HUTCHINSON v. PROXMIRE

SUPREME COURT OF THE UNITED STATES
443 U.S. 111
June 26, 1979

OPINION: Chief Justice Burger...We granted certiorari to resolve three issues: (1) Whether a Member of Congress is protected by the **Speech or Debate Clause** of the Constitution, **Art. I, §6**, against suits for allegedly defamatory statements made by the Member in press releases and newsletters; (2) whether petitioner Hutchinson is either a "public figure" or a "public official," thereby making applicable the "actual malice" standard of *New York Times Co. v. Sullivan* (1964)[1]; and (3) whether respondents were entitled to summary judgment.

Ronald Hutchinson, a research behavioral scientist, sued respondents, William Proxmire, a United States Senator, and his legislative assistant, Morton Schwartz, for defamation arising out of Proxmire's giving what he called his "Golden Fleece" award. The "award" went to federal agencies that had sponsored Hutchinson's research. Hutchinson alleged that in making the award and publicizing it nationwide, respondents had libeled him, damaging him in his professional and academic standing, and had interfered with his contractual relations. The District Court granted summary judgment for respondents and the Court of Appeals affirmed. We reverse and remand to the Court of Appeals for further proceedings consistent with this opinion.

Respondent Proxmire is a United States Senator from Wisconsin. In March 1975, he initiated the "**Golden Fleece of the Month Award**" to publicize what he perceived to be the **most egregious examples of wasteful governmental spending**. The second such award, in April 1975, went to the

[1]Case 1A-S-12 on this website.

National Science Foundation, the National Aeronautics and Space Administration, and the Office of Naval Research, for spending almost half a million dollars during the preceding seven years to fund Hutchinson's research...

The bulk of Hutchinson's research was devoted to the study of emotional behavior. In particular, he sought an objective measure of aggression, concentrating upon the behavior patterns of certain animals, such as the clenching of jaws when they were exposed to various aggravating stressful stimuli. The National Aeronautics and Space Agency and the Navy were interested in the potential of this research for resolving problems associated with confining humans in close quarters for extended periods of time in space and undersea exploration...

While seeking evidence of wasteful governmental spending, Schwartz read copies of reports that Hutchinson had prepared under grants from NASA. Those reports revealed that Hutchinson had received grants from the Office of Naval Research, the National Science Foundation, and the Michigan State Department of Mental Health. Schwartz also learned that other federal agencies had funded Hutchinson's research. After contacting a number of federal and state agencies, Schwartz helped to prepare a speech for Proxmire to present in the Senate on April 18, 1975; the text was then incorporated into an advance press release, with only the addition of introductory and concluding sentences. Copies were sent to a mailing list of 275 members of the news media throughout the United States and abroad.

Schwartz telephoned Hutchinson before releasing the speech to tell him of the award; Hutchinson protested that the release contained an inaccurate and incomplete summary of his research. Schwartz replied that he thought the summary was fair.

In the speech, Proxmire described the federal grants for Hutchinson's research, concluding with the following comment:

> "The funding of this **nonsense** makes me almost angry enough to scream and kick or even clench my jaw. It seems to me it is **outrageous**.
>
> "Dr. Hutchinson's studies should make the taxpayers as well as his monkeys grind their teeth. In fact, the good doctor has made a fortune from his monkeys and in the process made a monkey out of the American taxpayer.
>
> "It is time for the Federal Government to get out of this '**monkey business**.' In view of the **transparent worthlessness** of Hutchinson's study of jaw-grinding and biting by angry or hard-drinking monkeys, it is time we put a stop to the bite Hutchinson and the bureaucrats who fund him have been taking of the taxpayer."

In May 1975, Proxmire referred to his Golden Fleece Awards in a newsletter sent to about 100,000 people whose names were on a mailing list that included constituents in Wisconsin as well as persons in other states. The newsletter repeated the essence of the speech and the press release. Later

in 1975, Proxmire appeared on a television interview program where he referred to Hutchinson's research, though he did not mention Hutchinson by name.

The final reference to the research came in a newsletter in February 1976. In that letter, Proxmire summarized his Golden Fleece Awards of 1975. The letter did not mention Hutchinson's name, but it did report:

> " -- The NSF, the Space Agency, and the Office of Naval Research won the 'Golden Fleece' for spending jointly $500,000 to determine why monkeys clench their jaws...
>
> "All the studies on why monkeys clench their jaws were dropped. No more monkey business."

After the award was announced, Schwartz, acting on behalf of Proxmire, contacted a number of the federal agencies that had sponsored the research. In his deposition he stated that he did not attempt to dissuade them from continuing to fund the research but merely discussed the subject. Hutchinson, by contrast, contends that these calls were intended to persuade the agencies to terminate his grants and contracts.

