



Contents

[Case of the Month](#)
[From the Courts and Attorney General](#)
[Recent Regulations and Guidance](#)
[In the News](#)



Case of the Month

Community college board did not violate the First Amendment when it censured one of its members.

David Wilson, a Houston Community College (HCC) Board member who has a history of disagreements with the board expressed both publicly and through numerous lawsuits, was censured by the board. The board resolution included a verbal reprimand and other sanctions. Specifically, the censure stated that Wilson's conduct was "not consistent with the best interests of the college" and, further, was "not only inappropriate, but reprehensible." Wilson responded by asserting a retaliation claim under the U.S. Constitution [First Amendment](#), alleging that the censure violated his free speech rights. The district court dismissed the case, and Wilson appealed.

The Fifth Circuit Court of Appeals reversed,¹ holding that censures of publicly elected officials are actionable under the First Amendment, as protecting the role of elected officials in debates on matters of public importance. This decision conflicted with cases in other federal circuits, as noted when the college's request for rehearing was denied by the Fifth Circuit en banc. [Wilson v. Houston Comty. Coll. Sys.](#), 966 F.3d 341 (5th Cir. 2020) (en banc). The college appealed to the U.S. Supreme Court.

The Supreme Court's unanimous decision reversed the Fifth Circuit's ruling, finding in favor of the college, and holding that an elected body's verbal censure of a member does not violate the First Amendment. Reviewing historical precedent, the Court concluded that censures of members of elected bodies serve as an integral component of public discourse. Elected officials are often on both giving and receiving ends of criticism regarding the execution of duties of public officials, and here, the board's censure of Wilson served as countervailing speech on a matter of public concern. The Supreme Court rejected Wilson's claim that the First Amendment protected his speech critical of the Board while preventing his colleagues from doing the same: "In this country, we expect elected representatives to shoulder a degree of criticism about their public service from their constituents and their peers—and to continue exercising their free speech rights when the criticism comes." The Court noted that its holding was limited, specifically noting that governmental officials' censures of students, employees, licensees, or private individuals may raise concerns under the First Amendment. [Houston Comty. Coll. Sys. v. Wilson](#), No. 20-804, 2022 WL 867407 (Mar. 24, 2022).

Why is This Case Significant?

A community college board may verbally censure a board member for the member's speech without violating the member's First Amendment rights. If the board wishes to pursue further sanctions, first consult the college's attorney.

¹ This underlying Fifth Circuit decision was summarized in the [April 2020](#) Community College Services Legal Update.

Highlights

Policy Online™ is getting an upgrade!

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

Business and Finance

School softball team and flag corps did not infringe the author's copyright by tweeting a motivational passage from his book because the action constituted fair use. The school derived no commercial benefit, credited the author for the quote, removed the passage immediately when the author complained, and instituted a training program to avoid any future incidents. [Bell v. Eagle Mountain Saginaw Indep. Sch. Dist.](#), 27 F.4th 313 (5th Cir. Feb. 25, 2022).

Personnel

Basketball coach terminated after the college deemed her [Family Medical Leave Act](#) (FMLA) medical certification insufficient prevailed on her FMLA claims despite the college asserting other reasons for the termination because damages can be awarded under the FMLA when there are mixed motives for an adverse employment action. [Stanton v. Jarvis Christian Coll.](#), No. 20-40581, 2022 WL 738617 (5th Cir. Mar. 11, 2022) (per curiam).

Community college coordinator terminated following a reorganization and reduction-in-force provided insufficient evidence to overcome summary judgment on her claim the termination and related employment actions constituted race discrimination under [Title VII of the Civil Rights Act of 1964](#). [Peters-Clark v.](#)

[Angelina Coll.](#), No. 9:20-CV-00031, 2022 WL 729424 (E.D. Tex. Mar. 10, 2022).

Community college academic advisor who was disciplined for insubordination and then terminated after complaining about the discriminatory implementation of certain policies provided sufficient evidence to overcome a motion to dismiss her claims of national-origin discrimination and retaliation in violation of [Title VII](#). [Briceno-Belmontes v. Coastal Bend Coll.](#), No. 2:20-CV-00114, 2022 WL 673854 (S.D. Tex. Mar. 5, 2022).

U.S. Department of Labor [independent contractor rules](#) issued under the prior administration were reinstated because the procedures used to halt the implementation of the rules did not satisfy the federal [Administrative Procedures Act](#). [Coal. for Workforce Innovation v. Walsh](#), No. 1:21-CV-130 (E.D. Tex. Mar. 14, 2022).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings² based on requests from Texas community colleges related to:

- Specified request for proposals. Tex. Att'y Gen. [OR2022-04843](#) (Feb. 17, 2022); [OR2022-07079](#) (Mar. 9, 2022); [OR2022-07671](#) (Mar. 15, 2022); and
- A named employee. Tex. Att'y Gen. [OR2022-04955](#) (Feb. 17, 2022).



Recent Regulations and Guidance

In the [Consolidated Appropriations Act of 2022](#), U.S. Congress reauthorized the Violence Against Women Act, which includes grants to reduce violent crimes against women on

campus. Also included are additional amounts for educational or career training programs at community colleges to be administered through the U.S. Department of Labor.

² Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

The U.S. Department of Veterans Affairs issued [rules](#) updating the name of the “Vocational Rehabilitation and Employment” program to

“Veteran Readiness and Employment” [throughout 38 C.F.R. Part 21 \(“Veteran Readiness and Employment and Education”\)](#).



In the News

The U.S. Department of Education announced a [state-by-state breakdown](#) of funding for colleges and universities through the Higher Education Emergency Relief Fund, which includes \$10 billion to community colleges nationwide and \$3.4 billion to [Texas](#) colleges and universities.

The DOL [announced](#) \$45 million in [Strengthening Community Colleges Training Grants](#) available to address equity gaps and meet skills developments needs of employers and workers. The current round of funding focuses on accelerated learning strategies supporting career pathway development.

The U.S. Department of Labor (DOL) released [guidance](#) on retaliation under the [Fair Labor Standards Act](#) (FLSA) and the [Family Medical Leave Act](#) (FMLA).