No. 20-804

IN THE

Supreme Court of the United States

HOUSTON COMMUNITY COLLEGE SYSTEM,

Petitioner,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL

BRIEF FOR THE TEXAS ASSOCIATION OF SCHOOL BOARDS LEGAL ASSISTANCE FUND AND THE NATIONAL SCHOOL BOARDS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PETITIONER

TREVIÑO KYLE & ROBINSON P.C.
'HFNHU &RXUW 6XLWH
,UYLQJ 7H[DV

PZDONHU#ZDEVD FRP

Counsel for Amici Curiae

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8 Q L I R U P 5 H F D O O (O H F W L R Q / D Z) U H T X H Q W C
$ V N H G 4 X H V W L R Q V 23

8QLWHG 6WDWHV +RXVH RI 5HSUHVHQWDWLYHV
'HYHORSPHQW)URP WKH &RQVWLWXWLRQ WR
0RGHUQ +RXVH 'LVFLSOLQH 3XQLVKPHQ
ODVW DFFHVVHG RQ 0D\ 10, 17

8QLWHG 6WDWHV +RXVH RI 5HSUHVHQWDWLYHV

SUMMARY OF ARGUMENT

$FFRUGLQJ WR WKH %\ODZV RI WKH %RDUG RI 7U
3HWLWLRQHU +RXVWRQ &RPPXQLW\ &RROHJH 6\VV
´%RDUG PHPEHUV VHUYH DV ÀGXFLDULHVµ DQG DV
DFW VROHO\ DQG H[FOXVLYHO\²IRU WKH EHQHÀW RI W

4

7KH UHVSRQVH WR :LOVRQ·V FRQGXFW IURP +&&·V %
7UXVWHHV³D 5HVROXWLRQ RI &HQVXUH³GLG QRW U
:LOVRQ·V)LUVW $PHQGPHQW ULJKWV XQGHU H[LVWLQ
IURP RWKHU FLUFXLW FRXUWV RU PRUH LPSRUWD

ARGUMENT

2Q -DQXDU\ WKH %RDUG RI 7UXVWHHV IRU
LVVXHG D 5HVROXWLRQ RI &HQVXUH DGGUHVV
LPSURSHU FRQGXFW DQG YLRODWLRQ RI %RDUG SROL
D D D 7KH 5HVROXWLRQ RI &HQVXUH GLG Q
:LOVRQ IURP SHUIRUPLQJ KLV GXWLHV DV D PHPEHU F
%RDUG RI 7UXVWHHV FRQWLQXLQJ WR DWWHQ
%RDUG PHHWLQJV VSHDNLQJ RXW DJDLQVW +&&
%RD€ @ P€0
%RDUG PHPEHUV RU FRJ L0p WUHYt pR`ÉX 0À0z—@

KHUH E\ ÀQGLQJ :LOVRQ KDG D YLDEOH)LUVW
FODLP 7KHUH $UOHQH 5DVK $OGULGJH DQ HOH
RI WKH /DUHGR 7H[DV FLW\ FRXQFLO ÀOHG VX
YLRODWLRQ RI KHU)LUVW $PHQGPHQW ULJKWV
UHPRYDO IURP WKH /DUHGR 8UEDQ 7UDQVSRUW
/876 DW WKH KDQGV RI KHU IHOORZ FRXQFL
Rash-Aldridge) G DW ,Q Bond GLVWLQJXLVKLQJ
IURP 5DVK $OGULGJH·V UHPRYDO IURP WKH /876 W
&LUFXLW QRWHG ´>K@HU FDSDFLW\ DV DQ HOHFW
FRPSURPLVHG EHFDXVH WKH FRXQFLO GLG QRW WU\ W
IURP KHU VHDW RQ WKH FRXQFLO QRU WDNH DZD
RI WKDW RIÀFH EHFDXVH[3] RI ZKDW VKH VDLG RU G

