



Registry Matters Podcast

Episode 282

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Announcer 0:00

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Andy 0:07

Recording live from FYP studios, east and west, transmitting across the internet, this is Episode -- what is it? 282! of Registry Matters. How are you this fine Saturday evening?

Larry 0:20

Doing perfect. Nothing to complain about.

Andy 0:22

Not anything this week? You're not going to complain about your foot hurts, you can't get enough sleep, this hurts, your hot water is -- Oh, wait, how's your heater?

Larry 0:30

Oh, it is being taught a lesson, for the fourth season in a row.

Andy 0:34

(laughs) But didn't you get... Wasn't it just the pilot light?

Larry 0:42

Well, we thought that last year, but the guy got it going and it lasted about a week, and then it went out again. So, I'm letting it know I can do without it.

Andy 0:51

Maybe you have a ghost in there that, every time it gets lit, they go (poof) and blow it out for you.

Larry 0:58

Well it's old-school, with a standing pilot. And those things have a mechanism in 'em called a thermocouple, and they fail, and that's probably all it is.

Andy 1:06

Isn't that gonna to be like a ten-dollar fix?

Larry 1:09

Probably a little more than that. But who needs heat?

Andy 1:12

Okay, didn't you send me that, in your neck of the woods it was in the 20's? You had colder weather than where I am?

Larry 1:19

I did, but I can make do with auxiliary heat. You people are too spoiled.

Andy 1:23

Oh, okay, man. All right, then. Well, okay, so make sure that you go over and you press like and subscribe over on the YouTube channel, you can even click the little (clicks) like you see up there on the screen, and get notification bells and this feeds the algorithm. Then go over, in your podcast app, and make sure that you like and subscribe, and leave a review there. If you do nothing more than subscribe and leave a review, I'd be super-happy. But if

you want to, then certainly go over to patreon.com/registriymatters and become a supporting member of the show. And then Larry gets really happy and he does a happy dance. And I might end up with some sort-of video of Larry doing the happy dance at some point. And then as a patron, you would be able to see Larry do the happy dance, and everything would be great then. Everyday would be great if we could see Larry do a happy dance. Can you do a happy dance Larry?

Larry 1:23

I sure can, but you left one thing off of that. I also strive very hard each day to make sure I say something offensive enough to run people off.

Andy 2:16

(laughs) This is very true. And the more patrons we have, probably the harder you would try! Is that true?

Larry 2:24

That's true, but I can't seem to get rid of some of them.

Andy 2:27

Some of them, no. Some of them actually agree with everything that you say, so they dig their heels in deeper. But without all of that going on, Larry, what are we going to do this evening?

Larry 2:36

The bulk of the program is going to be a discussion about a case that originated in North Carolina, NCRSOL vs. Stein, North Carolina RSOL, NARSOL, and I forget how many parties, but it's a case that's been pending for several years. And we're going to dissect the trial court's decision, sixty pages. You've read all sixty pages right?

Andy 3:01

Multiple times.

Larry 3:02

Multiple times. So you spent your whole weekend reading this?

Andy 3:06

So far, yeah. I mean, started last night, cut out all playtime, didn't do anything else. I just read, and I took notes, and I have a series of questions and dialogues to carry out with you here, coming up.

Larry 3:18

And also, we have an email that was sent, making the rounds to legislators here in my state. And since I work for one of them, I have access to the incoming email, which is part of my job to review and handle it. I'm going to let people know how we handle mass emails. And hopefully it would be an educational moment, if you're going to write to a lawmaker, this will be some things I'll give you pointers on what to do, and what NOT to do when you're writing.

Andy 3:47

Well, let's head right over there. I'm gonna put on my snarkiest snark voice that I can. So here we go. "Dear Senator Nutjob, as your constituent, I'm aware that an interim legislative committee is discussing extreme gun control proposals this week, including

semi-automatic firearm bans and magazine limits, age restrictions on firearm purchases, waiting periods, and legislation paving the way for lawsuits to bankrupt the firearms industry. Failed gun control schemes the legislature has already passed, such as universal background checks, and red flag gun confiscation legislation, have not made New Mexico any safer. It is time that lawmakers focus on targeting criminals instead of restricting law-abiding citizens' Second Amendment rights with additional misguided unconstitutional proposals. Please oppose any gun control legislation in 2024. Sincerely, Kevin E. Crazyperson at 123 Main Street at nutjob@somewhere.com.

