No. 18-406

IN THE

Supreme Court of the United States

AARON J. SCHOCK,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICI CURIAE* FORMER GENERAL COUNSELS OF THE U.S. HOUSE OF REPRESENTATIVES IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE* [1]

Amici are former General Counsels of the U.S. House of Representatives. They served in the U.S. House of Representatives' Office of General Counsel across five decades.

Kerry W. Kircher served in the Office of General Counsel between 1995 and 2016; he served as the General Counsel between 2011 and 2016, under Speakers Paul D. Ryan and John A. Boehner. Thomas J. Spulak served as the General Counsel between 1994 and 1995, under Speaker Thomas S. Foley. Charles Tiefer served in the Office of General Counsel between 1984 and 1995; he served as the Acting General Counsel between 1993 and 1994, under Speaker Foley. Stanley M. Brand served as the General Counsel between 1976 and 1983, under Speaker Thomas P. "Tip" O'Neill, Jr.

As an element of their role as general counsels of the U.S. House of Representatives (the "House"), *amici* advised Members on their obligations under rules promulgated by the House and related constitutional immunities. Because of their practical view of these obligations and immunities in service of Congress, *amici* have an interest in the questions of the House's institutional independence presented in this case.

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[1] *Amici* provided timely notice to the parties of their intention to file this brief. The parties consented to the filing and attached hereto are their letters of consent. Pursuant to Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, made a monetary contribution to the preparation or submission of the brief.

Amici write separately only to provide additional discussion, from the perspective of the House, about the importance of the issue and the Seventh Circuit's grave misunderstanding of immunities conferred under the separation of powers. *Amici* have no interest in insulating the Petitioner from criminal liability; their interest lies in ensuring that the Executive and Judicial Branches construe the separation-of-powers immunities in a manner that affords the Legislative Branch and its Members due protection when performing legislative and rulemaking duties.

Because the Seventh Circuit fails to adequately consider the separation-of-powers immunities in this case, *amici* join the Petitioner in urging the Court to accept this case for review.

SUMMARY OF ARGUMENT

The Seventh Circuit's decision disregards the independence of the legislature and, specifically, the immunities afforded to Members of Congress under long-standing separation-of-powers principles. The separation-of-powers immunities conferred on Members of Congress arise from both the Speech or Debate Clause and the Rulemaking Clause of the Constitution. By brushing off these immunities, the Seventh Circuit derogates not only the specific legislative immunities but also the broader principle of respect among the branches. And it does so in a way that diminishes the Legislative Branch in relation to its co-equal branches. The Constitution, however, protects Congress uniquely and specifically. By diminishing these immunities, the decision harms the future operation of the Legislative Branch.

The Seventh Circuit's opinion dismisses Petitioner's assertion of separation-of-powers immunity under the Rulemaking Clause with little analysis. A necessary element of the House's constitutional power to "determine" its rules is the power to offer authoritative interpretations of those rules. Instead of engaging with the contours of the House's authority to "determine" its rules in this case, the court offers two substantive pronouncements, neither of which befit a co-equal branch of government. The court first compares the Petitioner's assertion of immunity as a Member of Congress to that of an employee at a company like "Microsoft." App. 3. But, of course, companies are not a co-equal branch of government and the Constitution provides no separation-of-powers immunities to private businesses. The Seventh Circuit's Microsoft comparison is facile and belies a surprising lack of respect for Congress under the constitutional system of checks and balances.

The decision also erroneously equates judicial treatment of congressional and executive rules: "Judges regularly interpret, apply, and occasionally nullify rules promulgated by the President or another part of the Executive Branch . . . why would reimbursement rules be different?" App. 4. The answer is simple: Because the Constitution affords special treatment to congressional rulemaking activities. House reimbursement rules are insulated from judicial interpretation because the Constitution's Rulemaking Clause explicitly reserves rulemaking authority to Congress. By contrast, Executive Branch rules enjoy no similar constitutional protection.

