The LOC Board of Directors was tasked at its October 16 meeting in Bend with identifying what legislative position, if any, the LOC should take on ORS 195.530 (commonly referred to as HB 3115), a statute which dictates how local government can regulate their public spaces in relation to people experiencing homelessness.

*Legal History*

To understand ORS 195.530, one must first understand a series of federal court decisions, and the Oregon Legislature's fear that the United States Supreme Court may one day reverse those court decisions, with the court decisions having been released in 2018, 2022, and 2023.

In 2018, the U.S. Ninth Circuit Court of Appeals, in *Martin v. Boise*, interpreted the Eighth Amendment to the U.S. Constitution to "prohibit[s] the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter … because sitting, lying, and sleeping are … universal and unavoidable consequences of being human." The court declared that a governmental entity cannot "criminalize conduct that is an unavoidable consequence of being homeless – namely sitting, lying, or sleeping." This opinion specifically states that local units of government could impose reasonable time, place, and manner restrictions on where people may sit, sleep, or lay on public property, but the court failed to provide any specific guidance on what would constitute a reasonable regulation.

With cities across the Ninth Circuit scrambling to understand the court's ruling, many cities attempted to update their camping ordinances to comply with the new federal law. One such city was the city of Grants Pass, Oregon. Despite updating its ordinance, the city of Grants Pass was sued in federal court, with the lawsuit alleging the city's updated ordinance was still in violation of the Eighth Amendment. In 2022 (and with a subsequent decision in 2023), the Ninth Circuit released its opinion in *Johnson v. Grants Pass*, expanding its decision in *Martin v. Boise*, in several ways. First, it stated that the Eighth Amendment prohibits cities and counties from both criminally and civilly punishing a person experiencing homelessness from sitting, sleeping, lying, keeping warm and dry, and taking reasonable precautions from the elements (the keeping warm and dry and taking reasonable precautions from the elements were newly added considerations in the *Johnson* decision). Second, the court seemed to assert that car camping is to be treated the same as camping outdoors. Third, the type of lawsuit filed in the case was one in which a class action was permissible (meaning no individualized finding of a potential constitutional violation need be made).

Grants Pass appealed the *Johnson* case to the United States Supreme Court, which issued a ruling this summer, finding that the 8th Amendment does not prohibit cities from enacting and enforcing generally applicable camping ordinances to regulate public spaces, even if it the regulations and enforcement thereof impact people experiencing homelessness.

While the *Johnson* case was making its way through the federal court system, the Oregon Legislature, during its 2021 legislative session, enacted ORS 195.530 via HB 3115. For simplicity, ORS 195.530 states that "any city or county law that regulates the acts of sitting, lying, sleeping or keeping warm and dry outdoors on public property that is open to the public must be objectively reasonable as to time, place and manner with regards to persons experiencing homelessness."

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- Reasonableness is determined "based on the totality of the circumstances, including, but not limited to, the impact of the law on persons experiencing homelessness."
- Keeping warm and dry means "using measures necessary for an individual to survive outdoors given the environmental conditions" – although it does not include using any measure that involves fire or flame.

In enacting ORS 195.530, the Legislature was clear that it was doing so as a way to "codify" the Ninth Circuit's decision in both *Martin v. Boise* and *Johnson v. Grants Pass*.

The result of the U.S. Supreme Court's recent decision in *Johnson v. Grants Pass* does not impact the current application of ORS 195.530 as only the state legislature can amend the state statute.

*Generalized Feedback from LOC Members*

LOC staff, including its Executive Director, Legislative Director, General Counsel, Assistant General Counsel, and each of its Lobbyists, have had conversations with various city officials – including elected officials, city managers/administrators, city attorneys, and lobbyists – about their thoughts on ORS 195.530, and whether the LOC should make any legislative attempts to repeal or modify the statute in the upcoming 2025 legislative session. Based on these conversations, three legislative pathways were identified. They include the following:

- **Full Repeal of ORS 195.530:** Individual city officials have advocated for the full repeal of HB 3115. Oregon is currently the only state in the Ninth Circuit that codified the appeals court decision, originally negotiated with then Speaker Kotek. Those seeking a full repeal have made two arguments. First, that the statute is a violation of Home Rule; it specifically dictates how cities are required to manage their own public property. Second, the previous decisions by the Ninth Circuit and the resulting ORS 195.530, have eliminated a tool from cities toolbelts as they try to prevent and address a homelessness crisis – cities asking for a full repeal are not, at least as staff can identify, seeking to jail people experiencing homelessness, but they are indicating that their ability to address the problem has gotten worse with the elimination of all available tools.

- **No Action at This Time on ORS 195.530:** Not every city, expressed through their lobbyists, experienced detrimental impacts, or litigation due to HB 3115. And some are hesitant to seek changes to the existing statue due to potential political ramifications, noting concerns that HB 3115 was strongly supported by the former Speaker of the House, who is now Oregon's Governor. Additionally, the adoption of ordinances under HB 3115 was costly (in legal fees and staff time) and in some cases controversial. The law directed cities to conduct community engagement and consult with persons experiencing homeless and their representatives. Revisiting ORS 195.530 could trigger a new need to expend staff time and fiscal resources on attorneys.

- **Clarify or Modify ORS 195.530:** In between the cities advocating repeal and no action, some city officials and legal counsel have suggested ways ORS 195.530 might be clarified to avoid legal claims surrounding what does and does not constitute a reasonable time, place, and manner restriction.