



Registry Matters Podcast

Episode 205

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Andy 00:17

Recording live from FYP studios West and in a tupik the northeast, transmitted across the internet. This is episode 205 of Registry Matters. Good evening, Larry. We have a mountain of stuff to cover tonight. How are you?

Larry 00:33

Doing awesome. Now, where are you recording in the Northeast? What did you say you're recording in?

Andy 00:37

It's a tupik And you know, I probably have already closed the window. I looked up alternate words, words for igloo. And that's what I came up with. It's a hut made out of animal skins. I'm so far north, I need a special kind of apparatus.

Larry 00:53

I see. Okay.

Andy 00:56

Tell me sir. I mean, we're just gonna dive right in. Because there's no time for us to meander about. We have too much stuff. We need like three hours to record the show tonight. We have 60 minutes to do it. What are we doing?

Larry 01:07

We're doing some cases. One just recently came to our attention this morning out of Tennessee, the Middle District of Tennessee, US District Court. We're doing a case from the Kansas Supreme Court. We're doing a case about money seizure, interstate highway interdiction programs. And we have some questions that have made their way to us from our listening audience.

Andy 01:32

Let us dive right in. I wanted to cover this because in episode - what was it? - 202, we had Brandon Thomas on, but there was a person that asked us a question that night about having internet access and driving a truck. Do you remember this, Larry? (Larry: I do indeed.) So way back in our history, one almost like one of our first patrons was a guy named Mike and he was a truck driver. And he actually ended up coming down to my area. And we hung out for a few days when his truck was being repaired in my area. And he wrote back a really long detailed answer of like, no, if you're a truck driver, you're really gonna need some internet access. And so here's what he wrote. A note about a recent episode where a person from Florida wanting to drive a truck: He will most likely need Internet access. While the logs are technically connected to the internet, it's more in more depth than that. How is he going to communicate with dispatch? Sure, he can use a flip phone. But that's not realistic. You need a smartphone to do your job. You need the camera in case of an accident, or any other incident where the dispatcher may need pictures. You may need to be able to send documents you get from the shippers or receivers. Personally, I use CamScanner. An app on the phone. And I can

personally attest to that one. I love that app. Then what about the truck GPS? They are all connected to the internet for at least updating software, not to mention live traffic and even weather. That does seem to be really important Larry, if you are driving a truck that you would not want to just get stuck in some traffic jam for hours. And with a smartphone, you can pay for some things with the company money instead of instead of yours by using their account. I did this for weighing the truck to keep it legal, about \$20 a shot. This can also be done for fuel if you need to fuel at a truck stop. You will need to send receipts back to your company to if you pay out of your own money for services. If you can send them and email them immediately, there's less risk of losing them. I could go on and on for a lot of other times when a smartphone would be needed. But trust me, it will be a requirement. Another thing is that this person could possibly consent to location sharing so his handlers know exactly where he is if he wanted to go that route. I know I wouldn't. But it may be a possibility if it is needed for the job. Finally, since you are driving a vehicle that is over 70 feet long, just using a book of maps is not enough. I could not count the times I used Google Maps satellite view to check out locations. This way I knew where I was going to be better prepared. Super thorough answer. Thank you, Mike. Really appreciate it. You met Mike at the conference. That's that guy I'm referring to.

Larry 03:56

I did indeed. And we had a discussion on various topics. Smart guy, I don't exactly agree with him on everything, but he's a smart guy.

Andy 04:06

I can't imagine what you would disagree with this particular individual about not at all.

Andy 04:13

Uh, I think since we've covered that, I guess we're gonna we're gonna go over to this Kansas case, Dennis Shaffer. And I think you were somewhat involved in it, weren't you?

Larry 04:27

I was and I'm constructing part of this interview from emails that that had been sent to me by Mr. Shaffer. And he took he took an Alford plea on a charge and, and venue was changed from Clark County, Missouri to Kirksville, Missouri. And the charge was sex abuse in the first degree, and he was given a suspended imposition of sentence and he was told that he would not have to register on the PFR registry or take PFR classes. He was given five years' probation which he violated. And he ended up serving prison time and he was released in April 2000 and moved to Kansas, to Olathe, Kansas, where he was initially not required to register in Kansas.

Andy 05:15

But as I understand it, he got a letter from the Missouri State Highway Patrol saying that he had to register in Kansas in 2008 after the retroactive registration law went into effect, and also stated he would have to register for a lifetime. He then received a letter from the Kansas Bureau of Investigation saying that if he did not comply by registering as a PFR, he would be arrested. We have

that letter here at FYP. Did he comply with the Kansas law as directed Larry?

Larry 05:43

He did indeed. And he was complying until April of 2017 when he forgot to make his required quarterly appearance. He said he was in the process of moving to Alabama. So he had already registered in Alabama. And while he was in Alabama on vacation, he was driving his boat, and the water patrol pulled him over. The Alabama authorities discovered that Kansas had a warrant out for his arrest. He was extradited back to Kansas.

Andy 06:12

He was offered a plea in Johnson County, Kansas. And as I understand it, Mr. Shaffer believed that he would not have to register in Kansas. His position was at the application of KORA, I guess that would be Kansas Offender Registry act, to him violated the Ex Post Facto Clause. Your law office worked with him in some capacity?

Larry 06:37

We did. And they had offered him a plea with a provision that he could appeal the question of his registration.

Andy 06:47

Could he find someone that's licensed in Kansas to help represent him?

Larry 06:52

He reached out because of our advocacy. He found out about NARSOL's advocacy. He was reaching out to advocacy organizations, and he connected through that process. And we weren't really able to recommend anything to him, since no one was licensed in my office, but we did talk to him. And we consulted with him as a consultant rather than a lawyer. And you're actually welcome to read a letter that we actually suggested that he send to his attorney in Kansas in terms of our concerns regarding the plea.

Andy 07:33

And you want me to read just the plea offer part or which part of this would you like me to read?

