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## Case of the Month

### U.S. Supreme Court considered the application of Title VII to discrimination based on sexual orientation and gender identity

The U.S. Supreme Court considered three cases in which tenured employees alleged they were fired based on their sexual orientation or gender identity in violation of [Title VII of the Civil Rights Act of 1964](#), the law that prohibits an employer from discriminating against an applicant or employee on the basis of sex. In the first case, Gerald Bostock, an employee of Clayton County, Georgia, was terminated for “unbecoming” conduct soon after he joined a gay recreational softball league. In the second case, Donald Zarda was terminated after stating that he was gay, and in the third, Aimee Stephens was terminated after informing her employer of her transgender status. The Eleventh Circuit dismissed Bostock’s suit and held that Title VII does not prohibit an employer from firing an employee based on the employee’s sexual orientation. The Second and Sixth Circuits held that Zarda’s and Stephens’ cases, respectively, could continue. The non-prevailing parties appealed, and the Supreme Court granted certiorari to resolve the circuit split.

The Court dismissed the employers’ argument that the Court should base its decision on Title VII’s legislative history, history that did not address the concepts of sexual orientation and gender identity, because the Court found the statute’s terms to be unambiguous. The Court assumed, as argued, that sex referred to biological distinctions between males and females and acknowledged that sexual orientation and gender identity are distinct concepts from sex. However, the Court stated that one concept cannot exist without the other because discrimination based on sexual orientation or gender identity requires an employer consider sex. The employer discriminates based on traits or behavior it deems acceptable in the other sex. Further, the Court explained that to trigger Title VII liability, sex discrimination need only be part of an employment decision. Specifically, the Court concluded an individual’s sex need only be one but-for cause and not the sole or primary cause of an employer’s adverse employment action. The Court concluded that discrimination on the basis of sex includes sexual orientation and gender identity and is prohibited under Title VII. The Court affirmed the judgements of the Second and Sixth Circuits in Zarda’s and Stephens’ cases and reversed and remanded the judgment of the Eleventh Circuit in Bostock. [Bostock v. Clayton Cty.](#), Georgia, No. 17-1618, 2020 WL 3146686 (U.S. June 15, 2020).

### Why is This Case Significant?

Title VII’s prohibition on employment discrimination on the basis of sex includes sexual orientation and gender identity. Liability under Title VII only requires sex discrimination to be one factor of an adverse employment action.

## Highlights

Update 39 to the [CCPRM](#) is now available.

Register for our upcoming [webinar](#): “Incorporating the New Title IX Regulations Into Policy” on July 16th

[Title IX Regulations and State Law Side-by-Side](#) available.

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



## From the Courts and the Attorney General

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### Governance

The Texas Attorney General concluded that a governmental body can determine whether a public comment period will be held before or during the body's discussion of an agenda item. Rules limiting the total amount of time a speaker has to address all agenda items are permissible only if the rules are reasonable. Tex. Att'y Gen. Op. No. [KP-300](#) (Apr. 22, 2020).

### Personnel

Former tenure track professor, terminated after teaching with an unapproved self-published textbook, claimed that a university official violated his [First Amendment](#) right to academic freedom and free speech by removing him from teaching. The court dismissed his claim holding that he failed to provide controlling legal authority protecting a professor's right to choose textbooks addressing textbook choice and that the university official was entitled to qualified immunity. *Committee v. Gentry*, No. 19-CV-0122, 2020 WL 3443022 (W.D. La. May 8, 2020).

### Students and Instruction

Former student expelled for violating a university's sexual misconduct policy plausibly pleaded that the university discriminated

against him on the basis of sex in violation of [Title IX of the Education Amendments Act of 1972](#) by selectively investigating complaints and enforcing its policy. *Doe v. Univ. of Scis.*, 961 F.3d 203 (3d Cir. May 29, 2020).

### Open Records Letter Rulings

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

- Information pertaining to a specified incident involving the requestor's client. Tex. Att'y Gen. [OR2020-13170](#) (May 8, 2020);
- A contract with a construction and engineering company and evaluation information for a specified request for proposals. Tex. Att'y Gen. [OR2020-13312](#) (May 11, 2020);
- The bid tabulation pertaining to a specified request for proposals. Tex. Att'y Gen. [OR2020-14223](#) (May 21, 2020); and
- Video recordings, 911 calls, and reports related to a specified incident. Tex. Att'y Gen. [OR2020-14874](#) (May 28, 2020).



## Recent Regulations and Guidance

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The Texas Board of Nursing amended [regulations](#) concerning the requirement to submit fingerprints for a criminal background check prior to licensure.

The Texas Comptroller of Public Accounts amended definitions in the [regulations](#) addressing the use of travel services other than contract travel services.



## In the News

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The Texas Secretary of State updated [COVID-19 resources](#) for election officials.

The Equal Employment Opportunity Commission updated its [guidance](#) on COVID-19, the Americans with Disabilities Act, the Rehabilitation Act, and other laws.

The [Department of Education](#) published its [interim final rule](#) regarding the eligibility of students at institutions of higher education for funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.