

## Judge won't toss charges for woman who was topless in front of stepchildren

Tilli Buchanan argued law was unconstitutional, but Utah judge upholds topless ban

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SALT LAKE CITY — A woman facing criminal charges after her stepchildren spotted her partially undressed in her home has lost her bid to have her case dismissed and invalidate Utah's topless ban.

In a written decision Tuesday, 3rd District Judge Kara Pettit rejected Tilli Buchanan's argument that part of Utah's lewdness law is unconstitutional because it treats men and women differently for baring their chests.

The judge ruled the part of Utah law at issue in her case is different than another law blocked by a court in Colorado — in part because it deals with children.

Buchanan, 28, faces three counts of lewdness in front of a child, a class A misdemeanor. A conviction would require her to register as a sex offender.

She and her husband were hanging drywall in their garage in late 2017 or early 2018 when they took off their shirts in order to keep them from getting dusty, court documents say. 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," court documents say. The couple then showered, put on fresh clothes, and made dinner for the children.

Buchanan sought to have the law 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."

While the Utah law treats genders differently, it is "substantially related to the government's important interest in protecting children from lewdness," so it is justified, Pettit wrote in her decision. She said the ban also reflects today's standards on what constitutes nudity.

At a November hearing, Buchanan's attorneys drew similarities to an ordinance in Fort Collins, Colorado, that was blocked by a federal appeals court last year.

But Pettit said they're different.

The Fort Collins ban placed restrictions only on women, not men, and doesn't consider a person's intent, Pettit noted. In Utah, however, a charge of lewdness in front of a child can be filed against a person of either gender. And to fit the offense, the behavior must "likely cause affront or alarm" or gratify sexual desire, meaning the "mere exposure of breasts is not prohibited nor necessarily a sexualized act," Pettit wrote, echoing the arguments of West Valley City prosecutors.

Ryan Robinson, chief prosecutor for West Valley City, said Tuesday he is pleased with the ruling and the case against Buchanan can now move forward.

"We support the court's finding in this case that 'the government has an important interest in enacting laws to protect the health, safety, welfare and morality of children, and to prevent them from being exposed to lewdness,'" Robinson said in a statement.

The judge said it's not her job to decide if the Legislature's definition is sound policy. She said a court can only strike down a law if it clearly violates the Constitution.

Buchanan's attorney, Leah Farrell, had argued the law says part of a woman is inherently obscene and the law requires only women to do "mental calculus" about whether forgoing a shirt might cause alarm.

Farrell said Buchanan's defense team is disappointed in the ruling and is speaking with their client about next possible steps. She declined to make Buchanan available.

Several with the "Free the Nipple" movement have challenged topless bans in other states.

Last week, the U.S. Supreme Court declined to review three women's constitutional challenge to their public nudity convictions in New Hampshire after they took off their bathing suit tops at a beach.