



RM 259—Recorded 3-18-23
Federal Judge Blocks Expanded Residency Restrictions in Rhode Island

Announcer 00:00

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Andy 00:18

Well, here we are Larry, recording live from FYP Studios, east and west, transmitting across the internet. This is what? Episode 258 of Registry Matters. I almost literally forgot the name of the podcast. What are we doing here?

Larry 00:33

Well, we're actually doing Episode 259. but who's counting?

Andy 00:37

Oh my God. Okay, so it's Episode 259 for those of you keeping track at home. And so how are you doing this evening?

Larry 00:50

We're doing awesome. How are you?

Andy 00:53

I'm fan-freakin-tastic. As somebody who shall remain nameless said, finer than frog hair. You probably know who I'm referring to?

Larry 01:08

I think so. I understand you've had some respite over the last week.

Andy 01:14

I've been kind of on the road moving about. I was testing out if I could be a digital nomad for a handful of days, going to see friends, family and so forth. Galivanting across the globe.

Larry 01:23

Well, I did receive a notification about a hovercraft, and I was very concerned. Did you spot that hovercraft?

Andy 01:32

I never saw anything related to hovercraft. But that's because I was never in any one place for more than about 24 hours. [Oh, I see. All right.] So they probably had noticed to send one out for a search, but they never had any opportunity to do anything and home in and really isolate

my position. I kept them on the run. [I see.] Well, tell me what we're doing tonight so that the shownotes person can have all the information they need.

Larry 02:00

Well, we're going to be doing a review of a case that was just decided, I think Thursday. We just got the paperwork on it today. It was decided Thursday or Friday out of Rhode Island. A federal case has been pending for several years. And we're going to be doing some legislative wrap up from my state and some general legislative discussions. And if time permits an article or two, and maybe even a live question from our vast studio audience.

Andy 02:30

Fantastic. So if you do have a question and you're sitting there in the studio audience, and you would like to ask a question, feel free to, you know, towards the end of the show, collect your thoughts. And maybe I can unmute you and you can ask a question. That's how that would go. Right?

Larry 02:45

That's right, but make sure you don't have any jackhammers, weed eaters or anything like that running when you're asking your question.

Andy 02:53

So legit, when we were doing another conference call one of the guests had their cell phone sitting right next to their speakerphone, and the cell phone was like Beep, beep, beep. And then another guest did the same. It did sound like there was construction going on in their kitchen. It was really, really out of whack.

Larry 03:14

I think that was from Louisiana, if I remember right,

Andy 03:17

I believe so. Baton Rouge. Okay, well, I guess we can dive right into this first question. This one was posted, if I'm not mistaken, on registrymatters.co. So I believe someone posted a comment on the website on the Registry Matters website and says "so in Wisconsin, I pay \$240 a month for GPS monitoring. So in the last four and a half years, I have been charged \$13,000 in services, if found unconstitutional, but I'd be able to get all of my money back due to the unconstitutionality of the law. Pretty sure No, but this is killing me financially."

Larry 04:01

I appreciate that he knows the answer is likely not. I wouldn't say it's an absolute not. But it's very unlikely because the state is going to fight even more on that issue. Since it was presumed constitutional upon enactment, there's a level of immunity that goes with that presumption even if it turns out that they were wrong. So the first question I would have to look at would be was the asking for damages planned in the complaint? So what was the state's response to that? But normally, in a constitutional claim, you're only seeking a remedy of the Declaration of Unconstitutionality. So I would find it most unlikely that any money would be returned. But do the math that 240 times 12 Doesn't seem like it'd be \$13,000 for four years. I'm not a great mathematician, but it seems a little high.

Andy 04:51

Well, I will run my snazzy calculus. I could ask the word thing really quickly, but I don't know if that would work out. So 240 times 12 times 4.5 is 12, 960.

Larry 05:01

I guess I'm just not very good at math.

Andy 05:07

Yeah, so, wow, that's there. I've referenced this a bajillion times. There's a podcast called Freakonomics. And in June of 2015, there's an episode about why do we make sex offenders pay and pay and pay and pay and pay and pay and pay. And in the show, they said that through treatment, through monitoring, and etc., that we are going to have PFRs come out of pocket for something close to \$10,000. And so here you go with more than that. And in that podcast, which has 3 million downloads a week, they said, there's no benefit to all these things, all these things that we make them go through, for maybe a very small number of them, that, you know, like SVP kinds of people that would be diagnosed with an actual disease and so forth. But otherwise, it's just putting the screws to us is what they ultimately were saying.

Larry 06:02

It absolutely is a tragedy. And I don't see how these people make it. First of all, the employment opportunities are certainly diminished, in terms of earning potential. And then you have these huge number of obligations related to GPS, related to polygraph examinations, treatment costs, even if you're not being polygraph. And the southern states are really big on restitution and fines. So you've got all these things that are following you. And I don't even know how they make it. So you're earning \$17 an hour? Theoretically, I know that's not minimum wage. But imagine you get a mediocre job is paying you 15, 16, 17 an hour. How would you do it? How would you pay 1000 or 1500 a month rent and then all these things?

Andy 06:47

I don't know. And I'm sure I've referenced a friend of mine that was in Augusta. When he had gotten out, he was in treatment. And his treatment provider wanted him to take a poly and it was right around Christmas. And he had just bought some Christmas gifts for his kids. And the treatment provider says well, if you don't go take it, I'm going to, you know, put you as non-compliant in the class and you'll be thrown out, which will be considered a probation violation, which will send you back to jail. And he's like, why can't the Po-Po say I can push it off for like a month. So the guy goes, and title pawns his car. So they can get the two or three hundred bucks off of that and pay for the poly. But then he has to work his ass off making minimum wage. And you know, at the time he was in his late 40s. And he's working at a place where they're making steel sheds. So he's doing manual labor as an upper 40-year-old walking around a factory hauling metal tubes and crap. It's like, I just can't see how that's beneficial. At all. I don't see on any level how that says, oh, well, you've really shown that you are treatable, and that you're not going to recidivate and all that. I'm just like, this is just complete garbage.

