



Registry Matters Podcast

Episode 143

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Andy 00:00

Registry Matters is an independent production. The opinions and ideas here are that of the hosts and do not reflect the opinions of any other organization. If you have a problem with these thoughts, fyp. Recording live from FYP Studios, east and west, transmitting across the internet. This is Episode 143 of Registry Matters. Larry, how are you tonight? I have a question for you. How are you?

Larry 00:29

Fantastic.

Andy 00:31

Alright. I was I was at the beach yesterday with a friend and a woman came up to the she was the waitress and she came up and we asked how she was doing and she said, I have the devil on my face. And she was wearing a mask and I know I'm gonna get hate mail for this. But I don't understand how a person can have a mask on their face, and they're going to blame Coronavirus. And if Trump is reelected, that it would then go away, that he would fix it. But he's the one in office now and she's wearing a mask now why that person is office? I'm really so confused by that.

Larry 01:08

I'm really confused. I didn't follow it.

Andy 01:12

Well, anyway, alright, Josh, you are a guest this evening. You've been on with us before you, you host a podcast called Decarceration Nation. And I think it's a fabulous program. You you do a crap ton of research for your program. And I'm always amazed at how well you do I know that you you run it very different than how we run it here where you are very much like you script kind of sort of the whole thing and you have all the questions prepared in advance and all that stuff. So welcome, again, as usual.

Josh 01:42

Thanks. Yeah, I do pre script a lot of the podcast but and do a lot of research. Yes.

Andy 01:48

It makes it easy to to edit it. And so that hey, look, hey, you can have a hard break and just like can you ask that question again? Oh, hey, let's let's ask that question again. What are, are you in your summer break? What are you doing? You're not you're not releasing episodes for a little while?

Josh 02:07

Yeah, I've got a couple more episodes before the whatever I've called the season is finally over. But it's mostly done for the year until November when we'll have our... usually I start new seasons on Martin Luther King Day. But I do have a couple more episodes this season.

Andy 02:24

Excellent, excellent. And you tagged me on Twitter or tagged the podcast on Twitter about a whole bunch of different policies. Can you can you dig into that real quick? Do you remember what your, what I'm talking about?

Josh 02:40

I think was just that, I think it was earlier today and I was just talking about something about failure to register, probably, but I don't really remember.

Andy 02:52

But it was like six tweets long a thread and talking about that there's no evidence that any of the registry stuff has any improvement on public safety, and so on and so on. Anyway, we don't have to dig into it without a lot of detail.

Josh 03:06

Okay, well, that's definitely something I might say for sure.

Andy 03:10

Oh, yeah, yeah. But you tagged you tagged the podcast and a couple other people. And that's how I ended up seeing it.

Josh 03:16

Yeah, yeah. It's just, you know, here it is. So basically there was an article in The Washington Free Beacon about how Kamala Harris or Kamala Harris had said, had it when she was the Attorney General of California had rolled back residence residency restrictions for people on the registry, which isn't entirely correct, but they were basically just trying to make a political attack against her. But then, you know, by saying that if you roll back registry, like the residency restrictions, that you must be pro, basically pro sex offender. So, but they didn't put any of it in context, and they didn't do any of the research that's necessary to kind of like understand the residency restriction question, they just asked one kind of proponent of residency restrictions, to make a bunch of kind of pejorative comments about Kamala Harris doing that. And so basically, all I did was link most of the the different major articles that have claimed through, you know, based on the research that there's really no public safety basis for residency restrictions based in and none of the research supports that. And so I just thought it would be something that would be interesting to your Twitter folks. And so that's why I tagged you.

Andy 04:40

I got it and here we are. See, that works out.

Josh 04:44

It does work out. I didn't think it was going to literally become part of the podcast, but now that we're here, all right, you know.

Andy 04:52

Larry, we had someone phoned in and actually then also left a comment on the website that we are going, that the person wanted to describe something about some partisanship. And am I I don't think I'm getting ahead of where we are. The person said that, that Joe Biden created the AWA or maybe he sponsored the AWA and you you immediately tagged me back and sent me an article whatever like us.gov whatever like the congressional document listing out how it all came about. What happened?

Larry 05:28

well, I took a little issue I was actually not very nice when I saw that. When I heard that because we go out of our way not to be partisan, and I want to define, use Webster's dictionary what partisan is. Definition number one: a firm adherent to a party, faction, cause or person especially. One exhibiting blind prejudice and unreasoning allegiance. Political partisans who only see one part of the problem. Another definition of feeling or showing or deriving from strong and sometimes blind adherence to a particular party, faction or cause. This is not Registry Matters. We do not have a blind allegiance to any party. We have a blind allegiance to good public policy. And we have opposition to bad public policy. And whichever party happens to be the architect of that policy that's good, they will get our accolades. The party that's the architect of bad public policy, they will get our criticism. And it's just that simple. If you promote good public policy, now you can differ on what you think good public policy is, that's fine. But I'm not loyal to a particular party because I'm loyal to that party. I'm loyal to that party on what I agree with that party on and and if I don't agree with something, I say that and I've said it over and over on the podcast, things I don't agree with, regardless of the party. So in my mind, we're not partisan. If we can't discuss the issues, if we can't criticize bad public policy, I really don't even know what the point of being here would accomplish because what we're trying to do is alter public thinking and promote good public policy. And we have to at least be able to identify where the problem is before we can work towards a solution. But anyway, that kind of that kind of got my attention? (Andy: I can definitely tell your feathers are ruffled there.) We're not partisan. Now, unfortunately for our cause, the, one party gets more of our wrath than the other, but that that's only because of the policies that they're promoting. It's not because of the party that their name is. That's all it is. If they, if they, if they promote good things, they magically get all sorts of accolades. They've gotten credit, credit for the for the, the campus assault, the changes they've made in terms of investigation of those accused of sexual assaults on campus. I've given I've given this administration huge accolades for that. (Andy: Right.) But but but other things have been not so favorable to our cause. And I've not been so complimentary of the administration. But on the other hand, what's going on here was that that, that that was just factually wrong, and the person who submitted that, they are actually the partisan themselves. They have a blind allegiance to their party, and they don't really take the time to know what's going on here. First of all, we need to take a look at who controlled Congress in 2006. Because a president cannot sign anything, unless it makes it through both houses of Congress, the same piece of legislation. Either it's identical or it goes through a conference process, though a conference committee and reconciled, but it can't get to a president without going through Congress. And for those who want to want to look at the numbers we're going to make it available for, for for the for the viewing audience and for the listening audience of what Congress looked like in 2006, when the Adam Walsh Act was passed. The Republicans had about a 10 seat majority of the in the in the Senate, which is a significant majority of it's not, it's not it's not what it takes to overcome a cloture vote where you need 60 but it was a solid, solid majority. And in the House of Representatives, they had a comfortable majority, not not by the same ratio, but they had a comfortable majority. And for those of you who've been around for a long time on this podcast, when you when you

