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Case of the Month

Former professor provided sufficient evidence to overcome summary judgment on her First Amendment claims.

Suzanne Jones, a long-time professor at Collin College who regularly received above average college and student reviews, engaged in advocacy regarding the college's decision to return to in-person instruction in Fall 2020 despite the COVID-19 pandemic, both at the college and by using social media to urge the public to advocate. She also participated in the creation of a Texas Faculty Association chapter. Once discovered by the college, she was asked to remove the college's name from the union's website. Requests for the union to present to faculty were denied until a recruiting event was held.

The college terminated Jones that day, citing her failure follow college policy, advance the college's mission, adhere to college values, and collaborate professionally with others. Jones' subsequent grievance was denied for improper use of the college's name on public websites and exerting external pressure on the college not to reopen, undermining the board's decisions. Jones sued the college president and vice president in their official and individual capacities alleging violations of her U.S. Constitution [First Amendment](#) free speech and association rights under [42 U.S.C. § 1983](#). The college officials filed a motion for summary judgment in their individual capacities, claiming qualified immunity.

The district court considered if Jones provided evidence that demonstrates a constitutional violation. The college officials argued Jones' advocacy on the campus reopening was speech on a matter of public concern but was part of her official duties, and therefore not protect by the First Amendment. The court disagreed, finding Jones speech to be about her duties, not in furtherance of her duties and that her interest in the speech outweighed college's interest in regulating it. She also provided evidence she was not terminated until she went public on the reopening plan and associated with the union.

The district court then considered if the college officials acted in violation of clearly established law. Reviewing precedent, the court determined it has long been established that the First Amendment protects union activity. Jones also had a clearly established right to use her social media account to engage the public in the college's response to the pandemic. Because Jones provided sufficient evidence to overcome summary judgment, the court denied the college official's motion. [Jones v. Matkin](#), No. 4:21-CV-00733, 2022 WL 3686532 (E.D. Tex. Aug. 25, 2022) (mem.).

Why is This Case Significant?

This case addresses the difference between a public employee's speech on the employee's duties and speech in furtherance of those duties. It also discusses clearly established First Amendment law.

Highlights

[2022-23 HR Services Community College Salary Survey](#) September 8th.

The new Policy Online™ is now live.

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

Governance

Anonymously voted ballots may be inspected by the public during the 22-month period they are to be stored in a locked ballot box, but the voter's personally identifiable information connecting the voter's identity to the voter's selections is confidential and must be redacted. Tex. Att'y Gen. Op. No. [KP-411](#) (Aug. 16, 2022).

Business and Finance

Texas law prohibiting the carry of handguns by 18-to-20-year-olds outside of the home was enjoined because it violates the U.S. Constitution [Second Amendment](#); the ruling was stayed pending appeal. [Firearms Policy Coalition, Inc. v. McCraw](#), No. 4:21-cv-1245-P, 2022 WL 3656996 (N.D. Tex. Aug. 25, 2022).

Personnel

Former faculty member failed to provide sufficient evidence to support her claims that her termination by a community college was the result of gender discrimination in violation of [Title VII of the Civil Rights Act of 1964](#) and the [Texas Equal Rights Act](#), age discrimination in violation of the [Age Discrimination in Employment Act](#), and retaliation in violation of the U.S. Constitution [First Amendment](#), or that the college breached her contract and violated her procedural and substantive due process rights. [Bennett v. Tarrant Cnty. Coll. Dist.](#), NO. 3:22-CV-0289-B, 2022 WL 3371629 (N.D. Tex. Aug. 16, 2022) (mem.).

Iranian former faculty member failed to provide sufficient evidence to support her claims of national origin and gender discrimination and retaliation in violation of [Title VI](#) and [Title VII](#) of the Civil Rights Act of 1964, [Title IX of the Education Amendments of 1972](#), [42 U.S.C. § 1981](#), and [42 U.S.C. § 1983](#) against a university system, university, and university officials, including evidence that other employees were treated more favorably in basically the same

circumstances. [Shahrashoob v. Tex. A&M Univ. Sys.](#), No. H-22-699, 2022 WL 3702264 (S.D. Tex. Aug. 26, 2022) (mem.).

Caucasian former faculty member, who alleged the university's decision not to grant her a new contract constituted racial discrimination and retaliation for her discrimination complaint in violation of [Title VII](#), failed to provide evidence the performance issues the university cited as its reason for its decision were pretextual. [Love v. Univ. of Saint Thomas](#), No. 4:20-cv-00176, 2022 WL 3927824 (S.D. Tex. Aug. 30, 2022).

