



New Mexico School Boards Association

POLICY SERVICE ALERT

To: Superintendents and Board Members
Date: January 3, 2023
From: John F. Kennedy, Policy Service Director
Re: U.S. Supreme Court Addresses Censure of Board Members

The United State Supreme Court has issued a decision in Houston Community College System v. Wilson, on appeal from the Fifth Circuit Court of Appeals. Mr. Wilson had served as an elected member of the Community College’s Board of Trustees since 2013. During his tenure, he disputed a number of the decisions of the Trustees and filed multiple lawsuits attacking the Board’s actions. The Board reprimanded him for his actions, which it concluded were a violation of the Board’s ethics rules and by-laws.

Ultimately, the Board issued a verbal public “censure”, and imposed additional sanctions, including barring Mr. Wilson from Board officer positions. Mr. Wilson amended an existing state court lawsuit to assert civil rights and First Amendment claims. The College removed the case to federal court, where it was dismissed for lack of standing. On appeal to the Fifth Circuit Court of Appeals, the appellate court reversed the dismissal, ruling that Mr. Wilson’s public speech addressed a matter of public concern under the First Amendment.

In its review, the Supreme Court reversed the Court of Appeals, concluding that Mr. Wilson was an elected official who would be expected to shoulder a degree of criticism from the public and his colleagues, especially when the criticism was the speech by an elected representative about the public conduct of another elected representative. Mr. Wilson was not denied any privilege of his office and did not claim the criticism was defamatory. Given these factors, the Supreme Court held that his censure did not

qualify as materially adverse action capable of deterring Mr. Wilson from exercising his right to speak. He was not subjected to expulsion from his position, exclusion from meetings or activities of the Trustees, or any other form of punishment.

Given the limited nature of the Board's reaction and response to Mr. Wilson's conduct (censure of one member of an elected body by other members of the same body, which addressed only the conduct of a board member by other members seeking to discharge their public duties), the Supreme Court held that Mr. Wilson's First Amendment rights were not implicated and the Board's responses to his conduct did not infringe on any of his fundamental rights.

While the Supreme Court's decision cautions that verbal reprimands or censures could rise to the level of a First Amendment retaliation claim, its ruling here upholding a censure of Mr. Wilson's conduct did not materially inhibit his ability to speak freely. School Boards in New Mexico have occasionally used verbal or written censure of an individual member of the Board when she or he has acted unethically, or outside the scope of the normal duties and responsibilities of a public school board member. (Disclosure of confidential information received by the Board as a function of its official duties is a common instance.)

The Wilson decision by the Supreme Court reinforces the Board's authority to use censure in appropriate situations. Such authority should be used with deliberation and caution, and ordinarily on the advice of counsel. However, given the "free for all" environment that has become more common at school board meetings, it is wise to keep in mind that censure is a tool in the Board's toolbox for maintaining civility and order at its meetings and among its members.