when you're the majority party, that means you control the committees. Every Chair of every committee is a member of the majority party. The committees decide, the chairs decide what they're going to hear when they're going to hear it. The majority decides what goes to the floor for a vote. And what order it goes to the floor once it makes it through the committee process. When you have the majority being Republicans in 2006, the Democrat Party didn't have anything that they could do that could have stopped the Adam Walsh Act, but they actually did try it, believe it or not, if, if I could find the archives from 2006 on the Bill O'Reilly show. Bill O'Reilly, who did the famous O'Reilly Factor on Fox, he vilified the late senator Edward Kennedy for holding up the Adam Walsh Act. And Kennedy was actually blocking the Adam Walsh Act using parliamentary maneuvers that a minority senator can do to keep it from coming to a vote because he was wanting the republicans to agree to hate crimes legislation in exchange. Now I'm not saying he was pro sex offender so don't misinterpret that. But he was trying to slow the train down. And O'Reilly vilified Kennedy for days on end until he relaxed and let go and stopped his opposition to the Adam Walsh Act. The Republicans authored it, Representative Sensenbrenner, Sensenbrenner from Wisconsin, the republicans managed the process to get it through the house. The Republicans managed the process to get it to the Senate and through the Senate, and the republican occupant of the White House, signed it. And now, I'm not criticizing President Bush, either. President Bush would have made no difference. If it had been President Nixon, had been President Carter. If it'd been President Reagan, any president would have signed this because it would have been suicidal not to sign it because this was protecting children. And, and so I'm not I'm not putting the fault on Bush. Bush signed it because it was presented to him as something good for public safety. But if you really want to stop it, you've got to look at how it got to President Bush. And it got to President Bush, not because of Senator Biden, it got to President Bush because of the Republicans who were running the show in 2006. That's not partisan. That's simply the way it happened.

Andy 12:00

So but what about so help educate me when I look at this, and I don't know who controlled Congress at this time in 2005, and six, and I look at who co-sponsored the bill, and they have 32 republicans and six Democrats, that show as being co-sponsors of the bill. How significant is that information in determining where the problem lies I guess is the question?

Larry 12:29

You shouldn't read a whole lot into that. This is the type of thing where I think before it made it through the final process, there was a whole lot more. Those were just initial co-sponsors. The people who served in Congress got on board because it was it was gonna pass and they couldn't be on the wrong side of the issue. But again, you have to understand this was was a Republican item, not partisan. Simply fact. It was not democrat proposal. And and there were some democratic co-sponsors initially. That number grew as the thing moved through the process. But I wouldn't read a whole lot into that in terms of of the co-sponsors, because it's easy to get co-sponsors for something like this. It's hard to say no. when you're, when you're seeking co-sponsors for something that's going to save children. It's very difficult to say, Well, no, I'm not interested in saving kids. But But you had a 55-44 majority in the Senate. That's a very solid, one independent who was actually,

who would have voted with the with the Democrats. But still you had a 55-45 a majority. So that's how it got through the Senate. It wasn't Mr. Biden, I know that that would make you feel really good to think that Biden did this, but Biden didn't do it. If you can have some evidence rather than just your partisanship, to submit to us to show what Biden did particularly that made this happen, we'll cover it next week on the podcast, but right now, all I hear is I'm angry at Biden. I don't like Biden. And I'm going to create in my mind that Biden did something that Biden didn't do.

Andy 14:09

Will in chat has said the Act was introduced by John Walsh in a closed session. How does one man get a closed session to push his legislative ideas? There was no public discussion or debate on the bill.

Larry 14:20

That's silliness. John Walsh didn't introduce a damn thing. He wasn't a member of Congress. He can't introduce anything. (Andy: Okay.) And there was nothing closed about this. Look at that link I sent you of all the congressional actions that took place on this. This again is buying into conspiratorial theories. This went through the regular legislative process. As legislation moves, if you look down that list of all of the actions that occurred in the bill, it was not done in the middle of the night. So, it was done through the process that we have.

Andy 14:57

Josh before we kick this out, do you want to talk about anything. There?

Josh 15:03

Oh, no, I think that I don't have much to say on any of that. I that was a bad moment for sure when that passed.

Andy 15:11

Yeah, no doubt. No doubt. I was just just I didn't want to leave you without the opportunity to speak about it.

Josh 15:19

No, that's okay. Larry got that one fine.

Andy 15:23

Yep, yep, yep, yep.

Larry 15:26

I don't I don't mean to diminish John Walsh's influence. He did have a significant influence. This was named after his son. And John Walsh was was was masquerading around. But John Walsh didn't introduce this. This was this was something that he encouraged. And it was, I think, signed on his what would have been his son's birthday, if I remember right in 2006, August 2006. But but it was, it was it was something that had been pushed by the Republicans. I'm sorry to have to burst your bubble. But that's the reality of what happened, so.

Andy 16:03

and then we have this article from the Washington Post that I'm going to, you know, let me let me take a quick little detour. So like two hours before we were going to record I decided, hey, it's probably a good idea for me to reboot my computer. Oh, gosh,

then all the troubles ensued. So I'm running on a backup computer and things are very slow over here. But so from the Washington Post is three years ago, an officer was filmed beating up a handcuffed black man. Now he's the police chief. Larry, is this something that probably happens on a somewhat regular basis?

Larry 16:39

Let's hope not. I stuck that in there just for kind of this. The irony of it. If you look at the, you compare it with the Minneapolis, the officer that had, how many complaints did he have? the one that did the neck?

Andy 16:58

it was in the dozens, maybe in the 20s.

Josh 17:02

Yeah, I don't know the number. I definitely there are certainly a lot of people who continue to get hired in in police departments despite a lot of complaints against them.

Andy 17:15

There's a clip in here, it's one sentence that says I got beat stomped, kicked into my groin. That's uh, that sounds like a really nice way to be handled.

Larry 17:27

I don't see a problem with it Andy. I don't know what you liberals are always griping about.

Andy 17:32

I mean, I get mean, a police officer is going to do what they have to do to get to get you to comply. I was having lunch with someone who said, Look, if you get pulled over by the police if you have some sort of police interaction, and things escalate and the police officer gives you some sort of order to do a thing that you should just comply. And while I don't disagree with the notion that life will be easier if you do comply. I don't know that you should just blindly comply.

Josh 18:05

There's also a lot of evidence, there's a lot of evidence of people who have fully complied and still gotten the beat down so.

Andy 18:11

That's true. I don't think George Floyd was resisting and it didn't go well for him.

Larry 18:19

Well, and I was going to add, Josh that there's, it sounds simple, but what what that doesn't take into account are so many variables. We, believe it or not, there are people in this country who do not speak or understand English because it may not be the first language. There are people in this country who have learning disabilities who have various mental conditions that cause them not to comprehend the directions they're getting. I myself, I was I was, had had officers draw guns on me. And I was having trouble following their instructions because they're barking this stuff out at you. You're scared. You don't know what you've done. I know I didn't know what I done. I was trying to help at the time trying to hail down an officer and the officer got scared and decided to pull his gun on me and told me to get down on the

ground. In an ideal world, yes, you would comply, assuming that you understood, comprehended and you and you were able to comply, but there are people who have medical conditions where they can't do all that twisting and stuff that the officer tell them to do. How would you like to see your 80 year old? How would you like to see that person trying to comply? When they say get out of the car, get on all fours, crawl backwards to me, would you like to see your 80 year old doing that? 80-year-old grandmother? (Andy: I don't think I could do it now.) That's my whole point. That yes, you should ideally you should comply. And and it would certainly go better for you if you if you comply. There are people who willfully disobey. They do understand it and they have their reasons logical to us or illogical to us for not complying. The biggest reason why people don't comply is they want to be arrested. And so when they bolt on an officer and decide to run, it's usually because they think or know they have warrants out for them. And they think they're going to outrun and get a little bit more freedom. Yes, you should have stopped, you should have, you should have stopped. If they tase you, and they do things to you because you ran, you brought that on yourself. But once they get you in a submissive state in a controlled state, that's where most of us begin to object when they continue when they're in total domination where they continue to administer a beat down when it's not necessary. The beat down of Rodney King, I'm not sure it was necessary. But now the police said it was they said that every time they beat him, he kept trying to get up. Well, of course, he would try to get up if you're being beat up, you're gonna try to escape the beating Right?

