

Utah law banning toplessness for women is unconstitutional, attorneys say

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Nov 19, 2019

Deseret News

<https://www.deseret.com/utah/2019/11/19/20973049/utah-law-banning-toplessness-for-women-is-unconstitutional-attorneys-say>

SALT LAKE CITY — Tilli Buchanan is facing criminal charges after she says her stepchildren spotted her topless in her home more than a year ago.

Now, her attorneys are asking a judge to declare part of Utah's lewdness law unconstitutional, arguing it treats men and women differently for the same conduct of baring their chests.



“What’s important to look at, to see when you look at the statute, is that there’s part of it that says this part of a woman is inherently obscene and this part of a man isn’t,” said Leah Farrell, the senior attorney at the American Civil Liberties Union of Utah who argued on Buchanan’s behalf. “And that really sets up an unequal, unfair dichotomy.”

Judge Kara Pettit did not rule from the bench following arguments in Buchanan’s case Tuesday in Salt Lake City’s 3rd District Court.

“It’s too important of an issue” for an immediate ruling, she said, adding that she will hand down a decision within two months.

Buchanan, 27, says she and her husband were hanging drywall in their garage in late 2017 or early last year when they took off their shirts in order to keep them from getting dusty. Buchanan also removed her bra.

The children, ages 13, 10 and 9, asked why Buchanan wasn’t wearing a shirt.

“Tilli explained that she considers herself a feminist and she wanted to make a point that everybody should be fine with walking around their house or elsewhere with skin showing,” her

attorneys argued in court filings earlier this year. After finishing the task, the couple showered, put on fresh clothes, and made dinner for the children, the court documents say.

Buchanan now faces three counts of lewdness in front of a child, a class A misdemeanor. A conviction for that charge requires a person to register as a sex offender.

Buchanan said after the hearing she is hopeful the law will be struck down, “especially given it was in the privacy of my own home. My husband was right next to me in the same exact manner that I was, and he’s not being prosecuted.”

Farrell, the ACLU attorney, argued the Utah law violates Buchanan’s 14th Amendment right to equal protection. She argued it is similar to an ordinance in Fort Collins, Colorado, that was found unconstitutional by the 10th Circuit Court of Appeals. The city had banned women but not men from being topless in public.

Corey Sherwin, deputy West Valley City attorney, noted that other laws based on morality around the country have been upheld in the courts.

He said it’s not that women are being picked on by the Utah Legislature. Nudity is commonly understood to include not only “lower parts of the body,” he added, “but also the female breast.”

The offense of lewdness involving a child only applies to those who intentionally expose themselves, he added. If that occurs in a private place, the law says a person is guilty if they should have known they will “likely cause affront or alarm.”

Yet Farrell said the standard is unfair because it requires a woman to do a “mental calculus” about whether going without a shirt might cause alarm, but it does not place the same burden on men.