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Case of the Month

Student drag show was protected by the First Amendment.

Spectrum WT, an LGBT+ student organization recognized by West Texas A&M University, planned a drag show to raise funds for a charitable initiative addressing suicide in the LGBT+ community. Student organizers were tentatively approved to host the event in Legacy Hall, which the university offered students and non-students for a variety of uses. Eleven days before the event, the vice president of student affairs informed the organization that the show was cancelled because the university president believed drag shows discriminated against women. The student group held the event off-campus, but sued the university officials alleging violations of their U.S. Constitution [First Amendment](#) rights under [42 U.S.C. § 1983](#) and requested a preliminary injunction to prevent future events from being cancelled. The university officials filed for dismissal, claiming qualified immunity.

The federal district court determined the drag show was not expressive conduct protected by the First Amendment because Spectrum WT failed to identify particular views expressed through the show. Even if it were protected speech, the university could enforce restrictions on lewd conduct. The district court granted the officials' motions except for the vice president of student affairs' motion and denied the preliminary injunction. Spectrum WT appealed.

The U.S. Fifth Circuit Court of Appeals considered when conduct is expressive enough to implicate the First Amendment and concluded that the First Amendment protections do not require a speaker to identify a particular message that a viewer would understand; rather, conduct must show an intent to convey a message. The court determined that Spectrum WT's message supporting LGBT+ rights satisfied this test. Next, the court conducted a forum analysis and determined that Legacy Hall was a designated public forum, open to all with no limits on expression. Therefore, limits on that expression must pass strict scrutiny, and they did not. Since the president canceled another show while the case was on appeal, Spectrum WT showed irreparable harm justifying a preliminary injunction against the president and the vice president of student affairs who helped him implement the directive. The court reversed the lower court's judgment as it related to the university president and vice president of student affairs and remanded the case for entry of a preliminary injunction against them. [Spectrum WT v. Wendler](#), No. 23-10994, 2025 WL 2388306 (5th Cir. Aug. 18, 2025).

Why is This Case Significant?

The court recognized that nonspeech conduct, such as live drama, is a protected form of expression under the First Amendment if it merely conveys some message, not necessarily a particular message readily understood by viewers.¹

¹ This case was summarized in the October 2023 and March 2024 Community College Services Legal Update.



From the Courts and the Attorney General

Governance

The voter assistance provisions of [Senate Bill 1](#) from the 87th legislative session are not preempted by Section 208 of the federal [Voting Rights Act](#). [La Unión del Pueblo Entero v. Abbott](#), No. 24-50826, 2025 WL 2489464 (5th Cir. Aug. 29, 2025).²

Personnel

Former employee, who was terminated by a university for poor performance when she returned from approved [Family Medical and Leave Act \(FMLA\)](#) leave, failed to provide sufficient evidence to overcome summary judgment on her claims of FMLA discrimination, interference, and retaliation against the university. [Holland v. Tex. Christian Univ.](#), No. 25-10567, 2025 WL 2588997 (5th Cir. Sept. 8, 2025) (per curiam).³

Former university employee, whose termination for documented performance-related issues was initiated a few days before she informed her supervisor she was pregnant, with the notice of termination being issued a few days thereafter, failed to provide sufficient evidence to overcome dismissal of her claim that her termination by the university violated [Title VII of the Civil Rights Act of 1964](#). [Littles v. Univ. of Tex. M.D. Anderson Cancer Ctr.](#), No. H-24-3855, 2025 WL 2379764 (S.D. Tex. Aug. 15, 2025) (mem. op.).

