



RM 240—Recorded 10-1-22
Preliminary Injunction Denied in AWA Challenge

Announcer 00:00

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Andy 00:17

Recording live from F.Y.P. studios, east and west, transmitting across the internet, this is Episode 240 of Registry Matters. How are you people this evening?

Larry 00:30

Doing awesome. Glad to be with you.

Andy 00:33

And make sure you people like and subscribe to all the nifty places like the YouTube channel, and if you' in a podcast app, if you can do it, make sure you give us a five-star review so the people can find this content, especially if you find it helpful. But if you don't want to leave a five-star review, don't leave anything. There. I said so.

Larry 00:54

What are the different star levels? I'm assuming they start at one, right?

Andy 00:59

Sure. So, don't leave anything less than five. That way we completely skew the results and only on the positive side so that we only have five-star reviews.

Larry 01:09

All right. Well, go for it.

Andy 01:14

Tell us, with the vast listening audience, what are we going to do tonight?

Larry 01:19

We're going to talk about hurricane evacuations out of Florida. You're going to hit me up with some great questions that come out of thin air, no script at all for that.

Andy 01:45

We have to imagine them as we go.

Larry 01:50

We have some articles that I doubt we're gonna get to. And we're going to talk about a challenge brought by the Alliance for Constitutional Sexual Offense Laws, hereinafter

referred to as ACSOL. And then I want to finally get back to a patron who asked about whether Iowa can force him to register longer because of his non-Iowa conviction. I'd like to do that fairly early on since he's been waiting so long. And it's not just this person. It applies to anybody who is in a similar situation. He's going to consider getting out of Wisconsin to get to Iowa. And we're going to talk about how well that's going to work.

Andy 02:16

Very good then. So then let us begin with some questions from Iowa. Tell me remind me what's going on with this. You said it's been a while, right?

Larry 02:27

It's been quite some time, feel embarrassed. It's been so long. But you know, FYP just has so many submissions and requests to talk about things. And we only have one podcast a week. So sometimes things wait for a while. But a patron in Wisconsin wants to move to Iowa because of his GPS monitoring there in Wisconsin. And he wants to be able to petition for removal or be removed. I'm not clear if it's a petition or just automatic, but he wants to be removed after 10 years. And he wanted us to give him some information on those two things.

Andy 03:01

If he's on GPS monitoring, I assume that he is in some sort of tier level that he can't just move. He is on supervision of some kind, right? Do you think he can achieve these objectives?

Larry 03:16

Well, actually, he's not on supervision. Wisconsin has GPS for recidivist offenders. They do recidivist if you have two counts in the same case, and that's how controversy is about. So yes, but can he achieve these objectives? He may be able to achieve one of the two objectives. He may be able to free himself of a GPS monitor. But I'm not sure that he can free himself from the registry because of some things that we're going to cover. But yes, he may be able to get away with not having to be GPS-monitored if he leaves because it's not standing out in the Iowa registration scheme anywhere that I can find.

Andy 03:59

Can you go into some detail about what you're concerned about? Can you give us the skinny, Larry?

Larry 04:05

Well, sure. It's in Iowa law in Section 692A.106, subsection eight. It states a PFR "who is required to register in another

Jurisdiction under the other jurisdiction's PFR registry but who resides, is employed, or attends school in this state shall be required to register for a period of time equal to the period of time required under the other jurisdiction's requirements or under Iowa law, whichever is longer." That's the thing that concerns me about him getting off after 10 years.

Andy 04:44

And so to be blunt, he might be screwed about getting off if he gets to Iowa.

Larry 04:50

He very well may be screwed, which I know is not funny. But when I go digging that's what I came up with. This looks like the 2020-21 version. So unless it's been changed, I'm afraid that reading directly from that section, he would be saddled with the time required in Wisconsin. So therefore, if he has a greater period, they're going to try to apply that to him.

Andy 05:16

I mean, you said the 2021 version. There's not a lot of time in there that could have been changed. I guess at the 2022 session at the beginning of the year when they would have been.

Larry 05:24

I have a feeling it has not been sure I'm not current all my subscriptions, because I'm no longer doing the amount of consulting work. So some of the stuff that I used to could readily obtain, I don't have access to as easily. So I'm telling you, based on the most recent version that I have, it looks like he might be screwed.

Andy 05:44

And I was looking through the free version that you sent and 692A.108 says that the sheriff has the latitude to require one of our people, a PFR, to report more frequently than what is listed in the statute. That sounds like Butts County, Georgia, putting up signs. Can the sheriff make a PFR report more frequently than what the statute says?

Larry 06:09

Well, apparently, it's in the statute. So they can do it until there's some litigation. But that is certainly ripe for litigation, in my opinion, because it doesn't give the sheriff any guidance in terms of how they would require that additional reporting. It says they'll provide something in writing to the PFR. But I'm not sure that that would be a constitutional version.

Andy 06:43

I'm assuming that the statute says that they like you report 2-3-4, whatever those numbers are, the sheriff has to then

follow those laws. He can't go oh, sorry, it only says two, but for you it's four.

Larry 06:57

Well, but they give them the provision under the law. These are the scary things that they are finding their way into statutory schemes. Like it says a sheriff may require a PFR to appear in person more frequently than provided.

