



## Registry Matters Podcast

Episode 151

Recorded 10-31-20

Andy 00:00

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Larry 00:32

Oh, I love that sound effect.

Andy 00:34

How about that? Chat is saying they're scared.

Larry 00:39

Where did that come from?

Andy 00:41

I if I told you, then we would end up with a copyright infringement and we would get a takedown order.

Larry 00:47

Okie dokie

Andy 00:50

What do we have going on tonight Larry?

Larry 00:53

Well, we have some, some almost late breaking news from Georgia, from the Peach State.

Andy 01:01

Okay. Peach State, eh? Is it a peachy news?

Larry 01:04

Well, it's not as optimistic as, it's not as fantastic as we would hope for. And we've got we've got some listener questions from inside behind the walls and from outside. And I think we might have a story or two. And then someone wrote to us with suggestion of how to get the podcast better just distributed. And since I don't understand it, you're gonna explain that.

Andy 01:28

Okay, I gotcha. Is this evening a special night by any chance for the PFRs of the United States?

Larry 01:37

Depends on what state they're in. I think I think it's Halloween across the country at the time we're recording. But some of our states our supervising authorities take a very limited view of Halloween in terms of what a person's allowed to do. In my State, they require them if they're under supervision to take off work, make arrangements to not work on this date to satisfy the stay at home order. And that really bugs me that they do that because it's hard enough to find employment, particularly COVID-19. And to say I won't come to work on a Saturday, which in retail, I think right now the retail establishments for people work are booming. Box stores are just filled with people and the grocery stores are

filled with people. So it kind of bugs me that that people are not allowed to work.

Andy 02:30

I went to, I went out to lunch. And I don't I don't even think of Halloween as a thing to be honest with you. And all the waitstaff was wearing costumes. There was like an astronaut and there was a somebody dressed as Michael Jackson. And he was actually dancing at tables. So it was a it was it was very entertaining.

Larry 02:48

So I didn't I didn't remember costumes being a big thing in Georgia back in my day. But it always has been here.

Andy 02:56

I think I've heard you say something to the effect, there might be something of a First Amendment challenge at Halloween for things like the costumes.

Larry 03:05

I believe there there is there, there's certainly the right for people to express themselves and to and to decorate. And, you know, that's one of our most cherished rights. And without any narrow tailoring, I believe that those type of restrictions would be extremely vulnerable to challenge that you have to refrain, it comes back to having having the financial resources to fight the government. And then having the legal team that's going to be in a protracted battle we're going to be talking about tonight, one that's already a year old. And that's the short side, they generally drag on for multiple years. But I think that would be something that would be vulnerable to challenge to require everyone not to decorate. Maybe you could come up with some individualized circumstances for a particular offender where they would not be allowed to do that. But just across the board, that's real problematic.

Andy 04:05

And I guess what somebody has to do is like, decorate their house, and then let them come in and be all nasty about it in take you off to have somebody you know, with skin in the game, having standing, I guess is the term.

Larry 04:21

That's correct on the standing. You wouldn't necessarily have to risk arrest because to have the requisite standing, there has to be a bona fide threat. So if you're given a directive that you cannot decorate, then you would have the requisite standing. You would not have to wait because the certainty of arrest is almost imminent. If they tell you if you do these things, you're going to be arrested. The problem with that waiting to that they generally disseminate these directives a week or 10 days out for Halloween, and you don't you don't get a lot of advance notice. So therefore, trying to gear up for a legal challenge is difficult because if you file this year for what's going to happen next year, we get into the international Megan's Law situation, it's speculative. You have to opine to the judge that's hearing the case for your restraining order that you believe based on prior practice, that they will be on order come down 10 days before Halloween that says you can't do these things. And that doesn't give you really time to gear up for a

preliminary injunction hearing. And the states where it would be more easier to do that would be one like in Tennessee, where they have it in the statute. It's not a policy, but it's a statute. They have that they have that 10- or 11-day period where you're not allowed to do things. There's no speculation at all, that that's on the books. And so if you're within that zone of the people covered by that statute, you would have the requisite standing and you could you could file without waiting for them to put the handcuffs on you. So I don't like to tell people to wait be in handcuffs. Being in handcuffs is unpleasant and all the consequences that go with it. But sometimes, that is really the only reasonable alternative is to be handcuffed. And then they're still gonna argue like if they were to handcuff you and take you to jail for violating the Halloween directive. They're gonna argue, once you finally get before a judge, they're gonna say it's not moot because Halloween is over. We're ready to let him go.

Andy 06:17

I wondering, I was wondering if like, I mean, do you, if you were so inclined and had the resources do you go hire an attorney sometime in the summer to to just spool everything up? And as soon as they come out with it, that you would have already your guns loaded, ready to fire that you could, you know, shoot them down a week, 10 days in advance and run into the court system immediately?

Larry 06:39

Yes, that's what you do.

Andy 06:41

Okay. Great. So and, you know, we're talking many thousands of dollars.

Larry 06:46

Many thousands of dollars. Yes.

Andy 06:49

What about, you know, my curfew this evening started at 5pm and ends at 7am tomorrow? Is there anything there there?

Larry 07:00

Again, with with any order that has no narrow tailoring that intrudes on a fundamental right, there's vulnerability, because you have you have some fundamental rights that are enshrined in the Constitution. Are you, are you being precluded from doing something that's fundamentally your right to do? Because clearly supervised defenders can can be can be restricted in their movements, that that is a given. But if they have a blanket policy, that tells every supervised offender, you cannot move between these hours, and there's no exceptions for hardship or anything, then those factors weigh more in your favor. Because if they can't articulate a reason for you to be immobilized. Do you have a curfew normally? Are you restricted to your domicile on normal days or can you be out gallivanting the streets?

Andy 07:53

And is that you're actually pointed to asking me that question.

Larry 07:56

Yes, I'm asking you that question. I don't know. Are you are you under any restrictions, in terms of curfew cause here, every

person who is under a sex offender supervision, they already have a curfew. So this is nothing new.

Andy 08:06

This is nothing new. But this is an extended one. This is extra restriction. Mine is normally 1pm.

Larry 08:13

Until What time?

Andy 08:16

You know, I mean, I go out and exercise, you know, it's supposed to be like seven in the morning or something like that.

Larry 08:23

So, anything that can't be, anything that that intrudes in a fundamental right, without any narrow tailoring is vulnerable. But I don't know that you have the gobs of money or would be in your interest to challenge that in view of the circumstances that you're in. And that's what a lot of people have to consider. They have to consider what the adverse ramifications would be. The money is the major barrier, but they're also other considerations.

Andy 08:47

We need a bunch of people to throw grenades and jump on them.

Larry 08:52

Now that's going to cause us, that's gonna cause us to be banned because of that word. There's, there's a big government listening device right now that just picked up on the grenade

Andy 09:02

No, but I didn't use the B word, the four-letter B word.

Larry 09:05

So well grenade is probably being tracked also.

Andy 09:09

um, I don't know grenade doesn't sound nearly that bad. You know, like horseshoes and hand grenades. But that other word that, that...alright, anyway, all right, we should move on. We have we have some some questions that we're going to go over before we hit the featured event. Shall we dig into Robert's question in Georgia?

Larry 09:26

Let's do our best.

Andy 09:29

And so his question is:

#### *Listener Question*

During sentencing, the public defender stopped the judge to have me sign the unsigned plea papers. Is that legal? Does it give me grounds for a habeas, habeas corpus? I, even to me Larry just, like, does, "have me sign the unsigned plea papers." When else would you sign them?