Three professors, who claimed their tenure was revoked by a community college after the college's board of trustees amended relevant policies to restructure their contracts from three-year rolling contracts to one-year contracts, provided sufficient evidence to overcome dismissal of their claim that the board secretly tasked the college's general counsel with

reviewing the effect of the three-year rolling contracts on governance and academic freedom in violation of the [Texas Open Meetings Act](#) and their claims the policy changes constituted retaliation for the professors' speech in violation of the U.S. Constitution [First](#) and [Fourteenth Amendment](#). [Frisella v. Dallas Coll.](#), No. 3:24-CV-0469-D, 2025 WL 2432668 (N.D. Tex. Aug. 22, 2025) (mem. op.).⁴

Former employee, who was terminated by a community college shortly after a complaint was filed alleging that her refusal to participate in Christmas festivities consistent with her faith harmed office morale, provided sufficient evidence to overcome dismissal of her claim that the college terminated her on the basis of her religion in violation of [Title VII of the Civil Rights Act of 1964](#). [Rogers v. Tarrant Cnty. Coll. Dist.](#), No. 3:24-CV-859-L, 2025 WL 2621562 (N.D. Tex. Sept. 11, 2025).

Driver who led a city police officer and a college police department officer in a high-speed chase and sustained injuries, including multiple K-9 dog bites, during his arrest failed to provide sufficient evidence to overcome dismissal of his claim that the city and college failed to train, supervise, or discipline the officers leading to a violation of the driver's U.S. Constitution [Fourth Amendment](#) rights, a claim brought under [42 U.S.C. § 1983](#), but provided sufficient evidence to overcome dismissal of his claims that the officers acted with excessive force in violation of the [Fourth Amendment](#). [Jackson v. Robledo](#), No. 3:24-CV-2896-K-BW, 2025 WL 2625584 (N.D. Tex. Sept. 10, 2025) (adopting report and recommendation in [Jackson v. Robledo](#), 3:24-CV-2896-K-BW, 2025 WL 2625734 (N.D. Tex. Aug. 13, 2025)).

² This case was summarized in the March 2025 Community College Services Legal Update.

³ This case was summarized in the April 2025 Community College Services Legal Update.

⁴ This case was summarized in the October 2024 and March and June 2025 Community College Services Legal Update.

Students and Instruction

Community college and interested individual and organizations failed to provide sufficient evidence to support their motions to intervene seeking reconsideration of a consent order and final judgment declaring [Texas Education Code sections 54.051\(m\) and 54.052\(a\)](#), which allow residents who are not lawfully present in the United States to qualify for in-state tuition, unconstitutional and invalid. [U.S. v. Tex.](#), No. 7:25-CV-00055-O, 2025 WL 2423900 (N.D. Tex. Aug. 15, 2025).⁵

Former doctoral student, a disabled veteran who suffered from chronic migraine syndrome and was denied participation in an abbreviated program at a university, failed to provide sufficient evidence to overcome summary judgment on his claim that the university failed to accommodate his disability in violation of [Section 504 of the Rehabilitation Act of 1974](#). [Reborn v Univ. of N. Tex.](#), No. 4:23-CV-613, 2025 WL 2483983 (E.D. Tex. Aug. 28, 2025) (mem.) (adopting report and recommendation in [Reborn v Univ. of N. Tex.](#), No. 4:23-CV-00613-ALM-AGD, 2025 WL 2487327 (E.D. Tex. Aug. 4, 2025)).⁶

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings⁷ based on requests from Texas community colleges related to:

- Information regarding a request for proposals. Tex. Att'y Gen. Op. [OR2025-29463](#) (Aug. 15, 2025), [OR2025-33269](#) (Sept. 15, 2025);
- Information regarding personnel records involving requestor's client. Tex Att'y Gen. Op. [OR2025-29714](#) (Aug. 18, 2025);
- Certain contracts. Tex. Att'y Gen. Op. [OR2025-30343](#) (Aug. 21, 2025), [OR2025-32842](#) (Sept. 11, 2025);
- Information regarding certain vendors. Tex. Att'y Gen. Op. [OR2025-30241](#) (Aug. 21, 2025), [OR2025-30346](#) (Aug. 21, 2025), [OR2025-32711](#) (Sept. 10, 2025);
- Information regarding a former employee. Tex Att'y Gen. Op. [OR2025-30448](#) (Aug. 22, 2025);
- Information regarding certain organizations. Tex Att'y Gen. Op. [OR2025-30520](#) (Aug. 22, 2025);
- Communications sent or received by an individual. Tex Att'y Gen. Op. [OR2025-31204](#) (Aug. 28, 2025);
- Information regarding a solicitation. Tex. Att'y Gen. Op. [OR2025-31562](#) (Sept. 2, 2025).
- A contract. Tex. Att'y Gen. Op. [OR2025-31666](#) (Sept. 2, 2025);
- Contracts and service agreements. Tex. Att'y Gen. Op. [OR2025-32730](#) (Sept. 10, 2025);
- Contracts, purchase orders, and master service agreements. Tex. Att'y Gen. Op. [OR2025-32922](#) (Sept. 11, 2025);
- Information regarding certain service contracts. Tex. Att'y Gen. Op. [OR2025-33265](#) (Sept. 15, 2025).

