



Registry Matters Podcast

Episode 187

Recorded 7-31-21

Andy 00:00

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Larry 00:27

Fantastic. I'm glad to be with you on the final day of the month of July.

Andy 00:33

This is incredible. I can't like, do you ever notice the time just sort of like it's only February and then you're like, crap, what happened in July? Now? It's August. We're on the final like we're on the back half of the year.

Larry 00:44

Absolutely. And we're going to be in Christmas holidays. Excuse me. We don't say Christmas anymore. We're going to be in the holiday season before you know it.

Andy 00:52

That's because the people like the Jews would also like to be included in this so you can't just say Christmas, dammit.

Larry 01:02

That's why I've corrected myself.

Andy 01:04

Well, very good. Ah, should we dive right in? Or do you have anything you want to banter about? Do you have any pet peeves? Any podiums? What do they call them? Oh, god. What do you want to stand on? Soap boxes. Do you have any soap boxes to stand on before we get going?

Larry 01:19

No, we've got an action-packed program tonight. We've got a voicemail. We've got a submission from prison. We've got a big case out of Michigan. We've got all sorts of things. We've got some articles that are going to be fun. We've got a competition to see if anybody can win this week.

Andy 01:40

Outstanding. I like it, man. So, we should... we'll dive right in, won't we? I guess first up we will cover this little voicemail, won't we? Let's go into this voicemail that just came in yesterday.

Shane (Voicemail) 01:52

My name is Shane. I'm in Virginia. There's a new law called H2038. Which limits probation for a felony to five years, effective July 1st. I signed a plea deal for 20 years not knowing that probation included restrictions and have served six years without an infraction. Three years ago and attorney and I went to court to remove the probation which was denied. Four months ago, my PO wrote a letter to the court to remove me from probation. And I was denied again. I've been trying to find the found a lawyer familiar with this new law without success. One lawyer read it

while he spoke on the phone and said that it is a procedural matter. It makes a difference, which I don't understand whatever that is. I'm waiting for another lawyer to get time to help me. Will I definitely be released from probation? If the way I interpret the law it sounds like a will be but I don't know. Please help me. End. FYP.

Andy 03:04

Okay, first, let me just point this out Larry: this is someone that actually like composed a letter to like, read out for the question and didn't do a whole bunch of ums and ramble, ramble ramble? Like, thank you very much for putting together a decent question.

Larry 03:18

And it's a very good question. And I probably don't have all the information, we may come back to it next week. But there's a lot buried in there. And I can read between the lines. He was denied twice on his 20 years for early termination. Now you know, the old adage, serve half of it. So clearly, he hadn't served half of the 20. Right? (Andy: Yeah, yeah.) So he didn't get released. But what we don't know, there may be something lurking in there where that judge and that prosecution team have some anxiety with him being our supervision, and they could have very aggressively opposed that removal. And I'm inclined to believe that when you have the recommendation from your supervising officer, we're taking all this at face value, because probation officials don't typically go out on a limb and recommend termination. But with all that being said, if the judge still denies it, I would say that they have some anxiety with him being off supervision, and they probably were very assertive that they did not want him off when he made the request. That particular piece of legislation... Go ahead.

Andy 04:35

I wanted to ask a question for clarification real quick. It says he wants to remove probation. Like I did? He terminated the remainder of a sentence. Is that what he's trying to do?

Larry 04:44

That's what he was denied twice on. He served six of the 20 which is not half of 20, which is generally what most attorneys recommend you do. But in addition to... that's why you hire an attorney that knows what they're doing in this. You find out what the customs are in that jurisdiction if that attorney that you hired doesn't practice there. And that means doing some dialoguing with others who practice in that jurisdiction to find out how they're going to treat such a request. And then you find out if the prosecution has any anxiety with that person. How are they gonna respond to the petition? If you find out that jurisdiction doesn't let people off PFR supervision. And if you find out that the DA is office is going to be all up in arms, and adamant they're gonna bring the victim in, you're not likely to get off which would suggest maybe you shouldn't spend the money. But his question is, beyond that, there's a law which I have not researched. I just heard this for the first, first time right before we started recording. So I haven't done any research. But as a general rule, laws are prospective in their application. Particularly criminal laws. I mean, that's kind of what we've been fighting in this whole battle for quite some number of years. So for him to make the assumption that they're going to by

legislative action, change the duration of sentences that have already been imposed, that are already in execution status, would be quite a stretch. And that would only happen if the legislation itself declared that it was going to be applied retroactively. And you would only be able to apply it retrospectively if it reduced the time. Remember, we cannot increase people's punishment.

Andy 06:36

Okay, so prospective means that from this day going forward?

Larry 06:41

Correct. (Andy: Okay. Gotcha.) So without a proclamation within the legislation itself that this is to be applied to existing sentences, then it is only going to be prospective in its application. And generally, they don't apply these things retroactively, because it applies... Now this is just in 10 minutes of preparation as I heard this, but here's all the things that would go wrong. If you say that this is to be applied retroactively, we've got all sorts of problems. First of all, we got to figure out who the class of people are that are still serving the sentences. That would be somewhat of a task. Then we've got to figure out if they can't serve more than five years of supervision, we would have to figure out if anybody had been violated in year six and year seven, does that mean that that their sentence... if say they got sentenced to the remainder of their exposure, because they violated their supervision and they violated after the five years. Does that mean that that would nullify that sentence of incarceration that was imposed because they had already served more than five years? That would be another problem that we would have created from that. The likelihood without me even looking at the legislation is there was no specificity that be applied retroactively. So in my humble opinion, this is not going to do the job that he's looking for. But we can double back on it next week. And perhaps I can look at the bill and look at the applicability, but I don't see it being likely that this is going to do anything for him.

Andy 08:18

And when you say do not do anything, like it doesn't even apply. It's like I would like to play football and you're over in the baseball stadium. Like they're not related to each other at all.

Larry 08:27

Well, it would be similar, but you can't have it both ways. Do you want to apply laws retroactively? Yes or no?