Larry 07:59

Well, this is the land of forgiveness. Remember?

Andy 08:02

I've heard this, send us your tired and something like that. Right?

Larry 08:07

Well, I'm speaking more from this spiritual and scriptural. You know, I think if you look at how the people are treated in the Bible Belt, as we'll call it, they're treated harsher there than anywhere else. So I'm not so sure that folks who run the Bible Belt are as forgiving as they would like us to believe.

Andy 08:28

I hear you. Oh, hey, let me ask you this quick question. If you can we, can we follow up the script for just a minute.

Larry 08:33

Sure what you got in mind.

Andy 08:36

I have seen people posting some questions about something that it didn't even really register to me very much. But then I was thinking about it a little bit. I've heard of another state, I guess Arizona, but they're trying to make having--how do you delicately put this--a fascimile of a human being used for entertainment purposes? Does that describe it well enough?

Larry 09:04

Are you talking about using a doll to replicate your sexual activity is going to be illegal? Is that what you're talking about?

Andy 09:12

Pretty much. And so my question to you is all things legislative and all that how is that any different than any other type of toy that any adult would buy? What is the difference?

Larry 09:25

At first blush, I don't see any difference in it. But the question is how are the opponents dealing and addressing this, and what are their talking points and how they're responding to it legislatively. And from what I was seeing on that thread that you're referring to for those who are not in favor of it, the response is really not ideal in terms of trying to win the battle.

Andy 09:51

So is their approach to bring evidence and things like that? Is that their approach?

Larry 10:00

That's what it was, what I was reading into it, and they wanted to bring in statistics, data. And that's of no use in this argument.

Andy 10:10

If you could, tell me why, and what would you do instead?

Larry 10:13

Well, what I would do instead is I would be very graphic, as professional as you can be graphic. And Arizona currently has a Democratic governor. They have a slim majority in both House and Senate with Republicans. I think this is a Republican sponsored piece of legislation. So you make the argument to the Republican that, you have always stood for keeping government out of people's bedrooms. Now we know that's not true. But that's the argument you would make. You've always stood in favor of individual liberties and privacy. And what a person is doing in their bedroom is not the government's business. If they're using a doll for sexual satisfaction, that is none of the government's business. That's the argument you make. When you go down this path of bringing in data, you can't prove what you're trying to prove. But what you are doing is you're acknowledging that if it does save one, it's okay to do it. And you've lost a battle at that point. Because when you put a legislator in the position of having to take a publicly recorded vote, with the chief argument being, if it saves one, it's worth it. And that's all they've got to hang their hat on, you've put them in a terrible position. They don't have anything to tell their constituents. On the other hand, if you

say this is big government intrusion into the private lives of our sexual conduct, which you may be next, then you have something that that lawmaker can hang their hat on and say I voted against it, because this is something this is a dangerous path to go down. Data is not your best friend. Again, the National Rifle Association never use this data. Why is that any?

Andy 12:08

I believe the answer is because they make it very challenging to collect any data. Therefore, there is no data. But if there were data, then it would be obvious that the ownership of guns is what causes all the deaths in the United States.

Larry 12:23

Well, we've got the data that we can show clearly that with the Las Vegas shooter to know that the number of hits that he was able to achieve would not have been achievable if he had been using an old-fashioned revolver. We've got that data already. But he was using something--I don't understand this--to accelerate his ability to fire. I don't understand all this terminology. All these things related to guns.

Andy 12:49

Oh, please, Larry, let me explain it to you. Please, let me explain it. Let me say this thing is so ridiculous. It's called a bump stock. And so you shake the gun back and forth to make it recoil and reload the next round. But if you're shaking the weapon, violently shaking it, the only thing that it would do is spray them in the most inaccurate method possible. If the intent of having a weapon like that is to aim and shoot with accuracy, then a bump stock would do the exact opposite as you're violently shaking that thing to reload the next round. So the only purpose for that thing is, is to put as many rounds down there as you possibly can come up with without any care for the accuracy of it. That is ludicrous.

Larry 13:41

But that's my point. The NRA will not have a discussion about data for all your data sensitive people that want to go there. They won't. They'll point to one thing, the Constitution. We need to start learning from them. I mean, they've perfected this argument. They point only to the Constitution, and they say, Gee, there's no limit on gun ownership, which even Scalia, the late Justice Scalia says that's not true. But they don't ever interject data into their discussions. If they do, they'll say something to the effect that the person was legally authorized to own the weapon. Well, of course, they were legally authorized to own the weapon because we don't have any laws with very few exceptions other than felons and those convicted of domestic violence of owning weapons, and then there's age

limits, but other than that, practically everyone can own a weapon so of course this wouldn't have stopped it because they were legal.

Andy 14:41

So what you're ultimately saying is that that you should double down on the Constitution as this is big government intrusion, get out of my bedroom. Two consenting adults doing whatever they want to do kind of thing.

Larry 14:57

Well, yes, if we had to come up with a strategy. Like I say the margins are not large margins. I was thinking Arizona had a larger margin Republican control, but barely. It's like a two-seat majority in each chamber. But I would go to the people who run the legislature right now, even though it's a slim majority. They are controlling the calendar. They are controlling everything. And I would appeal to what they claim that there what they are for is very limited intrusion into people's private lives. And then as a compromise, I would say now, in terms of people who have been convicted of sexual related offenses, of course, we can have these types of restrictions, because they're still paying their debt to society during the period of time that they're under correctional control. Those type of dolls could be, of course, prohibited. That would be a violation of your probation. Now, I don't necessarily agree with it. But that would be a constitutional thing you could do, even though I would not be in favor of it. But in politics, you have to sometimes agree to things that you really aren't in favor of as part of a compromise. So you would give them a victory, saying we will make sure that anybody who's been convicted of a sexual offense while they're under supervision, can't be doing this. And they get to go out and claim victory. And you get to go out and claim victory to the extent you want to because you killed a big piece of legislation. At least you watered it down to a point that you can live with it.

