



## What Defines Censure versus Exercise of the First Amendment?

*By Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)*

In [Houston Community College System v. Wilson](#) the U.S. Supreme Court will decide whether the First Amendment restricts the authority of an elected body to issue a censure resolution in response to a member's speech.

David Wilson was an elected trustee of the Houston Community College System (HCC). In response to the board's decision to fund a campus in Qatar, which he disagreed with, he arranged robocalls and was interviewed by a local radio station. He filed a lawsuit against HCC after it allowed a trustee to vote via videoconference, which he contended violated the bylaws. He sued the board again when it allegedly excluded him from an executive session.

Wilson hired a private investigator to investigate HCC and to determine if one of the trustees lived in the district in which she was elected. He maintained a website where he discussed his concerns, referring to other trustees and HCC by name.

The board publicly censured him for acting in a manner "not consistent with the best interests of the College or the Board, and in violation of the Board Bylaws Code of Conduct." Unsurprisingly, Wilson sued HCC and the trustees asserting that the censure violated his First Amendment right to free speech.



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HCC argued that “it had a right to censure Wilson as part of its internal governance as a legislative body and that Wilson’s First Amendment rights were not implicated.” But the Fifth Circuit noted it has repeatedly held that “a reprimand against an elected official for speech addressing a matter of public concern is an actionable First Amendment claim.” In this case there was no doubt Wilson was censured because of his speech.

The Fifth Circuit did not decide whether Wilson won his First Amendment case. However, the Fifth Circuit applies strict (usually fatal) scrutiny to “assess the government’s regulation of an elected official’s speech to his constituency.” Such a standard is favorable to censored elected officials.

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