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LEGAL UPDATE

April 25, 2022

**To: Superintendents/Presidents/Chancellors, Member
Community College Districts**

**From: Carl D. Corbin *CDC*
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**Subject: Censure of Trustee Determined Permissible By Supreme
Court
Memo No. 08-2022(CC)**

In a unanimous decision, *Houston Community College System v. David Buren Wilson*, the United States Supreme Court held on March 24, 2022, that an elected board of trustees could censure a trustee on the board and this action was not a violation of the censured trustee's First Amendment rights.^{1,2}

Summary

David Wilson was elected to the Houston Community College System ("HCC") Board of Trustees ("Board") and maintained a "stormy" and contentious relationship with his colleague trustees to include initiating various lawsuits against the Board that resulted in HCC incurring over \$270,000 in legal fees.

The Board adopted, at a public meeting, a censure resolution against Mr. Wilson that stated his conduct was "not consistent with the best interests of the College" and "not only inappropriate, but reprehensible."³

The Board also imposed the following penalties on Mr. Wilson: "'ineligible for election to Board officer positions for the 2018 calendar year,' that he

¹ Available at:

https://scholar.google.com/scholar_case?case=216698940733915394&q=houston+community+college+system&hl=en&as_sdt=4,60

² In California, there are limited options a board may take against a trustee of the board beyond a censure resolution. In order to involuntarily remove a trustee from a board will typically involve a "quo warranto" action filed with the Attorney General of California: <https://oag.ca.gov/opinions/quo-warranto>.

³ Pg. 3.



was “ineligible for reimbursement for any College-related travel,’ and that his future requests to ‘access ... funds in his Board account for community affairs’ would require Board approval” and, in addition, the Board recommended Mr. Wilson “complete additional training relating to governance and ethics.”⁴

The Supreme Court described the long history of the use of censure by elected officials against other elected officials in finding:

Given these features of Mr. Wilson’s case, we do not see how the Board’s censure could qualify as a materially adverse action consistent with our case law. The censure at issue before us was a form of speech by elected representatives. It concerned the public conduct of another elected representative. Everyone involved was an equal member of the same deliberative body. As it comes to us, too, the censure did not prevent Mr. Wilson from doing his job, it did not deny him any privilege of office, and Mr. Wilson does not allege it was defamatory. At least in these circumstances, we do not see how the Board’s censure could have materially deterred an elected official like Mr. Wilson from exercising his own right to speak.⁵

In closing, the Supreme Court held that there was no viable First Amendment claim, but rather, “[a]rgument and ‘counterargument,’ not litigation, are the ‘weapons available’ for resolving this dispute.”⁶

Conclusion

The Supreme Court has provided clear direction that an elected board of trustees has the right to adopt a censure resolution against one member of the body by the other members of the same body.

We strongly advise that our office be contacted if your governing board is considering adopting a censure resolution against one of its trustees.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁴ *Id.*

⁵ Pg. 6.

⁶ Pg. 7.