 208; *Flaxer* v. *United States*, 358 U. S. 147, 151 (1959); *Quinn* v. *United States*, 349 U. S. 155, 162, 169 (1955); *In re Hutcheson*, 369 U. S. 599, 630–631 (Warren, C. J., dissenting); 640 (DOUGLAS, J., dissenting). As Mr. Justice Frankfurter said concurring in *Watkins*:

"By . . . making the federal judiciary the affirmative agency for enforcing the authority that underlies the congressional power to punish for contempt, Congress necessarily brings into play the specific provisions of the Constitution relating to the prosecution of offenses and those implied restrictions under which courts function." *Watkins* v. *United States*, 354 U. S. 178, 216 (Frankfurter, J., concurring).

Where we are presented with an attempt to interfere with an ongoing activity by Congress, and that act is found to be within the legitimate legislative sphere, balancing plays no part. The Speech or Debate protection provides an absolute immunity from judicial interference. Collateral harm which may occur in the course of a legitimate legislative inquiry does not allow us to force the inquiry to "grind to a halt." *Hutcheson* v. *United States*, 369 U. S. 599, 618 (1962).

> sphere,' *Gravel* v. *United States*, *supra*, at 624–625, even though their conduct, if performed in other than legislative contexts would in itself be unconstitutional or otherwise contrary to criminal or civil statutes." *Doe* v. *McMillan*, *supra*, at 312–313.

For us to read the Clause as respondents suggest would create an exception not warranted by the language, purposes or history of the Clause. Respondents make the familiar argument that the broad protection granted by the Clause creates a potential for abuse. That is correct, and in *Brewster*, *supra*, we noted that the risk of such abuse was "the conscious choice of the Framers buttressed and justified by history." 408 U. S., at 516. Our consistently broad construction of the Speech or Debate Clause rests on the belief that it must be so construed to provide the independence which is its central purpose.

This case illustrates vividly the harm that judicial interference may cause. A legislative inquiry has been frustrated for nearly five years during which the Members and their aide have been obliged to employ counsel and have been distracted from the purpose of their inquiry. The Clause exists to prevent precisely this type of "questioning" and the enlistment of judicial power to challenge the wisdom of Congress' use of its authority.

V

When this case was in the Court of Appeals it was consolidated with three other cases[17] because it was assumed that "a decision in [this] case might well con-

[17] *Progressive Labor Party, et al.* v. *House Internal Security Committee, et al.* (C. A. No. 71–1609); *National Peace Action Coalition, et al.* v. *House Internal Security Committee, et. al.* (C. A. No. 71–2034); *Peoples Coalition for Peace and Justice* v. *House Internal Security Committee, et al.* (C. A. No. 71–1717).

trol the disposition of [them]." Those cases involve subpoenas from the House Internal Security Committee to banks for the bank records of certain organizations. As here, the organizations whose bank records were sought sued alleging that if the subpoenas were honored their constitutional rights would be violated. The issue of speech or debate protection for Members and aides is presented in all the cases. However, the complaints in the House cases are different from the complaint here, additional parties are involved, and consequently additional issues may be presented.

Progress in those cases was suspended when they were in the pleading stage awaiting the outcome of this case. The issues in them, therefore, have not been joined. Additionally, it appears that the Session in which the House subpoenas were issued has expired. Since the House, unlike the Senate, is not a continuing body, *McGrain* v. *Daugherty*, *supra*, 273 U. S. 135, 181; *Gojack* v. *United States*, 384 U. S. 702, 717 n. 4 (1967), the question of mootness question may be raised. Moreover it appears that the committee that issued the subpoenas has been abolished by the House, H. Res. 5, 94th Cong., 1st Sess., January 14, 1975. In view of these problems, and because those cases were not briefed or argued here, we feel it would be unwise to attempt to decide any issues they might present that are not presented in the instant case. *Powell* v. *McCormack*, 395 U. S. 486, 496 n. 8, 559 (STEWART, J., dissenting).

Judgment in the Senate case is reversed and the case is remanded to the Court of Appeals for entry of a judgment directing the District Court to dismiss the complaint. The House cases are remanded with directions to remand to the District Court for further consideration consistent with this opinion.