Andy 20:40

Josh, you write about this stuff all the time on your on Twitter and other places?

Josh 20:46

Yeah, you know, I mean, there's a lot of issues involved here. But you know, the truth is, is that the, you know, people don't like to hear it this way. But if you look at the statistics, and the thing that people miss about statistics is this notion of per capita. And, you know, African American people are between 13 and 14% of the population, and police violence affects them at a much higher rate than 13 or 14%. Oh, there's a lot of reasons for that. Not all, most of them are not good reasons. And, you know, I've often suggested that, you know, in most all these instances where we see these things happen, and there's almost always video, the officers are rarely if ever, in direct threat, risk or threat to their lives, and yet they do these things that, you know, more or less push deadly force on to people who are either complying or mostly complying. And that should be deeply problem problematic to everybody. You know, I mean, and, you know, people talk about the need for Law and Order, but what we're really facing here is a crisis of legitimacy, neighborhoods that have been discriminated against and over policed for decades, and sometimes for centuries, or at least a century. have, you know that have a lot of people that have lost faith in the rule of law and lost faith in the objectivity of law enforcement and they don't believe in it in the same way anymore. And so the idea that you fix a crisis of legitimacy by cracking down more seems fanciful to me and and really counterproductive, and that seems to be what people's answer is. It's either, literally, you know, take the calls to defund the police literally, which to some extent is true, but mostly not. Or to say that you want to return to really harsh law and order

kind of command and control Police crackdowns, and neither of those have any chance of fixing the problem. The only thing that's going to fix the problem is if police officers stopped disproportionately shooting people who are black and brown, I mean, and it doesn't seem like it's necessarily that complicated. You know, I mean, even this most one of the latest incidents, they talked about how he might have had a knife in his car, but he wasn't, it wasn't in his hand and they had the drop on him. So the idea that, you know, because he was, you know, at his car window means that they were at risk for their life is is pretty, you know, pretty crazy to me, the whole thing is just gotten so out of control and people don't put it in context, but you know, all you have to do is watch and and use your eyes and you see what the truth is.

Andy 23:26

But, uh, but depending on what you watch and how you use your eyes, you may come out with a different, different narrative.

Josh 23:34

I mean, there is no way you could watch that and, and, and, and regardless of what your preconceived narrative is, you can't say that those officers were at risk of their life. They had both had weapons drawn. He was out the window. At that point, there was nothing in his hand shooting him in the back eight times, seven times isn't you know, isn't proportional. It's not a proportionate response.

Andy 24:02

My person that I had lunch with, he was adamant that it was a proportional response. And if you don't comply, you deserve what you get, and I can't get there. I cannot figure out how you know, 8, 7 shots.

Josh 24:13

But the use of the use of deadly force does not... noncompliance does not justify the use of deadly force. That's not there's no police rule that says when someone doesn't comply, in fact, you can't even necessarily shoot someone when they're a fleeing felon. So the notion that you can simply shoot someone because they don't comply and if you haven't complied, that you deserve to die makes no sense to me. And it's and it's anti-democratic and and in way over sells what power the police have. The whole notion of the rule of law is an ancient concept that says that government is constrained by law as much as the people are constrained by law. And so there are rules for how the government can exercise force. That's what sets our democracy apart from say a dictatorship or, you know, some kind of fascist regime is that the government is limited by law, not just the people. And so, you know, in my mind, that's just crazy talk.

Larry 25:15

I can't I can't really find anything to disagree with Josh on there. I think he's been very eloquent. I don't, I don't have anything that I can enhance what he said with this. I see these police killings, and I've seen them here in my city and I've seen him all over the country and even the ones that have not resulted in death, where they've been horrendously disproportional to any justification. Yes, you do want compliance. At some point, you do want compliance but it's got to be proportional to the situation as to a threat or as to the surroundings. If a person if the person has done something minimal, yes, theoretically, they could be a

wanted fugitive in all 50 states, but we don't, someone who has a broken tail light and they're not having a good interaction with the officer with the cop, it you should not escalate that that's what I was talking recently about having more women on the police department because a woman officer is not going to escalate that if if they don't get the immediate compliance, that testosterone of a male officers is I have to have compliance, you're going to follow my instructions. And they tend to escalate things. Where a female officer is much more likely to achieve compliance using negotiation and, and better training tactics and just the whole persona of how they interact with people. But but a male officers' got to escalate things because they can and that's what that's what that's what they're wired do by their by their DNA.

Josh 26:42

I mean, that's one of the talking points that people came back with was that this individual had warrants. The same person we're talking about that got shot in the back. And, you know, last I checked, having a warrant is not a license, it doesn't come with a death sentence generally. Neither does getting you know, you know, even resisting arrest doesn't necessarily come with a death, with a death penalty. You know, I mean, I, I and if anytime a police officer thinks you've done something wrong, they have the right to shoot you, then you know, I mean, I don't know I just this the people just go I mean that the the ways people twist themselves into pretzels to justify these things is just I mean, I just I don't even get it. It's depressing to me.

Andy 27:40

I would understand the depressing comment for sure. Larry can like why don't we go into this feature segment of why we have Josh even here to begin with? I believe you told me that there was, I believe Josh maybe had emailed you with a disagreement about what we covered last week I think?

Larry 27:58

I didn't intend it as a disagreement but was more of a question that he asked. And I figured that I would try to answer it with his participation. That way we can have some back and forth dialogue on on how I think the question, as best I could remember was how do you feel, How do you see that this undoes Does, has the potential to undo Does versus Snyder? Wasn't that the question, Josh?

Josh 28:19

That was the question. And I, and since we had that discussion, I've done some more research. And so I think I can I think we could have a good discussion on this. Yes.

Andy 28:28

Please go at it. Ding ding ding in the left corner.

Josh 28:33

Well, answer the question first, and then we'll see where we go from there.

Larry 28:38

Well, what what I would see if the if the, if the decision that we talked about the Willman decision is is becomes final, meaning that no reconsideration or en banc Supreme Court review ensued, then what you will have potentially in Michigan is if, if I would, if I

would be representing the state of Michigan in the class action suit that is currently pending. And I can't know the name, I don't recall, recall the name of it, but the class action suit, I would argue...

Josh 29:13

We call it Does II.

Larry 29:17

okay, if I were if I were representing the state Does II, I would argue that since there was an independent federal duty to register based on the Willman decision, that it would be that district judge you cannot force us to turn the lights out on the registry on the dissemination. Now realize that that the principle two things and that caused the Does versus Snyder decision to go the way did was the 2006 and 2011 amendments. But, but but even even if you don't enforce the 2006 and '11 amendments, then you've run into we can't just turn the lights out on these people. So if I were the state, I would say, Judge, you can't order us to turn the lights out on the registry because there's an independent federal duty to register and we have to keep these people illuminated until their terms have expired. That's what I would argue. I'm not saying it's a winning hand, but I'm telling you, that's what I would do if I were tasked with representing the state of Michigan. That's what I would attempt.