Larry 07:38

It depends on how energetic you are on reading, but yes, all right. So,

Andy 07:44

I will start at plea offer. It says: Plea offer. At this time, I am not inclined to accept the current offering. I will explain my reasons. (1) Affidavit. The Affidavit on its face clearly demonstrates that I've been faithfully complying with the Kansas PFR registration since January of 2010. Second, during the entire eight years, I have not moved, which means the public at large was not in danger because of my forgetting to update my registration. The only thing the update would have accomplished would be it would have permitted law enforcement to see me in person. And I would have confirmed that I'm still at the same residence I've been for the past eight years. Third, the plea offer appears to be intensive supervision, which is unacceptable. Intensive supervision, which includes PFR treatment, polygraphs, expensive counseling, may be

appropriate for a person just entering the justice system for recent PFR type crime. However, my conviction occurred nearly 25 years ago. And these probation requirements are not appropriate for me, nor am I able to comply with them. I lack the financial resources... Larry, hang on. How was he lacking the financial resources if he was like tooling around in a boat in Florida?

Larry 08:55

Well, that was the representation he made, but go ahead.

Andy 08:59

Okay. I lack the financial resources and my physical disability does not allow me to comply. If I were to accept this plea offer, the likely result is a free ticket to prison. Wow. Like that's the opposite of the monopoly thing, Larry with the get out of jail free card. The counteroffer, I will consider an offer that guarantees a probated sentence without supervision or one that stays serving of the sentence until the appeal has been decided. Administrative probation is clearly an option on the form which can be done if the prosecutor chooses to be reasonable. And if that is not acceptable, the prosecutor clearly can stipulate that the surface of the sentence shall be stayed until the appeal is complete. Your selling points for my counteroffer are PFR registration is a civil regulatory scheme, which means I have not committed a new PFR type offense that merits intensive probation supervision. Number two, the violation as alleged in the officer statement makes it clear that this is a technical failure, oversight on my part, rather than willful noncompliance. Third, this outcome will spare the state of further effort dealing with an appeal and assure them a conviction. And then finally, appeal duty to register. You've indicated that the prosecutor will permit me to appeal. That concession is of little benefit if I lack the financial resources to undertake the appeal. Will you in the state add a stipulation that I will be provided representation to handle the appeal as long as I remain indigent? And will you stipulate that your office will handle the entire regardless of personal personnel changes? I'm sorry that this letter did not reach you sooner. However, I did not receive your communication regarding the offer until yesterday. Sincerely, Dennis Schaffer. So now that I've read the letter, though, it appears that your office was doing all it could to help them through the process. We haven't played that clip yet. So we need to get there. Do you want to play that clip real quick?

Larry 10:53

We were doing all we could to help him through the process. Which clip are we gonna play? We got several of them.

Andy 11:03

Yes. Should this be the first one?

Larry 11:05

Let's hear what you got queued up there.

Andy 11:09

All right.

State Supreme Court Justice Biles 11:10

If Missouri had no registration requirement right now, would he have been required to register in Kansas?

Attorney Jennifer Roth 11:24

I think that- I think that maybe not. Let me go back to something you said. My brain also is tangled in this. And it is somewhat complicated by the fact that we don't know under what ground the state even charged him that he has a duty to register. We don't- there's so much information that we didn't have in this prosecution. And so that's why...

Andy 11:52

Larry, it sounds a lot to me that- we talk about this regularly- of not all attorneys are created equal. And not all of them are experienced in the various areas that you really need an attorney that knows how this stuff works before you have one tries to represent you in something as important as not going to jail.

Larry 12:11

And we need to set this clip up. This is coming from the Kansas Supreme Court's oral arguments that were heard in March. This was his appellate attorney that was handling that appeal for him. So they're arguing before the Kansas Supreme Court right now. And that sounds really reassuring to start with, doesn't it? When she says she doesn't know. I love it

Andy 12:36

Completely, completely. Um, it seems as though the attorney wanted to do that. And she was trying to introduce new facts on the appeal. She asked for a remand to establish the facts. Is this what you always cringe about whether it's a civil case or criminal case?

Larry 12:52

It is indeed. The facts in this case were agreed upon by the parties. And the Supreme Court could not altered those agreed upon facts. I think that's in our next clip, maybe, of what could be better.

Andy 13:05

So can I just try to make a comparison? This is what you rail about with summary judgments too that the parties have agreed to- even if there are erroneous facts- they have agreed that these are true. And they don't get to relitigate him. Do I have that close?

Larry 13:21

You have that absolutely correct. They did a stipulation, which I don't think it was provided to me. I think it would probably get deeper in the woods that most of our audience could absorb. But the facts were stipulated to, in terms of his registration obligations. They did not stipulate to any facts related to the harm or anything like that. They just stipulated to the fact that what his conviction was out of Missouri, and how long he'd been in Kansas and basic facts. But yep, that's exactly valid comparison.

Andy 13:54

All right, and I will stop the rotator and then we'll try clip number two.

Atty. Jennifer Roth 14:00

But I think, he I mean, he has standing because they've, they've charged him with this. We don't know the grounds for it. It's I'm not exactly... nobody, you know, they entered a stipulation. Um, and so we're not clear on how all these things would interplay. Um, and so, I mean, the fact is, he was charged, he was convicted,

he made this argument. The record is what we have, and so I believe he should be able to litigate this.

Justice Biles 14:36

I think the question is, what are we litigating?

Andy 14:41

So, what are we litigating Larry?

Larry 14:44

And therein lies the problem. When you have a Supreme Court justice looking at you, and theoretically they, or their law clerks or both have read the brief, and they don't know what's being litigated, that does not bode well. They were litigating whether or not the Ex Post Facto Clause would prohibit Kansas from registering him. And he cited in his email to me about a case that was not binding in that jurisdiction. But that was his belief was that he had an argument, but he didn't really have an argument. And the court couldn't understand the argument. Because it wasn't, I mean, when you don't have anything but that little stipulation sheet, and once we get further into their interview, and the next question, we'll see what had been cited to them as their justification - their legal argument - and most of the legal argument was no longer valid case law. So go ahead. But when the justices tell you they don't know what's been litigated, you should not look for and expect a favorable outcome.

