

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#ZDEVDFRP

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 3XQLVKPHQW
ODVW DFFHVVHG.RQ.0.D\....10,17

8QLWHG 6WDWHV +RXVH RI 5HSUHVHQWDWLYHV

2

7KH 1DWLRQDO 6FKRRO %RDUGV \$VVRFLDWLRQ

SUMMARY OF ARGUMENT

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

7KH UHVSQRQVH WR :LOVRQ·V FRQGXFV IURP +&&·V %
 7UXVWHHV³D 5HVROXWLRQ RI &HQVXUH³GLG QRW U
 :LOVRQ·V)LUVW \$PHQGPHQW ULJKWV XQGHU H[LVWLQ
 IURP RWKHU FLUFXLW FRXUWV RU PRUH LPSRUW
 &RXUW ,QGHG FHQVXUHV DQG UHSULPDQGV KI
 FRQVWLWXWLRQDO KLVWRU\ LQ RWKHU JRYHUQ
 8QLWHG 6WDWHV %XW LQ RQH UXOLQJ WKH)L
 LJQRUHG WKDW DXWKRULW\ DQG KDV LQH[SOLFDEO\
 WUDMHFWRU\ IRU IUHH VSHHFK FODLPV E\ HOHF
 WUDMHFWRU\ WKDW KDV IDU UHDFKLQJ LPSDFW

6SOLWWLQJ ZLWK LWV VLVWHU FLUFXLWV W
 UHFRJQL]HG D YDOLG)LUVW \$PHQGPHQW FODLP ZK
 RIÀFLDO LV DGPRQLVKHG E\ KLV SHHUV IRU VSHDNLQJ
 RI SXEOLF FRQFHUQ UHJDUGOHVV RI ZKHWKHU WKI
 SUHYHQWHG WKH HOHFWHG RIÀFLDO IURP FDUU\L
 DQG UHVSQRVLELOLWLHV RI KLV SXEOLF RIÀFH ,
)LIWK &LUFXLW HIIHFWLYHO\ XQGHUFVW DQ HOHFV
 WR VHOI JRYHUQ DQG VTXHOFKHG DQ HOHFWHG E
 WR H[HUFLVH LWV YRLFH XQGHU WKH)LUVW \$PHQ

6LPSO\ SXW WKH)LIWK &LUFXLW·V DSSOLFDFW
 ´SXEOLF FRQFHUQµ WHVW VKRXOG QRW DQG
 VWDQGDUG HOHFWHG RIÀFLDOV PXVW PHHW WR
 \$PHQGPHQW FODLP DJDLQVW WKH HQWLWLHV WK
 ZLWK UHSUHVHQWLQJ 7R KROG RWKHUZLVH OHD
 OLPLWV DV LW EULQJV DOO DFWLRQV E\ DQ HO
 DJDLQVW D VLQJOH PHPEHU VTXDUHO\ ZLWKLQ V
 IHGHUO GLVWULFW FRXUWV FULSSOLQJ D SXE
 WR VHOI JRYHUQ 7KH)LIWK &LUFXLW·V GHFLV
 LQHTXLWDEOH OHJDO ODQGVFDSH LQ ZKLFK WKH
 WR VSHDN ÀUVW KDV WKH SURWHFWHG ULJKW Z
 XQFRQVWLWXWLRQDOO\ ´UHWDOLDWLQJµ LQ YLF
 \$PHQGPHQW 7KH &RXUW VKRXOG GHFOLQH WR S
 RIÀFLDOV ZLWK VXFK DQ DYHQRX RI UHOLHI