Andy 08:37

I got you. I mean, we do sometimes and we don't sometimes. I would certainly like for everyone to have fewer shorter sentences. But if I want them to be shorter than doesn't it then also have to apply for future stuff, too?

Larry 08:49

That is the point making.

Andy 08:50

Yeah, towards make longer ones, not just future, but just to make sentences longer. So, if I want it that way, I have to also want it that the other way too.

Larry 08:57

Well, that since clearly probation is a part of a punishment scheme, you could not lengthen probation by legislative action. But by the same token, the state of Virginia has the same rights that you do. The sentence that they sought and plea bargained for and is already in execution status, the legislature can't come back and just arbitrarily change those sentences, because of all the problems that would ensue if they did that. The likelihood is that this is not retroactive.

Andy 09:28

Okay. So maybe this will be something that we build up some new content for to cover in a future episode.

Larry 09:36

I think I'd love to look up the legislation and see what it actually says. But I'm very dubious that this is retroactive.

Andy 09:42

And just to circle back just real quick on the idea of going before court to have your sentence terminated, something that I did very recently, and I was just shy of that 50% mark and I was kind of going under that idea that I would have to wait roughly until somewhere around 50%. I was just a handful of months shy of it. Well, this person is almost at like 25% of their sentence if they're at six of 20. So that's just past a quarter of the sentence. You could pay an attorney, hundreds of dollars perhaps to have them make some phone calls to the DA to see how things would go before you hire them on to go full guns blazing, and find out if they're going to oppose or not, what are your chances before you go in? Is that is that a fair strategy?

Larry 10:23

It is a fair strategy. You have difficulty finding attorneys who want to do that. They perceive you to be too sophisticated. And I think you experienced that with your attorney. (Andy: Yes he pushed back on me.) They don't like you inquiring about a strategy because they think that they are the only person who can strategize. And you should lay your brick or whatever you do for a living, and not get into their wheelhouse. But I continue to suggest that as a strategy. And if you've got 1000s of dollars to burn, don't worry about it, just go ahead and give the attorney all your money. But if you don't have 1000s of dollars to burn, then you would like to know if this is an exercise in futility. Before you go down the path, I would assume. I know that I don't like to spend 10s of 1000s of dollars if I have virtually no chance.

Andy 11:15

I do understand. I gotcha. All right, well, then let's move over to this, To be read. And this comes from I assume from someone inside the walls, Larry? (Larry: It does.) Alright says: To whom of this may concern, I'm writing you in regards of a sample transcript of your Registry Matters podcast, I've just started receiving my first issue of the NARSOL digest volume, blah, blah, blah, blah, blah, from June - July 2021. And what I've read so far is very interesting. I have a little over eight years until my 12-12 date, because I wasn't able to complete the MOSOP program. Thank you. I'm hoping to hear from you. Larry, I have two questions for you. What is 12-12? And what is MOSOP

Larry 12:01

That's precisely the reason why I put this in here. I really appreciate the questions from prisoners, from the incarcerated or whatever the politically correct term is, I really do. But it would help us a lot if you don't use prison jargon. Remember, we're on the outside. And we don't even... if we were good, we wouldn't be good enough to understand the jargon in all states. So, this is specific to Missouri. And the way I understand it from a little bit of Google search I did, this is the day that he actually totally terms out of his obligation to the state, when they have no more control over him. But we wouldn't know that without doing research. So rather than saying my 12-12 date, try to specifically explain it in terms that we'll understand. And the same with MOSOP. We assume that that's a sex offender program of some type. But we don't know what MOSOP is. We don't know who gets in it.

Andy 12:55

It's gotta be a Missouri sex offender program. That's got to be it.

Larry 12:57

We don't know how long the program is. We don't know if it's in prison. We don't know if it's available in the street. There's a whole lot we don't know. So, now be careful, because I'm not asking for 20 page letters either. But if you have something, if it's prison jargon, convert it to something that we'll understand. That would be very helpful.

Andy 13:19

Yeah. And then what is he asking for? I mean, there's nothing even there for you to like dig into. He's like he's received a sample. Thank you. And I'm looking to hear from you for what?

Larry 13:30

Well, I think he wants us to tell him about the MOSOP program. Had wasn't able to complete it. I'm guessing that's the question. But I'm not certain.

Andy 13:44

I gotcha. Larry, with those two things done, you have provided us a monster amount of content for this thing that has everyone all over Twitter and Reddit all up in arms about this thing out of Michigan. Are we ready to go there?

Larry 13:59

I hope so. It is a very complicated case. And I don't even know that we'll do it justice. We're going to try to answer questions for people that we think that they will have. But I don't know that once we finish this up, people will still probably have questions.

Andy 14:14

It could be a record as far as how early we've gotten into this because we're only 15 minutes in. But so we have the case of the State of Michigan v. Paul Betts. It's awesome win for our case for our cause. Michigan Supreme Court was asked to decide whether the retroactive application of Michigan's sex offender registration act, or SORA, as amended by 2011 PA 17 and 18, the 2011 SORA, violate state and federal constitutional prohibitions on ex post facto laws. Tell us, Larry, what is this case about? We've talked about Michigan, is this even related to that other Michigan case?

Larry 14:53

It is and the PA I think means public acts 17 and 18.

Andy 14:57

Thank you. Thank you. Thank you.

Larry 15:00

The issue in this case is whether the retroactive application of the 2011 SORA unconstitutionally increased punishment for defendant Betts' CSC-II conviction. The court held that 2011 SORA does impose punishment which makes retroactive application unconstitutional.