Josh 30:21

Yeah, so you know, I've thought about this a little bit. And so, you know, I want to first you know, obviously preface this by saying I'm not an attorney, and I certainly nothing I say is dispositive. This is just thinking that I've done after reading. Let's see so far, I've read the the Adam Walsh Act again, AG Barr's recent memo, the Solicitor General's response to Does versus Snyder and the Willman decision. I did that all this afternoon, which was let me tell you thrilling, but the first thing I'd say is that both Willman and the AG Report I mean, the AG memo suggested that regulations can mean someone has to federally register or have to federally Register, but they can't force someone to register in unconstitutional ways. The Solicitor General one was when he was he was asked about Does verses Snyder responded by saying it wasn't in conflict with SORNA. Now you're right that that didn't presume that no registry existed. So I'm not entirely sure that you're wrong, that it couldn't get rolled totally back. But I don't think, I don't think it rolls Does back in the sense that if there were requirements of Does that the court found unconstitutional, the court still might not enforce those, those even if there's a federal requirement to register, because that would make the federal requirement to register in those instances unconstitutional. The second thing I'd say is that in the AG's guidelines, and it's actually the AG's who has to enforce the federal requirement to some extent, even though there is no federal registry. The AG's guidelines have an exception suggesting that if your state does not allow you to register in the manner required under his new guidelines, you have an affirmative defense against failure to register charges. So I get that states may, you know, there was another issue that we'll talk about maybe in a second about states kind of choosing to simply agree to comply with federal requirements, which is a different nuance to this thing. But they would also have to ensure that those requirements are implemented and enforced. And when federal requirements came, they be they could still be unconstitutional. So I still think

you'd have an affirmative defense there. If the state didn't force you to meet those federal requirements. I don't know if that answers. I mean, I think to some extent, you're right that it might mean that you couldn't invalidate the registry. Although if the reason you invalidate the registry was unconstitutional. It's because its application was unconstitutional. I still think that gets into the teeth, of why the judge would still have jurisdiction to do so.

Larry 33:00

Well, I agree with with a lot of what you've said, the the affirmative defense is there. If If your state will not register you then the feds can't successfully prosecute you. And they acknowledge that all throughout the 93 pages. But But here's the here's the nuance. the 2000s, this is why it was so critical that that that a determination be made by the Michigan Supreme Court, if there were if there were severability of that, of those 2006 and 2011 add ons. if if if those were, in fact severable then the registry arguably had always been had always been constitutional in Michigan up until those things tipped the balance, then what you would do would be you would not enforce those provisions. The federal judge based on Does versus Snyder would say yes, I'm going to continue my ban that you can't enforce exclusion zones and you can't enforce the provisions that that that were added in 2006 and 2011. But I, you really don't have a circuit conflict within the circuit, which is what what what ideally would be the best argument to undo this, this thing would be a circuit conflict. But if I'm the state of Michigan, I'm gonna say there is no circuit in there's no conflict within the circuit because the Does versus Snyder was decided based on those 2006 and '11 add ons, which are not in federal SORNA. There's no requirement that you do, particularly the residence restrictions. Now, increasing the terms, those actually were requirements of the Adam Walsh Act. But I would argue that there's no conflict or minimal conflict, therefore, there's no need for further review. But if if the federal judge tries to say that I'm not gonna allow anyone to register, because the legislature hasn't Come up with a fix. If I'm the state of Michigan, and I can assure you they can think of this, if I can think of it, I'm going to say, Judge, you can't do that, because your own Circuit Court of Appeals has said there's an independent federal duty to register. So we're going to have to keep these people on the public website, or we would be in violation of the Sixth Circuit decision that just came down, which is binding on you, Your Honor. That's what I would argue.

Josh 35:26

Yeah, the question then gets to the constitutionality of that. I mean, I do understand what you're saying, I don't think you're entirely wrong, which is why I said, I don't think you can. I'm not I don't disagree that it might mean you can't invalidate the entire registry. At the same time, I do think that if those two cases are in conflict as to what constitutionality means, the court still has the ability to determine that that is the that the requirement for pre-2011 people to register is, because I believe it was severability, not constitutional or can't be severed constitutionally or whatever the hell the way they explained it. I'm not 100% on that, because I'm not a lawyer. And this is, you know, I mean, while I read an awful lot of this stuff, you know, I'm not going to pretend that that I'm a constitutional expert of any kind, so.

Larry 36:25

Well, well, I wish that the Federal Court had certified the question and I understand why the federal court didn't, because the state had dragged it's seat for so long. And they just saw this as an additional delay. But at this juncture, we find ourselves at now, with the two decisions that we have. If if the state Supreme Court had told us whether or not the law was severable, then that would be a stronger position to be in for for everybody because if the law is severable, then then the people could clearly have those provisions removed from them and they could they could have lesser restrictions on them, rather than continue to wait for the for the legislature to act. If the law is not if the law is not severable, if the state Supreme Court said that, then you've got leverage to force the state to do something. And even though the federal court says that it's not severable, the federal court doesn't get to make the final determination on that.

Josh 37:27

I guess the question for me is, does the court get to say that there are elements of... Yes, here's what I'm trying to get at. In the Willman case, it may be true that under those facts, federal registration is a requirement and constitutional but that wasn't what was being challenged in Does vs. Snyder, if I remember correctly, and it seems to be that if it gets to a different question, that it's still possible that the judge could hold that the requirements are unconstitutional for people before 2011, or whatever the actual date was April of 2011, or whatever the heck it was. Now, again, I could be totally wrong about that. I don't think what you're saying is irrational, I agree that most likely it means you can't get rid of the registry, but probably does mean that the state can choose, any court could choose not to enforce unconstitutional parts of that registry, which the Solicitor General already said, parts of the Michigan registry went beyond SORNA. So you might not be able to go below the floor of SORNA. But you probably could say, we don't go to the ceiling of Does, if that makes sense.

Larry 38:46

well, I agree that that that is, first of all, I disagree with the Sixth Circuit, with the Willman decision. There is no federal registry, and there's lack of jurisdiction further to be one, four people who have convicted within a state remained within that state. There's just not that jurisdictional hook in my opinion. Unfortunately for us, the Sixth Circuit didn't see it that way. And so I'm actually in the process of reviewing all the circuit decisions, because they're not the first circuit that said this. But as I recalled, the other circuits have found that there was a federal jurisdictional connection based on the type of conviction the person had, it originated in another jurisdiction. But for for this particular one, this was an entire inside Michigan situation. So I disagree on Willman. But where the problem comes in, is the federal registration requirements, that's largely not been declared unconstitutional by the Sixth Circuit, they were really concerned more about the exclusions and the prohibitions, the disabilities and restraints. Federal SORNA doesn't have those disabilities or restraints. So therefore, if you if you if you don't enforce the unconstitutional portion in the Does versus Snyder decision, arguably, you've got a constitutional registry, and certainly that's what I would expect the state to argue, and with Willman, they're gonna say you cannot, federal law requires the tier twos and threes be available to the public. You could exempt the tier ones, and you can exempt

the juveniles, but the tier ones if it's a target offense against a minor, even those are supposed to be available to the public.

Josh 40:24

The Solicitor General explicitly said that the SORNA does not require public tier notification. That for sure the Solicitor General said in the response to Does that the reason that Does was consistent is because there's nothing in SORNA that requires public notification of the tiers. Your crime, yes, has to be public, but the tiers doesn't and that's the reason he said it was consistent.

Larry 40:50

Well, but but the offenders that are tier two or tier three have to be on the internet as a part of the Adam Walsh Act.

Josh 40:56

Sure, but not The notification doesn't have to include what their teir is. They just have to be on the internet.