Larry 09:51

Oh, you could sign up at any point. The the plea offer is usually extended to, I'm saying usually it's not a given, but usually

extended well in advance. The prosecutor Negotiations are going back and forth. And you may get you may get multiple offers and counteroffers. At at the time that that you and your client come to an agreement that it could be signed before court. What he's referring to is that is what I'm guessing, he he does not write very clearly. Nor does he communicate his key points very succinctly. So, it forces us to have to guess. So I'm guessing what happened was that on the day he was hauled to court, he had not agreed to the plea. And the plea proceeding was taking place, and the judge had called the case. And he's saying that the attorney pressured him at that point, he doesn't use the word pressure, but he's implying that the attorney pressured him to sign it right then. And that's what he wants to know. If there is a habeas for that. And the answer is probably not. Because even if he signed it, even if everything he described is exactly as I'm, as I'm inferring from what he, what he didn't say, if everything was exactly like that. The process requires an individual addressing of the person, the defendant, in open court, and all those questions they ask you, they're pretty standardized across the country, because it's based on Supreme Court ruling, which I can't cite the case. But there's an individual admonishment of all these things to understand whether you're competent, whether your attorney has explained everything to you. And if you're satisfied with your attorney's representation. And that would have been the time for him to have said No. Nobody does it. But that's the time for him to have said, "Well, Your Honor, actually, I don't like this plea agreement. I just got it today. I haven't had a chance to consider it. And my attorney has told me if I don't sign it, I'm going to go to prison for 200 years." But he didn't say that. He said, he said yes, yes, he answered every question correctly, to the judge's satisfaction. So therefore, the likelihood is very low, not impossible, but very low, he would be able to set aside that plea on a habeas corpus proceeding.

Andy 12:12

And real quick, what is habeas?

Larry 12:15

Well, it's a it's a, it's nothing more than a vessel that's used for a legal process when you don't have anything else. When you've pled guilty, or no contest, you don't have a lot of appeal options, in terms of undoing it. So then, the few remaining vessels you have is habeas corpus. you can say that it's a it's a Latin term to bring the person before the court and justify their detention. So, you use that vehicle to challenge your confinement saying that I shouldn't be confined because this plea was not bonafide correct, because here's the things that render that plea invalid. Almost all of those are turned down because the process, all they'll do is look at the transcript and see they answer yes, no, yes, no to everything correctly. And, and, and as far as his incompetence, what what people like to do, and I'm going off on a tangent here, what people like to do, is they like to pretend like they're incompetent after they've done the plea. They, they don't raise it, you're presumed competent. That's one of the presumptions that that goes with you when you're accused of a crime, everybody's presumed competent. And unless some evidence surfaces to the contrary, that presumption stays with you through the duration of the proceeding. And what happens is during the plea process, they generally ask, Are you under the influence of any medication or any drugs, illegal, that would render you incapable? Well, you're in a catch 22 because if you say, Yes, I'm all doped up, that was a

violation of your conditions of release. If you're brought on release, they are gonna lock you up for violating your conditions of release. Because you said, Yes, I'm on illegal drugs. And if you say, No, I'm not under the influence of anything that would render me incapable. Then you have a new problem because you, you, you indicated that you were not, you were not incompetent. I've got letter after letter after letter saying Larry Well, I was, I was high. I was this, I was on that when I did the plea. I didn't understand it. You didn't tell the judge that. You told the judge you weren't.

Andy 14:21

I have to tell you from personal experience, the way that they did it here is you're in what would be the room be called where you're like signing those final paperwork. I mean, like, here, it was right next, it was attached to the courtroom. And the courtroom is loud. Or maybe it was all the other holding cells were right there and you're trying to sign this stuff. Anyway, it was loud. Yeah. It had to be right attached to the courtroom, because like the court was telling us we were being too loud. I couldn't hear my attorney. And she's like, Hey, you got to sign these 45 blocks, initial initial and I'm in cuffs. It was very distressing. It was, it was not a happy situation.

Larry 14:59

Well, and you had the opportunity to tell the judge. I wasn't with handcuffs to review the documents I was signing. So therefore, I'm going to tell the court, I really didn't know what I was signing, they would have suspended the proceeding. And the judge shouldn't have taken the plea. And the judge would have said, Counselor, make sure your client understands what we're doing, because I don't want this case to come back up on appeal. That's what would have happened.

Andy 15:23

Somehow seems like that would have gone poorly for me in the end.

Larry 15:28

I don't think so.

Andy 15:29

Maybe then the DA withdraws everything and starts ratcheting, things up making stuff worser.

Larry 15:33

Well, the DA shouldn't have done that. I can't say what the DA would have done. But it's imperative that you understand what you're doing. And these are life altering decisions. And if you don't understand something, when the judge is asking you did you understand it? If you didn't the time to say is no I didn't. And, and nobody does that. I explained that to a federal judge, when I went to a national defense lawyers annual meeting in Philadelphia some years ago. He's now a circuit judge, but he was a he was a district judge then. And he said that he makes sure that he goes extra mile. He said I make sure that that I that I take the time with each individual defendant. And I said, Well, and he presented himself as being a great guy. I said well you're doing that, in the interest of making sure the defendant knows what they're doing or are you interested in closing the door on habeas corpus? He looked at me like he thought there was like, like, where's this guy come from? But as a judge, what do you what do you expect the person to do when they're in this situation? When the person that they, is their

advocate, because they ask you one of the questions is, are you happy with your attorney? That would be like asking me when I was in foster care in front of my foster parents, are you happy with how the this family has been treating you, as a foster child? What is a 12-year-old or a 10-year-old kid gonna say? And so I asked the judge that.

Andy 16:57

They're gonna say Yes, they're the best.

Larry 16:59

Is the judge that what would you expect? When your advocate is standing at your side and you're asked, Are you satisfied with the work that person's done? What would you expect the answer to be? And he acted like he might mumble something to the effect that he hadn't really thought about from that perspective. But he said he doesn't know. And he there is really no other alternative. You can't export the defendant because that's not fair to the other side. So, the judge doesn't get to go have a private conversation without any lawyers present and ask, Are you satisfied? He has to do it an open court. He or she, but but you can't export. So so it's a catch 22 for the judge.

Andy 17:41

All right, let's move over to the snarky question says:

#### *Listener Question*

I'm disappointed after listening to Registry Matters Episode 150. You two never seemed to be positive on anything. Even when there's a fantastic victory like the one in the Mississippi Supreme Court. Larry always seems to dash our hopes with his predictions... isn't that from Louisiana, not Mississippi, Larry? Forgive me. The driver's license one? (Larry: Uh, yes.) Okay. Let me back up, then. Even when there's a fantastic victory, like the one in Louisiana Supreme Court, Larry always seems to dash our hopes when he makes his predictions that they will simply do a new marking on the license, isn't it just as likely that they will realize the error and let the issue die and fade away? A positive attitude will be great once in a while. You two are something else. I'm thinking in my head he probably was saying you people are something else.

Larry 18:37

So well, other than the state being wrong, That's a good question. But what what I, I guess I can apologize, but I don't know what I can do about it. I apologize for coming across as negative. But I don't know what I can do about it. Because the likelihood of them just letting this issue die and fade away is very remote. And I say that based on the evidence we had in front of us. We had based on the Supreme Court's research, we had a finding that Louisiana was one of only nine states that marked driver's license in any way. And within those nine, they indicated that many of them were very discreetly done. They also opine that Louisiana's was the worst. I've never carried a Louisiana or any of the other states' marked driver's license. So, I don't know, which is worse, but I'm taking their word for it because their analysis was that it was the most obnoxious marking in the nation. So, I'm looking at the evidence we have and what we know and then I'm looking at what we what we know about how systems operate and how this is a political decision that has to be made. The lawmakers are going to be confronted with the decision to simply let the licenses be unmarked going forward, or the they're gonna be told by the law

enforcement apparatus that clearly the court said we can do it as long as it's not as intrusive as it was being done previously. They said that, and the roadmap is there. So, you would have to be an extremely optimistic person to believe that they will go from being the worst state in the country, to just simply letting it get fade away. Is that possible? Yes, it's remotely possible that they would do that. But I think it's so remote, that if I were to say that, that I think this is going to fade away, and be forgotten about, I think the listeners should abandon us all together as being a reliable source of information, because I don't believe that to be what's going to happen. I believe they're going to try to mark the licenses again, in some capacity. I don't know what they'll try to do yet. But I don't believe that they'll let this just fade away. But I guess I could answer the question with a question. Do you want us to tell you what you'd like to hear when we analyze these things, or what we think's likely to be the trajectory of what's happening going forward?

