



RM254—Recorded February 4, 2023
Unclear Law Keeps PFRs on the Registry

Announcer 00:00

Registry Matters as an independent production. The opinions and ideas here are that of the host, and do not reflect the opinions of any other organization. If you have problems with these thoughts, F.Y.P.

Andy 00:18

Recording live from FYP studios, east and west, transmitting across the internet, this is episode 254 of Registry Matters. How are you people this evening?

Larry 00:30

We are doing marvelous. It's 60 degrees. It's beautiful. And I'm looking forward to a four-hour recording tonight.

Andy 00:39

Oh, four hours, okay. Well, I will put it on extended play. So hey, make sure that you go over there and do all those nifty things on the YouTube thing, pressing the like, and the subscribe button and all that happy horse ka-ka stuff. You know what I'm saying, Larry?

Larry 00:56

And five-star reviews and comments and engagement and everything that feeds that algorithm. So that will get more subscribers. The more you feed the algorithm I'm learning, the more YouTube pushes us out to people who need it. It's up to you to help push it out.

Andy 01:11

Four years into the program, and you're figuring out the algorithm. Good job.

Larry 01:16

Well, we are trying to explain it to people even though you don't think it's worthy of your time. The like, and the engagement, all that makes YouTube do things that help us, which is to feed this to more people who need the information.

Andy 01:30

I'm not qualified to answer people's questions often Larry. They'll ask, Hey, what about such and such and such and such state? I'm like, yes, that's a state.

Larry 01:40

Well, that's a good answer.

Andy 01:43

Do me a favor, sir. Would you give me a brief synopsis, the 30 second version of what's going to go on tonight.

Larry 01:51

30 second version? All right, we have a case from the Missouri Supreme Court that is significant. Also, we will touch on last week's segment regarding chemical castration proposal in New Mexico. And we have a bill in Iowa which merits our scrutiny because it would bring folks back into registration that have been removed. And we have one question from a person in federal prison who wants to know about travel outside the United States.

Andy 02:20

And so without further ado, sir, I will take care of this question from the person in federal prison. It reads, "Dear Sir, I'm a level one PFR, and my offense was a federal crime. I'm in custody in Colorado. I am married to a Filipino citizen and have a house and a vehicle in the Philippines. At the end of my supervised release in five years, I want to relocate and reside in the Philippines with my wife for the rest of my natural life. I am now almost 70 years old. I do not want to renounce my citizenship as my income depends on social security and military pension. Is there any issue that you are aware of that will preclude my leaving the US. I had heard a rumor that it was difficult to leave the country even though you are a free citizen. Conversely, is there any reason that I cannot bring my spouse to the US and have my family emigrate while complying with the PFR requirements? Thank you for your time and trouble. Please do not use my name. Thanks."

Larry 03:40

So what we've done already is we've answered what we can and I'm actually sending him a letter because that question was submitted to NARSOL. But in terms of part one, I feel very comfortable answering. As to part two—I don't feel as comfortable about sponsoring from immigration. But in terms of part one, you will have absolutely no problem leaving the United States. You can leave the United States anytime you want to. There are no restrictions once you're off supervision. There is a requirement that you provide 21 days advance notice. And that's a federal requirement. Although it's federal, if your state hasn't put it into their registration scheme, you really don't have anyone to file that report with. So you could run into some problems because it's a federal requirement. People are just paranoid that they're going to be prosecuted. I've never heard of a prosecution where the person's state didn't require it to be provided when there was no place to actually go to and make the report that you're traveling. But anyway, let's

assume that your state, wherever you're going to be that, required that you file your 21 days advance notice as required by federal law with your local registration. They will transmit it to the US marshals who will then in turn transmit it internationally to Interpol. And Interpol will make sure the destination country has it. Well, there's where you could run into the problem. The destination country, having received that notice, well, in many instances, when you arrive, they will tell you sorry, we're not admitting you into our country, which is their prerogative. And you'll be facing a very expensive return flight to the United States. And that is what what's going to happen. Now keep in mind that the process is reciprocal, and that the United States receives such notices from other nations that leads to a denial of admissions into our country. This is not just a one-way flow. The United States has more notices, I would imagine, because the size of our country, and the complexity of our criminal reporting and record keeping. I suspect that we're sending more notices that we're receiving. But we're receiving notices as well from nations who have people on various terrorist watch list, you know, concerns that people are concerned about. And they share that information internationally. And the United States turns down their admission when they arrive here. And they're told to do the same thing. They're told to fly back to where they originated from because they're not being admitted. So that would be my suggestion is that you may not get in. Even though you're free to travel, they will let you fly off or sail away. You won't have any problem, but you just may not be admitted. So that's part one. Yep. Any questions?

Andy 06:44

No, I don't have questions. I'm pretty sure I agree with you that they're not going to stop you from leaving.

Larry 06:53

The only scenario I can imagine where they would stop you from leaving would be if you were under supervision. And somehow that they picked up on that in the airport screening process, they might would stop you. Or if they could pick up on the fact that you hadn't filed the requisite notice, they might stop you and try to prosecute you for that. But as far as I've heard, that's not been generally a problem. The problem is once you get to the destination. Therein lies the problem because they choose not to admit you based upon the notice. So it can a very expensive trip that accomplishes very little because you're turn back. In terms of the sponsorship, I am not an expert on that. I know so little about it. I know that we at NARSOL we're looking at the issue. And we're looking at the potential for maybe some litigation in terms of that because it seems to lack due process. But there is some sort of process by which you can make your case that you should not be prohibited from bringing your spouse in. And there's an administrative

review, and then from that point on, if you're denied that then there's judicial actions that can be taken. But I just lack knowledge to be able to give you much in that regard. But I do know that I understand why you wouldn't want to give up your social security, your retirement, if you're 70 years old, and you'll be 75 years old by the time you get off supervised release. It's probably not the best point of your life to start a new career. So the income that you have gotten is going to be the bulk of how you would survive. So you would not want to renounce your citizenship. But beyond that, I never, ever recommended anyone renounce their United States' citizenship. United States' citizenship is a very valuable thing. And I would never tell someone to disown this country.