Andy 15:24

Can we dig into some background about the case. This Mr. Betts, in December '93, pled guilty to second degree criminal sexual conduct (CSC-II), MCL 750.520c. The trial court sentenced him to five to 15 years imprisonment. Two years later, SORA took effect. After Betts successfully completed parole he failed to comply with SORA requirements. Specifically in 2012, he failed to report his change of residence, his email address, and his purchase of a vehicle within three days. Bett's was charged with violating SORA's registration requirements. He moved to dismiss the charge, arguing that the retroactive application of 2011 SORA requirements violated the constitutional prohibitions on ex post facto laws. The trial court denied this motion. Betts ultimately entered a no contest plea, conditional on his ability to challenge on appeal the constitutionality of the retroactive application of the 2011 SORA. The trial court sentenced Betts to 36 months' probation, with 12 months jail time, but suspended imposition of that sentence during the pendency of the appeal contesting the constitutionality of retroactive application to Betts. I think this is what is referred to as conditional plea. Do I have that right, Larry?

Larry 16:39

You do. I'm very proud that you remember some of the legal jargon that we talk about here.

Andy 16:44

I have, what is the word? Eidetic memory, where I remember everything that is said to me. I thought that the matter had been resolved in Does versus Snyder. Didn't the Sixth Circuit find that 2006 and 11 amendments made Michigan's registry unconstitutional?

Larry 16:58

Yes, they did. But the decision in that particular case was only for the plaintiffs in that case.

Andy 17:05

I thought that the Michigan Supreme Court had upheld the constitutionality of registration in the past. What changed since their last decision?

Larry 17:12

Well, they had and most Supreme Courts around the country have said that registration is constitutional. Generally, they've made those decisions a long time ago. But it is a great question, because Michigan SORA, as initially enacted, was similar to the Alaska sex offender registration registry, which was the issue in the Smith versus Doe case that the US Supreme Court decided. Subsequent

amendments have imposed additional requirements and prohibitions on registrants warranting a fresh look, according to the Supreme Court of Michigan. And the Michigan Supreme Court cited Alaska case, Doe versus the State where the Alaska Supreme Court decided that that you could not apply retroactively because of the enhancements because of the intervening amendments so they say cited, Doe versus State. For the legal beagles out there. That's Doe v State, 189 P3d 999, 1017 in 2008. The Alaska Supreme Court came back and said, despite what the US Supreme Court said, there has been enough evolution and change to the registry, that we now hold it in violation of the Constitution. So that's what changed in Michigan, the registry changed.

Andy 18:27

And riddle me this: I was having a conversation earlier talking about this. This is where the Kennedy Mendoza Martinez the different tests against the civil regulatory scheme kick in to find if something is punishment? (Larry: Yes, we're going to talk about that later. Absolutely.) Cool. Okay, well, very good. So the Michigan legislature enacted SORA in 1994 in response to the Jacob Wetterling crimes against children and sexually violent offender registration program. The purpose was to better assist law enforcement officers and the people of the state in preventing and protecting against the commission of future criminal sexual acts by convicted PFRs. This version of the Michigan SORA created a confidential database accessible only to law enforcement. It required persons convicted of certain sex offenses to register and notify law enforcement of address changes. Since then, the legislature has amended the act several times, altering both the nature of the registry and the requirements imposed by it. Betts alleged that these changes transformed SORA from a regulatory scheme as it existed in '96, into a punishment scheme by the time his failure to register conviction in 2012 such that the retroactive application of those provisions to him violated the Ex Post Facto Clause of the Michigan and United States Supreme Court constitutions. Can you walk us through some of those changes Larry?

Larry 19:49

Sure. It'll take a few moments, but this is something I have debated profusely over the years when people say: well, the Supreme Court of the United States said the registry was constitutional. They did. They said, and they will continue to say that registries are constitutional. As we register young men for the draft, as we register, on and on and on. But there's a limit to what you can do with a regulatory scheme. And Michigan's registry was initially for law enforcement only, as you mentioned there, but they changed in '97. And it became accessible to the public when the legislature required law enforcement to make the registry available for in person inspection during business hours. But then, just two years later, in 1999, the legislature required computerization of the registry and granted law enforcement the authority to make the computerized database available to the public online. But that didn't stop, they kept going. In 2006, the legislature allowed for the registry to send email alerts to a subscribing member of the public when an offender registers within or when they move to specific zip code. And the registry became more and more accessible to the public. The information registrants were required to provide to law enforcement also expanded as well. In 2002, the legislature required registrants to report whenever they enrolled or disenrolled or worked or

volunteered in institution of higher education. Two years later in 2004, the legislature directed registrants to provide an updated photograph for addition to the online database. Nope, didn't stop there. In 2011, the legislature required registrants to report more personal information including employment status, electronic mail addresses, and instant message addresses, vehicle information and travel schedules. Registrants were required to update law enforcement of these changes within three business days, which was a substantial reduction from the 10-day reporting window that had previously existed. And the updates were required to be in person where they had been allowed to be by mail or telephone or email. And the 2011 amendments have further added periodic reporting requirements that instructed registrants to present themselves to law enforcement in person, one or up to four times a year, even if they had nothing to report.

Andy 22:10

If nothing is changed, can't you just fill out a box and go, nothing changes? Everybody's lives would be easier if you could just click the box no change.

Larry 22:20

So when I tell people that the registry has evolved, I've had people say, Well, no, you don't understand. The registry is exactly like it was 20 years ago. You'd be in a very different situation if the registry was exactly the way it was 20 years ago, because very few states have held the line for 20 years. But anyway.

Andy 22:37

No doubt. All right, well, you've said that in the past, the legislature just can't help themselves. It seems like that's in this case. It appears that Michigan was no exception, and they kept piling on more and more requirements and prohibitions. Specifically, amendments, effective in 2006, creating Exclusion Zones that prohibited most registrants from living, working or loitering within 1000 feet of school. The legislature also added an annual registration fee of 50 bucks. Couldn't that be just challenged? Because if you're a very indigent person, 50 bucks could be a big deal to you. (Larry: It could be.) In 2011, the legislature also enacted significant structural Amendments of SORA. These amendments designed to achieve AWA compliance categorized registrants into three tiers on the basis of their offense and based the length of registration on that tier designation. With this reclassification came lengthened registration periods, including a lifetime registration requirement for tier three offenders. Registrants' tier classifications were also made available to the public database. Did they ever do anything that made life better for PFRs? Larry, come on, I can't imagine that they did this.

