III. “Cleaning Up” Records (Expungements, Pardons, Sealing)

Other Resources


IV. Statutory Employment Restrictions

Litigation

With a win-loss record of slightly better 50-50, the libertarian Institute for Justice has been going after state licensing restrictions for a number of years. Although they have not targeted the restrictions based on criminal records, the legal theories are nonetheless relevant. They have succeeded with substantive due process and equal protection challenges when the restrictions were particularly lacking in rationality. Craigmiles v. Giles successfully challenged a Tennessee law that required that casket retailers get a funeral director’s license. 110 F.Supp.2d 658 (E.D. Tenn. 2000; 312 F.3d 220 (6th Cir. 2002). In Brown v. (Marion) Barry, a shoeshine entrepreneur and his homeless employees successfully challenged a D.C. Jim Crow ordinance that forbade bootblacks from shining shoes on public property. The generic city vendor permit that had been granted was pulled under the auspices of the bootblack law and he was ordered to close shop. The plaintiffs won on equal protection grounds. 710 F.Supp. 352 (D.C.Cir.1989). Cornwall v. Hamilton was one the many African American hairbraiding challenges mounted by IJ. As with the other hairbraiding cases, it involved a state requirement of a cosmetology license even though cosmetology schools did not teach hair braiding, the state exam did not test on hairbraiding (except on blonde hair), and the hairbraiders did none of the cosmetology that the schools and tests covered. This requirement was stricken on both due process and equal protection grounds.
80 F.Supp.2d 1101 (S.D. Cal. 1999). In Santos v. Houston, a jitney service operator successfully challenged an anti-jitney ordinance on the basis of federal antitrust laws and substantive due process. 852 F.Supp. 601 (S.D. Tex. 1994). These cases were each fact-heavy. They pointed to the absurdity of the restrictions / requirements and how the state’s justification was just not rational. In a number of them, the court even pokes fun at the states’ arguments. When states create extremely harsh restrictions on some kinds of occupations based on criminal records (e.g., one can NEVER get the job or license if EVER convicted of ANY crime), but in an occupation with similar or identical public trust or safety concerns, there is either a case-by-case determination or some or all convictions are not relevant after the passage of time, the former, under precedents such as these, might successfully be challenged.