



Registry Matters Podcast

Episode 279

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Announcer 00:00

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Andy 00:17

Recording live from FYP studios, east and west, transmitting across the internet, this is episode 279 of Registry Matters. Good evening, Larry. How are you?

Larry 00:29

I'm doing awesome. Let's get this show on the road.

Andy 00:32

All right, well go over and press like and subscribe and notify, five-star reviews, all that fun stuff. Hey where's my little -- I press the button to do the thing and it's supposed to do the thing. There it goes. Okay, now know to press like and subscribe and share it, and such and such. Of course, go to your favorite podcast app and subscribe, and then you'll get a download right when it gets released. It's fantastic. You don't even have to work for it. What are we doing this weekend?

Larry 01:00

This is a holiday weekend, so we're going to be taking it easy.

Andy 01:04

Didn't you say? Come on, man. I'm looking at how long it is. And you said we're going to "take it easy?" You said we're going to take it easy last week, and it was 55 minutes. That is not what my definition of easy is.

Larry 01:15

Well that's because you need to stop blabbing so much.

Andy 01:18

Ah, my fault. I see. Okay. Well, then first of all, I did find an article. So, if anybody wants to say all we do is lefty pointy-head thingamajiggers, I have an article from a right-leaning source of all sides. It's their own little personal commentary about Mr. Speaker of the House being vacated. I wrote down a bunch of questions. How many times in the past has this ever happened? You're like nearly 200 years old. You have been here since the first Congress was ever voted in? And how many times has a speaker ever been removed?

Larry 01:54

I think I remember back in the early 1800s, there was an attempt, but I don't think it's ever succeeded before.

Andy 02:02

I see. Now, we also recently voted in the first non-Caucasian president. So that would be significant. Is this significant? Or should it have just happened at some point in time? This just happened to be the first one.

Larry 02:19

Well, it is very significant because it happened with such a low threshold to trigger the process. But it was a concession that the speaker made, or he was not speaker at the time, but candidate McCarthy made, to become speaker that they would lower the threshold of how many members it took to move to vacate the speaker's chair. And he agreed to it. And he challenged them a couple of times, saying, "If you got something to file, bring it on." And they did.

Andy 02:46

Why would he do that? Why would he make that deal to do this?

Larry 02:52

He wouldn't have become Speaker otherwise. They would've gone on from 15 ballots to 30 to 40, 50. He was forced to make the deal to appease the far-right wing of his party. If you flip five seats, you'll no longer have a Republican majority. And it's such a difficult caucus to manage because of the extreme views that are represented in what's a fairly extreme caucus to begin with, but there are some moderates in the caucus, and you can see that in the vote. I mean, all but seven or eight voted to retain him as speaker.

Andy 03:28

And to the thing of the 15 ballots, how many is normal to elect a speaker?

Larry 03:34

One.

Andy 03:34

(laughs) So one and done. We nominate so and so to be Speaker of the House and we're done, and we can move on with the business?

Larry 03:43

Well, typically each party puts forth a candidate. But the majority party is not going to vote for a candidate of the other party. So therefore, when Pelosi or whoever, Gingrich, had the majority, they put forth one candidate. You kind of go out and work behind the scenes, trying to rally the troops and find out if you can get the votes. And sometimes it takes a while to do that. But normally, when

you get to the vote, they coalesce around a candidate, some sort of consensus has emerged, and you have one ballot and you're done. But this time, we had 15 ballots, and it took a while, and McCarthy made concessions and those concessions came back to bite him in the butt.

Andy 04:24

So on that then, what was the cause? Why did they kick them out?

Larry 04:32

Well, Representative Gaetz, that's spelled G-A-E-T-Z, I think Trump era, he decided that McCarthy had committed a sin by putting forth what's called a continuing resolution, to prevent the government from shutting down at the end of September. And every Republican proposal in the house failed because it didn't have enough spending cuts to satisfy Gaetz and those in the extreme wing of the party. So, McCarthy, recognizing that there's a little benefit to be gained from shutting down the government, decided to take Leader McConnell's advice in the Senate, and put forth a proposal that would garner some Democratic support. And he finally did, at the closing moments Saturday, put forth a proposal, and it passed. But it was not what that extreme faction of the party wanted because it didn't contain the spending cuts they were looking for. Therefore, he forfeited his speakership.

Andy 05:37

Is this at all similar? I can't remember which state it was, in the southeast somewhere, Tennessee or Kentucky? There were three, I guess they were state-level reps, and they were booted? Is this at all similar?

Larry 05:49

It's hard to see a lot of similarities. That was in Tennessee. Those members of the legislature broke the rules of decorum and the membership voted to kick them out. This member, the speaker, who's also a member, didn't break any rules of decorum. He broke the cardinal promise that he was going to be a diehard staunch conservative. And it's not the same thing at all. Those people broke the rules of the house or the senate, I forget which they were, but they were members of the legislative body in Tennessee, and they broke the rules. And they were kicked out. And they were re-admitted because the County Commissions of those counties re-appointed them for the vacancies.

Andy 06:32

Have you heard it floated that they would nominate Trump to be the Speaker of the House?

Larry 06:38

I have and I don't imagine he would have any interest in it. And he certainly doesn't have the temperament to do that

job. But I don't know how he can campaign for president and be trying to run the House of Representatives. It's a fairly significant job. It really is.

Andy 06:53

This is the third in line to the presidency. I mean, if the president gets nuked, you have the vice president, and the Speaker of the House is the next in line?

Larry 07:01

Yes. Would that be funny?

Andy 07:02

That would be amazing. I don't want to drag this on for very long. They just, like last weekend, I guess it was like Friday, they closed the deal, to have just a one-month extension on this whole budget thing. And now he gets booted. What is going to happen in a month or so, at the end of November? With them trying to -- like they can't conduct business if there is no speaker, so that would just be -- it just keeps getting kicked down the road until they get one. But once they do get one, they still have to negotiate some sort of spending deal.

