



# CAMPING ORDINANCES

WHAT COMES NEXT IN LIGHT OF MARTIN, BLAKE, AND HB 3115

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# Overview

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- 8<sup>th</sup> Amendment
- Case Law: *Martin v. Boise*, *Blake v. Grants Pass*, other notable cases
- Medford case example
- What's next?
  - HB 3115
  - *Blake* appeal (20-35752)



# 8<sup>th</sup> Amendment

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“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”



# 8<sup>th</sup> Amendment

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- The 8<sup>th</sup> Amendment circumscribes the criminal process in three ways:
  1. Limits the type of punishment the government may impose.
  2. Proscribes punishment “grossly disproportionate” to the severity of the crime.
  3. **Places substantive limits on what the government may criminalize.**

*Ingraham v. Wright*, 430 U.S. 651, 667 (1977)



# 8<sup>th</sup> Amendment and Homelessness

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How are the 9th Circuit and courts in its jurisdiction applying the Eighth Amendment to the issue of homelessness?



# *Martin v. Boise* (9th Cir. 2019)

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“The Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being [...] **So long as there is no option of sleeping indoors, *the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.*** *Martin v. Boise*, 920 F.3d 616-17 (2019).

# *Martin v. Boise*

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## **A Very Important FN 8**

Naturally, **our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.** Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. **Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures.** Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the “universal and unavoidable consequences of being human” in the way the ordinance prescribes.



# *Martin v. Boise*

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*After Martin v. Boise*

Cities should conduct individualized analysis



LIKELY NOT OK TO CRIMINALIZE UNDER 8<sup>TH</sup> AMENDMENT



LIKELY OK TO CRIMINALIZE UNDER 8<sup>TH</sup> AMENDMENT



# *Blake v. City of Grants Pass (2020)*

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- Facts identified in district court opinion:
  - On Sept 11, 2019, Debra Blake slept in a sleeping bag in a park at 7:30 a.m. and was cited for illegal camping and prohibited conduct. She was convicted and fined \$590.
  - Later that morning, Blake was cited for criminal trespass, which had an associated fine of \$295, and was issued a park exclusion.
  - Other individuals (John Logan, Gloria Johnson) have also been similarly cited for other activities, incl. sleeping in trucks/vans in parking lots, rest stops, etc.

# *Blake v. City of Grants Pass (2020)*

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- Ordinances identified in district court opinion:
  - GPMC 5.61.020 (“anti-sleeping ordinance”)
  - GMPC 5.61.030 and 6.46.090 (“anti-camping ordinances”)
  - GMPC 6.46.350 (“park exclusion ordinance”) and criminal trespass laws associated with violating those ordinances.



# *Blake v. City of Grants Pass* (2020)

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District Court Judge Clarke:

- **PART 1** (Applies *Martin* holding in this case)
- **PART 2** (Eighth Amendment analysis from *Martin* also applies to civil punishments that are an element to a future crime)
- **PART 3** (Jurisdictions violate the excessive fines clause of the Eighth Amendment if the fine is grossly disproportionate to the gravity of the offense)
- **PART 4** (Appeals process for exclusions must comply with procedural due process)

# *Blake v. City of Grants Pass (2020)*

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District Court Judge Clarke:

## **PART 1 (Applies *Martin* holding in this case):**

Eighth Amendment prohibits a city from punishing homeless people for

1. Taking minimal measures to keep themselves warm and dry while sleeping
2. When there are no alternative forms of shelter available.



# *Blake v. City of Grants Pass (2020)*

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District Court Judge Clarke:

## **Taking minimal measures to keep themselves warm and dry**

- The definition of “camp” is too broad in GPMC because it includes “any place where bedding, sleeping bag, or other material is placed for the purpose of maintaining a temporary place to live.”
- “Maintaining a practice where the city allows a person to “sleep” on public property but ***punishes him as a “camper” if he so much as uses a bundled up item of clothing as a pillow, is cruel and unusual punishment.***”

# *Blake v. City of Grants Pass (2020)*

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District Court Judge Clarke:

**When there are no alternative forms of shelter available**

“Alternative shelter” does not include

- **A church-affiliated entity** because it has strict rules and requires mandatory attendance to church and other church-affiliated activities.
- **Federal BLM land, Josephine County land or state rest stops** because there are restrictions placed on those lands, making a homeless individual's use of those lands infeasible.
- **Warming shelters** because they do not have beds, are not available consistently throughout the year, and do not have enough capacity to house the homeless population in Grants Pass.

# *Blake v. City of Grants Pass (2020)*

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District Court Judge Clarke:

## **PART 2 (Eighth Amendment analysis from *Martin* applies to civil punishments that are an element to a future crime)**

- Eighth Amendment prohibits cruel and unusual punishment whether the punishment is designated as civil or criminal.
- Even if GPMC ordinances are civil in nature, since they are an element of future Criminal Trespass II arrests, the enforcement scheme with regard to the camping ordinances is subject to Eighth Amendment analysis.

# *Blake v. City of Grants Pass (2020)*

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District Court Judge Clarke:

**PART 3 (Jurisdictions violate the excessive fines clause of the Eighth Amendment if the fine is grossly disproportionate to the gravity of the offense)**

- The fines were punitive because they did not serve a remedial purpose but used as a deterrent instead.
- The fines levied were excessive because they were imposed for engaging in conduct related to their status as homeless individuals.