Despite opining on the application of the Rulemaking Clause, the Seventh Circuit finds that it lacks jurisdiction to hear an interlocutory appeal on the substance of that question. App. 9. This mistaken demurral also compromises the court's decision on the related question of Speech or Debate immunity. The Speech or Debate Clause immunizes all conduct within the "legislative sphere." And this necessarily includes congressional rulemaking. Given the relationship between these two separation-of-powers immunities, the court was obligated to address both clauses in assessing whether a former congressman is immune from a prosecution predicated on the internal rules of the House.

Without interlocutory appeal to ensure the prompt application of separation-of-powers immunities, Executive Branch prosecution of Members of Congress poses serious risks. The harm of untimely review is especially dire for House Members: serving a two-year term means that a representative has little chance of resolving a trial and appeal before the next election. The potential political consequences from an ill-founded prosecution far outweigh the limited efficiency a court gains by avoiding an interlocutory appeal in the occasional criminal case raising separation-of-powers immunities.

What's more, the body best situated to interpret ambiguous House rules and, if necessary, punish conduct that violates those rules, is the House itself. Through its Committee on House Administration, the House promulgates rules and procedures governing Members' allowances; this Committee also provides guidance on those rules

and resolves questions about appropriate use of a Member's allowance. Through the House Committee on Ethics (and Office of Congressional Ethics), the House engages in oversight of its Members' compliance with House rules, including the reimbursement rules. This process permits the House to interpret its own rules and exercise its constitutional authority to punish Members.

In sum, because the Seventh Circuit's opinion disregards the legislature's unique constitutional status, splits with other circuits that have addressed separation-of-powers immunities, and regrettably appears to ignore political reality, we urge this Court to accept the case for review.

ARGUMENT

I. THE SEVENTH CIRCUIT'S DECISION IGNORES THE SIGNIFICANCE OF THE RULEMAKING CLAUSE

The Rulemaking Clause provides in part, "Each House may determine the Rules of its Proceedings[.]" U.S. Const. art. I, § 5, cl. 2. As a textual reservation of exclusive power to Congress, this Clause is a vital element of the separation-of-powers doctrine. And while separation-of-powers principles "are intended, in part, to protect each branch of government from incursion by the others," these structural principles "protect the individual as well." *Bond v. United States*, 564 U.S. 211, 222 (2011). In the context of Executive Branch criminal prosecutions of individual Members of Congress, adherence to the separation of powers is even more vital. *Cf. Gravel v. United States*, 408 U.S. 606, 617–18 (2013).

A. The Rulemaking Clause Is a Foundation of Congressional Authority

The Rulemaking Clause is central to each House's independent operation. Indeed, congressional self-governance was so fundamental that the historical record adds little to the original construction or meaning of the Clause. *See* John C. Roberts, *Are Congressional Committees Constitutional?: Radical Textualism, Separation of Powers, and the Enactment Process*, 52 Case W. Res. L. Rev. 489, 528–529 (2001) (reviewing the history of the Rulemaking Clause). Joseph Story wrote the earliest commentary on the Rulemaking Clause:

> No person can doubt the propriety of the provision authorizing each house to determine the rules of its own proceedings. If the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order. The humblest assembly of men is understood to possess this power; and it would be absurd to deprive the councils of the nation of a like authority.

Joseph Story, *Commentaries on the Constitution of the United States* § 419 (1833). And, as this Court later explained, the power of each House to make rules "is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal." *United States v. Ballin*, 144 U.S. 1, 5 (1892). *See also Yellin v. United States*, 374 U.S. 109, 143 (1963) (White, J., dissenting) ("The

role that the courts play in adjudicating questions involving the rules of either house must of necessity be a limited one, for the manner in which a house or committee of Congress chooses to run its business ordinarily raises no justiciable controversy.").

B. The Authority to "Determine" Encompasses the Authority to Interpret

Part of the House's power to "determine" its own rules is the ability to provide authoritative interpretations of those rules. As the D.C. Circuit explained in *United States v. Rostenkowski*, the Rulemaking Clause "reserves to each House of the Congress the authority to make its own rules, and judicial interpretation of an ambiguous House Rule runs the risk of the court intruding into the sphere of influence reserved to the legislative branch under the Constitution." 59 F.3d 1291, 1306 (D.C. Cir.), *opinion supplemented on denial of reh'g*, 68 F.3d 489 (D.C. Cir. 1995). The *Rostenkowski* court correctly acknowledged that limitations on judicial authority to interpret House rules ensures respect for a co-equal branch of government.