Larry 07:35

Well, first of all, what you said is not true. They have an acting speaker right now.

Andy 07:38

Oh that's right. They do have a Pro Tem right?

Larry 07:41

Yes. So, house business will continue to take place. The risk is that the Democrats made a miscalculation, in my opinion. Time will tell if I'm right or if I'm wrong. But I think that what we learned in this, was that McCarthy was not willing to let the country burn. Shutting down government is a painful experience. It really is. Now most people listening feel differently. They think the government could shut down and nobody would think about it. But that's just not true. Every part of your daily life from getting on an airplane, to food safety inspection, to keeping the prisoners confined, that should be confined, to prosecuting criminals, all these things require federal salaries to be paid. Parks and recreation sites, perhaps you could not miss those. But shutting down the government is particularly painful. And we just can't cut ourselves out of the situation we're in right now. We have expenditures that are greater than the recurring revenue streams. And we need to figure out how to do a combination of finding new revenues and curtailing the growth of spending. You really can't dramatically slash spending, because about three quarters of what we spend is already in statute, having to be spent by law. But what's going to happen, and my fear, is that when this 45-day extension expires, we're in mid-November, which is coming

up on a holiday season. And if the candidate who emerges to be Speaker has learned anything, he will have learned that if you cut a deal with the Democrats, this is going to be the end of your speakership. Which means he's going to be very hard-nosed about any type of deal with the Democrats. And means that there won't be a spending agreement, and there'll be a government shutdown coming up on the holidays. Now, that's gonna be a lot of pressure. And it's gonna depend on messaging. And the Democrats have shown themselves to be totally inept in this administration, to message, as far as my opinion. And whoever is more clever at pointing the blame at the other, and succeeded in convincing folks that we're not responsible for the government. You'll hear the Republicans saying that it's a Biden shutdown. And you'll hear Biden saying it's the Republican shutdown. And it'll be just like it was in '95 when we had a long shutdown under Newt Gingrich. Clinton actually won that battle because he messaged better. This president messages horribly.

Andy 10:11

Wasn't there a shutdown in '12 or so?

Larry 10:14

Yes, there's been a number of them. There was one during the Trump administration over Christmas, a few years back. It was actually the longest one on record under Trump, I think.

Andy 10:24

You said during Christmas. Probably people are already taking vacations and don't give a poop what goes on at Christmas anyway, and they went back to work shortly thereafter?

Larry 10:33

Yeah, but what about the paychecks, people who are not being paid? What I would do if I'm the Republicans? I've got to think they're at least as smart as I am.

Andy 10:40

That's not necessarily true, though.

Larry 10:42

What I would do is, I would parade all these people that are being ordered to work, because you're told that it's your job. You got to be in those control towers and we'll pay you later. I would get these people in front of a camera and obligate them to boohoo about how difficult it is to pay bills and mortgage and because of the intransigence of the Democrat party, that I don't have a paycheck, and I can't buy gifts for my family. If I can think of that, I'm confident they can think of that as well.

Andy 11:08

I have a person in chat saying that the federal workers did care during that shutdown. I think the last question I have for you is, why should PFRs care?

Larry 11:18

Well, you shouldn't obsess over it, but anytime there's a disruption of government operations, I suspect some PFRs are applying for, maybe, benefits? And the process of going to an administrative law judge hearing for some sort of disability benefits? There's things going on that the government does that impacts your life. And you should care because when you need the services that you take for granted because they magically occur, that's when you should think about it, because services are going to be disrupted.

Andy 11:53

All right, well, that was significantly enough time to talk about politics in that regard. Let us move over to an article from The Colombian, and it is to follow up on last week's episode. We discussed a proposal that would have removed community notification from Washington State's PFR registry. Now I have a portion to play from last week where we were discussing it, and you offered an opinion at the end. It appears though, Larry, that you have put on your little clairvoyant hat. You've been listening to Art Bell or something like that, and you were able to predict the future. And I mean, I should cue the laugh track. Do you think this will become law?

Larry 12:39

I really don't. The law enforcement and victim advocacy organizations will put forth an intense campaign of opposition, and they will do this with the intention of scaring the public.

Andy 12:51

This comes on the heels of that proposal in King County, Washington. "A state advisory panel is doing damage control after recommendations regarding PFRs stirred outrage in the community." The recommendations are for community notifications to be eliminated when convicted PFRs are released from prison and returned to society. However, the Chair of the Washington State PFR board, SOPB, said, "This is all a misunderstanding that stems from research by an outside agency being included in a recent agenda packet."

Larry 13:21

Yeah, it was a mistake, all right. The article also states, quoting Brad Meryhew, who I think is the Chair of the SOPB, The research was outlined in a document that summarizes a portion of the Model Penal Code, which is known as MPC, which was drafted by a separate agency. Meryhew said,

"There are no plans to push it forward as a course of action for the Washington State Legislature to consider." So basically, Chairman Meryhew of the SOPB has decided this is not even going to be put forward as a proposal.

Andy 14:01

I do have to correct something. I had the wrong article pulled up on the screen. It is not from The Columbian. This is KOMO, K - O - M - O news, just to make that clarification. So, what happened next, though? I thought Washington was a bunch of liberal lefties, your people.

Larry 14:14

Well, parts of the state are, but the liberal lefties have little sympathy for PFRs. In fact, Meryhew said, "The confusion here is that included in the materials we distributed for that meeting, was a comprehensive Model Penal Code that talks about a variety of different proposals that have been made to state legislators for adoption. We are tasked with staying up to date on the latest research and policy proposals on PFR Offender Management."