Andy 07:10

Oh, okay, that may word versus shall. Okay

Larry 07:13

The PFR can appear to verify relevant information if good cause is shown. But then it doesn't go into anything that explains good cause, but it says the circumstances under which more frequent appearances are required "shall be reasonable, documented by the sheriff and provided to the offender and the department in writing." And I'm sure talking about the Iowa Department or their equivalent of the state agency that oversees the registry. But without precision and guidance, what would happen if the sheriff didn't really like you? And they decided that they wanted to make your life miserable, like maybe help you lose a job. So what if you have to start reporting weekly?

Andy 07:53

Larry, can we take a quick detour about what sheriffs can do. Someone in chat says that in Candee County, Georgia, they require a photo every month for all levels. Well, I've never heard of that one.

Larry 08:08

Well, again, it's similar to this. I don't remember any such provision in Georgia statute saying that a sheriff can do that. But on the other hand, there is no provision in Georgia statute that says they can't. And so therefore, you have to look at the section of Georgia registration and see if there is any guidance on photographing. The language should be something to the effect of the sheriff may request require a photograph if the appearance of the offender has changed significantly since the last photo was taken. That's the type of language you would want it there. Because if it looks the same, when they got you in the office, they pull you up on the screen and they see the photo. And then you look like you. What's the point?

Andy 08:55

I'm just wondering if this individual didn't make them his focus. And so he was the object of their desires?

Larry 09:04

Probably not. It's probably just what happens when these agencies how funding is they need to create work. I know that it's complicated for folks in some circles of life to figure

out, but when you create anything, whether it be in the private sector or in the public sector, very few of those employees are seeking ways to diminish their importance. They're usually looking for ways to justify their existence and find something to do. So I suspect that they've probably funded detectives that have a small caseload, and they're looking for stuff to do. That's my suspicion.

Andy 09:39
Sure. Anything else on this?

Larry 09:42
No. I hope that our patron forgives us for taking weeks and weeks. But yeah, we looked at it, and it doesn't look all that promising as I had hoped.

Andy 09:51
Do you think he's going to forgive you for bad news?

Larry 09:55
Not normally people don't.

Andy 09:58
Because I believe that when we move over to the next segment, apparently people like to just have fluffer cases. They just want to have action without a lot of success. And so do you want to move on now?

Larry 10:15
Yeah, unless you have anything else on this, but it doesn't look like he can achieve both of his objectives. Possibly one of them. Being free of GPS is an important step.

Andy 10:26
So wouldn't it just be better for him to stay?

Larry 10:29
Not in my opinion if he has the option to go to Iowa and be free of GPS. But there are other states that you could go to where he could probably get off the registry as well. So I would be looking for other options than Iowa. I don't know that he would want to go to Iowa based on what I see here.

Andy 10:44
Yeah, I got you on that one. Okay, then, let's go to talking about California. And we're gonna roll back to something we talked about a few episodes ago. So on Episode 227, we discussed the challenge mounted by ACSOL, which is the Alliance for Constitutional Sexual Offense Laws through the Pacific Legal Foundation. And I remember I was like, kind of confused about what that was. And I do recall that you were not positive in the terms of the outlook on the case. What causes you to be so negative when people are out there trying to do good there? Why are you Mr. Negative Nathan? Negative Nathan, that's who you are.

Larry 11:31
Oh, do you actually think I'm negative? I think one of the most positive individuals alive.

Andy 11:36
You are positive that things look shitty.

Larry 11:40
You missed your queue here. They're supposed to be something after I said that.

Andy 11:43
Oh, see, I thought you were being impromptu, but I'll play it. (Laugh track) Well, then, if you say so. Anyway, why did you put this case in here for tonight?

Larry 11:56
Because there was a recent development that our audience would probably want to know. I'm quite certain about this because I've received a couple of requests to talk about it.

Andy 12:04
And so what were the recent developments that you came up with?

Larry 12:14
Well, a federal judge that was assigned the case denied the request for the preliminary injunction and found that the challenger lacks standing to proceed.

Andy 12:28
So how can that be? I remember that you spewed some mumbo jumbo at the time about it being speculative. In fact, I will play exactly what you said at the time. Are you ready for me to call you to the carpet on what you said? You're and what do you see as the downside to this case? I think I can see this one:

Larry 12:48
"Well, if Mr. Doe has not been ordered to register, this case is premature and speculative. They'll say it should be dismissed."

Andy 12:55
All right. That's what you said at 44 minutes and change on episode 227.

Larry 13:01
Did I say that? I'm not sure that's my voice.

Andy 13:04
Yeah, I did some, some masking tones. And so that's actually that's our transcriptionist person.

Larry 13:12

Well, I did say that. I don't know what else to say other than it was my opinion at the time. And it seems like it's the judge's opinion. But I think you have something here to say about the judge, don't you?

Andy 13:27

I do I do. I think that the audience should hold you responsible for this debacle. It is well-known fact that most, if not all federal judges listen to Registry Matters and base their rulings on what you say. So you are the reason that this case is in trouble. Can you at least admit that?

Larry 13:44

Oh, I can indeed. I instruct federal judges almost daily in terms of how I want them to decide cases. So yes, I can admit that.

Andy 13:54

Alright, but let's get back to some seriousness. And let's get into the current situation. In this case, explain what happened. Tell me really quickly about an injunction and the level of surmountability that it does require. And so that was what was sought, and it was denied. And I've heard you pontificate for years about the difficulty of getting an injunction. Why are they so difficult?

Larry 14:17

Well, it's difficult and it should be difficult. A person seeking an injunction is asking the court to grant relief and be awarded something prior to the resolution of the case on the merits. So in other words, he or she has not proven the allegations in the complaint. So that's why it needs to be a tough standard because you're asking for relief that you have not won.