On April 16, 1976, Hutchinson filed this suit in United States District Court in Wisconsin. In Count I he alleges that as a result of the actions of Proxmire and Schwartz he has "suffered a loss of respect in his profession, has suffered injury to his feelings, has been humiliated, held up to public scorn, suffered extreme mental anguish and physical illness and pain to his person. Further, he has suffered a loss of income and ability to earn income in the future." Count II alleges that the respondents' conduct has interfered with Hutchinson's contractual relationships with supporters of his research. He later amended the complaint to add an allegation that his rights of privacy and peace and tranquility have been infringed.

Respondents...asserted that all of their acts and utterances were protected by the **Speech or Debate Clause**. In addition, they asserted that their **criticism of the spending of public funds** was privileged under the **Free Speech Clause** of the First Amendment. They argued that Hutchinson was both a public figure and a public official, and therefore would be obliged to prove the existence of "actual malice." Respondents contended that the facts of this case would not support a finding of actual malice...

The District Court...reasoned that the Speech or Debate Clause afforded absolute immunity for respondents' activities in investigating the funding of Hutchinson's research, for Proxmire's speech in the Senate, and for the press release covering the speech. The court concluded that the investigations and the speech were clearly within the ambit of the Clause. The press release was said to be protected because it fell within the "**informing function**" of Congress. To support its conclusion, the District Court relied upon cases interpreting the **franking privilege** granted to Members by statute.

Although the District Court referred to the "informing function" of Congress and to the franking privilege, it did not base its conclusion concerning the press release on those analogies. Instead, the District Court held that the "**press release**, in a constitutional sense, was no different than would have been a television or radio broadcast of his speech from the Senate floor." That the District Court did not rely upon the "informing function" is clear from its implicit holding that the newsletters were not protected.

The District Court then turned to the First Amendment to explain the grant of summary judgment on the claims arising from the newsletters and interviews. It concluded that Hutchinson was a **public figure** for purposes of determining respondents' liability:

> "Given Dr. Hutchinson's long involvement with publicly-funded research, his active solicitation of federal and state grants, the local press coverage of his research, and the public interest in the expenditure of public funds on the precise activities in which he voluntarily participated, the court concludes that he is a public figure for the purpose of this suit. As he acknowledged in his deposition, 'Certainly, any expenditure of public funds is a matter of public interest.'"

...The District Court held that...Hutchinson would not be able to recover...The Court of Appeals affirmed...

The purpose of the Speech or Debate Clause is to protect Members of Congress "not only from the consequences of litigation's results but also from the burden of defending themselves." If the respondents have immunity under the Clause, no other questions need be considered for they may "not be questioned in any other Place."...

In support of the Court of Appeals holding that newsletters and press releases are protected by the Speech or Debate Clause, respondents rely upon both historical precedent and present-day congressional practices. They contend that impetus for the Speech or Debate Clause privilege in our Constitution came from the history of parliamentary efforts to protect the right of members to criticize the spending of the Crown and from the prosecution of a Speaker of the House of Commons for publication of a report outside of Parliament. Respondents also contend that in the modern day very little speech or debate occurs on the floor of either House; from this they argue that press releases and newsletters are necessary for Members of Congress to communicate with other Members. For example, in his deposition Proxmire testified:

> "I have found in 19 years in the Senate that very often a statement on the floor of the Senate or something that appears in the Congressional Record misses the attention of most members of the Senate, and virtually all members of the House, because they don't read the Congressional Record. If they are handed a news release, or something, that is going to call it to their attention..."

Respondents also argue that an essential part of the duties of a Member of Congress is to inform

constituents, as well as other Members, of the issues being considered.

The Speech or Debate Clause has been directly passed on by this Court relatively few times in 190 years. Literal reading of the Clause would, of course, confine its protection narrowly to a "Speech or Debate in either House." But the Court has given the Clause a practical rather than a strictly literal reading which would limit the protection to utterances made within the four walls of either Chamber. Thus, we have held that committee hearings are protected, even if held outside the Chambers; committee reports are also protected.

The gloss going beyond a strictly literal reading of the Clause has not, however, departed from the objective of protecting only legislative activities. In Thomas Jefferson's view:

> "The privilege is restrained to things done in the House in a Parliamentary course...For the Member is not to have privilege...to exceed the bounds and limits of his place and duty."

...Nearly a century ago,...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." 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. As the Court of Appeals put it, the courts have extended the privilege to matters beyond pure speech or debate in either House, but 'only when necessary to prevent indirect impairment of such deliberations.'" *Gravel v. United States*.

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**. In *Brewster*, we observed:

> "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."

Claims under the Clause going beyond what is needed to protect legislative independence are to be closely scrutinized. In *Brewster* we took note of this:

> "The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from too sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerates and protects behavior on the part of Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process."

Indeed, the 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.

Mr. 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 libellous 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 colour 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. Every citizen has as good a right to be protected by the laws from malignant scandal, and false charges, and defamatory imputations, as a member of congress has to utter them in his seat."