Andy 08:45

Let me just dive in here for just a second. There is a website called Registrant Travel Group. And this is all anecdotal. This is whoever's experienced this. It isn't somebody going out and trying to find what the laws say and calling offices. These are people that went, and this is the experience that they had. And on there, you click on the travel matrix and go down to Asia, Philippines. And the first column is SOs, PFRs turned away. And the Philippines says yes. Now, I can't vouch for it. I'm only pointing to a resource that says you may have problems. That's all I really want to point out by this.

Larry 09:32

So well, that is a good resource. It'll be very limited in terms of his particular situation for accessibility being that he's in the Federal Prison up in one of the federal prisons in Colorado. He will not have that access, but maybe perhaps someone can do some research for him.

Andy 09:51

Yep. And continue then with the rest of that.

Larry 09:56

I think we're done with that question.

Andy 09:59

Okay, well, I believe there is a problem bringing in a spouse as a PFR. And I think I heard you say that you didn't feel qualified to answer it. But I'm pretty sure that there are other people that have a lot of problems bringing in a spouse from another country that is a PFR. And Brenda in chat says, yes, there definitely are. I'm not trying to answer it legally, or anything like that. But if he's trying to bring that person in as a PFR, he may have a lot of challenges.

Larry 10:26

Yes. I did say we at NARSOL are looking at litigation in the area. The person that approached us is still in administrative review. So it's not ripe for litigation until you

have exhausted the administrative process. But there is a process by which you can ask for a waiver. There is a provision, but apparently it puts some prohibitions on being the sponsorship. There is a provision that limits that. But I don't see that there's much due process afforded to those people. And that's what's troubling about it. I'm not going to ever argued that something can't be done, because with proper due process, a lot of things can be done. Remember, the Constitution says you can't be deprived of life, liberty, or property without due process. So if you logically interpret that, that means you can be deprived of all those things with due process. Right? If you can't be deprived of it without that means that de facto with due process, you can be. You can be deprived of your life, your liberty, your freedom, and your property. Well, I would argue, if I were the government, that we can deprive you of the privilege of sponsoring someone to come into this country with proper robust due process. I don't think that's being provided.

Andy 11:48

Yeah, and to go the other direction--the death penalty stuff--you did have due process. So that that's the life part of the life, liberty and property and you did get due process.

Larry 11:58

That is correct. And you can have your life taken after the due process is complete.

Andy 12:03

Exactly. Well, then let's move along, shall we?

Larry 12:08

Let's do it. Where are we going next?

Andy 12:10

I want to circle back to the legislative proposal we discussed last week pending in New Mexico. I think it was HB 128 and it was scheduled for a hearing in the House Health and Human Services Committee. How did that hearing go?

Larry 12:37

Oh, well, the bill was not heard.

Andy 12:30

Wait, say that, again.

Larry 12:36

The bill was not heard.

Andy 12:43

So tell me, is that good or bad that it was not heard?

Larry 12:47

Oh, well, when you're running a stalling campaign, this is a marvelous result that it wasn't heard. It wasn't heard Monday. The committee met Wednesday, and it wasn't

heard Wednesday. The committee met Friday and it wasn't heard Friday.

Andy 13:04

Okay, um, and so what is the publicly stated reason? What was the reason that it wasn't heard? Tell me why.

Larry 13:14

Well, the Monday publicly stated reason was that one of the sponsors, Representative Stephanie Lord, was not feeling well on Monday morning.

Andy 13:28

Okay. Any other reasons, maybe like black ops reasons or something?

Larry 13:33

Well, I'm not certain of all that was going on. But the fiscal impact report was posted and made available publicly on Monday. And then I sent a comprehensive letter that was reviewed. I know for a fact because I have personal relationships with members on the committee. It was reviewed by the committee and by the chair about a committee analyst. Amazingly, the bill now appears to have lost its momentum.

Andy 14:03

And hang on, hang on. I have something for you to play. You're not prepared for this. But what are you trying to do, Larry? [recorded voice: I'm trying to win the game] So what are you trying to do? [recorded voice: I'm trying to win the game]. I see. So it doesn't matter. Whether you push, shove, tackle, whatever, you're just trying to win the game.

Larry 14:21

That is correct. It's what we're trying to do here. We're trying to win the game.

Andy 14:27

All right. Let's see here. So is there anything else that could happen after all that?

Larry 14:32

But you missed the next question about gobbledygook.

Andy 14:36

I was getting there, Larry, if you would just relax. So you did send me something, and I read all that gobbledygook and it went on and on. I didn't see any reference to recidivism. So no recidivism, and so why no recidivism was listed.

Larry 14:53

Well, it was three pages, but I didn't see the need. As I stated last week, it's not a very effective argument. So

therefore I did not raise that argument in my three pages of gobbledygook, as you called it.

Andy 15:04

I see. And are you still pretty confident that the bill will not resurface on this session? So will the bill not pass this go around?

Larry 15:14

This bill will not pass in New Mexico. I can't guarantee it because nothing in life is guaranteed other than death, but I can tell you with emphatic confidence that this bill will not pass on our legislature. Yes.

Andy 15:29

A very dedicated listener of ours sent me some peer-reviewed empirical evidence stuff about the damage that the chemical castration stuff does. And this person was going to voluntarily take it to help him in his situation. But he saw all the medical downside of it and opted out and said, you know what, maybe this isn't really going to be all that it's cracked up to. So I will try to add that to last week's show notes so that people can have access to those PDFs that were sent. And thank you very much to that individual that sent them. So do you want to cover this little clip that you provided me, Larry?

