



Registry Matters Podcast

Episode 184

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Andy 00:00

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Larry 00:32

What's the humidity there as we speak?

Andy 00:35

I bet it's 40%. But 40% even still, it it's not the same because it's quote unquote, relative humidity, like 100%, 90% in New Orleans is not 90% in Georgia, and is not 90% in Pittsburgh, not even close to the same.

Larry 00:52

So well. I sent you a screenshot of ours yesterday. It was like 14% or something?

Andy 00:57

Probably. I didn't look at that. I thought you said it was like 104 or something like that. It's crazy. That's like, I don't know if that's hot. Alright, now that we're done with the FYP weather forecast podcast, let us begin the show. Tell us, Larry, what do we have this evening?

Larry 01:13

A fantastic program lined up. We have a comment from a listener. We have at least three or maybe four questions. We have West Virginia Supreme Court ruling analyzed by a West Virginian. And we have a Colorado Court of Appeals decision related to PFRs and prohibition and limitations on internet access. It should be exciting.

Andy 01:42

Wow, man, are we going to be able to fit all this in an hour?

Larry 01:45

If you talk fast.

Andy 01:48

Okay, I will talk very fast. Let's start from a very longtime patron and pretty regular contributor. Will from Tennessee. I haven't talked to Will in a long time, I almost forget where he is from. This is from what we talked about a week or two ago, if this decision that lifetime registration stands, wouldn't the state be able to cherrypick an expert on the stand who would come in on the stand to swear up and down every applicant for deregistration would be too dangerous to let go? Can't the State simply getpaid hack to say anything they want? Sounds conspiratorial Larry.

Larry 02:24

Yeah, the funny thing is, it's not so ridiculous, it very well could happen. What he's talking about is the South Carolina Supreme Court saying that you cannot be required to register for life without some due process to evaluate your continued need to register. And therefore South Carolina is gonna have to create a process to remove folks from the registry. And that would be one thing that would very likely happen would be that there would be... remember when you file these deregistration petitions, you serve them on a party, which is usually the prosecuting attorney, the jurisdiction of conviction. But that is a part of the prosecution apparatus. And when you're talking about the state, that's who you'd be referring to. It would be very likely that the more affluent counties, particularly that have lots of PFRs, they would be able to easily bring someone in that would say that. That's all the more reason why, if I were advising South Carolina, which they haven't asked me for any advice, I would try to rewrite the statutory scheme, where that the tier ones and the tier twos do not even need to file a petition because they're not required to by federal law. That was just South Carolina overreach putting everyone at lifetime when they didn't even have to do that to have their precious AWA compliance. I would rewrite the law and make sure those people just termed out automatically without having to file anything. Then you've gotten rid of two thirds of the people in the registry, that they would theoretically no longer be entitled to have a removal process because they remove themselves. Then you would be down to the 1/3. And then I would look at that 1/3, the tier threes and make sure that we didn't have anybody in that category that didn't need to be by the federal standards, and then I'd create a process for those people if it were me and I were creating this, but I don't expect them to do that. I expect them to require everybody to file a petition. And that's more of the reasons why they're not gonna want to do it, because it's going to be far more expensive when you have to give everyone a petition process.

Andy 04:33

As opposed to something that we've talked about, I think is why not just make it automatic after X number of years, whether that be 10 years that you just fall off automatically?

Larry 04:45

That's what the federal law permits.

Andy 04:49

That's permitted in the AWA guidelines? (Larry: Absolutely.) But I don't think there's a state that does it.

Larry 04:56

I think there are a few. We don't have a petition process but most people here are stuck life but the ones who are less than life, they just fall off, they don't need to file anything. But under the under the AWA, these very rigid federal regulations to achieve your precious substantial compliance designation petitions are not needed. And I've said that over and over again, you can just let them turn out. And that's what I would do if I were fixing South Carolina's problem. I would say, Look, I'm pretending I'm Attorney General, and I'm a policymaker there, we can't afford to be having all these hearings for 14,000 people. So what we're gonna do is

we're going to skirt not having to have a hearing, because we're gonna let these people just time out, they won't need to file a petition. Then that just took care of a big part of the Supreme Court's concern, because their concern was that no one gets off. That everyone is on for life. So therefore, I just took care of two thirds of the registry, they're no longer on for life, they just simply timeout. And then we would deal with that remaining third, look at that list critically and make sure that they really do have to be tier three, because a lot of states are fond of putting people in tier three of offenses that don't have to be, and I would move those out of tier three down to tier two, and maybe tier one. But I would certainly drop them down to tier two. And then I would figure out how to develop a less costly process for the remaining people because then you've reduced the number of people, you've cut the expense by two thirds.

Andy 06:32

Right. Larry, you and your rational reasoning and making sense of things? I don't like it.

Larry 06:40

Well, that's the way that you can sell this because they'll less likely that they would fight it. I continue to believe that they will file a cert petition with US Supreme Court, because they are faced with creating a process for 14,000. I think, Don said, the South Carolina advocate. 14,000 people, they're not gonna want to do that. That's going to be very expensive, and they're not going to want to do that.

Andy 07:03

Right, except for but if they just had a fall-off process, it wouldn't be expensive.

Larry 07:09

That's what I just said. That's why I would recommend letting the people term off the registry. And you've reduced that cost dramatically.

Andy 07:19

Sure. Okay. Well, let's move on. We have yet like another email message or voicemail message from Brent. This is like the third in a series, I think, do we need to set this up or just let it play?

Larry 07:30

Well, it's the arrest of a relative. And they're both college students and I don't know the extent of the of how close they are but a family member. And he's been reaching out to me directly for feedback, because we have come to know each other through the podcast.

Andy 07:50

Okay. Well, here we go with Brent's voicemail.

Brent (Voicemail) 07:54

Hey, Andy and Larry. Hello, again. I just wanted to give kudos to FYP for all the help that you've provided my family and I since my relative was arrested by the FBI. So far, the entire process has gone down exactly, literally exactly the way that Larry said it would. But unfortunately, the detention hearing did not go well, and they the judge ordered him detained pending trial. So this is, you know, hit our family pretty hard, because they literally had no

idea how the system worked. I had, you know, some idea by listening to you guys, but they were completely blindsided. They're also pretty shocked that the Federal sentencing guidelines are so strict and that his offense that he's charged with has a mandatory sentence that can't be suspended. So which pretty much means automatic jail time. Anyway, I'll keep fyp informed as it unfolds. But also on a side note, that was a sick laugh track. Do you know who that is laughing? 'Cause I've never heard that one before.

Andy 09:07

Let's do you want to cover the laugh track part first?

Larry 09:10

Let's play the laughter. I want to make sure we're talking about the same thing.

Andy 09:13

No, I can't. I can't do it. I don't have my gear with me. I'm traveling.

Larry 09:18

All right. Well, that is... I think he means sick is good. Right? Sick laugh track. That would mean good, right?