Reversed and remanded.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 22, 1975

Re: No. 73-1923 - Eastland v. U.S. Servicemen's Fund

Dear Chief:

Please join me.

Sincerely,

Byron

The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 25, 1975

Re: No. 73-1923 - Eastland v. U. S. Servicemen's Fund

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 25, 1975

Re: No. 73-1923 - Eastland v. United States Servicemen's Fund

Dear Chief:

Please join me.

Sincerely,

Harry

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 28, 1975

73-1923 - Eastland v. U. S. Servicemen's Fund

Dear Thurgood,

I should appreciate your adding my name to your concurring opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 2, 1975

RE: No. 73-1923 Eastland v. U.S. Servicemen's Fund

Dear Thurgood:

Please join me in your concurring opinion in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1975

Re: 73-1923 - Eastland v. U. S. Servicemen's Fund

MEMORANDUM TO THE CONFERENCE:

Henry Putzel suggested to me that because the House and Senate cases are consolidated under one number in this Court some language clarifying the disposition should be added. I have made some changes in pp. 19-21, as reflected in the attached pages.

Regards,

WEB

Attachment

> liability for their actions within the 'legislative sphere,' *Gravel* v. *United States*, *supra*, at 624–625, even though their conduct, if performed in other than legislative contexts would in itself be unconstitutional or otherwise contrary to criminal or civil statutes." *Doe* v. *McMillan*, *supra*, at 312–313.

For us to read the Clause as respondents suggest would create an exception not warranted by the language, purposes or history of the Clause. Respondents make the familiar argument that the broad protection granted by the Clause creates a potential for abuse. That is correct, and in *Brewster*, *supra*, we noted that the risk of such abuse was "the conscious choice of the Framers buttressed and justified by history." 408 U. S., at 516. Our consistently broad construction of the Speech or Debate Clause rests on the belief that it must be so construed to provide the independence which is its central purpose.

This case illustrates vividly the harm that judicial interference may cause. A legislative inquiry has been frustrated for nearly five years during which the Members and their aide have been obliged to devote time to consultation with their counsel concerning the litigation, and have been distracted from the purpose of their inquiry. The Clause was written to prevent the need to be confronted by such "questioning" and to forbid invocation of judicial power to challenge the wisdom of Congress' use of its investigative authority.

V

the Senate

When ~~this~~ case was in the Court of Appeals it was consolidated with three other cases[17] because it was

[17] *Progressive Labor Party, et al.* v. *House Internal Security Committee, et al.* (C. A. No. 71-1609); *National Peace Action Coalition, et al.* v. *House Internal Security Committee, et. al.* (C. A.

assumed that "a decision in [the Senate] case might well control the disposition of [the others]." Those cases involve subpoenas from the House Internal Security Committee to banks for the bank records of certain organizations. As here, the organizations whose bank records were sought sued alleging that if the subpoenas were honored their constitutional rights would be violated. The issue of speech or debate protection for Members and aides is presented in all the cases. However, the complaints in the House cases are different from the complaint [in the Senate case] here, additional parties are involved, and consequently additional issues may be presented.

Progress in [the House] cases was suspended when they were in the pleading stage awaiting the outcome of [the Senate aspect of] this case. The issues in them, therefore, have not been joined. Additionally, it appears that the Session in which the House subpoenas were issued has expired. Since the House, unlike the Senate, is not a continuing body, *McGrain* v. *Daugherty*, *supra*, 273 U. S. 135, 181; *Gojack* v. *United States*, 384 U. S. 702, 717 n. 4 (1967), [a] question of mootness [question] may be raised. Moreover it appears that the committee that issued the subpoenas has been abolished by the House, H. Res. 5, 94th Cong., 1st Sess., January 14, 1975. In view of these problems, and because [the House aspect of this case] were not briefed or argued here, we feel it would be unwise to attempt to decide any issues they might present that are not presented in the [instant] [Senate aspect of this] case. *Powell* v. *McCormack*, 395 U. S. 486, 496 n. 8, 559 (STEWART, J., dissenting).