Larry 4:48

Yes, that is an email that was sent in large quantities. And you being a tech guru, you can probably explain it better than I do but, as best I can understand, the advocates for these emails tell you to email your legislator, and they make it very simple. You can go follow their link, and you can email your legislator. And it supposedly directs you to your Senator or your Representative. And they send these things to us. And they start coming in fast and furious. The first one or two gets past me, because I don't know that they have been composed by an advocacy of any kind. So, the first one or two get an answer, a response, before I realize that we're being inundated. And then if the boss hasn't caught on to it, when they start coming fast and furious, what we do with these is, we create a spam filter that has like the keywords that are in this email. And we direct these to the spam folder, so that they no longer throw us off the air because the gun advocates, the pro-gun lobby, can generate emails faster than you can hit delete, and I'm not kidding. If you're just sitting here with incoming emails, they can have your box going faster than you can hit delete.

Andy 6:18

I believe it! I mean, it certainly wouldn't be hard "as your constituent," but I'm sure many, many emails come in that way so maybe look for something else. But it's not hard for them to do. But okay so, from the layperson side of this thing, Larry, when one first becomes involved, and someone says, "Well, write letters to your legislator," What do you want me to say? "Well, we have this form letter so send this out. Don't change anything, change it if you want to, but you can use this exactly as it is and send it to your legislator, you know, state, federal, senator, whatever it is. Click on this link to go find your legislator." What else are you supposed to do if you know nothing of what you're supposed to do, Larry?

Larry 7:01

Well, some basic clues would be, when you click on the link that they send you (and I don't get these links on the front side), you need to make a determination on whether you want to address your representative or your senator. So in the salutation, we sanitized this email because we didn't want to out the person who sent it, or the person who was the intended recipient. But when the form comes across, it'll say, "Dear Senator or Representative," so let's pretend you know nothing. So make a determination of if you want it to go to a senator or a representative. So then change the salutation to reflect that.

Andy 7:47

Yeah and then make it say, "Dear MY senator," or "MY representative," whoever that is.

Larry 7:52

Now some of them (again, this is out of my field of expertise) I think you click in your address, and it pairs it up with a program that tells you who your Senator or representative is.

Andy 8:04

Absolutely.

Larry 8:04

Sometimes that's not apparently the case because I'll get them where it says, "Dear Senator or Representative" or "Dear Legislator." If it starts with that, please make sure that when you hit send, it doesn't say, "Dear Legislator" or "Dear Senator or Representative." Have an intended recipient. And then, with this, like I say, he would have put the key words about "extreme," "gun," "Second Amendment," stuff like that, and then all these would have started going to the spam folder. But all you have to do is take this email, and you could tailor it, and maybe put in a personal experience of some kind, why you feel that way. If I receive an email that I think is personally written, I do my best to respond to it because if you took the time to compose it, in my view, you deserve a response.

Andy 8:05

That's reasonable, Larry.

Larry 8:59

If you took no time or effort at all, and you just clicked something, you're less deserving of a response. That's just proving to us that you can generate background noise, that the organization can generate background noise. But if you actually say something that looks like you composed it, you're almost certain to get a response from us. And I can't speak for all the hundred eleven other legislators, but I know many of them feel the same way, from my interaction through the years. If you write something yourself, it's going to get a response. So do the best you can to personalize it, make sure it's targeting the right person, and put something in there that you composed, and try to do away with just the form because when I get a few of these, I immediately let him know that we're receiving mass-emails. And then he takes care of it on the backside, and they all of a sudden quit coming to my attention because they're going to spam, and we don't look at them anymore.

Andy 9:58

And what about the length? I don't want to talk about the content here, but the length of it. Is this the appropriate length? Should it be ...if you put on a personal experience, it's going to be, at least a little if not a lot, longer.

