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Judge suggests Calif. ban on EMT licensing for felons not absolute

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(Reuters) - A U.S. appeals court judge indicated that the potential for convicted felons to have their records expunged could doom a lawsuit claiming California's ban on people with felony records being certified as emergency medical technicians is unconstitutional.

During oral arguments on Tuesday, 9th U.S. Circuit Court of Appeals Judge Mark Bennett told Andrew Ward, a lawyer for two men challenging the 2010 regulation, that the ban was not absolute if people convicted of felonies can rehabilitate and have their records cleared.

"They can go to judges and, in the interest of justice, get the ban taken away," Bennett said. "So I don't see how it's a flat ban."

Bennett said the court may request additional briefing on California's expungement process and how it affects EMT certification.

Ward, a lawyer with the nonprofit Institute for Justice, told the judge that whether an individual qualifies for expungement is a separate question from whether they are unfairly subject to the ban in the first place. The ban is unlawful because it extends to felony offenses with no connection to EMT certification, Ward said.

Lisa Tillman of the California Attorney General's office told the 9th Circuit panel that expungement could ease the ban on some felons, but that the state had not addressed the issue in its briefs.

Tillman said the ban was reasonable because a felony conviction indicates that an individual exercised poor judgment and inflicted harm on another person.

"An EMT's role, like a doctor's, is to do no harm to others," she said.

California bars people convicted of multiple felonies from being certified as EMTs for life. Individuals convicted of a single felony cannot become EMTs for ten years after their sentences end.

The ban is the strictest of its kind in the country; most states target specific serious crimes or have no similar ban.

Plaintiffs Dario Gurrola and Fernando Herrera, who each have two felonies, say California's law violates their constitutional rights and has barred them from full-time firefighting jobs that require EMT certification.

A federal judge in Sacramento dismissed the case last February, agreeing with the state that its interest in preserving public safety provided a rational basis for the ban.

The plaintiffs' appeal drew support from an array of liberal and conservative groups, including the American Civil Liberties Union and the Cato Institute.

Tuesday's panel included Circuit Judges Ronald Gould and Ryan Nelson, who said little during Tuesday's arguments.

The case is Gurrola v. Duncan, 9th U.S. Circuit Court of Appeals, No. 21-15414.

For the plaintiffs: Andrew Ward of Institute for Justice

For the state: Deputy Attorney General Lisa Tillman

For the other defendants: Louis Castoria of Kaufman Dolowich & Voluck; Wendy Motooka of Rivera Hewitt Paul