

**38th Annual**  
**SCHOOL LAW CONFERENCE**

# Culture Wars in the School District: Censure

A look at the availability of, and limitations on, censure as a tool of governance in the schools.

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The historical background is largely drawn from the briefing in *Houston Community College System v. Wilson*, 212 L. Ed. 2d 303, 142 S. Ct. 1253 (2022). The litigation team for Houston Community College System included:

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## A. History of Censure

Censure, defined as an “authoritative expression of disapproval,”<sup>1</sup> is both a longstanding practice and a traditional way of conducting government. “[B]y the time colonial assemblies began to function,” the power to discipline members “was a recognized tradition.”<sup>2</sup> During this time, the power to censure members was “more or less assumed.”<sup>3</sup>

### 1. *Censures in Congress*

The United States Senate issued its first censure in 1811, after a Member read aloud a letter from former President Jefferson that the body had been placed under an “injunction of secrecy.”<sup>4</sup> In 1832, the House of Representative censured a Member for “insulting ... the Speaker.”<sup>5</sup> In 1842, the House reprimanded another Member after he introduced a resolution thought to be damaging to international relations.<sup>6</sup> Two years later, the Senate issued a censure after a Member divulged to the New York Evening Post a confidential message from President Tyler “outlin[ing] the terms of an annexation agreement with Texas.”<sup>7</sup> And during the Civil War, Congress censured several Members for expressing support for the Confederacy.<sup>8</sup> One of the most famous censures occurred in 1954, when the Senate “condemned” Senator Joseph McCarthy for bringing “the Senate into dishonor,” citing his conduct and speech both within that body and before the press.<sup>9</sup> As noted by the Supreme Court of the United States, Congress continues to exercise the censure power today “not only for objectionable speech directed at fellow Members but also for comments to the media,

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<sup>1</sup> *Censure*, *Black's Law Dictionary* (11th ed. 2019).

<sup>2</sup> M. Clarke, *Parliamentary Privilege in the American Colonies* 184 (1943).

<sup>3</sup> *Id.*

<sup>4</sup> 22 *Annals of Cong.* 65-83.

<sup>5</sup> 2 A. Hinds, *Precedents of the House of Representatives* § 1248, pp. 799-800 (1907) (Hinds).

<sup>6</sup> *Id.*, § 1256, at 807-808.

<sup>7</sup> U. S. Senate Historical Office, A. Butler & W. Wolff, *United States Senate: Election, Expulsion, and Censure Cases 1793–1990*, p. 47 (1995).

<sup>8</sup> *See* Hinds § 1253, at 803-804 (censure of Rep. Alexander Long); *id.*, § 1254, at 804-805 (censure of Rep. Benjamin G. Harris).

<sup>9</sup> 100 *Cong. Rec.* 16392; *see also* Butler, *United States Senate*, at 404-407.

public remarks disclosing confidential information, and conduct or speech thought damaging to the Nation.”<sup>10</sup>

## 2. *Censures at the state and local level*

Censures “have proven more common yet at the state and local level.”<sup>11</sup> As early as 1833, Justice Story observed that even “[t]he humblest assembly” in this country historically enjoyed the power to prescribe rules for its own proceedings.<sup>12</sup> In modern times, local legislative censures often respond to statements made by individual elected members that are perceived as improperly disparaging individuals or groups. For example, in 1967, a New Jersey school board censured its vice president for giving the local newspaper a derogatory statement opposing two Jewish candidates.<sup>13</sup> In 1985, the Seattle school board censured a member for disparaging statements made about women in a newspaper interview.<sup>14</sup> In 2017, a member of New York’s St. Lawrence County Board of Legislators was censured for posting offensive comments about President Obama and his family on his personal Facebook page.<sup>15</sup> And in 2020, the city council of Fairmont, West Virginia, twice censured a member for making repeated offensive social media posts.<sup>16</sup>

### **B. *Houston Community College System v. Wilson***

The Supreme Court recently analyzed the use of a censure as a tool of governance in *Houston Community College System v. Wilson*. There, the Supreme Court unanimously held that

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<sup>10</sup> *Houston Cmty. Coll. Sys. v. Wilson*, 212 L. Ed. 2d 303, 142 S. Ct. 1253, 1260 (2022); *see, e.g.*, Congressional Research Service, J. Maskell, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives* 20 (2016) (documenting censures in the House through 2016).

<sup>11</sup> *Wilson*, 142 S. Ct. at 1260.

<sup>12</sup> 2 Commentaries on the Constitution of the United States § 835, p. 298.

<sup>13</sup> Richard Reeves, *Official In Wayne Is Asked to Quit*, N.Y. Times, Feb. 10, 1967, at 37.

<sup>14</sup> Constantine Angelos, *Roe Censure: Reaction of a Divided Community*, Seattle Times, Aug. 22, 1985, at A1.

<sup>15</sup> Alex Valverde, *St. Lawrence County Legislator Censured for ‘Racist’ Facebook Post*, Spectrum Newsl (Feb. 7, 2017), <https://spectrumlocalnews.com/tx/austin/news/2017/02/7/st--lawrence-county-lapierre-censured-facebook-post>.

<sup>16</sup> Allen Clayton, *Fairmont City Council censures one member due to controversial social media posts*, 12WBOY (July 28, 2020), <https://www.wboy.com/top-stories/fairmont-city-council-ostracizes-one-council-member-over-social-media-posts/>.

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