Andy 09:25

That would be the modern-day term. I think the easiest way to explain it would be what like in the 80s and 90s what the term bad was. So you'd say man, that was bad. But that meant good. So sick is like awesome, good, killer, off the charts.

Larry 09:37

So all right. Well, what am I supposed to be explaining now?

Andy 09:42

Uh, I guess that was that. We were explaining that part. But it was there anything to follow up with the whole process that they're going through with the federal sentencing guidelines?

Larry 09:52

Well, on a side communication, he asked me what would be the chances of this case being dismissed? And I told him very, very low. I mean, exceedingly low. If it were in the state system, there'd be a higher chance. But even in the state system, the chances would be low. What makes a case like this, and this is possession, and distribution of CP. What makes the case like this so different is you have multiple witnesses. A case with an individual victim can completely fall apart without the victim. It can completely fall apart without a key detective. Somebody gets transferred to Iraq or somewhere. And they're crucial to the case, the case falls apart. This case isn't likely to fall apart because too many agencies are involved in it. The National Center for Missing & Exploited Children who provided the initial tip, then there's the FBI, then there's the Department of Homeland Security. There's the Bernalillo County Sheriff's Department. There's on and on with agencies involved. And there's not a key witness that would make this case go away that's so critical and plus there's a confession. I've seen the evidence in the case, in terms of affidavit for the rest of the confession. So you would have to be successful on a suppression motion. And there's just too much that'll make this case impossible for it to go away. I mean, could there be a presidential pardon? I mean, we've heard of people being pardoned before

they're convicted. I mean, we heard of that in the Trump administration. We've heard about that in the Nixon administration, actually, after the Nixon administration. But yeah, that is possible. But it's a very long shot that any of that would happen. I don't see President Biden issuing a pardon preemptively on this case. So therefore, it's not likely to go away. So it's going to be plead out. If it's not plead out, if he were to go to trial, he would get a horrendous sentence. So it's going to be plead out. That's the way this case will go.

Andy 11:57

That's just terrible. Okay, I think enough of that, and we can move on to a follow up message. This is the follow up show. A follow up message from Jeff.

Jeff (Voicemail) 12:07

Happy Saturday Registry Matters. This is Jeff from Kentucky again. Last week, Larry said about my other question about the South Carolina thing and lifetime registration without due process. He didn't know how long I had been on the registry. I've been on for five years. And I had two counts possession, one count distribution. And distribution sounds really bad. But it was simply that a cop was able to download it from me so therefore I got distribution, but they all three stemmed from one incident. I have not been adjudicated three separate times. It was in one incident. So if you would explain to me what due process is. And pretend I'm really dumb. If you would, explain to me how I did or did not receive due process by being put on the registry for life with no chance of getting off. And as always, fyp. And thank you for what you guys do. Take care. Bye.

Andy 13:05

Interesting Jeff's a longtime listener since forever, pretty much like since episode one practically. And a longtime Patreon supporter as well.

Larry 13:13

Fantastic. Well, due process, there's procedural and there substantive due process, and he's talking about procedural due process here. When there's Liberty interests going to be diminished, there has to be a process as prescribed and followed by law. The problem that he's talking about is we do not know what due process is for this issue. And what suffices. What we're learning from these court decisions is that the lack of any process is problematic. But we won't know what due process. When South Carolina creates its process, we won't know until it's tested in court, if that is sufficient due process. The states up until recently when they started losing these cases, they simply argued that when you were adjudicated through the criminal system that resulted in your conviction, that that in and of itself was due process. But where that started breaking down, was that at the time many people were adjudicated that either there was no registry, or it was far less onerous. Far more benign and then as time has passed, like the registration periods. Point two and point three versions of the registry as they continue to toughen it. They include so many more disabilities or restraints. So the courts have started to recognize that perhaps maybe you did receive due process if the registry existed in some form or fashion at the time of your original conviction. But what you signed up for in your original plea negotiations as the registry, that was the point one version. We're now on point four and you could not have

reasonably anticipated all these disabilities and restraints. So therefore to continue to extract more and more of your freedom, and impose more and more restraints on your liberty, that you're going to have to have some form of due process that justifies that. We don't know what it'll look like, we truly don't know. We've had decisions out of other courts, I remember in New Hampshire, I think was the first Supreme Court that came out with such a decision five, six years ago. They said that the person had to have due process, they didn't know what it looked like, because they're the court. They're not the ones who make the law and create the process, they just said that you need to create a process. Well, when South Carolina creates it, if they decide not to file a cert petition, we will look at that. And some of us will say, gee, that's not sufficient. Or we'll say that's pretty good due process. And if it's challenged, we'll have to take that up on appeal and find out if it satisfies the opportunity to be heard, to confront the evidences against you, to put it evidence on your behalf, and so forth and so on. All things that are part of due process, but right now, we don't know.

Andy 16:07

Okay, interesting. All right. I guess we can go over to the thing we have titled of to be read. And I'm gonna read the whole thing, Larry?

Larry 16:16

You can. I don't think it'll take too long if you don't mind.

Andy 16:20

No, no, I don't mind. I was just making sure cuz I mean it is semi long. Alright.

Listener Question

My friend Sean is a subscriber to the Registry Matters transcripts. He is the young man who has dual citizenship with the UK and wants to leave the US when his sentence is over. He's written two or three times I believe. Actually, you might call me his Silent Partner, but with respect to being two subscribers. When he was on the fence about paying so much for a subscription, and let's face it, on a prison salary, it is a bit hefty, though I completely understand the need to cover costs on your end. I said I'd buy his coffee bags for a few months. This way, effectively, we both paid for half a year subscription and share the full year's informative podcast. It's a scheme that works well for us. And I think more folks in prisons should strike similar deals. (Andy: Totally Larry. People could like, 5, 10, 20 people could all chip in and buy you know, a couple of soups or something for one person to pay for it.) People trade coffee, noodle stamps and other items all the time for useless garbage like meat, legs and cookies. Why not pitch in with each other to share a podcast transcripts subscription and learn some valuable information? Oh, well, if everyone took time to think about how we'd all be better off working together, maybe we'd actually be living in a utopian society without prisons in the first place. So consider the context of where we are. I encourage others to try sharing subscriptions, and maybe a few genuinely will. Regardless, this is not the reason I'm writing. I'm interested in a topic you addressed in the 12 June podcast, Dennis J. Powell Jr. versus Mark Keel, Chief State Law Enforcement Division at the second state of South Carolina. Without going into too much detail, I was sentenced for similar crime. And although I ultimately took a plea deal, I have always wondered how the state could feel

so confident in pressing charges when, in my text with the undercover officer, I repeatedly indicated either we would engage in nothing sexual when we met, or I expressed ambivalence about my intentions. Ultimately, the police arrested me several blocks away, when I chose not to park my car and go to the building we agreed to meet at. You indicate you've done a lot of work on this subject for all 50 states. I'd be interested in reading the material you mentioned, especially for the state of Wisconsin. I'd ask you to fight back for my own benefit. Yet, I want to stand up for others, too. When I'm released in two years, I will advocate and fight for better laws until meaningful change is solidly established. Thank you, both Larry and Andy, for all you do. Enclosed are some envelopes to help your work. I wish it could be more.