Larry 10:09

This is just fine on length. You can take some of this out, and you can put in a personal experience. The "bankrupting" thing, nobody's going to bankrupt the firearm industry with a lawsuit. That's hyperbole, take that out. But my best advice to folks is: don't just follow those links and send these things. Do a little bit of work yourself if you want to be taken seriously. Oh, one other thing. If we respond to the person and I don't know how these work on the backside, but hardly anybody ever responds back to us, thanking us. If I take the time to compose a personal response (and as far as they can tell, it's coming from the Senator, you know

it doesn't say "staffer," it comes from the senator), if the Senator takes the time to respond to you, at least give a "Thank you Senator, for your time." Do that.

Andy 11:04

I'm with you. I mean, depending on whose platform they're using to get all that information put together. Yeah, I don't know. I certainly watch all the email logs for a bunch of different places. And I know how it all works. I just, how they're doing it, I don't know. I had another question for you. Have you experienced anybody using any of the AI text generators to scramble this text to make it into a different sentence that would get past your filters? Have you experienced that yet?

Larry 11:32

How would we know that?

Andy 11:33

Yeah. I realize that that's the appropriate question. I just know that I've been doing this a lot in the last few weeks, I've been rewording product descriptions for a client, and it comes out nothing like what went in. And I tell it to not change anything other than like "reword a sentence." But the details, as I read through it, still look identical. But now the whole sentence and everything is all different. So, I don't know how anybody's going to catch on. And that seems like that would be, "Here's the email. We want to run it through ChatGPT or Bard," or whatever service you want to use, and you will get back an entirely different thing that looks the same, has the same feel, you can even have it change the tone of it. I did a funny experiment with my kid, Larry. I asked it to write a report about George Washington in, like King Arthur, in Old English, and it was like "Hear ye, hear ye" and like it just threw the whole thing out using a different dialect so-to-speak. It's fascinating what it can do. And you just throw in those little coloring terms of "use extra slang," "make it snarky," "make it super-professional," and it adheres to those rules! It's amazing.

Larry 12:44

Well, for example, if he put in "extreme gun control," how would they be able to get that out, if they had it reordered by automation? What would make that doable, because that's one of the buzzwords they want in there. See that's one of their talking points, "extreme gun control." Everything to them is "extreme." So how would they be able to get that out of there? Because if he used that as a keyword, we would continue to pick up on that, no matter how much they change the rest of the email.

Andy 13:13

All right, well then, since we're here doing this, and I think we have a couple minutes that we can burn. Alright. I just ran it through ChatGPT and I'm going to read to you what I just read, "As a resident in your constituency," that's terribly worded, but it is different, "I want to bring to your attention that an interim legislative committee is currently deliberating on strict gun control measures this week. These measures include bans on semi-automatic firearms and magazine limits, age restrictions on firearm purchases, waiting periods, and legislation that could lead to lawsuits against the firearms industry." See, it didn't say "bankrupt" them. It just said "lawsuits against" that would be true.

Larry 13:48

Sure.

Andy 13:48

"The gun control policies previously enacted by the legislature, such as universal background checks and red-flag gun control confiscation laws have not effectively improved safety in New Mexico. It is crucial for legislators to shift their focus towards targeting criminal activity, rather than imposing further misguided and potentially unconstitutional restrictions on the Second Amendment rights of law-abiding citizens. I urge you to oppose any gun control legislation in 24."

Larry 13:48

Well, that is a significant change, but we'd still get you on "the Second Amendment," you'd have to make sure that you get that out of there, cuz I'm sure that was one of the words that he was flagging.

Andy 14:23

Yeah, sure. Certainly. But you probably get messages like that, that are legit about that. And if you target "Second Amendment," you would end up canning messages from people that are legitimately talking about it.

Larry 14:38

Well that's, I guess, the price they pay for using mass emails. But another thing that he taught me was that he will actually come down on the advocacy organization that's causing this, particularly if he's already gonna, if he's in alignment with their position, and they're bombarding us, and it really does knock us off the air. Because this is actually how they do their work. When you watch them on the floor, they have their laptops. They're watching for, like an updated piece of amendment, if there's language problems with a bill that they're debating, and they're watching for important emails. And if we're being spammed by hundreds of emails, you can't see the one from the bill drafter or whatever, that's important, that's coming. So what he does is, if he's already in alignment with the organization, and they're too stupid and incompetent to remove HIM, from the people that they're targeting, he will call up their lobbyists and say, "If you don't knock it off, I'm gonna vote the other way. I need you to stop the blast of emails that are coming!" So I'm talking now to you advocates: If you already have that lawmaker won over to your point of view, don't spam their boxes!"