Larry 16:09

Sure. But before we go do that, I did have several sections of key points in there. It would take too long to go through them all. But I did not have anything about the downside medical of the procedure itself--of the medication. I did put in there about how the conservatives claim that they are so much against the government forcing you to put stuff in your body against your will, and how that they've magically done a flip flop that was actually in there in the gobbledygook. But I didn't put anything in there about the medical stuff because I didn't feel qualified to talk about that. But if the bill does gain traction, I will be happy to, to add that to the list of things. But I will never argue recidivism because it's futile to do that. And so yeah, we can go on.

Andy 17:01

Do you want to set it up, or you just want me to like dive right into it.

Larry 17:04

So the clip that we're going to play is from a US senator from Louisiana, and the conservative talk show circuit had a lot of fun with it over the last several days because a judge before the Senate for confirmation was being questioned. And this was a question that he was posing that caused the uproar about how stupid this judge was. And I just want you people to listen to this and see what you think. And then it

does fit into the program tonight. We're going to double back on it as we go through this case that we're talking about.

Andy 17:39

Very good. So here's this little clip. It's short.

Senator Kennedy 17:45

I'm curious if you guys--

Andy 17:49

Oh, my God, I'm pressing all the wrong buttons. Larry. Let me try again.

Senator Kennedy 17:53

Do you know what perpoosivism is?

Judicial Candidate 17:59

In my 12 years as an Assistant Attorney General, and my nine years serving as a judge, I was not faced with that precise question.

Andy 18:11

What's the word?

Larry 18:13

Could you play just the first part of the game where you posed the question, because I wasn't clear on what he said. So play that again.

Senator Kennedy 18:23

Do you know what perpoosivism is?

Larry 18:29

Perpoosivism, perpoosivism--is that what he said?

Andy 18:35

That's what it sounds like. But I think I know what he's trying to say, Larry, but he is missing that word. Very, very badly.

Larry 18:43

Okay, I wish the Conservatives had been just a little bit fairer when they played this, and they had so much fun with it. Had he said, purposivism, then it's possible she might have known what he was talking about. But he didn't say that.

Andy 18:59

I should have queued up that Scalia clip where the guy asks him about the purposivism. I should play that whole thing out just so I can get out of my system. But yeah, so he's there asking her about purposivism. Right?

Larry 19:15

Right. She doesn't understand his southern drawl about propulsive ism or whatever it is.

Andy 19:23

Come on, man. He is totally botching the word. He doesn't know what the word is. He's not mispronouncing. I mean, he's mispronouncing it. He's not accepting it. In my opinion.

Larry 19:34

So yeah, well, he was provided those questions by his staff, and he probably didn't go through any rehearsal before he did the questions. That's the way it works. And when he looked at it, he was trying to do it on the fly. And that's what he came up with. But anyway, it fits with our Missouri Supreme Court case. We're going to have a little bit of fun with it as we go through this case.

Andy 19:59

All right, then. So this would be the Missouri Supreme Court case, You people put this case in from the Missouri Supreme Court. It's Brock Smith v. St. Louis County Police, et al. I noticed that it triggered a visceral response from Guy Hamilton Smith. I've read the case twice now and I'm curious what your overall reaction is. Why did Guy Hamilton Smith react so negatively? The case is very difficult to comprehend to say the least.

Larry 20:34

Well, I'm guessing because the state Supreme Court ruled against Brock Smith and Gary Nelson Ford. And you know, when a case is lost, that some of our advocates assumed that the court goofed, because if you just use a little bit of common sense, you can figure out that this stuff is wrong. So I would suspect that's part of his reaction because he's assuming the court goofed. As we get through this, we may come up with a different conclusion.

Andy 21:02

I thought Missouri changed their law several years ago and went to a tiered system which permits those on the registry to petition for removal.

Larry 21:11

You are correct, they did. And that in and of itself is a big part of the problem in this situation. Under federal law, there is no need for a formal petition process to exist. The registrant can simply time out once he/she has registered the required number of years for that tier. When the process is devised to include an adversarial process mandating the filing of a petition, you are destined to have issues. That's what occurred here. Both men filed removal petitions. The state of Missouri responded with objections, and the state has now won. The sad thing is that bad case

law has been created that will be virtually impossible to overcome.

Andy 21:55

Do you mind if we dig into that a little bit more?

Larry 21:58

Sure. That's what we got four hours set aside for.

Andy 22:02

Let's dig in a bit. As you have alluded already, this decision was the result of removal petitions by two different PFRs. Brock Smith appealed a St. Louis County circuit court's judgment denying his petition for removal from the Missouri PFR registry. Smith argued because he is a tier I PFR, Missouri law section § 589.400.1(7)1 does not mandate he remain on the registry for life. Gary Nelson Ford appealed a St. Louis County circuit court's denial of his petition for removal from the Missouri PFR registry. Ford argued the circuit court misstated and misapplied the law in concluding he must remain on the Missouri registry for life. How did I do in that assessment, sir?

Larry 22:54

You did fine. So you just keep on going?

Andy 22:58

Okay. It started on January 20, 2021, when Smith filed a petition for removal from the registry. Smith alleged he is a tier I PFR and is entitled to removal from the registry because he satisfied all registration requirements and more than 10 years had passed since he was required to register. What did the state say in response to his request?

Larry 23:21

The State denied Smith's allegations and requested his petition be dismissed. At a hearing on the petition, the State's sole objection was that, pursuant to Missouri law section § 589.400.1(7), Smith was not permitted to have his name removed from the PFR registry. They stated that it is because he is required to register under the separate requirements of the federal Sex Offender Registration and Notification Act codified as 34 U.S.C. §§ 20901 known as ("SORNA"). The circuit court concluded MO-SORA, specifically section § 589.400.1(7), requires lifetime registration for anyone who has ever had to register in Missouri for an offense that required registration under Federal SORNA. That's where it starts getting complicated.