Thank you so much. Wow, that's a lot going on there. What do you think about the work being done in all 50 states? Where do you want to go with that one?

Larry 19:10

Well, I was actually thinking I had divided that up. I thought I had the one to be read. And then we're going to do the question later. But they're combined. That's why you thought it was longer than I thought it was because I was thinking it as a one pager. But and Wisconsin law. Now I have not updated this for nearly a decade and I'll be happy to provide it to him without any cost. I'll send him the compilation. But what they had at the time I did this Wisconsin had two statutes. One was 948.07 was child enticement. And the other statute I think's more relevant, not 948.075, use of a computer to facilitate a child sex crime. And that one, as it read at the time I did this. Whoever uses the computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16, with intent to have sexual contact or sexual intercourse with the individual, in violation of Section 948.021.02 is guilty of a class C felony. Now, that's a pretty well constructed statute. It's not the best, but it's a pretty well-constructed statute. Because the actor has to believe that the person has not attained 16 years of age and there has to be intent to have sexual contact or sexual intercourse as that statute stood when I did this research. And therefore, I would say that not knowing the facts of that particular case, that even though he didn't park, and maybe he got cold feet, that they probably had some evidence of intent to have sex. And they had evidence that he knew or believed that the actor was under the age of 16. So it was a cop posing, not a real person. It never is a real person, but I have a feeling that the evidence was there, that he had intent. They always come with... this is a family program, but they always come with condoms, they always come prepared for sexual intercourse. And then what would have happened when they arrested him, they would have asked him after reading him his rights, because they would have arrested him told him he was in custody, they would ask him, Do you wish to talk and discuss that? And they would have asked him, what would he have done had they not arrested him? Would he have had sex? And during that interview if anytime he said, I might would have. They would have embellished that in their report. And they would have said that he agreed that he would have sexual intercourse with that person posing as a minor. So therefore, I feel his pain. But Wisconsin statute wasn't that bad at the time in terms of I wished all the state statutes were as clear and as clean as this one was written at that time. I'll look up a current version of it. We'll

talk about in a future episode, but I doubt it has changed significantly.

Andy 22:26

Do you think, I mean, like the act of I don't know if you could even extend it back. But as soon as you got in the car and started driving towards, wouldn't it almost be and I'm pushing it all the way to the extreme, he parked a block away, how far away would you be before you have not done the intent part? If you got in the car and started heading in that direction? You've got the intent if you want to push it all the way?

Larry 22:49

Well, not necessarily, if you had not discussed previously, you have the right to meet someone without having sex if that hasn't been discussed in advance of the proposed meeting. But I suspect that there was a discussion about sex might occur. The person posing as a minor said, well, you know, anything could happen. Yeah, I think I think older guys are cute, or whatever they say. And, but the actual, what, what you usually would have in what scenario you're describing is an attempt. When you when you take, like, say, for example, he agreed, or the conversation, the text or the whatever way they were conversing, suggested that sex might happen. And then he took the step of driving and moving towards that individual's location, then you've got a substantial step and furtherance and completion of the Act. And that is generally considered an attempt, because the police don't have to let the person fall in... If there really had been a minor, they don't have to let the minor fall into the hands of the perp and see if they would actually have sex. That first step towards meeting if there had been discussion of sex would be sufficient, in most instances to complete what would be an attempt which normally drops the offense by one level of severity. But still, I feel your pain, but I don't think you have anything. Now there went the rest of our subscription, they're going to cancel everything.

Andy 24:24

No more bags of coffee going to the person that's actually paying for it to defray the costs. So maybe you should give them positive news Larry instead of all the negative Nancy stuff.

Larry 24:33

Well, I'm gonna send up this compilation.

Andy 24:37

Oh, okay. Well, good reaching out there, Larry. Okay. Then let's move over to question number two, and this says,

Listener Question

To whom this may concern, I'm writing in regards to some questions concerning the PFR registry and federal supervised release etc., and I hope you're able to help. I've been hearing that there are people advocates fighting to get rid of the registry or reform it. Is there any truth to this? It's a very vicious thing. Also, regarding polygraphs, I've heard the same thing that advocates are fighting to get rid of using them on supervised release. Is this true? There are people that have been violated and sent back to federal prison for failed polygraphs for technical stuff. And to be honest, that concerns me. My last question is, I'm from New York, but would like to move to Vermont upon release. Will I be able to move to Vermont when I get released from the feds? How is it

living there as PFR in regards to the laws, etc. I've heard it's one of the better states to live in as a PFR. Any and all info you're able to send me will be appreciated so very much. Thank you for all your time and help in this matter. And look forward to hearing back from you best regards.

Larry 25:48

Okay, this comes from a prison where we have a lot of support for both the newsletter and the podcast, I'm always going to go out of my way to be helpful, because we have such loyal followers at this particular prison. So there are a lot of questions here. Is it true that people are working, advocates are working on both of those things to do with polygraph? Yes. Are they going to succeed? Well, that's another question.

Andy 26:20

Maybe.

Larry 26:22

Getting rid of polygraphs as they pertain to treatment? Probably not likely. I just don't see that happening. So there went bad news number one. There was like a second question at the beginning there wasn't there?

Andy 26:40

I hear that there are people advocates fighting to get rid of the registry or reform it. So that one is true, that, then regarding the polygraphs, then, also go ahead...

Larry 26:50

Yeah, getting rid of the registry. There are people advocating for that or making it nonpublic. That's going to be a really, really long shot. Because it's ingrained in American society now. It's been around some variation, since the mid 1990s. So we're talking about 25 years, Americans will tell you that now they have a right to know. Because if you have something for that long, it becomes ingrained. They have the right to know this information. So taking away something that they see as a right, it's going to be difficult through a political process. Could it be done through a court process? Maybe if we can prove how punitive being on a website is and all the things that relate to the registry. But merely collecting a name of people and putting them on a list, there's nothing wrong about that. We do that for voters, we do that for young men who register for the draft, we do that for the children of Flint that were exposed to contaminated water. I mean, we register, register, register, register, that doesn't have to punish you. So you could have a sexual offender registry that would not inflict the punishment. That would be conceivable to concoct such a mechanism. But as far as rolling these things back, it's a tough sell politically, it's really tough.

Andy 28:11

Which kind of means why we have to take it to court, though, to get the judges to push back to say that, No, you can't. But they're not going to say what they can do. So then they can just step up to that line again and do everything. But not that one little thing or two little things.

Larry 28:25

And we have to quit expecting the judges to know by divine intervention, that the registry is punitive. We have to be prepared

with a big bucks to come up with witnesses, with experts, with testimony. And we need to stop doing summary judgment. We need to put these cases on trial with a strong evidentiary record below so that the judges can make those decisions. That's what we need to do. And that means that we're going to have to as a population, we're going to have to stop waiting for someone else. And we're going to have to dig into our pockets and we're going to have to contribute and we're gonna have to be supportive of those who are fighting these battles, because they are very expensive. Now there went the rest of our listeners.