Larry 23:43

Well, they actually did. Not all the amendments burden the registrants. Some were actually positive, but very few. Registration requirements were removed for individuals who were under 14 at the time of their offense, because that's all the feds require that aggravated offenses be registered for juveniles that are over the age 14. So they remove that. And for an individual who engaged in consensual but unlawful sexual conduct with a minor in close proximity of age. They removed those. They removed the requirement that students in remote learning programs for higher education were relieved to reporting their educational status. And

something that was really bizarre that they did. They took advantage of the opportunity in Michigan not to put the tier ones on the website. You're not required to display the tier ones in Michigan, where previously all of the registrants had been available to the public. They took the tier ones offline. So if you managed to be in Tier One, your life actually improved as a result of the 2011 amendments. So I doubt most of those people are going to want to go back to the way it was previously. I'm guessing they would like to stay private.

Andy 24:57

And then, this may already come up, but is this just where you talk about where certain clauses are separable. Is that the word, where you can remove certain pieces?

Larry 25:08

Yes, that is a factor in this decision. They talk about severability. That's what you're talking about.

Andy 25:12

Severability. That's the word. Um, well, let's begin by briefly covering who has the burden of proof when a statute is challenged on constitutional grounds. I note that the court stated on pages 16 and 17, Because we conclude that the legislature likely intended SORA as a civil regulation, we must now determine whether the statutory scheme is so punitive either in purpose or effect as to negate the state's intention to deem it civil. They went on to say, again, a challenging party must provide the clearest proof of the statutory schemes punitive character in order to successfully negate the state's intention to deem it civil. How do they make that determination Larry?

Larry 25:51

Well, I'm glad you brought that point up, because every chance we get to talk about burden of proof, constitutional challenges, the burden is on us. The state gets to have the presumption that it's constitutional. But the court said on page 17 I believe it is, in determining whether a defendant has satisfied this burden, meaning the clearest of proof, we do not examine individual provisions of SORA in isolation, but instead, assess SORA's punitive effect in light of all the provisions when viewed as a whole. End of quote. We assessed in turn each of the Mendoza Martinez factors that the United States Supreme Court identified as relevant in the Smith versus Doe case.

Andy 26:38

It would seem that the 2006 and '11 amendments went too far. Can you explain that? I've heard you refer to the Kennedy Mendoza Martinez factors in the past and you just did that again. What are they again?

Larry 26:49

Absolutely, we will go through those. So for evaluation, the Supreme Court provided this guidance if you're going to look at whether this can be done, constitutionally. The Supreme Court has provided a non-exhaustive list like non exhaustive list of factors that are relevant to the inquiry. And the case was *Kennedy v Mendoza-Martinez*, 372 US 144, 168-169; 83 S Ct 554; 9 L Ed 2d 644 (1963). But the factors are, whether the sanction involves and affirmative disability or restraint. Meaning that you can't have a regulatory scheme and call it regulatory if it imposes a disability or

restraint on liberty. Back in 2003, there was no restraint on the person's liberty. So that decision by the US Supreme Court was correct on that factor. Number two, whether it has historically been regarded as punishment. Number three, whether it comes in play on a finding of scienter. No one, including the legal professionals can explain what that means. Since most courts don't consider that to be a relevant factor, there's no need to spend a lot of our precious airtime on it. If the person would make, if the attorneys would make the right argument, it would be one more of the seven, that you could use that would weigh in our favor. Because actually interpreted correctly, it would benefit us. Number four, whether its operation will promote the traditional aims of punishment, retribution and deterrence. So in other words, if you create a regulatory scheme, and you're actually imposing punishment, retribution and trying to use it for deterrence, you can't do that. We don't register young men for the draft to do anything other than have the list available. It's not to punish them, it's not to do any retribution, it's not to deter them from anything.

Andy 28:49

You can't deter them from turning 18 either.

Larry 28:52

if you don't comply, you face five years in prison, you face a loss of student financial aid, and you face a lot of problems if you don't comply. But that's not the design of that. But the registry unfortunately, that number four factor, that that is significant. Number five, whether the behavior of which it applies is already a crime. Number six, whether an alternative purpose to which it may be rationally connected, is assignable for it, and number seven, whether it appears excessive in relation to the alternative purpose assigned. Those are the seven factors that US Supreme Court recommends for evaluating these challenges. The Michigan Supreme Court looked at five of those seven.

Andy 29:36

Alright, well, then reading the opinion, I noted that the court found that five of the those factors, the Kennedy Mendoza Martinez factors, were relevant to its decision. And how many of the five did they find weighed in Betts' favor?

Larry 29:49

They found that four of the five factors weighed in his favor.

Andy 29:53

Interesting, which of the five was most significant in your opinion? I found it significant on page 28 where the court said Given the uncertainty of the 2000 SORA efficacy, the restraints imposed were excessive. Over 40,000 registrants were subject to the 2011 SORA's requirement without any individualized assessment of the risk of recidivism. The duration of an offender's reporting requirement was based solely on the offender's conviction and not the danger he individually posed to the community, should say he or she even. Registrants remains subject to SORA, including the stigma of having been branded potentially violent menace to the state, long after they had completed their sentence, probation and any required treatment. All registrants were excluded from residing, working or loitering within 1000 feet of a school, even those whose offenses did not involve children. And even though most sex offenses involving children are perpetrated by a person

already known to the child. As described, this restriction placed a significant burden on registrants ability to find affordable housing. And it sounds like they clearly got the part you have said repeatedly about registration imposing disabilities and restraints. I really, really absolutely love that term, Larry. I know that you're not the creator of it. But I just think that that concisely describes exactly what we're talking about with the different kinds of restrictions, like the living restrictions.

