



School Boards: Civility vs Free Speech

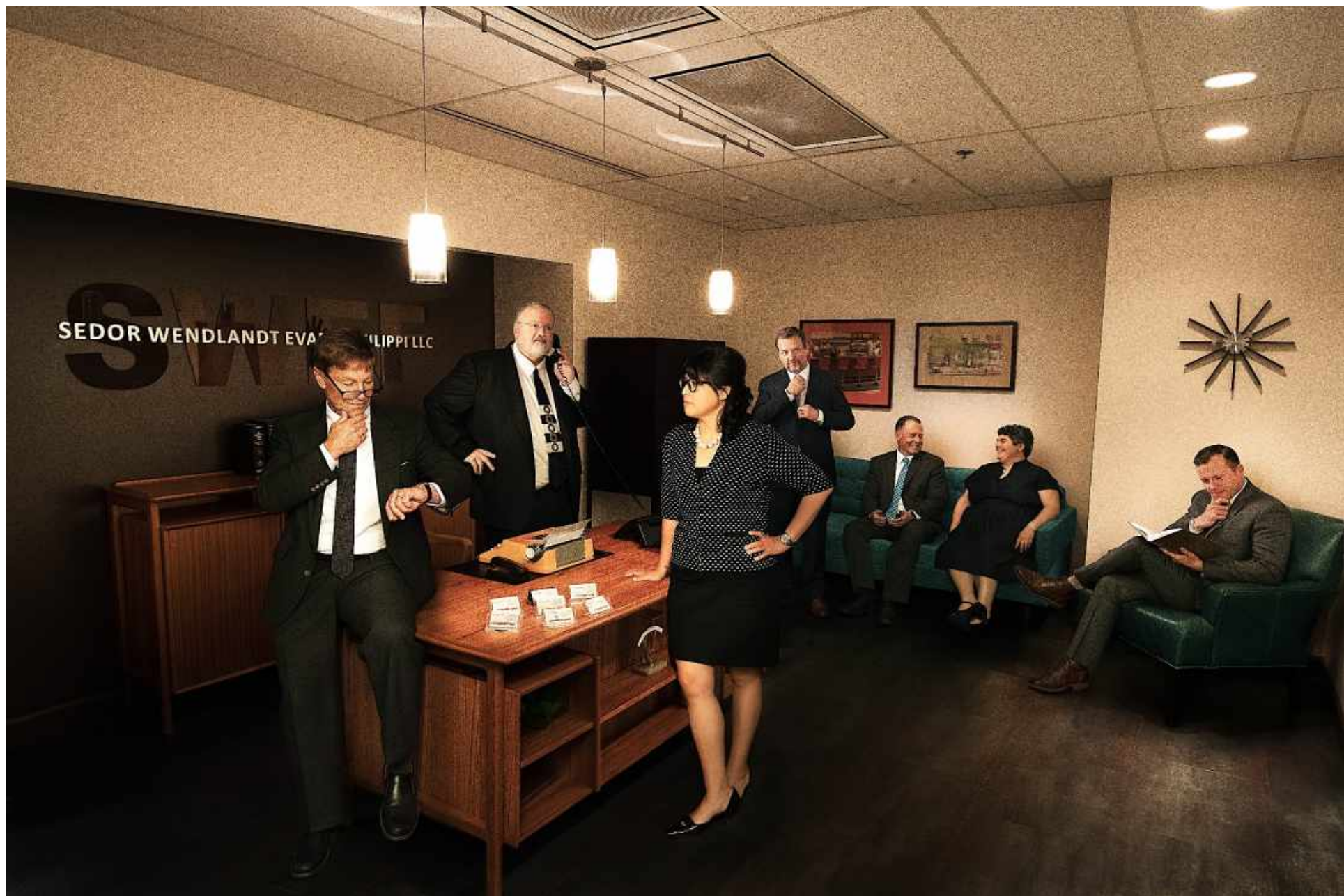
Allen Clendaniel and Clint
Campion

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SEDOR WENDLANDT EVANS FILIPPI

We take the law seriously, not ourselves!