B. The Constitution implicitly recognizes the FRQVWLWXWLRQDOLW\ RI FHQVXULQJ SXEOL for their bad acts.

$UWLFOH , RI WKH &RQVWLWXWLRQ SURYLGHV ´PD\ GHWHUPLQH WKH 5XOHV RI LWV 3URFHHG LWV 0HPEHUV IRU GLVRUGHUO\ %HKDYLRXU D &RQFXUUHQFH RI WZR WKLUGV H[SHO D 0HPEH *See* U.S. CONST. DUW , FO 8QGHU WKLV DXWKRULW\ IRU \HDUV WKH 8QLWHG 6WDWHV +RXVH RI 5HSU DQG WKH 8QLWHG 6WDWHV 6HQDWH KDYH H[SHOOH UHSULPDQGHG 0HPEHUV IRU YDULRXV LQIUDFWL IURP FULPLQDO EHKDYLRU WR H[SXOVLRQ DQG YLRODWLR E\ WKH 8QLWHG 6WDWHV 6HQDWH DQG UHOH FHQVXUH GRHV QRW UHPRYH D VHQDWRU IURP R LW GHQ\ WR D VHQDWRU KLV RU KHU ULJKWV RU *See* 8QLWHG 6WDWHV 6HQDWH 3RZHUV 3URFHGXU ODVW DFFHVVHG RQ 0D\ ZZZ VHQDWH JRY DERXW SRZHUV SURFHGXUHV FHQVXUH KWP

7R WKH FRQWUDU\ FHQVXUH VHUYHV ´DV D IR UHEXNH *See* 8QLWHG 6WDWHV +RXVH RI 5HSUHVHQW 2ULJLQV 'HYHORSPHQW)URP WKH &RQVWLWX 0RGHUQ +RXVH 'LVFLSOLQH 3XQLVKPHQW OD RQ 0D\ KWWSV KLVWRU\ KRXVH JRY ,QVWLWX 2ULJLQV 'HYHORSPHQW 'LVFLSOLQH ³>F@HQVXUH WKH FRQVWLWXWLRQDO DXWKRULW\ WR SXQLV HQJDJHV LQ ¶GLVRUGHUO\ %HKDYLRXU· LV LQWHQG DQ LQVWUXPHQW RI LQGLYLGXDO UHEXNH LW V

,QIRUPDWLRQ UHJDUGLQJ &RQJUHVV· KLVWRU\ ZLWK FHQ EH ORFDWHG DW ZZZ VHQDWH JRY DERXW SRZHUV SURF FHQVXUH KWP KWWSV KLVWRU\ KRXVH JRY ,QVWLWXWLRQ 'HYHORSPHQW 'LVFLSOLQH FHQVXUH KLVWRU\ KRXVH JRY ,QVWLWXWLRQ 'LVFLSOLQH ([SXOVLRQ &HQVXUH 5HSUL

(YHQ D FXUVRU\ UHYLHZ RI WKH FRQGX
ULVH WR RWKHU FHQVXUHV LQ WKH 8QLWHG 6
5HSUHVHQWDWLYHV RYHU WKH \HDUV UHÁHFWV
RYHUDUFKLQJ JRDO RI VHOI JRY See id. HUQDQFH EHKLQ
%XW DV ERWK KRXVHV RI &RQJUHVV H[SOLFLWO
FHQVXUH GRHV QRW UHPRYH D 0HPEHU IURP RIÀ

