

Judge rejects challenge from Utah woman charged for being topless in her own home

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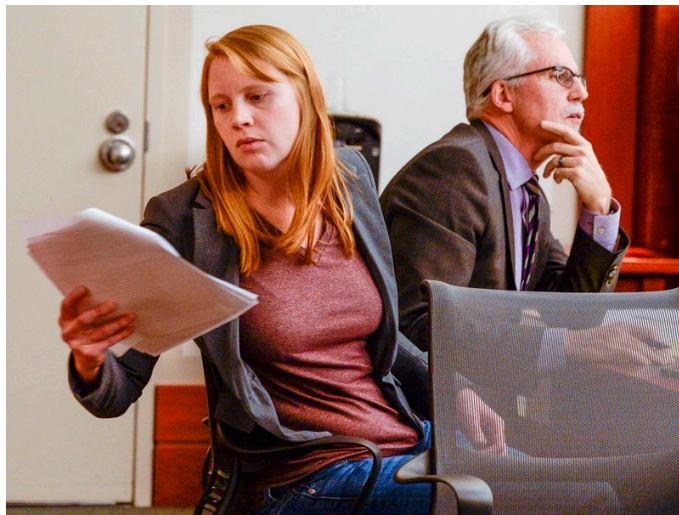
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By Jessica Miller

<https://www.sltrib.com/news/2020/01/21/utahs-lewdness-law-stands/>

A Utah judge has upheld the state's lewdness law after a challenge by a West Valley City woman who is facing charges for being topless in her own home in front of her stepchildren. Third District Judge Kara Pettit denied Tilli Buchanan's motion to declare the lewdness statute unconstitutional in a ruling filed Tuesday. Buchanan's attorneys had argued that the law targets and discriminates against women making it illegal for them to show their breasts.

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.



They leaned on a recent 10th Circuit Court ruling, where the appeals court sided with two Colorado women who sued the city of 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.

But the judge ruled that the ordinance in Colorado and Utah's lewdness statute were "significantly different."

In Fort Collins, the ordinance outlawed a woman from showing her breasts in public. It did not include language indicating that exposure was unlawful for men, and it did not require any specific intent or mental state.

The portion of the law that Buchanan is charged under is much different, Pettit ruled. It prohibits lewd behavior by both women and men in front of children, and also requires prosecutors to show that the defendant exposed themselves and knew their actions would either cause "affront or alarm" to the children or "with the intent to arouse or gratify the sexual desires" of either party.

West Valley City prosecutors had argued that Utah's law is based on what society deems to be nudity — and Pettit agreed with that analysis.

"It is the prerogative of the Legislature to establish laws incorporating contemporary community standards regarding lewdness," the judge wrote. "It is not for the court to decide whether the Legislature's enumeration of lewd conduct is wise or sound policy."

City Prosecutor Ryan Robinson applauded the judge's ruling in a statement Tuesday.

"We are pleased that Judge Kara Pettit agreed with our arguments about the constitutionality of Utah's lewdness in the presence of a child statute," he wrote. "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.'"

Buchanan is represented by attorney Randy Richards, and an attorney for the American Civil Liberties Union of Utah also argued on her behalf during a November hearing. Richards did not immediately return a request for comment Tuesday, and the ACLU said in a statement that it was "disappointed."

"We are still reviewing the order and consulting with our client about next steps," said spokesman Jason Stevenson. It's not clear whether Buchanan will appeal the judge's decision. If she does not, the case will now move toward a trial.

Buchanan faces three class A misdemeanors, and if she is convicted, she faces possible jail time and would be required to spend 10 years as a registered sex offender.

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 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, prosecutors say in court papers, the children's mother reported the incident to authorities because she was "alarmed."

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.”

A Colorado attorney who represented the Fort Collins women in their lawsuit has promised to sue West Valley City on Buchanan’s behalf, but no lawsuit had been filed as of Tuesday.