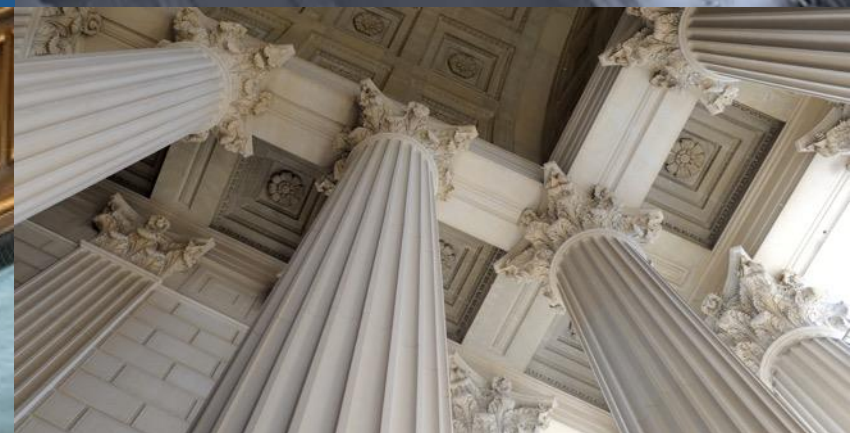


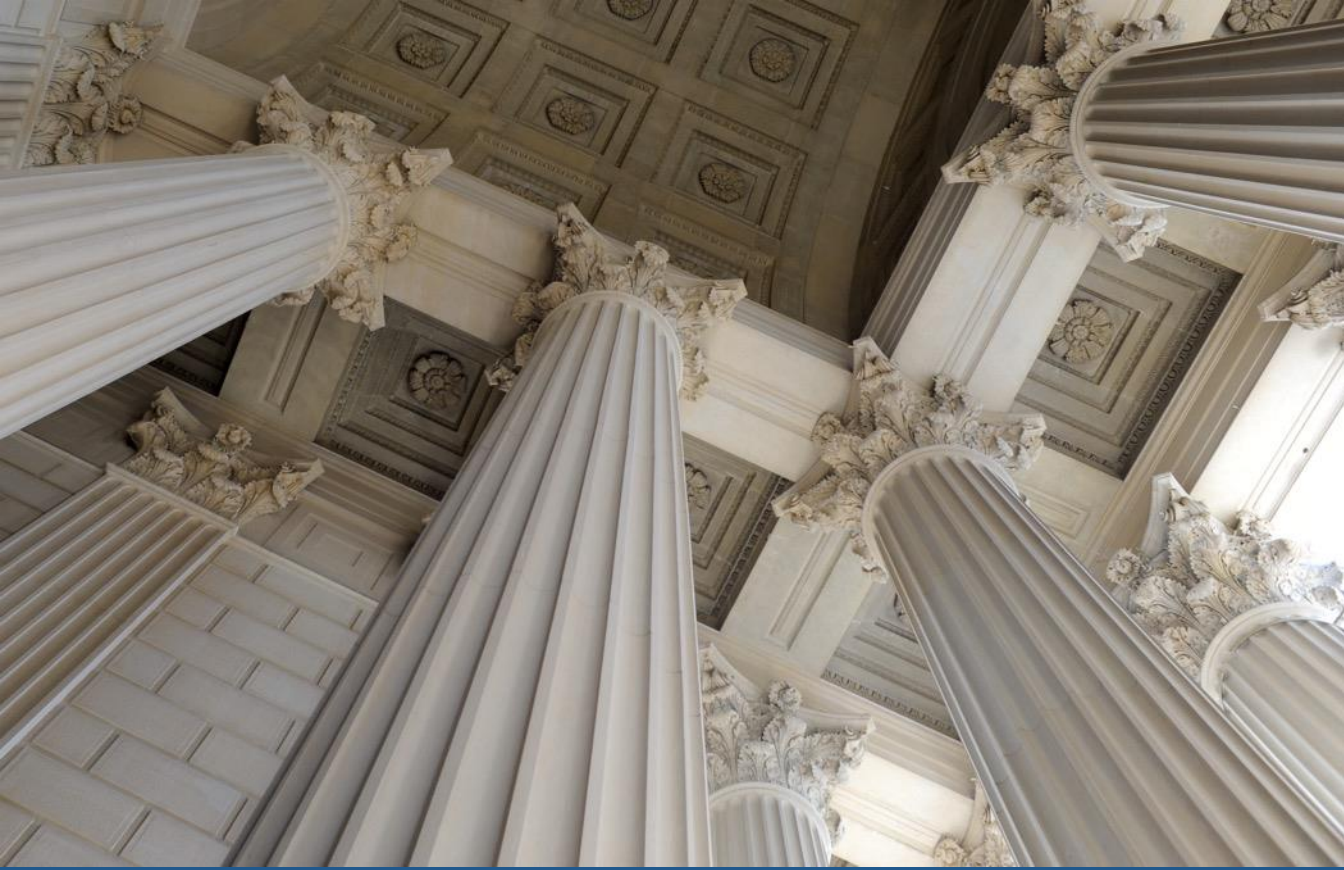


# Confidentiality and Protections for Legislative Activities

William Clark, National Conference of State Legislatures

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## Legislative Privilege


- Legislative privilege or immunity generally protects legislators based on what they say or do while in session with respect to legislative business.
- In *Gravel v. United States*, the U.S. Supreme Court defined such legislative acts as:

"an integral part of the deliberative and communicative process by which members participate in committee 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."



# Legislative Privilege

- Meant to shield legislators from interference while carrying out their official duties.
- Insulates legislators as they grapple with the challenges of governance and consider potential compromise.
- Courts have declined to extend the protections of legislative privilege to speech or conduct that occurs outside the legislative arena or is not required as part of legislative duties.



**“...for any Speech or Debate in either House, they shall not be questioned in any other Place.”**

*- U.S. Constitution,  
Article I, Section 6*

# Legislative Privilege



- Protects members of Congress and state legislatures from being compelled to provide testimony or records regarding statements made or actions taken in furtherance of legislative conduct.
- The U.S. Supreme Court has extended legislative privilege to legislative staff, committees and legislative agencies.
- Legislative privilege can extend to persons outside the legislative branch, including executive or judicial officials and members of the public, when they perform legislative functions.

# Legislative Privilege

## Case History

### ***LA Union Del Pueblo Entero v. Abbott***, 93 F. 4<sup>th</sup> 310 (2024)

Held that legislative privilege applied to documents shared, and communications made, between legislators and members of the state executive branch.

### ***Bogan v. Scott-Harris***, 523 U.S. 44 (1998)

Held that:

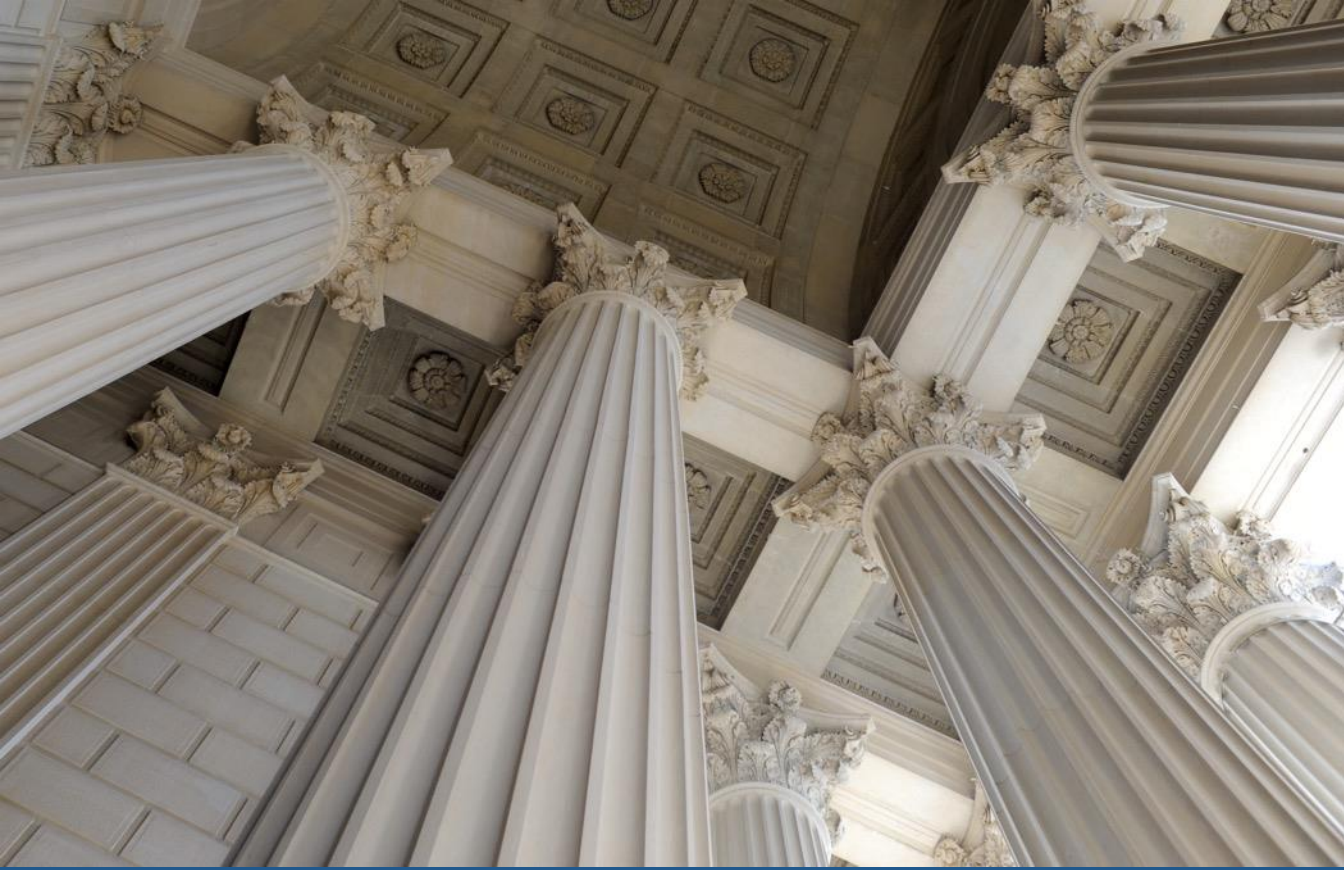
- Local legislators were entitled to the same absolute immunity from civil liability for their legislative activities as had been accorded to federal, state, and regional legislators.
- Absolute immunity attaches to all acts taken “in the sphere of legitimate legislative activity.”

# Legislative Privilege Precedents

- Constitutional provisions and judicial decisions interpreting those provisions
- Adopted rules of the chamber
- Statutory provisions
- Custom, usage, and precedents
- Parliamentary law and adopted parliamentary authority (Mason's, Jefferson's, etc.)







# Legislative Work Product Disclosure Exemptions

- Preliminary drafts
- Working papers
- Unpublished, legislative and intra-agency or inter-agency memoranda
- Notes and recommendations
- Documents produced at the request of, or for, legislators by legislative staff

# Confidentiality

## State Legislative Work Product Statutes

### New Jersey

#### [§47:1A-1.1](#)

A government record shall not include **the following information which is deemed to be confidential** for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

**any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties**, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;



# Confidentiality

## State Legislative Work Product Statutes

### Ohio

#### [Section 101.30\(A\)1\(a\) & \(3\)\(B\)](#)

(1) Legislative document includes, but is not limited to, all of the following:

**(a) A working paper, work product, correspondence, preliminary draft, note, proposed bill or resolution, proposed amendment to a bill or resolution, analysis, opinion, memorandum, or other document in whatever form or format prepared by legislative staff for a member of the general assembly or for general assembly staff;**

**(3)(B) Legislative staff shall maintain a confidential relationship with each member of the general assembly, and with each member of the general assembly staff, with respect to communications between the member of the general assembly or general assembly staff and legislative staff...a legislative document arising out of this confidential relationship is not a public record for purposes of section [149.43](#) of the Revised Code.**

# Additional NCSL Web Resources

## Separation of Powers: Legislative Immunity:

<https://www.ncsl.org/about-state-legislatures/separation-of-powers-legislative-immunity>

## Separation of Powers: An Overview:

<https://www.ncsl.org/about-state-legislatures/separation-of-powers-an-overview>



NATIONAL CONFERENCE OF STATE LEGISLATURES

## Thank You

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