Andy 16:30

Alright then. So let's move along to some legislative update stuff that you have for New Mexico. And what happened in the last handful hours, as I understand it, House Bill 233 was on final passage in the Senate and a floor amendment was offered. What is the significance of the floor amendment in the final hour? What is House Bill 233 anyway?

Larry 16:58

Well, it was dealing with our department regulation and licensing. Now listen to what you said. You said House Bill 233. And it was on final passage in the Senate. [Right. Right.] So therefore you have a House bill that's on final passage in the Senate. If something gets changed in the chamber it didn't originate in, it has to go back to the originating chamber for concurrence. And it's potentially a death sentence, because when you only have an hour left in

the session, the house is jammed down trying to pass as many pieces of legislation as they can. And they're also waiting for messages from the Senate on things that that may have fallen into this situation that need concurrence. So they can take a concurrence vote. But this is risky business when you put forward an amendment in the final hour. And so that's what that's I was trying to explain to people that anything that's submitted on the final hour that has to go back to the previous chamber for originated for concurrence. That is very risky.

Andy 18:04

Can you remind me what concurrency is? I've heard that in other contexts before. I mean, not other context. I've heard it, you know, related to like the US House and Senate. What does concurrence mean?

Larry 18:16

Well, since each chamber has a bicameral, a chamber has to pass an identical piece of legislation. If it's submitted in the Senate. It's not identical to that point, is it?

Andy 18:26

No, that sounds about right. It's not identical anymore.

Larry 18:29

Okay. So you would send it back over to the house where it originated, and ask them would they like to concur with the Senate change? And if they say, no, we do not like that amendment, we will not concur, then the message would go back to the Senate that the House refused to concur. And they asked the Senate to receipt on the amendment. The Senate could say, thank you, but no thanks, we choose not to receive the amendment stance. And then at that point, you need to appoint a committee of conferees from each chamber. So you'd appoint probably three or four conferees from each chamber. And they would hammer out an agreement. It may be that the amendment the conferees agree to would accept the amendment, or they may have agreed to some changes. But once the conferees come back with their report,--remember, there's only an hour left--that process is not likely to unfold in the final hour. But when you're not in the final hour, that would be the process. The conferees would come back with a report and say this is what we've agreed to. At that point, you only get to vote to accept the report or reject it. You can talk about it till you're blue in the face. You can talk about it for whatever the debate limits are, but the only vote you get to take is to accept the conferees report or reject it. So when people get all up in arms, and they say, oh, well, they just took a voice vote. That's all you really need to do. Because your only decision is can I accept what the conferees worked out between the two houses or to reject it.

Andy 20:01

Can you explain something else? So like, so this is a full Senate vote, and so they're on the floor. Someone's like penciling in felony jaywalking. And then a 16-year-old page runs that piece of paper down the hallway to the House side and asks them, hey, like, Excuse me? Can you guys approve this thing? Is that how it like functionally works?

Larry 20:32

That's a little bit of a of a dumbed down version. But that's essentially how it works. So the amendment came from the Republican side of the of the amendment. Magically, the Republicans, the small government people wanted to elevate it. I'm just trying to let people understand when you hear small government don't always believe it. I'm really trying to educate here. So the small government people who believe in keeping government small wanted to create a new cabinet level position for the department of regulation and licensing. So the amendment was, rather than it being as it currently exists, having a superintendent of insurance, which is a Department of Government position, they wanted it to be a full cabinet level position, which means that the Senate would get to vote to concur to approve not to concur, but to approve the Secretary of the Department of Licensing. So we had an amendment that was offered by the small government people to create a new cabinet level position. And the sponsors were really hesitant, and they opposed the memo. They considered it an unfriendly amendment. But the votes were not there. The votes were there to add the amendment. So once the amendment was added, then they voted to pass the bill because they were still going to go forward with it. So they voted to pass the bill. But at that point, the Bill that started in the House as it came over to the Senate was not the same. So a message literally would have gone across. And I'm not sophisticated enough to know if they use electronic means these days. But in the early days, when I started legislating, that's exactly what they would do. They would run that amendment to the house, they say the Rotunda. They would hand it to the Clerk of the House. The clerk would turn around and start whispering to the speaker. We've got House Bill 233, as amended by the Senate. They're asking for concurrence. And the House speaker would call it up and say, here's the amendment. And does the House consider this something that we want to accept, and they would vote to accept the amendment or to reject it? So that is literally how it works.

Andy 22:40

All right, then tell me what your thoughts are on this final floor amendment?

Larry 22:44

Well, I don't know if it was sinister or not. It could have been an attempt to kill the bill. Or it could have been an

attempt to gain more control over the Department of Regulation and Licensing. On behalf of the Senate, I have never been able to read the minds of people and why they sponsored the amendment. But they did do something that could have easily killed the bill. Now there was enough time. And it did get through the concurrence process. The House accepted the bill as amended. So it is now on its way to the governor, but it could have wrecked the bill.

Andy 23:18

I see. Okay, um, can we move on to that 60 day legislative session, which adjourned at noon today? What do you have to say about the session in total, I guess?

Larry 23:30

Well, Liberty and Justice Coalition allies, and we worked on a number of proposals. And we're pleased to report that only one bill we opposed will be sent to the governor. And that bill is Senate Bill number 215, which creates the new crime of bestiality. It did pass in the final days. But we weren't successful removing a provision that would have required anyone convicted to have to register as a PFR.

Andy 23:56

Oh, interesting. And you did not support the bill. I imagine.

Larry 24:00

We did not support the bill. Our reluctance to support the bill was not because we in any way approve of such activity. But because the bill is redundant with existing statutes against animal cruelty. During committee hearings those who proposed the bill spoke of a correlation between bestiality and crimes, such as child sexual abuse and child pornography. But no factual data was presented to support their assertions, and I know how you are about data.

Andy 24:27

I mean, I'm trying to think of how they would come up with some correlation between those two. And then we talked a couple episodes about your wonderful chemical castration. What was the results of that?

Larry 24:41

We were successful with that. That was House Bill 128, their chemical castration bill. That bill of course made national news and I think I had a reaction when you asked me it wasn't going to pass, and we were successful in getting that bottled up in committee. In addition, we were successful in defeating House bill 445, which would have expanded the list of offenses required PFR registration, and it would have broadened the definition of human trafficking to include practically everything that you could think of sexually would have been human trafficking. And so we were able to do that.