Larry 31:12

So yes, I continue to have minimal faith in recidivism, although it was mentioned in this decision. But I continue to harp as I'm doing again today, that they certainly did get it in regard to banishment because people say it is banishment. They said the 2011 SORA's student safety zones excluded registrants from working, living or loitering within 1000 feet of a school property. But they go on to sound like traditional banishment. These exclusions do not explicitly exile a registrant from the community, but they might have effectively banished a registrant from living within the community. For example, in urban areas that hosts several schools within their geographic borders, the 1000 foot restriction emanating from each school might have a limited access to all affordable housing, or in rural areas with fewer schools but concentrated community areas, the 1000 foot restriction might have eliminated a registrants' access to employment and resources within the town or city center. And available homeless shelters have also been encompassed by the 1000-foot residence restriction. When you compare that with the Smith versus Doe case, from 2003, which the United States Supreme Court held did not violate the ex post facto, it left registrants - I'm reading from I think page 101 - It left registrants free to move where they wished and to live and work as other citizens. Folks, we have to keep building on the disabilities and restraints. You can wish recidivism would win your case. It won't in most instances, but disabilities and restraints will.

Andy 32:52

I think there's certain like right in that section there was about homeless shelters and be generally people want to live that have close access to schools. And a 1000-foot diameter circle is pretty freakin far away in like, I mean that's a that's a big footprint for a house to be away from an area that... so now it's 1001 feet and it's okay to live there like you're not going to take, that's just too far that whole extra foot is going to keep me from going doing something bad. It's just ridiculous. Schools generally now are encompassed almost into like fortresses with moats and alligators in the moat, practically they're fenced in. You're not just going to pop up on the school randomly. You're going to go through some ingress point to get in that could be semi patrolled, like flagged with cameras of some sort. If you need to keep the bad people out. They're not gonna hop fences most likely. I think the whole 1000-foot thing is just garbage, garbage.

Larry 33:47

Absolutely. Ron Book is one of the advocates in Florida, not for our side, but for the other side. And he says these types of restrictions are a no brainer. But I think he's actually the no brainer, but go ahead with your next question.

Andy 34:04

All right, another one of your points made its way into the court's opinion. You've said in the past that the so called right to know, oh, that's what FYP is about, the so called right to know, is that such a right would only extend to information that was part of the original conviction, not all the stuff that's made publicly available that had nothing to do with the conviction. I'm quoting now, the 2011 SORA resembles the punishment of shaming, the breadth of information available to the public far beyond a registrants' criminal history, as well as the option for restrict subscription-based notification of the movement of registrants into a particular zip code, increase the likelihood of social ostracism based on registration. While the initial version of SORA might have been more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality. It's a total scarlet letter, Larry. That's totally what we got to wear. The little A on our shirts.

Larry 34:57

Absolutely. And that's why I say what I say about when people say, Do I have a right to know? Absolutely, you do have a right to know about the conviction. That is a public record. Arguably, you have a right to have a mugshot of the person on their conviction date. On the date that they are pronounced guilty, either by plea or by verdict, you have the right to that. But you don't have a right to any of this other stuff. And the court noted on page 18 and 19 that quote, The 2011 iteration of SORA contained more personal information, and required less effort to access that information. The public-facing registry contained not only information regarding the alleged criminal conviction, but also the registrants' home address, place of employment, sex, race, age, height, weight, hair and eye color, and discernible features and tier classifications. When SORA's notification provision was used, members of the public were alerted to this information without any active effort on their behalf, in sharp contrast with the endeavor of visiting an archive for the information. Further, a registrant's information could precede his entrance into a community increasing the likelihood of ostracism. There is no right to know. The conviction is all they have a right to know. Please, when someone says don't I have a right to know, say, No, ma'am. No, sir. You do not have a right to know. But everybody always... if you watch an offender being interviewed, they always say yes, they are advocates always say yes, where does that right come from?

Andy 36:41

And that's a right to know that I live at XYZ Main Street at this current stage, maybe I lived at ABC Main Street, then maybe I was six foot tall and weighed 130 pounds. Now I'm 6' 12" and weigh 300 pounds, you have the right to know then because that's what the criminal record would say. But you don't have a right to know what kind of car I drive or anything like that now.

Larry 37:03

Absolutely. Or who you're living with. Which all the stuff that I mean, if you look at the list of what some states make available to the public, it's just mind boggling. That's not a part of the conviction. I don't know why it took all these years to get the attorneys to finally make these arguments. But they have finally started making them. And they're finally winning cases.

Andy 37:24

The state argued several theories which were rejected. They argued that the unconstitutional aspects could be severed as one option. And they argued that the court should revive the previous constitutional version of the law. Did either of those arguments work?

Larry 37:39

Fortunately, they did not. And we have an example in Ohio, where they did that revival of the previous version, which I think is inherently unconstitutional, but that's what they did. They revived the previous version. But having determined the Supreme Court of Michigan... remember, the federal judge, I had trepidation about the federal judge not certifying this question of severability to the Michigan supreme court because it's ultimately their call about whether that legislation can be severed on a constitutional point. That is not something for a federal court to determine. But they have come lockstep behind the federal judge and said, you're correct. This law is not severable. And they also poopooed the idea of reviving the last valid constitutional version. They say that severability and revival are inappropriate tools to remedy the constitutional violation in this case. We are constrained to hold that the 2011 SORA may not be retroactively applied to registrants whose criminal acts subjecting them to registration occurred before the enactment of the 2011 SORA amendments. Folks, please listen carefully. They didn't say you can't make someone register. They said that 2011 SORA cannot be applied. You could create a 2021 one, a 2022 one. It's just that this one can't. This one went too far.

Andy 39:09

Larry, can we noodle around for a minute? A person in chat asked the question, if someone says that they have the right to know about who lives next door, don't you have a reasonable expectation of privacy? And I don't know if that goes beyond the Fourth Amendment. But just in general, you're kind of an anonymous entity running around the United States. And that's just part of our design. So can't you just counter by saying don't I have a reasonable expectation of privacy too?