Andy 15:52

Did they agree to hear it? It doesn't just get landed on their lap and they're mandated to hear it. They agreed to hear it correct?

Larry 16:04

They agreed to hear it. But once they agreed to hear it, they didn't understand what they were hearing. The parties have to brief the parties. They have to brief them thoroughly and tell them what they are arguing. And they didn't have anything to work with. There was no trial below. I mean, he chose to plead out so he wouldn't go to prison. And the attorney, the public defender, the trial level attorney, did not really know how to set this case up for appeal. He was making a deal with the prosecutor to get the case off his plate and keep the guy out of prison. And in his mind, he had done a wonderful job. You can appeal the question of whether you should register, I've got you a probated sentence. You can make your argument before the Supreme Court- well, before the appellate court, he didn't know that the Supreme Court would accept it. But he first had to make the argument to the trial judge. And of course, the trial judge, where he did the plea, denied it. But that that lawyer did not have a clue how to set this case up for appellate review. Cases have to be properly set up for appellate review. If you're intending on going that route, you need to actually know what you're doing.

Andy 17:25

So the court stated the remaining two cases cited by Shaffer in his petition for review do not help his cause. In Snyder, one of the effects of the Michigan statute that the Sixth Circuit graphically described with the aid of a map of the extensive area of Grand Rapids, Michigan, that the law rendered off limits to PFRs is that Michigan's law is so restricted where PFRs may live work and loiter that many of the plaintiffs have had trouble finding a home in which they can legally live find a job where they can legally work.

In Rausch, the court relied on specific and detailed facts presented to the trial court by plaintiff in his as applied challenge to retroactive application of the lifetime registration requirement in Tennessee. Were such facts presented in this case?

Larry 18:11

They absolutely were not. And this is a prime example of what I was just speaking about, of the attorney that was resolving the case had no idea how to set up for appeal. But I totally forgot, I was gonna mention that that the four cases he cited in his petition for review don't even stand for the proposition that retroactive PFR registrations are punitive and violate the Ex Post Facto Clause. He cited Millard versus Rankin out of the 10th circuit, which later became Millard vs. Camper. You remember, Judge Matsch was overturned by the 10th circuit on that decision. Okay, so that one was no longer was relevant. He cited the Pennsylvania Supreme Court in Muniz, which held that retroactive application of PFR requirements violated Ex Post Facto Clause. Unfortunately, that case is no longer controlling because the Pennsylvania Supreme Court later held after the legislature amended the statute, in the end up Commonwealth vs Lacombe case that it was not violative of their constitution. And then the cases that you've just talked about. When he gets to the Supreme Court, he has nothing.

Andy 19:23

That sounds like that's bad.

Larry 19:25

They had their own binding precedent where they had decided that the Kansas offender registry was not inflicting punishment, it didn't have all those prohibitions that were cited in the cases we just talked about. So he just had virtually no chance of winning this case.

Andy 19:45

I'm picturing Larry if you've ever watched like Bugs Bunny cartoons, Roadrunner specifically, there's wily coyote and he always ends up going off a cliff. And then there's no ground underneath him and he like holds up a sign and says, Oh, no, and then just falls. That sounds like what he's going into if he ends up at The Supreme Court.

Larry 20:01

Don't we have one more clip here? I think. (Andy: We do. We do.) This is the best of all.

Andy 20:09

Okay, here's clip number three.

Andy 20:10

And now I've gone off and forgotten exactly what your question was. But I see your point about, do we need to compare this? And I guess I just go back to the fact of Johnson County charged this man, they prosecuted him, they entered into the stipulation of facts. He's arguing that this applies to him ex post facto. And it might be that there needs to be some sort of a remand. I haven't thought that through. But maybe there's some sort of a remand to decide to what extent does this cover him? And what are all the issues involved?

Justice Biles 20:45

And the problem I have with that, is that this issue was raised before the District Court. And your side has the obligation to make the case. And so it was presented, if there are holes in the record, I think we get back to that, why would we remand to give you a chance to do a do over to fill in these holes? Seems like they should have been filled before.

Andy 21:21

Just what you talk about Larry, of filling holes and being prepared when you go to court?

Larry 21:26

That's correct. When you're inevitably going to be in an appellate posture, you cannot rely on anything other than facts that you've established below. And if those facts are lacking, or if they are not correct, the appellate court is stuck with those facts. They're not going to forgive you and say, Oh, well, you should have had a better lawyer. I mean, there is a possibility that he could assert ineffective assistance of counsel on this plea. He would have to look at Kansas law in terms of post-conviction proceedings, if he has that option. But that wasn't an issue before the court. That wasn't raised in this. This was merely a stipulated factual determination of the law if it could be applied retroactively to him with his Missouri conviction. And the answer is unequivocally yes. And this was painful. This was 45 minutes of oral argument. I could not watch it all. I have watched oral arguments. I've sat through courts and oral arguments. And this, I mean, I hate to say something negative about someone in the profession, but she was either having a bad day, or she shouldn't have been there to start with.

Andy 22:47

Is there a danger though if it does go to the Supreme Court? What happens then, if it does?

Larry 22:52

Well, it would be unlikely in my opinion, that there would be a cert petition. I would always take the optimistic view that an attorney looking at this would say there's nothing here on this case. But if he were to gather the resources, and put together a cert petition, and if four justices on the US Supreme Court granted it, yes, there would be a risk. Because part of what he was trying to argue which they didn't really seem to consider, because it hadn't been raised properly below, was that there might have been an independent federal duty to register. If this case were to get to the Supreme Court, and they're inclined to want to establish that independent Federal duty, which already the Willmann case out of Michigan has found that. The Sixth Circuit has already said that there was an independent duty. That would be the risk. But I think this is a real long shot that this case ends up being decided by the US Supreme Court. I think it's done.