,Q RWKHU ZRUGV &RQJUHVV· ULJKW WR VHO
0HPEHUV WKURXJK WKH XVH RI FHQVXUHV DQG
QHYHU UHDFKHV)LUVW $PHQGPHQW VFUXWLQ\ EHFDX
UHEXNH LQ QR ZD\ SUHYHQWV 0HPEHUV RI &RQJ
UHSUHVHQWLQJ WKHLU FRQVWLWXHQWV $ FHQVXUH
PLJKW HPEDUUDVV D 0HPEHU RI &RQJUHVV LW PD
LQWHQGHG LPSDFW RI SXWWLQJ D VWRS WR WKH F
DV UHSULPDQGV RIWHQ GR RU LW FRXOG HYHQ OH
E\ WKH ÀQDO DUELWHU³WKH YRWHUV³WR QRW VHQG W
LQGLYLGXDO EDFN WR :DVKLQJWRQ ' & %XW G
SRWHQWLDO FRQVHTXHQFHV D FHQVXUHG 0HPEH
FDQ VWLOO GR KLV RU KHU MRE ,W LV HQWLUH
&RQJUHVV KDV WKH DELOLW\ WR VHOI JRYHUQ Z
DIRXO RI WKH)LUVW $PHQGPHQW EXW WKDW V
ZRXOG QRW H[WHQG WR D ORFDOO\ HOHFWHG E
ZKLFK FHUWDLQO\ KDV D YHVWHG LQWHUHVW LQ
VFKRRO GLVWULFW RU HGXFDWLRQDO LQVWLWXW
GHUDLOHG IURP WKH PLVVLRQ RI HGXFDWLQJ VW
ERDUG PHPEHUV

C. The punitive measures imposed by Wilson's censure did not prevent him from carrying out his duties as a duly-elected member of the Houston Community College Board of Trustees.

:KLOH WKH)LIWK &LUFXLW IRXQG WKH 5HV
&HQVXUH LPSOLFDWHG :LOVRQ·V)LUVW $PHQGP

DFNQRZOHGJHG WKDW WKH SXQLWLYH PHDVXUHV L
ZHUH SHUIHFWO\ DFFHSWDEOH DFWLRQV IRU WKH
7UXVWHHV WR WDNH 3HW $SS D D &XULRX
GLG QRW DSSHDO WKH)LIWK &LUFXLW·V GHFLVLR
DQG DV VXFK LW LV QRW EHIRUH WKLV &RXUW Amici
DGGUHVV WKHVH WKUHH PHDVXUHV³:LOVRQ·V LQH
HOHFWLRQ WR D %RDUG RIÀFHU SRVLWLRQ IRU

FRXOG VWLOO DWWHQG PHHWLQJV YRWH RQ PD
%RDUG RI 7UXVWHHV VSHDN KLV YLHZV RQ DQG
DQG UHSUHVHQW KLV FRQVWLWXHQWV IXOO\

/LNHZLVH :LOVRQ GLG QRW KDYH WR WUDYH
H[SHQVH WR IXOO\ FDUU\ RXW KLV GXWLHV DQG
DV D %RDUG PHPEHU $UJXDEO\ WKH RQO\ WUDY
IRU :LOVRQ WR FDUU\ RXW KLV GXWLHV DQG U
ZRXOG EH IRU DQ\ UHTXLUHG WUDLQLQJ WKDW KH
YLUWXDOO\ %XW :LOVRQ ZKR ZDV HOHFWHG WR
RI 7UXVWHHV LQ 1RYHPEHU   ZRXOG KDYH FRP
UHTXLUHG LQ SHUVRQ WUDLQLQJ QR ODWHU WKD
WKHUHE\ UHQGHULQJ WUDYHO DW +&&·V H[SHQV
ÀVFDO \HDU ZKROO\[8] 3HWLWLRQ $SS XQQHFHVVDU\
,W IROORZV WKHQ WKDW WKH %RDUG·V WKUHH S
DLPHG DW :LOVRQ·V FRQGXFW GLG QRW LPSOLFD
$PHQGPHQW ULJKWV Bond (YHQ GHWKH)LUVW &LUFXLW
DJUHHG ZKLFK KLJKOLJKWV WKH DEVXUGLW\ RI