Andy 14:47

So it wasn't the actual SOPB? It was the Model Penal Code that has found that community notification actually undermines public safety? It also recommends that the PFR registry should be reserved for law enforcement and not be made available to the public. The reasoning is that the attention notifications and registries bring can make it more difficult for offenders to get housing and a job and successfully re-integrate in the community. Do you think it can pass now?

Larry 15:16

Not likely. First, the board does not even plan to recommend the proposal. Second, as Meryhew stated, "There's a great deal of support for community notification on our board and I would be shocked if any proposals to limit that or in any way or diminish that were successful." It cannot pass the legislative process.

Andy 15:37

I remember seeing like on the NARSOL affiliates list, like is this the, I don't remember the right words, but the somebody organization presents, they're a panel and like a think-tank of what the policy should be. I don't remember what this is called. Do you know what I'm talking about?

Larry 15:56

I know what you're talking about, and I have scorned that because, in my 30 years of legislative experience, I have never seen anybody say in our legislature, "Oh they recommended that. We better pass it." I mean, it's just not a big talking point here.

Andy 16:10

So, is that just like wasted paper?

Larry 16:13

Yes. The American Law Institute, you're thinking about ALI.

Andy 16:16

Okay, yeah. And so then having all the big-brain, social scientists, legal brain people, like this means nothing to policy?

Larry 16:29

No, because you're dealing with the public's emotions. And as this did exactly what I thought it was going to do, it caused a backlash among the public. And that's a sure way to end your political career, if you go against the public on something as sensitive as this. And they're not likely to do it.

Andy 16:47

Mr. Doom and Gloom. That's why I leave that picture up there of you, Larry. And I don't change it around anymore because you were just Mr. Doom and Gloom. Let us go over to actually what is The Colombian, my apologies on jumping the gun on which article it was, but we had the right information going. I just told you the wrong article. This one is from the *Colombian*, and it says, "A Portland man was acquitted last month, after being granted a new trial on appeal, nearly five years after he was convicted in connection with an undercover child-sex sting. A Clark County Superior Court jury, September 8th, acquitted Jace Hambrick, 27, of attempted second degree rape of a child and communicating with a minor for immoral purposes. This is great news. I'm perfectly good friends with the boy's father. And as I recall, you were kind of down on the whole idea about him winning a trial anyway.

Larry 17:39

I was, because jurors generally do not care. Jace was one of several people arrested in February 2017 after responding to an advertisement posted by an interagency task force posing as minors online. And in Hambrick's case, he responded to a Vancouver detective's post in the "casual encounters" category of Craigslist, by a girl looking for someone to talk to you about video games. Initially, that's what the conversation centered on, but it drifted to something else.

Andy 18:11

The court records show the detective messaging Hambrick said, multiple times, that they were -- how old, Larry? 13 -- before and after the conversation turned sexual in nature. Hambrick, then 20, expressed doubt that a 13 year old would be posting on Craigslist, and at one point he said he

thought the fictitious girl was joking about her age. Now, can you admit that this turns out to be entrapment?

Larry 18:48

Yes, I can admit it. But the problem is it's for the fact finder, either the jury or the judge. But when Hambrick arrived at a Vancouver apartment to meet the girl, detectives arrested him, according to a probable cause affidavit. And I have not wavered in my opinion at all, that people should disengage when a person morphs into a minor. It doesn't make any difference what you think. Disengage. You're not going to be as lucky as Jace was. And you're not going to have a determined parent, and a lot of money to throw at this. It's easier to just disengage.

Andy 19:23

On May 21st, 2018 Hambrick's bench trial began in Clark County. The following day, Judge Gregory Gonzalez found Hambrick guilty on both counts, court records show. Despite his convictions, Hambrick maintained his innocence. His defense attorney at the time filed multiple motions, including asking the judge to reconsider his verdict, and to vacate the convictions. All of the motions were denied, according to court records. In November 2018, the judge sentenced Hambrick to 18 months in prison, which was an exceptionally low sentence. He was also ordered to register, the court records also show.

Larry 19:57

Yes, and Hambrick appealed on the basis of insufficient evidence, and that his right to a jury trial was violated because he didn't personally sign the waiver. I actually agree with that. That's a significant thing. And I would never think of waiving jury trial without the client's signature, because that's going to come back and bite you as an attorney. But anyway, that's apparently what happened. His case was featured in an August, 2020 story by the New York Times Magazine that explored online-predator stings in Washington. Two years after he was sentenced, the Washington Court of Appeals issued an opinion that Hambrick's right to a jury trial was violated by his lack of signature, and the court vacated his convictions. By then, of course, he had already served his sentence. The appeals court, however, did not find that there was insufficient evidence for his convictions. His case was set for a new trial, which began in front of the jury this time, on September 5th, according to the court records.

Andy 20:53

At the new trial, Hambrick's defense attorney, Charles Lane, raised several issues with the investigation. He said Craigslist requires users to affirm that they are at least 18 years old, so Hambrick assumed he was talking to an adult. At one point in the conversation, Hambrick asked the fictitious girl to send him a photo. The photo he received

was of a 24-year-old woman who turned out to be a Vancouver police officer." That officer also answered the door when Hamburg arrived at the apartment, court records show. What more do you need to find that this is entrapment?

Larry 21:24

Well, I said I don't need any more. I think it is. But again, we have to convince juries and judges. But in the police interview, after being arrested, Hambrick told officers, "If he arrived to find the person he was messaging was actually a 13 year old, he would have left, and he said he had no intention of having sex with a minor." Most juries do not believe such proclamations by an accused. That's very self-serving. He was a compelling witness, obviously, and a juror was open minded. It is very important that Hambrick also had no criminal history, and a law enforcement search of his phone did not turn up any evidence of sexual misconduct with minors. All those things weighed in his favor. And those are things that you would certainly take into account before putting a person on trial. Nevertheless, he was still sentenced to prison, in what was referred to as a very light sentence. And again, that would not have been the outcome here in New Mexico for a young first-time offender. It just wouldn't have been. He would have got a probated sentence.