Larry 41:04

That's what I'm saying, though that so does the judge is going to say, the state's gonna say, Judge, you can't turn off the lights on this public registry, because under federal law, they have the duty to register independent of anything Michigan opposes on them. So even though even though under Michigan law, we can't require them to register, federal law does and federal law requires that the tier twos and threes be publicly disseminated. So therefore, Judge, you can't turn off the lights. That's what I would argue. And if I could think of that, I promise you they can do that.

Josh 41:42

No, I don't think that that is an unreasonable expectation. I'm not even saying you're necessarily wrong, but I don't think that the Willman Court is determining the constitutionality of retroactive application. It's an odd question. If there's a federal requirement to register that isn't... for them to affirm that there's a federal requirement to register without, without considering the constitutional question at issue in Does, seems to me to invalidate the notion that that federal requirement to register is inherently constitutional, which is why I'm saying it's still theoretically possible for this court to say you weren't considering the same question we're considering. Hence, we can invalidate the registry because those requirements would be unconstitutional. Different grounds.

Larry 42:37

but I see the Does, the class action certified case, the state is going to come in and say, You can't this case can't go the way that we were planning on it going because there's a decision now that deals with an independent federal duty to register, which means that these people cannot be cannot be discharged from us.

Josh 42:57

I mean, that's exactly what I just said though. I said that yes, while they have affirmed that there is a federal duty to register, that federal requirement to register was not tested under these grounds. And so if that federal requirement to register is found unconstitutional, then there isn't a federal requirement to register, per se. And the court could hold that. I'm not saying they

will. I'm not saying you're wrong, but I'm saying that is certainly a possible response.

Larry 43:23

Well, in Willman they found that there was nothing unconstitutional, they knock eddown every claim that they made in there.

Josh 43:30

Willman didn't make the claims that were in Does, that's my whole point. Does was a different case testing different questions, different constitutional questions. So with the facts in front of them in Willman, Yes, it may be it may be constitutional based on what was challenged, but they were not addressing the questions that were presented in Does. So in the questions that were presented by Does, the ex post facto question, if it is determined that people before 2011, that it would be impossible constitutionally to reapply the registry. I'm not saying that's what will happen. But if they decided that, I don't understand why Willman would override that concern given they were decided on different grounds. They're considering different constitutional questions.

Larry 44:18

I wish I wish we had provided you the 349-bullet complaint because practically everything but the kitchen sink was thrown into the Willman case below. And and if you only were looking at the decision, you wouldn't have known everything that they put, but they threw 349 allegations out. They asked for declarations on seven different constitutional grounds and asked for 10 orders of relief, 10 specific orders on that. So practically everything that they could throw at the registry, they did in the Willman case.

Andy 44:49

I only made it to like 124 of them and everything that I could think of was even in that batch residency restrictions, presence restrictions, curfews, like everything was in there.

Larry 45:01

Yeah, so yeah, like so. But in hindsight, we should have provided that to Josh, cuz, cuz

Josh 45:08

Yeah but in fairness, when I read the decision, there answer to everything is that essentially that the legislative intent was that everybody has to register. I'm not really sure why that answers the question of if the requirements are constitutional based on other grounds. I'm not saying you're wrong, I'm just saying, I don't really understand why, even if it's an omnibus decision that that considered a ton of things, why they wouldn't at least have to speak to the question of why the fact that the legislator intended for everyone to have to register makes that registration requirement constitutional.

Larry 45:50

Well, I didn't read it that way. I read it that that they that they didn't say that they didn't see the proof that was necessary, but this is an unfolding situation, and I'm hoping I'm wrong. I'm hoping that that that it doesn't go the way that I fear. I'm hoping the same thing. I'll do have the proposal for the regulations. But I feel like the AWA regulations are going to just empower the states to do by

administrative action, what they could not do through legislative process. All this all this worries me, but I certainly hope I'm wrong.

Josh 46:20

I'm not sure I follow how, and I understand how the legislature could pass additional requirements and simply say that people have to follow the federal regulations. I'm not sure I understand how they could implement the federal requirements without legislation though.

Larry 46:43

Well, one example would be like we talked about last week would be the the the episode what they did in West Virginia. Even though there was no requirement at the state level that people required to register give a 21-day advance notice. The West Virginia State Police wrote a letter to everybody, sent a letter to everyone on the registry and said, this is a federal requirement, you need to get to our office within 10 days and sign these and so you won't be noncompliant. Now truthfully, without a state statute said you had to go sign that, you wouldn't have been in noncompliance for not going in and signing it. But what you did is you handed the federal government, the notice requirement that they've been struggling with, of people not having noticed that they needed to give that give that 21 days advance with a travel itinerary and the things that were required for international travel. Well, they could do this, they could do the same thing. They could do the same thing on local and state level. They could start pumping out forms and stuff. Like for example, like in our state, we have 10 days between when you have to update your registration information, unless you were convicted after July 1, '13. Well if the registry official hands you a document that's been created by the Department of Public Safety that says that pursuant to federal requirements there's a three-day window, you will register you will update your stuff within three days. Arguably, you're on notice that there's a federal requirement, and even though the state wouldn't be able to prosecute you, because our law says 10 days, what would preclude the US Attorney General from bringing a charge on you Because you had agreed and you had knowledge that you had three days under federal law to update what would preclude that?

Josh 48:22

Yeah, I mean, I don't know what's all this is all we're getting into. I think in a lot of ways issues that have to play out still.

Larry 48:34

That's that's my fear though that watching what they're doing already, they're having people sign stuff. Like in our state we have a specific section of the law that says you cannot, a law enforcement registration official cannot demand information that saw specifically required in our SORNA, but they're doing it. And people are willingly signing things that are... Like we don't have any obligation to check in weekly if you're homeless. They've created a form that says that you'll check in weekly, you're not required to do that. You're, you're not required to do that. And I'm afraid they're going to start handing people the federal requirements, even if their state hasn't adopted them. And they're gonna say, we have an obligation to tell you this because it's federal law. And you could be federally prosecuted if you don't do this. So we got to make sure you know, and then what my fear is that once you sign that, then the US Attorney's office is gonna say,

well, you acknowledged there's a federal law. So so your violation is knowing and willful. That's my fear.

Andy 49:27

I still don't understand how that works. I still don't understand even though you have signed sort of under duress, that you are going to comply with something that doesn't exist as a law, then they turn around and say we agreed to follow a law that didn't exist when you signed it.

Larry 49:43

Well, arguably, it does exist under federal law. These things do exist. The question I have is, I argue that these are requirements on the state, not the offender. For the for the state to be substantially compliant. They need to have this three-day requirement. But if you sign say, cause right now under Willman, at least it the Sixth Circuit, there's an independent duty to register. So, for example, if the 10th circuit were to follow suit and say we agree with Willman, there's an independent federal duty, well if you've signed a form acknowledging that the three day window exists under federal law, what would stop a US Attorney for prosecuting you in the federal system for the for violating the separate federal duty, which has a tighter requirement than what the state does? What would stop that from happening?

Andy 50:29

Certainly over my head, please, Josh, help bail me out.