Unlike the *Rostenkowski* approach, the Seventh Circuit's ruling could enable both the Judiciary and Executive Branches to undermine the rules of the Legislature. Much of the error below stems from conflating matters that are "judicially cognizable" in general with the authority to interpret ambiguous rules. *See* App. 4. As the Seventh Circuit recognizes, House rules can be judicially cognizable—that is, a court can use, reference, and apply them. *Yellin*, 374 U.S. at 114. For example, if "the application or construction of a rule directly affects persons other than members of

the house," then "'the question presented is of necessity a judicial one.'" *Id.* at 143 (White, J., dissenting) (quoting *United States v. Smith*, 286 U.S. 6, 33 (1932)). But this Court's decision in *Yellin*—that a congressional witness could raise the House's failure to follow its own rules as a defense to a contempt of Congress charge—does not inform the present issue involving judicial interpretation and application of House rules governing its Members.

The Seventh Circuit likens its interpretation of House rules to the more typical judicial role in interpreting statutes, regulations, and administrative rules. App. 4. But the Constitution provides no equivalent Rulemaking Clause for Executive Branch "determination" of those sources of law and authority. Indeed, our democracy is predicated on the relationships among the co-equal branches of the federal government, which respectively write, execute, and interpret the laws in their various forms. By contrast, the Constitution reserves to each House the unique authority to "determine" its own rules, and the power to "determine" those rules necessarily includes the power to interpret the rules.

The Seventh Circuit reinforces its error by comparing legislative rules to rules of a private business. *See* App. 3. If allowed to stand, this decision equates the most representative body in our federal democracy with a private company. Again, the reason congressional rules are different from internal rules of a business is because they are constitutionally protected.

By failing to acknowledge the constitutional differences between congressional rules and

executive rules or private rules, the Seventh Circuit ignores the constitutional provision protecting congressional rulemaking and diminishes Congress's ability to govern itself and its Members. In drawing these conclusions, the Seventh Circuit improperly opines on the significance of the Rulemaking Clause despite holding that it lacks jurisdiction to substantively address the issue on interlocutory review. *Cf. Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998) ("Hypothetical jurisdiction produces nothing more than a hypothetical judgment—which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning.").

C. Separation-of-Powers Immunities Require Interlocutory Review

Despite offering this flawed, advisory view of the Rulemaking Clause, the Seventh Circuit ultimately determines that interlocutory appeal is not available for claims of immunity under the Rulemaking Clause. In doing so, the opinion below fails to confront serious issues of institutional independence and congressional immunity. The Rulemaking Clause is an essential element of the separation of powers between co-equal branches of the federal government. If a criminal prosecution of a Member of Congress poses a risk of violating that Clause, a court must evaluate the claim before forcing the Member to confront the charges.

Without interlocutory appeal to ensure an effective application of separation-of-powers immunities, Executive Branch prosecution of Members of Congress poses serious risks. At the institutional level, a prosecution based on House

rules risks possible inconsistent outcomes with investigations conducted by the House on the same conduct. *See Baker v. Carr*, 369 U.S. 186, 216 (1962). And at an individual level, a prosecution based on immunized conduct can pose grave political consequences for the accused Member of Congress—belated review is especially pressing for House Members, who serve two-year terms. The short time between election cycles means that a member of the House is unlikely to resolve a trial and appeal before the next election; an ill-founded prosecution can upend a political career before an appellate court can engage in meaningful review of the immunity claims. Indeed, the Second Circuit has noted, "[t]hough every member of the public has an interest in avoiding the strain, expense, and injury to reputation" resulting from a criminal trial, "the interests of Members of Congress in this regard are especially compelling." *United States v. Myers*, 635 F.2d 932, 935–36 (2d Cir. 1980). And the judicial efficiency gained by avoiding immediate review of these cases, which number few among the broader criminal docket, is limited compared to the risk of an improper prosecution. *Cf. Helstoski v. Meanor*, 442 U.S. 500, 506 (1979).

