



Houselessness and the Law

Beth Jones
Capitol Legal Services
beth@capitol.legal





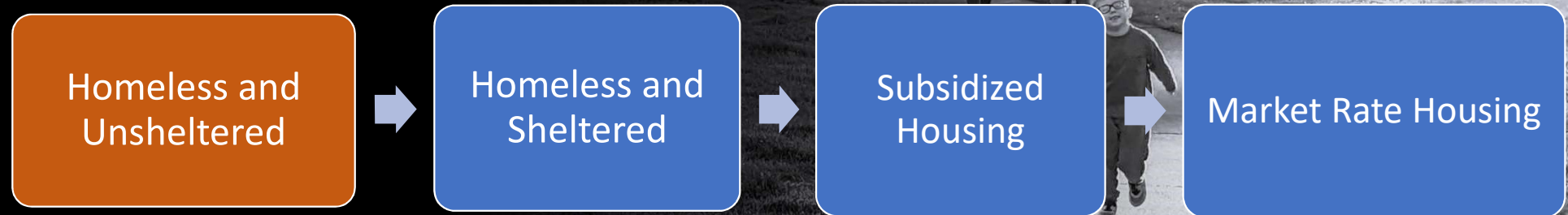
Outline:

1. Relevant History
 2. Where We are Today
 3. The Next Wave of Litigation
 4. ~~Perfect solutions~~
 5. Questions
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What we are talking about (and not talking about) today



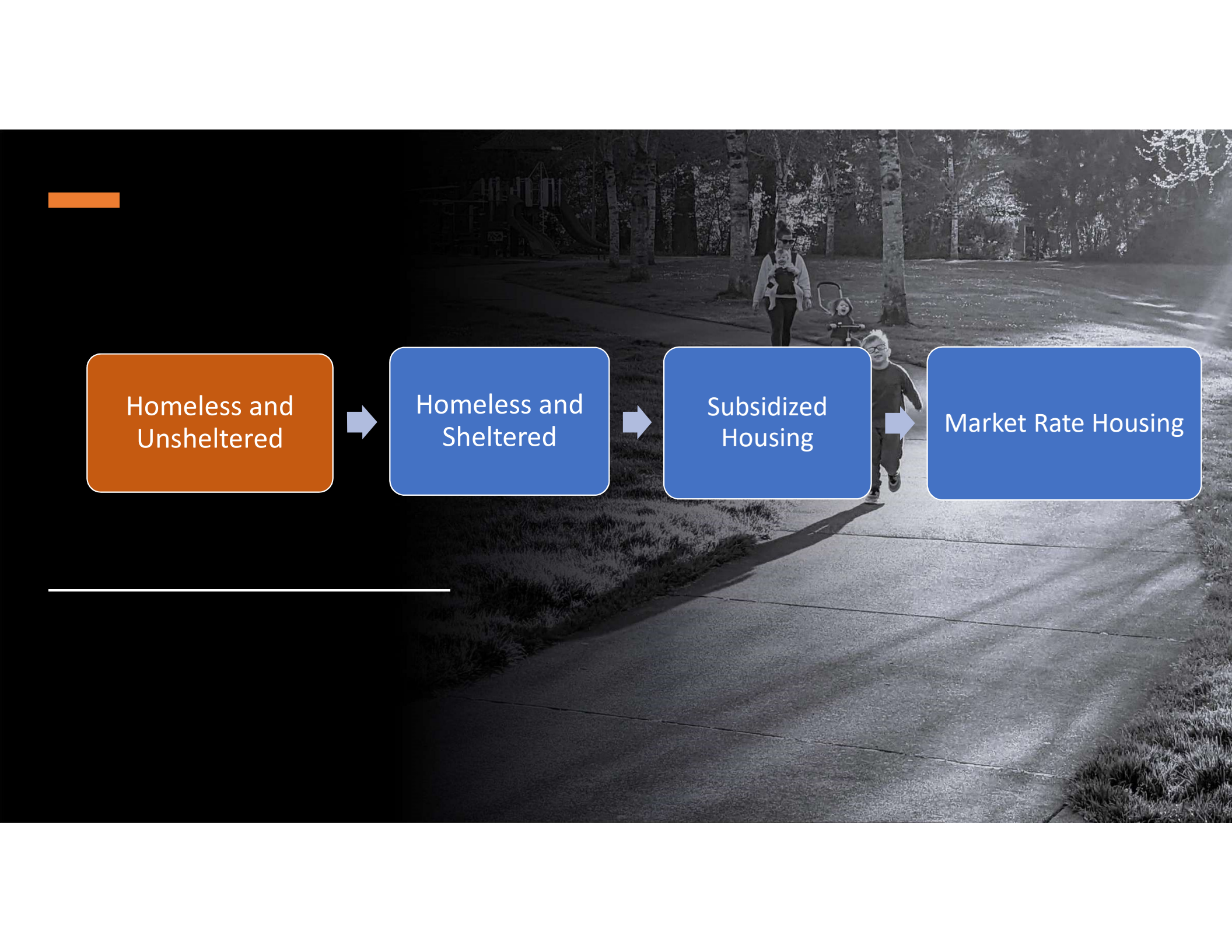
Definitions of Homeless (Federal Government)