Andy 22:28

So, in your experience, why are you so afraid to go to trial on these kinds of cases?

Larry 22:33

Mainly because of my grand jury experience of three months of listening to people and arguing with fellow jurors, and just not making any headway. In every sex case, they were ready to rubber-stamp the indictments. And also it's worth noting that one juror named Rik Smoody, said the majority of the jury was in favor of convicting Hambrick when it first began deliberations. But as the jurors continued to discuss the case, they found enough reasons to cast doubt that Hambrick was actually seeking a minor. The juror said the evidence showed Hambrick was cooperative "perhaps to a fault." And he said Hambrick let law enforcement search his things, and he answered all their questions. And now, I have to backtrack on something, because I always say, "Don't talk to the police". But I've never been put in this position in my career of having your cooperation with the police weighing favorably before a jury. So now I have to rethink that. But I would normally say to tell the police to take it and shove it. And this, as far as the jury is concerned, worked to his advantage.

Andy 23:40

I'm still troubled, Larry, that even if the person said they were 13, and he goes to the house, and it is an adult, where does this fictitious minor come into the picture?

Larry 23:54

Well, obviously, they're not going to have a minor there and risk that you would take possession of a minor. I mean, the whole thing is a scam. But I think it's really important to say this jury was ready to convict him at the beginning of it.

Andy 24:07

Without a doubt.

Larry 24:08

Yeah. So you know, it's not a slam dunk, by any means.

Andy 24:11

Right. And he also stated that when the jury was shown the photo the detective sent Hambrick, Smoody agreed the woman did not look like a minor. He said Hambrick never wavered that he felt the person in the photo was a real adult. "It was entirely credible that he was checking it out because she might have been for real," Smoody said, "And, in fact, there she was - she stood in front of him and opened the door, all 20 something and all that woman."

Larry 24:38

Yep. And again, that was an amazing, open-minded jury. The Grand Jurors I served with would not have cared about the fact that it was a picture of an adult. They would have said, right, sure. They would have made every excuse in the world to justify convicting him. But he happened to have an open-minded jury in his determination, so he doesn't have a PFR conviction, and it's just fantastic. But juror Smoody also said he finds this type of online sting, like in Hambrick's case, to be wrong. He said he believed law enforcement was casting too wide of a net. And that's an extremely insightful thing, from a jury.

Andy 25:22

Can we get him on the podcast?

Larry 25:25

I don't know how we would find him. But if Kathleen knows how, yes.

Andy 25:28

What was his... Smoody? Like how many people can have that name?

Larry 25:33

Probably about 10 million.

Andy 25:35

Oh, God, seriously? No. Lane, the defense attorney, said that when the sting operations first began, defense attorneys and prosecutors alike, didn't like much about how they were operated or funded. At the time of Hambrick's case, investigators did not do enough to ensure the suspects were actually intending to meet minors. "Since then, agencies have made changes to how they conduct the stings," he said. Aha! So they've gone back and taken note of what they did wrong, and they probably improved things, Larry.

Larry 26:03

Well, yes. But we need to, as the people who actually instruct law enforcement and give them the powers that they operate, make it clear that they must prove that there was an intent to have sex with a minor. And we need to clarify the statutory schemes. But anyway, while Lane said, Hambrick's case isn't an outlier, he said it's unusual that he was acquitted. And I want to reiterate that, yes, this is a great outcome. Congratulations to Kathleen and Jace. But don't figure this is going to become the norm.

Andy 26:36

Is there any avenue that all of the other people that are involved in Kathleen's group called CAGE, which is Citizens Against Government Entrapment, if I'm not mistaken on that one -- Is there an avenue that this is used as some kind of evidence, persuasive authority, all those terms, whichever one would work, to help those people out?

Larry 26:57

Very little, because this is a trial level court, it went up on appeal, and it got reversed on one issue alone, not insufficient evidence, but the fact of the waiver. So, you'd have to find how many people had waived their right to a jury, unknowingly, without signing it themselves, and you would have a subgroup that could possibly reopen their old convictions and go back and roll the dice and go before a jury. If they've served all their time, perhaps they have nothing to risk, because maybe Washington law would prevent them from imposing a harsher sentence than what was originally imposed. But this won't have much impact beyond this case. And if it is, it will be for people who had waived their jury right, unknowingly.

Andy 27:41

Only because of that, he was able to go back before the jury?

Larry 27:46

Yes, that was what got him back to the courthouse again, was the attorney-waived-jury. Like I said, I would never have done that.

Andy 27:58

Because he had served his sentence at that point. So, he was like, "done." He still had the registry to contend with, but he was done. Why would you then go, "get another bite of the apple?" That's the expression you always use?

Larry 28:10

Well, because the higher court said so. Because he did not knowingly waive his right to a jury trial. Yeah. Right. But I'm saying I would never have, I can't imagine any attorney I've worked with in case preparation, where we would waive a jury trial, without getting a signed waiver from the defendant. I can't fathom that happening.

Andy 28:29

I remember I've talked about this before, that when I was being sentenced, and I'm sitting there in the courtroom with the attorney on the other side of the glass, and the whole room is just super loud and booming, can't hear anything. And somewhere on there, I signed that I was waiving right to a trial and all that stuff. I mean, I remember, of all the other things that I was signing at that time, but I remember that happening. Well, that's a standard part of the waiver, when you're doing a plea. But he went ahead and went to trial, but he waived his right to a trial by jury. Yeah.

Larry 29:03

And that's an unconscionable thing for a defense attorney to do that.