Larry 39:35

Absolutely, and that's where my consternation comes. But we inevitably say yes, you have the right. No, you don't. I want to hear no, every time someone asked that question. No, you don't.

Andy 39:48

Can we go into what FYP goes for or did we sort of decide to not discuss that anymore?

Larry 39:56

We decided not to discuss that anymore, but I think people can guess now that we've gone there.

Andy 40:01

Okay, well, no, I can guarantee you they don't because I've said, hey, think about this, and they still don't get it. Um, but so is there anything else? Let's see. It sounds like this is awesome, Larry, that they're going to like the judges making them go rewrite the law that they can't roll back to a previous iteration that they have to... I mean, do they have to start from scratch?

Larry 40:23

Well, they don't have to do anything. They could just let all these people disappear. They're not likely to want to do that. But in conclusion, the court said we hold that the 2011 SORA as applied to registrants whose criminal acts predated the enactment of the 2011 SORA amendments violates the constitutional prohibition on ex post facto laws. As applied to defendant Betts, because the crime subjecting him to registration occurred in 1993. We order that his instant conviction for failure to register as a PFR be vacated. This is awesome. This is awesome.

Andy 40:59

So how many failure to register convictions will be vacated as a result of this ruling?

Larry 41:04

We don't know that. We don't know how many will be vacated. But I can assure you that in the pendency of this nearly decade of legislative litigation after the Michigan legislature did what they did in 2011, many people have been convicted. A lot of them are probably still serving sentences related to 2011 violations. You remember, all the souped-up enhancements that we talked about? (Andy: Okay. Okay.) All those things that they did that were unconstitutional, there's a really significant task at hand now to figure out whose convictions are vacated, who's released from prison, who's released from supervision, this is a real challenge.

Andy 41:46

Can someone, remember we was talking about the Uhahl situation? Could people convicted prior to '11 just pony up and migrate over that way and then not be on the registry?

Larry 41:59

Well, they could but I think the Michigan legislature passed a new version, which would apply, potentially, to these people. It'd be helpful if we had some Michigan folks to come in, because I didn't have enough time to go into all that. But I think they passed legislation that restored a registry. So, I think that that this is kind of somewhat been mitigated by legislative action. And you'll have to prove, and remember the burden to start all over again, with a new enactments presumed constitutional, so they'll have to start this all over again.

Andy 42:33

And can you describe in more detail, from what we described here, I don't see a whole lot of tie between the two. Is that Judge Matsch, is that right? Is that the right name of the judge that ruled on the Michigan case three years ago?

Larry 42:46

No, that was from Colorado.

Andy 42:49

Okay, that's Colorado. Okay. My bad. So how is this related and not related to that scenario?

Larry 42:56

There was a lot of references in the 60 pages about that decision. I didn't think it was all that relevant for what we were trying to cover. But there is a lot of nuance about the federal parallel litigation and what was going on in federal court.

Andy 43:13

So much in there, um, and this is the supreme court. So, this applies to all of the peoples of Michigan, but it does not apply to their district, which includes like Kentucky and another state up that way, but does not apply to the United States and, and so forth. But it's citeable. It's something of like, hey, this happened here. And you guys might want to put it on your radar?

Larry 43:39

It's very persuasive authority. Yes. So this is this is another one of the building body of case law. Now, I mean, that body of case law is becoming significant. Legislators, I know you're listening to us all across the country, I know that you are. If you want to have a registry, stop doing these add ons, you can't impose all the things that victims' advocates would like to have you do within a civil regulatory scheme. If you're gonna do that, we're going to keep coming after you and we're going to keep winning, because you just can't do it. You can't use a disguised regulatory scheme to inflict punishment. You can only do it to regulate.

Andy 44:27

One-ish, maybe final question that I have in regards to this, and hopefully I can remember. It is... nope it left. I just I'm just really hung up on the 1000 foot any sort of presence, distance kind of restriction and what that does. If we had like horses and buggies later, like from the days when you were growing up 1000 feet might be something halfway significant to traverse. But it doesn't matter if it's 5000 feet, it's not hard to traverse 10 miles to get to a location, by that same token. Like it just doesn't make any sense to me whatsoever that there's some arbitrary number that says 1000 feet, puts people too far or too close to the entity in question. And I just can't rationally like work my way through logically why that makes any sense.

Larry 45:13

Well the theory is, and I'm not supporting the theory, but the theory is that people recognize folks who don't belong in a certain location. So if you have a person quote loitering that doesn't have any quote business there, they're more spottable. So absolutely 1000 feet or 2500 feet, it wouldn't make any difference if you're going to do something. But the theory is that the person would be noticed, because they don't fit in here. When you when you go to pick up your kids at the school, there's all these cars parked out there, but you see the same cars every single day. And when there's a different car, someone notices. who is that? You know, it draws attention.

Andy 46:03

Okay, I mean, then it would encourage them to make it where you can't go places outside of that 1000-foot range of where you are, because people would recognize you within that zone, they wouldn't recognize you out of that. So that's where you should be able to go.

Larry 46:19

Absolutely. The whole thing's ridiculous. (Andy: I know it is.) But unfortunately, when they were debating these things, we weren't there.

Andy 46:29

Okay, that's another one of these things where we were talking about the South Carolina Supreme Court decision, where the, I can't imagine not looking for advocates in this general space and not coming up with one of our people to, whether you find the South Carolina affiliate, or you find NARSOL or whomever, to try and reach out to try and get some people to pile on with you. But these people keep filing challenges that we don't find out about until the very end of it, and we never had a chance to try and assist and strategize and whatnot. I'm baffled by that too.

Larry 46:59

Well, sometimes they don't know about us, either.

Andy 47:03

Right? Um, is there any sort of monetary challenge or problem from the state in this? Because if it were a constitutional challenge, isn't there something that gets piled on that they have to pay attorneys fees or whatever?

Larry 47:13

Well, I don't know what the rules are in the state proceedings, but in the federal case, the attorneys got gobs of money from the state. That's not gonna deter them. I mean, it's not very much in the overall scheme of a state budget.