Andy 23:53

Well, that's probably a good thing, because this doesn't sound like a thing that we would want to have go up there and establish possibly more bad case law for us.

Larry 24:02

The case law already existed in Kansas. So it didn't really hurt Kansas. They already had this case law, but it would have that

potential if the Supreme Court did. It has the potential to be harmful, but I think the odds are very low. And see, I occasionally give you good news. You guys always say that I'm negative. On this one, I don't think there's a cert petition in the filing.

Andy 24:25

Very good, sir. I think that'll close this one out for us.

Andy 24:30

Where are we going next?

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Andy 25:25

We are going to go cover this Tennessee thing that like showed up on the radar but apparently has our whole Discord server abuzz. And the title that I got from a US news articles is federal judge rules for Tennessee PFRs rebukes the state. A federal judge has harsh words for Tennessee officials who continue to enforce retroactive punishment against PFRs. Some of whom committed their offenses decades before the state's PFR law even took effect. Um, so you put this in here though from Tennessee and it's a decision from a federal judge ordering eight men removed from the PFR registry. Well, we do have the actual decision now. It says US District Judge Aleta Trauger ordered the removal of eight men from the PFR registry to end their sentences retroactively. Trauger went on to say the Tennessee's official Tennessee officials continue to disregard the guarantees of the Constitution, Trauger wrote in her ruling Friday. The state's federal district courts have repeatedly concluded that the same analysis applies to Tennessee's own very similar arrangement and policies. Tennessee officials have continued to impose the state's repeatedly deemed illegal policies on other similar individuals, despite statements. She said, What is going on here?

Larry 26:52

Well, it's simple. It actually is in the AP story. According to the Associated Press, governments are prohibited from increasing penalties for crimes previously committed under the Ex Post Facto Clause of the United States Constitution. And according to judge Trauger, the violation does not depend on plaintiffs hardships, but rather on the punitive nature of the law. So that's what's going on here. The courts in the Sixth Circuit where Tennessee is are recognizing because of a previous precedential decision in 2016, that people are being punished through these laws. And they can't do that retroactively.

Andy 27:35

And it's not the mere act of the registering part. It's all the other things that -I really like the expression- disabilities and restraints. That's really the problem. It's not just going and visiting your popo.

It's like getting booked and work in living restrictions and all that other stuff. That's where it becomes a problem.

Larry 27:51

That is correct. Everybody wants to believe that the mere act of registration is unconstitutional. The mere act of registration is not unconstitutional. But when you inflict punishment and disabilities and restraints, and alter people's lives, it's a whole different type of registry that can no longer be considered a registry. It's a form of probation supervision, if not even more.

Andy 28:12

Right. I also noticed that Judge Trauger cited on in a in an April ruling in which another federal judge in the Middle District of Tennessee ruled that the two men should be removed from the PFR registry. The judge ruled that enforcement of laws made after the crimes committed were unconstitutional. In addition, Judge Trauger mentioned that in the 2016, the 6th US Circuit Court of Appeals ruled against the retroactive implementation of a Michigan PFR law. Is this what you mean when you say we need to build a body of case law?

Larry 28:44

Yes, indeed, it is. The body of case law in the Sixth Circuit has been steadily building since the precedential decision that was Does vs. Snyder was released back in 2016. And we're gonna see it continue to build because, until that is no longer precedential and controlling in the sixth circuit, everyone who has a punitive registry- now listen carefully, everyone who has a punitive registry- has the potential to have a viable legal challenge. If you have a Vermont-type registry, and you're in the Sixth Circuit, you're probably not going to fare very well because Vermont doesn't impose these types of restrictions and restraints on how one lives.

Andy 29:24

Now, Larry, I've done my own research on this judge and you know all about people doing their own research these days. She's a liberal do gooder appointed by Bill Clinton. Let me go through some of her notable decisions. On March 14, of 2014 Judge Trauger issued a preliminary injunction ordering Tennessee to recognize the marriages of three same sex couples consummated out of state. This was well in advance of the Supreme Court's decision. She said at this point, all signs indicate in the eyes of the United States Constitution, the plaintiffs marriages will be placed on an equal footing with those of heterosexual couples, and that prescriptions against same sex marriage will soon become a footnote in the annals of American history. Then, on March 23 2017, Judge Trauger issued a preliminary injunction prohibiting Rutherford County from subjecting children to solitary confinement while their cases proceed. On July 3 2018, Judge Trauger struck down a law that would allow Tennessee officials to revoke driver's licenses of defendants who could not pay their court costs. She sounds very liberal pointy headed Larry. In September of 2019, Judge Trauger warned that a Tennessee law that restricted voter registration had chilling effects on the individuals and organizations that were trying to register new voters in Tennessee. Then judge Trauger struck down the law ruling that there was no basis that a law would benefit Tennesseans. The most recent activism, judge based activism, Larry, occurred on July 9, 2021, when Judge Trauger issued a

preliminary injunction blocking a Tennessee law that would require businesses and other entities that allow transgender people to use the public restroom that matches their gender to post a government prescribed warning sign. The injunction blocks enforcement of the law while the lawsuit is pending on the grounds that implementation will cause immediate and irreparable harm. This sure seems to me to be an activist judge that is legislating from the bench, Larry. She's legislating from the bench, does it not?

Larry 31:25

Well, yes, that is what she's doing. I mean, she's legislating from the bench, and particular on the Rutherford County, which one were you talking about where they can't collect their money?

Andy 31:40

For the driver's license. Yeah. Go on.