Andy 14:40

And you're also asking that it just be reviewed by a judge without any sort of jury, and you're just asking the one person to almost make an executive kind of decision. Right?

Larry 14:54

Well, that is true, but that's not the real issue. Because it could be a bench trial anyway. But in this, you're getting relief that you haven't won. The other side hasn't had the chance to fully play their defense. I don't know why people have all struggle with this. We presume that the burden is on the party that's making the assertions. That's where the burden rightfully rests. So therefore, the person who's in the defensive posture--in this case, it'd be the state of California or the US government attorney general--whoever is going to be in the defensive posture, they haven't had a chance to play their cards. Therefore, I see giving them an award of relief that you have not played out and given them

a chance to defend against is an extraordinary remedy. Therefore, it has to be a tough standard.

Andy 15:41

But it seems like you kind of have no mercy. Let's just refer to the court's order, the judge stated that "a plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, and that the balance of equities tip in his favor and that an injunction is in the public interest." This is relying on Winter versus Natural Resources Defense Council. And that's from 2008, with some numbers and stuff in there. So for those on the list, are they all equally important? That's a good question. Are they equally important?

Larry 16:19

No, not in my opinion, they're not equally important. To me, the two most important factors are the likelihood of success on the merits, and that there would be irreparable harm without the injunction. In other words, you have to show with existing case law that you would likely prevail, when the case ultimately goes to trial. This means that your facts are sufficiently similar to controlling case law that when you do get to have your day in court, it's your win. And--and the and is important--that there would be irreparable harm. The harm cannot be speculative, which is precisely the situation we have here. They are speculating that he might be harmed if the day comes that he should be directed to register. But that's too far disconnected from reality to be a credible threat of harm.

Andy 17:06

The defendants argue that Mr. Doe does not allege standing, because he has not shown that he is required to register under SORNA or the rule. Mr. Doe argued that he is subject to the rule, and that it exposes him to criminal penalties based on a decade's old, expunged misdemeanor offense. It's obvious to anyone with an open mind that he has standing. And why are you so dismissive of that?

Larry 17:35

Well, because there are no official, state or federal, that has even hinted that he must register. This is a figment of his wild imagination. He's created a fear of an imaginary boogeyman, and he's letting it adversely impact his life,

Andy 17:52

An imaginary boogeyman Are you implying that the Federal Penitentiary is an imaginary Boogeyman? I would not want to go to the Federal Penitentiary, Larry.

Larry 18:00
The federal prison is certainly not an imaginary Boogeyman. The imaginary boogeyman is that he is under no credible threat of being sent to the federal pen.

Andy 18:12
Okay, so why are you so adamant about this? The feds could prosecute him, could they not?

Larry 18:22
Well, even in your wildest imagination, Mr. Doe is no longer subject to registration. According to the complaint, in 1994, when he was 23 years old, and still serving the Marines, he engaged in an otherwise in consensual encounter with a 16-year-old. They didn't sit it did not involve intercourse. In Mr. Doe's mind, this is the AWA rule that was adopted in January requires him to register in California because its original conviction was expunged rather than set aside for factual innocence. The only problem is nobody has suggested much less directed him to register. It's all in his head.

Andy 19:00
I really can't let you off that easy though. I've read the complaint. Mr. Doe has real issues. He "wishes to engage in anonymous speech on the internet through the use of anonymous usernames via email addresses and social media." He also "wishes to remain anonymous to preserve his privacy and to avoid adverse reputational risks related to his past offenses. He also wishes to speak anonymously about issues of public concern, including PFR registration requirements and his opinions on the rule. He contends that the rule requires him to disclose his usernames as part of the registration, which he could which could be accessed by the public."

Larry 19:38
Yes, but see, the only problem is he's not registered. And he's not required to do any of those things that he just listed in the complaint. Again, he did state those things. He did say that in the complaint, but he has not spoken on these topics through his anonymous usernames because he's not subject to the rule. This is despite, despite the fact that Mr. Doe currently cannot register. And even beyond the fact that he's not required to, as I understand it, they won't even register him if he tried. He says he's concerned that California may force compliance with the rule at any time. The only problem is, they haven't as of now, which makes this case, as I said, back on Episode 227, premature and speculative.

Andy 20:29
So if we go back to our favorite punching-bag person in North Carolina that called the office like three times, and then they eventually nailed him, he actually attempted to

register and they say, "No." And he's repeatedly done this, and they say, "No, don't register."

Larry 20:47
People can't take no for an answer I have no explanation for that.

Andy 20:52
Well, anyway, Larry, you always forget about the vast FYP trove of stuff you've said previously, because like, every episode has approximately 10,000 words, and we've done 240 of them. So there's a lot of words that you've spoken out there. And if we go back to 227, a little bit later than the previous clip, this is what you said.

Larry 21:14
"The complaint gets the attention of the press, and they seek comment from the Attorney General of California. The reporter will ask the question as follows: Do you think it's a good public policy for our state to have people who have committed serious sexual offences living anonymously in the community. And then there's the likelihood that victim advocates will apply even more pressure to close the loophole that they perceive that permits people to go on with their normal lives while the victims live in constant fear of being attacked, again, by their former perpetrator. Political pressure could easily mount, and the California Assembly could find itself in impossible political position of telling the voters that the federal government has it all wrong on the PFR issue. Is that a sustainable political position?"

Andy 21:54
That is what you said. Do you remember saying that?

