



# Martin v. City of Boise and Public Camping

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# Martin v. City of Boise, 902 F.3d 1031 (9th Cir. 2018)

DB

- › “We consider whether the Eighth Amendment's prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to. We conclude that it does.” We hold that “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],” the jurisdiction cannot prosecute homeless individuals for “involuntarily sitting, lying, and sleeping in public.”
  
- › Actions illegal under Boise ordinances:
  - To use any of the streets, sidewalks, parks, or public places as a camping place at any time
  - Occupying, lodging, or sleeping in any building, structure, or public place, whether public or private ... without the permission of the owner or person entitled to possession or in control thereof.

# Martin v. City of Boise

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DB

- We in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets ... at any time and at any place.
  
- The dicta of Footnote 8:
  - Nor do we suggest that a jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside. 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.

# Martin v. City of Boise – the progeny

DB

- › Frank v. City of St. Louis (Federal district court - 2020)
  - Context: City seeks to close an unauthorized encampment due to COVID risk.
  - Court says that Ms. Frank is not able to get a TRO to stop City action.
  - At most, the City is criminalizing sleeping in public *in a particular location*. And according to the health official, as well as the Order to Vacate itself, the City is doing so because it has identified that particular location as especially “high risk .. for the spread of COVID-19....
  - It is not at all clear that the City is criminalizing homelessness anywhere, even at the downtown encampments. At oral argument, counsel for the City repeatedly stated that the City had no intention of arresting the individuals who have been residing at the encampments.
  - The Notice and Order posted at the downtown encampments clearly states that sufficient alternative housing is available for everyone still sleeping there.

# Martin v. City of Boise – the progeny

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DB

- › **Gomes v. Kauai (Federal district court - 2020)**
  - **Context: Gomes sued County challenging citation for illegal camping and constructing an illegal structure in a public park.**
  - **The plaintiff's alleged that there the County's capacity is 19 persons at the homeless shelter in County; but there are 500 registered homeless people in the County.**
  - **Defendant files a motion to dismiss for failure to state a claim; Court agrees.**
  - **Importantly, plaintiffs were cited for sleeping at a public park; not for sleeping on public property; in other words, the ordinance just precluded sleeping at a particular location.**

# Martin v. City of Boise – the progeny

DB

- › City of Eugene v. Adams (Oregon Court of Appeals - 2021)
  - **Context:** Appeal of a criminal conviction for trespass. Defendant was sleeping in front of an elevator to a private building blocking access for employees.
  - The Court stated that nothing in *Martin* supports the extension of that rationale to prohibitions on enforcement of criminal trespassing laws on *private* property. Here, it is undisputed that defendant was on private, not public, property.
  - We thus conclude that neither the Eighth Amendment, nor Article I, section 16, prohibits enforcement of criminal trespass laws, involving an entry onto private property, against the homeless.

# Martin v. City of Boise – the progeny

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DB

- What have we learned? The following appear to be the key considerations on whether the 8<sup>th</sup> Amendment applies to public camping:
  - Only applies to public (not private) property – interesting opportunity??;
  - Doesn't apply if no criminal charges possible;
  - Probably doesn't apply if not all public property affected; best approach is to speak to specific categories of property that are off limits;
  - Doesn't apply to temporary prohibitions to achieve public policies (like cleaning or closing a particular facility due to health risks).

# Martin v. City of Boise – the progeny

DB

## ➤ Sacramento Homeless Union v. Sacramento

- Sought and obtained a temporary restraining order against the City in light of the high temperatures and the fact that the main designated camping location was a parking lot.
- “The Ninth Circuit held in Martin that “the Eighth Amendment’s prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to.” 920 F.3d at 603. In contrast, the crux of the relief Plaintiffs seek in this case is to stop the City from clearing encampments because those encampments provide some amount of respite from the extreme heat in Sacramento — not that Plaintiffs are being prosecuted criminally for sleeping outside on public property....The Court finds Martin has no bearing on the injunctive relief that Plaintiffs seek.”



# The Tennessee Approach

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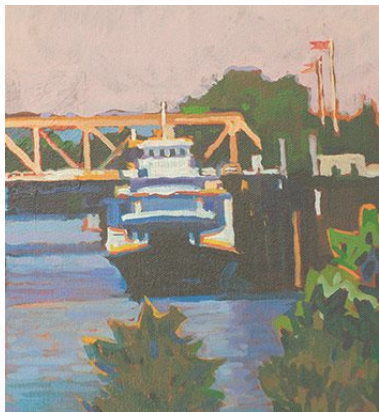
- SB1610 expanded the Equal Access to Public Property Act of 2012 to include city and county public property. It previously only included state and private property. Camping on any public property not designated for camping use is now a Class E felony in Tennessee.
- The law also makes soliciting or camping alongside roadways or bridges illegal as a Class C misdemeanor, punishable by a \$50 fine or community service.
- This may set up an eventual battle at the Supreme Court.

# Blake v. City of Grant's Pass

DB

- A 9<sup>th</sup> Circuit appeal challenging City ordinances in effect *before* Martin. The case challenged anti-camping and anti-sleeping ordinances punished with civil fines that ripened into criminal punishment. Anti-sleeping ordinance did not prohibit sleeping, only sleeping with any sort of shelter or bedding.
- “Our decision reaches beyond Martin slightly. We hold, where Martin did not, that:
  - class certification is not categorically impermissible in cases such as this,
  - “sleeping” in the context of Martin includes sleeping with rudimentary forms of protection from the elements
  - Martin applies to civil citations where, as here, the civil and criminal punishments are closely intertwined.”

QUESTIONS?



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# Thank You

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