

# Portland groups divided on camping ban

*One day after a lawsuit demanding the city enforce its camping ban was filed, local civil rights leaders issue a brief calling the same ban cruel and unusual*

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On April 21, several area civil rights groups, charities and religious organizations united to file an amicus brief in the ongoing appeal of Alexandra Barrett, a Portland woman who's been fighting a slew of illegal camping charges and other misdemeanor offenses related to her homeless status since December 2014.

The brief is an add-on to the appeal, filed in February, which argues that to arrest and prosecute a homeless person for sleeping outside when there is no shelter space available is cruel and unusual punishment in violation of their constitutional rights.

"We're saying that conviction should be overturned because she didn't have any opportunity to avoid violating the law," said attorney Shauna Curphey, who submitted the amicus brief on behalf of local chapters of National Lawyers Guild and American Civil Liberties Union, as well as the Albina Ministerial Alliance, First Unitarian Church of Portland, Oregon Justice Resource Center, Operation Nightwatch and others.

The brief calls into question the constitutionality of the very laws Portland business groups and neighborhood associations are demanding the mayor enforce in the lawsuit

they filed just one day prior to the filing of the brief.

"While the issues in the two cases are different," said Curphey, "they are pushing the city in different directions with regard to enforcement of the anti-camping ordinance."

The lawsuit, filed by Portland Business Alliance, Cartlandia, Overlook and Pearl neighborhood associations and others, claims Portland Mayor Charlie Hales does not have the authority to allow camping on city property without the vote of City Council.

It also argues his move to allow tent camping goes against a state statute that limits the number of city-sanctioned tent cities in any given municipality to two, and that it goes against city ordinances restricting the use of tents for residential occupancy.

The amicus brief argues that enforcing camping bans when there is no shelter available is in violation of constitutional rights under the Eighth Amendment.

This argument mirrors a Department-of-Justice-issued statement of interest released last summer in a lawsuit brought against the city of Boise, Idaho, by its homeless residents.

In both Boise and Portland, homeless people are often turned away from shelters because they are full, or because they do not meet eligibility requirements, which make sleeping outside involuntary.

The brief argues that as the Eighth Amendment of the U.S. Constitution is applied to Oregon's state constitution, "the state cannot impose a criminal penalty on an individual based on her involuntary status," and "likewise cannot be punished for conduct that is inseparable from her involuntary status."

The brief continued: "as a matter of survival, homeless people in Portland cannot sleep outside without the use of bedding, a sleeping bag or other sleeping matter. Yet this is the very activity that the anti-camping ordinance prohibits."

Should Oregon Supreme Court issue a decision in favor of Barrett, Curphey explained it would not strike down camping bans across the board, but could be used as precedent in future cases where a homeless person is criminally prosecuted for camping when there are no alternatives available.

(Street Roots Executive Director Israel Bayer testified on behalf of the defense in Barrett's trial.)

Curphey said the amicus brief, which is a legal document containing arguments and additional information for the court to take under advisement, was submitted in an effort to expand the argument of cruel and unusual punishment beyond the individual case of Barrett to include all people experiencing homelessness.

"We're trying to make a point about the broader implications of the decision that they make in this case," she said.

The brief included interviews with members of Portland's homeless population about the difficulties in finding a place to sleep and the need to use sleeping bags and tents or tarps to protect themselves from the elements.

According to one of their interview subjects, "Nothing makes you feel more homeless than carrying around your sleeping bag and not being able to find a place to sleep."

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