Andy 29:08

Right. Is there any sort of punishment, whatever the right word would be? Is there any sort of punishment for that attorney that did that?

Larry 29:14

Not likely. He's going to tell a different story. If the complaint was made, he's going to say, "I discussed it very thoroughly with my client. He was young and impressionable. And I thought he signed the paper. I don't have it now, but I'm almost certain he signed the paper." That's what he's gonna say.

Andy 29:32

Well, I do have Kathleen scheduled at the end of the month. Schedules just could never work out with the time that we took off and whatnot, and she was busy. But she's supposed to come on so we can talk to her firsthand, towards the end of the month, if I'm not mistaken. The 28th? I don't know if that's the right day of the week. Yeah, the 28th I'm pretty sure that's what it's gonna be.

Announcer 29:50

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Andy 30:39

All right. Let us go to this article over from ACSOL, which is the Alliance for Constitutional Sexual Offense Laws. Is that right?

Larry 30:50

That sounds familiar.

Andy 30:51

Very good. All right. ACSOL has filed a federal lawsuit in Missouri (in Missoura?) Which way do you say it, Missouri or Missoura?

Larry 30:59

Missouri.

Andy 31:02

The case is *Thomas I. Sanderson vs. Andrew Bailey*, in his official capacity as Attorney General of the State of Missouri; and James --who? oh my god, what is up with these names you keep coming up with every week? Who Danik? Who Denecke? Which one do you think it is?

Larry 31:20

I think it's Hudanick.

Andy 31:24

Hudanick. So, this is James Hudanick, in his official capacity as Chief of Police of the City of Hazelwood, Missouri. And what is this going to be about?

Larry 31:34

This action challenges the constitutionality of a provision of Missouri State law mandating that persons convicted of sexual offenses display a sign at their residence declaring, "No candy or treats at this residence" each Halloween. This is prohibited by Missouri revised Statute 589.426(1)(3).

Andy 32:03

And what are they trying to do? What are they seeking?

Larry 32:06

Two things. First, they're asking the defendants be enjoined in perpetuity from enforcing the Halloween sign posting mandate, and that the Halloween sign posting mandate codified in the statute section I just read be declared null and void under the First Amendment of the United States Constitution.

Andy 32:26

Courts and other jurisdictions have struck down similar Halloween sign posting mandates on the grounds that they are a 'classic' example of 'compelled speech.' Do you think that this case is a good one? Do you like it?

Larry 32:38

I do. And it's very solid. Courts have indeed struck down similar requirements. And it's noteworthy that the only circuit precedent that they cited in this complaint is *McClendon v. Long*, and that's 22 Federal 4th at 1330 from the 11th circuit in 2022.

Andy 32:54

I know that one!

Larry 32:56

I was just going to ask you if you remember that. That was the case that I, as your host, planned and worked diligently with the attorney in Georgia, to see that we prevailed, and we did prevail.

Andy 33:09

The complaint states further, "Sign posting mandates, such as those imposed by the State of Missouri, pose a danger to PFRs, their families, and their property. That is because the sign posting mandate and its association with the requirement to register, is highly publicized by state and local governments, as well as the media. Further, both the government and the media encourage the public to view the occupants of any house displaying the sign at issue as likely abusers of children." Do you agree with that?

Larry 33:39

I do, indeed. This is placing a target on the registrant, as well as all occupants of that dwelling.

Andy 33:45

The complaint states, "There is no empirical evidence for the State of Missouri's continued assertion of a danger to children from registrants on Halloween, or for any special regulation of registrants on Halloween. In fact, the leading association of specialists in the treatment of PFRs, the Association for the Treatment of Sexual Abusers (ATSA), affirmatively denounces Halloween restrictions such as Missouri's." I know you say that evidence is not necessarily

required. What is it about this case that involves the First Amendment?

Larry 33:45

Well, that does change the equation. Normally, you're looking at what's called a rational basis review. But this changes the legal standard dramatically. In First Amendment challenges, there is a much higher threshold for the government to overcome. They could, in fact, require signs for a very limited number of registrants. But those registrants would have to receive some due process that identifies them as likely to lure a child. Otherwise, they just cannot impose this blanket requirement. So, listen to me law enforcement: If you want to do these things that, I don't think they're solid, but if you want to do it from a constitutional perspective not being challenged, you have to have due process. Remember: due process.

Andy 35:05

What does this word mean?

Larry 35:06

You have to target those people who have, in their offense behavior, and their criminality, that they have done something like luring a child. And if you were to narrow it down, then you would take 800,000 PFRs nationwide, and you'd have a category of 17. Because the number of adults who have actually lured a child to some sort of private place, and sodomized and done ugly things to them is probably very, very small. But you could do this type of thing, to that offender, with due process, to show that they have this propensity, and it has been untreated, and unmanaged. But you can't do it as a blanket policy. So folks, listen, if you want to do these things, tell your state legislators that we want to do this, but it's going to cost us some money, because we want to do it in a constitutional way. Remember, you put your hand on the Bible, and you said that you're going to enforce and defend the Constitution. That means *all* aspects of the Constitution.

Andy 36:11

I mean, so I was just going to bring up, when I joined the military and re-enlisted and all that stuff, I had to swear to uphold the Constitution against all enemies, both foreign and domestic. And that would be including due process, correct?

Larry 36:27

It would. And these people, when they get elected to office, they pay a lot of lip service to the Constitution. But what they actually mean, let me interpret it to you. They mean: "I will enforce the Constitution on things that have big money behind them, like the NRA, and things where there can be an immense amount of political pressure brought to bear if I don't." So, you'll find a lot of sheriffs that magically believe

in strong defense of the Second Amendment, because they know the consequences of not having that position. But when it comes to something about PFRs and due process, they magically go silent. And they forget all about that same Constitution.