- **What you likely Picture**: Individual or family that lacks a fixed, regular, nighttime residence or resides in a public or private residence that is not designed for regular sleeping accommodations for human beings (examples in statute are in a car, park, abandoned building, airport, etc.)
- **What you May Not Picture**: Lives in a supervised shelter designed to provide temporary living arrangements (examples in statute are in a hotel, motel paid by taxpayer funds or other shelters or transitional housing even when run by charitable organizations)
- **What you are even less likely to Picture**: Imminent risk of losing housing and those fleeing domestic violence. Within 14 days the individual or family is going to be evicted or run out of money and has no subsequent residence identified or resources to obtain other permanent housing.

42 U.S.C § 11302

- Children and youth who are sharing housing of other persons due to loss of housing, economic hardship or similar reasons, which expressly includes any children living in motels, hotels, and trailer parks

42 U.S.C § 11434a



Homeless and
Unsheltered



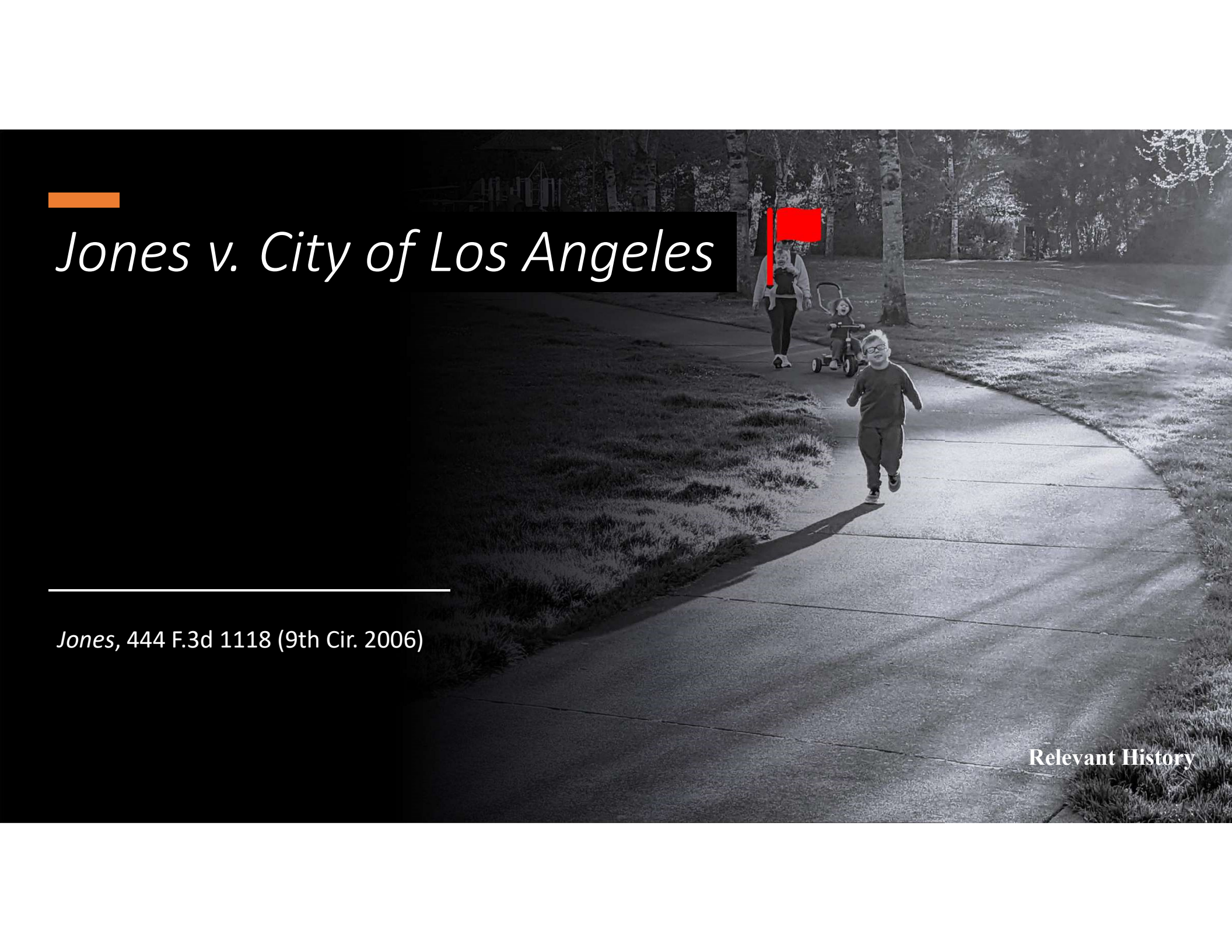
Homeless and
Sheltered



Subsidized
Housing



Market Rate Housing



Jones v. City of Los Angeles

Jones, 444 F.3d 1118 (9th Cir. 2006)

Relevant History



Martin v. Boise



Holding: If available shelter beds < homeless in jurisdiction (per most recent P.I.T. count) = the homeless in that jurisdiction are “involuntarily homeless” and once deemed “involuntary” individuals cannot be criminally “punished” for the acts of sleeping or resting on public property

Status: Overruled by SCOTUS.

The mathematical formula created here was difficult, if not impossible, to meet, particularly where available shelter was defined in a way that would require indoor accommodations.

Martin v. Boise, 920 F.3d 584 (9th Cir. 2019)