7KH 7H[DV +LJKHU (GXFDWLRQ &RRUGLQDWLQJ %RDU
GHWDLOHG LQIRUPDWLRQ RQ UHTXLUHG See WUDLQLQJ IRU E
7UDLQLQJ 5HTXLUHPHQWV IRU *RYHUQLQJ %RDUG 0HPE
3XEOLF ,QVWLWXWLRQV DQG 6\VWHPV RI +LJKHU (GXFD
UHSRUWFHQWHU KLJKHUHG WH[DV JRY DJHQF\ SXEOLFD
PDQXDOV FRPPLVVLRQHU RIÀFH VXPPDU\ WUDLQLQJ UH
IRU JRYHUQLQJ ERDUG PHPEHUV 7KH RQO\ WUDLQLQJ UHTXLUHG
FDQ EH FRPSOHWHG RQOLQH EXW WKH VWDWXWH
F\EHUVHFXULW\ WUDLQLQJ ZDV QRW HQDFWHG XQWLO
LQDSSOLFDEOH WR :LOVRQ DW WKH WLPH WKH +&& %R
LVVXHG WKH 5HVROXWLRQ RI &HQVXUH See Tex. Gov't Code

FDPH WR D KHDG LQ 'HFHPEHU ZKHQ :LOVRQ·V
GLUHFWO\ WKUHDWHQHG +&&·V DFFUHGLWDWLRQ Z
$VVRFLDWLRQ RI &ROOHJHV DQG 6FKRROV &R
&ROOHJHV 3HW $SS D D %\ WKH WLPH +&&
WKLV OHWWHU :LOVRQ KDG LQLWLDWHG URERFDOO
RI RWKHU %RDUG PHPEHUV ZKHQ KH GLVDJUHHG ZL
RI 7UXVWHHV· GHFLVLRQ WR IXQG DQ RYHUVHDV
SULYDWH LQYHVWLJDWRUV WR FRQGXFW VXUYHL
%RDUG PHPEHU LQLWLDWHG DQ XQDXWKRUL]HG
LQYHVWLJDWLRQ RI WKH %RDUG RI 7UXVWHHV DQG
DW OHDVW WZR ODZVXLWV 3HW $SS D D ,Q
6RXWKHUQ $VVRFLDWLRQ RI &ROOHJHV DQG 6FKRR
RQ &ROOHJHV TXHVWLRQHG ZKHWKHU :LOVRQ·V FR
FRQWUROO E\ D PLQRULW\ RI WKH %RDUG RI 7UXVW
JRYHUQDQFH LQ WKH FROOHFWLYH 3HW $SS D

7KH +&& %RDUG RI 7UXVWHHV WRRN WKH RQO\ U
DFWLRQ DYDLODEOH WR DGGUHVV :LOVRQ·îÊÙQV-• RRDH W

DFFRUGLQJ WR WKH)LIWK &LUFXLW·V GHFLVLRQ
VHOI JRYHUQDQFH UDQ DIRXO RI :LOVRQ·V)LUV
ULJKWV EHFDXVH KLV URJXH DQG GLVUXSWLYH
RQ D PDWWHU RI SXEOLF FRQFHUQ 3HW $SS

7KH)LIWK &LUFXLW·V GHFLVLRQ HIIHFWLY
DQ HOHFWHG ERDUG·V DELOLW\ WR VHOI JRYHU
PHPEHUV WR NQRZQ VWDQGDUGV RI FRQGXFW ,
DUH QR FRQFHLYDEOH FLUFXPVWDQFHV XQGHU
PHPEHU·V IDLOXUH WR UHVSHFW DQ HOHFWHG E
GHFLVLRQ PDNLQJ SURFHVV³WKH VWDQGDUG :LO
VHYHUDO WLPHV RYHU³GRHV QRW WRXFK RQ D P
DW3F`€VV ÀHG V@FRQFHUQ9@@3HW À $SS D D 7KH PHUH IDFW WKD