Andy 21:09

I can tell you what super patron Mike usually says, like always says, is that he appreciates when we tell it to him straight, that he wouldn't want us to tell it to many other way. He doesn't want us to try and make it all happy sounding and this and that, you know, I mean, it was it was it is an excellent victory for those people. But that would, if you were playing a game of chess with someone and you made some incredible move to defend against their attack, they're not going to just go up crap they really defended Well, they lay down their queen and you win, they're probably going to make another play, to push back against your defense, they're going to keep pushing.

Larry 21:47

That's my expectation. Now, if all of a sudden, the people of Louisiana rise up by large numbers and say, we find it appalling that we were putting Scarlet letters on our driver's license, now we know this, we demand you don't enact any more laws to this effect. That could happen. Based on the years I've been in advocacy, I have not heard of a population rising up against anything that's done to PFRs. So that would be a first. But could it happen? I guess it's possible it could happen.

Andy 22:21

In my wrong in my assumption that it comes back to us if we turned around and told our legislators to not do those things. And then if they did, we would change who the legislator is and put somebody else in there that we have questioned to say, "Can you not do those things?" We have the power to change these things at the legislative level. Am I wrong in that assessment?

Larry 22:43

You're absolutely correct. But the public opinion... the public opinion is going to be in favor of what they were doing. And the magic is to change public opinion. And that's not that's not going to be an easy task. Because it's been. It's kind of like a lot of the myths that people began to believe they've been out there for so long, that people accept them as being true.

Andy 23:14

Right. Um, yeah, I was listening to a podcast and it was a very pro criminal justice reform episode that they had done. And they came to the issue of rapists. And they said that they are likely to get out

of prison and immediately go find someone to rape and I was like, I don't think that's how it works. A) for rape, you're going to be there for a really long time, most likely, and they're going to be heavily, heavily watching those individuals, when they do get out. I just didn't see it like their recidivism rate is going to be super high. You know, a drug person is going to end up with a pretty high recidivism rate compared to almost any of quote unquote, our people. It seems vanishingly small.

Larry 23:57

It is by every measurement that's been done. And within a particular type of category, though the recidivism is a lot higher, the non-contact offenses tend to be higher recidivist. That's just a given. But but the contact offenses, unless it's a serial individual, the recidivism...

Andy 24:18

Like an actual damaged, medically treated like a person that needs counseling, like it's somebody that just makes a mistake kind of personally urinating in public, which probably doesn't exist, whatever. But that kind of person doesn't need counseling and has a very low recidivism rate.

Larry 24:33

That is correct. And those impulse control ones, the ones you're talking about, where people make an impulsive decision. People have all sorts of impulse control issues, people are compelled, compulsive shoppers, and they bankrupt their families. They're compulsive gamblers and they bankrupt their families. And I'm not equating the significance of the two but I'm saying impulse issues. You could have a sleep over of a niece or a nephew that that has developed physically. And you could have had a drink or two. And you could put your hands where you shouldn't because of a lack of impulse control. And after the system has done the harsh things they've done to you, you're never going to do that again.

Andy 25:21

I gotcha. And one more after this one says, this is a question for Larry, this came over from Discord. It says:

#### *Listener Question*

Larry lives in Albuquerque, right? Has he ever talked about the pretty good sized cop watch movement that goes on there. There are at least three groups that frequently post videos to YouTube of police interactions. I gather that, I gather, they use police scanners to find the locations and then record from a respectful distance. The Albuquerque Police Department seems to mostly leave them alone now. Seems like a great constitutional way to keep the police accountable. I wonder if Larry knows or has any thoughts about it might be an interesting topic for the podcast.

Larry 26:00

Well it might be except I don't know anything about it. I know that the police due to litigation through the years and through the federal consent decree that we're under right now that they have improved a lot of their protocols in terms of citizen oversight. But as far as the organized groups, I didn't know anything about that. So this person has enlightened me to something that I'm not aware of.

Andy 26:23

If we can sort of pull back though, what would, what is your opinion in general of all of the cell phones are all the cameras that everyone has running around that they capture the George Floyd events and so many other things? Do you think that's positive? Or is that a negative for the community and/or the police?

Larry 26:44

Well, I think it's a positive for, for both the community and the police. Because I believe that the police, by and large, want to do a good job. I have that, I have those rose-colored glasses that they want to do a good job. And I believe that there's systemic problems within the police bureaucracy that cause I mean, watch the movie *Serpico*. It was a movie that was recorded in 1970 or '71 sometime like 50 years ago. And I don't think a lot has changed since *Serpico*. I really don't. And, and so I think that the, the cameras everywhere, give us insight into what we would never have known because of the blue wall of silence. Where it's just the code of conduct that most officers remain silent. The videos speak volumes about what they're being silent about. And oftentimes they taint their reports with, with, with narratives that just don't match what actually happened. And we get a better accounting by the by the videos. The good police officers should be happy that these recordings are happening because that prevents them from being put in a position where they have to rat on one of their colleagues. The ratting is done by the camera.

Andy 27:59

Okay, I see what you're saying that that makes sense. Yeah, they don't they don't have to be trapped up in some sort of being a snitch inside the organization. They can just let the public speak for it and, and so forth. Okay.

Larry 28:12

So, I think it's a good thing. And I think that there's a lot of good police officers that that are happy that it's happening. And I think there are some not so good police officers that that try to confiscate video equipment and phones. And they do that and say we're seizing this for evidence. But unfortunately, that's going to happen. I mean, they're still they're still bad cops out there. They're only human beings. That's all.

Andy 28:40

Yeah right. Right, right. Well, we can do this a little quick. Somebody wrote in that listened to the podcast, this came back fast Larry. This is only from Episode 149, where we discussed getting the podcast into the prison system. And just you know, further talking about that, this individual is referencing that he gets a religious kind of podcast from a Jewish organization, Orthodox Jewish organization that he is, is working with. And he provides me provides us with some resources. And I assure you, I will check into them. But what I found from just a very intensive like 30 second Google search was that it was going to cost us money to get our product distributed into it. And not cheaply either. But I will certainly try to try to figure out how to get them published. And that would be super fun if we could get them actually published inside the prison

Larry 29:35

Oh it would be. Don't you think the prison administrators would be really fond of this program?

Andy 29:39

I have a feeling that, I have a feeling that they would object to it. But at the same time, if we did have that 501(c)3, which I know we'll work on either at the beginning of the year or after the election coming up, but I imagined that that would help us.

Larry 29:53

well, you know, there there actually would be prisons that would object but if they actually sit down and listen to what we say, I think a lot of prison administrators would be very happy with us because we try to call it down the middle. I have I have no hesitancy to criticize prisoners. I've done it over and over again about their internal code of conduct, about how they classify inmates themselves and in terms about how they're willing to jettison their own due process. They don't want you to, they don't want to administer they fight for their due process. But they don't afford any to anybody else. They have their own administration of justice that doesn't... I mean, I, I think the prison administration would really like us because I give them credit for the hard work they do. Running a prison is not an easy job. It is not.

Andy 30:43

but I'm thinking back to the Mississippi, I think it was Parchman. Is the prison that the riots broke out six-ish months ago. No one could do anything but go those are deplorable conditions. I can't imagine everyone going that's what they deserve. I mean, I guess people were saying that's what they deserve. But you know, they're in there like animals. That's why they're in there. That's probably a common sentiment that people had, but they shouldn't have been treated that way in the first place. I don't know that anybody would, really object to how they were being treated incredibly harshly.