Larry 31:44

She just arbitrarily rewrote the law with total disdain for the people in Tennessee. And she decided that she knew what was best. And this is judicial activism. But let's talk a little bit about judicial activism. It is indeed that. Unfortunately, there are times when legislating from the bench is the only mechanism to effectuate the constitutional protections guaranteed to all Americans. Do you actually think we would have the Miranda warnings that are given today and have been for decades that are intended to protect us from self-incrimination were it not for the liberal Earl Warren Supreme Court? Do you think that the police would have raised issues and developed these directives of their own volition? Do you think that legislative bodies would have enacted such statutes requiring those warnings to be given? And then, for example, in Gideon versus Wainwright where the constitutional right was established, that you have, if you can't afford representation, that that you will be provided representation at no cost. Do you think, without Gideon versus Wainwright, do you think without that activism of the Warren Court that we would have the requirement? Do you think that that the state taxpayers of their own volition would have said well, you know, we've accused of a crime. We ought to provide you an attorney. That's the least we could do. The very reason why Gideon versus Wainwright made it to the supreme court was because the state of Florida had a policy that they didn't provide any person accused of a felony, unless it was a capital felony, with free representation. So wasn't that judicial activism?

Andy 33:20

It sounds like it. I've heard grumblings from the current court that the Miranda rights might have challenges too.

Larry 33:26

Well, they have been weakening the Miranda rights. This more conservative court has weakened them through the years. But everybody's for judicial activism. The only thing is, when it's something that achieves their goals, they magically don't consider it activism. This more conservative court has been very activist. For example, they've extinguished the right of labor to collect dues for everyone that they're obligated to represent in a union shop. And so they've done away with dues checkoff. They have decided that corporations are people in 2010. And so, activism happens all the time. It's just that the type of activism that we're looking for

comes usually from the left. And this judge is an example of that. But my bigger point is most of what she has done would not fare very well with conservatives, unless they're on the PFR registry. And then they like that activism on this one thing. But on the other activism of the cases that you've cited, they wouldn't be fond of that at all.

Andy 34:35

The state's position is that the eight individuals in question, named John Doe's number one through eight in court documents, must remain on the registry to protect public safety and to prevent potential future crimes State Attorneys have argued. However, Trauger wrote that no evidence was provided by the state to show that the plaintiffs posed a threat. Larry, this sounds to me as though this do-good judge is thumbing your nose at the citizens of Tennessee and their Law. If this is not overturned on appeal, does this mean that all PFR's in Tennessee may have some sort of due process keeping them on the registry?

Larry 35:10

That is a possibility. Let's, let's take a look at one of these individuals. John Doe number one pleaded guilty to second degree assault of his girlfriend in Hawaii in 1994. Now we're coming up on how many years now that that happened? Almost 30 years. According to the court, since completing his probation, he has not been convicted of any other crime. He's lived a productive law-abiding life. He's married. Has children, and he owns and operates his own successful business. But because he's subject to the Tennessee PFR laws, he is required to personally report to the police within 48 hours of changing his address, job, or email address, Facebook account or buying a vehicle among other things. Failure to report may lead to criminal prosecution. And there's no may to it- you will be prosecuted. While his crime did not even involve a child, under Tennessee law, he's not allowed to live near children. He cannot attend the events at his children's school. When one of his children was injured at school, he rushed to see his child and the school staff called the police. He cannot take his children to parks or playgrounds and the law does not allow them to invite friends into the house for fear of breaking the restrictions. This is an example of runaway disabilities and restraints. They just can't help themselves.

Andy 36:32

It is, though, the public that wants it. They say I'm going to make things tougher for the PFRs. And the people are like, Yeah, let's make it tough for the PFRs. And then it gets signed into law. This is what we get.

Larry 36:42

This is indeed what we get. But see the thing that people refuse to argue, which is very compelling, if you would actually try it. I mean, who am I to say? But anyway, if you actually try this out, utter the words civil regulatory scheme. When you go to your capital, remind your lawmakers when they're debating changes, look, folks, this is a civil regulatory scheme. And if you're going to try to inflict all these things in a civil regulatory scheme, you're going to run afoul of the Constitution, because it sounds like you're wanting to inflict punishment. And you just can't do that in a regulatory scheme. But see, we're resistant to using that term. Because they say, Larry, if you just understood what registration was all about, you would there's not anything civil and regulatory

about it. That doesn't matter. It's upheld as being civil regulatory. So you need to remind them that it's a civil regulatory scheme. And beyond that, when they say are you own the registry? That's a difficult one. Because once you say yes, then they say, I don't think you have the impartiality to be objective. And you say, you answered a question with a question. You say, well, since it is a civil regulatory scheme, do you not generally invite people to come testify before you when you're looking at regulatory schemes that apply to a particular whatever the situation is? Every regulated entity gets to have input in how the regulations apply to them. So rather than going down that path of saying, Yes, I'm on the registry, and letting them say, well, you're no longer impartial. You say it's a regulatory scheme. And everyone who is regulated, whether it be the oil business, whether it be the telecommunications business, whatever it is, they are allowed to participate in the formulation of those regulations. And if they've pinned you down and say, Well, I still don't believe you're impartial, if they've already figured out you're on the PEFR registry say, Well, you know, I think I'm inclined to agree with you. But I think all these victims that come in here, I'm not sure they can be impartial, either. And you certainly don't hesitate to hear from them do you?

Andy 38:50

What is this about the ninth plaintiff not living in the state of Tennessee? So they knocked them off the list because they don't live there and it doesn't apply to them?

Larry 38:59

The state has filed a motion according to the story to dismiss his claims, because he's no longer subject to the registry in Tennessee. So therefore, any relief that they would be able to grant him would be a moot question because he's having to register wherever he is. So it's no longer relevant. Now he can argue against that motion. He can say that he's in Tennessee regularly. He has a business interest, he has whatever, and that he doesn't want that claim dismissed. But the state doesn't want that to be decided because it's another hole in their registry that they'd rather not have. So, they do everything they can to extinguish your claim without it being decided.