Andy 15:50

Right, right, right, right. But yeah, it totally becomes a denial of service attack, that you can't see the emails that are important, cuz they're being flooded by all the other things. I'm totally with it. Okay, so there's your legislative advocacy work lesson of the day of how to correspond, email-ly. Is that a word? Emailly?

Larry 16:13

We'll find out when the transcript is prepared.

Andy 16:16

How to correspond with your representative through email. Well, then we shall move over to this case that you have your panties all up in a wad Larry, about North Carolina vs Stein, and it's a long running case that you want to focus on. And it's NARSOL versus

Stein. And that's the National Association for Rational Sexual Offense Laws vs Joshua Stein. I know who NARSOL is, but who in the f-bomb-expletive here, who is Joshua Stein?

Larry 16:48

That would be the Attorney General of the State of North Carolina.

Andy 16:51

That sounds like low-hanging fruit. Like that's a nobody.

Larry 16:55

Not really.

Andy 16:57

Okay, so this case was intended to be The Big One! Like -- Oh my God, Louise, I'm coming to visit you. It's the big one -- to bring down the North Carolina registry. And the attorney was Mr. Dubbeling. Did it succeed?

Larry 17:10

Unfortunately, it did not. It actually failed miserably.

Andy 17:13

(laughs) Miserably. All right, let me read directly from the judge's decision. And Judge Biggs said, "Plaintiffs contend that four amendments to the North Carolina Sex Offender and Public Protection Registry (the "Registry"), which were enacted as early as 2006 and have been applied retroactively to [PFRs] violate the Ex Post Facto clause of the U.S. Constitution." So, what did the plaintiffs seek in this lawsuit?

Larry 17:14

They sought a declaratory decision and injunctive relief, meaning that they wanted the court to declare the PFR registry unconstitutional, and they wanted an injunction prohibiting any future enforcement.

Andy 17:56

According to the plaintiffs, "The challenged amendments to the Registry represent a 'punitive regime of affirmative restraint' that create homelessness, wholesale exclusion from the community and from various employment opportunities otherwise available to registrants." Now, tell me Larry, can you not concede that the registry does all of those things?

Larry 18:17

I can, indeed. Unfortunately, the plaintiffs did not prove their assertions in the trial. Defendants countered (that would be the state) that the Registry and the challenged amendments to the Registry codified in Chapter 14, Article 27A of the North Carolina General Statutes were not intended to impose criminal punishment, but rather as a civil regulatory scheme to assist law enforcement in protecting the community. Also, they argued that the Plaintiffs have failed to carry their burden of showing by "the clearest of proof" -- remember that, "the clearest of proof" -- that despite the legislative intent, the challenged statutory scheme is so punitive in effect as to negate the legislative intent to deem it civil. And the court agreed. They had not done that.

Andy 19:01

According to the court, in 1995, North Carolina's General Assembly enacted the Amy Jackson Law, a [PFR] registration program. The General Assembly recognized that PFRs "often pose a high risk of engaging in sexual activities even after being released from incarceration," and that "protection of the public from [PFRs] is of paramount governmental interest." It drives you over the edge when we talked about recidivism though Larry. Yet, in North Carolina, the General Assembly stated that offenders pose a high risk of engaging in sex offenses even after prison. Can you not see that recidivism is important?

Larry 19:41

It can be important in the right circumstances. Unfortunately, when making a constitutional challenge, recidivism is not a valid claim. Regardless of the rate of recidivism, the fact is that a nonpunitive regulatory scheme CAN be imposed on people, retroactively. As long as the scheme is nonpunitive, it can be imposed. And it can be imposed just simply because the people want to do it. Remember, we're a government of the people.

Andy 20:09

The court went on to include this next passage as well: "Part of the General Assembly's stated purpose for creating the Registry was to assist law enforcement agencies' effort to protect communities by requiring persons who are convicted of [PFR type] offenses or have certain other offenses committed against minors, to register with law enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies, and to authorize the access to necessary and relevant information about those offenders to others as provided in this Article." Now, I'm sure you're going to spin this some kind of kooky way. So, what you got?