Judgment [with respect to] the Senate case is reversed and the case is remanded to the Court of Appeals for entry of a judgment directing the District Court to dismiss the com- [aspect of this]

No. 71-2034); *Peoples Coalition for Peace and Justice* v. *House Internal Security Committee, et al.* (C. A. No. 71-1717).

aspects of this case

plaint. The House cases are remanded with directions to remand to the District Court for further consideration consistent with this opinion.

Reversed and remanded.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 13, 1975

PERSONAL

Re: 73-1923 - Eastland v. United States Servicemen's Fund

Dear Lewis:

I agree wholeheartedly with your sentiments and am as offended as you at the protracted nature of this litigation but felt a Court opinion could not stress this too much without provoking a concurrence -- but not like yours. The purposes served by the Speech or Debate Clause -- especially when they relate to an ongoing legislative function -- clearly require speedy resolution of actions like this one. I am not sure, however, whether the respondents were entirely responsible for the delay. Petitioners, who had just been "burned" by Powell v. McCormack, it seems to me were in no great haste. Several times they agreed to extensions of time, and after the original expeditious hearings in both the District Court and the Court of Appeals everything seemed to settle down and, to my knowledge, petitioners did not press for expedited consideration of the matter.

In the opinion I have tried to remedy the delay problem to some extent. For example, on page 14 the opinion states:

> "On this record the pleadings show that the actions of the Members and the Chief Counsel fall within the 'sphere of legitimate legislative activity.' " (Emphasis added)

The underlined phrase is for the benefit of the District Judge confronted by one of these actions. It is intended to remind District Judges that they may dismiss on the pleadings alone when a complaint shows on its face that no relief may be granted against those enjoying Speech or Debate protection.

It might be wise for me to add something, making it even clearer that expeditious treatment of cases like this one is essential. For instance, at the end of the first full paragraph on page 19 I could add a footnote to this effect:

> -/ Although the Speech or Debate Clause has never been read so broadly that legislators "are absolved from the duty of filing a motion to dismiss," Powell v. McCormack, supra, 395 U.S. 486, 505 n. 25; see Tenney v. Brandhove, 341 U.S. 367, 376-77, the purposes which the Clause serves require that such motions be given the most expeditious treatment by District Courts because one branch of government is being asked to halt the functions of a coordinate branch. If there is a dismissal and an appeal, Courts of Appeals have a duty to see that the litigation is swiftly resolved. Delay [redacted] in this litigation has frustrated a valid Congressional inquiry.

For my part, I would see no need to hand even "negative bouquets" to the lawyers for the respondents. I'd give them no brickbats, but no brownie points!

Regards,

WEB

Mr. Justice Powell

I'll stand by to discuss further awaiting your reaction to my proposed footnote - so as to get word to others. WEB

May 15, 1975

No. 73-1923 Eastland v. United States

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

May 15, 1975

No. 73-1923 Eastland v. United States

Dear Chief:

Your letter of May 13, suggests to me that the Senate Committee itself bears part of the responsibility for the unconscionable delay.

In view of this, I am inclined to abandon my concurrence if a footnote is added along the lines indicated on page 2 of your letter. I enclose a copy of your proposed footnote, in which I have added the next to the last sentence. The footnote will be strengthened if the reader is reminded that the Senate Subcommittee has been enjoined for half a decade.

Sincerely,

The Chief Justice

lfp/ss

Although the Speech or Debate Clause has never been read so broadly that legislators "are absolved from the duty of filing a motion to dismiss," Powell v. McCormack, supra, 395 U.S. 486, 505 n. 25; see Tenney v. Brandhove, 341 U.S. 367, 376-77, the purposes which the Clause serves requires that such motions be given the most expeditious treatment by District Courts because one branch of government is being asked to hal the functions of a coordinate branch. If there is a dismissal and an appeal, Courts of Appeals have a duty to see that the litigation is swiftly resolved. Enforcement of the Subcommittee's subpoena has been restrained since June 1970, nearly five years, while this litigation dragged through the courts. This protracted delay has frustrated a valid Congressional inquiry.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 21, 1975

Re: 73-1923 - Eastland v. United States Servicemen's Fund

MEMORANDUM TO THE CONFERENCE:

A purely stylistic change is being made on page 20 so that the final sentence in the first full paragraph will read:

> "In view of these problems, and because the House aspects of this case were not briefed or argued here, we conclude it would be unwise to attempt to decide any issues they might present that are not resolved in the Senate aspect of this case. Powell v. McCormack, 395 U.S. 486, 496 n. 8, 559 (STEWART, J., dissenting)."