Andy 39:38

Okay. Let's see. We did receive a couple of questions from people. I hope we haven't covered them already. So this is a question from Chuck on the Discord server, who is also listening in chat. I have a question for Larry. That's you. These winning cases and the PFR is taken off of the registry, is there a possibility if/when Tennessee changes Parts of the registry that are punitive per the courts, that these people would have to go back on the registry? And then another question I can ask if you need me to remind you, does winning a lawsuit prevent you from being forced back on the registry? I guess is that is my question. I'm pretty sure one of the changes to the AWA states if you have ever committed a PFR-type crime, you will be on the registry.

Larry 40:24

I would answer those in turn, is it possible these people that have been ordered to be removed can be put back on? Yes, it is possible. It's going to be a lot harder for them, because I'm assuming that an injunction is going to issue when this case comes back. There's going to be an injunction issued when the when the

final order- I haven't gone on Pacer, looked at all that- but there's an injunction issued. So the injunction will have to be lifted before they can be ordered to register. But if they come up with a new law, and the court cannot order them not to come up with a new law. That's one of the big misunderstandings. They are certainly free to try to come up with a constitutional regulatory scheme. So if they were to come up with a new law, what they would need to do is to notify them that they believe that they have a duty to register because the law has been amended, and it's no longer punitive. And they should move the court for an order lifting the injunction. And they would tell the court what has changed. But in terms of everyone else that doesn't have an injunction, you're not in nearly as strong a position. They could just simply change the law like they've done in Michigan and say that law that was declared unconstitutional, it's gone. We've got a brand-new version now and you have to litigate all over again.

Andy 41:50

I gotcha. All right. And then this one is also related. And this is the Patreon Question of the Week. What sanctions can be placed on Tennessee for not complying with the previously discussed Does ruling in a timely manner? Why hasn't Tennessee adopted a class action suit? Like Does vs. Snyder and Michigan? That's way above my paygrade by the way.

Larry 42:15

I can't answer the second part of why. may be that just the legal resources... I mean, you represent clients not causes. And these people have either one or several clients. It looks like this was a consolidated case of multiple clients challenges that were working their way through the court. And is it possible that there'll be a class action. That's exactly what happened in Michigan, but that only happened in Michigan after the Sixth Circuit Court of Appeals. And that may be what's going to happen in Tennessee is that Tennessee may finally decide that we're going to we're going to take our chances and try to distinguish ourselves. And we're going to appeal these adverse decisions to the Sixth Circuit and see if we can get a different outcome. And if they get a different outcome... I mean, the general rule of thumb is a panel will not overturn a previous panel decision, unless the case is extremely distinguishable. So what was the last part of that question?

Andy 43:14

The other part was why hasn't Tennessee adopted a class action suit? But um, says what sanctions can be placed on Tennessee for not complying with a previously discussed Does ruling in a timely manner? So I mean, if the rule says they can't do it, and then they continue to do it, can't we put the state in jail for not following the law?

Larry 43:33

That premature. When the decision has been made that something's unconstitutional, there has to be an order of the court. The decision that if you look at that, usually there's a memorandum opinion. And that's followed by an order. And if the order is to remove an individual, they would have to do that, or the state would have to ask for a stay of that order, pending an appeal or for reconsideration. I mean, there's no automatic sanctions until there's a violation occurring of a court order. I mean, right now, if you look at that, the one that we just got 10 minutes ago, that's an opinion, right? It doesn't say anybody's

ordered to anything. Well actually it did. It did say there was an order in that one...

Andy 44:22

Well, those eight people are required to be removed from the registry, but I'm gonna guess not the 20,000 or whatever it is in Tennessee.

Larry 44:30

Yes. So let's go down and see. It is ordered the defendants shall not enforce provisions on Tennessee...They have been enjoined. And so, yes. This particular case, if they don't follow this order, this is not an opinion, this is an order. So if they don't follow this, what the attorneys would do is they would vote for an order to show cause. And the judge would hold a hearing and say, why have you not removed these people? Show me cause why you have not done that, and sanctions could flow. But they could also file a motion for reconsideration. I mean, there's all these legal tactics, and I can't tell you what Tennessee is going to do. But folks, this is going to drag on for some time. I mean, don't start...

Andy 45:18

If your case is similar to those eight, then you have a good shot of bringing a case and going, I'm just like number two and three over there. Shouldn't this apply to me too?

Larry 45:27

Could. Or you could try to bring a class action. This is a number of cases, 1-2-3-4-5-6-7-8-9. Looks like this is this is a whole consolidated... but it says memorandum and preliminary injunction. So there is an order attached to this that they cannot continue to register these. So they will have to comply with that fairly quickly.

Andy 45:49

Okay. Well, that's cool. Um, I think we're done with that one, too, sir. I believe.

Larry 45:56

I believe that we might have might be enough time for the seizure.

Andy 46:01

I think we do we have enough time to cover this at least reasonably in depth. We let's say we have 10 minutes to float around with this one. You shared this video with me and a few other people about an army vet, marine vet, I forget which one it was. He got pulled over for driving too well Larry. He actually, as I recall, he got cited for driving too close to the person in front of them. He was driving like maybe a mile below the speed limit. And when the police pulled him over, we have some clips to play. And but he did all of the things that everyone says when we talk about the different police brutality kind of things where the person doesn't comply, this and that. This guy was hyper compliant. Hyper, hyper, hyper. He did everything, sir. Yes, sir. Thank you for your service. I know you're just doing your job. He did all of those things. It seemed he would be doing them right for what ultimately ended up happening. What do you want to set up before we start playing some clips?

Larry 46:57

So I think you've set it up pretty well. He was passing through Nevada, and he was met with the Nevada Highway Patrol Interdiction Unit. So let's play the first clip. This is good stuff, man.

Andy 47:13

All right, here we go.