Larry 20:49

Well, there's no spin needed. It's not anything that comes close to the proof that's needed to show that the intent of the lawmakers was that the Registry be punitive. In fact, testimony of one of the witnesses called for our side conceded that he could find no such proof of the sinister motivations.

Andy 21:09

The North Carolina General Assembly amended the law multiple times, but the most significant changes occurred in 2006. According to the court, "Effective December 1, 2006, the General Assembly amended the Registry to require registration for a period of at least ten years following the date of initial county registration. For registrants whose registration period would terminate on or after December 1, 2006, those who had not committed a subsequent offense requiring registration could petition the superior court for termination of the registration requirement ten years after the date of the initial county registration." I'm guessing that was a change in the removal process?

Larry 21:50

I'm guessing that as well, I think it's correct. But, prior to 2006, my recollection is the person just simply timed out. But a listener can correct us if we're wrong, but I think that's the way it worked.

Andy 22:01

And to clarify, that means: Do nothing, and you just fall off the list?

Larry 22:05

Yes, they would have received a letter from the state saying, "Your term of registration has expired".

Andy 22:10

I see. Okay. And then also that same year, "the General Assembly required in-person reporting by registrants for change of address and semi-annual in-person verification of Registry information. The General Assembly prohibited registered PFRs from working or volunteering in the instruction, supervision, or care of a minor and from knowingly residing within 1,000 feet of property on which any public or non-public school or childcare center is located." This list sure does sound like one of these Kennedy-Mendoza things of disabilities and restraints. It sounds like that to me.

Larry 22:45

It sounds that way to me, as well.

Andy 22:47

So, then this should be a slam dunk!

Larry 22:49

Uh, yeah.

Andy 22:52

All right. Well, then in 2008, the General Assembly amended the Registry to establish a thirty-year registration requirement for people convicted of certain offenses, with an opportunity for those people to petition to shorten their registration period after ten years. That same year, they also shortened the time for registrants to return verification forms making reportable changes of residency, and report an intent to move out of state, from ten days to three business days. What else did they do?

Larry 23:21

Well, the General Assembly enacted premises restrictions. The restrictions at issue in this case include a ban on registrants from "the premises of any place intended primarily for the use, care, or supervision of minors, including, but not limited to, schools, children's museums, child care centers, nurseries, and playgrounds, and from being within three hundred feet of such locations, including, but not limited to, those located in malls, shopping centers, and other property open to the general public."

Andy 23:56

After reading that list of prohibitions, can you finally admit that the North Carolina registry imposes significant disabilities and restraints?

Larry 24:06

I can admit that, but the proof in this case was inadequate for the court.

Andy 24:14

It should also be noted that in 2009, the General Assembly restricted registrants from obtaining or maintaining a commercial driver's license for the operation of commercial passenger vehicles

or school buses. Does this not prohibit a person from making a living, Larry?

Larry 24:32

It interferes with some occupational opportunities, but these restrictions do not foreclose all employment, not even a small fraction of employment opportunities. But it is definitely a disability and restraint, no doubt.

Andy 24:43

One of the witnesses for our side was Dwayne Daughtry. Daughtry is a member, and a board member of both NCRCSOL and NARSOL. He testified that he reviewed the above-referenced bills as well as reports, transcripts, and audio recordings of the legislative committee and subcommittee meetings at the time of their passage. During that review, Mr. Daughtry found no discussion or written reference to the recidivism rates of PFRs or to the efficacy of sex offender laws in reducing recidivism. He found no evidence of express statements of intent by the legislature for any of the statutory amendments was presented at trial. This was apparently important, though?

Larry 25:28

It was. The court stated, "based on Mr. Daughtry's testimony, the court finds no evidence in the legislative record that the North Carolina legislature intended the relevant statutes to be punitive." Now remember, we bear the burden. Now can you at least admit that that's funny when one of your own witnesses makes the state's case stronger?

Andy 25:50

That sounds like an attorney's worst nightmare to me, honestly. I don't think that it's very funny at all.

