



## Contents

[Case of the Month](#)  
[From the Courts and Attorney General](#)  
[Recent Regulations and Guidance](#)  
[In the News](#)



## Case of the Month

### U.S. Supreme Court halts enforcement of state COVID-19 gathering restrictions.

Individuals (plaintiffs) sued California state and county officials in federal district court to obtain a preliminary injunction prohibiting enforcement of state and county restrictions on gatherings in response to the COVID-19 pandemic. They alleged, in part, that the restrictions violated their U.S. Constitution [First Amendment](#) right of free exercise of religion by placing capacity restrictions on religious meetings at their homes while allowing secular businesses to operate in public buildings without the same limits. The district court denied the injunction and the plaintiffs appealed, seeking an emergency injunction.

Declining to apply the plaintiffs' broad comparison of in-home and public activity, the Ninth Circuit Court of Appeals compared the application of the capacity restrictions to the plaintiffs' at-home religious meetings and secular activities also held in homes. The restrictions applied equally and thus were neutral and generally applicable. As such, the restrictions needed only to have a rational basis and likely did. The court declined the injunction, and the plaintiffs appealed.

The U.S. Supreme Court considered the case as part of its "shadow docket", an accelerated approach intended for emergencies where cases are considered without oral argument and with limited briefing. Contrary to prior precedent, [Employment Division v. Smith](#), 494 US 872 (1990), the Court applied for the first time a theory often referred to as "most favored nation" theory. Under this theory, a government restriction on religious exercise must be subjected to heightened strict scrutiny if it allows any exception for secular activity. Here, the regulations allowed higher capacity limits for businesses in public buildings, such as retail stores and restaurants, than at-home religious gatherings, and thus the Court applied strict scrutiny to its analysis of the restrictions on those gatherings. Because the state had not shown that the restrictions were narrowly tailored and that less restrictive measures could not address the state's interest in reducing the spread of COVID-19, the Court granted the injunction pending appeal. [Tandon v. Newsom](#), No. 20A151, 2021 WL 1328507 (U.S. Apr. 9, 2021) (per curiam).

### Why Is This Case Significant?

Contrary to precedent, this case establishes that a law or regulation may not treat a religious activity less favorably than any other comparable secular activity unless it meets the highest standards of strict scrutiny, regardless of whether the government is specifically targeting religious activity. The case is also an example of the growing significance of the Supreme Court's rapidly expanding shadow docket in changing Court jurisprudence.

### Highlights

[Update 41](#) to the CCPRM is now available.

New on eLaw:

[Meeting Notice Requirements](#)  
[Emergency Meetings](#)

### 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

### Business and Finance

University board of trustees' application to patent certain computerized statistical models for determining haplotype phase, indicating the parent from whom a gene has been inherited, was rejected because the subject matter consisted of abstract ideas, such as mathematical concepts, and abstract mental processes and therefore was held to be patent ineligible. *In re Bd. of Trs. of Leland Stanford Junior Univ.*, 991 F.3d 1245 (Fed. Cir. Mar. 25, 2021).

### Personnel

Former university employee alleged he was injured while being forced by the university to lift amounts greater than his medical condition allowed and was terminated three months after complaining of disability discrimination and retaliation to the U.S. Equal Employment Opportunity Commission (EEOC). The court held that the fact that the employee was terminated three months after filing an EEOC complaint was sufficient evidence that the university retaliated in violation of the [Americans with Disabilities Act](#) (ADA) and [Rehabilitation Act Section 504](#) (Section 504) but that there was not sufficient evidence that the termination was made on the basis of a disability and granted summary judgment for the university on the discrimination claim. *Stratton v. Jackson State Univ.*, No. 3:20-CV-00202-TSL-RPM, 2021 WL 1268381 (S.D. Miss. Apr. 6, 2021).

University professor refused to use female pronouns during classroom lectures to refer to a transgender student who identified as female and received a written warning for violating university policy requiring faculty to refer to students by their preferred pronouns. The professor plausibly alleged that the university's enforcement of its policy violated his U.S. Constitution [First Amendment](#) right to free speech and that university officials and

procedures created a hostile environment that violated his [First Amendment](#) right to exercise of religion. However, the university's policy was not unconstitutionally vague as applied to the professor. *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. Mar. 26, 2021).

University police officers had probable cause to restrain and arrest a university student's parent for disorderly conduct or resisting an officer, and their use of force was not unconstitutionally egregious. Therefore, the officers were entitled to qualified immunity from the parent's complaint of false arrest and excessive force in violation of the U.S. Constitution [Fourth Amendment](#). *Cibulka v. City of Madison*, 992 F.3d 633 (7th Cir. Mar. 29, 2021).