Andy 24:18

Yeah, because you're already confusing me. So did I hear what you said correctly that Missouri law requires lifetime registration for anyone who has ever had to register in Missouri for an offense that required lifetime registration under federal SORNA?

Larry 24:32

I think so. That's what I cut and pasted from the court's opinion, but I found this a little bit confusing as well.

Andy 24:39

All right, so then, looking further, I noted that Smith appealed and that the Court of Appeals reversed and ruled in his favor. I'm guessing that Missouri appealed.

Larry 24:59

They did indeed.

Andy 25:02

Okay, so then let's move on to Ford. The decision states that Ford's conviction renders him a tier I PFR subject to a 15-year registration period. Ford was required to register, and he has been registered in Missouri since 2004. In December 2018, Ford filed a petition for removal from the PFR registry. Ford alleged that, as a tier I offender, he was eligible for removal. The Missouri State Highway Patrol and other defendants argued solely that, pursuant to section § 589.400.1(7), and asserted that Ford was not entitled to have his name removed from the PFR registry because of his separate obligation to register under federal SORNA. Ford did not dispute that he had previously been required to register under SORNA. The circuit court denied Ford's petition for removal. Ford appealed, and the court of appeals reversed. The ball's in your court. What happened next?

Larry 26:00

The Missouri Supreme Court granted the state's requests for transfer and decided to reverse the Court of Appeals.

Andy 26:08

So, let's dig into the reasons why the state Supreme Court reversed. I'll begin by reading from page 4. "When reviewing a court-tried case, this Court will affirm the circuit court's judgment unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law citing *Murphy v. Carron*. What does this mean in terms of deference to the trial court?

Larry 26:39

It means the trial judge's decision will not be overturned except in extremely rare situations, because it's a very high hurdle that they have in Missouri in terms of deference. And read that very carefully, folks, that what the standard is--extreme deference except for a few factors that Andy just cited. And therefore you're starting on an uphill climb.

Andy 27:07

They went on and stated, "this Court's primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue. If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then [this Court is] bound by that intent and cannot resort to any statutory construction in interpreting the statute." This sounds like black letter interpretation does it not?

Larry 27:38

It does. Yes, it does. They stated that "Courts look elsewhere for interpretation only when the meaning is ambiguous or would lead to an illogical result defeating the purpose of the legislature" citing *Spradlin v. City of Fulton*, 982 S.W.2d 255, 258 (Mo. 1998).

Andy 27:56

To move along. On page 5 it states, "[A] court must presume that the legislature acted with a full awareness and complete knowledge of the present state of the law. Accordingly, when the legislature amends a statute, we presume the legislature intended to change the existing law. In determining legislative intent, no portion of a statute is read in isolation, but rather is read in context to the entire statute, harmonizing all provisions." Harmonizing. I remember that you people used that phrase when we were discussing whether or not North Carolina had jurisdiction over the person who is incarcerated in Ft. Leavenworth at the Joint Regional Correctional Facility. So, you didn't just pull that from your tukus?

Larry 28:39

I did not. Statutes are read in harmony rather than reading an isolated provision standing alone. The court stated, "where a statute is amended only in part, or as respects only certain isolated and integral sections thereof and the remaining sections or parts of the statute are allowed and left to stand unamended, unchanged, and apparently unaffected by the amendatory act or acts, it is presumed that the Legislature intended the unamended and unchanged sections or parts of the original statute to remain operative and effective, as before the enactment of the amendatory act." Meaning that the legislature knew what it was doing. And they have deliberately left that language. They had that there for a reason. That's what they're saying regarding the amended mandatory act.

Andy 29:30

So just so we can clarify this for all the lay people like me, I want to really dig into the issue of this consolidated appeal because the state did change the law as I mentioned earlier. In 2018, the Missouri General Assembly amended MO-SORNA. It added a list of crimes exempt from registration. It

divided PFRs into three tiers, based on the severity of the offense. Tier I offenders must be registered for 15 years, tier II offenders must be registered for 25 years, and tier III offenders must be registered for life. Also, it added section § 589.400.10 which provides: "Any person currently on the registry for having been adjudicated for a tier I or II offense or adjudicated delinquent for a tier III offense or other comparable offenses listed may file a petition for removal from the registry." It added § 589.401, which contains requirements, according to the tiered system, that an offender must meet to petition to have their name removed from the Missouri registry. This should have been a good thing. So tell me sir, what went wrong?

Larry 30:44

I'm not totally sure, but it appears that an overzealous law enforcement apparatus is one problem. And sloppy drafting of legislation is another part of the problem. It appears to be a twofold problem.

Andy 30:56

Didn't the court say that it was unambiguous?

Larry 31:01

Yes, they're saying it's unambiguous, but not the way you're hoping that they said. They're saying it's unambiguous that the state is doing the correct thing. And we'll get to that later. But again, folks, we talk about reducing funding to the police and law enforcement apparatus. If Missouri didn't have unlimited funding, they would not be able to fight all these petitions. If Missouri had not put a petition process in, we wouldn't be in this predicament right now. They should just have allowed these people to timeout. But no one listens to me. But okay, keep going.

Andy 31:36

All right. On page 8 of the majority opinion it states, "Before the 2018 amendments to MO-SORA, Missouri courts consistently held that pursuant to § 589.400.1(7), sex offenders are required to register in Missouri for their lifetimes if they previously were required to register as sex offenders pursuant to SORNA, even if they are not presently required to register under SORNA." Do you remember that decision?

Larry 32:15

I vaguely do. In fact, the Missouri Supreme Court had previously held that registration violate Ex Post Facto Clause. Then they did reverse themselves after the enactment of the Adam Walsh Act, I think it was around 2009, after the Walsh Act was enacted in 2006, which created the Federal SORNA. And they reversed themselves. So before that, the Supreme Court already had said that they could not impose these obligations on people ex post facto. But then they reversed themselves.

