

A woman's stepchildren saw her topless in her home. She may have to register as a sex offender.

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A Utah woman may have to register as a sex offender after her stepchildren saw her topless in her home, allegedly violating part of a state law that forbids women from showing their breasts in a private place under certain circumstances.

Tilli Buchanan's attorneys argue that the state's [lewdness statute](#) is unconstitutional because it bans women showing their chests but does not do the same for men. Her lawyers cite a ruling by the U.S. Court of Appeals for the 10th Circuit, which has jurisdiction over Utah, that in February [overturned](#) a toplessness ban in Colorado because it treated the two sexes differently.



"It's problematic to bring in all the consequences of criminality simply based on our feelings about how a woman should be and how a man should be," Leah Farrell, a lawyer at the American Civil Liberties Union of Utah, told The Washington Post.

Ryan Robinson, West Valley City's chief prosecutor, declined to discuss specifics of the case. Prosecutors have said in court hearings and filings that the law can treat women's chests differently because American society considers women's breasts to be sexual, according to [the Salt Lake Tribune](#), which first covered the case. State law says a woman's breasts may not be exposed in private "under circumstances the person should know will likely cause affront or alarm," or to arouse the woman or a child.

Buchanan is charged with three counts of lewdness involving a child, which is a misdemeanor in Utah punishable by up to [364 days in prison](#) and a maximum fine of \$2,500. If convicted, Buchanan would have to [register as a sex offender](#) for 10 years.

The defense team is relying on the 10th Circuit decision, which upheld a ruling that blocked a statute in Fort Collins, Colo., criminalizing women being topless in public. Other courts, however, have upheld bans on women going topless.

“What we have is what the lawyers refer to as a split in the circuits right now, so this does seem like an issue that’s destined to go to the U.S. Supreme Court,” said Paul Cassell, a professor of criminal law at the University of Utah and a former federal judge.

Buchanan, 27, and her husband were putting up drywall in their garage when they became dusty and hot, Farrell said. They walked into the house and took off their outer clothing, Farrell said, and Buchanan also removed her bra. Then her three stepchildren walked in.

Buchanan told the Tribune that she told the children they should not be uncomfortable seeing a woman’s chest if they were not embarrassed to see a man’s chest. Women’s chests were not inherently sexual, Buchanan said she added.

Her lawyers wrote in court documents that she told her stepchildren, ages 9 through 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 [the Associated Press](#).

Prosecutors frame the event differently, according to the Tribune: They allege that Buchanan drunkenly commented in front of her stepchildren that she should be able to take off her shirt if her husband could do so, then removed her clothes. The prosecutors also allege that Buchanan told her husband that she would put her shirt back on only if he showed her his penis.

There is disagreement over when the incident occurred, according to the Tribune. Buchanan pegs the time frame as fall 2016, while prosecutors say it happened between November 2017 and January 2018.

Police contacted Buchanan this year after the state Division of Child and Family Services started a probe involving the stepchildren that did not include Buchanan, the Tribune reported. The children’s mother reported the toplessness incident to authorities because she was alarmed, according to the Tribune.

“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,” Buchanan told [the Associated Press](#) after a hearing Tuesday on the challenge to the law’s constitutionality.

Robinson, the prosecutor, said that Judge Kara Pettit in Salt Lake City is expected to decide on the constitutionality of Utah’s lewdness statute within two months.

“We see our role as to enforce the laws of the state of Utah that have been enacted by our state legislature, and we’re looking forward to seeing what the judge determines,” Robinson said.

Deborah Tuerkheimer, a law professor at Northwestern University and a former state prosecutor, said Buchanan’s case raises questions about whether the incident had any sexual meaning and, if it did not appear to, why prosecutors chose to pursue charges.

“I come away with more questions than I have answers,” Tuerkheimer said.