The Headnote "lineup" prepared by Mr. Putzel reads:

> "BURGER, C.J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, MARSHALL, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. MARSHALL, J., filed a concurring opinion in which BRENNAN and STEWART, JJ., joined. DOUGLAS, J., filed a dissenting opinion."

Regards,

WEB

Jlle

In view of changes in C.J.'s opinion — especially addition of a note added on this point, I withdraw this op.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1923

James O. Eastland et al., Petitioners, v. United States Servicemen's Fund et al. | On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[May —, 1975]

MR. JUSTICE POWELL, concurring.

The Court holds today, some five years after this litigation was commenced, that the petitioners are immune from suit and that the respondents' action—though properly entertained—should have been dismissed. Thus, on the official records, the respondents lost their case. In fact, they *won* it.

The subpoena of the Subcommittee was issued on May 28, 1970, commanding production of the requested records on June 4, 1970. Prior to that date, respondents brought this action to enjoin implementation of the subpoena *duces tecum*. The Court's opinion traces the tedious history of the resulting litigation, which did not reach its denouement in the Court of Appeals until January 23, 1974. We granted certiorari on October 11, 1974; the case was argued on January 22, 1974; and—at long last—we now direct dismissal of the complaint.

During the intervening five years a legitimate inquiry of the Senate has been frustrated. Of course, we have no occasion today to decide the merits of respondents' First Amendment claim. Nor do we know whether the activities of respondents, addressed to United States servicemen during a time of war, were being financed or controlled by "foreign governments." The Senate Sub-

mere passage of time to determine the outcome of the case

committee considered this to be a real possibility. If it were true, the five-year delay in resolution of this litigation, during which time an injunction foreclosed legislative inquiry, was intolerable. Presumably, during this period, respondents' activities continued unrestrained. The long delay may have destroyed whatever efficacy the legislative inquiry might once have had in serving the public interest.

I am concerned, not with this case in 1975, but rather with the functioning of the judicial system in a way that allows a party, whose cause ultimately may be resolved against him, to delay decision of a case until the mere passage of time achieves the party's ends. The very conduct that concerned the Senate Subcommittee was allowed to continue for years free of legislative investigation. As the Court today notes:

> "Private civil actions . . . may be used to delay and disrupt the legislative function." *Ante*, at 11.

I emphasize that these observations are not directed at counsel, who were entitled to take advantage of all available lawful procedures to further their clients' interests. And, in noting the success of resourceful counsel in exploiting delay under injunctive protection, I am not unmindful of the duty of courts to protect the rights of citizens. As is well stated in MR. JUSTICE MARSHALL's concurring opinion, the Speech or Debate Clause "does not immunize congressional action from judicial review," and it may be conceded that the issues presented in this case merited careful judicial consideration. Indeed this is apparent from the decisions of the District Court and the Court of Appeals.

My concern is directed solely to protracted delay in the judicial process, accompanied by injunctive restraint of legislative inquiry into what appeared to be an emergency situation. Although expedited hearings were

sometimes held in the course of the proceedings below, the end result reflects little evidence of expedition and convincing evidence of successful delaying tactics. In such a case, it seems to me that the Federal Judiciary—and here I include this Court—must find more effective means for bringing injunctive litigation to an expeditious conclusion. Legitimate concern for protecting the asserted rights of citizens must be accompanied by an equal concern for not allowing the courts to be used as a means—as they apparently were in this case—of shutting off legislative inquiry for half a decade.

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
1/27/75								
1st draft 4-7-75 2nd draft 4-21-75 3rd draft 4-29-75 Changes made 5-6-75	dissent 1st draft 5/16/75	Join TM 5-2-75	Join TM 4-28-75	Join CJ 4-22-75	Concurrence 4-16-75 2nd draft 4-23-75 3rd draft 4-30-75 4th draft 5-20-75	Join CJ 4-25-75	Join CJ 5/15/75	Join CJ 4-25-75
					73-1923 Eastland v. U.S. Servicemen's Fund			