Larry 31:17

Well, and but again, sometimes the prison administrators are stuck with that not about their own choosing. You have prison administrators who want to do they understand correctional Association, ACA standards, they understand they, understand how a prison should be run in terms of classification, not running a snitch system. They understand all that. But they're not given the resources. When they go to their legislature, legislature asking for resources about employee compensation, which is usually deplorable in most states, particularly the South. And when they ask for funding, they're the lowest on the totem pole. So, you have good administrators who are stuck with old ancient facilities that are underfunded, and they are tasked with doing the best they can with what they have. And then you have horrible prison administrators who are like former Sheriff Joe Arpaio, who are excited to see how much misery they can inflict on people. Now that's the type of prison administrator that would not like me, because I would call that administrator out and say you could do a whole lot better with the resources you have. But sometimes, like in these southern states, Alabama doesn't allocate very much for prisons, and they lock up too many people. And those people were stuck in a very bad situation trying to make the best of what they have.

Andy 32:30

And I will also say, Brian, thank you for writing to me directly. And also thank you for having incredibly legible handwriting.

Larry 32:37

Oh, that was a fantastic letter.

Andy 32:40

Yes, it was. Ready to be a part of Registry Matters? Get links at [registrymatters.co](http://registrymatters.co) If you need to be discreet about it, contact them by email at [registrymatterscast@gmail.com](mailto:registrymatterscast@gmail.com) You can call or text a ransom message to (747)227-4477. Want to support Registry Matters on a monthly basis? Head to [patreon.com/registrymatters](https://patreon.com/registrymatters). Not ready to become a patron? Give a five-star review at Apple podcasts or Stitcher or tell your buddies at your treatment class about the podcast. We want to send out a big heartfelt support for those on the registry. Keep fighting without you, we can't succeed. You make it possible. I think, Larry, that leads us to this, this final little tidbit on this Georgia thing, doesn't it?

Larry 33:37

Yeah, we're gonna we're gonna spend some time talking about an important case.

Andy 33:43

Well, I think things started If we do a little bit of history, the way that you wrote it up, it says on September 24, a lawsuit was filed in the United States District Court of the Middle District of Georgia challenging the Butts County Sheriff's Office practice of placing warning signs at the residence of PFRs before Hallows Eve. And then we went to court. I was in the courtroom with another person from Georgia and the judge, like gave us the injunction. That was, yeah, that was just this last year. And that was an incredibly great victory that we had at that time that that shut down that whole process. What transpired from there?

Larry 34:26

Well, what transpired from there is the injunction, for people who may be joining us for the first time, an injunction is an order granting you relief that you have not won because the case has not been tried on the merits underlying your complaint. You're asking for relief in advance of your case being adjudicated and the standards are incredibly high to get an injunction. It's not anything to do with whether the judge likes you or dislikes you it has to do with The four pronged test which the two most important ones, are you likely to succeed on the merits when the case goes to trial and will you suffer irreparable harm if the injunction relief that you're requesting hasn't isn't granted. And those those critical factors, those two determine whether you're going to get injunctive relief or not. And in this particular case, the judge felt like that the evidence was there that the likelihood for success on the merits were good. And that, that the harm would be any first amendment deprivation or infringement would be irreparable harm. So, he granted injunctive relief. And then that put that put the kibosh on it for those plaintiffs. It was not it was actually not a class action; it was only for the plaintiffs that were named. And the court encourage them not to do the signs in general, and they didn't but the injunction was really directly applied to the the plaintiffs. And and then the case had to had to move forward towards the trial, where there's going to be a full blown trial, or whether the case was going to be resolved by an agreement between the parties, or whether there was going to be a decision made without a trial through a process called summary judgment.

And this case was decided in that last process that I mentioned, by summary judgment.

Andy 36:20

Did the sheriff say anything, did he perform any actions that really were like kind of egregious? I think there was things in the and what I'm actually getting at is that I think there were things in the case that were brought up, that there was no intent to put these things out there to highlight PFRs. But there was stuff found on his Facebook page from the previous year of like, I'm gonna like, single these people out, something like that?

Larry 36:50

So Well, I'm not sure I follow that question. The intent becomes to whether you have whether you have a... when you when you're litigating for damages under 1983, which is a section of United States Code of civil rights, you have to be able to show that that that there was a right clearly established, and that there's a willful intent to violate that right. And, and if you're getting at that part, the sheriff's department was claiming that they didn't intend to intrude on private property that they thought they were that they were on the public right of way. Is that where you're going?

Andy 37:30

Um, no, I'm actually referring to because he was posting on his Facebook page just about that his whole intent behind this was to I don't want to say that he don't he didn't use the word shame them. But the intent was to, you know, highlight and show everyone where these people were. That was, that was the intent, but he didn't bring that forth as being quote unquote, his intent. He was just trying to keep the community safe, Your Honor.

Larry 37:53

Well, I do remember I do remember that he they said he was he was simply trying to do his duty, he put his hand on the Bible and he said that he felt he had a duty to notify the citizens of the presence of these people. And he was doing that that was his intent, nothing more.

Andy 38:11

But the the post that he put on Facebook the year prior to this is what I think kind of got him in trouble is that there was that from the previous year. And that's what he was trying to do. And then everyone's like, "God, thank you Sheriff for keeping the people safe."

Larry 38:24

Do they say it like that?

Andy 38:27

In Butts County, they would definitely say it that way. Definitely.

Larry 38:32

Where is Butts county for our global audience. So if you were to if you were to look at Georgia, where would you find Butts County?

Andy 38:41

If you were to find a place between Macon and Atlanta, it would be pretty much halfway between. There's the diagnostic center for the Georgia Department of Corrections. It's called Jackson State Prison. And it's right in that general vicinity. It's Yeah, it's it's

probably just a hair south of the middle point between Macon and Atlanta. It's pretty much Nowhere Veil though.

Larry 39:03

So yeah, it's it's a it's still a small county, I think somewhere around 20-25,000 people.

Andy 39:10

Oh, and what was Mr. Long's, what was Sheriff Long's attitude about where this was going to go if even if we won at the next level after that, you know, since the summary judgment, but you know, he lost the injunction if he had lost the case, what was his next step? What did he want to do next?

Larry 39:27

Well, he did in fact, he filed an appeal on the on injunctive relief, and that was that is pending, set for oral arguments in the 11th circuit, which is in Atlanta for mid-December, I think 15th or 16th. And he had taken that upon appeal. Injunctive relief is immediately appealable because, again, you're getting relief that you haven't won and he filed an appeal, and the appeal has yet to be decided. We argued that the appeal was moot. Our team argued that the appeal was moot because the injunction was only good through Halloween 2019. Therefore, the court should not consider the appeal. Now, our posture may change. And, you know, I'm not prepared nor am I in the total know of what they might do next. But one of the things you would do next would be that since the case has been resolved on the merits, you would you would consider trying to get the court to take this, consolidate the the Georgia appeal with the appeal of the merits that go ahead and have their oral arguments if you're ready, on the whole case. But the more likelihood is they'll probably counsel that hearing. Because now that the case has been dissolved or been resolved on the merits, there's no need for the for the injunction here, because the injunction is going to be lifted by the district judge who issued it. If if he, if it's not clear that that it dissolved itself, because it was only for 2019, if an order is requested, the judge is going to issue that order, because he's found against us and in favor of the county.

Andy 41:01

And just forgive me for a minute going back a couple questions from the listener saying that we're all negative Nancies all the time. That here is a direct example that we shot them down and got the injunction. The sheriff should have been like, Whoa, okay, sorry, you guys are right, man, we're gonna just gonna back off. But that's not what he did. Granted, the Spalding Sheriff did. And then we also sent a letter down, I don't remember the name of the county, down, like in Mosquito Ville, of South Georgia, we sent a like notice citing the injunction, and they backed off. So I'm just using that as evidence to say, they may not just back down when you say, hey, you can't do this.

Larry 41:42

They're they're not likely to just back down. What people fail to realize is that the governmental entities have virtually an unlimited bank account. And there are a lot of attorneys out there that love to make money. Therefore, they have no difficulty finding attorneys to represent them. None whatsoever. Because they're going to get paid, generally at an hourly rate that's very attractive. And they're happy to run up billable hours. So they will

invent arguments, they will invent stuff that you can never imagine, which if people want to bother read this decision, they did some of that. But they will invent arguments to litigate. And they are going to do that. It doesn't matter if it's in the pristine, pure state of Maryland, where they're wind driven. Or if it's an Arkansas, whether it's in New Mexico, whether it's in Georgia, doesn't matter, Michigan. that's what they're going to do. And if you are in denial that they're going to do that, then I can't help you. But that's what they're going to do. They have unlimited resources, and they're going to fight anytime you're challenging the constitutionality of anything that's a law. Now this wasn't even a law, this was an action initiated without the benefit of law, and they still fought it. So, it's a lot of wishful thinking, to think these people are just going to go away.

