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Case of the Month

Court concluded non-profit organization's distribution of food on a university campus constituted expressive conduct under the First Amendment.

Krishna Lunch of Southern California Inc., a religious non-profit organization sought to distribute vegan and vegetarian food on the campus of the University of California, Los Angeles (UCLA) while engaging in conduct including, chanting, singing, talking with students, and distributing literature related to its religious beliefs. The University of California, Los Angeles maintained a policy that limits the distribution of food on campus by off-campus organizations to four days per year. Krishna Lunch filed suit alleging that UCLA's policy violated its rights to freedom of speech, religion, and association under the First Amendment to the U.S. Constitution. The lower court dismissed the organization's lawsuit for failure to allege sufficient facts to support its claims. The organization appealed.

The Ninth Circuit Court of Appeals first determined whether the organization's conduct constituted expression protected by the First Amendment. In making its determination, the court considered the intent of the organization and the perception of an audience. The court of appeals found that the organization intended its distribution of food to be expressive and an onlooker would understand the organization's as such. The court explained that the fact the organization used signage and engaged in additional activities intended to communicate a message distinguished it from the other vendors on campus distributing food without additional context. The court also recognized that the Krishna Lunch considered those activities to be an important practice of its religion. As a result, the court held that the organization's distribution of food constituted expressive conduct and religious exercise protected by the First Amendment. Although the court found that the organization engaged in protected expression and religious exercise, the court concluded that UCLA did not violate the organization's rights because the policy lacked evidence of discriminatory intent and was neutral and generally applicable to all vendors serving food on campus. The Court vacated and remanded the organization's free association claim and dismissed the organization's free exercise claim because it failed to negate every possible rational basis UCLA might have to support its policy. [Krishna Lunch of S. California, Inc. v. Gordon](#), No. 18-55316, 2020 WL 134123 (9th Cir. Jan. 13, 2020).

Why Is This Case Significant?

Community colleges may place reasonable restrictions on the use of campus facilities and grounds that are neutral and generally applicable, do not discriminate on the basis of any protected category, and do not impede on the First Amendment rights of those seeking to use the facilities.

Highlights

New COVID-19 resources available on [TASB College eLaw](#) and the [TASB COVID-19 Website](#)

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Personnel

Former employee's retaliation and quid pro quo sexual harassment claims under [Title VII of the Civil Rights Act of 1964](#) were dismissed where a community college established the employee's insubordination as a legitimate nonretaliatory reason for termination, and the employee failed to establish a causal nexus between the unwelcome sexual behavior and her termination. [Scott v. Navarro Coll. Dist.](#), No. 3:18-CV-00634-X, 2020 WL 554557 (N.D. Tex. Feb. 4, 2020).

Former employee issued a criminal trespass warning by a community college due to allegations of stalking failed to sufficiently allege facts to support his claims under [42 U.S.C. § 1983](#) that the college's chief of police lacked authority to issue the warning and that the college maintained a custom of condoning constitutional rights violations. [Arismendez v. Coastal Bend Coll.](#), No. 2:19-CV-312, 2020 WL 977231 (S.D. Tex. Feb. 27, 2020).

Former instructor failed to file [Title VII](#) race discrimination lawsuit within the prescribed filing period and was not entitled to equitable tolling. [Huff v. Texas A & M Univ.](#), No. CV H-18-3531, 2020 WL 918606 (S.D. Tex. Feb. 26, 2020).

Former employee's complaint of discrimination and retaliation under [Title VII](#) and violations of the federal [American with Disabilities Act](#) and [Family and Medical Leave Act](#) was dismissed for failure to comply with federal and local rules of appellate procedure by raising issues in his appellate brief and before the court were not introduced in the lower court. [Arredondo v. Univ. of Texas Med. Branch at Galveston](#), 950 F.3d 294 (5th Cir. 2020).

