

Free the Nipple' attorney vows to sue Utah prosecutors for charging a woman with being topless in her own home

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A Colorado attorney who represented the “Free the Nipple” movement in court promised to sue Utah prosecutors for charging a West Valley City woman for being topless in her own home in front of her stepchildren.

David Lane said the decision to charge Tilli Buchanan with multiple counts of lewdness involving a child — a misdemeanor that carries the possibility of jail time and mandatory placement on the sex offender registry — is “outrageous.”

He said the charges amount to a violation of Buchanan’s constitutional rights.

“My job is to go after the government when the government violates the Constitution,” he told The Salt Lake Tribune on Friday. “And here, the Utah government is violating the Constitution. And there will be consequences.”

Lane represented two women who sued Fort Collins, Colorado, arguing the city’s ban on female toplessness violated their right to equal protection. The 10th Circuit Court sided with the women — and Lane says that’s a binding decision that applies to every state in the circuit, which includes Utah.

“That is the law,” he said. “And it’s the law even in Utah. These prosecutors seem completely oblivious to that fact.”

Lane has sent a letter to West Valley City prosecutors demanding that they drop the charges against Buchanan and seal her record. He told The Tribune that he anticipates filing a federal lawsuit regardless of whether prosecutors drop the charge.

Tilli Buchanan demand letter by The Salt Lake Tribune on Scribd

Lane recently negotiated a \$50,000 settlement in Loveland, Colorado after a woman was cited for playing frisbee while topless in her front yard. The potential penalties for Buchanan, he said, are much greater.

“These West Valley City prosecutors have done way more to Tilli than what was done in Loveland,” he said.

West Valley City Attorney Ryan Robinson confirmed Friday that his office received Lane’s demand letter. But he declined further comment, saying he didn’t want to address threats of lawsuits through the media.

Buchanan’s criminal attorney, Randy Richards, has asked a Utah judge to find that the state’s lewdness laws are unconstitutional — a request that’s been backed by attorneys with the American Civil Liberties Union of Utah.

Third District Judge Kara Pettit heard arguments in the case earlier this week, and is expected to make a ruling in a few months.

Buchanan's attorneys noted in their arguments that her husband had been in the same state of undress when her stepchildren saw her breasts — the couple had stripped down after installing insulation in their garage — and he was not charged with any crime.

This uneven treatment, they say, highlights how Utah's lewdness laws target and discriminate against women. They asked Pettit to throw out Buchanan's charges and strike down language that says a woman showing her breasts is against the law.

West Valley City Deputy Attorney Corey Sherwin argued in response that the 10th Circuit "Free the Nipple" ruling was very narrow — and did not make any findings about whether the law there was constitutional or not. He said there hasn't been any past cases that have "completely undone the notion that the Legislature cannot legislate morality."

Buchanan told The Tribune in September that she had been installing insulation with her husband in their garage on the day of the incident. The couple had stripped off their clothes just inside their home to get the itchy materials off their skin. She was topless when her stepchildren came downstairs and saw them.

She said her stepchildren seemed embarrassed — but Buchanan told them they shouldn't treat her differently because she was a woman. She told them a woman's chest wasn't inherently sexual, and that if they were comfortable seeing their dad's chest, it shouldn't be different for her.

But West Valley City prosecutors say the situation wasn't quite that innocent. They accuse Buchanan of stripping down in front of her stepchildren after making a statement about how if her husband could take off his shirt, then a woman should be able to as well.

They further allege that Buchanan, while "under the influence of alcohol," had told her husband that she would only put her shirt back on if he showed her his penis.

The date of the incident is also in dispute. Buchanan thinks it happened in fall 2016, while prosecutors put the timeframe as November 2017 and January 2018.

The police became involved in the situation after the Utah Division of Child and Family Services began an investigation involving the children that was unrelated to Buchanan. Though it was not the focus of the initial investigation, Sherwin wrote, the children's mother reported it to authorities because she was "alarmed" about what had happened in front of her kids.