Wilson v.
Houston
Community
College
(HCC) System



Trustee David Wilson was not a happy camper.

He was an energetic critic of his fellow trustees.



Facts of Wilson v. HCC

- Houston Community College Trustee David Wilson disagreed with the majority's funding decision to establish a campus in Qatar.
- He didn't let his frustration go.
- He alleged that his fellow board members engaged in violations of bylaws and were corrupt.
- He set up robo-calls to constituents that criticized his fellow trustees.
- He maintained a website criticizing his fellow trustees.
- He went on local radio and criticized his fellow trustees.
- He sued the HCC and his fellow trustees challenging a video conference vote and executive session that he was excluded from.
- He hired a private investigator to determine if a trustee actually lived in the district he served.

CENSURED

The HCC Board
Censured
Wilson



The Board's Censure

On January 18, 2018, the Board voted in a regularly-scheduled session to adopt a resolution publicly censuring Wilson for his actions. In the censure resolution, the Board chastised Wilson 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.” The censure, the Board emphasized, was the “highest level of sanction available,” as Wilson was elected and could not be removed. The Board directed Wilson to “immediately cease and desist from all inappropriate conduct” and warned that “any repeat of improper behavior by Mr. Wilson will constitute grounds for further disciplinary action by the Board.”

Wilson sued the HCC claiming that the Board's censure violated his First Amendment right to free speech





5th Circuit Appeal

The federal district court dismissed the case, but Wilson appealed to the 5th Circuit Court of Appeals.



5th Circuit Decision

The 5th Circuit Court of Appeals reversed the lower court's dismissal. The Court found that the HCC Board violated Mr. Wilson's First Amendment free speech rights by censuring him. The Court stated in part "[t]he role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance."



Wilson asked the Supreme Court to take the case. The Supreme Court agreed and heard oral argument on Tuesday.



Justice Sotomayor and Justice Clarence Thomas pressed the HCC's lawyer about the limits of an elected body's power to sanction its members for their speech – does the body have the power to expel or imprison its members?

Speech at Meetings vs. Speech at a Press Conference?

- Justice Amy Coney Barrett was also skeptical of Wilson's lawyer's efforts to distinguish between speech that occurs within the "legislative sphere" – at formal meetings, on the floor of a legislative body, and in the records – that can be censured, and speech that occurs outside that sphere, which cannot be. Does this mean, she queried, that a legislator can use "all kinds of horrible racial slurs" on the floor of the legislature and be censured for that, but then use the same kinds of slurs a few minutes later in a press conference without any possibility of censure





Justice Kavanaugh

Justice Brett Kavanaugh seemed to advocate for a narrow decision. He stressed that the justices only had to decide that “a mere censure does not trigger a retaliation claim. And I think it’ll be difficult, potentially, to draw lines beyond that.”

Civility at School Board Meetings





Role of the Board

- The School Board's primary goal is to provide each student with an education of the highest quality in keeping with his/her capacity to learn.
- This goal shall be the basic factor motivating the Board's execution of its powers and duties.

BB 9000

Public Meetings



- Alaska Statute 29.20.020 requires governing bodies to provide reasonable opportunity for the public to be heard at regular and special meetings.



BB 9323 Meeting Conduct

- The School Board desires to conduct its meetings *effectively and efficiently....*
- Because the Board has a responsibility to conduct District business in an *orderly and efficient way*, the following procedures shall regulate public presentations to the Board.

BB 9323

Meeting Conduct



- Recognition by Board President.
- Limited to three minutes.
- No charges or complaints against any employee, including Superintendent.
- No disturbance or willful interruption of any Board meeting shall be permitted.
- The Board may remove disruptive individuals and order the room cleared as necessary.

Board Options



- Require pre-registration to speak at Board meetings?
- Only written public input, i.e. letters, emails, etc?
- Only virtual Board meetings?



Discussion
and Q &A



association of
ALASKA
school boards

School Boards and Committees