Andy 32:45

And further down on page 8 they stated, "SORNA imposes an independent obligation requiring respondents to register as sex offenders in Missouri. MO SORA registration requirements apply to any person who 'has been' required to register as a sex offender pursuant to federal law even if [the offender] presently is not required to register pursuant to SORNA, [the offender] 'has been' required to register as a sex offender and, therefore, is required to register pursuant to [MO-]SORA." Id. Now that's BS, or funny as you would say, I think, is that funny?

Larry 33:28

Yes. Well, no, it isn't really funny. But it's sad the way I use the term funny because it appears to be that they're saying, since you were once required to register you are required to register forever. But this is a very convoluted outcome. They really worked hard to get to this outcome.

Andy 33:54

If we move along to page nine, they stated, "Because the language of § 589.400.1(7) is clear, it is improper for this Court to look beyond the plain language of the statute and to construe § 589.400.1(7) contrary to both the plain language and this Court's previous construction of the same statutory provision. The registration requirement pursuant to § 589.400.1(7) continues even after the individual's federal registration obligation pursuant to SORNA has expired because "the state registration requirement is based on the person's present status as a sex offender who 'has been' required to register pursuant to SORNA." That's got to be the most absurd thing I've ever heard in my life.

Larry 34:42

Oh, really? I thought you believed in judicial restraint and that courts should only interpret the law. In fact, we just played a clip about purposivism at the beginning of the program. The court stated, "The General Assembly was aware of this Court's interpretation of 589.400.1(7) at the time of the 2018 amendments and chose to leave the language regarding federal registration unchanged. Although Missouri courts have stated this result does not seem to comport with legislative intent, when the plain language of the statute is clear, this Court will not look beyond it." So if you really believe in your judicial restraint, and you're so proud of it, then you would say that this Court did exactly what it should have done.

Andy 35:26

Well, I gotta say, you are impossible. Can't you admit that someone somewhere goofed?

Larry 35:34

Well, I'd certainly disagree with the outcome. Someone did goof. The legislative drafting wasn't good. We didn't have someone like my senator who looks at all these things and didn't have someone like me looking at it. We had the advocates over Missouri thinking about what a great thing it was, people were going off the PFR list. And I remember sounding the alarm bell--not so fast here, just like I did in California. Not so fast here, folks. Don't assume that this is going to work marvelously. I did not pick up on this thing. Someone did goof. But the point I'm making now in terms of the purposivism, all of a sudden, we have people wanting the court to interpret what they perceive to be the purpose of this, which was to give people a way out. And they're forgetting that they have always professed that they believe in the letter of the law. The letter of the law is just what the Supreme Court said was there, so that provision was not removed. That provision that if you had a federal obligation at one time, you'd have to go back and fix it. But I do disagree with the outcome. But I see and understand that their philosophy of judicial restraint is that's it not our job to fix this.

Andy 36:45

So then to move right along. On page 10 they stated, "There are reasons the General Assembly would want to keep the language of § 589.400.1(7), and its interpretation, the same. SORNA requires every state "shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter." 34 U.S.C. § 20912(a). Certain federal funds are linked to Missouri's substantial compliance with SORNA."

Larry 37:20

And they noted that "For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this subchapter shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, therefore, it is not unreasonable to presume the General Assembly would maintain this "catch-all" provision in § 589.400.1(7) to ensure Missouri is fully in compliance with federal registration requirements and safeguard Missouri's federal funding. And everybody wants that federal funding from the government that they claim is too big and should be smaller. I just don't understand it.

Andy 37:56

That's the whole thing with the debt ceiling going on right now. It's like, we need to constrain federal spending, cut it by--I heard an economist say it would be, I think, a 15%, across the board cut to start getting closer to things. And you couldn't just cut everything right now. But everyone

wants their funding, except for when we need to make the cuts, but no one wants to cut it right?

Larry 38:23

Well, I've done that arithmetic myself. And we're digressing. But it's somewhere 15 to 20 percent that our revenue stream is short of our fiscal needs of what we're spending. But that really masks the problem because almost 70% of what the federal government spending on is on automatic pilot, meaning it's not voted upon. That is national defense, and the things that do get voted on. So trying to cut 20% of the overall federal budget from a 30% slice of the federal budget, you can see that you would basically wipe out two thirds of discretionary spending, which would totally eliminate the Department of Defense and so many things that are critical. I mean, it's still it's not practical to do that. But anyway, back to this.

Andy 39:09

Yeah, I'm just going to get somebody to kick that soapbox out from underneath you.

Larry 39:12

It is an example of the hypocrisy of all of us. Missouri tends to lean conservative now, and they are proud of their conservatism. Well, if that be the case, and if you believe the government should be smaller then this is a way for you to make it smaller. Don't worry about that 10% of those federal grants, don't worry about the whole 90%, don't worry about any of it. Take care of your own criminal justice system. Don't have your pot out to the federal government.

Andy 39:39

So before we get out of this, the court also stated something that I've got on page 11. "Even more significantly, had the General Assembly not intended for § 589.400.1(7) to continue to be construed in the manner this Court has consistently construed it, the General Assembly could have amended that provision in 2018 along with the other substantive changes to MO-SORA. Because § 589.400.1(7) is not ambiguous, this Court must apply § 589.400.1(7) according to its plain language. And would you please tell me what will happen to this whole thing next?"