Andy 47:28

Okay. All right. Well, I certainly am happy to hit them in their pocketbooks. If that's that is a thing. And Paul made a statement in chat. He says they don't care if we go after them, they get elected for creating these unconstitutional regulatory schemes. If we go after them after the fact they just don't care because they still got their votes.

Larry 47:47

Well, that's a reflection on the on the people though. He keeps blaming the lawmakers, we need to start blaming the people.

Andy 47:53

Yeah, 'cuz we voted for the lawmaker, and they did the things that we wanted, so we should be mad at us for electing them.

Larry 48:02

Right. Their reactions are generated by phone calls and emails they get from constituents. I worked in a senator's office. I know what we hear. And the public supports registration, and they support it big time.

Andy 48:20

Sure. Let me, someone in chat just posted this question. Says residency restrictions have been struck down in PA, New Jersey, etc? Why can't we get them removed everywhere? Why do they still have them in Georgia, Larry and many other states, if we've won in other places?

Larry 48:35

Because these decisions are not binding in Georgia. That's the simple answer.

Andy 48:40

So we would have to possibly use that as a cookie cutter and model a new challenge. And but you'd have to have some sort of what's the word if you get denied housing, because of the residency restriction. You have to have skin in the game? What's the word there?

Larry 48:53

You have to have legal standing.

Andy 48:55

Standing, that's the word. So somebody would have to say, I would like to live here and you get denied, then you have to go File a challenge. And I assume that requires money.

Larry 49:03

Well, I don't know if you would, if you'd have to be denied there, but you would certainly have to be a PFR. You'd have to have possibility of it being applied to you, the exclusion zones. But just because Michigan Supreme Court said something, that's not binding in Georgia. Tell me what Georgians would say if a Michigan supreme court, if you started going around saying well, We gonna have to change our laws down here in Georgia. That Michigan Supreme Court has decided that you can't do this. What would an average Georgian say? (Andy: FYP.) That's exactly what they would say.

Andy 49:36

I was trying to figure out if I could wing it into the program so that people could get context. Alright, I violated our terms Larry. And I am sorry. Anything else? And we've covered this for a super long time. I am sorry, if anyone's eyes have rolled in the back of their heads. I am super happy about any sort of victory that we can get even if it's little but this one seems pretty significant. This could have impact over possibly 10s of 1000s of people that are in prison now for some bs like a procedural violation, a technical violation of not registering their car within 72 hours and all that garbage, this could help out a lot of people.

Larry 50:08

It absolutely could. A lot of people could be cut loose.

Andy 50:12

That's awesome. Well, very good. Pick one or two of these articles that we have, because we don't have a lot of time before we have to close out the show and do the winner and not winner of the contest last week.

Larry 50:25

Let's do the Angola and the restoration of voting rights. That would be good.

Andy 50:32

Cool. Gotcha. I will move that there. Okay. So this article comes from the Marshall project and the title is: A filthy New Orleans jail made my son sick, the cruel and unusual medical treatment. An Angola prison killed him. Holy crap, tell me what you found in here some of the gory details about how someone wasn't having a very nice time in prison.

Larry 50:53

This is one if you read it, and you have any, any emotional capability, you're going to find it very sad that this 45 year old, ended up dying from what should have been able to be addressed with proper medical care. And this prison system in Louisiana has been notoriously inadequate in providing medical care. Prisons across the country don't provide the greatest of medical care. But Louisiana has been particularly horrible. And this is just a tragic thing. And hopefully, something good will come out of this. Hopefully that this, this will, it says in March toward the end, a federal judge ruled that inadequate health care at Angola amounted to a violation of the Eighth Amendment, which bars infliction of cruel and unusual punishment. And this guy did testify in that particular proceeding, but this is just awful, folks. This is what we think about when we put someone in prison, we're taking away their ability to care for themselves. I know this sounds like a liberal philosophy. But I believe we have an obligation to keep these people safe and healthy. And if it costs money, it costs money. But when you take away their ability to provide for themselves, you have to step in and provide for them. If you don't like that, don't incarcerate so many people.

Andy 52:25

Did you hear, to take a little bit of a detour, have you heard a lot of fire coming back at Larry Krasner, the DA in Philly for the rising crime rate in that city?

Larry 52:36

I've heard it. It's across the country. These liberal do gooders are being criticized for the increase in criminality.

Andy 52:45

And the way that it was presented is that you might be able to blame him for at least some of it. But you can find rising crime rates in places where there aren't these progressive DAs. So, it almost then would negate saying that it's directly his fault for giving people lighter sentences. And I don't want to call it kid gloves, but just reducing the prison population and the jail population in general. I was just wondering if you had been following any of that. Did you have any quick comments that you'd like to make on it? I'd be interested in your opinion.

Larry 53:13

Well, it's going to be spun that they're directly related. I mean, the conservatives are going to say that this is an example of what you get when you put these kinds of people in charge. They do not have a clue what they're doing. They've turned loose a tidal wave of crime on you. And that's what happens. That's what they're going to say. If you choose to buy into that, then it's on you. But that's what they're gonna say.

Andy 53:39

Sure. All right. And then we can move over to an article from NatLaw Review, which I'm going to go with is National Law Review. Restoring voting rights for individuals with criminal records and the need to inform them of their rights. Where do you want to go with on this one?

Larry 53:54

Well, I'd like to go with people who don't vote, yet they have the right to. In this article, second paragraph between 2016 and 2020, 13 states expanded voting rights for individuals with felony convictions. The Marshall project examined voting rolls in four states that recently reformed their voting laws. Those were Nevada, Kentucky, Iowa, and New Jersey and found that quote, only a fraction of the 1000s of formerly incarcerated people whose voting rights were restored in time for the 2020 election made it back to the voter rolls. How is it that we work to try to get the right to vote and people are not doing it? It says indeed, less than one in four eligible voters who had been formerly incarcerated were registered to vote out of the study group. It's pretty pathetic.

