A Utah judge will decide if a woman violated the law by being topless in her home in front of her stepchildren

By Jessica Miller
Nov. 19, 2019
Salt Lake Tribune
https://www.sltrib.com/news/2019/11/20/utah-judge-will-decide/

Attorneys for a West Valley City woman asked a state judge on Tuesday to do two things: Dismiss her misdemeanor lewdness charges and change state law.
Tilli Buchanan, 28, was charged in February with three counts of lewdness involving a child after prosecutors accuse her of exposing her breasts to her stepchildren several years ago.
But her attorneys argue that Buchanan's husband had been in the same state of undress — the couple had stripped down after installing insulation in their garage — and he was not charged with any crime.

During oral arguments Tuesday, an attorney with the American Civil Liberties Union of Utah argued this uneven treatment highlights how Utah's lewdness laws target and discriminate against women. The ACLU asked 3rd District Judge Kara Pettit to find the law unconstitutional, and strike down language that says a woman showing her breasts is against the law.
"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 the hearing. "That really sets up an unequal and unfair dichotomy. And Tilli's case is something none of us would expect to happen to us.

(Leah Hogsten | The Salt Lake Tribune) Tilli Buchanan is seen in Judge Kara Pettit's Third District Courtroom with her attorney Randy Richards, Nov. 19, 2019. Her attorneys Leah Farrell with the American Civil Liberties Union of Utah and Randy Richards argued on her behalf that Utah's lewdness statute is unconstitutional because it discriminates against women. Buchanan is facing charges of lewdness involving a child after police say she took off her top while cleaning out the garage and her stepchildren saw her breasts. Judge Pettit is expected to rule in two months.

Randy Richards, Buchanan's defense attorney, noted that his client faces extreme consequences if she's convicted of the class A misdemeanors. She could face jail time and would be required to spend 10 years as a registered sex offender.
"If we lose this, she's on the sex offender registry with child rapists

and things of that nature," he said. "The magnitude of the penalty on this is enormous."
Buchanan's attorneys had leaned on a recent 10th Circuit Court ruling, where the appeals court sided with two Colorado women who sued Fort Collins. The women are part of "Free the Nipple Fort Collins," a group arguing that the city's ban on female toplessness violated their right to equal protection.
West Valley City Deputy Attorney Corey Sherwin argued in response that the "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."
Sherwin further argued that the law is based on what society deems to be nudity.

But Farrell argued in response that the current lewdness law says it's illegal to expose oneself in a private setting if the actor knows it would cause a child "affront or alarm." Because the law specifically includes language about women's breasts, she argued it requires women to do a "mental calculation" about whether going topless would cause someone alarm — something a man would not need to do.
"It's unfair," she argued, "to take stereotypes and create an unequal burden on women."
Pettit, the judge, said she expects to issue a written ruling in about two months.
Buchanan told The Salt Lake 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 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.
Buchanan said she hadn't thought about the incident much since it had happened — until a police detective called her earlier this year and asked about it. Then, weeks later, the charges were filed.
"I was devastated," she said in September. "Because the moment I took to teach the kids, it was kind of smashed. Like you can't teach kids this. In fact, you're going to be charged for even bringing this up."

After Tuesday's hearing, West Valley City Attorney Ryan Robinson that he is looking forward to seeing what the judge decides in Buchanan's case.

"We see our job is to represent the laws of the state of Utah," he said, "and we've made our argument that's now on the record."

Buchanan said she's "hopeful" that the judge will strike down the law and dismiss her case.

"Especially, given that I was in the privacy of my own home with my husband right next to me, in the exact same manner that I was," she said. "And he's not being prosecuted for it."