Former supervisor's claims her termination constituted retaliation for her Equal Employment Opportunity Commission charge of race and color discrimination in violation of [Title VII](#) and of disability discrimination in violation of the [Americans with Disabilities Act](#) (ADA) survived dismissal because she alleged her termination occurred two weeks after she filed the complaint. [Baker v. Univ. of Tex. Southwestern Med. Ctr.](#), No. 3:19-CV-3020-K, 2022 WL 4122222 (N.D. Tex. Sept. 9, 2022).

Black employees, who claimed a community college violated [Section 1981](#) by intentionally discriminating against them based on race through implementation of a reorganization plan and by subsequently retaliating against them based on their discrimination complaints, provided sufficient evidence to overcome dismissal of their claims. [Adams v. Houston Cmty. Coll.](#), No. H-22-1547, 2022 WL 4227260 (S.D. Tex. Sept. 13, 2022).

Executive associate overcame dismissal of her claim that the university's decision to promote a colleague 20 years her junior instead of her constituted age discrimination in violation of the [Texas Commission on Human Rights Act](#) because she provided sufficient evidence constituting genuine issues of material fact as to whether the president's reasons for the decision were credible and therefore pretextual. [Texas Tech Univ. Health Sci. Ctr.-El](#)

Paso v. Flores, No. 08-20-00202-CV, 2022 WL 3755789 (Tex. App.—El Paso Aug. 30, 2022, no pet. h.).

Students and Instruction

Student's claim she was entitled to a tuition and fees refund after a university moved her in-person courses online in response to the COVID-19 pandemic was remanded for consideration of whether the term "educational services" in the student's financial responsibility agreement was latently ambiguous and, if so, the term's meaning. *King v. Baylor Univ.*, 46 F.4th 344 (5th Cir. Aug. 23, 2022).

Former student failed to provide sufficient evidence to overcome summary judgment on her claim a college was deliberately indifferent to her report of sexual harassment committed by her academic advisor in violation of [Title IX](#). *Pierce v. Houston Cmty Coll. Sys.*, No. 4:21-CV-00346, 2022 WL 4292337 (S.D. Tex. Sept. 15, 2022) (mem.).

Community and Governmental Relations

Gender dysphoria is not a gender identity disorder excluded from [ADA](#) protection. *Williams v. Kincaid*, 45 F.4th 759 (4th Cir Aug. 16, 2022).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- A specified contract. Tex. Atty. Gen. Op. [OR2022-25574](#) (Aug. 24, 2022);
- Information regarding an agreement. Tex. Atty. Gen. Op. [OR2022-25580](#) (Aug. 24, 2022);
- Information regarding certain courses and examinations. Tex. Atty. Gen. Op. [OR2022-26029](#) (Aug. 26, 2022);
- Information, including contracts and communications, regarding certain programs. Tex. Atty. Gen. Op. [OR2022-26101](#) (Aug. 29, 2022); and
- A specified bid. Tex. Atty. Gen. Op. [OR2022-27136](#) (Sept. 7, 2022).

Recent Regulations and Guidance

The Texas Department of Information Resources repealed and adopted [regulations](#) addressing the required standards for videoconferencing technology used for meetings held in compliance with the [Texas Open Meetings Act](#), including standards for meetings held by computer-based videoconferencing applications and those hosted from a dedicated video room.

The Texas Workforce Commission amended [regulations](#) addressing Self-Sufficiency Fund

training grants, including updates to the purpose of the fund and the eligibility requirements, implementing statutory changes enacted by the 87th Texas Legislature.

The Texas State Board of Pharmacy repealed [regulations](#) addressing pharmacy technician training programs to remove standards that the Board determined are not required to be in the Board's rules or are outside of Board's resources to perform.

¹ 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.

The Texas Commission on Licensing and Regulation adopted, amended, and repealed [regulations](#) addressing court-ordered education programs for alcohol and drug-related offenses, implementing statutory changes enacted by the 87th Texas Legislature.

The Texas Department of Insurance adopted [regulations](#) addressing preauthorization exemptions, including the review of those exemptions by an independent review organization, implementing statutory changes enacted by the 87th Texas Legislature.

The Texas Attorney General repealed the [regulations](#) addressing the address confidentiality program intended for victims of sexual assault and abuse, family violence, stalking, and trafficking of persons.

The U.S. Department of Homeland Security adopted and amended [regulations](#) intended to preserve and fortify Deferred Action for Childhood Arrivals (DACA) policy.



In the News

The Texas Governor renewed the [disaster proclamation](#) issued for all counties in Texas due to the COVID-19 pandemic.

The President issued a proclamation celebrating [National Hispanic-Serving Institutions Week](#).

The federal Internal Revenue Service lowered the Affordable Care Act [affordability percentage](#) to 9.12 percent for the 2023 tax year, meaning employers must contribute more toward their employee's health insurance premiums in 2023.