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### Senator Menendez and the Speech and Debate Clause

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# Senator Menendez and the Speech and Debate Clause: What Comes Next?



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## *Who is Robert Menendez?*

Robert “Bob” Menendez is a United States Senator from New Jersey. He was appointed to the Senate in 2006 by newly elected Governor John Corzine to fill Corzine’s vacated seat. Menendez served two years as Chairman of the Senate Foreign Relations Committee, from 2013 to 2015, and [remained that committee’s ranking Democrat until his indictment](#). He is also a member of the Senate Committee on Banking, Housing and Urban Affairs and the Committee on Finance. Between 1993 and 2006, Menendez represented New Jersey’s 13<sup>th</sup> district in the United States House of Representatives.

## *What are the allegations against him?*

Senator Menendez is facing an [indictment](#) in federal court in New Jersey on [18 bribery and public corruption charges](#) for an alleged quid pro quo relationship where political favors were traded for undisclosed gifts and campaign donations from long-time donor and friend Dr. Salomon E. Melgen. Over the course of [seven years](#), Melgen, a Florida ophthalmologist, made gifts and directed contributions to Menendez worth nearly \$1 million. Luxury gifts included [19 free rides on a private jet](#), a [vacation at Melgen’s villa](#) in the Dominican Republic, and stays at a [five-star hotel in Paris](#). Through his company, Vitreo-Retinal Consultants, Melgen also directed over [\\$700,000 in corporate contributions to Majority Pac](#) which, in turn, used that money to support Menendez’s 2012 re-election campaign.

In return, Menendez repeatedly interceded on behalf of Melgen’s personal and business interests. Menendez and his staff appealed to the Health and Human Services Administration in an ultimately unsuccessful attempt to settle an administrative enforcement action against Melgen’s practice stemming from a [\\$8.9 million Medicare billing dispute](#). Menendez, moreover, allegedly tried to [pressure the Obama administration](#) to alter Medicare reimbursement policies in a way that would generate the surgeon more income. Separately, Menendez attempted to involve the Executive Branch in a business dispute between the government of the Dominican Republic and a company owned by Melgen, threatening to hold congressional hearings should it not intervene. Moreover, the Senator secured travel visas for three of Melgen’s foreign girlfriends.

## *What is the Speech and Debate Clause and why is it relevant?*

Senator Menendez has argued that he is entitled to immunity under the [Speech and Debate Clause](#) of the U.S. Constitution. The Clause, intended to protect legislators from political prosecution and maintain the independence of the Legislative Branch, provides that “for any Speech or Debate in either House, [Members of Congress] shall not be questioned in any other Place.” U.S. Courts have interpreted the Clause broadly to cover not only actually speech and debates on the floor of Congress, but also routine “legislative acts” inherent to a legislator’s position, [such as voting, holding hearings, and authorizing investigations by a congressional committee](#). The Clause prohibits prosecution of Members of Congress for such acts and bars prosecutors from introducing them as evidence at trial. Menendez claims that the actions he took on behalf of Melgen were within the scope of his position as a Senator, and therefore “legislative acts” protected under the Clause.

## *How did the Court rule?*

Both the trial court and the appeals court have now rejected Menendez’s immunity claim. Specifically, the appellate court [found](#) that Menendez’s actions were “[essentially lobbying on behalf of a particular party, and thus, under the specific circumstances, are outside the constitutional safe harbor \[of the Speech and Debate Clause\]](#).” Quoting from the 1972 Supreme Court decision in [United States v. Brewster](#), the court concluded that “[Members of Congress are not to be ‘super-citizens’ immune from the criminal process](#).” On September 14, the U.S. Appeals Court for the Third Circuit [refused Menendez’s request](#) to hold an “en banc” hearing and allowed the charges against him to stand.

## *What comes next?*

Should Senator Menendez decline to appeal this decision, his case would proceed to trial. His defense attorney, however, has [publicly stated](#) that they intend to appeal before the U.S. Supreme Court. No trial date has yet been set.