Andy 54:50

So, then you had people like Rush, losing their mind and pulling out all their hair for the, if I'm not mistaken is who it was (Larry: Yep.), was pulling his hair out when they rolled back the voting right restriction for felons in Florida. It was amendment number four, saying that this was going to flip the whole thing over, you're going to have a million or whatever, Democrats voting and now this, like only one in four have gone out to vote.

Larry 55:14

Well, not only that, but we did an episode where we showed that by objective evidence, more of the people that have been incarcerated are going to vote conservative and not vote liberal. They don't vote for the Democrat Party anyway. But there's that paranoia that because they're going to vote democratic, that we can't restore their rights to vote. But I think you'd actually find a whole lot of Republican votes would come your way.

Andy 55:41

I understand. Larry, last week, we played a clip that didn't really do so well, I guess you could say that. Nobody wrote in and guessed it. And so I'm going to hopefully, I'm gonna try and play for you now. What? Oh, shoot, you know, of course, I start pressing buttons and my technology blows up on me Larry. You know how that happens?

Larry 56:03

I don't know how that happens. But I'll take your word for it.

Pres. Gerald Ford (Audio Recording) 56:07

And I must say to you, that the State of the Union is not good.

Andy 56:15

It was that Larry.

Larry 56:17

That was Gerald Rudolph Ford in the 1975 State of the Union address. He, to my recollection, and I've been around through well over 100 of those, State of the Union Addresses. That is the only time a president has reported to the nation that the State of the Union isn't good. They always use language like it's strong. But in 1975, he said the state of the union is not good. That was who that speaker was.

Andy 56:45

Was that like during the gas crisis? What timeframe was this? What was going on for him to say that?

Larry 56:51

Well, he had just assumed the presidency in October, excuse me, August of '74, after the resignation, and he had issued the pardon in September of '74. And then we were in the middle of we were still in the oil embargo. So, we had energy lines. We had inflation, stagflation, as they called it. And there were a lot of people who were losing faith in the government's ability to react. We had the swine flu in '75. It wasn't till later, but I think swine flu came along in '75. There was an attempt to vaccinate Americans against the swine flu. But there was just so much going on, that the government seemed paralyzed, inflation was high and so the president, honestly reported that the State of the Union wasn't good.

Andy 57:43

Alright. Well, then, now I've got to find... we're gonna play that other clip. I got to put the thing out there with the with the new one. I've got to play the new sound.

Larry 57:52

Now we know that there will be dozens and dozens of people who will get this one.

Andy 58:01

I am inclined to agree with you Larry. I swear I put it on one of these buttons. But I'm going to make it happen just because that's what I'm going to do. Because I don't know where I put it. So here is your question or the voice for this week. So what you're going to do is when you know this person... gosh if you don't know who this person is, I got nothing for you. Send me an email message over at registrymatterscast@gmail.com and tell me who this person is.

Who's that Speaker? 58:33

In this present crisis, government is not the solution to our problem. Government is the problem.

Andy 58:44

And there you go. So like I said, Send me an email at message at registrymatterscast@gmail.com and tell me who... Did you not hear it Larry?

Larry 58:53

It was a little on the low side.

Andy 58:55

Okay, well, I'll fix it for the podcast then. I will boost it. Someone said they couldn't hear it in chat. So it will be mo louder when it does play. So there you go. There's Who's that speaker that's our new segment where you can win fabulous prizes and come on the air and run around and be all special. And I'm just kidding on all that, there's no prizes, but you get to have your name announced or something like that. Get your 10 seconds of fame. Larry, did we get any new patrons this week?

Larry 59:20

I think we got a couple.

Andy 59:22

We did. We got one. Daniel, thank you so much, Daniel. You are at the level that you get to have a transcript sent into someone behind the bars if you want to. So let us know that address of a person. If that's how you wish it. We are getting super close Larry to the 100-patron mark. We are like single digits away. And I'm gonna have to like really actually start practicing. So you might see some extra videos of me practicing in your Patreon feed and to try and get people pumped up for it. And is there anything else before we scoot out Larry?

Larry 59:53

So was Alex a new one this week or was that last week?

Andy 59:57

That was last week. Daniel was the only one that I saw within the date range, but if you give me one second, I'll check and double check real quick, because I don't think there was anybody else this week. That was on the 23rd was Alex. All right, that was prior to last week. So, we announced him last week. I'm pretty sure. If not Alex, thank you very much for coming on board. And that was super generous.

Larry 1:00:22

Yes, he's at 1000 a month, I think.

Andy 1:00:25

I think so. Did we get any non-Patreon people but behind the walls, people?

Larry 1:00:30

We did not. We're getting more and more requests for samples, but we haven't gotten any new ones to announce that I can think of.

Andy 1:00:38

Okay, sounds good man. You can find the show notes over at registrymatters.co. Of course, that's where you would go to get

the transcript or find out any sort of links to go anywhere else. As I said, already, you can email us over at registrymatterscast@gmail.com and then also voicemail at 747-227-4477. The best way on our favorite way to support the podcast is to go over to patreon.com/registrymatters. Larry, you're the best, best, best. And I appreciate all the information and you bring up these cases and do expert analysis. Let me let me cover one thing before we actually like jump out of here. How much do you interpret of these things or how much do you read directly from it to make up your analysis?

Larry 1:01:24

I've been interpreting less recently. And the reason for that is we had a snippy response out of Wisconsin saying that the case that involved homosexual sex, according to the court didn't have anything to do with homosexual sex. So, I'm striving to put in more direct quotes from the court with less of my spin. Because I want you to know, this is what they're saying. This is not us saying this. We're just reporting what they're telling you. But a lot of what's happening here is what I've advocated for for several years now. And we're finally getting there.

Andy 1:02:03

Fantastic. All right, Larry. Well, that's all I've got. I appreciate it very much. And I hope you have a splendid rest of your weekend. And that's all I got. Have a great night.

Larry 1:02:13

Thank you for having me here.

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