

**Zachary Christy, Assembly Counsel Intern (I mostly get coffee for Dean and Matt, but sometimes I can talk about the law)**

# **Legislative Immunity: Everything you wanted to know but were too afraid to tweet**

**[www.muni.org/assembly](http://www.muni.org/assembly)**



# Why This Matters

Every elected official eventually asks:

- Can I be sued for something I say during a meeting?
- Does legislative immunity protect me?
- Where does that protection begin and end?
- Does immunity follow me outside the Assembly Chamber?

The answer is yes, sometimes.

Understanding legislative immunity allows elected officials to debate difficult issues vigorously while recognizing the limits of that protection.



# The Big Picture

**The purpose of legislative immunity is simple: Legislatures should be free to debate, deliberate, and vote without fear that every disagreement will become a lawsuit.**

**The Doctrine exists to protect:**

- **Independent judgment**
- **Open debate**
- **Legislative decision-making**
- **The public interest**

**It is not a personal privilege designed to protect bad behavior. As the Supreme Court has repeatedly explained, the privilege exists to protect the legislative process itself.**

# But Zach, I have a 1<sup>st</sup> Amend. Right!

**"The Senators attempt to claim a personal First Amendment right to walk out, but Carrigan is clear that [t]he legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it."**

***Linthicum v. Wagner*, 94 F.4th 887 (2024)**

**The most important thing to remember is that the 1<sup>st</sup> amendment is designed to protect the public from the government. When you are conducting yourself within the bounds of your governmental office, you do not have the protections you do when are conducting yourself as a private citizen.**