⁵ This case was summarized in the March 2025 Community College Services Legal Update.

⁶ This case was summarized in the September 2024 Community College Services Legal Update.

⁷ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended [regulations](#) to expand eligibility for the Financial Aid for Swift Transfer (FAST) Program, in response to statutory changes made by the 89th Texas legislature.

THECB amended [regulations](#) to clarify the period in which corrections may be made to data used in calculating community college formula funding, change certain reporting deadlines, and, in response to statutory changes made by the 89th Legislature, update references to law and reporting manuals.

THECB amended [regulations](#) to give THECB the flexibility to link academic fields to high-demand occupations, which are used in calculations related to performance funding for colleges, in instances where the Bureau of Labor Statistics and National Center for Education Statistics do not include a high-demand occupation.

THECB amended [regulations](#) to increase the precision of the forecasting methodology used to predict performance tier funding under the community college finance program.

THECB adopted [regulations](#) to clarify that the base and performance tier funding methodology described by 19 Texas Administrative Code chapter 13, subchapter S, applies to payments made in Fiscal Year 2026 with limited modifications.

THECB adopted [regulations](#) establishing requirements for the waiver of college

application fees during Free College Application Week.

THECB proposed a review of [regulations](#) regarding the transferability of lower-division course credit among universities and colleges and through core and field of study curricula.

The Teacher Retirement System of Texas amended [regulations](#) addressing members' eligibility to earn a year of service credit.

The Texas Board of Dental Examiners amended a [regulation](#) addressing the deadline for dental hygiene faculty to apply for a license and the procedure for the renewal of the license.

The Texas Historical Commission amended a [regulation](#) to address the criteria for the use of real property as a historic site or for inclusion in the Texas Historical Commission Historic Sites Program.

The Texas Appraiser Licensing and Certification Board amended [regulations](#) to permit pre-licensing course hour requirements for appraiser candidates to be revised in accordance with requirements specified by the Appraiser Qualifications Board.

The Texas Real Estate Commission amended [regulations](#) permitting online verification of student identification prior to taking a course and removing the proctoring and closed-book requirement for certain online exams.



In the News

The second special session of the 89th legislative session ended on Sept. 4, 2025.

The Texas Lieutenant Governor and Speaker of the House announced the formation of the Senate and House [Committees on Civil Discourse & Freedom of Speech in Higher Education](#) to jointly study and issue reports on bias, discourse, and freedom of speech on Texas university and college campuses.

The U.S. Department of Education (ED) announced it will end funding for [Racially Discriminatory Discretionary Grant Programs at Minority-Serving Institutions](#).

The President signed a proclamation, [Restriction on Entry of Certain Nonimmigrant Workers](#), aimed at reforming the H-1B visa program, including requiring a \$100,000 payment accompanying any new H-1B visa petitions submitted after Sept. 21, 2025.

United States Citizenship and Immigration Services provided [guidance](#) regarding implementation of the President's H-1B program reforms, including an [FAQ](#) noting that the proclamation does not change payments or fees required for renewals or prevent holders of current H-1B visas from traveling in and out of the country, and referencing further [guidance](#) from U.S. Customs and Border Protection.