Josh 50:35

Well, there's no really bailing you out. I mean, it's a gigantic nightmare for a number of reasons. I mean, one of the most prominent reasons is that, you know, I think that the attorney general's memo even addresses this pretty specifically, which is why they created the affirmative defense part of it is that the state has to want to enforce, in essence the state has to come up with a way or agree to enforce whatever those requirements are, and many states don't but could, which is what Larry's talking about. How that happens, you know, or if it can happen through different means is is that but it's all very complicated and very tricky. And it's unfortunate that some states will take the ball and run with it. And it's unfortunate that some states will think this is like a boon to them and others won't, hopefully won't. But it's it's going to be tricky, because we've already got, I mean, one of the things that's the most frustrating is just how many overlapping questions of jurisdiction we already deal with and then this kind of notion that you have to comply. Like So for instance, if this all if you are in a state where they decide to comply, however, they did it with federal law, or federal requirements and then you graduated from the residence registry at the state level, but not at the federal level, you still have to go and register, even though you're no longer required to register in the state where the crime happened, it wasn't a federal, the feds didn't prosecute you there. It's just it's it's it's very upsetting and, and, and ridiculous and

Larry 52:17

well, Josh, I agree that's why this decision, this decision is clearly erroneous in my view, but unfortunately, I'm not the court. But clearly, what they, what they've decided, goes contrary to everything about federalism. This is this is this is legally an incorrect decision. And I'm hoping we can figure out some way to overturn it.

Josh 52:37

Yeah. And it's funny too, because in the AG memo, which I think preceded the decision, I could be wrong about that. They made a big play about how they didn't want to enforce this over federalism. So this really seems like it in some ways. It has to be a play, for states to make a move to comply with the AWA in some way or I don't know what the hell Barr's up to but it's something

Larry 53:02

Well, it's an example of the small government conservatives reaching for more power.

Larry 53:06

You had to throw that dig in there, didn't you?

Larry 53:07

I mean, I'm not being partisan. I'm just simply stating the fact. This is an administration that's supposed to be small government and respects the state's rights. This is them doing what they claim they don't believe in. That is not partisan Andy. I'm simply stating the fact

Andy 53:25

I know that I just you not saying partisan but you just always want to throw that like, just gonna always love those grenades over there.

Larry 53:32

Well, but I want people I want people, no I'm not even trying to do that. I want people to think because remember the the sticker we hand out at the conference, Don't believe everything you think. This is an example of why you shouldn't believe everything you think, because you hear the rhetoric, small government, state's rights, and the people that say that, they're the biggest expanders of government every time they're in the levers of power. This is an example of what they do versus what they say. That's all.

Josh 54:02

Yeah, Andy, I just saw what you said in the chat, which is can states do other than what the federal government requires? The answer is yes. But they also can do what the federal government requires, which is what we're talking about (Andy: Oh, absolutely.) So for instance, and yeah, so I mean, for instance, they could stick with the status quo. If you're a state that's not in compliance, you could stick with the status quo, and that, then everybody who is registering in your state has an affirmative defense against claims by the federal government that you didn't register. But if you ever change that, then people have to register. So you know, I mean, it just creates a lot of a lot even more responsibility on registrants to try to keep track of what the hell is going on in ways that, you know, are frankly, very confusing, and there's a lot of overlapping jurisdictions and a lot of questions that need to be answered.

Larry 54:53

well, we're gonna have to wrap this segment up because we're running up against the clock.

Andy 54:56

And I'm sure people's eyes are already rolling in the back of their head cuz mine are this is this is superduper propellerhead policy

jurisdiction like Venn diagram kind of stuff that is really hard to process.

Josh 55:12

Unfortunately we're all responsible for that though. And the damnable truth of it is we're all legally responsible for understanding this stupid morass that they've created.

Andy 55:22

Yeah. And Georgia when you do your annual whatever pilgrimage to the Popo, that you have to sign that you acknowledge that you are responsible for keeping up with the laws, you're like, how are you supposed to keep up with these? you need like some like, like I said, a Venn diagram. You need all these overlapping circles to know what you're supposed to be in compliance with, where, with whom? Well, let's let's head over. Yeah Josh, do you wanna stick around or do you want to head out?

Josh 55:54

Well, I probably should head out because I got to fix my phone.

Andy 55:56

Okay. Josh it's always a pleasure. You're always welcome and Thank you for for bringing in great alternate points of view.

Josh 56:07

Alright, thanks. Nice to talk to you all. Hope you all have a good show.

Larry 56:10

Bye Josh.

Andy 56:13

And of course Larry just now some software popped up to install this, this computer I don't use that often. And then something has popped up on my screen to install. I'm so happy about this. This is great. Thanks to Windows for being awesome. This thing comes from Colorado politics, federal judges in Colorado Grant 12% of pandemic related early release requests. I know you put this in here for a reason you're trying to lob grenades again, I think.

Larry 56:40

just just for for disappointment of the lackadaisical response of the judiciary to exercise their powers. And it's really, really sad that people are dying that that shouldn't have died had we taken the pandemic and the conditions in prison a little more seriously, and look for alternatives.

Andy 57:04

Josh Josh would actually be a good person to speak on this as well. But I know that he had to run. He got a new phone and the screen was broken. So he wanted to try and get that resolved before it gets too late. But we, we knew it was coming. And we could, we knew that having people in close proximity, even just knowing about the flu, if you are in close proximity, you are more likely going to distribute it to your neighbor than if you live in the in the boonies. So having people in prison in large population, tightly packed in there kind of places, it's going to create a well a pandemic, and create an outbreak of a virus. And they don't treat you that well medically, and they're now, they have some kinds of treatment on the street just to help minimize and reduce the

chance of it becoming something really full blown, but they're not going to treat you like that in prison. They're not going to try and try and use some medicines and stuff. They'll be like here's Some ibuprofen and wait it out, go back to the dorm.

Larry 58:05

Well, since we went so long in that session we ought to shorten it and just do the listener questions and the patron shout out.

Andy 58:12

We can do that. Oh, we did get a new patron too and I gotta go track that down. Let's go over to this was a letter. Let's see the person's first name. Can you give me the first name? It is Daniel, and the letter reads:

Listener Question

To whom it may concern: many of us have been wondering what the legal obligations are for a sex offender to travel internationally ever since international Megan's Law was passed. It is my understanding that we have to provide a travel itinerary in advance with the angel watch center. I am currently in federal prison and I haven't been able to find the laws that specifically dictate these requirements in our law library. However, we only have access to federal law. Could these travel requirements be specified under state laws? Which statutes dictate travel requirements? In case it's under state law, I'm from Ohio. Thank you.

Andy 59:08

Oh, that's a pretty neat detailed question Larry. How do you figure out how to travel? And, you know, how do you how do you actually read the law from the horse's mouth so to speak, so that you can figure out how to be in compliance with all this?

Larry 59:22

Well, as a, as a general rule, if you're coming out of prison, a federal system, you're going to have supervised release. So that's not going to be an immediate problem for you if you have lifetime supervised release. But it is, in fact, both it's a federal and it's a state law. And in our previous segment on the podcast, on this episode of the podcast matter of fact, we were talking about the something very tangentially related, which is what the although it is a federal law that you give this notice, if your state has not adopted it, that's where the notices are filed with, is your state. But if you look, and we're going to send this listener or this writer of the of the question to the actual citation, so it'd be in the United States Code, title 34. And then it would be in Section 21501. And, and, and going forward, the remaining subsections. There there would be there would be the description of that, and you have the obligation. But if your state has not incorporated that into your registration requirements, then you're not on notice. And there's nowhere to file this required information. So your state will have either adopted it by statute, saying in the list of things that an offender on the registry must provide. That would be one way that you would have notice, or another way would be the West Virginia model where they just simply despite the fact that it had not been adopted by statute, they notified everyone in West Virginia on the registry that they had this obligation under federal law to file this, this advanced itinerary of 21 days at least. And it's very complicated because any emergency or last-minute travel is not provided for and but it's definitely the

law and you definitely are going to have to comply because you'd be facing federal prison if you don't.