Andy 25:14

That all sounds really fantastic that y'all were able to pretty much squash everything, and at least from a PFR point of view, if the other thing is still criminal, but at least you don't end up on the registry for it. So that all comes from having the LJC doing that work. What else? What other kinds of stuff were you facing beyond that?

Larry 25:36

Well, we certainly didn't do this alone. We worked with our allies. But the most difficult challenges we face were bills that would have extended the civil and criminal statute limitations for those accused of sexual misconduct. And so we dealt with Senate Bill 82, which I think was the one on civil statute limitations and Senate Bill 126, which were with that with the criminal statute limitations, and were able to bottle those up in committee. But a version of both of those have been around for a long time. And they will keep coming back again, and again, and again, because this is a national movement. Remember, the talking point, justice should not have an expiration date. That is what's been happening across the country. We've been fortunate to keep them from making a radical change here. But our luck may run out. And it's not really luck. It's really hard work relationships, and compelling arguments about Yes, Justice does have an expiration date, because the evidence gets lost, memories fail, people die. That would be crucial to the other side, to the accused. The accused is the person whose rights we have to protect because they're going to the cage. And I don't have any hesitation to say that. I feel bad. I feel bad for anyone who's victimized, but also recognize the imbalance of the power of the state and the government versus an individual. And the person who is going to be put in the cage, their rights have to take priority in terms of them being protected. Because you may be devastated if something did happen to you years and years ago. But we have to give that person we're going to put in a cage a fair, robust process before we put them in that cage.

Andy 27:22

I understand what a good job they're for New Mexico and IJC. That's really awesome that you all are able to do that with the amount of I don't know, expertise. And what's the word I've just experienced that you guys have doing that. It would be great if more states could do it that way?

Larry 27:40

Well, I understand. I understand they do. Doesn't Florida kill everything that comes out down there?

Andy 27:46

I don't know. I don't ever hear any sort of updates from pretty much anywhere else other than Georgia. And whoever else decides to that. I am on a newsletter from

that does reach out to West Virginia and had halfway decent results.

Larry 27:59

Doesn't Georgia kill everything that comes before them?

Andy 28:02

Certainly not. So, but not much has come up there lately, either. I think there was only one or two bills that were going through Georgia that needed to be dealt with anyway.

Larry 28:11

Well, there were a number of bills that were less impactful that were killed by the Coalition of Allies. For example, statute limitations—we all worked on that. But there are things dealing with three strikes where we were against it, but we didn't spend a lot of time on three strikes. They want to expand our three strikes law. Not a soul has ever been sentenced under three strikes law that's been on the books since Gary Johnson was governor back in the 90s. Not a soul has ever fit within the narrow parameters of our three strikes law. And we've been able to achieve a success rate. In fact, the governor has even hinted around that there may be a special session because not enough things to hammer down. We're past this session. So she could very well call it back.

Andy 28:56

Larry, a question in chat really quick that seems relevant is about the statute of limitations stuff. And if the crime was before the invention of the registry before the 90s, would they have to register?

Larry 29:09

They would have to register as long as there had not been an adverse decision regarding a registry because as long as it's the civil regulatory scheme, you can apply a civil regulation.

Andy 29:23

Well, I mean, there's a friend of mine in Florida, whose crime was before whatever registry stuff existed in Florida at the time, and they snuck in that he's on the registry now for life.

Larry 29:33

Absolutely. But as long as there has not been a finding that there's an *ex post facto* violation and as long as it's civil, non-punitive. You folks, you got to build the framework to show that the registry isn't imposing punishment. You can't just go in and assert it because it's presumed constitutional. You know what you're going through, but you haven't proven it to the satisfaction of the courts.

Andy 29:55

And if you know using Florida as the model for compared to just about every other state, I mean, you know, you could probably compare it to Alabama as being toughest. But it's obvious and blatant that it's punishment if you're on the registry in Florida, if your crime was, you know, 50 years ago, and now you're on the registry today, so you don't have anything that they've made it worse since then, if you're just on whatever the minimum version of it is in Florida, it's still horrible. Listen back to two or three episodes ago of a guy writing about riding motorcycles in a park. And is that going to be is that an activity that he should refrain from doing? You think he should refrain from doing it because that that falls in the crosshairs of it. And this guy got sentenced in the 90s.

Larry 30:47

Yeah, but that was because of locally imposed restrictions. But we have a loyal supporter in Florida who says the registry is not that bad. [Yeah, he lives there.] And he says that, you know, it's just people what they make of it. So there's different opinions about how bad Florida is. But I can tell you, Alabama is really bad.

Andy 31:04

No doubt. Okay, well, are we ready to move on, sir?

Larry 31:09

I hope so.

Announcer 31:11

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Andy 32:04

All right. [breaking news sound effect] You know what that sound is?

Larry 32:10

That sounds like breaking news.

Andy 32:11

So breaking news out of Rhode Island. I have found some articles and I was studying for tonight's episode, Larry, but no, you decided to switch things around on me right at the last minute. You want to talk about a case from a Rhode

Island that's been going on for years. And literally Larry, some of the first calls that I was on listening to on NARSOL and its action stuff was about Rhode Island. So what's the urgency that we must cover this tonight? Without a doubt like tonight where you scrapped the whole schedule?

Larry 32:45

Because the federal judge has rendered a decision.

Andy 32:49

Oh, well, that's easy. Do you want to just give me the bottom-line up front? And then we'll just go home? Just kidding. Just kidding. So I have looked through all of our stuff to see what we may have covered in the past. And our record show that RSOL, now known as NARSOL provided funding to the ACLU of Rhode Island, and it was the ACLU that fought for us. Wait, don't we hate the ACLU?

Larry 33:11

Yes, we do. They're destroying this country.

Andy 33:15

Correct. I see. Okay, so it was the ACLU that filed the lawsuit back in 2015, challenging a recently enacted residency prohibition. What was so unique about the residency restrictions that NARSOL was interested in providing funding for this cause?