...In *Gravel v. United States*, we recognized that the doctrine denying immunity for republication had been accepted in the United States:

> "[Private] publication by Senator Gravel...was in no way essential to the deliberations of the Senate; nor does questioning as to private publication threaten the integrity or independence of the Senate by impermissibly exposing its deliberations to executive influence."

We reaffirmed that principle in *Doe v. McMillan*:

> "A Member of Congress may not with impunity publish a libel from the speaker's stand in his home district, and clearly the Speech or Debate Clause would not protect such an act even though the libel was read from an official committee report. The reason is that republishing a libel under such circumstances is <u>not an essential part of the legislative process</u> and is not part of that deliberative process 'by which Members participate in committee and House proceedings.'"

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. But in *Brewster*, we rejected respondents' expansive reading of the Clause:

> "It is well known, of course, that Members of the Congress engage in many activities other than the purely legislative activities protected by the Speech or Debate Clause. These include...preparing so-called 'news letters' to constituents, news releases, and speeches delivered outside the Congress."

...We are unable to discern any "conscious choice" 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. It was in that sense that Woodrow Wilson used "informing" in a statement quoted by respondents. In reality, Wilson's statement related to congressional efforts to learn of the activities of the Executive Branch and administrative agencies; he did not include wide-ranging inquiries by individual Members on subjects of their choice. Moreover, Wilson's statement itself clearly implies a distinction between the informing function and the legislative function:

> "Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function...[The] only really self-governing people is that people which discusses and interrogates its administration."

It is in this narrower Wilsonian sense that this Court has employed "informing" in previous cases holding that congressional efforts to inform itself through committee hearings are part of the legislative function.

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.

Doe v. McMillan (1973) is not to the contrary. It dealt only with reports from congressional committees, and held that Members of Congress could not be held liable for voting to publish a report. Voting and preparing committee reports are the individual and collective expressions of opinion within the legislative process. As such, they are protected by the Speech or Debate Clause. **Newsletters and press releases, by contrast, are primarily means of informing those outside the legislative forum; they represent the views and will of a single Member.** It does not disparage either their value or their importance to hold that they are not entitled to the protection of the Speech or Debate Clause.

Since *New York Times Co. v. Sullivan* (1964), this Court has sought to define the accommodation required to assure the vigorous debate on the public issues that the First Amendment was designed to protect while at the same time affording protection to the reputations of individuals. In *Gertz v. Robert Welch, Inc.*, the Court offered a general definition of "public figures":

> "For the most part those who attain this status [of public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment."

It is not contended that Hutchinson attained such prominence that he is a public figure for all purposes. Instead, respondents have argued that the District Court and the Court of Appeals were correct in holding that Hutchinson is a public figure for the limited purpose of comment on his receipt of federal funds for research projects. That conclusion was based upon two factors: first, Hutchinson's successful application for federal funds and the reports in local newspapers of the federal grants; second, Hutchinson's access to the media, as demonstrated by the fact that some newspapers and wire services reported his response to the announcement of the Golden Fleece Award. **Neither of those factors demonstrates that Hutchinson was a public figure prior to the controversy engendered by the Golden Fleece Award; his access, such as it was, came after the alleged libel.**

On this record, Hutchinson's activities and public profile are much like those of countless members of his profession. His published writings reach a relatively small category of professionals concerned with research in human behavior. To the extent the subject of his published writings became a matter

of controversy, it was a consequence of the Golden Fleece Award. Clearly, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure.

Hutchinson did not thrust himself or his views into public controversy to influence others. Respondents have not identified such a particular controversy; at most, they point to concern about general public expenditures. But that concern is shared by most and relates to most public expenditures; it is not sufficient to make Hutchinson a public figure. If it were, everyone who received or benefited from the myriad public grants for research could be classified as a public figure -- a conclusion that our previous opinions have rejected. The "use of such subject-matter classifications to determine the extent of constitutional protection afforded defamatory falsehoods may too often result in an improper balance between the competing interests in this area." *Time, Inc. v. Firestone.*

Moreover, Hutchinson at no time assumed any role of public prominence in the broad question of concern about expenditures. Neither his applications for federal grants nor his publications in professional journals can be said to have invited that degree of public attention and comment on his receipt of federal grants essential to meet the public figure level. The petitioner in *Gertz* had published books and articles on legal issues; he had been active in local community affairs. Nevertheless, the Court concluded that his activities did not make him a public figure.

Finally, we cannot agree that Hutchinson had such access to the media that he should be classified as a public figure. Hutchinson's access was limited to responding to the announcement of the Golden Fleece Award. He did not have the regular and continuing access to the media that is one of the accouterments of having become a public figure.

We therefore reverse the judgment of the Court of Appeals and remand the case to the Court of Appeals for further proceedings consistent with this opinion...

DISSENT: Justice Brennan...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...**