

Utah Judge Rules Against Topless Stepmom's Equal Protection Challenge

Tilli Buchanan's stepkids saw her topless. Now she could face 10 years on the sex offender registry.

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(Yuliia Pedchenko/Dreamstime.com)

A Utah judge denied a motion this week from a woman challenging Utah's lewdness statute. That means Tilli Buchanan could still be placed on the sex offender registry for 10 years after appearing topless in front of her underage stepchildren.

According to Buchanan, she and her husband stripped their shirts off after installing insulation in their garage and getting the itchy substance onto their clothes. When Buchanan's stepchildren saw the couple partially naked, she says, she attempted to explain that she and her husband were at the same level of undress and that her bare chest was not inherently sexual.

Word of the incident made its way back to the biological mother of Buchanan's stepchildren. The mother then reported the incident to Utah's Division of Child and Family Services. Prosecutors say Buchanan stripped in front of her stepchildren under the influence of alcohol and threatened to remain naked unless she saw her husband's penis. Buchanan is now charged with three misdemeanors for lewdness involving a child. Her husband, on the other hand, will not face any legal repercussions because Utah statute 76-9-

702.5 defines lewdness involving a child as exposing "genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area" in both public or private spaces "under circumstances the person should know will likely cause affront or alarm or with the intent to arouse or gratify the sexual desire of the actor or the child."

The Utah branch of the American Civil Liberties Union (ACLU) challenged this statute, arguing that it violates the Equal Protection Clause of the 14th Amendment, which clearly prohibits discrimination on the basis of race, but can also be read to prohibit discrimination on the basis of sexuality and gender. In this case, the ACLU argued that the law's inclusion of "the female breast below the top of the areola," but not its male counterpart, is gender-based discrimination.

On Sunday, Utah Third District Judge Kara Pettit rejected the argument. In her decision, Pettit argued that the law criminalized similar levels of nudity and merely itemized specific body parts "rooted in physical differences between the sexes." Because the itemization reflects the "contemporary community standards regarding nudity" and because the government has an interest in protecting children from lewd acts, Pettit dismissed Buchanan's Equal Protection argument.

"We're obviously disappointed that the motion was denied," ACLU attorney Leah Farrell says. "We'll likely appeal the decision."

Constitutionality aside, prosecutors could stand to exercise some discretion in Buchanan's case. They have not been able to verify even a detail as simple as the date of the incident. There is significant disagreement over the timeline of events, with separate recollections placing the incident in the fall of 2016, in late 2017, and in early 2018.

Meanwhile, the possibility that Buchanan will be added to the sex offender registry for what may be an honest misunderstanding highlights the problems with such a registry. The rules that designate sex offenders can be inconsistent or overzealously applied to people who clearly are not a threat to children. And those placed on these lists are often subjected to abuses from state and local governments.