Larry 21:58
I vaguely remember saying that, and I stand by that to this very day. The risk of this litigation outweighs the rewards. If they actually were to gain attention, in California--I don't know how much attention this has gotten, if any, in the press. But this is a case where you're asking and inviting a lot of media attention. Because if a reporting news organization doesn't understand that there is no federal registry, it could look like Mr. Doe, is escaping his federal duty to register, which he doesn't have. But I did say that. And as I continue to be fearful this case, what happens when it gains traction in the media? Although right now, California does not require him to register. And people similarly situated as to what happens when they change the law, because of all the attention that this case gets.

Andy 23:04
Sounds like from Butts County, where the person was complaining like, "Hey, man, you don't want to bring us under the heat under the spotlight of the legislators.

They're going to turn around and go change the law." Same thing?

Larry 23:17

That is correct. That guy was in Clayton County, Georgia, you're talking about, but yes, that is what I'm talking about. As a general rule, you shouldn't litigate something that doesn't need to be litigated. We don't need this answer yet. Because no one has been ordered to register. There's been a regulatory proclamation by the US Attorney General that seems to strongly suggest as an independent federal duty to register. That's nice as attorney general opinion, but the Attorney General has taken no action on that yet. The Attorney General is hoping that the states will use that to modify either law or to try to figure out how to expand the compliance to get more states into substantial compliance. But no, nothing has changed. I don't understand. I got into a discussion with the transcriptionist about this. And he said I was getting overly heated about it. But I don't understand why people obsess over things that are not a problem yet. This does not need to be resolved yet until someone is directed to register.

Andy 24:23

So I going to go through this again. After we did pre-show and this talk, I think I'm beginning to understand. The court stated to satisfy Article Three's standard requirements in the context of a pre-enforcement challenge. A plaintiff must show that they face a realistic danger to sustaining a direct injury as a result of the statutes operation and enforcement where the feared prosecution is too imaginary or to speculate. There is no standing does he have to wait for a knock the door and being led away in handcuffs like the cops and the like the the whole SWAT team think about showing up?

Larry 24:58

No, he does not have to do that. As the court stated, in evaluating the genuineness of a claim threat or prosecution courts look to whether the plaintiffs have articulated a concrete plan to avoid the law in question, whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and the history of past prosecution or forcement, under the challenged statute. So they haven't done any of those things. A state or federal official has indicated nothing of the kind. And I don't know why people can't take no for an answer. There is nothing going on here yet, in particular, in the case of Mr. Mr. Doe, but they did name several other potential plaintiffs. And we'll see what happens on that. But I don't understand.

Andy 25:50

So tell me what happens next. So what happens next to this individual?

Larry 25:55

Well, the court found that Mr. Doe lacs standing. I'll just read it. But "because the court finds that Mr. Doe lacks standing and declines to find that ACSOL establishes standing on the basis of other members, the court does not reach the merits of the Plaintiff's request for a preliminary injunction. As the pleading may possibly be cured by an allegation of other facts, the court grants leave to amend." So they can draft a brand-new complaint. And they will file an amended complaint. They may have some of the plaintiffs that were already mentioned in this complaint that they'll bring forward. But my opinion has not changed. If none of these people are under the threat of prosecution, if the outcome is not going to change it's still imaginary. It's still speculative. It's still premature.

Andy 26:49

Do you think that the amended complaint is going to be filed?

Larry 26:53

Oh, I have no doubt. There's absolutely no way that these people who are behind this are going to let it go. They receive great accolades from their followers for doing stuff like this, whether it's sound litigation or not. And I have no doubt that they'll file another one. I can't speak to their motives. Their motives may be pure as winter and snow. But I can't speak to their judgment. And their judgment is not all that spectacular. But their motives I can't address.

Andy 27:18

And tell me what happens with the amended complaint?

Larry 27:22I

It would be filed with new allegations. The defendants would get a chance to answer to give, follow the response. And they will file the same response that they filed previously with slight modifications. So they will make the same defense that's already worked. And they'll say the same thing all over again: this is premature, speculative, and all this kind of stuff. And we're in a holding pattern on this. This is exactly like the International Megan's Law when they were wanting to challenge the marker on the passport before the marker was ever identified, much less who was going to be required to have the marking? It was speculative and premature. As I said, at that time, you can probably dig that out of their archives if you'd like.

Andy 28:10

Maybe, maybe I'll do that.

Larry 28:12

So actually, I don't know if you can because that was passed in 2016. And I think we didn't start the program to 2017.

Andy 28:19

I'll find it from NARSOL In Action. It will sound like an am radio with tin cans or something.

Larry 28:25

You can find it with Barbara Gale because she was the attorney that used to be the head of the Georgia group. And I told her what the ruling was going to be when it came down that way. She said, "Did you write the rule anywhere?" And I said no. But again, it's not hard to figure out when something's not right. There has to be ripeness for an issue. You have to have standing. This guy is already off the registry in California. He can't register even if he wants to because he's gotten his expungement. They've released him. And beyond that he is a tier one. It looks like based on the pleadings, the court in this case considers he would be a tier one under the AWA. And the maximum amount of time has already expired because the Tier One is 15 years. And there can be five years removed if the person meets certain criteria of not being arrested, and on and on, that what we've gone over before. This guy has no standing. And they're gonna have to come up with some people that have standing. And I don't know how you do that, because they're arguing about people who are off the registry. They have to argue about people who are on the registry. So the people who are off the registry, I don't know how they're going to manage to cure that defect of no one has told those people to register. It's a figment of their imagination. I don't know how you cure that. But we'll see. I mean, they may come up with something really creative.