Larry 33:29

You're correct. And did you find this in our vast FYP archives?

Andy 33:32

I don't think we've ever talked about Rhode Island.

Larry 33:35

Well, you went to somebody's archives and found this stuff. I've found the NARSOL action column. [Sure.] So you're correct. The residence restrictions are not that uncommon, but this particular prohibition is because it would have applied both retroactively. That means registrants in Rhode Island would have been forced from their existing homes at the time this was passed. In fact, notifications have been given to people that vacate.

Andy 34:00

Now legit, Larry, I don't live in Rhode Island. Why do I give two flips about people in Rhode Island if this doesn't apply to me?

Larry 34:09

Well, the answer is that if they can get away with retroactively forcing people from their homes in Rhode Island, it has the potential and certainly can spread to other states, possibly even yours. So that's the reason NARSOL

decided to make the case a priority and NARSOL took our appeal to have this critical case directly to our members and supporters in December 2015.

Andy 34:30

And how did that particular action go?

Larry 34:33

It did fairly well. Remember, this is seven plus years ago, but we raised over \$14,000 that was turned over to the ACLU to help them cover case-related costs.

Andy 34:44

And that money covered the ACLU attorneys.

Larry 34:48

That money was not to pay for their attorneys. It was to cover direct pays costs such as expert witnesses, and court reporters' fees for depositions, and that kind of stuff. So it was to augment the small chapter of ACLU's funding so that they would not be forced to forego it. Remember what happened in Colorado when Alison Ruttenberg didn't have any money to do anything? I do.

Andy 35:14

Yeah. Well, eventually it backfired. And they overturned stuff because she didn't use any expert testimony.

Larry 35:19

So while we were trying to avoid the courts, that case had not been decided in 2015. But some of us understand that cases cost money to develop. So that was our model--to try to make sure that they did not lack the funding they needed.

Andy 35:34

As with most of this stuff, Larry, like these things change. And like, if you're just living your life, you don't know that a law has changed about a thing unless you're going down the road, and they've changed all the speed limit signs. And well, now you're pretty much aware of it. So I'm assuming that the PFR is up there. They had no idea they were in danger of eviction until the law passed, and they weren't notified that they had to leave.

Larry 35:54

That is correct. At the time the law was passed NARSOL didn't even have any members in the entire state. And had there been no viable state organization there, it is possible that the outcome could have been different. Now the ACLU did oppose the law. So I'm not saying it would have been different. But it's possible. We didn't really have much going on in Rhode Island at the time.

Andy 36:20

And as I recall it, Larry, this was a restriction that was going to change tier three people, kind of like the SVP level kind of people. And they were going to have like a 300-foot residency restriction kind of kind of measurement. If that's my what I remember,

Larry 36:37

It was tier three. And that's a misleading statement because they have a risk-based system. So it was a level three as a risk. And they were going to expand the diameter from 300 feet to 1000 feet.

Andy 36:52

Oh, okay. And there's only 45 People that live in Rhode Island. So this only would impact like seven people. [Right.] And so the point, though, is that if there aren't affiliates, if the affiliates can't do the work, without the active participation and financial support. So NARSOL works in collaboration with other organizations that do this amazing work for those convicted of PFR type offenses. And those groups need our support as well. Do you mind if we then move on to what was actually in the decision?

Larry 37:29

Sure, the original version of the statute prohibited persons classified as level three within 300 feet of a school and they increased it and 2015 the General Assembly amended that section of law to increase this prohibition to residing within 1000 feet of a school. So that was the essence of the case.

Andy 37:49

And I see that. I'll just read a bit from the court's opinion. "The named plaintiffs brought this action claiming that residency restrictions are unconstitutional, because one, they violates due process rights under the 5th and 14th amendments to the Constitution because they are vague. And that's count one. Number two is it violates their substantive due process rights because it infringes on their fundamental right to family privacy. And count number three is it violates their procedural due process rights because it denies them liberty and property interests without due process of law. And that's count three. Number four is it violates their constitutional right against *ex post facto* laws." And I recall that a temporary restraining order was ordered.

Larry 38:29

You are correct. What the hell did you invite me here for?

Andy 38:32

I just do it just to make me feel good.

Larry 38:34

So almost immediately after filing the complaint, the plaintiffs quickly move for a temporary restraining order, which the Court granted. In addition, the court did granted classification to the plaintiffs. And the temporary restraining order was then converted to a preliminary injunction that has remained in effect throughout the pendency of this action, which is one of the reasons why I wasn't too worried about it. I mean, we're in the strongest position possible. If the state can enforce the law. I don't care if you wait 20, 30, 40, 50 years to bring it to trial. You can take your time because we've effectively won. We just don't get our money. But I never did sweat this because the diploma injunction was all the time you need.

Andy 39:12

And remind me--I believe that we learned this from the Georgia case, a preliminary injunction is a pretty high achievement.

Larry 39:19

Well, even the temporary restraining order is generally done with just one hearing from one side, and that's a very brief order that's issued. And then they have like the hearing that you attended down in Macon, Georgia. They have that and that's where you get the preliminary injunction which is going to remain in effect during the pendency of the action unless it's overturned by the appellate court. If the state were to appeal the junction, I think in Georgia, the county agreed to the injunction. But it's a very difficult thing because you're getting relief you have not won. Sure that's what people don't understand what he's talking about. Go get an injunction. It would be great if you could get your case decided before you've put on any evidence. I mean, it's great if you're the one who's launching the complaint, and you want a decision on relief, whichever one. But if you're on the other side of that, if your neighbor claims part of your land, and you say, well, Judge, go ahead and give him the relief, even before you litigate and hear my defense, that's just not a good thing. So, therefore, it has to be a very high standard. You have to show that you're likely to win when the case goes to trial. And that's the most important thing that you have to show--that you'll suffer irreparable harm, and nobody understands those two are very difficult. The irreparable harm was not hard to show in this case if you get kicked out of your home. Yeah, but at 10, 15, 20, 30, 40 years is fairly easy. And you can show that the harm from that could be irreparable. So you had a house that you paid \$20,000 for 1979. And you're no longer allowed to live in it. And you have to pay, \$600,000 today, if you can find anything, it's not hard to see that. But you also have to show before you get to that point, you have to show that you're likely to prevail, based on existing case law, when the case does go to trial. And that's the problem. So many people have to

understand, if you can't meet the tough standards of an injunction because you're getting relief, you have not won yet.

