

Utah Judge Upholds Lewdness Law in Case of Woman Charged with Being Topless at Home

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On Tuesday, a Utah judge ruled the state's lewdness law is constitutional and declined to dismiss charges against a woman who faces jail time for being topless in front of her stepchildren in her home.

Tilli Buchanan, 28, was charged in February with three counts of lewdness involving a child—a class A misdemeanor in Utah—after her stepchildren walked in on her topless in her own bedroom several years ago. Buchanan said that she and her husband had been installing insulation in their garage and had removed their shirts to keep them from getting dirty.

She explained to the children, who were then 9, 10 and 13, that "she considers herself a feminist and wanted to make a point that everybody should be fine with walking around their house or elsewhere with skin showing," according to court documents.

While Buchanan claims she said that the children shouldn't be embarrassed by her shirtlessness or treat her differently due to her sex, prosecutors accused her of intentionally stripping her top off in front of the children to prove her point about the equality of the sexes. They also say she was "under the influence of alcohol" at the time, and that she'd allegedly said that she would put her top back on if her husband would display his genitals for her.

The incident was reported during an investigation of a Division of Child and Family Services case involving the children, but not Buchanan. The children's mother reported the incident, saying she was "alarmed" by what Buchanan had done.

Buchanan was charged under a state law which prohibits women from removing their tops "below the top of the areola" before a child "under circumstances the person should know will likely cause affront or alarm" or "arouse" either party. If convicted, she could be placed on a sex offender registry for 10 years and pay fines up to \$2,500, in addition to possibly serving up to 364 days of jail time.

Lawyers for the American Civil Liberties Union of Utah argued against the constitutional viability of that law, saying it promotes sex-based discrimination, noting that Buchanan's husband was as nude as she was at the time, and yet had not charged with a crime. Buchanan's lawyers asked for the law to be stricken down, the dismissal of all charges against her and that any language which declared it unlawful for a woman to bare her breasts be removed from state law.

Third District Judge Kara Pettit noted that during a November hearing the defense made reference to a recent case in Fort Collins, Colorado, where a 2015 public nudity ordinance banning any woman or girl over the age of ten from showing her breasts was determined to be unconstitutional and stricken down in 2019.

But she also said that this incident was "significantly different" because it involves children, which invokes a different statute. Any person of any sex may be charged with lewdness before a minor, noted Pettit. She added that the law is also justified in its existence because it is "substantially related to the government's important interest in protecting children from lewdness."

"In the statute, there's one part of it that says this part of a woman is found inherently obscene and this part of a man isn't," ACLU of Utah attorney Leah Farrell said after Buchanan's November hearing, adding that the law has set up an "unequal and unfair dichotomy."

"We are still reviewing the order and consulting with our client about next steps," said ACLU spokesman Jason Stevenson in a statement to The Washington Post.

"We support the court's finding in this case that 'the government has an important interest in enacting laws to protect the health, safety, welfare and morality of children, and to prevent them from being exposed to lewdness,'" Ryan Robinson, chief prosecutor for West Valley City, said in a statement Tuesday.