Andy 29:49

Hold on to that thought. I have a question for you, and then I have a question for someone in chat.

Announcer 29:56

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Andy 30:44

Can you briefly describe the duration of registration? And tell us how the situation is in California?

Larry 30:53

Yeah, I could do that. You're talking about the AWA tiers?

Andy 30:57

Yes. Section 20915.

Larry 31:01

Yes, the basic framework is it's an offense-based registration system. So the federal government recommends that you look at your list of offenses, and you put them in certain tiers. And they give you guidance of how to do that. And they tell you if there are misdemeanors, they should be recommended as a tier one. And if they are felonies, they're going to be at least a tier two. And if there are certain felonies, involving a minor under 13, with force, they need to be tier three. And within that framework, you register either 15, 25, or life. And it's 15 for the tier one, and there's a five-year reduction. So you can register for a little as little as 10 years. And it's really straightforward. You have to have no sexual convictions of any kind and no felony convictions during those 10 years. And you have to complete an appropriate treatment program. And you're entitled to that five-year reduction. So it's a 15, 25, or life, and the frequency of the duration is governed around that. A tier one, you need to register at least once a year. A person in tier two needs to register at least twice in person and a tier three needs to register four times a year in person. That's the basic framework of the Adam Walsh Act.

Andy 32:24

And it could be you committed your crime at the age of 18. And now your 80, but there's no timeline of aging out of it, so to speak. They're going to always look at that crime, no matter any of the other, like the Static 99. This is what I was trying to work my way around--they're not going to look at how long has it been. I'm not talking about that five-year stuff. But I'm just saying it's based on the crime alone and no other factors.

Larry 32:57

That is correct. It's based it's an offense-based, rather than a risk-based system. So therefore, but there is the passage of time in terms of your registration. Like he's already had more time than required past. So therefore, the best-case scenario, he wouldn't have to register because his tier one time has already expired. And the Feds allow you to give credit for all the time that's expired, even if the person never registered. They're trying to create a gap between the last offense that was the intention. But 20 or 25 years have passed, and you're a tier two, and you never register a day. You've met the 25-year requirement.

Andy 33:36

Okay, I gotcha on that.

Larry 33:39

Now, it turns to be a little bit of a problem for the for the tier threes. And that's why it's so important that you get only to tier threes that are correctly there. And many states have put things into your tier that do not belong there. On a tier three, that's lifetime. So if you're breathing, and they find you, you're still covered.

Andy 34:00

So we had a question in chat. And I think it's a good question: I've always held the understanding that you had to show harm to even file a case. How did this complaint even turn into a case?

Larry 34:13

You don't have to show harm to file a case. His complaint is about a regulatory scheme related to a statutory scheme of the Adam Walsh Act, and he feels like he's within a zone of potential harm. But the problem he's gonna continue to face is that the the harm is really not there yet. We've got to get closer to the harm. It's got to actually come into play at some level. If the US Attorney General issues directive to all of the US Attorneys around the country that effective on July 1, 2023, we will begin to try to identify everybody who is off the registry and notify them that they must rejoin us. Then you've got the requisite that you need. Because everything he alleged in the complaint, not necessarily Mr. Doe, but some of those other people, they may be able to show that they're within the zone of harm about the internet, the anonymity, and all the things that go with being registered. But we're not there yet.

Andy 35:23

I see. So while we were talking about this, I had the idea that maybe we can rebrand something. Have you ever heard of Fermi's Paradox?

Larry 35:40

It's not ringing any bells.

Andy 35:42

Well, this guy is named Fermi, and he asks why haven't we heard from aliens? And there's two answers. The first answer is because there aren't any aliens. The second one is they're so far away, and because the speed of light and all the other things--we can't talk to them. In effect, both are true. So Larry, these fears that you're talking about, sort of kind of sound like Fermi's Paradox, that they're afraid of something that there's no evidence for. But they still believe that there's, like problems with these laws that are going to impact them. See what we did there?

Larry 36:18

If you say so. But my fear is you're creating the very problem that you claim you're afraid of. There's a lot going

on in California right now. They've got a governor who's trying to lead the outlawing of gas-powered vehicles. They've got a state that's having a mass exodus of population because people don't like the high taxes. They've got so many problems to focus on. They've got the Diablo Canyon, their power plant, that they're trying to figure out how to keep running because they're not going to have enough electricity, particularly when the Hoover Dam can no longer generate power. Why do you want to bring this to the attention and caused the legislature to pivot to this and put them in a position where they have to change California law because you're litigating a problem that doesn't exist?

Andy 37:12

And that wasn't a problem out there is insane. Oh, my God.

Larry 37:16

For the life of me, I can't understand why you would want to do that.

Andy 37:23

All right. Is there anything else in this particular thing that you want to talk about, before we go on to my little ad hoc ask you question session?

Larry 37:32

Well, if there's no other questions in chat, if we haven't run off the remaining listeners, I'm sure we will before before the weeks out.

Andy 37:41

Nope, nothing else. Nothing else from the peanut gallery, I guess you could say. Do you know that there was a pretty big weather event that happened in the southeastern United States recently?

Larry 37:54

I'm not really familiar with it. Which one are you referring to?

Andy 37:58

I'm referring to the giant category, 7000-hurricane that rolled over Florida. It was like in the opposite direction of Andrew, a little bit north.

Larry 38:09

We haven't had an experience with that here. So I don't know anything about it.