Andy 43:03

We have a series of prepared questions. So I'm going to... between you and I, we created a dozen or so questions. So just to try and keep things on track instead of us meandering about. Why was this lawsuit filed and why do you people at NARSOL not challenge the registry itself? If you get rid of the registry, this issue people have wasted so much time on will cease to exist Larry. Why do you people not just challenge the registry itself?

Larry 43:30

Well, that has been done multiple times. And it's limited success, because registries may not be unconstitutional. And it depends on the registry. And in fact, Georgia's registry has been challenged and they haven't made any dramatic changes to Georgia's registry in a decade. Since the last, since the federal case, it was handled by Judge, I believe his name was Clarence Cooper. But by that, I mean, are you oblivious to what's happening in the world with case decisions? We just got the decision of the 10th circuit where where it vacated, Judge Matsch was overturned, by the 10th circuit. So if you want to, if you want to continue to believe that the mere act of having registries is unconstitutional, you can do that. But it's not realistic. So, the question is, why did NARSOL challenge the Halloween thing? We felt that, I can speak for NARSOL, we felt that if you've got 159 counties in Georgia, and you allow sheriffs to invent requirements, this only happens once a year. But they can invent any requirements that's not in the statute and impose those requirements by their own initiative, and then threaten to prosecute you if you don't comply. And we felt and still feel that we cannot allow law enforcement to invent requirements. We take that oath seriously when they put their hand on the Bible, they're going to enforce the law and not make the law. And that's why we attacked this. We felt that this was a clear infringement on a person's property rights. And it was compelling them to speak a message. And it was important enough to try to stop it in its tracks. So that's why, that's why we attacked this.

Andy 45:23

And without going down that whole rabbit trail of registries being constitutional, you have described what, at least from your point of view what would be, like some sort of constitutional registry, where maybe you have an app and you take a picture from your phone, there's your updated photo, if that's what is necessary. But all of the restrictions, the term that you introduced me to is the disabilities and restraints, the living restrictions, the all of the

other presence restrictions, all that stuff. That's what makes this so horrible.

Larry 45:51

That's correct. But each registry, each state, and even within the state, there's individual local restrictions that are imposed. And each registry scheme has to be challenged on whether it can withstand constitutional scrutiny. The mere act of registering someone is not unconstitutional.

Andy 46:13

What are the three claims that they... what were the three claims, and can we go through them?

Larry 46:19

Yes, we can. The defendants, the plaintiffs alleged, the defendants being the sheriffs, that compelled speech in violation of the First Amendment of the US Constitution, that, they, the defendants trespassed in violation of state law. And they committed an unlawful taking of the plaintiffs' property, in violation of the Fifth Amendment. And those were the three claims that they put forward. Didn't get a lot of traction on either of the three.

Andy 46:54

But they did award it to for one situation and not for the other two, I think is how we can say that.

Larry 47:02

Explain that.

Andy 47:04

They awarded it to the person that doesn't own the house, he doesn't have like the property interests, he lives with his parents, but not the ones that either owned or rent their home?

Larry 47:13

It's the opposite. The people who did not have the... there was lack of standing on the people who didn't own property. You can't take from a person what they don't own. And at the very minimum, they had to have at least a lease. And the people who just lived with their parents apparently didn't have a lease so that they didn't really have any property rights, as far as the court could see.

Andy 47:43

And if we move on and says this case was decided on motions for summary judgment. What in the flippety flip is summary judgment?

Larry 47:55

It's an expedited process when you when you seek summary judgment. Either party can move the defending party or the plaintiff, either party can move for summary judgment. And when you when you make the motion, actually, I wrote an article for the, for the *Roush* decision out of Tennessee, and we put it in our newsletter. And, and, and I, I cut and pasted it in here, I'm going to use it again. And the court itself explained the standard, but actually, I liked mine better. I like what I'd cut from the *Does v. Roush* with my little add-ons in it. But summary judgment is a way to resolve a case without going to trial if there are no facts in dispute, and that's the key. The moving party is telling the court,

we don't need to go to trial here. All the facts are clear. The parties are in agreement. Therefore, just decide the law, decide the case based on the law, save us a bunch of time and money. And we'll get this case over with.

Andy 49:05

Was the decision to request summary judgment wise in this case?

Larry 49:10

Well, being that I don't have a law license, I'll have to let the decision speak for itself. So in the summation that I've written, I've quoted from the court where the court said unequivocally that there were, there were facts that were in dispute and I highlighted that. It says, but the critical issue is in fact hotly disputed about whether the signs were on right of way, or whether they were on private property. And that is not me saying that. I got it straight from the decision of the court.

Andy 49:47

Can we dig into that for just a minute? (Larry: Sure.) What is the right of way? I mean, to me I think of I'm responsible to cut my grass all the way to the street. I don't cut it all the way to five feet six, whatever this is some imaginary number is. However, there is a ditch, I guess, like, you know, like a water runoff an exposed drain, I guess you could call it. Am I not responsible to care for this part of the property? Because that's probably the city's?

Larry 50:13

Generally, you're required to care for that property. But the question is can, can you as a private owner, do, what can you do with that other than mow the grass? Because you're not allowed to do certain things on easement and a right of way. But but the government can I mean, your speed limit signs are generally off to the side, you know, your any type of warning signage, I mean, utilities might say that they they have... what what what happened in this case, is that there wasn't sufficient factual development about what constituted private property and where the signs were being placed. And whether they're being placed on right of way that that the occupant and homeowner had no say so over, or whether they were being placed on their private property. That, in hindsight, should have been developed at trial. There should have been experts that talked about what the Georgia law is, and it may be individual county ordinances, I don't know all these things. But that's what you have a trial for it to bring in experts to talk about these things and experts cost money. And I also would have delayed this this case by another year, which would have meant the the team that we have, they were faced with Halloween bearing down on us with no injunction because the injunction from 2019, had expired. And we were arguing that it had expired to the 11th Circuit Court of Appeals saying that there's no need for you to hear this case, because the injunction has expired. Therefore, they were going to have to they were going to have to request another injunction and go through that process or could they go ahead and try to resolve the case on the merits in advance of Halloween 2020. And in hindsight, we can see that the decision wasn't favorable, but their analysis was that they thought they had it won. And you know, here we are sitting here quarterbacking on Monday.

Andy 52:07

I'm actually looking at the next question and wondering, going going back to the previous listener, a couple questions go from the listener about won't they just lay down? Couldn't we apply that to us? Hey, like we've lost decisions, should we just lay down and stop trying?

Larry 52:22

Absolutely not, I do not know what we will do. But I do know that that NARSOL has invested a significant amount of money not not gobs and gobs, but a significant amount of money. And we were committed to this case. And we believe in this case. So therefore, we're not likely just to go away and say that's the end of it. What we're going to do next, this just came out three days ago, so we don't know.

Andy 52:47

Can you like literally someone told me like you are the best legal strategist legal mind that that we know. And yes, I'm sorry to say Larry that you don't have all the fancy letters and Esquire and all that, you know, you didn't go to school for 100 years. I don't really care. The reason why our listeners are here and the reason why I chose you for this podcast was because of your expertise and your strategy and your insight and all that. So now that I'm done blowing smoke up your fanny, what do you see as the options to go next?

