

## U.S. Supreme Court Upholds a Community College Board's Censure of a Board Member

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On March 24, 2022, the United States Supreme Court decided a case relevant to public agency governing boards managing disruptive board members. The case was originally brought by David Wilson, an elected trustee on the Houston Community College Board. Wilson had made a number of public accusations against his fellow board members. He sued after the Board censured him for his disruptive comments, arguing the censure violated his First Amendment rights.

In *Houston Community College System v. Wilson* (2022) \_\_ U.S. \_\_ [142 S.Ct. 1253], the Supreme Court unanimously rejected Wilson's claim and, in doing so, reaffirmed the long-established practice of censure, which dates back as far as the history of our nation. The power of assemblies to censure their members has been allowed and practiced since colonial times, at every level of government—including, local, state, and national.

In addition to the verbal censure, the Board had imposed other penalties on Wilson, such as deeming him ineligible for Board officer positions and access to discretionary funds. The trial court had dismissed Wilson's claims, finding Wilson did not have standing. On appeal to the Fifth District Court of Appeals, the Appellate Court reversed in part, holding that Wilson had a viable claim as to the censure, but upheld the dismissal of the penalty-based claims, holding that the imposition of these penalties could not violate Wilson's First Amendment rights because he did not have an "entitlement" to those privileges. The college then sought review by the Supreme Court.

To prevail on his First Amendment claim, Wilson was required to demonstrate that the Board took an "adverse action" in response to his speech that would not have been taken absent a "retaliatory motive." The Supreme Court reasoned that a purely verbal reprimand did not rise to the level of an adverse action, and thus could not be retaliation for Wilson's exercise of his free speech rights. Because the censure, which the Board adopted as a public resolution, was not a retaliatory action, Wilson had no right to sue.

## Takeaways

This is an important decision for all public entity governing boards. The Houston Community College Board's appeal in this case was supported by the National School Boards Association and other school board groups.

This case affirmed the authority of public entity governing boards to carry out formal reprimands of a board member, even if they are based on the member's speech. There are many examples in California and nationwide of K-12 school boards censuring their members over various forms of speech on hot-button issues. The Court did not alter the authority to censure, ruling that "[a]rgument and counterargument, not litigation, are the weapons available for resolving this dispute."

The Court pointed out that this decision specifically applies to censure of elected representatives, and not censure of any private individuals. This is because elected officials expose themselves to criticism by consenting to enter public office, and they enjoy equal power to speak freely about government policy on the same platform as their fellow board members. In other words, the censure is also a form of protected speech, and the First Amendment tolerates free speech on both sides of the issue. By contrast, government bodies should be cautious when considering reprimand or censure of students, employees, or licensees. If the public entity exercises control or authority over an individual, censoring them creates a greater risk of violating their First Amendment rights.

If you have any questions about *Houston Community College System v. Wilson*, the First Amendment, or Board governance in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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