Andy 38:14

You don't have hurricanes?

Larry 38:16

No, we don't actually. You

Andy 38:18

Probably almost have no weather where you are. It's the same almost every day. Right?

Larry 38:23

That is correct. 300 days of sunshine. Yes, we do get the outer bands of hurricanes as they move up from from the Gulf sometimes and from the Pacific. But there's no meaningful impact from hurricanes. We're just too far inland.

Andy 38:40

Hey, do you know what--and this is just completely off the rails--do you know what the difference between a hurricane and typhoon is?

Larry 38:46

I do not. That one's in the Pacific, right? And a hurricane is in the Atlantic.

Andy 38:51

No, it's south of the equator. On the western side? I guess. Yeah, cuz I don't think there's any typhoons in the Atlantic. Even if they come from below the equator. I'm pretty sure that's how it is. Something along those lines. So anyway, there was this big hurricane--did it make it to Category Five? Or was it just category four? I think it was a category four.

Larry 39:09

It was category four, four miles an hour under what they needed to raise it to a five.

Andy 39:15

So it comes up about this time of year, and we can have this exact same conversation when it gets butt ugly cold of what do you do with PFRs if they need to get to shelters of some sort, or if they're homeless and anything of that nature? Can you help me? This will be the first question. Help me understand why the the laws would be that they restrict PFRs from getting to an evacuation shelter?

Larry 39:45

That's easy. Because they can, and it plays well with the public. It's one of those imaginary boogeymen that we just talked about, where there's some advocacy group has gone in and said, "Can you imagine this, those kinds of people are allowed to shelter with us." And they changed the law. I can easily explain that.

Andy 40:11

There must not be any sense of humanity. I can understand that you don't want them in your life. I mean, I can't really, but at least, conceptually that you don't want them in your neighborhood, and so forth. But I have a picture up on the

screen for anybody that happens to be watching. Like these categories, even like a category one storm, or even a bad tropical depression will rake people over the coals. and they have no place to go. And they're in the elements that there would be no way to survive, if they were actually in this. I saw a picture where someone posted the water level in the Tampa Bay area before the hurricane hit. And all the water is sucked out in the ocean getting pulled up into the clouds for it to dump on the area as the hurricane goes by. So do you have any experience with how people are treated getting to a shelter or anything like that? If they're allowed to go to a shelter, how are things handled? Do you have any experience with that?

Larry 41:10

I don't. I only have what people have said and comments afterwards. And I reached out to a couple of folks and didn't have any luck. I guess they're still in power shortages, power outages. I mean, they're still in distress. But I've heard that they're instructed, depending on what county they're in, to report to various locations if they're on the PFR list, including jail.

Andy 41:40

Do you see a problem with them just under the quote unquote, "civil regulatory scheme." If my handler tells me that I have to go visit the local jail as my evacuation shelter, meanwhile, my neighbor gets to go to a normal one. I mean, I don't know. Almost like, "Hey, I got my own room, instead of being in a big gymnasium with 700 of my closest friends." Is there anything like a constitutional challenge there? Anything more than that is an ethics challenge. Is there any way that somebody could file a constitutional challenge?

Larry 42:12

Absolutely. There there is, in my opinion. But there are many barriers there. There are a number of things you could assert in such a challenge. The first thing you want to do is to scare them about the monetary thing. If they designated a PFR shelter, something tells me that they're not going to designate the best shelter for the PFR. Would you agree with that?

Andy 42:35

I think so.

Larry 42:37

So therefore, it's going to be a less quality shelter. And suppose a person has conditions that need to be cared for that cannot be cared for in whatever that substandard PEFR shelter is, then you run into potential liability for requiring them to go to this alternate shelter. This bleeds over into the issue of that since 1954, when the US Supreme Court ruled in Brown versus Board of Education that separate but

equal is not equal. We would look at this. And this is certainly separate but not equal. It's not defensible. I mean, that's an almost 70 years old no 68-year-old precedent. Well, I shouldn't talk about precedent because of this group we have up there now. But there's a long-time precedent about separate but equal not being equal. So I think that a person does have a cause of action. But here's the problem. When you follow that cause of action, who do you serve? Who's your who's your defending party? Because everybody's going to point the finger at one another. So if it's a Florida Statute, you would name the attorney general or the governor. The Attorney General or governor is gonna say, well, we don't set up the shelters. That's a FEMA thing. The Federal Emergency Management Agency is gonna say, "Well, these are FEMA regulations, that's the first thing they're gonna say." That's exactly what I would say. And I always try to be self-deprecating--if I can think of this, they can think of that. So what they would say is that, you know, we've got these obligations to get our federal FEMA money, that we have to do these things, and I don't know what's in the FEMA regulations, but they're gonna say it if they can even come up with anything that remotely resembles federal regulations to point to. So then when you ask for leave to amend, and to name the FEMA Administrator, the FEMA Administrator is gonna say, well, it's not us. It's the local administration. We just provide the money, but shelters are administered locally. So you need the name, the local person as a defendant. And you're going to have the circular game. And when you finally get the local person and the judge says, "I've heard enough game playing. We're going to settle this. Who's the local party?" Then you're gonna get to the part where the local people are going to play the games. They're gonna say, well, this is speculative, which is like what we said about California. But we don't know what the county commission is gonna require next time around. So it may be a different facility altogether, I guess. So this is gonna be a tough one.

