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Opinion No. 08-128

Liability of Members of General Assembly for Impeachment or Removal of Judges

QUESTION

What is the liability of members of the general assembly for their impeachment or removal of a judge?

OPINION

State legislators are entitled to absolute legislative immunity from federal and state law claims for money damages and prospective relief for legislative activities undertaken based on their constitutional role in the impeachment or removal of a judge.

ANALYSIS

The subject of this opinion request was addressed in *Larsen v. Senate of the Commonwealth of Pennsylvania*, 152 F.3d 240 (3rd Cir. 1998). The Third Circuit Court of Appeals in *Larsen* held that state senators were entitled to absolute legislative immunity from a former state supreme court justice's 42 U.S.C. §1983 claims for money damages and prospective relief, based on constitutional violations that allegedly occurred during the justice's impeachment and removal from office. The plaintiff justice's challenges to the impeachment proceedings included the senate's use of a committee to hear evidence, the absence of some committee members during presentation of evidence, the inadequacy of the final report, the format of the report, the inadequacy of the evidence, the factors considered by the senators in casting their votes, and the alleged consideration by senators of material outside the record. *Id*. at 254.

The immunity accorded state legislators for federal law claims for legitimate legislative activities taken in their legislative capacities is a creature of federal common law and is derived from the protection accorded federal legislators by the Speech or Debate Clause. *Id*. at 249. The *Larsen* Court found that legislators performing their role in impeachment proceedings were acting in their legislative rather than their judicial capacities.

> Given that impeachments are matters "'which the Constitution places within the jurisdiction of either House,'"(citation omitted), and represent "'a field where legislators traditionally have power to act,'"(citation omitted), we are convinced that when legislators play the role they have been given in impeachment proceedings, they act within the sphere of legitimate legislative activity and within their legislative capacities. Thus, the necessity for independence requires that legislators be accorded legislative immunity and "not be questioned in any other place," U.S. Const, art.I, §7, cl.1, concerning their activity and their decision.

Id. at 251-52.

Similarly, in Tennessee our Constitution places the impeachment and removal of judges within the jurisdiction of the General Assembly. It provides that "Judges of the Supreme Court, Judges of Inferior Courts, [and] Chancellors" may be impeached by the General Assembly. Tenn. Const. art. V, §4. Judges may also be removed from office by the General Assembly pursuant to Tenn. Const. art. VI, §6. To implement article VI, §6 the General Assembly has created the court of the judiciary, authorizing it to recommend the removal of judges and providing for an appellate review of the recommendation. Tenn. Code Ann., title 17, ch. 5.

Under the Speech and Debate Clause of the Tennessee Constitution individual legislators are immune from any kind of state law suit, including criminal prosecutions and suits for damages, injunctions and declaratory judgments provided the legislator's action is part of the Legislature's deliberative process. *Mayhew v. Wilder*, 46 S.W.3d 760, 775 (Tenn. Ct. App. 2001). In addition, legislators enjoy a common law immunity from liability for their legislative acts. *Id.*

Determining issues of liability turns on the operative facts and the causes of action alleged, and it is difficult to give definitive opinions in the abstract. However, as a general rule, state legislators should be entitled to absolute legislative immunity from federal and state law claims for money damages and prospective relief for legislative activities undertaken based on their constitutional role in the impeachment or removal of a judge.

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