Other circuits have long acknowledged the use of interlocutory appeal to address questions of a prosecution intruding on the separation of powers, whether under the Rulemaking Clause or more broadly under separation-of-powers principles. *United States v. Durenberger*, 48 F.3d 1239 (D.C. Cir. 1995) (Rulemaking Clause); *Rostenkowski*, 59 F.3d 1291 (Rulemaking Clause); *United States v. Rose*, 28 F.3d 181 (D.C. Cir. 1994) (separation-of-powers doctrine); *United States v. Claiborne*, 727

F.2d 842 (9th Cir. 1984) (separation-of-powers doctrine); *United States v. Hastings*, 681 F.2d 706 (11th Cir. 1982) (separation-of-powers doctrine); *Myers*, 635 F.2d 932 (separation-of-powers doctrine); *see also Helstoski v. Meanor*, 442 U.S. at 506–08. The Seventh Circuit's refusal to hear these claims on interlocutory appeal runs counter to other Circuit Courts that have addressed the issue. Therefore, this Court should grant review to resolve the conflict.

II. THE SPEECH OR DEBATE CLAUSE IMMUNIZES MEMBERS' RULEMAKING ACTIVITIES

The Speech or Debate Clause encompasses a crucial check on the Executive and Judicial Branches by immunizing Members of Congress from prosecution for their acts within the "legislative sphere." *Gravel*, 408 U.S. at 624–25. The Clause is another textual commitment in the Constitution to the separation of powers, and "insure[s] that the legislative function the Constitution allocates to Congress may be performed independently." *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 502 (1975). This explicit shield from prosecution "reinforce[es] the separation of powers so deliberately established by the Founders." *United States v. Johnson*, 383 U.S. 169, 178 (1966). And contrary to the Seventh Circuit's cursory analysis of the Speech or Debate arguments, this Court has mandated that the protections "are entitled to be treated by the courts with the sensitivity that such important values require." *Helstoski v. Meanor*, 442 U.S. at 506.

The Speech or Debate Clause protects Members of Congress in three distinct ways: First, it prohibits prosecutors and parties from advancing any legal claims against a member by "[r]evealing information as to a legislative act." *United States v. Helstoski*, 442 U.S. 477, 490 (1979). Second, it privileges Members from being compelled to testify about legislative matters. *See Gravel*, 408 U.S. at 615–16. Third, and most relevant here, it immunizes Members from legal challenges to activities within the "legislative sphere." *Doe v. McMillan*, 412 U.S. 306, 312 (1973).

Because the Speech or Debate Clause protections apply to all activities "within the 'legislative sphere,'" *Doe v. McMillan*, 412 U.S. 306, 312 (1973) (quoting *Gravel*, 408 U.S. at 625–26), the protections cover activity conducted under the Rulemaking Clause. As described in Section I.A., the Rulemaking Clause is essential to the functioning of the House and antecedent to the House's power to legislate. In *Consumers Union of U.S., Inc. v. Periodical Correspondent Association*, 515 F.2d 1341, 1350 (D.C. Cir. 1975), the D.C. Circuit held that "enforcing internal rules of Congress validly enacted under authority specifically granted to the Congress and within the scope of authority appropriately delegated by it . . . 'fell within the sphere of legislative activity'" protected by the Speech or Debate Clause. Because the authoritative interpretation and implementation of congressional rules is a "matter[] which the Constitution places within the jurisdiction of either House," it is protected conduct under the Speech or Debate Clause. *Id.* (citing *Gravel* and *Eastland*).

By ignoring the key Rulemaking Clause issues at issue in this case, the Seventh Circuit also fails to comprehensively address the Speech or Debate immunities asserted by the Defendant.

III. THE EXECUTIVE AND JUDICIAL BRANCHES SHOULD NOT INTERFERE WITH THE HOUSE'S PROCESSES FOR DRAFTING, INTERPRETING, AND ENFORCING ITS RULES

By declining to address the merits of the Rulemaking Clause issue, the Seventh Circuit's decision also fails to acknowledge and respect the internal mechanisms the House has developed (through the Rulemaking Clause) to manage itself. Under the Rulemaking Clause, the House has not only the power to "determine" its rules but also the power to "punish its Members for disorderly Behaviour." U.S. Const. art. I, § 5, cl. 2. As Justice Story explains, "the power to make rules would be nugatory, unless it was coupled with a power to punish for disorderly behavior, or disobedience to those rules." Joseph Story, *Commentaries on the Constitution of the United States* § 419.

