

Fifth Circuit halts West Texas A&M drag show ban as free speech lawsuit continues

In a split decision, a three-judge panel of the 5th U.S. Circuit Court of Appeals blocked the school's prohibition on drag performances, finding students are likely to prove it violates the First Amendment.

BY **JESSICA PRIEST** AUG. 18, 2025 UPDATED: 6 HOURS AGO

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A federal appeals court Monday blocked West Texas A&M University President Walter Wendler from enforcing a campus drag show ban, ruling that the performances are likely protected under the First Amendment.

The 2-1 ruling from the 5th U.S. Circuit Court of Appeals reverses a lower court's decision upholding Wendler's 2023 cancellation of a drag show, which he argued was demeaning to women and compared to blackface.

The decision means Spectrum WT, the student group that brought the lawsuit, can produce drag shows on campus while its lawsuit continues in a lower court.

Judge Leslie H. Southwick, who wrote for the majority, said the context of the students' event made its message of supporting the queer community clear.

"The viewers of the drag show would have been ticketed audience members attending a performance sponsored by LGBT+ student organizations and designed to raise funds for LGBT+ suicide-prevention charity," wrote Southwick, who was appointed by George W. Bush. "Against this backdrop, the message sent by parading on a theater stage in attire of the opposite sex would have been unmistakable."

The court concluded that Legacy Hall, where the drag show was scheduled to take place, was a designated public forum open to a variety of groups, including churches and political candidates. That meant banning drag shows targeted the content of the event, something the Constitution allows only in the rarest cases.

Finally, the court found that students faced ongoing irreparable harm to their speech rights, noting Wendler had canceled another drag show planned for 2024 and declared that no drag shows would ever be allowed on campus.

That conclusion gave the judges another reason to block the ban for now, since courts only grant such relief when plaintiffs have a strong case and risk being harmed without it.

In March 2023, Wendler canceled Spectrum WT's drag show intended to raise money for the Trevor Project, a nonprofit that works to reduce suicides in the LGBTQ+ community. He explained in a letter to the campus community that he thought drag shows — where participants often use exaggerated clothing and makeup to explore, celebrate or parody gender roles — were misogynistic.

“As a university president, I would not support ‘blackface’ performances on our campus, even if told the performance is a form of free speech or intended as humor. It is wrong. I do not support any show, performance or artistic expression which denigrates – in this case, women – for any reason,” he wrote.

In September 2023, U.S. District Judge Matthew Kacsmaryk, a President Donald Trump appointee and former attorney for a conservative legal group that opposed LGBTQ rights, sided with Wendler.

The case arose as Texas lawmakers were also targeting drag more broadly. The same year, they passed a law restricting some drag performances in public spaces, but a federal judge later struck it down as unconstitutional under the First Amendment.

West Texas A&M isn't the only campus to ban drag shows. This year, the Texas A&M System adopted a systemwide prohibition, and the University of Texas and University of North Texas systems enacted similar restrictions following pressure from conservative officials, including Tarrant County Judge Tim O'Hare. In March, however, a federal judge temporarily blocked the Texas A&M System's ban, allowing the “Draggieland” event at the flagship campus to proceed, also finding that students were likely to succeed on their First Amendment claims. That lawsuit is also still working its way through the courts.

Judge James C. Ho dissented in the West Texas A&M case. Ho, who was appointed to the 5th Circuit by Trump and is the former Solicitor General of Texas, wrote that Spectrum WT had not shown it was entitled to such an “extraordinary remedy” as a court order blocking the drag show ban.

The Foundation for Individual Rights and Expression, which represents Spectrum WT in the West Texas A&M case and the Queer Empowerment Council in the Texas A&M System lawsuit,

hailed the ruling as a major victory for student speech.

“We’re overjoyed that our clients will now be able to express themselves freely, and we’ll be watching to make sure that President Wendler obeys the laws of the land while the case proceeds,” FIRE Attorney Adam Steinbaugh said in a statement.

A spokesperson for West Texas A&M could not immediately be reached for comment, so it’s unclear how the university will respond to the ruling.

The case now returns to district court in Amarillo, where the fight over whether West Texas A&M’s drag ban is constitutional will continue.

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Correction, Aug. 19, 2025 at 6:38 p.m.: An earlier version of this story incorrectly attributed the statement “drag is not inherently expressive” to Judge James C. Ho in his dissent to the 5th U.S. Circuit Court of Appeals’ ruling that blocks West Texas A&M University’s ban on drag shows. The phrase appears in the majority opinion’s overview of the arguments made by university President Walter Wendler in support of the ban.

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