Andy 45:12

And we can reference back to the California thing about having standing. So it's also seriously past the event that, you know, the hurricane came in, and you couldn't go to a shelter and poof, now the hurricane goes by, oh, well, it already happened. So can you just suck it up and move on. That could happen.

Larry 45:35

That's precisely what's gonna happen. But they're gonna say that, and you won't be able to say, when the next one was gonna occur. But they need a degree of certainty. You can say that there will be storms in the Florida peninsula, but you don't know when they're coming and what part of the peninsula they're going to hit.

Andy 45:51

My handler told me back in the day, because there was one that was gonna roll through the area and said that I would report to the shelter and identify myself and they would have my own special place. Like, I guess it would be the nearest broom closet or something like that, to keep me away from the people so that I don't spontaneously offend.

Larry 46:09

Well, that would have been interesting, but you didn't ever have to do that. But I'd like to have some real solid evidence of where they would have sent you, had that happened. Because then that would make good material for an actual lawsuit, depending on what they told you to do. If they put you in your own private space, and they fed you well, as well as did everyone else, and you had restroom facilities and you had good care, it wouldn't matter. But what if they didn't?

Andy 46:40

And the next thing--what's the population of this area? 3ish or 4 million people once you encompass the entire breadth of where there may have been potential damage. It seems in my brain, from an administrative point of view, it's easy to just corral everybody and deal with everyone is one big block, then like, oh, crap, we have to make this exception. You're then pulling potential resources away to lock PFRs up in the local sheriff's office, and your resources might be out and have the ability to go out and direct traffic and deal with people with like real emergencies instead of some babysitter duty. Does that make sense?

Larry 47:20

Well, it does. But again, we don't know what they do with these people if they do report to the sheriff's office. I have heard that shelters are locked once they reach a certain point. And I don't know if this is factual, but I've heard that people are not allowed in or out. Our vast audience should correct us on this. But I would maintain that you should be able to leave if you so desire. I mean, if it went as long 114 miles and there's debrief flying around everywhere, and there's downed power lines, and you want to get electrocute yourself, I think in America, you have the right to do that.

Andy 47:59

Can you imagine then there's gonna be some sort of lawsuit against them for letting the person out and they got electrocuted.

Larry 48:04

But that's what they say. But you know that that would be liability, but they don't let people leave after a certain point. I don't know this stuff to be accurate. I've learned that when you hear stuff online, and you hear people chatting

about stuff, if you don't have firsthand information, you may be hearing incorrectly. But these are things I've heard. But what is really problematic to me is what about all these people that have committed crimes that could be harmful to people in the shelter. There are so many things that people go through if you have a gymnasium full of 300 people or whatever the capacity might be with your cots side by side. What all have those people done in the way of criminality? Is your personal property safe? Are you going to be physically attacked? How many of these people have done violent crimes? How many people have sold drugs to children? Aren't we fighting an imaginary boogeyman here?

Andy 48:59

Sounds like it's a solution in search of a problem. I think that's the expression that we should use.

Larry 49:05

But there's no doubt it's a solution that starts to have a problem. But I'm sure when this was being debated the PFR was not there. Not that they could have stopped it if they had been there. I'm not saying that. But you certainly are not going to stop it if you're not there. We can agree on that. Right?

Andy 49:23

Yep. Ok, here's a question in chat? So what about the sheriffs who round up PFRs on Halloween and lock them up for the night? This is similar and you have your own problems with that issue. We can like noodle around that for just a minute because we're in that season.

Larry 49:39

We are indeed we're 30 days away. In terms of that, if the person is under supervision, that always changes what they're allowed to do because your freedom is conditional. And being deprived of liberty for a few hours on a Halloween night is not significant enough that most courts are going to pay it any attention. But a person who is merely subject to the civil regulatory scheme of registration, if they are ordered to give up their personal freedom and be in custody, I think that we can look at what happened to Georgia sheriffs that made up the requirements. You just can't deprive people of liberty, you just can't. So I think that there's a there's a lawsuit with reasonable chances for success if anybody is being required to go place themselves in custody on Halloween, and they're merely required to register with nothing else in the way of supervisory conditions.

Andy 50:39

How would somebody bring a challenge forward when they're going to sue 10 people? I've seen challenges that we have talked about where they cite this person all the way up the chain to like the Secretary of State, practically, and

every county administrator and bureau of prison official in the governor and they just run it all the way at the whole flagpole and sue everybody.

Larry 51:07

Well, that sounds good. But one problem is you got to get all these parties served. You got to prepare a summons of the complaint, and you have to serve the person and the entities. And then you have to get someone to accept the summons and file the return of service. And then you create a whole bunch of extra work when you do that because those parties are going to answer by filing a response, saying why they shouldn't have been named. And then you have to plead back to them or else they're their motion saying, we're not an appropriate defendant is going to be granted. And they're going to be asked to be removed. So it sounds really wonderful. But if you're a one-person law firm, you don't want to do that.

Andy 51:42

Okay? And that's what you were talking about--going around in circles and circles--you're gonna say I'm suing this guy, this guy, this guy, and they're gonna say, no, no, no, and then you're gonna like a bathtub in the drain, just swirling around a circle for all of time.

Larry 51:55

That's exactly what you're gonna do. That's what people don't understand about litigation. It sounds good. Oh, we ought to do a big class action, but they have no idea what they're talking about with a class action. You really want to try to zero in on the proper respondent when you're filing these types of actions because you want to have your arguments ready. And you're going to respond, yes, you are the correct defendant, here's why. You don't want to just throw up a bunch of people and hope it sticks. That's irresponsible litigation, in my opinion.