Through its committee structure, and particularly the Committees on House Administration and Ethics, the House discharges its power to punish. These Committees draft, interpret, and enforce House rules governing Members' conduct. The House can and does address ambiguities in its rules; and where separation-of-powers immunities bar Judicial or Executive review of a Member's conduct, the House is well-equipped to oversee and regulate itself.

A. Under the Rulemaking Clause, the House Drafts, Interprets, and Enforces Rules Governing the Standards of Conduct for Members

The House mainly regulates Members' conduct through two committees: the Committee on House Administration ("CHA") and the Committee on Ethics ("Ethics Committee").

In 1947 the House established the Committee on House Administration ("CHA") to oversee the operations and administrative functions of the House. *See Rules of the House of Representatives*, H.R. Doc. No. 114-192, House Rule X.1(k) (2017). CHA determines the amounts each Member is allocated for their Members' Representational Allowance ("MRA") and the manner in which they may spend that allowance. *See* H.R. Doc. No. 114-192, House Rule X.1(k)(1); *see also* Comm. on House Admin., 115th Cong., *Members' Congressional Handbook* (2018). The rules governing the use of MRA funds are published in the *Members' Congressional Handbook*, which CHA promulgates after consultation with other House entities, such as the Ethics Committee, House leadership, and officers of the House. At the start of each Congress, CHA adopts the handbook and the rules contained therein.

With each new Congress, the House may adopt new rules that address the proper regulation of House funds and Members. This permits the House to respond to ambiguities in its rules by swiftly amending old rules or adopting new ones. Indeed, in 2015 the House made several amendments after issues were raised with several

Members' use of MRA funds and reimbursements. The House conducted a bipartisan review to "explore ways to strengthen the regulations governing official expenses, as well as ways to enhance the training and educational opportunities available to assist each office with compliance." Comm. on House Admin., *Committee Members to Review House Regulations Governing Official Expenses* (Mar. 27, 2015), https://cha.house.gov/press-release/committee-members-review-house-regulations-governing-official-expenses. The House adopted numerous changes to the rules governing official expenses later that year. *See* H.R. Rep. No. 114-901, at 7–8 (2016); H.R. Res. 114, 114th Cong. (2015), https://docs.house.gov/meetings/HA/HA00/20151021/104098/BILLS-114pih-CommitteeResolution.pdf.

In conjunction with CHA, the Ethics Committee provides standards for Members on ethical conduct and disciplines Members. Until 1967, the House exercised its disciplinary power through ad-hoc committees formed to investigate misconduct and make recommendations for punishment where appropriate. Cong. Research Serv., Rep. 98-15, *House Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, 2 (Feb. 1, 2017). In 1968, the House formed a permanent ethics committee, now called the Committee on Ethics. *Id.* at 3–6. The Ethics Committee has four key areas of jurisdiction over Members, officers, and employees: 1) recommending legislative or administrative actions necessary for enforcing standards of conduct; 2) investigating allegations of misconduct; 3) reporting to law enforcement violations of law in performance of

official duties; 4) providing advisory opinions for guidance. *Id.* 6–7.

In addition to adopting formal rules, CHA also provides advisory guidance on the rules in the handbook to Members and resolves questions about proper funding practices. The Ethics Committee also has an Office of Advice and Education which provides guidance to Members, officers, and employees on applicable standards of conduct and interpretations and advisory opinions. *See* Ethics Reform Act of 1989, Pub. L. No. 101-194, § 803(i), 103 Stat. 1775 (Nov. 30, 1989); *see also* Comm. on Ethics, *Committee Advice*, https://ethics.house.gov /about/committee-advice (last visited Oct. 25, 2018) (explaining the Committee's responsibilities and approach to providing advice to Members and staff).