Andy 37:06

And DAs, obviously, are there to uphold the law. And this is not, well, this is law for them, right?

Larry 37:15

It is in fact law.

Andy 37:16

In Butts, it wasn't, with Gary Long. That wasn't law, that was him making up something. That's why it was, I'll say, easy to win in court.

Larry 37:24

It was easier because he could not cite to the law. This is not going to save Missouri, but it is easier for them to defend it. "Well, I mean we're just doing our job. We put our hand on the Bible, we're going to enforce the law. If you don't like the law change it."

Andy 37:37

Yeah. And another thing that you say is, in signing a law, you assume it's constitutional until somebody brings a challenge for it.

Larry 37:48

And that's generally true. In First Amendment cases, when you're restricting the content of speech which, arguably, I would say this is restricting the content, you're not telling them particular words that they can say, but you're telling them particular things that they can't do to express themselves on Halloween. And you're telling them that they can't communicate with people who might come to their door. So I would say this is very close to a content-based restriction, and this is the highest standard of scrutiny applied, strict scrutiny, and I just don't think they can overcome it.

Andy 38:18

Would you let me read part of the statute, is that cool?

Larry 38:21

Yes.

Andy 38:22

Missouri Revised Statute Section 589.426 and the Halloween Sign Posting Mandate: *Effective August 28th, 2008, the Statute provides, in full (so hold onto your seats, kids) as follows: Any person required to register as a PFR under the sections I just said above, shall be required, on*

October 31st of each year, to: Avoid all Halloween- related contact with children; remain inside his or her residence between the hours of 5pm and 10:30pm unless required to be elsewhere for just cause, including but not limited to, employment or medical emergencies; post a sign at his or her residence, stating "No candy or treats at this residence;" and leave all outside residential lighting off during the evening hours after 5pm; any person required to register as a PFR under Sections 589.400 to blah blah blah, who violates the provision of Subsection One of this section shall be guilty of a Class A misdemeanor. Now, has the plaintiff in this been prosecuted for a violation?

Larry 39:31

According to the complaint, he has. Plaintiff Sanderson and his family moved to the City of Hazelwood in or about the year 2000. Each Halloween for the 22-year period between 2000 and 2022, Sandersons family erected and maintained lavish Halloween displays at their home and on their property. The Sandersons' display has been a neighborhood tradition for many years, with over 300 people visiting each Halloween. In or about October 2012, Hazel Police Officers appeared at Sandersons residence to inquire about the Halloween decorations, alleging that he might be in violation. Subsequently they concluded that he was not, for whatever the reasons. It wasn't clear in the complaint, but they told him that he was good to go.

Andy 40:11

I mean, man it says -- yeah, I guess it doesn't really say you can't do it. Like I just read the, so: "Avoid all Halloween contact with children, remain inside, posting a sign and leave residential lighting off outside. Now if you've got lights on in your yard, Larry, lighting up your skeletons, that's not residential lighting. All right. It goes on to say that on or about October 31st, 2022, while his residence was decorated, as it had been for the past 22 Halloweens, six marked vehicles from the Hazelwood Police Department descended upon the Sanderson residence, with sirens blaring! At least 10 Hazelwood police officers then entered plaintiff Sanderson's property from all sides, including through his neighbor's yard. Officers told plaintiff Sanderson that he was in violation of the statute that he had, twice before, been told did not apply to him. The officers asked for permission to search his property, which plaintiff Sanderson refused to grant permission requested, requesting instead that the officers obtain a warrant. Do you approve of him telling them to go get a warrant?

Larry 40:35

Good point. I do. Indeed. But did you hear how many officers they had at the property for a misdemeanor? Now, can you please admit that that's funny?

Andy 41:32

This is, okay funny in the sense of, oh my god. The guy just has some skeletons and boo boo boo on his front yard, and they need six cop cars? How many, and they're loaded probably four deep, in each car?

Larry 41:46

In our studio audience, someone Google this Hazelwood, Missouri and let's see what the size of the town is, and what type of police force we're talking about. But I'm betting this is like a third of the police force.

Andy 41:57

Yes, it probably is. Hazelwood, Missouri Population. All right. So no, it is not funny, Larry. And then on November 3rd, 2022, law enforcement obtained a warrant and arrested plaintiff Sanderson and placed him in custody. Plaintiff Sanderson was then charged with one misdemeanor count of violating the statute. The St. Louis County court convicted plaintiff Sanderson of violating the statute and sentenced him to 12 months of unsupervised probation. Plaintiff is currently on probation and will remain so through April 12th of 2024. Now, what do you think of this plaintiff?

Larry 42:34

Actually, I like this plaintiff. He's about as good as you could hope for, unlike the case we discussed last week when we had the worst possible challenge. Uh, this town has 25,000 people. Yeah, so they had like a third of the police force out there at his residence.

Andy 42:51

(laughs) Before we go out of here and cover the last little section, what do you think the odds of success are?

Larry 43:01

Oh, in this one, they're excellent. I have wanted to do this challenge. Our bureaucracy at the organization I serve on the Board of has been moving a little bit slower than I would like, and another organization got to it first. But this is something I wanted to go at for about a year now.

Andy 43:18

Doesn't Janice have experience in this? They filed something similar in California, years, years, years years ago?

Larry 43:25

Yes, they do.

Andy 43:27

So, is this something that you can kind of rubber stamp and just fill in the form letter and go about the challenge?

Larry 43:34

Yes, you look at her complaint. And it's very similar to what we used in Georgia, and they will be similar to what we use around the country. I want to do all these. I know it doesn't bring down the registry. It's not the big one. But it conveys to law enforcement, and to the policymakers and lawmakers, that there are limits to what will be tolerated. And it puts boundaries around what's acceptable. And being told that you cannot decorate, you cannot engage in your basic rights as an American, it's unacceptable. And we're gonna shoot you down on it.