Larry 40:18

Unfortunately, I think there's nothing more to do, unless the Missouri legislature has the courage to come back and say that we goofed. We need a clean-up piece of legislation. And this is why you'd have to frame it. And I'll help you people of Missouri if you reach out to me. You don't frame this as a change of existing law. This is cleanup. If you frame it as we're going to let people off the PFR list, all hell will break loose. But you say the 2018 legislative action needs some cleanup, and it was made apparent to us by the recent Supreme Court ruling. And we're merely cleaning up

that language that we've goofed on in 2018. I'll promise you this--if you can get the Republicans and the conservatives to buy into that if there's any opposition from the Democrat party, I will travel to Missouri on my dime. And I will lobby the halls of the Capitol to try to extinguish any Democrat Party opposition that should surface.

Andy 41:21

And I know that I have heard on every politics podcast I've ever listened to that they will definitely go in there. And they will admit that they goofed and that they need to fix something. So do you think that Missouri would do that?

Larry 41:34

Not likely, but it does happen. It really does. We deal with cleanup legislation all the time. When you're running as many bills as they're running, as quickly as the system works, you're bound to have some oversights and stuff that needs to be cleaned up in subsequent sessions. This is one of them. It could be done. And I think that you would need to actually get leadership on board. Because leadership is going to be able to make it happen, and they can do the spin. So you would need to have some connection for leadership and the Missouri assembly. But yes, it could be done.

Announcer 42:05

Are you a first-time listener of Registry Matters? Well, then make us a part of your daily routine and subscribe today. Just search for Registry Matters through your favorite podcast app. Hit the subscribe button and you're off to the races. You can now enjoy hours of sarcasm and snark from Andy and Larry on a weekly basis. Oh, and there's some excellent information thrown in there too. Subscribing also encourages others of you people to get on the bandwagon and become regular registry matters, listeners. So what are you waiting for? Subscribe to Registry Matters right now. Help us keep fighting and continue to say, F.Y.P.

Andy 42:54

Shall we move over to Iowa?

Larry 42:57

Iowa. Well, what the heck is happening over there. Corn stalks.

Andy 43:02

I am thinking there's like 12 people that live in Iowa. So they can't have a very big registry over there. Hold on one second, so I can get my screen back. So here we are with a little Iowa thing. Um, can you tell me what is HF? So I understand HB would be a house bill and then Senate Bill, what is an HF?

Larry 43:24

It's House file 77.

Andy 43:27

Okay, so tell me about these shenanigans in Iowa.

Larry 43:32

It's HF 77. The title is "An Act modifying sex offender registry requirements by requiring sex offenders whose registration requirements have expired to reregister and making penalties applicable." That's the title of the legislation House File 77.

Andy 43:49

This then applies to people who no longer have to register. Like would that be me, for example?

Larry 43:57

Correct. This proposal would reimpose registration to all those who have termed out or otherwise been released?

Andy 44:05

That's so the reason why you continue fighting after you've been released from the registry, because somebody could propose this kind of thing that would drag you back in.

Larry 44:16

You're correct.

Andy 44:18

On page one line 5 there is a new category of Tier IV offender created by this bill. What is a Tier IV PFR?

Larry 44:32

Tier IV offenses include a conviction for any sex offense that required a sex offender to register in this state or under another jurisdiction's PFR registry, but such registration requirement has since expired.

Andy 44:51

And I mean, literally so I got off the registry in Georgia, and I could then go meander my way and set up camp in Iowa, and they would say something like Oh, you had to register before in Georgia, you got to register here now.

Larry 45:03

They could already have done that under the previous law. This is really trying to keep the people who've gotten off the registry to make sure that they still have a registration obligation. They're really focusing this on internal rather than external because they can already rope you back in if you come by because George's removals not bonding alive.

Andy 45:23

Okay, so yeah, I understand. Okay, and do you think that this proposal will be defeated?

Larry 45:30

Well, it can be it. It certainly could be defeated? With the proper strategy.

Andy 45:38

Oh, okay. So you are Mr. Strategy. What would be the best strategy? And what do you think is driving this legislation?

Larry 45:50

Well, I would have to do a lot more study to come up with the best overall strategy. I can unequivocally tell you that focusing on recidivism is not the best strategy folks. Let go of it. We can easily conclude that by looking into the plain facts. People to whom this would apply have already timed out, and thus they have not committed a subsequent sexual offense, meaning there has been no recidivism. If they had, they would not have been released from registration because most states already require lifetime registration for recidivist offenders. So put your recidivism argument away. And let's come up with some new strategy.

Andy 46:28

I noticed that it states, "A person who has been convicted of any sex offense classified as a tier IV offense shall register as provided in section 692A.104A if the offender resides in this state." Based on the plain language, it does not appear to apply to all the other situations that can trigger a duty to register such as attending school or becoming employed in Iowa.

Larry 46:58

I noticed that as well. My hunch is that they're simply trying to keep the requirements benign for now to avoid any constitutional issues for those people like me that will start throwing around Ex Post Facto Clause. That is my hunch why they're being very, very crafty and cagey about how they're doing this.

Andy 47:18

"A sex offender classified as a tier IV offender shall, within thirty days of being required to register under section 692A.103, appear in person to register with the sheriff of the county where the principal residence of the offender is maintained. The PFR is only required to provide the sheriff the following relevant information: Name, Date of birth, Principal residence, and Photograph."

Larry 47:42

Yeah, this is a very lean list of requirements that would have applied to this new tier for offender registration. If this should pass.

Andy 47:57

Do you think do you do you think that do you think that it would pass? Do you think do you expect it to remain this lenient? [Clinton laugh track]

Larry 48:13

No, I do not expect it to remain lenient. I would not expect the law enforcement apparatus and the victim advocates to be satisfied with such a benign list of requirements. Not at all. I think this is a way to get your foot in the door. And you present this as being kind of like this is just very easy requirements, nothing to it. And I think that it would be law and it would not be long before amendments would be proposed.

Andy 48:39

The bill also states, "A tier IV offender is not required to verify any relevant information as required by section 692A.108." This is a very limited set of requirements for sure. Do you think a Tier IV person would be listed on the interwebs?