Andy 1:01:23

Um, so you gave the you gave the the US code of where to find it. And it's a three-week window that you have to provide? Is that right?

Larry 1:01:36

Yes, along with itinerary as well. And then the, the your registry official agency, they turn it over to the US Marshals who transmit it internationally through some bureaucracy through Interpol, then it makes its way to the to the receiving nation where you're going to be visiting, they're going to be receiving you as a visitor. And it very well could end up in them rejecting your visit because once they get the information that you have been convicted of this type of offense. Many nations will decide that they would rather not have you visit, they will tell you that we're not going to admit you, which is what the United States does. When we get information of people that we deem less desirable. We turn them around and we say, gee, we'd rather not have you here. But this is this is a federal requirement. And definitely, if you've been notified by your state by either statute, or by administrative action that you need to provide this, I would strongly encourage you to provide it because if you're on boarding and you've gotten clear notification, that there's that there's this obligation and you don't do it. The feds do clearly have jurisdiction because you have crossed jurisdictional boundaries when you travel. And they consider that the jurisdictional hook that they need for a federal prosecution.

Andy 1:02:47

just for clarity for my own personal interest. So you have to if you're even just going to anything of you trying to leave the country, you're going to have to put in some kind of paperwork, telling them where you're going and then when you intend to return too?

Larry 1:03:03

that that's the way I understand it. I never go anywhere. So it's not it's not an issue and I'm not on the registry anyway but but my understanding of it and there's a Registrant Travel Action Group, RTAG, that has far more information than we do. But my understanding is that that it would be it would be required with the, with the itinerary of where you're going to be going and when you will return to the United States. And if you fly airplanes for a living, that would be very hard. And if you have, if you have relatives that are that are if you have dual citizenship, for example, an American and you're also have citizenship of another nation and you have family, one of them gets sick and you want to spontaneously travel, that would make it virtually impossible for that. I think this is clearly has some constitutional issues that could be developed. Unfortunately, the cases that have been brought so far haven't gotten any traction in the courts.

Andy 1:04:00

And my one last question related to this would only be for people that are actively registering or any like the way that the state laws read if you move in there. If you've ever been convicted of one of these things, so is it only people that are actively registering or anybody that has a sexual offense?

Larry 1:04:19

That's my understanding. My understanding is if you're if you're if you're registered but but but i'm not i'm not 100% certain on that.

Andy 1:04:22

All righty then I don't I don't even have something else to read other than you pushed this into the show notes.

Larry 1:04:30

it's way down at the bottom. I'll dig it out. It's it's it says legal corners down at the bottom. Their last name starts with G. I don't want to give the name out over the over the podcast. It has to do with with email and CorrLinks or Trulinks or whateber they call it.

Andy 1:04:51

So I was just trying to, all i got is the the PDF and it's Are you saying it's at the bottom of the PDF?

Larry 1:04:57

Well, do you see one that has the has the name Christopher. Last name beginning with a G?

Andy 1:05:08

Yes, I do now. I didn't see that before Larry.

Larry 1:05:13

Okay. Yeah, cuz it was it came in mid-July, so we've had it for a while.

Andy 1:05:17

How do you sit on these things for so long?

Larry 1:05:22

We just started this segment

Andy 1:05:25

I am loading it more editing post reading. People can't see it on the screen. One more second. Loading. All right.

Listener Question

Greetings. I have been in Federal Bureau of Prisons custody since approximately may of 2017 and am a sex offender. One of the many things a sex offender does not get is email services through Trulincs. I didn't know that. I know people that do get them Larry. A complex warden. (Larry: You can, that's his question.) I mean, maybe this is different because he's federal too but a complex Warden has final say on who gets email and not and that is the program statement the state to an inmate who is asking for email, and he is a sex offender. The complex I am at has been very discriminative towards sex offenders for email service. And however lately, they are giving it only to a certain few. But keep telling those remaining that because we've had some form of contact with the victim, that they would never give us access to it. Now that is now that is said I am subscribing to your Digest. That would be the NARSOL Digest and I would like some information if possible to give those of us so we can be rewarded with the privilege of email. Is there any group of attorneys willing to fight BOP policy and get us access to email? The problem for why denying email to sex offenders is it gives those select few haters away to see if we are a sex offender without asking for our

paperwork. It also gives them a chance to extort us if they do find out. This has not happened to me. But I know at other compounds, it is bound to have happened. Since sex offenders have been on the rise. Any advice would be helpful. Thank you.

Andy 1:07:15

I don't know that that last little part is accurate. Anyway. Wow. So if you are a registered person a PFR, well, you're not a PFR yet. And the Federal Bureau of Prisons, I guess they could do that to anybody, Larry, they can pick and choose who is allowed to have or not have mail or email.

Larry 1:07:31

Well, this is an area of law that's very, very interesting in terms of what privileges you can assert a right to because by the very definition of a privilege, that's in fact what it is. But, but even within privileges, for example, privileges, if you tell a certain inmate yard time without without giving that inmate a reason. You don't get yard time because we don't like your kind. You could run into a problem, even though it's a privilege. And when I say yard time, I mean wreck time. But in terms in terms of in terms of whether or not the courts are going to be sympathetic to this argument that you when you begin to assert that you're being discriminated against, you're going to have to prove it. Remember, the complaining party bears the burden of proving delegation, you're gonna have to prove that the program statement that that gives the warden that power, that the warden is abusing the power. And as a general rule, you're gonna have to go through your administrative remedies first before a court will even entertain it. So you're gonna have to go through the internal administrative review process and exhaust that. And then you're going to have to find an attorney or law firm that's willing to go into an area where the courts are very hostile. This is one thing about conservative courts. They are very pro-prison administration. they're very hostile towards prison...

Andy 1:09:04

This sounds like an ACLU thing or Southern Center for Human Rights just sounds like one of those super lefty kind of like hated kind of places looking for that basic fundamental right kind of stuff.

Larry 1:09:17

I don't see them even touching it because the the the odds of success... When when you're trying to do litigation that's very expensive, the federal government is one of the most well-funded clients you can ever challenge. Would you agree with that? So so I don't even think the ACLU would touch it. I don't want to discourage and say you shouldn't look and try to find because it's wrong. It's unequivocally wrong. It's actually bad prison administration. You can better monitor incoming communications through electronic means than you can ever do through the mail. Very little contraband comes through email. So I think I think that if you can put the, and I'm not an expert on how you keep people from having access to folks they ought not contact, but there has to be a way in this modern modern age where you can prevent a contact with, with victims or with people that they're on orders that they have no contact with. But in terms of trying to create a right, the courts are going to be very hostile towards because there's a great deference to prison administration, because they have to keep order in the facility. And they have to keep the

community protected. And they have to keep the staff protected. And when they judge that when a court looks at this after it's gone through the administrative process, which is likely not going to come to a good outcome, the court is going to be exceedingly deferential to prison administration. And also the public policy pronouncement of who, if I don't know enough about this particular privilege to know what the intent of the public policy pronouncement is, but, but I would tell you this, it's going to be a tough battle. And I don't think you're going to easily line up, lawyers are not going to want to undertake this challenge, but I wish it I wish you could. I wish it were it were something could be done because it's fundamentally wrong.