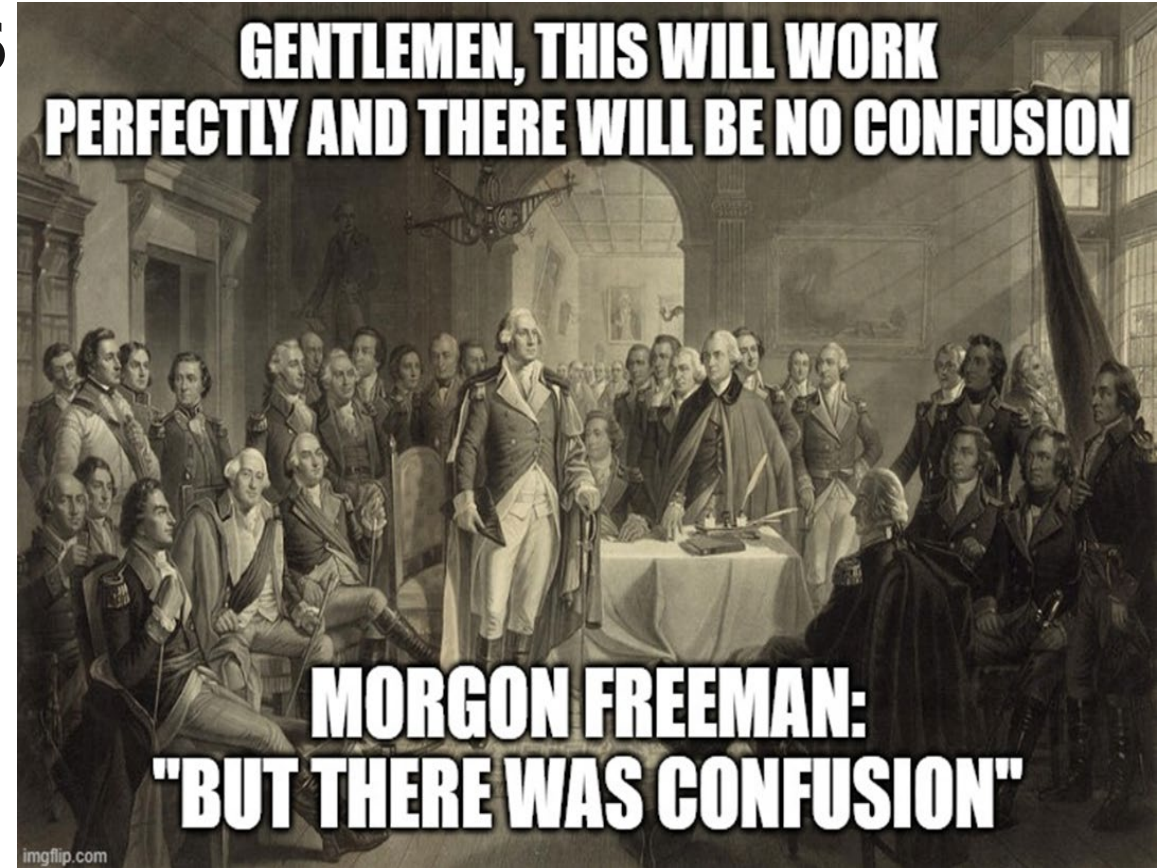


# Constitutional Foundation

**United States Constitution, Art. I, Sec. 6 provides: "For any Speech or Debate in either House, they shall not be questioned in any other Place."**

**This clause is known as the Speech or Debate Clause.**

**Important: It applies only to Members of Congress**



# Alaska Constitution

**Alaska has a nearly identical provision in its state constitution**

**Alaska Constitution Art. II, Sec. 6 “Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session.”**

**Like the federal Constitution, this provision applies to members of the Alaska Legislature, not municipal legislators. The Alaska Supreme Court has recognized that this provision serves the same historic purpose as the federal Speech or Debate Clause: protecting legislative independence.**

# What Protects Muni. Assembly Members

**Because neither the U.S. Constitution nor the Alaska Constitution directly covers city councils or municipal assemblies, their protection comes from the common-law doctrine of legislative immunity.**

**The United States Supreme Court has held that local legislators receive the same protection as state legislators when performing legislative functions**

# **Tenney v. Brandhove (1951)**

**The Supreme Court held that state legislators enjoy absolute immunity for legitimate legislative activities.**

**Justice Frankfurter Famously held, “The claim of an unworthy purpose does not destroy the privilege.”**

**This means that bad motive generally does not eliminate legislative immunity.**

# Bogan v. Scott-Harris (1998)

**This case is one every city council should know.**

**The Supreme Court unanimously held that “local legislators receive absolute legislative immunity for legislative acts”**

**The court explained that city council members (including Anchorage Assembly Members) perform the same core legislative functions as members of Congress and state legislatures:**

- Debating**
- Introducing legislation**
- Voting**
- Conducting hearings**

**Those activities deserve the same protection.**

# **The Functional Test (more boring but important legal stuff)**

**The single most important principle is this: Legislative immunity depends upon the function being performed.**

**Courts do not ask:**

- Where did it happen?**
- Was the public present?**
- Was the speaker elected?**
- Did they use their official title?**
- Was the statement offensive?**

**Instead, courts ask: Was the official performing a legislative function?**

# The Most Difficult Question

**Legislative immunity clearly exists.**

**The difficult question though is:  
Where does it stop?**

**The answer is boring and uninspired  
from centuries old legal scholars  
and poor law students alike: It  
depends.**

**The farther an activity moves away  
from legislative process, the weaker  
the immunity becomes.**



# Clearly Protected Legislative Functions

**These activities are at the core of legislative immunity.**

- **Speaking during regular Assembly meetings and/or special meetings**
- **Committee meetings**
- **Work sessions**
- **Legislative investigations**
- **Public hearings**
- **Debating ordinances and/or resolutions**
- **Introducing and/or sponsoring legislation**
- **Voting**
- **Making motions**

**These are exactly the activities legislative immunity was created to protect.**

# **Absolute Means Absolute**

**Legislative immunity is generally absolute for legislative acts.**

**That means protection usually exists even if someone alleges:**

- Malice**
- Retaliation**
- Political motivation**
- Bad faith**
- Intentional falsehood**

**If the act itself is legislative, motive generally does not matter.**

# Defamation

**One of the primary protections of legislative immunity concerns defamation.**

**If an Assembly Member makes statements during legislative debate concerning matters before the Assembly,**

**They are generally immune from lawsuits alleging:**

- Libel**
- Slander**
- Defamation**

**This protection exists because open debate would be impossible if every controversial statement resulted in litigation**

# Beyond Formal Meetings

Outside formal meetings, the law becomes less certain.