ARGUMENT

2Q -DQXDU\ WKH %RDUG RI 7UXVWHHV IRU
LVVXHG D 5HVROXWLRQ RI &HQVXUH DGGUHV
LPSURSHU FRQGXFWDQG YLRODWLRQ RI %RDUG SROL
D D D 7KH 5HVROXWLRQ RI &HQVXUH GLG Q
:LOVRQ IURP SHUIRUPLQJ KLV GXWLHV DV D PHPEHU
%RDUG RI 7UXVWHHV FRQWLQXLQJ WR DWWHQ
%RDUG PHHWLQJV VSHDNLQJ RXW DJDLQVW +&& I
%RDUG PHPEHUV RU FRJ LOp 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 ~~Band~~ WLQJXLVKLQJ
 IURP 5DVK \$OGULGJH·V UHPRYDO IURP WKH /876 V
 &LUFXLW QRWHG ´>K@HU FDSDFLW\ DV DQ HOHFV
 FRPSURPLVHG EHFDXVH WKH FRXQFLO GLG QRW WU\ W
 IURP KHU VHDW RQ WKH FRXQFLO QRU WDNH DZD
 RI WKDW RIÀFH EHFDXVH 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 3URFHGH
LWV OHPEHUV IRU GLVRUGHUO\ %HKDYLRXU D
&RQFXUUHQFH RI WZR WKLS. H[SHO D OHPEH
CONST DUW ,FO 8QGHU WKLV DXWKRULW\ IRU
'HDUV WKH 8QLWHG 6WDWHV +RXVH RI 5HSU
DQG WKH 8QLWHG 6WDWHV 6HQDWH KDYH H[SHOO
UHSULPDQG 0HPEHUV IRU YDULRXV LQIUDFWL
IURP FULPLQDO EHKDYLRU \$WR[SXOVLRQ GLRODWLRQ
E\ WKH 8QLWHG 6WDWHV 6HQDWH DQG UHOH
FHQVXUH GRHV QRW UHPRYH D VHQDWRU IURP F
LW GHQ\ WR D VHQDWRU KLV Sed KHU ULJKWV RU
8QLWHG 6WDWHV 6HQDWH 3RZHUV 3URFHGXU
ODVW DFFHVVHG RQWDSV ZZZ VWQDWH JRY
DERXW SRZHUV SURFHGXUHV FHQVXUH KWP

7R WKH FRQWUDU\ FHQVXUH VHUYHV 'DV D IR
UHEX Sed 8QLWHG 6WDWHV +RXVH RI 5HSUHVHQW
2ULJLQV 'HYHORSPHQW)URP WKH &RQVWLWX
ORGHUQ +RXVH 'LVFLSOLQH 3XQLVKPHQW ODV
RQ OD\ KWDSW KLVWRU\ KRXXH JRY ,QVWLW
2ULJLQV 'HYHORSPHQW 'LVFLSOLQH Sed
WKH FRQVWLWXWLRQDO DXWKRULW\ WR SXQLV
HQJDJHV LQ 1GLVRUGHUO\ %HKDYLRXU LV LQWH
DQ LQVWUXPHQW RI LQGLYLGXD UHEXNH LW V

,QIRUPDWLRQ UHJDUGLQJ &RQUHVV KLVWRU\ ZLWK FHO
EH ORFDKWHG DW ZZZ VHQDWH JRY DERXW SRZHUV SURF
FHQVXUH KKWSPV KLVWRU\ KRXXH JRY ,QVWLWXWLRQ
'HYHORSPHQW 'LVFLSOLQH DQWV FHQVXUH KLVWRU\ KRXXH JRY
,QVWLWXWLRQ 'LVFLSOLQH ([SXOVLQJ &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 VHOISERIUHUQDQFH EHKLQ
 %XW DV ERWK KRXXHV RI &RQJUHVV H[SOLFLO
 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
 LQWHQG HG LPSDFW RI SXWWLQJ D VWRS WR WKH F
 DV UHSULPDQGV RIWHQ GR RU LW FRXOG HYHQ OH
 E\ WKH ÀQDO DUELWHU³WKH YRWHUV³WR QRW VHQG V
 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 VX
 ZRXOG QRW H[WHQG WR D ORFDOO\ HOHFWHG E
 ZKLFK FHUWDLQO\ KDV D YHVWHG LQWHUHVW LQ
 VFKRRO GLVWULFW RU HGXFDWLRQDO LQVWLWXV
 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 LPSOLFDFWHG :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 EHFRPH WKH &XUW
 DGGUHV 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\ WUDYH
 IRU :LOVRQ WR FDUU\ RXW KLV GXWLHV DQG U
 ZRXOG EH IRU DQ\ UHTXLUH WUDLQLQJ WKDW KH
 YLUWXDOO\ %XW :LOVRQ ZKR ZDV HOHFWHG WR
 RI 7UXVWHHV LQ 1RYHPEHU ZRXOG KDYH FRP
 UHTXLUH LQ SHUVRQ WUDLQLQJ QR ODWHU WKD
 WKHUHE\ UHQGHULQJ WUDYHO DW +&&·V H[SHQV
 ÀVFDO \H DU ZKROO\ H[W]H V DDU\
 ,W IROORZV WKHQ WKDW WKH %RDUG·V WKUHH S
 DLPHG DW :LOVRQ·V FRQGXFW GLG QRW LPSOLFDO
 \$PHQGPHQW ULBQV(XQG WKH)LIWK &LUFXLW
 DJUHHG ZKLFK KLJKOLJKWV WKH DEVXUGLW\ RI

