



## LEGISLATIVE IMMUNITY IN TOWN MEETINGS

By: Terrance Adams, Associate Analyst

### ISSUE

Does legislative immunity apply to town meeting participants if the town meeting is the municipality's legislative body?

The Office of Legislative Research is not authorized to issue legal opinions, and this information should not be considered one.

### SUMMARY

Legislative immunity protects individuals from liability for actions or statements made in a legislative capacity. It applies not only to legislators, but also to other public officials (e.g., a chief executive) if they are acting in a legislative capacity; the immunity covers "all actions taken in the sphere of legitimate legislative activity" (*Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998)). Whether an act falls within the sphere of legislative activity "turns on the nature of the act, rather than on the motive or intent of the official performing it" (Id).

The U.S. and state constitutions (and numerous court decisions) provide for legislative immunity for members of Congress and state legislators (and others acting in a legislative capacity), respectively. In *Bogan*, the U.S. Supreme Court held that legislative immunity also applies to municipal legislators (and others acting in a municipal legislative capacity). However, we did not find any cases binding on Connecticut that interpreted legislative immunity in a town meeting context.

Generally, cases in other states that pertain to town meetings address legislative immunity for public officials; we did not find any cases that examined whether legislative immunity applies to members of the public who attend town meetings.



## **APPLICABILITY TO TOWN MEETINGS**

We did not find any cases binding on Connecticut that interpreted legislative immunity in a town meeting context. The Connecticut cases that we found address legislative immunity at the municipal level generally (see, for example, *South Lyme Property Owners Association v. Town of Old Lyme*, 539 F.Supp.2d 547 (2008)).

Generally, cases in other states that pertain to town meetings address legislative immunity for public officials (and not private citizens). For example, in an unreported case, a federal district court in New Hampshire held that a town meeting moderator was entitled to legislative immunity when he ordered a meeting attendee to stop taking photographs (*Artus v. Town of Atkinson*, 2009 WL 3336013). Similarly, the New Hampshire Supreme Court held that legislative immunity applied to a member of the board of selectmen who spoke at a town meeting about a police chief's termination (*Voelbel v. Bridgewater*, 144 N.H. 599 (1999)).

One case in Massachusetts addressed representative town meetings, a form of government that consists of municipal residents (known as meeting members) who are elected to represent a particular district or precinct at a town meeting. (Several Connecticut municipalities use this form of government.) In the Massachusetts case, a federal district court noted that members of a representative town meeting in Framingham would be entitled to legislative immunity if they could show that their challenged actions were legislative in nature (it then held that they failed to meet this burden) (*South Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F.Supp.2d 85, 111-112 (2010)).

However, we did not find any cases that examined whether legislative immunity applies to members of the public who merely attend town meetings. A federal district court in Massachusetts declined to consider a legislative immunity claim made by a member of the public who was arrested at a town meeting, noting that the plaintiff "cites no support for the proposition that a non-elected, non-appointed town resident qualifies as a 'municipal legislator' or that all speakers at an open town meeting are entitled to 'immunity' beyond general constitutional safeguards. This court declines the plaintiffs' suggestion that this novel theory be certified to the Massachusetts Supreme Judicial Court" (*Nolan v. Krajcik*, 384 F.Supp.2d 447, 458 (2005)).

TA:bs