There is no bright-line rule.

Instead, courts continue to apply the same functional analysis.

The question remains: Was the member performing a legislative function?



# Activities *Probably* Protected

## **Legislative Newsletters**

**Newsletter distributed to constituents explaining:**

- Pending ordinances
- Assembly actions
- Committee work
- Legislative priorities

**These are likely closely connected to legislative duties.**

## **Drafting Legislation**

**Meeting privately with:**

- Constituents
- Neighborhood groups
- Industry representatives
- Subject matter experts

**To develop an ordinance or resolution is likely part of the legislative process.**

**Fact gathering is a traditionally legislative function.**

## **Legislative Emails**

**Emails discussing:**

- Proposed ordinances
- Amendments
- Legislative research
- Committee work

**These are likely legislative in nature.**

**The medium does not change the function**

# Gray Areas

Some activities have little or no direct case law.

Protection depends heavily upon the surrounding facts-  
For example:

## Community Council Meetings

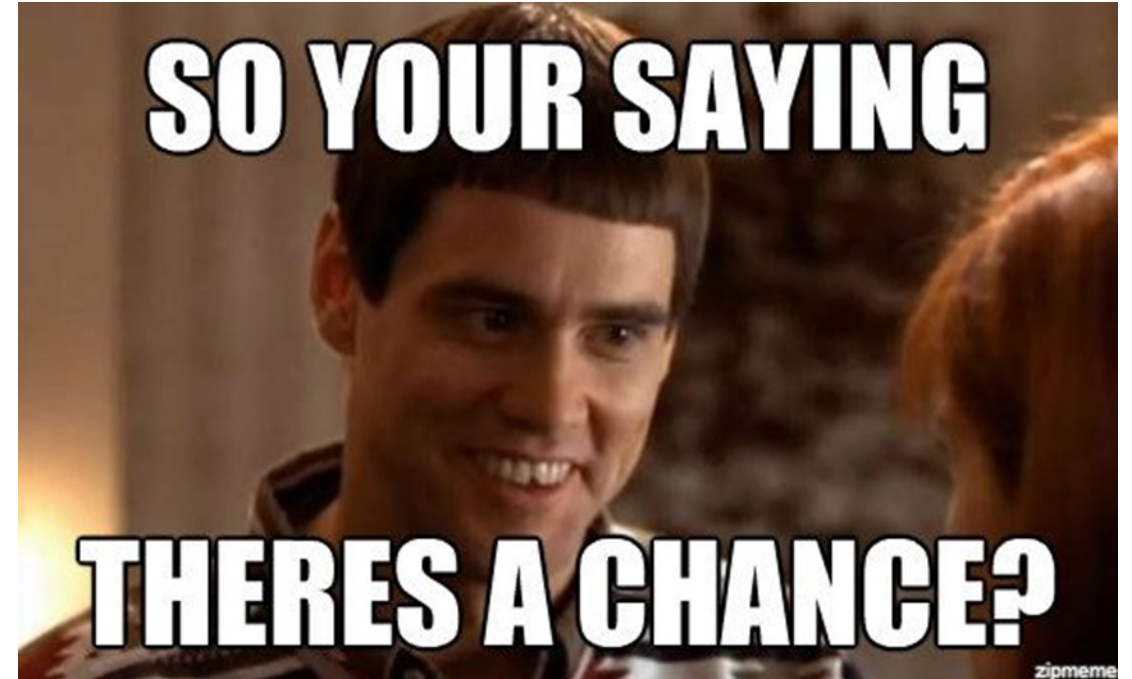
Speaking about pending legislation may resemble legislative work.

General political advocacy may not.