7KH 7H[DV +LJKHU (GXFDWLRQ &RRUGLQDWLQJ %RDU
 GHWDLOHG LQIRUPDWLRQ RQ UHTXLHG WUDLQLQJ IRU
 7UDLQLQJ 5HTXLUPHQWV IRU *RYHUQLQJ %RDUG 0HPE
 3XEOLF ,QVWLWXWLRQV DQG 6\VVWV +LJKHU (GXFD
 UHSRUWFHQWHU KLJKHUHG WH[DV JRY DJHQF\ SXEOLF
 PDQXDOV FRPPLVVLRQHU RIÀFH VXPPDU\ WUDLQLQJ U
 IRU JRYHUQLQJ ERDQGHPEHU\ WUDLQLQJ UHTXLUH
 FDQ EH FRPSOHWHG RQOLQH EXW WKH VWDWXWH
 F\EHUVHFXULW\ WUDLQLQJ ZDV QRW HQDFWHG XQWLO
 LQDSSOLFDEOH WR :LOVRQ DW WKH WLPH WKH +&& %R
 LVVXH WKH 5HVROXWLRQ·V CDD&HQVXUH

FDPH WR D KHDG LQ 'HFHPEHU ZKHQ :LOVRQ·V
 GLUHFWO\ WUHDWHQHG +&&·V DFFUHGGLWDWLRQ ZI
 \$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 ZLV
 RI 7UXVWHHV· GHFLVLRQ WR IXQG DQ RYHUVHDV
 SULYDWH LQYHVWLJDWRUV WR FRQGXFW VXUYHLC
 %RDUG PHPEHU LQLWLDWHG DQ XQDXWKRULJHG
 LQYHVWLJDWLRQ RI WKH %RDUG RI 7UXVWHHV DQG
 DW OHDVW WZR ODZVXLWV 3HW \$SS D D ,Q
 6RXWKHUQ \$VVRFLDWLRQ RI &ROOHJHV DQG 6FKRR
 RQ &ROOHJHV TXHVWLRQH GZKHWKHU :LOVRQ·V FR
 FRQWURO E\ D PLQRULW\ RI WKH %RDUG RI 7UXVW
 JRYHUQDQFH LQ WKH FROOHFWLYH 3HW \$SS D

7KH +&& %RDUG RI 7UXVWHHV WRRN WKH RQO\ U
 DFWLRQ DYDLDEOH WR DGGUHV :LOVRQ·ÏÛQV·RRDH W

DFFRUGLQJ WR WKH)LIWK &LUFXLW·V GHFLVLRQ
 VHOI JRYHUQDQFH UHQ 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 XQGH
 PHPEHU·V IDLOXUH WR UHVSFW DQ HOHFWHG E
 GHFLVLRQ PDNLQJ SURFHVV³WKH VWDQGDUG :LO
 VHYHUDO WLPHV RYHU³GRHV QRW WRXFK RQ D P
 DW3F`€VV ÀHG V@FRQFHUQ@@HTM \$SS D D 7KH PHUHWDPHW@KD

,I D ERDUG PHPEHU FRQWLQXDOO\ HQJJDJHV L
 KLQWLQJ DW GLVFULPLQDWLRQ RI D SURWHFWHO
 DQG WKDW FRQGXFWDJH XQFKHFNHG LW LV HD
 GLIÄFXOWLHV D VFKRRO ERDUG FRXOG KDYH LQ
 FODLPV TXHVWLRQLQJ ZKHWKHU LW DGRSWHG D FXV
 JLYLQJ ULVH WR PXQKESDODGHVED ERDUG LQ
 WKH XQWHQDEOH SRVLWLRQ RORLWKEHU ULVNLQJ
 H[HUFLVLQJ LWV ULJKW WR VSHDN E\ UHSULPDQG
 WKH ERDUG PHPEHU RUFODVPLQJIDLOLQJ WR
 FRQGHPQ WKH ERDUG PHPEHU·V GLVFULPLQDW
 ORUH WR WKH SRLQW D ERDUG·V DELOLW\ WR
 VKRXOG QRW EH VTXHOFKHG GXH WR WKH WKUH
 ODZVXLW E\ RQH RI LWV PHPEHUV

