

WA Supreme Court strikes down Spokane homeless initiative

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Downtown Spokane as seen from South Hill in 2018. (Nicholas K. Geranios / AP)

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Washington's Supreme Court has overturned a citizen-led initiative to make Spokane's ban on public camping stricter.

The case is a bit unusual because most court cases involving homeless camping bans center on the question of whether they violate a person's constitutional rights. This one focused on how much residents of a city can force its elected officials' hand in how they deal with homelessness issues.

While the ruling says little about how far cities can go in punishing people for sleeping in public spaces, it fits into a national trend of lower courts carving out some baselines after the U.S. Supreme Court ruled last year that fining and arresting people for living outside is not cruel and unusual punishment.

In 2023, about 75% of voters in Spokane approved an initiative to ban camping within 1,000 feet of parks, schools and licensed day cares. Anyone found camping in those areas, which covers most of the city, could be issued a citation, even if there wasn't any space in homeless shelters.

The state Supreme Court struck down that law, largely on procedural grounds. The court's majority opinion stated that local initiatives passed by voters had to be limited to legislative topics, and that Spokane's initiative was administrative rather than legislative because it overrode aspects of the city's homelessness policy that officials had already set.

Sara Rankin, a law professor at Seattle University, said even before the Spokane case, it was clear that local initiatives seeking complete or functionally complete bans on involuntary public survival will be met with legal challenges.

"What's popular, what's political, and what's legal don't always line up. But here, the Supreme Court righted the ship," Rankin said.

An attorney for Brian Hansen, the Spokane resident who sponsored the initiative, didn't immediately respond to a request for comment.

Spokane reverts back to its previous camping ban, which doesn't allow enforcement unless there is shelter space available. Mayor Lisa Brown said the city would be charting a path forward that reflects the state Supreme Court's guidance.

As homelessness developed into a crisis over the past few decades, cities increasingly passed laws prohibiting camping within their borders. They then used those ordinances to remove encampments or fine and arrest people in them. In response, people living outside and their advocates sued cities, saying that punishing people with no other options for living outside violated their constitutional rights.

In 2018, the U.S. Court of Appeals for states on the West Coast ruled that fining or arresting people for sleeping outside was indeed "cruel and unusual" punishment if cities didn't have adequate shelter or housing for people who wanted it.

The U.S. Supreme Court overturned that precedent last June.

That set off a torrent of new laws.

Eight cities in Washington created or expanded camping bans since then. In King County, Burien passed a ban so strict it prohibits living outside in public at all.

Across the country, more than 140 cities passed similar regulations, according to the National Homelessness Law Center.

Public sentiment has largely supported these harsher policies following the pandemic, when COVID-19 protections caused larger encampments to proliferate in many major cities.

But lower courts have stepped in at points since the U.S. Supreme Court decision to reestablish a floor of protections for people living outside.

In February, a federal judge blocked the city of Vallejo in California from removing a homeless woman's tent after her attorneys argued that removing her without another place to go would put her at increased risk for physical harm, including for sexual assault.

A New Mexico district court judge wrote in a decision last month that the U.S. Supreme Court's decision was flawed and that the state's constitution provides people greater protection from cruel and unusual punishment.

"It's too early to really call it a trend, but we have seen state courts picking up the baton where the Supreme Court dropped it in protecting homeless persons' rights, on both procedural and substantive grounds," said Eric Tars, senior policy director at the National Homelessness Law Center.

Homelessness law experts say the Spokane case, because it was based on procedural grounds, will have limited impact on the legality of other camping bans across the state. However, Spokane and other cities in the state are facing other lawsuits.

Burien is facing a lawsuit over its camping ban, with the plaintiffs arguing the law violates their right to travel along with their protection from cruel punishment and against search and seizure.

The ACLU of Washington is also suing Spokane, arguing its camping ban violates people's rights for due process and the protection from cruel punishment under the state constitution.

"Our position remains that criminalizing individuals for engaging in life-sustaining activities, such as sleeping or resting in public spaces when no adequate shelter is available, constitutes cruel punishment and is therefore unconstitutional," said the ACLU-WA in a statement Thursday.

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