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Case of the Month

Fifth Circuit concluded that public censure of an elected official constituted an actionable claim under the First Amendment

While serving on the Houston Community College board of trustees, David Wilson publicly opposed several board decisions. He arranged robocalls opposing a new international campus and expressed concerns about a fellow trustee's residency on a website he maintained. After the board permitted a trustee to vote via videoconference, Wilson sued the college and the members of the board arguing that the vote violated board bylaws. When Wilson was allegedly excluded from a closed session of the board, he filed another lawsuit claiming his exclusion was unlawful. The board publicly censured Wilson for his actions, stating they were not in the best interests of the college or the board and violated the board's code of conduct. The board imposed sanctions and directed Wilson to "cease and desist from all inappropriate conduct" or be subject to additional discipline.

In response, Wilson consolidated his complaints and added allegations that the board's censure violated his [First Amendment](#) right to free speech and his [Fourteenth Amendment](#) right to equal protection, and that the code of conduct was overly broad and unconstitutional. He sought an injunction preventing the board from enforcing the censure, damages for mental anguish, punitive damages, and attorney's fees. Houston Community College filed a motion to dismiss. The district court granted the motion, concluding that Wilson lacked standing because the censure did not prohibit him from carrying out his duties or speaking publicly. Wilson appealed.

The Fifth Circuit Court of Appeals reversed the district court's judgment, stating that a reputational injury stemming from a First Amendment violation, like Wilson's mental anguish, is sufficient to confer standing. The court explained that Wilson's concerns expressed about the board were matters of public concern and held that the college's public censure of Wilson constituted an actionable First Amendment claim. The court remanded the case to the district court and dismissed Wilson's remaining claims as moot because Wilson was no longer a trustee. [Wilson v. Houston Cmty. Coll. Sys.](#), 19-20237, 2020 WL 1682780 (5th Cir. Apr. 7, 2020).

Why Is This Case Significant?

Community colleges may be subject to First Amendment claims when censoring board members for constitutionally protected speech. A board of trustees should consult local counsel when considering censure.

Highlights

Update 38 to the [Community College Policy Reference Manual](#) is now available.

New COVID-19 resources available on [TASB College eLaw](#) and the [TASB COVID-19 Website](#).

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Personnel

Former faculty member terminated as a result of a reduction in force failed to establish that a college engaged in gender discrimination in violation of [Title VII of the Civil Rights Act of 1964](#). The college established a drop in student enrollment as its legitimate nondiscriminatory reason for her termination and the terminations of other male and female professors. [Raley v. Felician Coll.](#), 797 F. App'x 737 (3d Cir. 2020).

Students and Instruction

Former student expelled for dating violence sued a university regarding his expulsion under [Title IX of the Education Amendments Act of 1972](#) claiming selective enforcement, erroneous outcome, and deliberate indifference. The court dismissed the Title IX claims as barred by the applicable state personal injury statute of limitations. [Doe v. Loyola Univ.](#), CV 18-6880, 2020 WL 1030844 (E.D. La. Mar. 3, 2020).

Female student's [Title IX](#) claim that a university was deliberately indifferent in its response to a male student's violation of no-contact and no-retaliation orders issued pending the outcome of a sexual harassment investigation constituted a genuine issue of material fact sufficient to reverse the summary judgment granted to the university. [Foster v. Bd. of Regents of Univ. of Michigan](#), 952 F.3d 765 (6th Cir. 2020).

Law school applicant who disclosed a disability in his application failed to provide evidence that a university violated the federal [Americans With Disabilities Act of 1990](#) by discriminating against him on the basis of his disability in rejecting his application. The university established legitimate nondiscriminatory reasons for rejecting his

application, including his LSAT score, GPA, and previous courses of study. [Power v. Univ. of N. Dakota Sch. of Law](#), 18-3535, 2020 WL 1482389 (8th Cir. Mar. 27, 2020).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings based on requests from Texas community colleges related to:

- the application and pre-employment background investigation of the requestor, who applied for a position with the college's police department. Tex. Atty Gen. Op. [OR2020-07869](#) (Mar. 12, 2020);
- emails and text messages containing specific key words sent or received by named individuals during a defined period of time. Tex. Atty. Gen. Op. [OR2020-07875](#) (Mar. 12, 2020);
- the requestor and complaints and communications between named individuals. Tex. Atty. Gen. Op. [OR2020-08984](#) (Mar. 23, 2020);
- a car crash report. Tex. Atty. Gen. Op. [OR2020-09169](#) (Mar. 25, 2020);
- a contract with a software company. Tex. Atty. Gen. Op. [OR2020-09611](#) (Mar. 30, 2020);
- professor and student evaluations. Tex. Atty. Gen. Op. [OR2020-09806](#) (Mar. 31, 2020).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board adopted [regulations](#) concerning transcript notations required when a student is ineligible to reenroll due to a non-academic or non-financial reason in response to statutory changes made during the 86th Texas Legislative Session.

The Texas Health and Human Services Commission adopted [regulations](#) concerning

epinephrine auto-injector policies approved by institutions of higher education implementing statutory changes made during the 85th and 86th Texas Legislative Sessions.

The Texas Commission of Licensing and Regulation amended regulations concerning [cosmetologist](#) and [barber](#) programs in response to statutory changes made during the 86th Texas Legislative Session.



In the News

The Texas Higher Education Coordinating Board (THECB) [endorsed](#) the American Council on Education's [Statement of Principles on Acceptance of Credit](#) regarding credit acceptance in light of COVID-19.

THECB, Greater Texas Foundation, and the Trelis Foundation [launched](#) the Texas Emergency Aid Grant Program to support college students during COVID-19.

The U.S. Department of Education [announced](#) an additional \$6.2 billion in funding available to institutions of higher education under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The U.S. Department of Labor [issued](#) a final rule on the establishment of Industry-Recognized Apprenticeship programs.