Relevant History



Blake/Johnson v. Grants Pass *(initial lawsuit and rulings)*



72 F.4th 868 (2019)

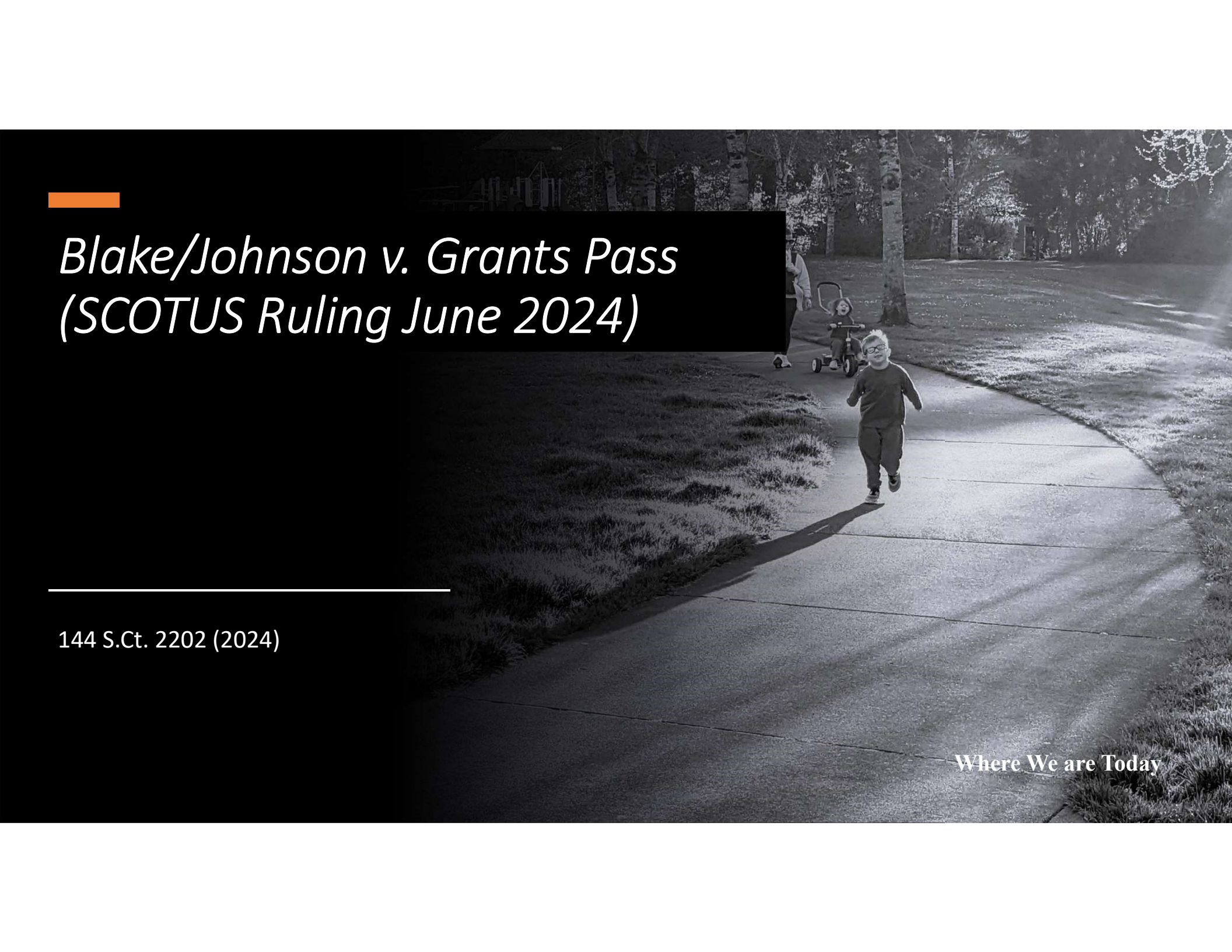
Relevant History



State Law Changes – 2021, 2023

- **“Codifying Boise and Grants Pass”**
- **HB3124 (2021) = Moved notice provisions from 24 to 72 hours and added other restrictions on the removal of individuals or their property. (ORS 195.505)**
- **HB3115 “Objectively reasonable as to time, place and manner” (ORS 195.530 went into effect 2023)**
- **HB3115 = Creates a right of action where plaintiffs only can be awarded attorneys’ fees. (ORS 195.530)**