Andy 1:11:15

Well, just as like a tangentially related I'd like this is like very similar that, you know, kids are doing a lot of remote schooling at the moment. And I heard of two kids that were going to do like a little bit of a study group and the WiFi password needed to be shared. So I just suggested Well, why don't you email the kid the WiFi password so that they have it when they're when they get to the place that way they don't have to try and like type in the thing, they can just do copy paste, and an outside person like a civilian call it a you and me, we are not allowed to email the person's school email address. Like they have obviously locked it down to being you know, this XYZschool.edu or something like that. So, I mean, you make it so that you can't just have random phone calls. You have to do some kind of permission of what phone numbers you're allowed to dial. You could set the thing up to only accept mail to and from specific addresses. And then you also have extreme ability to censor by keyword to look for any kinds of content. You can keep it from having any sort of anything other than text. It doesn't sound hard at all.

Larry 1:12:24

Oh, well, I wish I wish that people with your skill could get into some of the debate because I don't know about what I'm talking about. But all that seems plausible. It seems it seems like that we should be able to do what what you're talking about and give the people. It's a lot easier to type than it is to write if you if you see the crappy letters that come in here. Some of them are so, they're so beyond decipherable. And it's also a lot easier for the people that are monitoring for security reasons. The The consistency of, I mean you can have the algorithms and the computer looking, the way I understand it, looking for for keywords. (Andy: It's easy as pie too.) And to me it's just it's just nonsensical. It's nonsensical to do that. To me it's it's, it's an extra punishment that we're not going to give you this privilege because we do not like you and be damned if it's in the best interest of institutional security. We don't like your kind. That's the way I've been interpreting it. And that that seems so tragic.

Andy 1:13:28

Will and Chad has a really, really bad opinion of people that work in the criminal justice system. I can tell you that. Wow. Are you are you reading what he's putting down? Okay.

Larry 1:13:39

No, I'm looking, I'm looking at my screen that's got other things that are exciting.

Andy 1:13:44

Well, I'm not gonna read what he says. But man, he's got a very, very, very dismal opinion of the people in the prison system. And what else do we have to do, Larry, before we we close this whole thing out?

Larry 1:14:00

Well, let's see. Weren't we gonna do a shout out to the patrons and also the more explanation about the prison about the transcript service?

Andy 1:14:09

I think I'm supposed to ask you a question about do we, So we're doing a shout. We've been doing the, the the transcript and sending that in, and I, and I believe you're telling me that it's having like an overwhelming response. But the question is, do we accept stamps?

Larry 1:14:28

And the answer is, yes, we do. Postage is a form of commerce of how commerce was conducted in prisons. And therefore, therefore, that's one of the most readily available things people have. And we used to have that on the subscription form for the newsletter that we will take your stamps. Here's what we don't want you to do. When you tear those stamps up into individual ones when you separate them because owe somebody two stamps, a one stamp, and then you keep it for three years and you've been through 40 shakedowns, they get really dirty and gross, and you can't find how to start the stamp, where you can pull the adhesive off and get the thing, those, those are of no use to us. So therefore, I removed that option from the from the newsletter. And the same thing applies here. We'll be glad to take your stamps, if you'll send us a sheet of stamps, where they're clean and where they can actually be peeled off easily. But don't send us a jumbled-up bunch of loose stamps that are all dirty. If you do that. I'm not going to give you credit for the for the payment because I'm the one that's going to handle them and I'm the one that's not gonna want to use them and I'm the one that's gonna want to chuck them into the trash can. But other than that we'd be glad to take your stamps.

Larry 1:15:59

Well, if they if they're if they're frayed around the edges and I can't find a way to peel them, and they're dirty, no, we don't want them and I've thrown stamps away that come in that condition. But yes, if you have a book, or if they sell the rolls, if you if you peel off the appropriate number, we'd be glad. Because we have to buy stamps to mail the transcripts. All this will do is save trips to the post office if they're usable. So yes, we'll take stamps and I'll ask our, our graphic artists to to put that on the subscription form going forward.

Andy 1:16:27

We did get a new patron this week, Larry, so we can we can be like *cheers*. So we got a new one. And the individual is very adamant about remaining anonymous, so we will leave that individual anonymous and his name is just kidding, I'm not gonna say his name. But thank you very much for becoming a patron. And I'm super excited that we have yet another one.

Larry 1:16:57

well, I thought I thought that one came across, wasn't the last name Trump?

Andy 1:17:02

Yes, he donated his annual salary because he's not taking one while he's in office.

Larry 1:17:09

You know, well, to give him credit, people say we don't give credit. I've given him credit for that he donates his salary. And to my recollection, the last president that did that was Herbert Hoover who served from March of 1933, let's see. no he got elected in '28. He served from '29 through '33. And then Roosevelt came in but but that's the last president who donated his salary to charity to my recollection.

Andy 1:17:34

I've heard people go, who else has done like, I don't know who else has done it. I assume that there's a sort of cost of living increase the last number that I heard that the President makes us 400? I don't guess that, I don't guess that in the 20s he was making 400.

Larry 1:17:53

No, it wasn't until 1969 that the presidential salary was increased from whatever level it was to two hundred thousand. And it remained at that level for decades before they raised it. And the only reason it went up because we hate we hate the notion of paying our officials anything. But Congress figured out, figured out how to build in an automatic raise that reflects the cost of living. So, as the congressional salaries crept up and crept up, they were inching very close to the presidential salary. And there's something that that people find objectionable that about that if you if you look around... where are we going? We're going off the reservation here, but if you look around at, college coaches, for example, they tend to be very well compensated well, university presidents and chancellors find that offensive and so like they will have a clause in their contract that they'll be paid more than the head coach. You know that, I won't be the chancellor of this university unless get paid at least \$1 more than the head football coach because that's the usually the big revenue sport that draws the largest salary.

Andy 1:19:02

I totally understand.

Larry 1:19:06

And that's what caused it. That's what caused the presidential salary to go up was because the congressional salaries had caught up.

Andy 1:19:10

And that's I think one of our very early episodes was what is the 27th amendment and it has to do that Congress cannot elect themselves pay raises in their same session or something like that has to be a session or two removed. They can't just like vote in raises for themselves.

Larry 1:19:28

Yeah, but they built it into a statutory, it happens automatically unless they vote no.

Andy 1:19:32

Yeah, I can't imagine that they would do that.

Larry 1:19:36

So they created on automatic cost of living for themselves that they have to vote down and it is it's it's very unusual for employees to vote for lesser salaries.

Andy 1:19:45

Those knuckleheads that go and talk about restraint on federal spending and stuff, shouldn't they be the first ones in line to vote down, well we're going to actually take a pay cut.

Larry 1:20:00

I don't buy into that. I think the salaries are so paltry to begin with that it's laughable that we expect people to maintain a home in their district, and to live in a high cost District of Columbia, on the salaries that we pay. And they're laughable compared to the private sector, if you want government to run like the private sector, which people claim that they do. Maybe we ought to pay for the talent at the level of the private sector pays, maybe.

Andy 1:20:28

Maybe, maybe maybe. anything else that we have to do? All right, well, hey, we usually record the show on Saturday nights at about seven o'clock. But if I have technical problems, things get really delayed and very ugly. You can you can join the discord by being a patron. I need to update that little script that I have. And anyway, I'll skip all that stuff. Go to the website registrymatters.co You can phone in (747)227-4477. Like or Subscribe on your favorite podcast app. And if you can't become a patron then please do some sort of review on the iTunes which is now Apple, Apple podcast or Google Play podcasts and all that stuff. But our favorite way for people to support the podcast is to go over to patreon.com/registrymatters Larry, I hope you have a phenomenal Labor Day weekend, and I will talk to you soon. Bye

Larry 1:21:20

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