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Post Nation

Washington Supreme Court strikes down state's death penalty, saying it is 'arbitrary and racially biased'



Washington Gov. Jay Inslee (D), who declared a moratorium on the death penalty in 2014, praised the court's order. (Ted S. Warren/AP)

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By

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The Washington state Supreme Court on Thursday unanimously struck down the death penalty there as unconstitutional and “racially biased,” a ruling that makes it the latest in [a string of states](#) to abandon capital punishment in recent years.

The order will not stop any scheduled executions because Washington state has already frozen its death penalty under a moratorium by Gov. Jay Inslee (D) in 2014. But the court's order, which declares that death sentences in the state should be converted to life in prison, is a sweeping rejection of capital punishment at a time when [it is being used less nationwide](#) and as states are [struggling to obtain the drugs](#) needed for lethal injections.

In their opinion, the justices focused on what they said was the unequal use of the death penalty, describing it as a punishment meted out haphazardly depending on little more than geography or timing.

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“The death penalty is invalid because it is imposed in an arbitrary and racially biased manner,” the justices [wrote](#). “While this particular case provides an opportunity to specifically address racial

disproportionality, the underlying issues that underpin our holding are rooted in the arbitrary manner in which the death penalty is generally administered.”

[[The Washington state Supreme Court justice who stepped down to protest the death penalty](#)]

Chief Justice Mary E. Fairhurst wrote the opinion and four justices concurred, one in the result only. Four other justices signed a concurrence saying they agreed with “the majority’s conclusions and its holding invalidating the death penalty” but adding other state constitutional factors that they said “compel this result.”

The arguments outlined in Washington have echoes of what Supreme Court Justice Stephen G. Breyer has said in [questioning whether the death penalty itself is constitutional](#). In a 2015 dissent joined by Justice Ruth Bader Ginsburg, Breyer called the death penalty’s use “capricious, random, indeed, arbitrary” and said [for those sentenced to death](#), it was “the equivalent of being struck by lightning.” Breyer echoed that point in 2016 when [discussing California’s use of the death penalty](#), saying it similarly was unreliable, arbitrary and plagued by delays.

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The opinion in Washington was issued in a case that has lingered in the criminal justice system for more than two decades, centering on a man sentenced to death for the rape and murder of Geneine

Harshfield in July 1996.

Allen Eugene Gregory, who was convicted of Harshfield's death, is one of eight people on Washington's death row; five of those people are white and three, like Gregory, are black. Gregory, 46, was first convicted and sentenced in 2001 and then, after his case was overturned, convicted and sentenced again in 2012.

After the decision, Gregory's attorneys, Neil Fox and Lila Silverstein, both issued statements praising the court's move. Fox said "Washington now joins the overwhelming majority of the world's democracies in its respect for human life," while Silverstein said the justices "properly ruled the Washington Constitution does not tolerate such an unfair system."

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[\[Supreme Court Justice Breyer: California embodies the death penalty's 'fundamental defects'\]](#)

Washington currently has two methods of execution, according to the corrections department: lethal injection and hanging, if the inmate opts for the latter. The state last carried out an execution in 2010.

Executions nationwide have [declined steadily in recent years](#), with several states or courts doing away with the practice. The Washington ruling makes the state the 20th without the death penalty,

according to records kept by the Death Penalty Information Center. Some states have [abolished the death penalty only to face uncertainty](#) regarding what would happen to the inmates already on death row or people convicted of crimes before they abolished the punishment.

Maryland [repealed capital punishment](#) in 2013, but it was not until the following year that the state's then-governor, Martin O'Malley (D), said [he would commute the state's remaining death sentences](#). Connecticut abandoned the death penalty in 2012 but left it open as an option for crimes committed before that point; the state's high court [said in 2016](#) that this option was unconstitutional.

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[\[‘It was fundamentally unfair.’ A prosecutor apologizes for his role in putting an innocent man on death row\]](#)

In one recent case, a state scrapped the death penalty only to reverse course. Nebraska lawmakers [abolished it in 2015](#), but voters wound up restoring it through a ballot initiative [the following year](#). The state [carried out an execution earlier this year](#), the first in the United States using the powerful opioid fentanyl.

Washington has been among the states not moving forward with executions under the moratorium

Inslee announced in 2014. Oregon also has a moratorium on the death penalty, which Gov. Kate Brown (D) decided to keep in place when she took office.

“Today’s decision by the state Supreme Court thankfully ends the death penalty in Washington,” Inslee said in a statement after the order Thursday. “The court makes it perfectly clear that capital punishment in our state has been imposed in an ‘arbitrary and racially biased manner,’ is ‘unequally applied’ and serves no criminal justice goal. This is a hugely important moment in our pursuit for equal and fair application of justice.”

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Bob Ferguson, Washington’s Democratic attorney general, praised what he called “an important decision” Thursday. He has previously spoken in favor of abolishing the death penalty, saying there was “no rule for capital punishment in a fair, equitable and humane justice system,” and said he would again propose legislation to abandon it after the court’s order.

“The court recognized that Washington state’s death penalty is broken,” he said. “We should act quickly to remove the death penalty from state law once and for all. Next session, I will again propose legislation repealing the death penalty, replacing it with life in prison without the possibility of parole.”

What happens to the eight people on death row remains unclear, although corrections officials said they will consider whether they should be housed elsewhere. The Washington Department of Corrections “is reviewing the ruling to determine any operational changes that may be necessary within the agency,” a spokeswoman wrote in an email after the ruling.

Further reading:

[Nebraska becomes the first state to use fentanyl in an execution](#)

[The steady decline of America's death rows](#)

This story has been updated to include the statements released by Ferguson and Gregory's attorneys.

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