



Written by [James Murphy](#) on November 4, 2022

Ninth Circuit Court of Appeals Rules Miss USA Pageant Can Remain Women-only

A three-judge panel of the historically liberal Ninth Circuit Court of Appeals ruled on Wednesday that the Miss USA Pageant may retain its “natural born female” eligibility requirement. That seemingly common-sense requirement was being challenged by an Oregon individual named Anita Noelle Green, a transgender activist and beauty-pageant contestant.

[Green](#) had argued that the pageant’s “natural born female” requirement violated Oregon’s Public Accommodations Act (“OPAA”). But the Ninth Circuit Court of Appeals panel voted two to one that the pageant could go on excluding biological males from competing in the event.



YouTube
2022 Miss USA pageant

In the split [decision](#), the three-judge panel found that the First Amendment’s protections against compelled speech was reason enough for the all-female event to continue on as it has been for the 70 years of its existence.

“The panel held that the First Amendment, which ensures that ‘Congress shall make no law ... abridging the freedom of speech,’ extends its protections to theatrical productions,” according to the case summary. “The panel noted that it is commonly understood that beauty pageants are generally designed to express the ‘ideal vision of American womanhood.’ The panel held that the Pageant’s message cannot be divorced from the Pageant’s selection and evaluation of contestants.”

Green and his team of lawyers argued that the forced inclusion of biological males into the competition wouldn’t necessarily be a burden to the pageant’s ability to advocate for that “ideal vision of American womanhood.”

But Circuit Judges Carlos T. Bea and Lawrence Van Dyke disagreed.

“Green’s insistence that there was no meaningful difference between Green and any of the Pageant’s cisgender female contestants was precisely the opposite statement of the one that the Pageant sought to make,” the summary of the case concluded.

Ultimately, the majority concluded, “The First Amendment affords the Pageant the ability to voice this message, and to enforce its ‘natural born female’ rule,” wrote Van Dyke in the decision.

Citing the case of *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.* Van Dyke went on: “The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it.”

“In short, Miss United States of America expresses its message in part through whom it chooses as its contestants, and the First Amendment affords it the right to do so,” the majority concluded.



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In dissent, Judge Susan P. Graber believed it was imprudent to rule on a federal case when it was uncertain if the OPAA even applied to the pageant.

“Under Oregon’s established precedents, the state court would determine first whether the OPAA applies. It could decide that the OPAA does not apply to that defendant’s activity and dismiss the action,” Graber said.

Toward that end, Graber would have had the appeals court send the case back to the district court.

“We must vacate the judgment and remand this case to the district court, because that is what an Oregon court would do with respect to this state-law statutory claim.”

As of yet, Green has not commented on the case. In 2019, he told NPR, “I don’t think someone shouldn’t be allowed to compete simply because they are transgender.”

“I think that that’s very arbitrary. Transgender women are equal to cisgender women,” Green said. “To me, pageantry isn’t just about the way a person looks. To me, it’s about giving people a voice.”

So-called transgender women certainly have equal rights under the law, but they are not “equal” to women in many key ways — the ability to bear children, for one.

If you ask certain LGBT activists, it’s all Donald Trump’s fault: “This is a result of the continued impact of Trump’s anti-LGBTQ judicial nominations that were rated not qualified by the [American Bar Association],” Harvard Law School instructor Alejandra Caraballo told the LGBTQ news source The Advocate. “This opens up the door to first amendment challenges for all public accommodation protections around race, religion, and sex to be overridden by personal views, no matter how bigoted.”

It’s neither “bigoted” nor “arbitrary” to hold to natural traditions such as men being men and women being women. But transgender and LGBTQ activists won’t rest until they get their hooks into every one of our cultural institutions. Having biological males compete in the Miss USA Pageant may not seem important in the grand scheme of things, but this perverted agenda must be challenged and defeated wherever possible.



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