

# The Christian Science Monitor

## Judge blocks DC man from smoking in his own home... at least for a while

A Superior Court judge has decided to temporarily prohibit one Washington, DC resident from smoking in his home after his next-door neighbors filed a suit claiming the smoke causes harm to their family when it seeps into their property.

**By Jessica Mendoza , March 11, 2015**

Smoke a cigarette in the privacy of your home? For one Washington, DC man, that's no longer an option – at least for a while.

A Superior Court judge has issued a temporary injunction barring Edwin Gray from smoking inside the Northeast DC home his family has owned for 50 years, WLJA-TV reported.

Justice Ronna L. Beck's decision comes after Mr. Gray's next-door neighbors – a couple with one child and another on the way – filed in December a civil lawsuit claiming Gray's cigarette smoke causes harm to their family when it seeps into their home through a hole in the basement. In addition to the ban, the claim asks for \$500,000 in damages.

The case highlights an ongoing movement in the District and around the country against cigarette smoking in places where it might cause harm to others, in some cases overruling what seems to be an individual's right to smoke. Judge Beck, in issuing the injunction, reportedly agreed with the plaintiffs' claim.

"We were floored," Gray's sister, Mozella Johnson, told the WLJA in response to the temporary ruling.

Yet the decision to grant the injunction is not all that surprising, says John Banzhaf, a professor of public interest law at George Washington University and founder of the nonprofit Action on Smoking and Health.

The general public – including tobacco companies – now acknowledges that smoking is bad for one's health, with some even agreeing secondhand smoke can be hazardous, Mr. Banzhaf says. Indeed, as of January this year, 36 states and the District of Columbia have laws that ban smoking in public places. In Washington, DC, bars, restaurants, and workplaces have been smoke-free areas since 2006.

But what about the individual's right to engage in a chosen activity, particularly in one's own home? As Gray told WLJA: "You want me to stop what I've been doing in my house, all my life?"

He and his sister have told the network that they intend to fight the injunction, which stops any family or guests from smoking cigarettes, cigars, or marijuana in their home – though they can step outside for a smoke.

Smokers' associations have also continued to fight legislation that prohibits smoking. They cite discrimination, heavy taxation, and widespread anti-smoking campaigns that they claim are based on junk science.

“Public health advocates who claim one out of every three, or even one out of every two, smokers will die from a smoking-related illness are grossly exaggerating the real threat,” Joseph L. Bast, president of the conservative and libertarian organization The Heartland Institute, wrote in a 2006 book defending smoking.

One of the most outspoken critics of smoking bans is Audrey Silk, founder of the New York City-based Citizens Lobbying Against Smokers' Harassment, or CLASH.

In an interview with The Gothamist, Ms. Silk, a former police officer, said that most smokers are informed adults exercising their right to make a decision about their personal health.

She also agreed with Mr. Bast's claims, saying that “anyone who has done their homework knows that there is nothing legitimate about the science that [people behind anti-smoking campaigns] are producing to push their agenda.” “It is activist driven science,” she said.

A study published last month in the British journal BioMed Central suggest that the numbers cited by smoking advocates like Bast and Silk might actually be too low: A study of more than 200,000 smokers in Australia published last month concluded that up to two-thirds of deaths in current smokers can be attributed to smoking.

And according to a 2014 report by the US Surgeon General, some 2.5 million nonsmokers in the United States have died from exposure to secondhand smoke in the preceding five decades.

Banzhaf notes, too, that the constitutional right to smoke does not exist. He adds that in the city of Burbank, Calif., smoking is prohibited almost everywhere, including sidewalks, with the exception of designated smoking areas.

In 2013, one resident smoker filed a lawsuit against the city of Clayton, Mo., after officials passed an ordinance that banned smoking in city buildings, parks, and playgrounds on the grounds of public health and safety, litter reduction, and preserving the aesthetics of city property, the Monitor reported.

The plaintiff argued that the ban violated his right to light up in a public area, but

a federal court rejected the suit, saying, “We decline [the] invitation to declare smoking a fundamental right.”

More recently, the state of New York also upheld a smoking ban in state parks, which had been overturned by a lower court, according to CBS New York.

“Attitudes have changed,” Banzhaf says, “and they have changed rather dramatically.”

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