Police #1 47:16

Hey, this is gonna sound kind of weird. Um, part of my job out here is I do what's called highway interdiction. I look for people that are smuggling contraband through our state, across the country. Weapons, humans, drugs, illicit currency, things like that? Anything in the vehicle I should be aware of. (Victim: Nothing) Okay. No, no firearms? (Victim: No.) No explosives? (Victim: No.) Okay. Are there any drugs in the vehicle? Cocaine? (Victim: No. I don't do drugs.) I got to ask all these silly questions, right. Any large amounts of United States currency in the vehicle? (Victim: Yes.) Okay, what's a large amount of US currency to you? (Victim: Anything over \$10,000.) Okay, so there's over \$10,000 in there? (Victim: Yes.) Okay, how much money you got in there? (Victim: About \$100,00.) Okay. (Victim: I don't trust banks, so.) Fair enough. Fair enough. Um, would you give me permission to search your vehicle today? (Victim: Yes.) That's okay with you? Okay, perfect.

Andy 48:17

He lets them search. Larry, is that a problem?

Larry 48:23

Well, as we get into these clips, you'll see that this is a combat veteran who would have probably never had any experience with a cop. Maybe a traffic ticket or something. But in his mind, it's a wise thing. And people who are in the criminal defense business, I don't think anyone's going to tell you that this is a wise decision to allow search. But since I'm not allowed to give that advice, officially, I'll tell you that my office has never advised anyone to do that. And I don't think the attorney that we hear from later advises that course of action, but he thought it was the best thing to do. And let's see where it goes next after he does it.

Andy 49:03

So here's the second clip.

Police #1 49:05

He consented to a search. Said there's money up there. We located what he says is \$100,000. It's in a Ziploc sandwich baggie. There's also- I haven't gone into it. There's also a bunch of bank receipts and stuff in there as well to show to show the currency.... Hold on a second.

Police #2 49:25

So why the mistrust for the banking system? (Victim: I just don't trust them. That's just my reasoning. It's my personal thing.) No, it's just not usual.

Andy 49:39

So what is the problem with carrying, let's just say whatever, 100 grand, what's the problem with carrying that kind of cash?

Larry 49:45

Well, I mean, there's nothing unlawful about it, and through the 12 or 13 minute clip, the cops make it clear that it's not unlawful. But since he's doing something that's not ordinarily done, it's very rare. It raises questions. And he is not able to talk himself out of this situation that he's opened the door for by giving them... First thing he said is I've got a large amount of cash. Remember, the cause for the for the engagement was if he was following a little too close behind a vehicle, right?

Andy 50:22

Yep, they said he was following one second. You know, you're supposed to follow two seconds behind the vehicle that's in front of you. And they said he was following one sec. And that's why they pulled him over. And I can't ever think of anybody I've ever known in all of my million years of living that has been pulled over from following too close, Larry.

Larry 50:39

Well, I have but anyway, he should have confined the stop to the reason for the cause. But he was being a good patriotic American. He always believed the cops are overworked, understaffed, and that they just are so busy with real crime that they would never have this type of engagement. So, now he's got himself in a position where they've got 10s of 1000s of dollars. And it's not unlawful to have it, but it's very unusual. So now he's got more and more questions coming at him that he would not have had, had he not opened the door, but keep going.

Andy 51:16

Well, this is just like the final one that does like the close out of it. So here we go with that.

Victim 51:22

I find it even more so concerning that, if this could happen to me as a combat veteran who served overseas, in Iraq and Afghanistan, this could happen to anybody.

Andy 51:43

A clip that I didn't capture was the dog alert one and this is something that we should cover though, is that they took the money and they put it in the bag and they went out like in the field nearby the truck. And they said I think it was like 40 yards away or whatever. And the drug dog goes, yeah, there's totally some drugs on this money. And I know that I've heard this throughout my life that all US currency, like particularly 20s, they have trace amounts of cocaine. So if you put 100,000 bucks in a bag, you've got some appreciable amount of cocaine, and the dogs be like, yep, cocaine money, right?

Larry 52:17

That's exactly right. That came up in the video. But here's a guy by all accounts, who did everything right. He had bank receipts, showing that the money had been banked. He was traveling across country. They engage him in a dubious stop. They recognize he's a veteran and a good citizen. I mean, it's a very cordial exchange. He has such a high level of comfort with the officer. And with ultimately the supervisor. The part we didn't tell is they called the drug enforcement, DEA, and they weren't able to come, but that's who ultimately got the money. After the dog alerted, they seized the money. He had no money, because all of his money is there.

And he says I don't have enough fuel to get across the country. And they said, Well, too bad, so sad. He said, I don't have money for my family. And they said too bad, so sad. I'm embellishing it a little bit. But that's essentially what they told him. And he says, all I get is a receipt? And they said yes. And then they told him to call the DEA. And he did that to no avail. And he ended up finding this liberal do-good outfit to file a lawsuit on his behalf. And apparently, they do these actions to try to get people their money back. I don't know if they get a portion of it. But the lawsuit resulted in the DEA agreeing to release his money. But he would never have believed in United States of America where he went and had bullets fired at him, if we liberal do gooders had told him that we've got these runaway seizure statutes where the government can take your money without even so much as a criminal charge, much less a conviction. If we had told him that he would roll his eyes, he would have rolled his eyes, and he would have been astounded. He would have said no way. That can't happen in my country. And now that his eyes are opened, I hope he will do what most don't do. Rather than saying this as an isolated incident over a renegade cop, which it isn't. He's on an interdiction team that Nevada has. And there are multiple lawsuits being filed regarding these seizures. Hopefully, he will try to advocate for some systemic change. And this is what we talk about when we talk about the police being reduced funding. When they throw that cliché out of defund the police. This is an example of where funding is coming to the police. They get a portion of the seizure. A significant portion of it. So here's law enforcement that has a job that's funded by their success rate. And they go out and take assets away from people without even so much as an arrest, let alone a conviction. So I hope he will do what he should do, which is become an advocate for change. Getting his money back is the first step. But don't stop there.