Larry 25:55

(laughs)

Andy 25:57

Now, you have this really weird notion of what's funny, though, and so we will move on from there because of that.

Larry 26:04

(still laughing)

Andy 26:04

The court even recognized that Enforcement of the Registry Laws is problematic. Maybe you can agree with my next line of thought. In paragraph 33, it states, "In practice, how the Registry laws are administered and enforced is highly discretionary among and within the respective law enforcement agencies responsible for its enforcement in the various prosecutorial districts. Officers testify that they undertake a full investigation of possible violations and consider, among other things, the intent of the registrant and surrounding circumstances. Further, there are no standards related to how compliance checks under the statutes must be conducted. The frequency and manner in which law enforcement conducts in-person compliance checks at the homes of registered individuals varies among sheriffs and counties. I've heard you pontificate for years -- Listen to me, Larry -- I've heard you do this for yeeeeeears that a law can be declared unconstitutional if it is so poorly written, that it can be arbitrarily enforced,

Larry 27:06

You are correct. I have said that many times in the past. There was only one problem. The plaintiffs did not assert that the law was void for vagueness. You read their entire litany of complaints and I do not recall that you read a void for vagueness challenge among them. The court cannot invent counts that are not asserted by the parties.

Andy 27:27

I gotta say, you're hopeless. Don't we want them to be super legislators, Larry?

Larry 27:31

Well, remember, they're neutral parties. So, when the complaint is rendered by the party initiating the action, wouldn't it be great if the court came in and said, "Well, you know, Mr. Dubbeling, I can think of some other things that you didn't bring up.

Andy 27:44

(laughs)

Larry 27:44

-- "I don't like the registry much myself, and I would like to do a little ex-parte communication with you. I've got some suggestions for you." I mean, the judge can't do that.

Andy 27:56

You're hopeless.

Announcer 27:57

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Andy 28:46

Plaintiff John Doe testified that he has been subjected to multiple instances of harassment in the community. During these instances of harassment, John testified that he was referred to as an [expletive deleted]-- I'm not saying these things, Larry, I'm not saying them. So, he says bad words about the person and you can fill in the blank of whatever your worst imagination could come up with. So, I'll leave it at that and as someone who "hurts women" and "messes with children" (those are really like the nice versions of what they call him). Can you not admit that that's a direct result of the registry?

Larry 29:20

I can admit that is possibly, and probably, a direct result. But unfortunately, on cross examination, Plaintiff John Doe testified that all the information contained on his Registry profile could also be obtained from publicly available criminal conviction records. Additionally, Mr. Doe testified that there's at least one incident of harassment where the harasser personally knew him and the

circumstances of this guilty plea, and the harassment was not a result of the registry. He testified to that. The reality is that John could not confirm whether these harassers found out about the circumstances of his underlying crime from the registry or from gossip. And if you assert the registry is the cause, be prepared to offer proof.

Andy 30:04

The registry prevents people from holding jobs too, Larry. The court noted though John Doe was employed at the time of the trial, he testified that his presence on the Registry created a significant barrier to his finding employment. From 2010 until 2016, John operated a towing business but stopped to care for his ailing father. John also has worked as a "bodyguard" for private clients since being released from prison. John testified about various other jobs he has held, or for which he applied, that he "believes" were adversely impacted by his registry status. John acknowledged that he has, at times, lost jobs when a business collapsed or, once, when he was involved in an altercation with a customer.

Larry 30:53

Now, that's funny.

Andy 30:55

But if you get into a fight with a customer, you're probably going to keep your job.

Larry 31:02

But, again, John Doe did not provide the court with any written documentation, or any compelling documentation showing that his registry status was the reason for being denied a position or losing one. Remember, folks, we need proof. We have to show proof. Remember, he said he "believed" he lost jobs. That's not good enough.

Andy 31:25

So let's talk about residency restrictions then. In paragraph 49, the court stated "with regard to the residency restrictions, John Doe testified that, following his release from prison, he attempted to find housing in 'at least' 20 places but was unsuccessful because of his registry status. John stated that most of these locations had either playgrounds or childcare centers on the grounds. John testified that, even after expanding his search to trailer parks and Section-8 housing, he and his wife were only able to find a place to live when his wife applied under her name alone." Now, give me your spin on that, Mr. Doom and Gloom.