## Social Media

Perhaps the largest unresolved area. Courts will generally examine

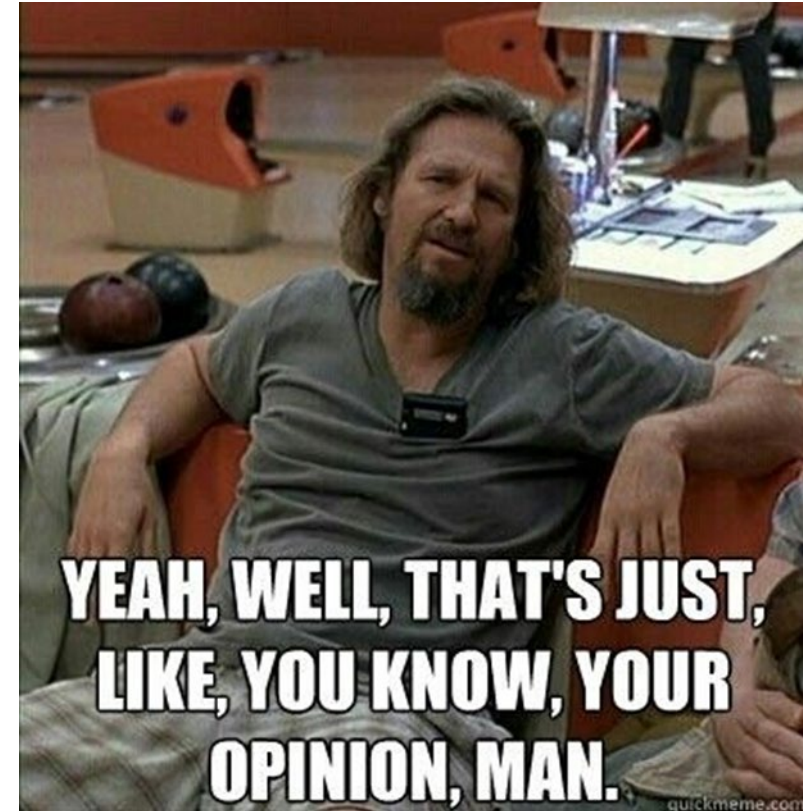
- Was the post discussing legislation?
- Was it constituent outreach?
- Was it campaign speech?
- Was it political commentary or was it personal?



# Protected Conduct

**Legislative immunity generally protects:**

- **Legislative debate**
- **Statements made during debate**
- **Votes**
- **Sponsorship of legislation**
- **Committee deliberations**
- **Legislative investigations**
- **Introducing amendments**



# Conduct Not Protected

**Legislative Immunity does not protect conduct that is not legislative. Examples of this and general tom-foolery include:**

- **Harassment**
- **Administrative employment decisions**
- **Bribes**
- **Assault**
- **Destruction of Property**



# Practical Rule of Thumb

The question to ask is: Would this activity still exist if I were not exercising legislative authority?

If the answer is yes, immunity becomes less likely

Examples:

- Campaigning
- Networking
- Fundraising
- Personal disputes
- Social interactions

If the answer is no, because the activity exists only as part of making laws, immunity becomes much stronger

Examples:

- Debating and investigating legislation
- Introducing ordinances
- Voting

# Key Takeaways

- Legislative immunity exists to protect the legislative process.
- Municipal legislators are protected through the common law and Supreme Court precedent- not directly by the U.S. or Alaska Constitution.
- Courts apply a functional test to determine whether an act is legislative.
- Debate, voting, sponsoring legislation, and committee work receive the strongest protection.
- The farther an activity moves from law making, the weaker the immunity becomes.
- Some situations, particularly social media and public appearances outside formal meetings, remain legally unsettled and require careful, fact-specific analysis.

# Final Thoughts

**Legislative immunity is not about where you are.**

**It is not about your title.**

**It is not about whether the public is watching.**

**It is about what government function are performing.**

**If the activity is integral to the legislative process, the protection is strong**

**If it is not, legislative immunity may not apply**

**LEGISLATIVE  
IMMUNITY ALLOWS  
ME TO SAY ANYTHING**

**THERE IS NO  
STATUTORY RULE ON LEG.  
IMM. FOR LOCAL  
GOVERNMENT LEGISLATORS**

**BOGAN AND TENNEY  
GRANT ME SOME  
PROTECTIONS IN MY SPEECH  
AS A GOVERNMENT OFFICIAL**

**THE FURTHER  
AWAY AN ACTIVITY IS  
FROM THE LEGISLATIVE  
PROCESS, THE  
WEAKER THE PROTECTION**





Zachary Christy, Coffee Boy

**QUESTIONS?**

**THANK YOU**

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