Andy 29:04

So now people that have been violated and setback to federal prison for failed polygraphs. But see, cover that for a second people don't fail quote unquote, they don't fail the polygraph. They just have some level of that didn't quite look right. So then let's go scrutinize you further.

Larry 29:20

Yeah, I continue to take issue with that because the failing the polygraph, showing deception doesn't send you back to prison. In most instances, it's your admission after the polygraph conclusion in the post polygraph interview where disclosures are made, those send you back to prison. But just simply showing deception if you continue to say I've told the truth. I have not seen a revocation petition yet. I'm gonna have to up the ante, please send me a petition that says only that that's all they did: show deception on a polygraph. Send me that I'm anxious to see it.

Andy 29:54

So just to take a quick little detour. Remember we talked about my buddy at the end of the podcast three years or so? I'm pretty confident that he had some sort of problem with his Polly and not that he lied. He just was nervous. Whatever showed up that caused them to come visit scrutinize them where they did find something that was completely unrelated. And that's why he got jammed up. I'm pretty sure that's how it went down. And I'm just saying that to confirm the story that you've just already described, and to push back against him saying that failed polygraphs. He didn't fail a polygraph, he showed he had some sort of meters registering that he was whatever, not lying, just nervous, whatever it showed, but that's why they came in and tossed the house.

Larry 30:35

In terms of the question about Vermont, they do have one of the less obnoxious registries in the country. Whether the feds will let you go there, I can't answer that. It's going to depend on the judicial district, the Federal Judicial District where you were convicted, and what their policy is letting people move to other states. It would be an OK state to live in. If they would let you move, they're going to require you have connections to that state, that you'd be able to support yourself. You just don't get to state shop and say, gee, I'd like to go to a better state. But yes, they very well could let you go there. But I don't know the answer to that.

Andy 31:12

Okay, I think that's everything from this letter. All right, then let us move on to I think this is question number free. Do I say that right? Yes. Question free. It says:

Listener Question

to Whom it may concern, same as the last one. I'm writing you to request information and assistance from you in the following. I am sentenced to two lifetime probation terms. And the Arizona Probation Department won't help me succeed. Could you please provide me with a listing of states that are lenient and will work with me to get off probation in a reasonable time. I get out of prison July 9th, 2021, so can you please send it to the following address blah, blah, blah.

That's kind of a demanding letter, Larry, but what is two lifetime probation terms? Like he has two lifetime sentences of probation?

Larry 32:01

Yes. And I put in here for one particular reason. I'll be able to emphasize that you cannot state shop to reduce your sentence. Arizona imposed that sentence. And only Arizona can modify that sentence. Wouldn't it be a great country if you could be sentenced to lifetime in one state, and you could go to another state, and they could say hmm, we really don't care for this sentence. We're gonna reduce it. Wouldn't it be a fantastic setup? What would the moving business be like? Whatever state that you would be allowed to transfer to assuming that they would take you, and I don't have a list of the lenient states. But you're going to need connections, as I said on the previous segment, you're going to need connections to those states that you're interested in moving to. They have to decide that they will accept you. And you will go to those states with lifetime probation. There's nothing that state can do about it. The only thing they can do is after a period of time of successful supervision, if they were so inclined, they could recommend to Arizona that it be reduced, or that you be discharged. Very few supervising authorities will make that recommendation. And I think Andy, you could explain to us why they wouldn't make that recommendation. It has happened, I think once since I've been in this business. We know who had happened to from North Carolina that had a sentence for 50 years from Virginia. And the North Carolina people recommended that he be released, but it seldom happens. But it could happen. That's would get your Arizona probation term reduced. But otherwise, you can't go to the other state and they reduce your probation. Wouldn't that be great?

Andy 33:42

That would be. The only equivalent that I can think of is that people go visit other countries and they tell what the situation is here. And then they like, don't worry about that here. And I know that that's after sentence and all that stuff. So it's not quite the same thing. You're not getting your sentence reduced. But other countries look at what we're doing here. And they're like, not appalled. They're completely disagreeable to what we're doing and their situation is different there. But not within the states. I don't imagine because then everybody would just move around and you don't have this packing of PFRs in those states. (Larry: Absolutely.) Okay, question number four, it says:

Listener Question

Hello, Andy and Larry, as always, I can't thank you guys enough for what you do every week. I've asked questions before regarding issues with PFRs. My question this evening is when it comes to the First Amendment and registration requirements. Recently, I went to go to do the dreaded Annual Registration. I noticed they seem

aggressive about the internet and social media identity issue. As here in this state, one of the requirements is giving your Internet Information social media to the government. I'm not an expert at this but isn't as a clear violation of the First Amendment? The very idea of having to reveal your internet identity to the government would chill free speech, as have been quoted. On top of his probation is the state has a blanket ban on social media. Why aren't there more challenges on this issue when it appears to be a very clear win? It seems that something gets ruled unconstitutional in one circuit, but another ignores it? I'm in the fourth by the way, and even within this circuit, I believe this has been ruled unconstitutional. It's frustrating because the law enforcement seems to show blatant disregard. Is there anything NARSOL or affiliates are looking into on this issue? I hope that this makes it into the show this evening. Thanks.

Larry 35:38

So well, the problem is, is that the courts are not, there's no Supreme Court United States decision on this. And the statutes support what they're doing. The Congress passed the Keep the Internet Devoid of Sexual Predators act back in 2008. So we're talking about 13 years ago. And that was intended to make it easier to identify and remove registrants from social networking websites. And therefore, as a part of the dreaded AWA compliance, one of the things that states are supposed to be doing is asking for that information. And then there's a databank that social media can access to see if your identifiers are in their databank. And then they use that to eject you from their platforms. We don't know yet whether it's unconstitutional because the Supreme Court hasn't weighed in. Within a circuit, we still don't know. If a circuit decision comes out and say, for example, the 10th circuit, if my circuit were to say that you couldn't collect the identifiers, all the states in this vast circuit may have laws that say that to collect it. They're not going to magically stop doing that until someone in that particular state litigates it and they cite to that binding decision from the 10th circuit. So if the decision of the 10th circuit says, as related to an Oklahoma challenge, that you can't collect, Oklahoma's law is unconstitutional. That doesn't mean New Mexico's is or Utah's is, or Colorado's law is. But you would argue that that is binding they're requiring the same thing, and you would probably get the same outcome, but you're going to have to file the case in the district court at the trial court level. And you're going to have to cite to that decision. Law enforcement doesn't just magically turn things off. Oftentimes, they don't even know about the decisions, but they don't care if they do know about it. They're not going to stop doing this because the law tells them to do it.