Andy 52:25

I don't think I have any other questions. And no one has offered anything in chat. Do you have any other final points that you want to talk about?

Larry 52:33

No, I think we're coming up on our time.

Andy 52:37

We're going on 52. I was going to ask if you wanted to hit any one or two of these articles, or do you just want to drop it?

Larry 52:45

Well, let's see. What would my favorite article be?

Andy 52:49

I didn't look at any of them. So we're going to be doing this. What do you call it extra, extra, x-training? What do you call it?

Larry 52:56

You certainly don't remember what I say.

Andy 52:59

That's why I get recordings.

Larry 53:02

That's why you have to play these clips later to remind me of what I said previously.

Andy 53:05

What is this word you keep using?

Larry 53:09

Extemporaneous?

Andy 53:13

What is this word?

Larry 53:17

That's what you speak without script.

Andy 53:20

Why can't you just say unscripted? All right, any of these articles?

Larry 53:30

Well, they're all interesting. Why don't we do all nine of them?

Andy 53:35

I don't think we can. I don't think we can do them all in like eight minutes.

Larry 53:42

Well, let's just let's just wrap it up. I do have an announcement. Next week, we will be recording for all of our loyal patrons Friday evening rather than Saturday evening. I will be attending a very special event. Anybody who's ever been to Albuquerque or about Albuquerque

Andy 54:03

You're getting married?

Larry 54:06

No, Margaret put that on hold. Remember last week?

Andy 54:09

Yes. So you're attending the balloon event?

Larry 54:12

Yes. It's called the Albuquerque International Balloon Fiesta. And this one is special. I've been here for a long time, and we have it every October, but what makes this one special is it's the 50th anniversary of the Fiesta itself. They started in '72, and it's the 50th Fiesta, but it's the 100th anniversary of KKOB radio, who started the Balloon Fiesta in 1972. KKOB, which was known as KOB at that time, they were looking for something splashy for their 50th birthday, which happened in late March of '72. So they had this birthday bash in April '72 at Cornell Shopping Center. They launched 13 balloons. And this is their 100th anniversary and the 50th anniversary of the Fiesta. And therefore, being that I am in the position that I'm in with my day job, we have VIP tickets to go to the balloon Museum and watch it from the elevated stand, rather than having to be down with the the pesants. And we have VIP parking. So I'm going to be out there at the Fiesta, watching the special balloons. There's going to be an evening globe and special shapes and all this kind of stuff. And I should have a few photos. My camera might make some decent photos and we can get them.

Andy 55:43

I hope so. But you got you got something better than \$100 Walmart job you used to have.

Larry 55:48

Nothing wrong with that phone. It worked.

Andy 55:51

It wouldn't take good pictures. They would be all smudged and blurry.

Larry 55:55

You're imagining things. But yes, we'll probably record Friday evening. I'm guessing around the normal time, but maybe a little bit later because of my day job. But it'll be by 8pm. And then we'll be back to regular schedule. And then I think you have an announcement about what might be a scheduling conflict later in October.

Andy 56:15

Yeah, but at the end, we'll figure that one out. Maybe I'll record from a campground.

Larry 56:20

So Alrighty.

Andy 56:23

Well, everyone, if you want to find show notes, you can go over to registrymatters.co and fypeducation.org. You can leave voicemail at 747-227-4477. And email registrymatterscast@gmail.com. And of course, for those that were listening tonight, thank you for being a patron, and you can sign up at patreon.com/registrymatters. And

we did do our little event chatting with Larry, I think that was Thursday night, we had a few people come out. And I think that was roughly about the right number. Maybe a couple more could have shown up. But it was enough to have a conversation and pay attention to people. And I think it went well. And I think we'll do that towards the end of October. And we'll have another one that was for \$5 patrons and above. So please sign up. Oh, you know what, Larry, talk for a second. What were your thoughts on the event the other night? Because we got a couple new patrons.

Larry 57:15

Absolutely. I think it went well. When you start doing individual questions like we did, there has to be some give and take. And you have to allow a little bit of latitude for people to do a little bit of rambling, which I find is a problem. But all in all, I think it went really well. I hope I provided some help to a particular person in Tennessee that's trying to run a strategy on a particular proposal. So I do the best I can. I can assure you none of that was scripted--that was actually live.

Andy 57:41

There was a lot of cuss words.

Larry 57:45

There was?

Andy 57:47

Yes. I love when you are unscripted, Larry, and you don't think that you are being quote unquote, watched because your language gets more fluid and freer. So we did get two new patrons. And one of them was Dennis and the other one is just a bunch of initials. And so I'll just call you JH. So

thank you both for becoming patrons. And both of those showed up to the event on Thursday night. So thank you so very much for everyone joining that came along.

Larry 58:17

Awesome. And to our friends at the Joint Regional Correctional Facility, we're going to be doing a special program in the coming weeks. I don't know exactly the date, but we're gonna be doing a special program, and we're going to have a guest that some of you will know personally. We'll be talking about the standard of proof and all the issues related to how unjust what's happening to these guys. It's really tragic.

Andy 58:45

Well, very good. Well, thank you so much, Larry, for everything that you do. There are several things in chat going on that you should be made aware of. And if nothing else, then I will talk to you next week. And before then, I'm sure to do prep and stuff like that. Thanks everyone for joining and listening to the program. Again, like subscribe, subscribe on the podcast apps, all that stuff and share with your friends.

Larry 59:07

Good night, everyone.

Announcer 59:09

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