Larry 53:18

Well, the great thing is even on summary judgment, there's a right to an appeal. Just because it was decided without a trial doesn't mean that there's no appellate review. So you would you would be arguing, and this is this is a great question, actually. This, this would get us back to *Smith v. Does*. The facts that the parties agreed to in summary judgment cannot change on appeal. Those are the facts. Whether they're facts or not, doesn't matter. Those were the facts. And the appellate court will not disturb those facts. Because that's what the parties agreed that they were. So and anything that wasn't established as a fact, is resolved in favor of the non-moving party on summary judgment. So so anything, if if if the county says our defense would have shown this had we gone to trial, the appellate court has to accept that as being a fact because they didn't ever get an opportunity, because we requested they not be afforded the opportunity to put on their defense so so we're limited in what can go go what can be considered on appeal, because the facts were established by the parties. And but that doesn't mean that the law was interpreted correctly. There's cases cited all throughout the 28 page opinion. And those cases may be applied incorrectly. I don't begin to think that I know. I just prepared for the podcast today the best I could to put something together. Yeah, but but what what I would say is there's an appeal option. There certainly the request for reconsideration before you before you go up on appeal and there's a notice of appeal to 11th circuit there's already an appeal pending and and like say It could be extinguished, but there could be the possibility of combining these issues now on appeal with the 11th circuit, but, but in terms of that, the team is going to have to huddle. You know, the attorneys. There's two attorneys in Georgia, Janice Bellucci is working on this case with us. I'm working on this case, to the extent anybody listens to me. And we've got to figure out what we can do. And and I don't know all the things we'll do, but I know this, we're not going to go away.

Andy 55:30

Okay. Is it possible that our cause has suffered a setback due to this decision?

Larry 55:35

There is absolutely no doubt that as of this moment, we have suffered a temporary setback. It may become a permanent setback if we if we lose on appeal. But clearly at this point, there will be adverse ramifications. There was the settlement negotiations at Spalding County, those would be potentially adversely affected. Because Spalding county is in the Northern District of Georgia. This case is in the central Middle District of Georgia. But it doesn't change the fact that the two counties border each other, and that the county attorneys representing the two counties, I can assure you are talking to each other, they're aware of this. And Spalding county is going to say, Gee, I don't know why we should stipulate to a permanent injunction and pay these people money when the judge ruled against them. So that would put that settlement in jeopardy. The Georgia Sheriffs Association clearly has been informed of this decision. And they have probably already communicated to the shareholders of Georgia that that this was a this is a green light to go. Now, it was such short notice before before Halloween, I don't know if there machinations being with COVID-19 if they actually could act on it for this year. But it certainly could impact us for next year. We all of a sudden could rather than having Butts and Spalding, now we could have we could have dozens or maybe 100 counties in Georgia doing this. It's so it's potentially devastating to us, which begs a question that's not on the list. Why did you people litigate if you could make things worse? I mean, why didn't you just go home and forget the whole thing? We have that question come up all the time.

Andy 57:13

Just let the two counties whatever have to deal with it, and at least the other 157 counties didn't have to deal with it.

Larry 57:18

Well, that that's that's exactly what we've got a person in Clayton County that insists that and Clayton County is very close to the to these counties that we don't have it so bad here in Clayton County. And and with you people making all this noise, first thing, you know, we're gonna have problems here in Clayton County. And by that standard, by that standard, we should just never litigate anything. We should just turn a blind eye and say, well, it's ain't so bad it's only it's only two counties, right? Now, of course, we had the assurance, because we we learned a discovery that that the Sheriffs Association was encouraging these signs producing these signs. And they were opining to the sheriff's that this was legal. So what we knew was that it was it had been encouraged by the Sheriffs Association. So just because only two were were doing it at the time doesn't mean that that was all it was going to ever be. But now, I'm afraid that there's going to be a rapid explosion of this because now they've got a green light. I mean, the Court has said it's okay.

Andy 58:22

Can you, can we walk down the path of compelled speech in regards having a signpost in your yard. The sign didn't say sex

offender, PFR. Didn't use any of that language. It just said, don't get candy here.

Larry 58:35

we've got it here the within the analysis, no trick or treat at this address, a community safety message from Butts County Sheriff Gary Long. It has stop signs and warning. The warning is the most problematic. Warning, why is there a warning on what basis? but all the sign said, it didn't say the persons on the registry.

Andy 58:58

Right. So how is this so problematic? They're not calling the person out. I'm like if we compared it to the driver's license that actually says, hey, you're a PFR. It's not the little innocuous thing in the corner that has some little code. This, I'm not saying that. I mean, I certainly am not sitting here trying to say I agree with it. I'm just trying to be devil's advocate for just a minute. This doesn't say anything other than don't knock at this door. (Larry: Well, that's true.) How was this compelled speech, government message like where do we cross the lines?

Larry 59:30

That's the struggle that the court had in terms of the this case because the government speaks all the time on documents. We've talked about the the corrective lenses. Every state marks corrective lenses on people who can only pass the eye test with corrective lenses. That's not intended to shame you. It's not intended to do anything bad. It's intended to keep the public safe. If you require corrective lenses to operate a vehicle safely and an officer encounters you That is the most innocuous way that I can think of this very day to convey that information to the officer that if you're not wearing your corrective lenses, you're not safe to be on the road. That's all that's for. So that's government, that's the government speaking to the to the cop. And this changes slightly, in my view, because it is the government speaking to the passersby. But they're speaking on private from the platform of private property. And they're, they're speaking on a day that you, that expression is accepted that you could express yourself. And they're saying that you cannot interact with anybody that chooses to interact with you by this no trick or treating here. And it didn't say that you couldn't decorate but I'm presuming that if the deputies brought the signs by and told you, you can't hand out candy. They also told you don't bother decorating your house. Because that would encourage people to come.

Andy 1:00:59

I don't know if it's for anybody on the registry or if it's just if it's just supervision.

Larry 1:01:02

But I'm making that assumption without any evidence. But, but I'm assuming they did that. So you're getting it, you're getting into, you're getting into some really significant areas of speech and expression, that you're that you're disallowing. But then again, let's take it to the cigarettes, where we're where we have compelled speech, because Sheriff long says that clearly, that his argument was that the government is speaking and no rational person would associate that this would be a message that the offender endorses, therefore we can do it clearly. It's the government message. Well, is it possible he's right? When you, since 1964, when you've bought a pack of cigarettes, there's been

a variation of some form of warning, the first one started out with warning. The surgeon surgeon, I believe it said warning: smoking cigarettes may be hazardous to your health and in about 1971, they added they they came up with like a rotating message of like three or four different messages. They said warning the Surgeon General has determined this. Do you think that tobacco companies want that message on there? Do you think they endorse that? But isn't it the government commandeering their, their wrapper and forcing them to carry a message that they vehemently disagree with? How is it the government gets away with that?

Andy 1:02:20

And not only that, making them pay to put the message on there too.

Larry 1:02:24

And I'll take you one further. The government in the early 70s banned advertising on television. When's the last time you seen a TV ad? Isn't that prohibition on first amendment rights?

Andy 1:02:39

I guess if you think that corporations are people too?

Larry 1:02:43

Well, the Supreme Court said they are. I mean, we don't we don't execute revenue corporations. But the Supreme Court said they are people.

Andy 1:02:55

So, you wrote in addition, most of the assertions raised in the complaint were dismissed with prejudice, meaning they cannot be raised again. Can you elaborate? Is this something similar to double jeopardy?

Larry 1:03:06

Yes, it's similar to double jeopardy, you don't get multiple bites at the apple, when when you raise claims that have been extinguished through through a litigated process. So these people can't come back and raise these claims again. They had their chance, they had their day in court, they chose summary judgment. They're out of business now. Now, this is not a precedential decision. So it doesn't mean that new plaintiffs can't come raise these same issues, but it means these people, these claims are over. If they don't like the signs being erected, they need to vacate Butts County, because they're done, by and large, except for the one remaining claim, which I didn't completely understand. But there was one that was not fully extinguished by the court. And let's go back to the decision because it was at the very end of the of the order. Did I put it in my analysis? I think I did, didn't I? There was there's one, Okay, what is the surviving claim?

Andy 1:04:01

I thought the surviving claim was about the people that are living with their folks. I thought that was the surviving claim. The ones that don't if somebody owns or rents their property that they are the ones that are doomed and the ones that live with mom and dad, they're not on the lease.