### Students and Instruction

Student did not provide sufficient evidence that a college was deliberately indifferent to her sexual assault by another college student in violation of [Title IX of the Education Amendments of 1972](#) by limiting her participation in its disciplinary proceedings against the other student, arranging a meeting between the students, and failing to remove from its campus promotional posters featuring the other student. The court also held that the student did not provide sufficient evidence that the college failed to provide reasonable accommodations in violation of the [ADA](#) or [Section 504](#). *Shank v. Carleton Coll.*, No. 19-3047, 2021 WL 1228068 (8th Cir. Apr. 2, 2021).

## Open Records Letter Rulings

The attorney general issued Open Records Letter Rulings<sup>1</sup> based on requests from Texas community colleges related to:

- Information pertaining to a specified contract. Tex. Att’y Gen. [OR2021-4094](#) (Feb. 22, 2021);
- Information pertaining to the college’s advertising. Tex. Att’y Gen. [OR2021-4142](#) (Feb. 22, 2021);
- The bids and bid scoring sheets for college building contracts awarded to a certain general contractor. Tex. Att’y Gen. [OR2021-4187](#) (Feb. 23, 2021);
- Bid tabulations, evaluation documents, scoring rubrics, or other information pertaining to specified proposals. Tex. Att’y Gen. [OR2021-4286](#) (Feb. 23, 2021), [OR2021-5810](#) (Mar. 10, 2021), [OR2021-5969](#) (Mar. 11, 2021), [OR2021-6128](#) (Mar. 12, 2021);
- Basic employee wage and job information. Tex. Att’y Gen. [OR2021-5495](#) (Mar. 8, 2021);
- Information pertaining to a specified request for proposals. Tex. Att’y Gen. [OR2021-8377](#) (Apr. 1, 2021); and
- Information pertaining to specified contracts and invoices. Tex. Att’y Gen. [OR2021-9093](#) (Apr. 9, 2021).



## Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) replaced [regulations](#) concerning the field of study curricula and the transfer of credits among institutions of higher education. The new regulations include the [creation](#) of a new Texas Transfer Advisory Committee, the replacement of existing field of study advisory committees with new Discipline-Specific Subcommittees, and structural [changes](#) to field of study curricula.

The Texas State Securities Board amended [regulations](#) concerning the definition of institutional accredited investor and others in response to regulatory amendments by the U.S. Securities and Exchange Commission.

The Texas Education Agency adopted a [regulation](#) providing guidelines for calculating college, career, or military readiness.

The Texas Board of Architectural Examiners replaced regulations concerning continuing education requirements for [architects](#), [landscape architects](#), and [interior designers](#).

The Texas Forensic Science Commission amended a [regulation](#) concerning continuing education requirements for forensic analysts and forensic technicians.

The Texas Department of State Health Services Commission (DSHS) updated its [schedules](#) of controlled substances.

DSHS updated its [Child Care Regulation Handbook](#).

The Texas Health and Human Services Commission amended regulations concerning [minimum standards](#) for school-age and before- or after-school programs, [licensing requirements](#) for child-care operations, and [minimum standards](#) for child-care centers.

The Texas Commission on Environmental Quality renumbered [regulations](#) concerning the requirements to give preference to products made of recycled materials and the hardship exemptions from mandated recycling programs.

<sup>1</sup> 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 U.S. Department of Justice Civil Rights Division issued a [memorandum](#) concluding that [Title IX](#) prohibits discrimination against an individual based on the individual's sexual orientation or gender identity, predicated on the

U.S. Supreme Court's holding in [Bostock v. Clayton County, Georgia](#), that [Title VII of the Civil Rights Act of 1964](#), a similarly worded provision, prohibits discrimination on the basis of those characteristics.



## In the News

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

The Texas Governor [renewed](#) the disaster proclamation issued for all counties in Texas due to severe winter weather.

THECB [updated](#) its guidance for Texas institutions of higher education regarding tuition, refunds, and financial aid requirements impacted by the COVID-19 pandemic.

The U.S. Department of Education (DOE) announced the availability of new grant funding under the Higher Education Emergency Relief Fund for eligible institutions of higher education under the [Minority Serving Institutions program](#) and the [Strengthening Institutions Program](#) to address needs caused by the COVID-19 pandemic.

DOE's Office for Civil Rights [announced](#) plans to review its regulations implementing Title IX in response to [Executive Order 14021](#), directing the Secretary of Education to review existing regulations that are inconsistent with the order's statement of policy regarding prevention of discrimination on the basis of sex, including on the basis of sexual orientation or gender identity.

DSHS [updated](#) its frequently asked questions regarding COVID-19.

The Office for Civil Rights at the U.S. Department of Health and Human Services [issued](#) a bulletin concerning laws prohibiting discrimination during the COVID-19 pandemic.

The Internal Revenue Service (IRS) [issued](#) frequently asked questions regarding the taxability of emergency financial aid grants made by institutions of higher education to students due to the COVID-19 pandemic.

IRS [issued](#) a notice warning students and staff of institutions of higher education regarding IRS-impersonation email scams.

The U.S. Department of Labor issued [guidance and best practices](#) for maintaining cybersecurity to protect information regarding retirement benefits regulated by the Employee Retirement Income Security Act.