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Utah Judge Rules Against Woman Who Was Topless in Her Own Garage

A Utah judge ruled against a woman who tried to fight a lewdness charge for appearing bare-chested in front of her stepchildren.

By MARIA CRAMER



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<https://www.nytimes.com/2020/01/22/us/tilli-buchanan-topless-utah.html>

By Maria Cramer

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Hot and dusty from installing drywall in their garage, Tilli Buchanan and her husband stripped down to their underwear. She also took off her bra.

When Ms. Buchanan's three young stepchildren saw her and asked her why she was topless she said if their father could bare his chest, then so could she.

Ms. Buchanan now stands accused in a Utah court of three counts of lewdness involving a child, charges that could carry a sentence of up to one year in jail and 10 years on the sex offender registry.

On Tuesday, a Salt Lake City judge rejected a challenge to the charges by Ms. Buchanan's lawyers, who had argued that the law, which forbids exposure of "the female breast below the top of the areola," was unconstitutional.

"The Court finds 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," wrote Judge Kara Pettit of the Third Judicial District Court of Salt Lake County.

Judge Pettit said she agreed with prosecutors' argument that the law's description of female breasts, but not male, as lewd "reflects contemporary community standards as to what constitutes nudity."

Ms. Buchanan's lawyers said they will appeal the decision. It is a case that comes at a time when women are challenging laws around the country that forbid them from walking bare-chested as freely as a man.

The United States Supreme Court decided this month not to hear an appeal by three women who were fined by a city in New Hampshire for exposing their breasts in public. The women had argued that banning female but not male toplessness violates the U.S. Constitution.

In 2019, the United States Court of Appeals for the Eighth Circuit affirmed a lower court's decision that a lawsuit against the city of Springfield, Mo. — by two women who argued that the city's ordinance on indecent exposure was unconstitutional — could not go forward.

Both cases were brought by women who called themselves part of the “Free the Nipple” movement, which pushes for the ability of women to go topless in public as a way to promote equality.

The movement had a victory last September, when officials in Fort Collins, Colo., removed their ban on women and girls over 10 going topless in public following a ruling by the United States Court of Appeals for the 10th Circuit that said the ban was based on stereotypes that depicted women’s breasts as “sex objects.”

Ms. Buchanan’s case is different from those because she was topless in her own home, according to her lawyers.

The police in West Valley City, a suburb of Salt Lake City, learned of the episode in November 2018, about a year later.

Detectives were investigating unrelated allegations of sexual abuse when the biological mother of the children, who were about 13, 10 and 9 at the time, told them about the disrobing, according to court documents.

Randall W. Richards, one of Ms. Buchanan’s lawyers, said that the allegations had nothing to do with Ms. Buchanan, a 27-year-old test automation engineer. He declined to provide more details.

Ms. Buchanan was charged in early 2019. Mr. Richards said he believed the defense had a straightforward case.

“If a man can go topless and it is accepted in society, that same privilege should be given to a woman,” Mr. Richards said.

Prosecutors have said that lewdness can occur even in a private dwelling if a person knows that his or her nakedness will “cause affront or alarm.”

Ryan Robinson, chief prosecutor for West Valley City, said his office was pleased with the decision.

“Now that the court has ruled on the overall constitutionality of Utah’s lewdness law, we are prepared to move forward to the litigation portion of our specific case,” he said in a statement that quoted some of Judge Pettit’s ruling.

The charges are an example of prosecutorial overreach, said Leah Farrell, a senior staff lawyer with the American Civil Liberties Union of Utah, who served as co-counsel on the case.

“When I talk to people about the case I don’t think any of them realized they could be charged for a crime for walking around with their shirt off inside their own home,” Ms. Farrell said.

Mr. Richards said that if Ms. Buchanan is placed on a sex offender registry she could be prevented from seeing her own stepchildren.

“Anywhere there are kids, she’s not allowed to go,” he said. “It’s a ridiculous charge.”