Larry 1:04:19

Okay. Okay. Well, it says, under the section it says is there hope? Yes, there is hope because the court was not able to resolve all issues, particularly the issue of whether the signs were on public right of way or private property. Quoting from the order, the court first makes clear that what is it is not concluded. The sheriff's office believes it has the right to post the signs in front of the plaintiff's homes as long as the signs are, are in a... you're a better reader. I can't read that.

Andy 1:04:51

Yep, the sheriff's office believes it has the right to post signs in front of the plaintiff's home, as long as the signs are in yet to be defined rights of way and that it can prosecute anyone who moves the signs. The court doesn't reach that issue. But as noted, the defendants have scant authority to support either proposition. And the court certainly doesn't conclude, given the facts here that putting the sign in the plaintiffs yards makes sense. Rather, the court only concludes that for the most part, the relief the plaintiffs seek is not available.

Larry 1:05:23

And that came from page 28 of the opinion. So the summary judgment precluded the court from being able to determine whether this is right of way or not. So that issue remains open. Any of the plaintiffs could bring that back again. But everything else is gone. They didn't trespass, and they didn't do a taking. And they do have qualified immunity. Because this was not a clearly... the standard is it says has to be something that's clearly established violations, alleged violations, and there's nothing clearly established on this. So therefore, they have qualified immunity. But the remaining issue for these individuals is whether or not this is private property or government right of way and the court seems to be telegraphic that they have scant authority so far, for their assertion that this is right of way.

Andy 1:06:15

Didn't Janice Bellucci file a case, win a case similar to this in California, or is this a figment of my imagination?

Larry 1:06:21

I think there was a case some years ago in Simi Valley. I don't remember the particulars. But I do remember that, that she being on the team that she had had offered us that cleaning. And that I remember something along that line.

Andy 1:06:36

Then there is something to be said for 50 individual countries, you were just saying a few minutes ago about we have to fight each registry on its own home turf in each little state and all that stuff. So this goes to that as well that she may have won a case out there, whatever the the reasoning behind it was, and we fought a case here, different reasoning and different outcomes necessarily?

Larry 1:06:59

That is correct. And not nothing that happened in California is binding in any way in Georgia.

Andy 1:07:05

But cookie cutter copy, paste, if it applies, then some of the work has been done for you already?

Larry 1:07:11

Correct. And you cite to it as persuasive authority, which this court cited to the cases. They cited to the recent decision out of Louisiana, in fact, when trying to analyze what is compelled speech.

Andy 1:07:27

Oh, how ironic. So the thing that we just talked about last week is cited in this case.

Larry 1:07:33

it was, it was cited by the court and they said they received as a judge that he received an email about it. And he cited he cited to the Marshall case out of Alabama in terms of the driver's license. But this compelled speech is really tricky. And I don't pretend to understand it completely. This is this is this is a nuance of law in terms of what what we're whether this is compelled speech or not, or whether this is government speech. And this certainly the right of way is unclear to the court in terms of whether it was the right of way or whether it was private property. And what really wasn't raised in the complaint, very succinctly was that, that the registry has its requirements and a sheriff can't really invent requirements beyond what's in the statute, because they're therefore you get into void for vagueness, you don't know what you're required to do. And you can have a law enforcement officer just because they have a badge tell you have to do this, because you're on the registry. No, it has to be in the statute. I think if I had anything to second guess myself about I would have been more assertive about we have to figure out some way to have the claim in there that that allowing the county to invent their own requirements, makes the statute vague and void, because no one knows what they have to do. And we're getting ready to gear up again for Cobb County, because Cobb County is doing that very same thing. They're inventing requirements that are not in the statute, not in terms of having signs, but in terms of several other things that they're requiring. And they're arresting people for not doing those things. One of them is if you don't call them within 24 hours of them leaving a flyer. They, they believe that that's contemptuous of their authority. And they're locking people up and saying that they don't live there. If you don't call them back, they leave a few flyers. And then if you're not, if you don't respond, they conclude that you're no longer there.

Andy 1:09:19

And I'm gonna be like, I don't know the right terms for this. You have described to me that there are certain areas of authority that different echelons have. I don't know if that's the right word to use. But the sheriff of the county is not something that's listed in the statute as being an entity. I hope I got you close enough that you can fill in the gaps.

Larry 1:09:42

Well, that was in terms of the Cobb County Attorney's response to NARSOL. She said that, that in terms of the more frequent verification requirements that these were imposed by Cobb County and she cited to the Adam Walsh Act that said that in the Adam Walsh Act, the language says that jurisdictions are allowed to exceed the requirements. And she's absolutely correct. Jurisdictions are allowed to go through the legislative process. And they can have requirements for registrants that are not

recommended by the federal government to be substantially AWA compliant. But where her analysis broke down, the Cobb County Sheriff's Office is not a jurisdiction. A jurisdiction is defined under Adam Walsh as being a state or territory. So so so we pointed out to her that, that you're headed down the right path that jurisdictions are allowed to do that, but they have to enact it through the statutory process. You can't, I mean, when you put your hand on that Bible, when you run for sheriff, you promised that you would enforce the law. If you want to be a law maker, Sheriff Long, run for the Georgia General Assembly, and you can be a law maker. But right now, your job is simply to follow what's in that book. And there's nothing in the book that requires anybody to have signage.

Andy 1:10:56

And so a state or a territory would be Georgia or Puerto Rico. Those are the two entities that you just described.

Larry 1:11:04

yes. And Georgia could conceivably put this in their statutory scheme that you're required to do this. It's not recommended by the AWA, it would not get you closer to AWA compliance, if you were deficient in some category. This won't do anything, because they don't care about Halloween restrictions. This would just make your citizens feel good. But this would not move you toward compliance. But you could do that. You can do things that are not recommended, and many states do. And that's why people misinterpret the Adam Walsh Act. We need to do a program about the Adam Walsh Act one of these days because I get emails almost every week about it. And and people still misunderstanding Adam Walsh Act and they gripe about things that are not in that Adam Walsh Act. And I said, Well, you can gripe all you want to but it's not there.

Andy 1:11:46

And I think at all the other questions, I think this is really the last one it says both parties moved for summary judgment. This is something that I'm really trying hard to understand, because this seems to be like the nuance of this whole thing is did they move for the same summary judgment, both parties, or did they do this independently? (Larry: Independently.) Do they move into a summary judgment? Okay so one guy said they want this. The other guy said they want that

Larry 1:12:09

Correct. Well, the each motion for summary judgment gets considered independent of the other. So the court determines if if the plaintiff is entitled summary judgment and rules on that motion and they determine if the if the defendant is entitled to summary judgment? But you could do it conceivably do a joint motion for summary judgment, but in this case, the sheriff had his reasons for wanting summary judgment. And we had our reasons for wanting summary judgment. And the sheriff had more compelling reasons than we did. So, he won.

Andy 1:12:44

Okay, and you're just saying, as in like, here is here, here's my list. And then the judge says, Okay, you guys win, because you submitted a better document, like copying pasting?

Larry 1:12:56

Well no, the law favors his interpretation of the law was that the case law supported the county's position, that that based on what we argued, we were less compelling. And all the inferences were resolved in favor of the non-moving party on our motion, because anything that that was not proven. The court has to interpret in the light most favorable to the, to the non-moving party of the motion for summary judgment. So so everything went in favor of the county on our motion, and everything went in favor of us on the county's motion.

Andy 1:13:31

Do they, I guess they don't combine then. So then he just the judge looks at it. And I keep saying he because this in this case, I don't mean to be like, you know, all judges are only guys. Uh, he looks at it and weighs which one he feels is better. Like, that's just the end of it. The guy with the robe, end of story?