Larry 32:02

Well, on cross-examination, John acknowledged that his ability to find housing was, at least in part, affected by his low income, and lack of strong credit history. John testified, at least once, his credit history was provided as the reason for his application for a mortgage being denied. The court stated, "the evidence therefore shows that while his registry status may have been a factor in his denial of housing, a number of other factors, to include a poor credit score, his inability to provide proof of income due to his being self-employed or being paid in cash, were likewise factors in his being denied housing." You need to pick good clients, folks, and you need to provide proof. Now, I'm that nasty guy that, when you start telling me your story, I start saying, "Do you have proof?"

Do you have proof? What is your evidence?" and you get mad at me, and you go down to the lawyer that babies you and tells you what you want to hear. But I tell you, "This is what we're up against. This is what we're going to need." And for some reason, they walk out of our office.

Andy 33:04
(laughs) May we move on then from this little section?

Larry 33:08
Sure.

Andy 33:09
All right. Well, I mean, not from this case, we'll move on from this little subsection. The court then stated, "With regard to the challenged premises restrictions, John Doe testified regarding the impact of the registry on his ability to be present at certain places and engage with the community. John Doe testified that it was his understanding that he was not permitted to visit the Alamance." I have no idea, Alamance? I don't know the name of that county.

Larry 33:35
I don't begin to know how to pronounce that.

Andy 33:38
A-L-A-M-A-N-C-E "County Library because it contains a children's section. He also stated that the former sergeant at the sheriff's office, Jackie Fortner, instructed him that he cannot visit parks if any minor is in the park, and that he could not go to a McDonald's because it has a play place. John also described an instance where he was grocery shopping with his father at a Food Lion when an off-duty sheriff told him that he had to leave because children were congregating there. Seriously? John also discussed the government buildings in Alamance County that he is not permitted to visit including the Veterans Service office and the Register of Deeds because these buildings have a playground on the property. Now, this definitely starts to cross the line in my mind about what we would call disabilities and restraints.

Larry 34:30
Well, it would. And I deliberately put that county in your session because I knew I couldn't pronounce it.

Andy 34:34
(laughs) You're evil. I have no idea how to pronounce it. I'm going to look it up because that's bothering me. But, please continue.

Larry 34:42
(laughs) So it does look like disability and restraints, definitely. But unfortunately, plaintiff selection is so important. Regarding political activities and events, John Doe testified that he wanted to attend certain events at locations where he is not permitted to be present, including community centers and college campuses. Specifically, he testified about a Donald Trump rally and a Bernie Sanders event that he was unable to attend due to the location of the events. On cross-examination, John Doe acknowledged that he was present during a protest at University of North Carolina at Chapel Hill's campus and was arrested for possession of a knife, not for being a registered sex offender on a college campus; that was not the reason. Now can you admit that that's funny?

Andy 35:25
Not funny! None of this is funny! How do you think that this is funny?

Larry 35:30
Well, you've got to screen your plaintiffs, folks! If you're going to go to trial, you're going to have to screen the people that you are going to put on that stand.

Andy 35:42
I have looked up the pronunciation and this is "a•luh•mans kown•tee". Oh, that's "county." So it's "ah luh mahns" Alamance, and I was like, "What is kown tee?" Ah, that's how you pronounce "county," Larry. K-O-W-N T-E-E County. Okay, so it's Alamance. Anyway, that's not funny, Larry. None of this is funny, because these are people that are seriously impacted by this stuff. And you keep shooting all this stuff down like it's nothing. You're mean. But, you have often pontificated that we need to call experts at trial, and NOT move for summary judgment! This case went to trial. Were their experts called?

Larry 36:25
They were. But before we get to the experts, I'd like to point out that Mr. Dubbeling DID file a motion for summary judgment.