Andy 41:28

I'm seeing that in 2020, the General Assembly further amended the statute to add language that clarified how the distance between a residence and a school would be calculated and limited the definition of schools to kindergarten through grade 12. Was that an attempt to extinguish the lawsuit?

Larry 41:43

I think it probably was.

Andy 41:47

So to move on, then on page two, it states "under the most recent scheduling order to efficiently litigate this case limited discovery proceeded. First on the vagueness issue. With that discovery now complete both parties move for summary judgment." I know you're not a big fan of that. So can you admit that this was a good strategy being that our side won?

Larry 42:08

No, I cannot. You've just read a litany of counts above that the court above that have not been developed yet. Which does not necessarily bode well for this case. Longer term. Remember all those you remember count one, count two, count three for it do? [All right.] Well, those were undeveloped.

Andy 42:27

I'm just thinking you're pretty much hopeless. [Well, I guess I am.] Anyway, plaintiffs contended that the residency restriction is void for vagueness both as applied to them and facially in its cross motion for summary judgment, the state first argued that plaintiffs are not properly situated to mount an as applied challenge, because none of them is affected by the alleged ambiguities. Now, that's funny. Were they arguing that the plaintiffs by virtue of their preliminary injunction could not bring in as applied challenge?

Larry 43:00

It does seem like that's what they might have been arguing. I didn't really have enough time to do thorough prep. But it seems like that might have been what they were arguing here. But it certainly appears so then the state argued that even if the plaintiffs combat mounts an as applied challenge, they have failed to demonstrate that the residency restriction is vague as applied to them. The state further argued that plaintiffs have failed to meet the much heavier burden of showing that the statute is facially vague, which is a very tough, that means that there's no set of

circumstances which you can do something. And that's why I tell people, please listen to this. The reason why you can't strike down the registry by a court action, when you say the registry in its totality, there is a scenario where you could constitutionally register people. So that means a facial challenge, getting this lovely court order that says you can never register people, that's why that order will never ever come. Because there are registries that would be constitutional. So that's what that means here, that too much heavier burden of showing that this facially take is a tougher one as applied to the individual.

Andy 44:08

Can you remind me what void for vagueness, what does that mean?

Larry 44:12

Well, it's one of my favorite things to talk about for first statute to comport with the 5th and 14th amendments. Due process. It must define the criminal offense with sufficient precision that a person of ordinary intelligence can understand what conduct is prohibited and it must define the criminal offense in a manner that does not encourage arbitrary and discriminatory enforcement. Due process requires both fair notice to its citizenry, and standards for enforcement by the police, judges and juries. In other words, an ordinary person does not afford a due process of law if he or she cannot read a statute and figure out what and how they can conform their conduct to the requirements of law. You got to be able to understand it. It cannot be vague.

Andy 44:55

And if we looked at how they were going to do the measurement did they just say from such and such address such and such address, whereas like in a state like Georgia, at least my understanding is that like the interpretation is from the closest corner of the property, not where the residence or the building are--but from the corner of the property to the corner of the property. Is that where it crosses the line from being vague to the opposite? Specific? What's the opposite legal term for vague?

Larry 45:21

That is an example. Now that wasn't the case, or the legislature did clean up how the measuring was done. But yes, that would be a good example. When you don't a person doesn't know necessarily if they're within 1000 feet because they don't know how the 1000 feet is being measured. Is it being measured from that or property lines? Is it being measured for the last building that's being used? Is it measured from the property line? If they've got 40 acres, it's never used? So you need to get into great specificity. So a person can look at that and say, I'm not allowed to live there.

Andy 45:54

I see. Um, I believe then on page 11. The judge stated, "The court finds that the statutory text itself is puzzling. The statute defines a school as the buildings and real property of kindergarten, elementary, middle and secondary institutions, whether public or private. The residency restriction compounds the ambiguities by using circular language. The residency restriction specifically requires that a person subject to it cannot within live within 1000 feet of real property that supports or upon which there exists a school, Larry, legal language like that is ridiculous. And so it goes on to us but a school is the building and real property of the kindergarten, elementary, middle and secondary institutions." Are the two the same or are they materially different?

Larry 46:43

Well, don't ask me, but that's what the judge was struggling with. The judge stated, "because the statute has not provided any further detail into what constitutes a school, the court must start with the ordinary definite definition of the word. And considering these examples, when interpreting a statute, the courts ultimate goal is to give effect to the General Assembly's intent. The best evidence of such intent can be found in the plain language used in the statute." Remember, it's all about the text.

Andy 47:09

There you go, being a textualist again.

Larry 47:12

Sometimes it suits my purposes.

Andy 47:15

The judge stated as a starting point, one might plausibly define a school as the buildings and real property that the school owns or leases. But why doesn't the statute not come out and explicitly say that or make some other clear or articulation?

Larry 47:32

Again, I don't know. But the judge basically said one answer is perhaps there are other spaces that a school uses but neither almost nor leases that the General Assembly intended to include in the definition of a school and consider the opposite. What about a building or property that the school leases irregularly, like once a year for graduation?

Andy 47:55

Right. So the New Orleans Superdome has high school graduations? And does that count? Now you can't live within 1000 feet of the New Orleans Superdome?

Larry 48:04

That would be funny, wouldn't it?

Andy 48:07

Well, that would also constitute what I would classify as ludicrous. And so I was just speaking in chat that a school near me rents an abandoned strip mall as an annex. So that now qualifies as the school property?

Larry 48:25

Maybe it does.

Andy 48:29

Alright, well, given this linguistic jumble, if one of the prosecuted for violating if one is prosecuted for violating the residency restriction, because he or she could not parse the ambiguous scope of a statute, or more troubling, could not foresee the state's construction of an ambiguous statute. That is the exact infirmity that constitutional due process prohibits citing *United States versus Williams*, 553 U.S. 285 (2008).