Employee rejected for an internal position provided evidence of causation, including temporal proximity and statements made by members of the search committee, sufficient to survive a university's motion for reconsideration of the court's denial of summary judgment on

the employee's [Title VII](#) retaliation claims. [Alozie v. Arizona Bd. of Regents](#), CV-16-03944-PHX-ROS, 2020 WL 836528 (D. Ariz. Feb. 20, 2020).

Students and Instruction

Former student athlete who opposed a finding of sexual harassment by a university against her coach by meeting with the athletic department and advocating for the coach to the investigator did not engage in activity protected from retaliation under [Title IX of the Education Amendments Act of 1972](#) and failed to establish a causal connection between her opposition to the finding and the denial of her request to redshirt. [Du Bois v. Bd. of Regents of Univ. of Minnesota](#), 19-CV-1676 (PJS/LIB), 2020 WL 759949, (D. Minn. Feb. 14, 2020).

Federal student loan guaranty agency was not considered a debt collector under the [Fair Debt Collection Practices Act](#) when it attempted to collect a nonexistent debt because it acted in good faith incidental to a bona fide fiduciary obligation. [Darrisaw v. Pennsylvania Higher Educ. Assistance Agency](#), 949 F.3d 1302 (11th Cir. 2020).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings based on requests from Texas community colleges related to:

- employee information. Tex. Att'y Gen. Op. [OR2020-03215](#) (Feb. 3, 2020);
- attorney-client privileged communications. Tex. Att'y Gen. Op. [OR2020-03398](#) (Feb. 5, 2020);
- a student incident report. Tex. Att'y Gen. Op. [OR2020-04057](#) (Feb. 11, 2020);
- submitted job applications Tex. Att'y Gen. Op. [OR2020-04045](#) (Feb. 11, 2020); [OR 2020-04074](#) (Feb. 11, 2020);

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- [OR2020-04963](#) (Feb. 18, 2020);
[OR2020-05391](#) (Feb. 20, 2020);
- a psychological examination. Tex. Att'y Gen. Op. [OR2020-04544](#) (Feb. 13, 2020);
- invoices for checks. Tex. Att'y Gen. Op. [OR2020-03952](#) (Feb. 10, 2020).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended and adopted several regulations addressing the establishment of: [Nursing Shortage Reduction Program Study Work Group](#); a [Title IX training advisory committee](#); a [Study and Report on Core Curriculum Advisory Committee](#); and the [Texas Application for State Financial Aid Advisory Committee](#).

THECB amended [regulations](#) concerning funding for the nursing, allied health, and other health-related education grant programs.

THECB adopted [regulations](#) addressing the requirements, conditions, and limitations of the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) internship program.

The Texas Department of Insurance Division of Workers' Compensation amended [regulations](#) concerning the delegation of authority to complete a work status report in response to statutory changes made during the 86th Texas Legislative Session.



In the News

The federal [Families First Coronavirus Response Act \(FFCRA\)](#) temporarily expands the Family and Medical Leave Act (FMLA) and requiring certain employers to provide paid sick leave to employees affected by COVID-19.

The U.S. Department of Labor released [questions and answers](#) regarding the FFCRA.

The [Coronavirus Aid, Relief, and Economic Security Act \(CARES\)](#) provides financial support to taxpayers, businesses, and institutions of higher education impacted by COVID-19.

The Texas governor issued a [proclamation](#) authorizing political subdivisions, including

community colleges, to postpone elections scheduled for May 2020 in response to COVID-19.

The Texas secretary of state issued an [election advisory](#) to provide guidance to political subdivisions postponing May 2020 elections pursuant to the governor's proclamation.

In response to COVID-19, the governor [temporarily suspended certain Texas Open Meeting Act provisions](#) to expand opportunities for [telephonic and videoconference board meetings](#).

The governor [waived regulations](#) related to college work-study programs to ensure participating students continue to receive funding while campuses are closed due to COVID-19.