Andy 44:07

I'm struggling to really grasp, Larry, that the people continue to be elected and re-elected and they have to swear an oath to the Constitution that they're going to uphold it and all this stuff. But in that -- so, fine, you have a statute that says to do the thing to uphold the law, but you also then have the First Amendment right. Then maybe those aren't exactly covered the same way of the First Amendment being about freedom of speech, freedom of religion. But when I first started becoming involved with NARSOL, and something along those lines of the Halloween signs was going on. And I heard someone said, it's also the right to be able to express yourself. I guess it was the right to be able to hear a message. And then you brought up that this is your ability to express yourself. And that these would be perfectly good challenges to go after.

Larry 44:57

Correct. Absolutely and we as advocates need to be doing more of these challenges. We're not going to bring the registry down through judicial intervention, I'm sorry to break that news to you. But we can contain the monster. And we need to go after everything that we can to contain this monster. Litigation will eventually wear these people down. But these people, the legislative bodies, they're part time. They're homemakers, they're different. They don't know. They're not constitutional lawyers. They're being told by the Attorney General, and experts that testified, that these are constitutional, and they don't know any better.

Andy 45:34

So we shouldn't blame them?

Larry 45:35

Not per se. We should not blame the legislative bodies, because they're being told by people they trust that these are good laws, and that they are very much constitutional.

Andy 45:46

Do you think it's lost on them? That it's not just about the PFR in the house, but also potentially the other innocent people that are in the house? Their parents, kids, spouses,

whatever, that can be impacted by this public awareness of them? Does that ever enter into anybody's consciousness?

Larry 46:06

No, because the PFR population seldom shows up and brings their minors to explain to them that, "Hey, I'm afraid because of this, and I'm bullied because of that." They don't use the boohoo technique. The victims' advocates, they bring in the boohoo-ers to cry. And I'm sorry, but boohooing is very effective. We need to get into the boohoo business.

Andy 46:27

We're gonna run a boohoo campaign, Larry. All right, we have something. I have to like change screens, because I could not get this article to load, Larry, without using my special sneaky-sneaky techniques. Where did -- where do I go for this one? Uh, what did I do?

Larry 46:51

It was the Washington Post.

Andy 46:52

I know. But I could not get it to load on Chrome, so I had to go do something sneaky-sneaky to make it load. There, now it'll load. Okay, now we can look at it. And this article is from the Washington Post about the blackmail of teenage boys. And, you know, Larry, I have a 16-year old myself. So, this is something that hits kinda close to home. The article was from the Washington Post, as I said, written by Chris Moody and published October 2nd, 2023. It states: Lynne and Paul were sitting in their Seattle home one night earlier this year when their son, Michael, a 17-year-old high school football player, burst into the room and made a bee-line for his mom's purse on the dining room table. Paul asked, "Hey, what are you up to there?" Their son paused, took a breath, and leaned against the wall. "Um, I'm being blackmailed," he said. He had been chatting with a person through Instagram and Snapchat, who purported to be a 16-year-old girl. 'She' saw his profile and told him he was cute. Michael had never met the person, but the account was filled with photos and details about the girl's life that made it appear real. The two flirted back and forth. The person behind the account asked to see a photo of him in the nude, and specifically requested he include his face. Alone in the room that night, Michael dashed off a picture he took with his phone. Suddenly, the person who had seemed so sweet and fun while chatting for weeks, demanded Michael send hundreds of dollars through Zelle. If Michael refused, the person threatened, they would send the nude photo to his family and friends. He tried to set up a Zelle account on his phone, but it required his social security number. That's why he was digging in his mom's purse. He was hoping she might have his card there.

Larry 48:31

I didn't catch that part. I totally went through that. But according to the article, Michael had fallen prey to what online safety and law enforcement experts call 'financial sextortion,' in which predators befriend victims online under false pretenses, entice them to send incriminating photos, and then demand payment under threat that they will expose the photos to family and friends. "The number of sextortion cases targeting young people has exploded in the past couple of years, with teen boys being the specific targets," said Lauren Coffren, executive director of the Exploited Children Division at the National Center for Missing and Exploited Children (NCMEC). "They're using shame, embarrassment and fear, and they're tapping into that," Coffren said. "They're exploiting children's worst nightmares." This is gross stuff.

Andy 49:22

The repercussions of the abuse are devastating. At least a dozen boys died by suicide in 2022 after they were blackmailed, according to the FBI. Michael's parents were surprised he would find himself in this position, but immediately helped him navigate the next step.

Larry 49:40

Well, what do you do if your teen is a victim of sextortion? I don't have a teen. I mean, I did about 160 years ago, but what do you do?

Andy 49:47

(laughs) According to the article, if you're in this situation, experts advise you to immediately stop responding, and block the harasser. Do not delete the conversation, so you have proof, and you can report it to authorities. Do not send any money, even if the user has sent incriminating photos. Giving into demands will rarely make them go away, and will often encourage them to demand more. Next, alert the platform. Most have a place to report sextortion. I have problems with that advice, Larry, but what do you think? Do you agree with that advice?

Larry 50:20

Not entirely. Do you remember a recent episode, where a father called the police?

Andy 50:25

I do!

Larry 50:25

And the police threatened to prosecute the minor girl, it was a girl in that case. And I know of only one state that protects minors from prosecution for making photos of their private parts, and that's New Mexico. I do not know of any other state. So, calling the police might have some risk attached to it.

Andy 50:43
Can you see any legal way to insulate yourself? I guess, don't talk to the police. Call an attorney first, and then talk to the police.