Larry 48:58

So that is one of my favorite cases to go to for an explanation for void for vagueness. The *Williams* court held a conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited. It authorizes or encourages seriously discriminatory enforcement. You've heard me say many times some variation of that. And I get it from the *United States versus Williams*, because I've read that case. It's very significant in terms of you want to order argue about whether something is void for vagueness.

Andy 49:40

Do you think you could do like a 10-minute-deep dive into that case on one of our episodes?

Larry 49:44

I could.

Andy 49:46

That'd be cool. To move along on page 18. The judge noted "that the state tried to articulate such a standard. The judge said to begin the court cannot ignore the fact the state itself has had trouble in defining these terms. In fact, it has defined relevant terms at least three ways during the litigation now." Okay, I'll admit, Larry, that that one is funny.

Larry 50:09

So, you finally can see here, but some of this, the judge said, no matter what caused the shifting definitions and discovery, the plaintiffs' confusion on the state's position is

understandable. The greater point, however, seems to be that if the state has had difficulties in properly working out these definitions, then those difficulties themselves support the idea that the statute is unconstitutionally vague.

Andy 50:34

Clearly, the judge gets it here. He stated "as such difficulties would prove far greater to an ordinary person. After all, if the state's process involves law enforcement, school officials, officials and attorneys collaborating to make precise individualized determination on these boundaries, how could an ordinary person be expected to faithfully follow this process, let alone come to the same conclusion about where these boundaries lie?" Was the court unable to locate a single case on point in terms of school boundaries?

Larry 51:03

Great question. It seems like they did have some difficulty, but this was an opportunity to talk about persuasive authority. Because you've heard me use that term a lot over the last five years, right? [Yes] Okay. On page 20, the court referred to *Doe vs. Cooper* from North Carolina. The judge stated, while that case is not binding on the court, its logic is quite persuasive. That's what we mean by persuasive authority. The Rhode Island residency restrictions does not specify how often students must use real property before it constitutes a school. Nor does it provide any examples to help in this determination. So when you hear me talking about persuasive authority, even though it's not binding, courts can look at that and say, wow, that was well thought out. I'm going to apply that here. So the judge chose to incorporate *Doe versus Cooper*, even though it has no power and controlling his decision.

Andy 51:56

And then the judge stated "the state does not even provide examples beyond its discovery responses further, because the state's examples do not appear in any public forum, the way a statute would, or the way authorized agency sometimes provide guidance on their websites. They become both legally and practically less relevant." All right, we need to move along pretty soon. Do you have any other points that you want to go over?

Larry 52:21

I do. The state at oral argument raised that a person who is prosecuted for violating residence restrictions, residing in a zone of ambiguity would be protected by the lack of *scienter*. As a defense, the state contended that when it is ambiguous whether one is subject of residence restrictions within 1000 feet of a school boundary, the defendant could not be illegally convicted because she liked he or she liked knowledge that he or she resided within the Delfino school boundary.

Andy 52:56

What did the court find in terms of that argument, then?

Larry 52:59

The court was not amused. The court stated, "this approach presents compelling on its face, because that's a legitimate defense, you know, but the resulting scheme proves unworkable." Under this theory, the state would first filter which person says to whom it believed it could establish they enter. And its prosecution would violate Reza restrictions, the state would then try each person at a jury or perhaps a judge. In some cases, what ultimately find the person knew or did not know that he or she was violating the resident's restriction. Do you see that? Do you see the inconsistency that would happen there? If they tried to use that?

Andy 53:34

I do. Can you explain *scienter* again? You have before, but I'm dumb.

Larry 53:40

Well, but first, we have 10s of 1000s of new listeners since then. *Scienter* is the mental state of knowledge. So in most criminality, you have to know what you're required to do. So in this case, the person would say, I didn't know it was an exclusion zone. But you've effectively shifted the burden to them to prove something and remember, they're presumed innocent. They're not supposed to have to prove anything. So therefore, the requisite burden is on the state to show that you that you weren't allowed to live there. And this was going to flip that on its head if the judge had bought into that argument that the state may well, they'd be protected. Well, they wouldn't have been it would lead to all sorts of arbitrary and capricious enforcement and convictions. You got to have knowledge, the *scienter*.

Andy 54:35

Is that the same that we talked about in the May case of burden shifting? Is that the short definition that *scienter* is burden shifting.

Larry 54:43

It can lead to burden shifting but it's really knowledge. You have to know. We don't care on some regulatory things whether you know about it or not, because the penalties for violating if you're speeding, and you didn't see the sign and some kid took the sign down. You're going 50 and a 30. We don't care that you didn't know because it's not going to have any lifelong ramifications. You're going to get three points on your record and you're done. So we really don't care about *scienter* there. But we're going to saddle you with lifetime consequences to your reputation with most felony offenses. Then there has to be knowledge. So I

continue to maintain that the laws that like in Michigan that dealt with Zach Anderson were that he was not able to say that he didn't know that the woman was under the age of 16. I believe it was an unconstitutional statute. Because they said, there's no such defense. I believe that every statute of significant importance that carries felony consequences, there has to be proof that you knew that you are breaking the law. You just don't have that when someone comes into a bar. And there's the presumption that they were over age, and then it turns out magically, they weren't above the age. The state should have to prove that you knew that that person was underage. Now, if they can prove it, you still deserve to be convicted, because you're not absolved from having sex with a 16-year-old just because they were at a bar as a 16-year-old. Once you start making out if the 16-year-old tells you "Well, I tell you that this is a lot of fun. But I am a minor." Do you need to stop? Yeah, it's kind of like the entrapment you need to stop when the teenager tells you that they're a teenager. Right?

Andy 56:28

Trying to remember the word Catherine Carpenter used when talking about these, particularly the ones involving minors, and I'm drawing a complete blank on what it is where the consequences should be pretty low, where you don't have knowledge of it, *scienter* is not the word that I'm looking for. Can you fill in that gap quickly?

Larry 56:49

I remember that talk, but I don't remember the particulars of what she was arguing.