# *Blake v. City of Grants Pass* (2020)

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District Court Judge Clarke:

## **PART 4 (Appeals process for exclusions must comply with procedural due process)**

- Courts use a three-part balancing test from *Mathews v. Eldridge* to determine whether procedural due process is violated.
- Here, existing procedures did not identify the type of evidence or standard that must be present before police officers can issue exclusions. Additionally, the lack of a pre-deprivation hearing created a high risk of an erroneous deprivation for a population with a strong interest in using the parks.

# *Blake v. City of Grants Pass (2020)*

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## Takeaways:

1. **Review ordinances** regulating or outright prohibiting the acts of sleeping or camping on public property and the amount of the fine imposed for each violation.
2. **Evaluate “available” shelter spaces** and consider working closely with nonprofit or community services organizations for programming and services.
3. **Review park exclusion processes** or exclusions from real property and the appeals process.

# Other notable cases – Further reading

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- ***Aitken v. City of Aberdeen***, 393 F. Supp. 3d, 1075 (W.D. Wash. 2019): Summarizes decisions made by courts re 8<sup>th</sup> Amendment post-*Martin*.
- ***State v. Alexandra Chanel Barrett***, 302 Or App 23 (2020): Illustrates generally the facts an Oregon court would want before deciding an as-applied 8<sup>th</sup> Amendment claim. Concurrences in this case provide arguments a judge may use if a future case were to be presented.

# Medford case example

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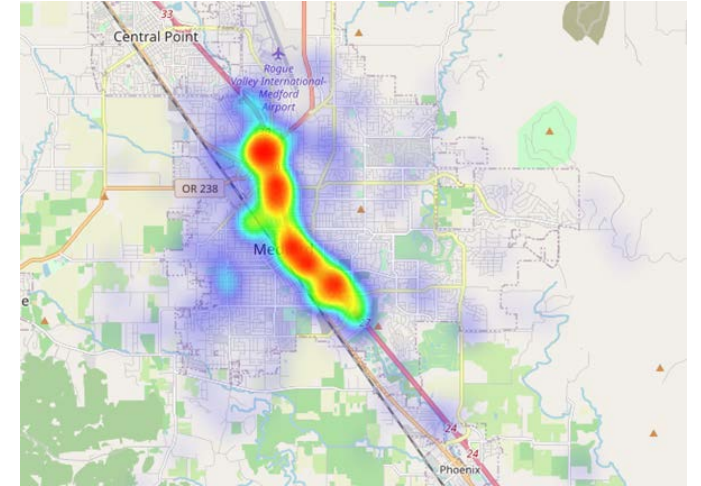
- Identify specific local concerns to address with time-place-manner restrictions
- Support social services, including new/innovative efforts
- Conduct outreach and seek out feedback with draft
- Present legislative body with options based on feedback



# Medford's local concerns

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- Medford Fire provided information that roughly 50% of fire calls in past three years were associated with greenway
- Fires on greenway endanger nearby properties
- Fires on greenway endanger people sleeping on greenway
- Greenway is difficult to evacuate during a fire event and poses risk to first responders



# Medford's local concerns, continued

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- Unregulated campsites contrasted with regulated camping programs
- Unregulated camping and its impact on riparian area, public safety, usability of public property for its intended purpose





# Medford: supporting service programs

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- "Available shelter bed" test not necessary to impose time-place-manner restrictions
- But robustness of local resources may be relevant to totality-of-the-circumstances test
- And other good reasons exist to support such programs
- Some recent City of Medford examples: Urban Campground, Project Turnkey, Navigation Center, and many others



# Medford: outreach and feedback

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- Presented at Housing Advisory Commission, Community Services & Development Commission, and Homeless Task Force
- Directly solicited feedback and potential changes from a half-dozen local grassroots activists
- Received voluminous feedback, both for and against
- Several substantive changes presented to Council as a result of constructive criticism

# Medford: resulting rules

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- Sleeping with bedding on sidewalks and in parks (except playgrounds and ballfields) is legal, but must pack up within 24 hours
- Greenway closed to lying or sleeping during fire season
- Tent camping restricted to organized operations (comparable to Urban Campground), severe weather events, and declared emergencies
- Unauthorized tent camping a misdemeanor; sleeping on greenway during fire season a misdemeanor; unauthorized car camping a violation

# Medford: lessons learned

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- Many opponents will not accept anything short of right-to-rest
- Actively engage with local media
- Do not let opponents frame this as one person's crusade
- Engage with specific criticism, but do not engage with unproductive/inflammatory commentators
- Take safety precautions for involved staff and officials



# What's next?

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- HB 3115 (Sponsor: Speaker Kotek)
- *Blake* appeal (9<sup>th</sup> Circuit)

# What's next?

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- **HB 3115**

1. July 1, 2023: Cities that have laws regulating sitting, lying, sleeping, or keeping warm and dry for outdoor spaces must ensure that those laws are **objectively reasonable** as to **time, place, and manner for persons experiencing homelessness**
2. Affirmative defense available
3. Facial challenge to local law permissible
4. Attorneys' fees – Limited circumstances

# What's next?

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- **HB 3115**

- Passed House on 4/15
- Senate First Reading on 4/19
- Senate Public Hearing on 5/4
- Passage TBD

# What's next?

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- ***Blake* appeal (9<sup>th</sup> Circuit)**
  - Case No. 20-35752
  - Opening brief filed by Grants Pass on 3/31/2021
  - Plaintiffs to file answering brief by 6/1/2021

# Thanks for listening!

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## Any questions?

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