

6-22-2023

## Federal Court Orders Utah City to Issue Permit for Drag Show

Arthur S. Leonard

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BY ARTHUR S. LEONARD

**T**he small city of St. George, Utah, is characterized by Senior US District Judge David Nuffer as being a “very conservative community,” so perhaps it is no surprise that a group that was specifically performed to present a public drag show there ran into trouble getting a permit for the event. Judge Nuffer concluded that the City Council’s stated reason for denying the permit — that the plaintiffs had begun advertising the event before they had received a permit — was a pretext for unconstitutional discrimination, and he granted a preliminary injunction ordering the city to issue a permit for the event to be held on June 30, 2023.

Of course, there is a back story. During the summer of 2022, the HBO program “We’re Here” got a permit to hold and film a drag show in one of St. George’s public parks. The event involved “three popular drag queens” who were “traveling to small towns to speak with members of the local LGBTQ+ community and to perform in drag shows.” When they heard about it, the City Council voted to demand that the city manager rescind the permit, which he refused to do. The event was held, and subsequently distributed online by HBO. The city manager ended up resigning over this issue.

This incident inspired Mitski Avalox, a male drag performer who uses feminine pronouns, to organize the Southern Utah Drag Stars, LLC, for the specific purpose of holding a drag show planned for late April 2023 in a public park in St. George. Avalox put out notices to potential advertisers and vendors for the show after being told by a city official that she could do so while a permit application was pending, and then she applied for a permit. Suitably alerted of the City Council’s hostility to the idea due to the controversy surrounding the previous year’s HBO show, officials denied the permit, even though at first they had told Avalox that it would be granted, and various city agency heads who were consulted had raised no objections to it.

The issue of drag shows has been embraced by some political conservatives as one of their social and po-



St. George, Utah.

ST. GEORGE CHAMBER OF COMMERCE

litical wedge issues, and some city officials looked for a “technical” way to justify denying a permit. They seized upon the previously unenforced city law stating that persons holding “special events” on city property could not advertise or publicize their events before obtaining a permit. They pointed to Avalox’s attempts to get sponsors and participating organizations, which involved a listing on a website, called that “advertising,” and cited it as a pretext to deny the permit, when their real reason for doing so, as Judge Nuffer found based on a review of the City Council discussion of this issue and the spurious justifications offered by the City for this action, was to prevent drag shows where children might see them, out of an ostensible desire to “protect” children from harm.

A study of “special events” permits in St. George revealed, to nobody’s surprise, that because many permits were not issued until shortly before an event took place, most public events were advertised well before permits had been issued, and no permit had ever then been rescinded because the event had already been advertised. The denial of a permit for South Utah Drag Stars was a first, although city officials then tried to

cover their tracks by denying a handful of other permits on this basis.

In addition to denying Avalox’s appeal of the permit denial, the City Council adopted a six-month “moratorium” on approving permits for “special events” on city property, but riddled it with exceptions. In fact, the court found, more special events were actually held during the “moratorium” period than had been held the previous summer, giving the lie to the City’s transparently false contention that the “moratorium” was supposed to reduce wear and tear on the city parks. Avalox and his organization, represented by the American Civil Liberties Union, filed suit in the US District Court for Utah.

The City Council’s meeting devoted to this topic was fairly typical of such events, packed with people screaming against drag shows and making the usual misrepresentations about them. It was clear that the issue was not about “advertising,” but rather about the presumed content of the show, which was inaccurately described by at least one Council member as a “strip show.”

Judge Nuffer rejected the city’s argument that a drag show does not enjoy any First Amendment protection. “Given current political events and discus-

sions,” he wrote, “drag shows of a nature like the planned Allies Drag Show are indisputably protected speech and are a medium of expression, containing political and social messages regarding (among other messages) self-expression, gender stereotypes and roles, and LGBTQIA+ identity.”

“The city’s related argument that it has a compelling interest in protecting children from obscene material is wholly unsupported on the record as to Plaintiff’s permit,” the judge continued. “To be clear: there is no question that governments have a legitimate interest in protecting children from genuine obscenity. But the city has not provided on shred of evidence that would implicated that legitimate interest.”

“Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body this unsuitable for them,” wrote Nuffer. And, he pointed out, the city had presented no evidence that the drag show was anticipated to be “anywhere close to satisfying even one prong” of the multipart test adopted by the Supreme Court in 1973 when it set a standard for juries to use in determining whether particular speech was obscene.

The judge also observed that the city’s rules suffered from vagueness, failing to define “advertising” in a way that would make clear what the limitations on pre-permitting publicity actually were.

“Challenging times give us an opportunity to re-examine fundamental principles of our government and, once again, determine to adhere to them,” wrote the judge. “We recognize that just as we enjoy and prize our rights, we must value and respect the rights of others. This case presents an opportunity for our recommitment.”

Judge Nuffer, formerly a magistrate judge, was appointed to the district court by President Barack Obama in 2011. After serving as chief judge of the district for several years, he took senior status in 2022. When the district court decided to establish a satellite courthouse in St. George, Nuffer volunteered to staff it.