Andy 56:53

God, that word is hurting my brain. Okay. Well, the judge also then finally said in just describing a simplified version of such a scheme, one can see that inconsistent enforcement would likely exist, who has the knowledge that he or she is violating the residency restrictions would turn on individual decisions by various individual prosecutors, judges, and jurors?

Larry 57:17

Which is what makes this statute void for vagueness.

Andy 57:21

Gotcha. So what's next, Larry, do you think that this case is dead? And that they won't appeal?

Larry 57:37

I would be very surprised if they don't appeal.

Andy 57:41

All right. Oh, Miss Mr. Doom and Gloom again? So this is good news for our people. So were there people that got removed from their homes?

Larry 57:53

Well, but for the injunction they would have they were serving notices on people at the time. They said I recall that. Yes. So now and then.

Andy 58:01

And I recall, there were situations where perhaps you're the owner of the house, and they were like, well, I mean, you can't throw somebody out that owns it. But here I rent it. Sorry, you're on your butt?

Larry 58:12

Well, actually, they were going to throw out the owners too, because you can still own the house, you just can't reside in it.

Andy 58:19

God, I also don't understand. I mean, I understand it, but it just doesn't really make sense to me. Why are these people so willing to die on these hills with these cases, these laws that to me don't pass a sniff test. They're just popular by the population. Therefore, we should do them, regardless of whether they're effective, whether they're constitutional, whether like--are we just mean bastards in the United States?

Larry 58:50

Some of it is systemic. We have systems that people don't understand that cause things to happen that people would rather not have happened. And it's in the private sector, as well as the public sector. Like I've talked about the news media. They're in a system that they don't have any control over as an individual organization. When you get hired to be a news director of KOB-TV in Albuquerque, your job is to get the ratings as high as you possibly can. Your job is not to be moral at the expense of making a profit. That's what the corporation exists for us--to make a profit for its shareholders, right?

Andy 59:32

I believe so.

Larry 59:33

So the attorney general of Rhode Island is in a difficult position. He or she--I don't know what the gender is--but he or she's in a difficult position now. They've got a statute that's been declared unconstitutional. But the statue is the desire of the people of Rhode Island because they've expressed that desire through their elected officials. [Right] They expressly expressed it in 2015. They expressed it again in 2021. They amended it for clarity once the lawsuit was pending. But that elected person is in a system where they can decide, well, I'm just going to throw up my hands and not defend this law anymore. They have the prerogative of

doing that. But do you remember what happens when you do that? Remember when the Obama administration chose not to defend what was called the DOMA, the Defense of Marriage Act, which proclaimed that marriage was between a man or woman? Do you remember the ridicule that they got for not defending no one. So you've got an attorney general that has the potential to lose the Office of the Attorney General, over something that the people want. And they face vilification from the other side, potentially. So therefore, the desire is going to be to defend the law. And that that's why I think the odds are greater that there will be an appeal. I can't guarantee it because I don't have a direct pipeline to that office. But depending on the political dynamics, (I don't know what is going on in Rhode Island), who's to say that the election is not in 2024. And who's to say that there's not someone chomping at the bit to want to be attorney general of Rhode Island is going to make this a huge issue. So if the attorney general that's sitting now is running for reelection, he or she is not in a position to say, Well, I'm not going to fight this thing no more. They're just not like that, though. They're just not in a position to do that. Systemically, they're caught in a situation where they are forced to do things that are less desirable. We had that speech at the conference in Cleveland where the Attorney General said I wish I hadn't done that. Remember?

Andy 1:01:33

I do vaguely, yes.

Larry 1:01:37

So you would give people grief about things systems they can't control, right?

Andy 1:01:45

Okay, hey, we are short on time. But I do want to cover this article that you threw in there just because this is insane. Because this is from News Nation. Never heard of it. Minnesota father kills PFR with Moose Antler. I've never heard of that one before. That's why I wanted to put this in here. I'm sure I can come up with reasons why you put this in here. But why did you put this in here?

Larry 1:02:11

It's just really to say how sad we are from something or something like this happening. I don't have enough information to really go into great detail about it. Minnesota has very few of their people publicly listed as I understand. He was at a very small town. And I don't even know if he was publicly listed. He certainly isn't now, but I don't know if he was at the time. But it could be that in a small town everybody knew. But apparently, he was bothering this father, in a way, because he felt like he was stalking children. And he was not able to do anything through the legal system to get relief from the irritation of the man. So he decided to provide himself the relief by

killing him. And I think he beat him with a shovel if I remember right, a dozen times or more with it. So the moose antler was just a final thing. He might have been dead by them. But this was a really old man. Like in his 70s.

Andy 1:03:10

Yeah, it was a 27-year-old beat the 77-year-old. I mean, I don't want to go fight Arnold Schwarzenegger at this point, because he's still a big dude. But generally, I'm thinking 77-year-olds are pretty frail, generally.

Larry 1:03:26

Yes. And so it's just a tragedy. I mean, I have sympathy for the family of the human being that's life was taken. But having said that, this man deserves a fair trial. He deserves a robust defense. He deserves the presumption of innocence. And the state has to prove beyond a reasonable doubt that he did this. Now since he went in and confessed, immediately, the state's case is going to be fairly strong. And a defense that's going to be very difficult to mount. So this will probably result in a plea agreement of some type.

Andy 1:04:05

Right. All right. Okay, well, we will close out the show because we are just a hair pastime. So find all of the show notes over at registrymatters.co. And, of course, support

the program with all the people that came and joined in the program tonight, over at patreon.com/registry matters. For as little as a buck a month you can become a patron, and we appreciate all of our patrons. And without anything else now, if you have any parting words, it's great. Otherwise, I will talk to you very soon.

Larry 1:04:31

You forgot to tell everyone to subscribe on YouTube and hit the like button and five-star reviews because our audience is going up. We picked up some subscribers last week.

Andy 1:04:40

Fantastic. Yep. So feel free to press like and subscribe and do all the things with the notification so that YouTube likes us better. Have a great night, sir. Good night.

Announcer 1:04:53

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