Andy 37:37

Well, okay, um, but the First Amendment has something in there of if it would chill you from having the freedom to go do it, even if like a little, little voice in the back of your head tells you that the government's watching you do it, then that could have a chilling impact on you having your freedom of speech. So but does this only is this question only applies to people that are on supervision? Or does this apply to the PFR population as a whole?

Larry 38:09

This this requirement of collecting this information applies to the population. The keep the internet devoid of sexual predators act was to apply to all people the registry. So people regardless

whether they're supervised, they're being they're being required to provide this information? And yes, it very well could chill speech, but we got to prove that.

Andy 38:32

Yeah. I mean, obviously, if you're not on the platform, if you're giving up your internet identifier, then you're likely not going to be on it. Like that is totally your speech being chilled. It's not like you're hesitant. You're totally having it shut down.

Larry 38:46

Well, I mean, they identify you, with all the cameras and the facial recognition when you walk in a public protest, but arguably, are we were going to require them to take down their cameras that are out in public, because they could run you through facial recognition. And then they could come back and visit you and say that you're not allowed to protest. We don't like... I mean, where does this end?

Andy 39:06

I don't know. But that that sounds exactly like 1984. That book was written roughly around the time that you were a kid. (Larry Really?) Yes, it's a pretty old book, I think in the 50s or 60s or s. In 1984 it came out. Man, okay. But this goes to that the social media platforms, they can do what they want, though. If they want to not have PFRs there, then they can not have PFRs. There's currently a particular former president that is not allowed on there. And certainly he's trying to fight it, which could be something in our favor, but they have kicked him off. Like what kind of standing do we have to get ourselves put back on if a former president can't be on?

Larry 39:45

Well, again, a collection of this is what's the problem, the platform wouldn't kick you off except for the fact that they are able to use what the government collected and run it through a database and see that you are a PFR. They might not otherwise have known because sometimes I have heard that people, they check on the terms of service that they agree to them, and that these things don't apply to them that exclude them from their terms of service, and they go ahead and get on and get on the site. I've heard that.

Andy 40:18

Yeah, yeah, totally. Okay.

Ready to be a part of Registry Matters? Get links at registrymatters.co. If you need to be all discreet about it, contact them by email at 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. Not ready to become a patron? Give a five-star review at Apple podcasts for stitcher or tell your buddies that 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.

Andy 41:12

Joining us now is Steven from West Virginia. The NARSOL contact for NARSOL for three years. He is the newsletter for the state called the Crumbling Times and is also a PFR. The website for West

Virginia is wvrsol.com. Thank you for joining us, Steven. Appreciate your coming on pretty short notice, I think.

Steven 41:33

It's great to be with you guys. I've listened to you many times over the years. (Andy: Oh, yeah?) It's great to be with you. Yeah. (Andy: Longtime listener first time caller as they say?) Yes.

Andy 41:44

All right. Well, let's set this up so we can drill into it a bit. STATE OF WEST VIRGINIA EX REL. SCOTT PHALEN, Petitioner v. CRAIG ROBERTS, Superintendent, South Central Regional Jail, Respondent. As I understand it, West Virginia law provides that any inmate may be paroled after serving a quarter of a definite term sentence. In this instance, after serving 1/4 of his 10-year definite term sentence for violating his conditions of supervised release. The petitioner Scott Phalen was released on parole. However, he was arrested and re incarcerated six months later because the division of Corrections and Rehabilitation determined he had been released in error based upon an internal policy that inmates who are incarcerated for violating the conditions of their supervised release are neither eligible for parole nor entitled to receive commutation from their sentences for good conduct. I'm confused right from the get-go. It says Phalen was released on parole after serving 1/4 of a 10-year definite term for violating a supervised release. Can you explain what occurred here? Was he on parole or supervised release and explain the difference please?

Steven 42:42

Well Phalen was on parole. He was incarcerated for a violation of supervised release, also known as extended supervision. And he violated parole. And just briefly parole in West Virginia, I think a lot of other states is simply the release of one incarcerated but you remain under the sentencing control of the DOCR. Extended supervision is not under the control of the DOCR but instead, under the provisions of a county probation officer, the conditions are very similar to being on probation. They restrict your residency in our state to within 1000 feet of schools, victims, childcare facilities, and a host of other restrictions. Phalen was on extended supervision. He violated that extended supervision. Then he was granted parole. And then the DOCR created this new policy that he wasn't eligible for parole or good time. And they went out and re incarcerated them. This not only happened to Phalen. This happened to dozens of 'rolees in the state. So that's basically what happened in his case. They decided internally in the DOCR in October of 2020 that when you violate extended supervision or supervised release, you are not under a sentence, you are under a sanction. And if you're not under a sentence, you can't get good time, or you cannot be paroled. And that's why they decided to go out and pick up all these people after they let them go. Some people were out for over nine months and reincarcerated. Some people were out for only a few days. And everyone in the state of West Virginia who was in for a violation of extended supervision lost all their goodtime credit from that day forward. So, it was pretty intense.

Andy 44:44

Tell me some about the specifics of the case with Phalen. Tell me about him, specifically.

Steven 44:50

Well, he pled guilty to one count of first-degree sexual abuse and on February 14th, 2012, he was sentenced to one to five years in prison, followed by 15 years of extended supervised release. He discharged his prison sentence on December 2nd, 2013. And then he began his period of supervised release. According to West Virginia law, the period of supervised release begins when your probation expires, your sentence of incarceration or parole expires. So, once you're done with everything in our state, they place you on extended supervision and that can be up to 50 years. Phalen had 15 years of extended supervision.

Andy 45:39

That's a long time. I'm guessing that he violated a supervised release?

Steven 45:43

He did. We don't know the specifics of that, but he violated it and you don't get a jury trial or anything, you just go in front of a judge. His circuit court found that he violated his supervised release and on June 9th 2017. He was ordered and sentenced to confinement for a determinate sentence of 10 years for his violation, he could have gotten up to 15 but they gave him 10. West Virginia code for extended supervision is West Virginia Code § 62-12-26(h)(3) and it provides that if a circuit court finds by clear and convincing evidence that a defendant violated a condition of supervised release, then circuit court can revoke the defendant's release and require the defendant to serve in prison all or part of the term of supervised release. Now, what's amazing with supervised release in our state is, you know, Phalen's sentence was one to five years for his crime, but because he had a violation of his rules of supervised release, he now has 10 more years to serve. That's a long time.

Andy 46:52

Yeah, I think I hear about stuff if people violate their special terms and whatnot. But so as we talked about earlier, West Virginia law provides that any inmate in the correctional Institute is eligible for parole after they have served 1/4 of their time. But so after serving a quarter of his 10 year term, Phalen appeared before the parole board which determined that he should be released on parole, and he was released June 29th of 2020. So what happened after that?