Andy 55:23

So we've covered stories even like this before, Larry, where you recommend that people stand up to the police. And this is what you're describing for this guy to do as well. You have to have some massive cojones to stand up to the police. And they go, Well, you stopped me for following too close. Can you just hand me the citation for that? And no, you can't search my car and peace out, mic drop, flip them the bird and get in your car drive away?

Larry 55:50

I wouldn't advise doing that the way you describe. What you would try to tell the officer- and it may not go well for you, I cannot predict what he would have done- But you would tell the officer I believe I'm being detained for a traffic infraction. Can we get on with the traffic infraction? And well, I'm just wanting to search your car? No, I don't think you've articulated any probable cause for searching my car. This was a traffic stop, right? And you've got to focus back to what the reason for the engagement is. And the traffic stop, You can say, let's deal with traffic stop. I've got a time schedule to meet and I need to get on my way. Well, can you search? No, I'm not able to do that. Do you have anything to hide? No. I don't have anything to hide. I'm in a rush. I need to be on my way. And you've got to stay focused on that message. I can't tell you what they would have done. They might have gotten belligerent, they may have said, well, we're going to have the dogs take a sniff. Would they have found the baggy? I don't know that either. I don't know how that would have played out, but when you have an illegal search, you make it legal by giving your

permission. In the worst case, if they had gone ahead with him protesting and saying no, you would clearly have had an illegal search. Right now, that was that was an legal search. He gave consent. You heard him do it right? Was he threatened with anything? (Andy: No. He wasn't being detained either.) That was a voluntary and intelligent decision that he made. So had he been charged with something, say for example, if that was actually dirty money, and they could dig up evidence that he had engaged in criminality, he just shot us in the foot in terms of trying to suppress that search. Because with acquiescence to the search, our motion to suppress would've gone right down the crapper.

Andy 57:54

I have two things. The crapper. Is that a technical term? And B is the transcription person going to know what acquiesces is?

Larry 58:01

Oh, Otter will know that.

Andy 58:05

Alright, um, I still, Larry, to be able to push back on them when they ask that question and have the gumption to say, the hutzpah I think is the best word, to say, No, I don't consent to that. And you force them to be in a position that they are detaining you. That then escalates things up. Like you're forcing their hand to, I guess you're given them the game back because they're already giving it to you and you give it back and force their hand and then they let you go. Probably?

Larry 58:35

I don't know, but I would think that the odds are his supervising officer would have probably said, we don't have enough here to work with. But there's no guarantee of that. But he didn't fare very well with his strategy that he did.

Andy 58:51

He definitely did not. But I mean, I mean, ultimately, after I don't know how many years it was, but it took him a while to get the money back. But he got some \$86,000 bucks if I recall.

Larry 59:00

And I'm suspecting that law firm that helped him gets some. I mean, they couldn't operate their business without getting a part of it. So they probably... that's how we paid his legal fees from that money.

Andy 59:11

Sure. All right, man. Let us go over to we are going to do who's that speaker and again, Larry, you gave too many hints and tips about it. But last week, I played this.

Senator Howard Henry Baker, Jr.

What did the President know? And when did he know it?

Andy

And the answer to that one is Senator Howard Henry Baker, Jr. The leading Republican on the committee investigating the Watergate scandal surrounding President Nixon asked the seminal question at the hearings. What did the President know? And when did he know it? So we did have a winner. And this is Al in

Maryland. And he wrote, he is the first one to write in but he does not believe this. Now this was a more worthy adversary, Larry. Although I agree that Larry may have given too much of a hint, as usual. Since I don't listen the podcast until several days later, I'm sure someone told you by now that was Reagan's Dick Cheney, the distinguished senator from Tennessee, Howard Baker, doing some grandstanding and political positioning as it was becoming obvious Nixon was going down during Watergate. Nice pic. Everyone's heard the quote, repurposed a million times, but probably doesn't remember who said it. If Trump is ever held to account for January 6, this quote will be resurrected yet again. A boy can dream. Thanks Al, in Maryland. Appreciate it. Oh, any comments before we move on?

Larry 1:00:35

I was nearing 100 when that happened. And my recollection is that we just didn't have enough evidence to know that Nixon was going down. The Smoking Gun hadn't come out yet. That had not been discovered. So I'm not sure that we knew Nixon was going down when this quote was made. But I mean, he could be right. But I don't think that that was clear at that point. But anyway, we have another great one for tonight.

Andy 1:01:02

Okay, and no clues, but I bet you nobody gets this one. You're gonna have to dig for this one.

Who's that Speaker?

I say segregation now. Segregation tomorra' (tomorrow). And segregation forever.

Now, how do you spell tomorra' (tomorrow with an accent)?

That's my question. Tomorra'. Segregation now. segregation tomorra'. segregation forever. There you go. That is that. And that is pretty much wrapping up the show Larry. If there's anything else, I guess we could ask if you have some sort of audible clip that you would like us to play to contribute. Feel free, you can email registrymatterscast@gmail.com. Use something about Who's that Speaker submission, something like that. And then I can filter through my email and find them. Anything else before we shut things down?

Larry 1:01:48

Absolutely. And we're going to be building our FYP Education website in the coming weeks. And we may end up needing some help building that because of our very busy schedules on mine and your side. So if there's anybody out there who's a website master that knows how to make it pretty again, how would you contact us?

Andy 1:02:07

Use the email address registrymatterscast@gmail.com. You know what else I forgot? Like I did find this. So check this out if you're looking at the screen. See? Like and subscribe over on the YouTube side. *click* click* *click* I got buttons that click. Right. All right. So Well, very good. Thank you everyone for joining. We had a nice crowd there on Discord. And if you want to find all the show notes and everything, all links to everything is over at registrymatters.co. You can leave voicemail at 747-227-4477. Email at registrymatterscast@gmail.com. And of course the best