Larry 1:13:51

Well, until there's an appeal. This is as if there had been a trial. This is if 42 witnesses have testified. And both parties, both sides have rested. And the judge made a decision, he made the decision on pleadings. And the rules established for summary judgment are that the non-moving party gets the benefit of the doubt on anything that's adverse to them because they weren't able to defend that by the benefit of a trial. Back to the *Smith versus Doe*, Alaska said that we want this scheme because the recidivism is high. Since there was no trial, and that was not able to be unpacked in the court below, the Supreme Court was bound to accept that because that was a defense that would have been tested had there been a trial so they don't try the cases at the Supreme Court. And everybody does understand that the appellate court is not going to try the case.

Andy 1:14:55

And just one other point with this, if if our side had said we don't want summary judgment. Does that negate the other side? If either side says they don't want summary judgment? Does that mean everything then pushes forward? They both have to agree to the summary judgment?

Larry 1:15:10

No, you don't have to agree to summary judgment. You have to put forth reasons why summary judgment is not. You have to put forth, once the moving party shows that it believes it's entitled to summary judgment, then you have to say, actually, they're factual stuff here that makes this case not right for summary judgment. You have to tell the court what facts are in dispute and why a trial is necessary. If no party tells the court that there's anything in dispute, the court is "okay well the parties agree on everything." (Andy: Okay.) So when we moved for summary judgment, we told the court there was nothing factually that was in dispute.

Andy 1:15:49

And, okay, so we would we had to, I don't want to drag this out for forever. If we had said we dispute this thing that the judge could have still said, I'm awarding summary judgment.

Larry 1:16:00

Well, on our motion, we wouldn't have disputed anything because we made the motion. So, we are telling the judge, there's nothing

in dispute on when they made their motion, we could have said you should deny theirs because their facts are in dispute. We didn't do that either. Okay, so each party has to respond to the other party's motion.

Andy 1:16:22

Okay. That's kind of what Okay, I think that's what I was asking.

Larry 1:16:24

So. So, yes, if they don't identify any material fact in dispute, the court assumes there is no, there are no facts in dispute. But the court eloquently stated in the opinion that there were facts that that weren't facts. There just wasn't enough there. We didn't have the facts in terms of what the right of way is. We didn't establish that.

Andy 1:16:50

I gotcha. I don't have anything else. I think, you know, we've been doing this for like, 45 minutes. I think we are we are done beating this thing to death.

Larry 1:17:02

Alright, do we have a dozen new patrons this week?

Andy 1:17:06

We did receive a one new patron this week and want to send out a huge thank you to Eugene, for becoming a new patron. Thank you so very much, Eugene. Mr. The deputyHMFIC counted and you have done three hands on the Bibles tonight. So if this were a drinking game, he would be under the table.

Larry 1:17:26

So he's got to learn how to pronounce Bible. It's \*southern accent\* Bible.

Andy 1:17:30

Oh, sorry. Sorry. Sorry. Yeah, I think he's from up north. So there's no Bible. He's just says Bible. Ah, oh, my God, Larry, you you have delivered us with crappy news, yet again. Can't you ever be happy and bring us good news and be happy about the good news?

Larry 1:17:47

I could be.

Andy 1:17:52

Larry, how can people find the podcast? Can we can we take a quick detour about that? There was a phone call that was received today about this podcast at, I'm just gonna say the wrong number.

Larry 1:18:05

Okay. And they left a message saying that they wanted to the prisoner had submitted a question that was answered. The prisoner wanted his mother to hear the answer. And I immediately called the person back. And the person didn't answer the phone. And I tried multiple times throughout the day, and the person never answered their phone. And so like I for the life of me, I don't understand if you if you call and specifically say, Would y'all call me back? And then you don't answer your phone, I don't understand how that works. How would you ever get the call back if you don't answer the phone?

Andy 1:18:43  
They immediately went and took a very long hot bath

Larry 1:18:46  
For the entire day?

Andy 1:18:48  
All day, all pruney fingers and all.

Larry 1:18:51  
Well, see I've lived long enough to where phones were the primary means of communication for most of my life. And now everybody has such a phone aversion. And when I survey people, I get various answers. But the one that I get most often is I might have to deal with something I don't want to deal with. And I said well just press that little button that says end. And that'll end the call you don't have to deal with anymore. And people tell me, well, I'm busy. I don't wanna be disrupted. I said, Well, just like anything else. Just ignore it if you're busy, but don't just have a blanket policy to never answer the phone. Because if you don't want that call, you can separate yourself from that unwanted call and there are people who never ever, ever answer their phone anymore. (Andy: I don't answer my phone.) I know I'm poking fun at you. I mean, there's people that never answer their phone anymore. They have all sorts of software and interceptors and everything that says the party is not receiving calls. And I don't understand, my family is that way and neither of them work and they say that they're afraid that they're gonna have to deal with something. What would you not be able to extricate yourself from? If a call is unwanted, just end the call. But they feel like they have to have permission end the call. The only calls I don't like answering are the calls that come to the office of the senator. Because I'm not allowed to end those calls. And, therefore, when I'm in something I can't get out of, I prefer not to get into it. But on my personal phone, I can end any call at any time, so it's easier to me if I get... I've been called in last week, I probably got a dozen calls about my warranty on my car is about to expire. And each time, it comes from a different number at each time, and each time when it starts I just hit end, and I'm done with it.

Andy 1:20:31  
I don't know what to tell you, man. I don't answer any calls. That way. I don't have to worry about all that.

Larry 1:20:36  
So well, but say you told me that you texted the person back. How do you know that that phone received text? You texted them, but had they not responded, Which I'm assuming they did respond. But if you didn't get a text back, how would you know that that had been handled without talking to them?

Andy 1:20:55  
Usually, landlines will bounce back and say that this is a landline and can't receive text messages. Usually that happens.

Larry 1:21:00  
Okay. So you would have known

Andy 1:21:02  
I assume I would have known but I took my math measures plus plus, which you can't do on the phone, which I think you can do.

But it would require a lot of writing is I sent this person links to the podcast so that they could find where exactly to listen to it.

Larry 1:21:17  
So well, fantastic. Just

Andy 1:21:18  
And they can just click on them in their phone. So the whole reason that I brought this up to you was that we got criticized, this was forever ago that we got too political and we started getting hate mail. NARSOL started getting hate mail. So, there's a disclaimer at the beginning of the program that says this is an independent program. Like we are not part of them. I granted we kind of cross paths very regularly. But now people are calling NARSOL for questions to the podcast, which I find kind of ironic.

Larry 1:21:45  
So well, there is there's a lot of overlap, because we operate from the same Post Office Box. All the mail that's come to the podcast and we are getting mail now is all coming to the same P.O. Box. So it confuses people.

Andy 1:21:59  
Well, all right, so people can find this at [registrymatters.co](http://registrymatters.co). That is the website where to find all of the things and you know, were you to do some Google searching for the podcast, then you might show that that might show up too. If you type in Registry Matters, you will definitely find the website. How about how about your favorite thing, Larry voicemail? Where do people call to get voicemail?

Larry 1:22:21  
(747)227-4477

Andy 1:22:26  
The email address is [registrymatters cast@gmail.com](mailto:registrymatters cast@gmail.com). And if we don't get another patron this coming week, then I guess we'll just shut the whole thing down and I'm poking fun. But Larry, where do people support the podcast?

Larry 1:22:39  
At [patreon.com/registrymatters](https://patreon.com/registrymatters)

Andy 1:22:44  
Fantastic. We love our patrons very much they they make this whole thing very worthwhile. And I appreciate each and every one of you very, very much and all of our listeners we had a crap ton of the YouTube people this week on last week's episode. Like a whole lot.

Larry 1:22:59  
It's pushing 400

Andy 1:23:02  
Good grief That's a lot. With all that Larry, Um, as usual, you are a Master Blaster of information about all things related to this issue. And we wouldn't be able to do it without you. And I appreciate it very much. And I hope you have a great rest of the week and you're going to go out and scare people and dress up as I don't know, like Godzilla or something?

Larry 1:23:23  
I am indeed.

Larry 1:23:30  
Good night.

**You've been listening to FYP**

Andy 1:23:25  
Excellent. Thank you as always. I appreciate it very much. Have a great weekend.

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