Steven 47:17

Well, that's when the on October 21st 2020, 5 months after Phalen was released on parole, DOCR created a new internal policy that established that among others, sex offenders and child abuse neglect offenders were not eligible for parole, nor should they receive day for day good time incarceration credit if they were incarcerated for revocation of supervised release. As a result of the new policy on December 7th, 2020, the DOCR issued a warrant for his arrest. They said that Phalen had been released from custody on June 29th 2020 due to a clerical error or mistake. According to footnote six from the case document, the December 7th 2020 arrest warrant did not identify the clerical error or mistake that precipitated his release from custody on June of 2020. The court noted that the respondent had been given conflicting reasons for the issuance of the warrant and his initial summary response to Phalen's petition for a writ of habeas corpus. The state respondent said that the clerical error or mistake

upon the arrest warrant issued was that petitioner was not eligible for parole pursuant to the recently issued the DOCR policy. However, in a later filed supplemental response to Phalen's petition, respondent stated without acknowledging the earlier justification given that Phalen was released on parole in error based upon the DOCR policy relative to good time. They kept flip flopping; it seems like the state could not get their story straight. But the central point of the DOCR's policy was that Phalen violated his extended supervision. And he was not serving a sentence, so they didn't have to give them parole or goodtime credit. Instead, he was sanctioned. And that's why Phalen filed this case, to our supreme court in West Virginia.

Andy 49:33

I'm guessing that he didn't really go along with being arrested and decided to take his grievance to court.

Steven 49:40

He did and on December 23rd, 2020, he filed a petition for a writ of habeas corpus from a Regional Jail, which is really odd. And he sought reinstatement to parole directly to the Western US Supreme Court of Appeals. Generally, you have to go through a circuit court. He went Straight to the Supreme Court. And while his case was pending during the 2021 legislative session, Senate Bill 713 was introduced to amend the good time statute in West Virginia.

Andy 50:15

Backup for just something that you just said in there was that he filed it directly to what court? What, what, how did he file it originally?

Steven 50:25

Well, generally, in West Virginia, when you file a petition for a writ of habeas corpus, you go to your County Circuit Court of conviction. You don't go directly to the Supreme Court of Appeals, the western US Supreme Court of Appeals, because you need to have a hearing and they need to get a case record. But in this case, he went directly to the Supreme Court. He was represented by the public defender in the state, and they felt it was urgent enough to go directly to the Supreme Court.

Andy 50:55

That's interesting. Tell us about the legislation. Was it signed by the governor and what did it do?

Steven 51:01

Well, the legislation was introduced, again Senate Bill 713, to remove all good time credit for any inmate who was incarcerated from an extended supervision violation. And they dated it to the day that the DOCR instituted their internal policy change of October 21st, 2020. They did that by amending the good time statute to exclude anyone who violated extended supervision, which is primarily those with sexual offenses. The legislation became effective on April 30th of 2020 after being approved by the governor.

Andy 51:39

Interesting, okay, so it's well understood that under most ex post facto principles of the United States and West Virginia constitutions, a law passed after the commission of an offense,

which increases the punishment, lengthens the sentence, or operates to the detriment of the accused cannot be applied retroactively. Can you explain Ex Post Facto Clause?

Steven 52:00

Well, according to the court and West Virginia Supreme Court opinion here, they said that ex post facto prohibition forbids the imposition of punishment more severe than the punishment assigned by law when the act to be punished actually occurred. Critical to relief under the Ex Post Facto Clause is not an individual's right to less punishment, but the lack of fair notice and government restraint when the legislature increases punishment beyond that was prescribed when the crime was consummated.

Andy 52:35

Alright, it seems obvious to me though, so why did West Virginia legislature pass an unconstitutional law?

Steven 52:45

Well, we can pass that on to Larry.

Andy 52:49

Okay, we're gonna kick that can down the road there. Larry, what do you have to say about why would they pass something that seems to be an unconstitutional law?

Larry 52:53

Well, there's a number of reasons that they could have done it. And if you give them the benefit of the doubt, they didn't know. That's hard to imagine. But they were under pressure, public pressure, that is. bBcause I'm sure there was some sensationalized reporting about the dire consequences that would happen if they didn't do this. And because the law is presumed constitutional, upon enactment, and they, more often than not, they win these battles, because of the strong presumption of constitutionality. The people in in prison are under the control of correctional entities don't usually have a lot of resources, and they just end up getting away with it. But I don't know in particular why they passed it. But they did and they were shot down.

Andy 53:44

Interesting. So because they believed it to be constitutional. And the presumption is that all laws are constitutional until challenged in a court?

Larry 53:54

That is correct. You don't know what advice that the lawmakers are getting when they're passing this. They have some... every legislative body has some level of analyst available to the. They rely heavily on the Attorney General and the Office of the Attorney General to tell them and the Attorney General being that they're elected, they're not going to tell them sometimes that I recommend you don't pass this. Particular on something as hot as sexual offenders, anything related that. They're not going to come in and say, I urge you not to pass this it might be unconstitutional. They're going to say go ahead and pass it and we'll let the courts unravel it later. That's just typically the way it goes.

Andy 54:32

That seems super lazy to me, Larry. That seems just like passing the buck. We don't want to deal with it. We'll let somebody that

doesn't have a political career. That sounds like kind of a shady way to go about it. (Larry: It is.) Let me take this outside of the PFR realm. Does that happen do you think with other laws regularly or infrequently?

Larry 54:53

It happens regularly. It's the public pressure that that causes that reaction. You've got citizens and people say to me, Larry, you don't understand, all the citizens don't support that. Yes, Larry actually does understand that. But the citizens that are vocal enough that they hear their voices, those are the ones that matter in the formulation of public policy. We can't measure what we don't hear from. We measure what we do hear from, and we know what we're hearing with our emails and our telephone calls and all the various ways that people communicate with us. And we know that this is hot button item, they do not want PFRs roaming the streets any earlier than they possibly can. They want them to be incarcerated, the average citizen that we hear from wants them incarcerated, the longer the better. So they're going to formulate public policy around that. And that goes with anything that's sensitive. And it can go the other way in your favor. If there's strong public support for doing something that's good. That will be magically reflected in the actions of the legislative body.

Andy 56:03

Okay, well, we need to move on from this and keep rolling with the program. What is the bottom line, Steven?

Steven 56:10

Well, I'm going to give you Phalen's bottom line, and then the bottom line for everybody else in our state. But just from the opinion of the Supreme Court of Appeals of West Virginia on page 21. They said accordingly, we hold that in order to avoid the constitutional prohibition against ex post facto laws WV code § 15A-4-17(a) [2021], which is our good time statute, shall not be applied to those inmates who committed the underlying crimes for which they are incarcerated pursuant to West Virginia code § 62-12-26, which is our extended supervision statute, prior to April 30th, 2021. The effective date of this statute regardless of any contrary language contained therein. In light of this holding, we conclude that Senate Bill 713, and West Virginia code § 15A-4-17, as amended may not be applied to the petitioner. Phalen, in this case, whose underlying offense was committed in 201 to preclude him from being granted commutation from a sentence for good contact in accordance with that statute. So Phalen was then eligible for parole immediately. The bottom line for everybody else in West Virginia, and this was a three to two decision by our Supreme Court was that those with the offense dates, offense dates, not conviction dates, offense dates prior to April 30th, 2021, will still get good time credit if they're incarcerated for a violation of extended supervision. From April 30th, 2021 forward, if you commit a sexual offense in West Virginia and are convicted, and then you violate extended supervision, you will not get any good time credit. You're gonna do, like, for example, in Phalen's case, all 10 years, and you still will be eligible for parole at one quarter of your sentence, but you're not going to get any good time credit. So, it's not a good thing from here on out. But it is a good thing for those of us that were previously sentenced.