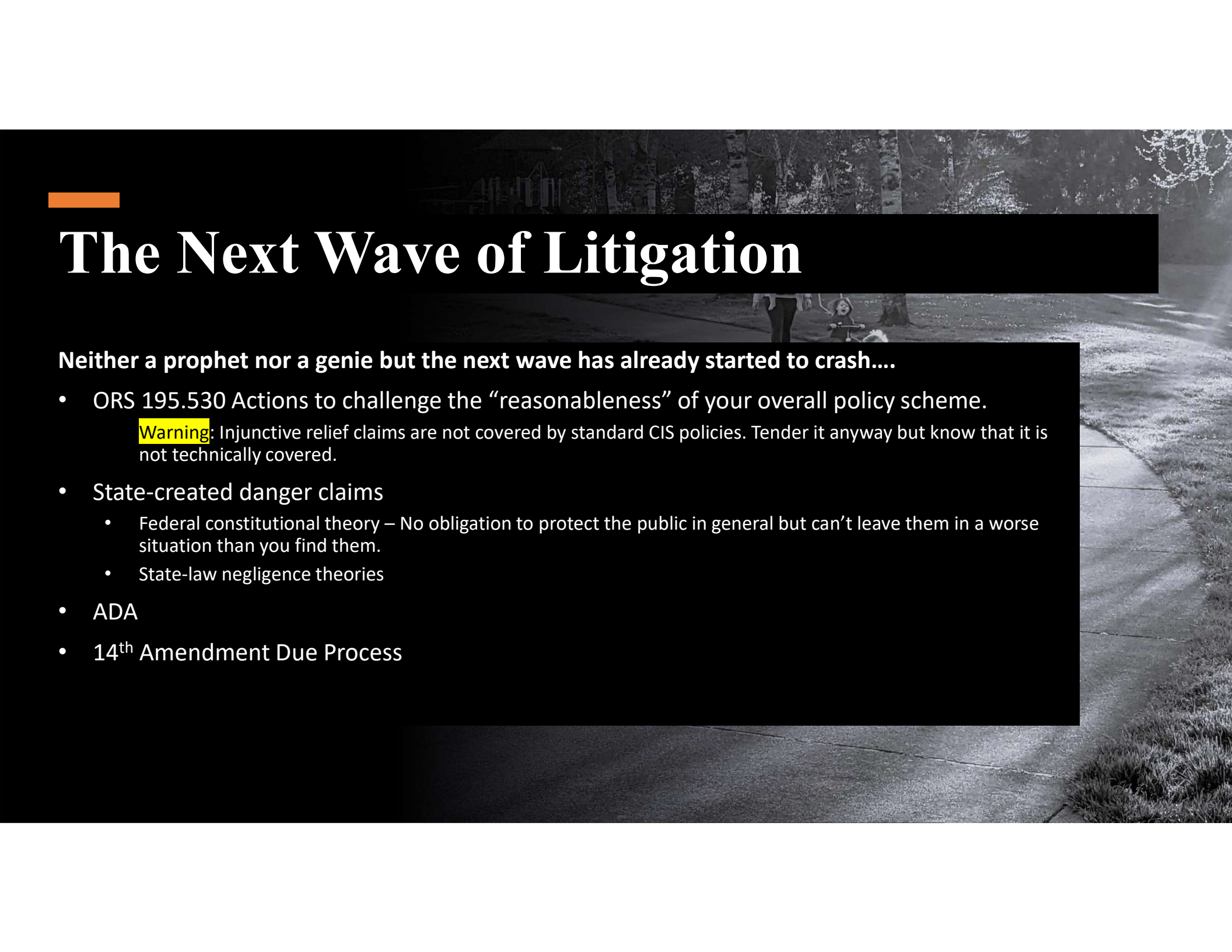
Where We are Today



Blake/Johnson v. Grants Pass (SCOTUS Ruling June 2024)

144 S.Ct. 2202 (2024)

Where We are Today



The Next Wave of Litigation

Neither a prophet nor a genie but the next wave has already started to crash....

- ORS 195.530 Actions to challenge the “reasonableness” of your overall policy scheme.
Warning: Injunctive relief claims are not covered by standard CIS policies. Tender it anyway but know that it is not technically covered.
- State-created danger claims
 - Federal constitutional theory – No obligation to protect the public in general but can’t leave them in a worse situation than you find them.
 - State-law negligence theories
- ADA
- 14th Amendment Due Process



Perfect Solutions





Suggestions

- Have you changed your ordinances since the passage of HB3115 in 2021?
- Dedicated enforcement and resource teams.
 - Whoever is doing the enforcement/notice posting needs to be very comfortable with the law including the traps that are baked into the law.
 - e.g. – ORS 195.505(10) – 2 hours and 200 feet restrictions.
- Consistent enforcement of other conduct unrelated to sleeping/camping type activities
 - drugs, dogs off leash, spreading trash, etc.
- Putting opportunities for individuals to avoid the consequences of an enforcement action if they meaningfully engage with services that may aid in them getting off the street.
- Train your folks not to say insensitive stuff in public meetings, or on your email system.
- Stay involved with lobbying efforts.



Questions

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aaron@capitol.legal