,I D ERDUG PHPEHU FRQWLQXDOO\ HQJDJHV L
KLQWLQJ DW GLVFULPLQDWLRQ RI D SURWHFWHG
DQG WKDW FRQGXFW JRHV XQFKHFNHG LW LV HD
GLIÀFXOWLHV D VFKRRO ERDUG FRXOG KDYH LQ G
FODLPV TXHVWLRQLQJ ZKHWKHU LW DGRSWHG D FXVW
JLYLQJ ULVH WR PXQ 7KLV SODFHV D ERDUG LQ
WKH XQWHQDEOH SRVLWLRQ RI HLWKHU ULVNLQJ
H[HUFLVLQJ LWV ULJKW WR VSHDN E\ UHSULPDQGL
WKH ERDUG PHPEHU RU FODLPLQJ D IDLOLQJ WR
FRQGHPQ WKH ERDUG PHPEHU·V GLVFULPLQDW
0RUH WR WKH SRLQW D ERDUG·V DELOLW\ WR
VKRXOG QRW EH VTXHOFKHG GXH WR WKH WKUH
ODZVXLW E\ RQH RI LWV PHPEHUV

C.

,QVWHDG WKH)LIWK &LUFXLW IRFXVHG RQ WKH
WKUHH SXQLWLYH PHDVXUHV ZHUH LQFOXGHG ZLW
FDOOHG WKH ´5HVROXWLRQ RI &HQVXUH µ EHJJLQ
DV WR ZKHWKHU WKH 5HVROXWLRQ RI &HQVXUH ZRX

RU KHU VWDWXWRU\ UHVSRQVLELOLWLHV ,Q DGGLWLRQ DQG F
WR GDPDJH DQG GLVUXSWLRQ WR RSHUDWLRQV
XQDXWKRUL]HG DFWLRQV E\ D URJXH ERDUG PHP
LQVWDELOLW\ E\ FUHDWLQJ D UHDO ULVN RI OL
XOWLPDWHO\ IDOO WR WKH HOHFWHG ERDUG WR

,Q VXFK VLWXDWLRQV DQ HOHFWHG FRPPXQL
VFKRRO ERDUG PXVW EH DEOH WR DFW³WR VSHD
YRLFH³ZKHQ D PHPEHU·V KDUPIXO EHKDYLRU FRP
LWV PLVVLRQ ,QGHHG LW LV RIWHQ WKH FDVH V
DUH QRW DEOH WR UHPRYH PHPEHUV ZLWKRXW
MXGLFLDO SURFHVV OHDYLQJ FHQVXUHV RU UH
RQO\ WRRO DW DQ HOHFWHG ERDUG·V GLVSRVDO
D URJXH ERDUG PHPEHU·V FRQWLQXHG LPSURSHU Seel,

(YHQ D TXLFN LQWHUQHW VHDUFK UHYHDOV QXP
DUWLFOHV KLJKOLJKWLQJ VXFK FRQGXFW See, e.g., Menomonie School
Board votes to censure member behind outburst DWWWSV ZTRZ
FRP PHQRPRQLH VFKRRO ERDUG YRWHV WI
PHPEHU EHKLQG RXWEXUVW Saugus Union school board member
in hot water over alleged racist comments DWWWSV ZZZ VFSU
RUJ EORJV HGXFDWLRQ VDXJXV XQLRQ VFKRR
PHPEHU LQ KRW ZDWHU RYHU WCCS board censures school board
member for 'unethical and unprofessional' conduct DWWWSV
ZZZ ZGUE FRP QHZV JFFV ERDUG FHQVXUHV VFKRRO ERD
IRU XQHWKLFDO DQG XQSURIHVVLRQDO FRQGXFW I
F HE FF II I IE Jefferson County Health
Department Censures one of its Members DWWWSV IR[QRZ
FRP QHZV PLVVRXUL MHIIHUVRQ FRXQW\ KHDOWK
FHQVXUHV RQH RI LWV PHPEHUV Lexington-Richland Five Trustees
Censure School Board Member DWWWSV ZZZ ZOW[FRP DUWLFOH
QHZV HGXFDWLRQ OH[LQJWRQ ULFKODQG ÀYH FHQVXU

e.g., Jones v. City of Canton 6 R G 0 L V V
Q R W L Q J V F K R R O E R D U G P H P E H U V P D \ R Q O \ E