Larry 48:58

Great question. As the proposal currently stands, the answer is no. The bill states on lines 11-14 that "The general public through the sex offender registry internet site, except the general public shall not have access to tier IV offender relevant information through the internet site." Unfortunately, it has a bad provision as well. Further down it states, "A member of the public may contact a county sheriff's office to request relevant information from the registry regarding a specific sex offender, including relevant information relating to a tier IV offender as specified in section 692A.104A." So it means they would have to know that you existed. And so what they would do and how this would come back to bite you in the you-know-what if you disappeared because you timed out. And if someone were looking for you, they would just contact the sheriff's department and say do you have this person registered on the private list? And then all hell would break loose because I'd say why we remember the right to know thing. The right to know thing will surface itself and all of a sudden you'll have a big brouhaha about the alleged right to know this. This won't stand with it being private. But as it's currently drafted, it would not be available online.

Andy 50:12

The bill states "A tier IV offender who violates the bill commits an aggravated misdemeanor for a first offense and a class "D" felony for any second or subsequent offense. That sounds lenient as well. I don't know, personally, I mean, a misdemeanor, I think we sort of have a rough idea. But then I don't know what class D felony would mean.

Larry 50:35

It's probably the lowest level felony in Iowa. In our state, it's a fourth degree, and it carries up to 18 months. And then with good time, you would serve no more than nine months, assuming you didn't forfeit your good time. We're on the low side of Class D felony, but it's still a relatively benign requirement. There are very few misdemeanor registry violations anywhere anymore. So this starts out with all the misdemeanors, but it still puts the person in danger of prosecution. And that can lead to incarceration. One of the scariest parts of the proposal is at the end. It states that, "Depending on the nature of the offense committed, a tier IV offender may be subject to exclusion zones and prohibition of certain employment-related activities under Code section 692A.113, residency and childcare restrictions under Code section 692A.114, and restricted employment where dependent adults reside under Code section 692A.115." This still imposes disabilities and restraints which makes it vulnerable to a constitutional attack.

Andy 51:45

And we need to get there's a question in chat, Larry, before we get out of this, a person says so I was basically making all PFRs to be on for life. Why don't they just pass a law saying that because they want to make it explicitly, maybe they want to make it explicitly retroactive.

Larry 52:03

That is, that is correct. They probably have been advised by all the victories we've rolled up on ex post facto stuff, that reimposing a registration obligation they would run into constitutional problems. But as I've said all along, you could have a registry that would not run afoul of any constitutional provisions, if you made it benign enough. So it may be that that's what they're trying to do. But see, it won't stay that way. It will not stay that way. I promise you, the law enforcement apparatus, the victim's advocates-- they will not allow it to stay that way. They will not allow it to be private, and they will not allow you to not be required to update information. And actually we didn't talk about it, but they give you 30 days to do things rather than the standard 48 to 72 hours.

Andy 52:50

For a very brief part this had a part in there that you had 30 days to do this.

Larry 52:54

Okay, I didn't realize that. I had that in there. But there, it's much more lenient in terms of enforcement, but they can't allow it to stand that way. What's going to happen, and I know I offend some of my advocate listeners, I'm sorry. But they will come in and say this is not fair. We are suffering still the effects of what these heinous actions that these

people have done. It is not fair that we can't have the benefit of the protection because we don't get to know where these people live. We don't get to know where these people work. We can't protect our families. And they won't allow it to stay that way. And the pressure will mount on the legislature. And there will be a lone wolf who will say, well, we can't do that. There might be a Larry over there. They'll say we can't do that because it will run the risk of it being declared unconstitutional. They will ignore that. And they'll say, well, you know, that is presumed constitutional upon our enactment. And they can challenge it, and we'll see what the courts say. And that's the big risk of this. But it's relatively benign, except for that final section where if they would take all those disabilities and restraints out, there would be nothing unconstitutional. But this registry, they couldn't help themselves. They need to go ahead and exempt them from all that stuff that we just discussed about restrictions, and have no disabilities restraints. And I wish you could propose legislation that would repeal itself or plan change and actually ask my legislative expert says you cannot do that. But what I'd like to put in a proposal like this is okay, we won't oppose it. If you'll strike the disability restraints, and you'll put a self-repealing provision in that if any attempt is made to change this and any amendments are enacted, it will cancel everything else about the bill. It will self-repeal. And I guarantee you wouldn't get a whole lot of people that would agree. But I would love that provision in there that it will self-repeal upon any changes.

Andy 54:48

Let me see if there's any comments in chat though. A person who hasn't been around in a long time, Larry, you know that guy from Tennessee. He agrees with you, and I know that that's very comforting for you. This is just to get their foot in the door. This will bring folks who are not on registry, and now they will be subject to all the restrictions that all the other people think. That's what he's saying. And as Deputy says, this is just a slippery, slippery slope creep.

Larry 55:16

That's precisely what I believe to be the case. I don't think we have all that robust of an advocacy in Iowa. The legislature is overwhelmingly Republican, so there's nothing the Democrat party can do for you if you're so inclined. I looked at it. It's like 50 senators, and like, only 16 of those are members of the Democrat Party. And under the house side is like 100, and only like a 30 something of them are members of the Democrat party. So if you got to be reaching out to people, the Democrat Party can't help you in Iowa. You're barking up the wrong tree.

Andy 55:52

All right. We are at right around 55 minutes. Do you want to just jump out. I have something I would like to speak about

quickly for another podcast. Is there anything that you want to do before we get out here?

Larry 56:08

Not particularly. But you did have a question or something? Or were you going to play a clip of a bonehead who called?

Andy 56:14

Well, do you want to do that?

Larry 56:17

Sure. That'd be fine.

Andy 56:18

Okay, do you want to set it up? Like I mean, beyond just a bonehead?