Andy 58:08

Do you guys have activity in the legislature that would have advocated for this to try and kill it before it would have passed?

Steven 58:18

Well, we didn't know about it. This actually slipped through the cracks. They did... see nothing's mentioned in the legislation about sex offenders. It only affected extended supervision. And that's how they slid this in there. Because the only people that have extended supervision in West Virginia, for the most part, is sex offenders. Some people that had child abuse claims but the majority, 1000s are those with extended supervision. So we'll be on the lookout from here on out, but we missed this one. And we didn't get to duke it out with them before they passed it.

Andy 58:53

I'm guessing because I know how big the West Virginia group there, the NARSOL affiliate. There's a hundreds of you. I'm surprised that it that it passed, slipped through the cracks.

Steven 59:02

It did, but and we track everything, anything that comes out with any of the sex laws, etc. But frankly, we were not looking for them to exclude those with extended supervision. It's a tough law. I mean, it really is

Andy 59:20

You missed your que to say that there aren't hundreds of people in West Virginia. There aren't even 100 people that live in West Virginia.

Steven 59:27

Well, we're just all spread out. It looks like there's hardly anybody here.

Andy 59:34

Anything else before we dip out?

Steven 59:37

Oh, I really appreciated joining you guys today. And again, if anybody has any questions or anything and they want to look at our site, it's wvrso.com I believe it is.

Andy 59:53

Thank you so much for joining us again on short notice so really appreciate you being here. (Steven: Your welcome. Have a good night, guys.) Thanks. I think we can go over to Colorado real quick. Is that where we should go?

Larry 1:00:09

Yep. And we got a lot to cover on Colorado. So let's do it.

Andy 1:00:12

All right, we're already at an hour. So this is going to run a little bit long. I will read very quickly. Your people put this case in the from the Colorado Court of Appeals called *People vs Landis*? Let me set it up. Defendant Christopher David Landis appealed his probationary sentence for attempted sexual assault on a child. He argued that the conditions of his probation restricting the use of the internet and social media violate the governing Colorado statutory scheme and his right to free speech under the United

States and Colorado constitutions. He argued that the Supreme Court's decision in *Packingham v. North Carolina* would make such a probationary condition unconstitutional. Larry, did he win?

Larry 1:00:51

No, he did not. (Andy: Oh, surprise.) The court stated that he fully acknowledged to date the internet has become one of the most important places, if not the most important place for people to exchange views and ideas. Under the circumstances here, we disagree with both of Landis' contentions.

Andy 1:01:10

I've always heard horror stories from Colorado in terms of how tough things are there. I'm not sure now after reading this case, it says according to the affidavit of probable cause for arrest, Landis sexually assaulted his stepdaughter when she was 10 years old. The evidence included his to police that he touched the victim's parts. The prosecution charged Landis with sexual assault on a child and sexual assault on a child by one in a position a position of trust. He pleaded guilty to an added count of attempted sexual assault on a child and the original charges were dismissed. The party stipulated to a sentence to probation. While that does not seem too harsh of a sentence, and the party stipulated to probation. Wow Larry, can you believe that? Why would they stipulate to only probation?

Larry 1:01:55

Well, we can only speculate. It could be that the trial court had ruled favorably on a suppression motion, that his confession was not admissible. It could be that the witness that would have testified was deemed not credible by the prosecution. They could have said we've got problems with our witness, or could be he was well connected with people in power. I really don't have any idea but it does seem like a very good, good outcome.

Andy 1:02:17

Jen in chat says probation there is awful. At the sentencing hearing the prosecutor agreed with recommendation in the pre-sentence investigation report that the district court sentenced Landis to PFR intensive supervision probation, SOISP and require him to comply with the standard additional conditions of probation for adult sex offenders, the standard conditions and the recommendation in the sex offense specific evaluation, SOSE. Is it the sex offense specific evaluation that caused problems for Landis?

Larry 1:02:53

It did, ultimately, but it was the two standard conditions that were underlying the issue. The district court sentenced him to seven years as you said SOISP. As for the two standard conditions, restricting the use of internet and social media. The court required Landis to comply with those conditions but modified them to allow for such use of the internet as required by his employment at the electronics installation company where he worked.

Andy 1:03:21

Okay, I see that all right, Landis argued, among other things, that he should not be required to comply with the two standard conditions prohibiting the use of internet and social media without prior approval from his probation officer. He emphasized that he is required to use the internet in his ongoing employment at an electronics installation company. He also argued that the

conditions violate his constitutional rights based on *Packingham v. North Carolina* from 2017, which invalidated a statute creating new felony offense for violation of post custodial restrictions on sex offender access to social media.

Larry 1:03:56

Yep, he did do that. He contended that the district court abused its discretion by imposing the probation conditions at issue because they were not reasonably related to his rehabilitation and the purposes of probation under relevant Colorado law. And I've used these terms over the years. And, and individual tailoring is so important. And yeah, I don't know what happened here. But that was supposed to be your line. (Andy: It was my line.) But let's start with the relevant points. Probation is a privilege, not a right. And the Colorado court referred cited *People v. Smith*, a 2014 case in Colorado. It's an alternative to prison and it's intended to be rehabilitative. If an offender seeks a probationary sentence as an alternative to prison, he or she must accept district courts conditions of probation. That's the opinion on page four.

Andy 1:04:54

Okay, and CRS. What is CRS Larry? I didn't see what that meant.

Larry 1:05:00

Colorado Revised Statutes.

Andy 1:05:01

Colorado Revised Statutes section 18-1.3-204(2) lists the various conditions of probation that a district court may impose, which included a catch all for any other conditions reasonably related to the defendants rehabilitation and the purposes of probation. The appeals court may have concluded that these conditions are reasonably related. What is the legal standard there, Larry?

Larry 1:05:31

Well, for him to overturn his conditions, it's abuse of discretion. And the court relied on a decision called *People v. Brockelman* from 1997. And I'm going to read it. It says we conclude from my evaluation of the five Brockelman factors, that their probation conditions at issue restricting Landis' use of internet and social media are reasonably related to his rehabilitation, and the purposes of probation. First, the conditions are reasonably to Landis' underlying offense. To be sure Landis did not use the internet attempting to sexually assault his stepdaughter, however, he engaged in sexual conduct with a child. And it was reasonable to place restrictions on Landis use of the medium that could easily be used to facilitate contact with children.