C. The `R DThe WXf|1P5EP "&GÑ Ç gzP^P ~XÇfâqđ | 1 1"UA6,Æ J-0

,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
 FRQVWLWXWLRQDO PXVWHU LI WKH +&& %RDUG RI 7UX
 KDYH FDOOHG LW E\ DQRWKHU QDPH :KLOH RWKH
 VHW IRUWK WKH OLPLWV RQ)LUVW \$PHQGPHQW F
 :LOVRQ·V WKH)LIWK &LUFXLW·V H[HUFLVH LQ VH
 VFKRRO DQG FRPPXQLW\ FROOHJH ERDUGV JUDSSO
 H[DFWO\ FRQVWLWXWHV D PDWWHU RI SXEOLF FR
 IRUP DQ DFFHSWDEOH GLVFLSOLQDU\ DFWLRQ FD

7KH GHOLQHDWLRQ EHWZHHQ ZKDW LV DQG LV C
 LV DQG VKRXOG FRQWLQXH WR EH WKH TXHVWL
 Bond DQG LQ WKH RWKHU FLUFXLWV WKDW KDYH F
 LVVXH³LV WKH HOHFWHG RIÀFLDO VWLOO DEOH W
 KHU GXWLHV DQG UHVSQRVLELOLWLHV GHVSLWH
 FHQVXUH" ,I WKH DQVZHU LV \HV WKH UHSULPDQ
 VLPSO\ GRHV QRW LPSOLFDFWH WKH)LUVW \$PHQGPHQ
 QR TXHVWLWLRQ WKDW LV WKH FDVH KHUH

- D. The implications of the Fifth Circuit's decision
 have a far-reaching impact on elected boards.

(OHFWHG ERDUGV WKURXJKRXW WKH FRXQWU\ K
 GLIÀFXOW WDVN RI DGGUHVVLQJ DQG DWWHPSWLQ
 PHPEHU ZKR KDV DFWHG LQ D ZD\ WKDW GDPDJHV
 XQGHUPLQHV WKH RSHUDWLRQV RI WKH ERDUG D
 RYHUVHHV 7KH H[DPSOHV DUH PDQ\ ERDUG PHP
 GR QRW FRPH WR PHHWLQJV GLVFORVH FRQÀGH
 VHVVLWLRQ FRQYHUVDWLRQV DJJUHVVLYHO\ VHHN
 DFFHVV WR GLVWULFW GRFXPHQWV RU IDFLOLWLHV
 DELOLW\ RI WKH 6XSHULQWHQGHW RU 3UHVLGHW

RU KHU VWDWXWRU\ UHVSRO D D G L O W M R Q H V D Q G F
 WR GDPDJH DQG GLVUXSWLRQ WR RSHUDWLRQV
 XQDXWKRULJHG 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 ,QGHG 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 FROSA, QXHG LPSURSHU

(YHQ D TXLFN LQWHUQH VHDUFK UHYHDOV QXP
 DUWLFOHV KLJKOLJKW L Q J M H A F K I E S H Q G X F W
 Board votes to censure member behind outburst D W W S V Z T R Z
 FRP PHQRPRQLH VFKRRO ERDUG YRWHV W
 PHPEHU EHKLQ Saurwein school board member
 in hot water over alleged racist comments D W W S V Z Z Z V F S U
 RUJ EORJV HGXFDWLRQ VDXJXV XQLRQ VFKRRO
 PHPEHU LQ KRW C O S H o a r d R e s i d e n t s school board
 member for 'unethical and unprofessional' conduct D W W S V
 Z Z Z Z G U E F R P Q H Z V J F F V E R D U G F H Q V X U H V V F K R R O E R D
 I R U X Q H W K L F D O D Q G X Q S U R I H V V L R Q D O F R Q G X F W I
 F H E F F I I I I E f f e r s o n V C o u n t y Health
 Department Censures one of its Members D W W S V I R [Q R Z
 FRP Q H Z V P L V V R X U L M H I I H U V R Q F R X Q W \ K H D O W K
 F H Q V X U H V R Q H R I L e x i n g t o n P r i c e H i l l T r u s t e e s
 Censure School Board Member D W W S V Z Z Z Z O W [F R P D U W L F O H
 Q H Z V H G X F D W L R Q O H [L Q J W R Q U L F K O D Q G A Y H F H Q V X U

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