Beyond providing guidance to Members, the Ethics Committee also investigates allegations of misconduct. It can either initiate an investigation itself or review cases initiated with the Office of Congressional Ethics ("OCE"), a nonpartisan office that reports to the Ethics Committee. *See* H. Comm. on Ethics, 115th Cong., Rules Comm. on Ethics, 17 & 17A (2017). The House established OCE in 2008 as a nonpartisan board empowered to independently investigate allegations of misconduct against Members, officers, and employees of the House in the discharge of their official duties. When OCE receives a complaint about a Members' conduct (including a complaint from a member of the public), it can begin an investigation. H.R. Res. 895 § 1(c)(1)(A), 110th Cong. (2008). OCE investigations are conducted in two stages: preliminary review and second-phase review. *Id.* at § 1(c). In the

preliminary review, OCE examines whether OCE has a "reasonable basis to believe the allegation." OCE, *Rules for the Conduct of Investigations*, Rule 7 (2015). At the close of the preliminary review, OCE must notify the Ethics Committee and the individual under review, whether the investigation will continue or be terminated. H.R. Res. 895 § 1(c)(1)(A). To initiate a second-phase review, OCE must have "probable cause to believe the alleged violation occurred." OCE, *Rules for the Conduct of Investigations*, Rule 8. At the close of the second-phase review, OCE must send a written report, findings, and any supporting documentation to the Ethics Committee for final disposition. H.R. Res. 895 § 1(c)(2)(C).

The Ethics Committee annually publishes a summary of its public investigations and must publish all OCE decisions where the Ethics Committee's conclusion differs from OCE's. For example, in 2016 the Ethics Committee reported on 23 cases escalated from OCE that were made public. H.R. Rep. No. 114-910, pt. V, 12–30 (2017). The cases included campaign finance violations, sexual harassment, and allegations of improper use of MRA funds. As the annual reports detail, the House engages in robust investigation and oversight of its Members through the Ethics Committee.

B. The Constitution Requires the Executive and Judicial Branches to Respect House Rulemaking Activity

The Executive and Judicial Branches must respect the House's well-established mechanisms for applying its rules. While Members are not—and should not be—immune from prosecution, any

action predicated on congressional rules should be scrutinized for adherence to principles of separations of powers. And in some cases, the Rulemaking Clause and justiciability doctrines will compel the other branches to refrain from using House rules in a prosecution.

As detailed in Section I and in the Petition, the Rulemaking Clause prohibits the judiciary and executive from interfering with House rulemaking activity. Where a rule is ambiguous, the other branches cannot apply it without engaging in impermissible rulemaking. *See Rostenkowski*, 59 F.3d 1291. The *Rostenkowski* Court applied appropriate restraint in interpreting and applying ambiguous House rules to prevent impermissible intrusions on powers reserved to the House under the Rulemaking Clause.

Justiciability doctrines buttress this framework. As this Court has explained, courts should not adjudicate cases that pose a risk of inconsistent decisions with other branches. *Carr*, 369 U.S. at 216–17 (noting cases are nonjusticiable when there is "the potentiality of embarrassment from multifarious pronouncements by various departments on one question."). This risk is especially concerning where a prosecution uses ambiguous House rules. Because the House engages in its own extensive interpretations of its rules, a prosecution premised on House rules may reach a different conclusion from guidance issued by CHA or an investigation by the Ethics Committee. And while the House can (and sometimes does) pause its investigations while prosecutions are ongoing, it does so at its own discretion. The House has the

predominant interest in applying its rules—whether ambiguous or not—and a prosecution that infringes on this interest violates justiciability doctrines under *Carr*.

And while cases raising concerns of improper prosecutions based on ambiguous House rules are rare, both the Rulemaking Clause and Speech or Debate Clause teach that courts and prosecutors should carefully attend to the separation of powers when addressing conduct by Members of Congress. Indeed, the history of the Speech or Debate Clause indicates that our democratic system depends on these separation of powers as rules—not norms. *See Johnson*, 383 U.S. at 178–79 (noting that "'power is of an encroaching nature'" and that the legislative privilege is a "'practical security' for ensuring the independence of the legislature." (quoting The Federalist No. 48 (James Madison)). If uncorrected by this Court, the Seventh Circuit's erroneous conclusions—even where dicta—set a harmful precedent.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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