Larry 56:22

Well, it's my commentary about the legislative, our government system of self-governance, and the type of danger that we're in. It would never have occurred to me, not that many years ago, that the level we have managed to go to whatever had been achieved. Folks, we resolve our differences in this country by the ballot box. We vote for people. And we express our disagreement with them civilly. And we don't call them unpatriotic. We don't call them names. We work to defeat them in the next election. We run for office. But now it's gotten so ugly, that in my day job, when the legislature is in session, I find it almost repugnant to answer the phone. Because a good significant percentage of the phone calls are ugly. They use vulgar language. They make threats. And they make veiled threats, and they make direct threats. And this is one that just came in. Yesterday, I came into the office, and I didn't pick up the phone. And I generally like answering telephones because I'm a telephone person. But when you get to the ugliness that we've sunk to it is very disheartening to pick up a phone and have people say such cruel things.

Andy 57:34

And listen to how quickly it escalates. Because you sent this to me sometime during the week and it starts out somewhat with a normal tone, but then the person like almost starts hyperventilating. Alright, here's the clip.

Unknown Speaker 57:48

It's interesting to me. I'm curious if you guys are more concerned about the fact that you're working for somebody that's helping steal elections for foreigners or globalists or the fact that he just [unintelligible], or the fact that these things seem to go hand in hand. You guys are essentially, Hunter Biden, that's what you are. You're basically enabling both election theft and this sexual abuse. That's what you are. You're trash. You're traitors. You're committing [profanity] treason every day by overlooking things that you

know are wrong. You're [profanity] liars. You're corrupt. You're helping steal the election. You have no [profanity] future. You have no souls, you have no [profanity] future. Stolen elections have consequences you [profanities].

Andy 58:36

That's off the charts. I'm going to have to bleep that before it goes out there. I'll bleep it on YouTube.

Larry 58:41

Can you imagine that I would want to pick up a phone and deal with that.

Andy 58:46

And you wonder why none of us want to pick up phones.

Larry 58:49

You don't have to deal with that on your job do you know.

Andy 58:53

I don't want to. I mean, you don't know that something's not going to escalate. I don't answer the phone for that reason. I don't want to talk to anybody. I don't want nobody calling me unless I know who you are. Is it anybody I want to talk to?

Larry 59:05

Well, it's a tragedy. If you don't agree with a person's politics, work to defeat them. You can make donations, you can go into their district, you can put signs up, you can knock on doors for them. You can work to get them defeated. That's our system, folks. Our system is not to threaten people. Our system is not to question people's morality, their integrity, and all these things. And I'm very disappointed that I never thought I'd live long enough to say this, but I have lived long enough to say this and it's very disheartening.

Andy 59:38

He sounds a little, a little peeved. Larry, would you speculate that this person is even in your state, let alone in your actual district? Because I'm thinking this is almost like a phone bank dialing all the senators and so forth. All the politicians and all the states, that's what it feels like to me. Because there were no names given. Not your name, not anyone you work for, not the state, nothing like that.

Larry 1:00:07

Well, it was deliberately targeted to this senator that I work for. Yep, the call phone number was coming from New Mexico, the southern part of the state, but from New Mexico. But he did not leave a name. He certainly is probably not one of the constituents. But you just wouldn't do that. I'm going back in history to when the Republicans were taking their shellacking in 1982. When the economy

was flat on its back in the first two years of the Reagan administration, and they'd lost like 70 seats. That is a large number, and I may be off. But the first thing Tip O'Neill, he was the Speaker of the House and leader of the Democrat Party at the time, he asked how Congressman Bob Michel was doing in Illinois? Because Bob Michel was such a patriot. And O'Neill worked with Bob Michel although he philosophically disagreed with Bob Michel. And O'Neill and Michel did not see eye to eye on most things politically, but they were very cordial to one another. And they did not question each other's patriotism. And I get tired of people questioning my patriotism. Patriotism is not by how big the flag is on your pickup truck. That does not make you a patriot. It really doesn't.

Andy 1:01:24

Well, very good, sir. I just wanted to point out, since we're going to head out of here, I assume we're starting to get over time, that there's an incredibly good podcast out there called Intelligence Squared. And they happen to have a debate that just came out on the third. So as we're recording this yesterday, and the title is "Does the PFR Registry Do More Harm than Good." You can replace the word PFR as you need to. And it is done with Emily Horwitz. I forget the goofball that she is debating with, but obviously

she's in support of that the registry does more harm than good. And her opponent in the debate is not so anyway, very, very, very, very, very, very good. Intelligence Squared. Anything else sir, before we go?

Larry 1:02:15

Well, not really, but I'm just impressed with this huge turnout tonight. We've got a full house.

Andy 1:02:20

We do. It's a very good turnout. I thank you so very much people for coming in and hanging out. And if you want to stick around, if you're a patron and you want to hang out and shoot the breeze, then feel free and we'll hang out for a little while. But otherwise, find all the show notes over at registrymatters.co. And I will bid you a farewell for the evening and I hope you have a fantastic weekend. Good night.

You've been listening to Registry Matters Podcast.

Registry Matters Podcast is a production of FYP Education.

More show transcripts are available at <https://RegistryMatters.co> (that's right... just C O with no M)

In prison and can't get the podcast? Have a loved one "subscribe" at <https://patreon.com/registrymatters> at the **\$15 level**, and include your prison address information. Or send a check to cover at least 3 months.

REGISTRY MATTERS MAIL-IN SUBSCRIPTION FORM

Sign me up for _____ months X \$6 = \$ _____
(Minimum 3 months) * **We do accept books or sheets of stamps. No singles please.**

First Name

Last Name

Name of Institution

ID Number

Address

City

State

Zip Code

**Make check payable to FYP Education and send to RM Podcast,
Post Office Box 36123, Albuquerque, NM 87176**