Andy 1:06:21

All right, well, now I'm starting to see the picture Larry. I recall that this PFR specific evaluation, according to the SOSE, objective testing indicated that Landis' highest sexual interest is toward juvenile females. It also concluded that he was in high denial regarding his offense, the SOSE recommended that he be monitored carefully while in the community and not have contact with the victim or with anyone under the age of 18.

Larry 1:06:50

That is, in fact, you're correct. And that was a significant point for the court. And that is one of the reasons among others that *Packingham* did not carry the day for him.

Andy 1:07:01

I can't even imagine like this doesn't seem like one of those poster child cases that we should try to bring up the flagpole of someone that had this... this seems kind of like a gross case to try and run up and challenge with. This doesn't seem like the right one to do.

Larry 1:07:16

Sometimes we're stuck with what our clients want us to do.

Andy 1:07:20

Alright, so the Supreme Court specifically pointed out that in *Packingham* that of importance to the court was the troubling fact that North Carolina law imposes severe restrictions on persons who already have served their sentence and are no longer subject to the supervision of the criminal justice system. The Supreme Court repeated that same point soon after, concluding that it is unsettling to suggest that only a limited set of websites can be used even by persons who have completed their sentences. We need to get out of this one. What did the Colorado Court of Appeals decide?

Larry 1:07:51

Well, I'm going to read again, we conclude that *Packingham* is distinguishable on the on that basis, as you just said, I like to defendant in *Packingham*, Landis is quite obviously still serving his probationary sentence for a sexual related offense. They went on to say, quote, as the United States Supreme Court held in *United States v. Knights*, inherit to the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled. And that's in the opinion on page 13. I say that over and over again, you have a diminished expectation of liberty. You do not have the same privileges that a regular citizen, you are paying a debt while you're on probation, you're being punished. Things can be done to a person who's being punished that cannot be done to a regular citizen.

Andy 1:08:41

The analogy that seems to make sense to me, at least it works for me is when you go get a new job, you often have something of a 90 day probation period, you've agreed to it, your employer agrees to it. And if for some reason, they just don't see that you're a fit. They just can you without really any questions asked. I don't know about state laws or labor laws, whatever. But that seems to be something that is in place. So you're on a probationary period. And they can you because they don't like how you dress one day. (Larry: Correct.) But Larry, I'm still confused, though, because the way that they say this is that he, while he can be banned from the internet, yet the Court recognized that the internet is so integral to the modern world. That seems conflicting.

Larry 1:09:23

Well, a little bit to me as well. But then they say that there are ample alternatives and quoting again, the probation conditions at issue still leave ample channels of communication for Landis to engage in everyday life. For example, Landis may still communicate in person, communicate over the telephone, who communicates on the telephone? Receive news from television and newspapers and write to government representatives. That's on page 18 of the opinion. So they are not on real solid ground here. But as I've said, legal people, legal minds can disagree. I said

when *Packingham* came out that folks, don't imagine that this is all encompassing to everybody. Because this was for people who had paid their debt in full to society and who were merely being subject to a civil regulatory scheme. They're supposed to have, in my view, the liberties that everyone enjoys. This is a person who has not the same expectations of liberty interest because they're being punished. Now, I remember shortly after *Packingham*, the West Virginia Supreme Court, they agreed with Landis. If he had just committed his crime in West Virginia, he would have the protection of that Supreme Court ruling because they said the opposite of what the Colorado Court of Appeals said. So I think this case will probably be petitioned, there'll be a petition to the Colorado Supreme Court asking them, and it could even go higher. But we don't know yet whether or not this is something that you can apply, the Supreme Court didn't, that wasn't the issue before them. And we don't know if a person under probation supervision or parole supervision or any type of supervision has the right to be on the internet.

Andy 1:11:03

As I recall the facts of *Packingham* where he made a religious claim on Facebook, I know it was under a pseudonym, an alias name. But making that really puts you squarely on the First Amendment, especially with this conservative Supreme Court, if that went up, oh, my God, they would totally rule in favor of religious freedom. But he was just on, he was past supervision. So like, he seemed like a really good case for the *Packingham* case. This seems like the exact opposite.

Larry 1:11:30

It does. And they've got basis for the... they narrowly tailor this, they're using the SOSE, the evaluation to justify this is exactly what we say we're for, for narrow tailoring reasonably related to the underlying offense and the offender characteristics. That's what they say here. They did tailor this to him based on his evaluation, and we'll just have to see, but I don't think that's gonna be the end of this case. I think he's gonna have to continue fighting. And we'll have to see what happens.

Andy 1:12:02

Okay, final question before we head out here. Doesn't that sound like a bad idea? Doesn't that present us with potentially, like a slam dunk negative, like a defeat on this type of case?

Larry 1:12:15

Potentially, it could if it were to go the US Supreme Court, but I suspect the Colorado Supreme Court was going to be the final say on this. You eventually run out of money.

Andy 1:12:24

Okay. Wow, that's frightening. Okay. Uh, Larry, we are like superduper overtime. We're like, as long as we were last week or the week before. Is there any else before we get out? We got to announce a new patron. And then we can scoot out. Anything else we?

Larry 1:12:38

We got a new subscriber, his name is escaping me. But I believe he was in Maryland. And we'll make sure we get your announcement next week. But we did, we did get a new subscriber to the transcript.

Andy 1:12:48

Okay. And then we also have a new patron named Jacob, and I can't thank you enough. I appreciate it so very much. And make sure you sign up for the Patreon feed so that you get these as soon as I release them. And as you will know, if you're not a patron, you will have received this on Saturday night. I got to edit this thing tonight because I'm heading out of town. Again I'll be out of town today. And I'm out of town tomorrow. Anyway, leaving going on a long drive tomorrow. But Jacob, thank you again so very much, Larry, anything else?

Larry 1:13:19

Did he come in at the \$1,400 level?

Andy 1:13:22

It was really really close. I'm serious. He was a very generous, I forgot to send you a screenshot of it. But it was very nice. And I appreciate it very much. Thank you, Jacob. We're at 89 Larry. So we're 11 away from 100. I got to start getting my reeds ready for my saxophone.

Larry 1:13:37

And the person who subscribed. I'm gonna follow up on that question. We're going to talk more about hearsay evidence. I'm got to try to have Ashley in the coming week or two, to explain exceptions to hearsay.

Andy 1:13:52

Okay, very good. Find all the show notes over at registrymatters.co. There'll be transcripts there, you can sign up for an email. I don't ever push the email. If you want to get an email when this thing comes out. Be sure to sign up for the email notifications and certainly leave voicemail like Jeff does over at 747-227-4477. Email us at registrymatterscast@gmail.com. And of course, as we just said, just like Jacob supporters over on patreon at patreon.com/registrymatters. Search first over a twitter, facebook, not facebook. Yeah, facebook too. And then also sign up and like us and share and subscribe on YouTube as well. Larry, I don't have anything else. I think that covers it all. And we will get out of here. Have a great night and a great weekend. And I'll talk to you next week.

Larry 1:14:38

Thanks for having me.

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