Larry 50:50
That might be the first step. But all I can say is that parents are going to have to speak to your adolescents and urge them not to send any selfies, particularly nude selfies I should say. You can send all the selfies as you want, but don't send nude selfies because these can bite you in the butt. I got bad news that they could use all kinds of AI tools, and make whatever you send them -- suppose you don't include your face, Larry, and then in another picture you do include your face. With some creative photoshopping, you could put the two together and now you have a nude selfie. But do not send any selfies of your junk.

Andy 51:26
I'm with you. But it wouldn't be very hard to even craft the other part of that, of making up somebody else's junk and putting the other person's face on it.

Larry 51:35
But we would get into that in discovery. If you came to me as a defendant, telling me that that's not your junk. Well, I'm gonna have to say, "Well, we're gonna have to look at your junk and compare your junk to this junk, and see if the junk is a match."

Andy 51:48
That's what they did with Michael Jackson!

Larry 51:50
That's exactly what we would have to do!

Andy 51:53
Now running around looking at minors' junks, Larry!

Larry 51:56
Well, we would have to do that, because I'd have to tell the prosecutor, "Look, I need for you to consider dismissal in this case, because the junk that's in that photo is not my client's junk."

Andy 52:06
(laughing)

Larry 52:11
"And if you want to verify that, well we'll go into that. But we have a different junk, and I'm gonna put my client's junk in front of the jury, and we're gonna get an acquittal at that point. Do you really want to go through this?"

Andy 52:27
This is ridiculous. This is sad. All I can say to parents is that, please, speak to your children and urge them to not send selfies.

Larry 52:40
I totally agree.

Andy 52:43
Lastly, Larry, I hope we can do this one quickly. This comes from Florida. And this is from News4jax.com. The article says, "A number of new laws are now in effect, as of Sunday. Arguably, the most controversial centers around changes to Florida's death penalty. Child rapists can now face execution for their crimes. The law specifically pertains to child victims under the age of 12. Higher courts have already said imposing death sentences in these types of cases is a violation of the 8th Amendment." What say you?

Larry 53:17
Well, I say it's unconstitutional in my opinion, but Florida courts now have a green-light to sentence certain offenders, labeled as 'child rapists' to death row. It was a measure that received bipartisan support as it rose through the Tallahassee legislative process. Upon signing it into law, Governor Ron DeSantis said, "These are really the worst of the worst. The perpetrators of these crimes are often serial offenders." You always want bipartisan support for legislation. Here's an example of something that's bipartisan, and it's not good. Bipartisan doesn't necessarily mean good.

Andy 53:51
Maria DeLiberato is the Executive Director of Floridians for Alternatives to the Death Penalty. She does not disagree. She said, "Of course, child sexual battery is one of the most horrific crimes that one can think of." DeLiberato, an attorney herself, explains even though the law is now technically in effect in Florida, the Supreme Court would first have to reverse its initial ruling for it to apply to a particular case. DeLiberato also points to alarming statistics. According to the Child Welfare Information Gateway, about 90% of child sex abuse victims know their abuser and about 30% of children are abused by family members. So now you've got this whole dynamic where a child is going to bear the weight of a possible death sentence to a neighbor, an uncle, grandfather, something that's someone that they know, that everybody in their family is not going to feel exactly the same way about. The end.

Larry 54:54
Now that's going to be sad, because Florida's strongly in favor of the death penalty, but there are gonna be people in the family that may not live in Florida, that might not be pro-death-penalty. And so, you're gonna split families apart

in terms of, "I don't think the death penalty should be applied in a case like this." Hopefully the courts strike it down. But again, folks: bipartisanship doesn't necessarily mean good. It can be good, but it's not necessarily.

Andy 55:25

Hey, there was something that I just read, though, that says about 90% of victims, and so 90% -- that means some number 10 or less, is of people that are a known quantity. And like, they've just admitted that, essentially, the registry is watching the wrong people.

Larry 55:46

But how would you watch the right people? If they haven't offended yet, how would you determine who to watch?

Andy 55:51

We wouldn't have a registry then. Because it doesn't make much sense to watch the people that you don't need to be watching. Not necessarily don't need to be, but these other people are going to be the ones that are going to end up in court sooner.

Larry 56:03

So, well we shouldn't be registering anybody if they've paid their debt to society, but that's a discussion for another podcast.

Andy 56:10

I agree with you. I looked for new patrons. There's no new patrons, but feel free, if you want to listen and subscribe for even \$1 a month, that would make me a happy camper. But you have something to report about a new subscriber.

Larry 56:24

Yes, we actually have a free-world subscriber named Scott that just signed up for a year. Can you believe that? A year!

Andy 56:31

Where is Scott located, give or take?

Larry 56:34

I think Wisconsin.

Andy 56:36

Wisconsin, eh? All right, well, fantastic! Is there anything that you would like to talk about for the next 30 seconds before we close it out?

Larry 56:42

No, just make people aware that we are not going to record next week, because you're traveling to the Bahamas. But you'll be back the following week.

Andy 56:52

I am. Absolutely. It's gonna be a long drive too. All right, well, make sure that you head over to registrymatters.co, where you can find the show notes, and subscribe to the podcast with your favorite podcast app there. Or do it actually in your podcast app and search for it there. Email registrymatterscast@gmail.com. And as I said before, subscribe over at patreon.com/registrymatters. Nothing else, Larry?

Larry 57:17

Nothing else.

Andy 57:19

Very good. I hope everybody has a great weekend. It's a holiday weekend for most people, or at least many people. It is, uh, I don't even want to call it Columbus Day. It's Indigenous Persons Day now, I think. Isn't that right?

Larry 57:32

That is what I recollect it being called.

Andy 57:35

Very good. And I hope everybody has a great week, and we will see you in two weeks.

Larry 57:41

Good night.

Announcer 57:49

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