Andy 36:31
(laughs)

Larry 36:33
Unfortunately, the court denied his motion, and indicated there WERE material facts in dispute. This means, despite all my pontifications, they continue to seek resolution by summary judgment, even when there are disputed facts. Folks, summary judgment is something where there's only a matter of law to be determined. Factually, all the parties agree on everything. If there are any facts in dispute, you need a trial. You need for an evidentiary record to be developed. And you need for a court to make a determination on the credibility of the witnesses, and the evidence that is tagged and admitted into evidence. You can't accomplish this because the state is never going to make concessions. They're not going to stipulate to the things you want them to stipulate to, so that you don't have to do a trial. He tried to do summary judgment, but the court didn't let him. So the question might be, how prepared was he for trial when he didn't get a summary judgment? I don't know the answer to that, but based on what I'm seeing here, it looks like he could have possibly been better prepared.

Andy 37:38
The judges stated, "Plaintiffs offered the testimony of several witnesses -- many of whom conducted studies -- regarding the impact of registry laws generally on housing, employment, education, and registrants' ability to visit certain locations. Plaintiffs called Mr. William Sexton Cooper to testify as an expert witness. He serves as a consultant in demographics and mapping to various civil rights organizations, nonprofits and local governments across the United States, primarily focusing on voting issues. As a consultant, Mr. Cooper draws voting plans which requires using demographic data from the United States Census Bureau, particularly the geographic files produced annually and every ten years, the underlying population data from the

decennial census, and information from the American Community Survey." What did Mr. Cooper's testimony reveal?

Larry 38:29

Well, in this case, Mr. Cooper determined the exclusion zones by examining the population and housing units within the corporate limits of the three largest cities in North Carolina, those being Charlotte, Raleigh, and Greensboro. Using the 2010 census data, Mr. Cooper determined that 49% of the population in Charlotte... Uh, what do you do to my screen?

Andy 38:51

I didn't do anything to it.

Larry 38:57

You gotta finish.

Andy 38:58

Okay, that's fine. So... "48.3% of the population in Raleigh, and 42.8% of the population in Greensboro are within the exclusion zone. With regard to housing units, Mr. Cooper found that 49.4% of the housing units in Charlotte and 47.5% of the housing units in Raleigh, and 41.9% of the housing units in Greensboro are within the exclusion zones. This testimony hardly rises to the level of banishment." Remember the case in Lewisville, Texas where about 90% of the housing units were off limits?

Larry 39:33

Yes, so now I can see where we were. So, do you remember that case in Lewisville, Texas, where the evidence showed that 90% of residential housing stock was off limits?

Andy 39:45

Was this the Home Rule one?

Larry 39:48

Not that particular issue, but this was a case that Richard Gladden brought, and he used a woman named Duarte as a family member of a registrant, and he said that, since 90% of Lewisville was off limits, that that constituted banishment, and the trial judge and the Fifth Circuit Court of Appeals said, "Nope, it doesn't." (both laugh)

Andy 40:12

Not even 90% could? Good grief, dude! Here's this tiny little carve-out that's a 10-by-10 plot of land that you can live in.

Larry 40:19

So, based on the Fifth Circuit, which is different -- this is in the Fourth Circuit but -- if 90% being off limits, and these cities like, you read the numbers, they range from, what? 42.8 to 49%? That means over half of the housing stock is still available. So it hardly constitutes banishment. So therefore, your claim doesn't prevail. It's not banishment.

Andy 40:47

Do you mind if we go back to the employment restrictions?

Larry 40:51

Aww, yeah. I see you're obsessed about employment restrictions.

Andy 40:55

(laughs) I want you to admit that the registry prevents people from having employment.

Larry 41:00

Well, I've admitted that already!

"Mr. Andrew Casey Doll testified regarding the difficulties of felons and PFR registrants experience in obtaining employment. In 2010, Mr. Doll began serving on the employment team of Durham Congregations, Associations and Neighborhoods, a grassroots organizing committee that is part of the International Association of Federations." What is this, Star Trek? That sounds like a Star Trek name to me. "The role of the employment team is to improve outcomes for people with high barriers to employment. Mr. Doll discussed the various barriers of employment to felons including lack of education, hard skills and soft skills. Further, he testified that the types of employment generally available to the felons he works with are either janitorial, food service, or construction positions. Mr. Doll also discussed how the availability of these jobs differs for registrants. For janitorial positions, Mr. Doll testified that the registry's premise restrictions form difficulties because of the variety and locations of businesses that janitorial positions require registrants to serve." That would be like, "Hey, we need a janitorial service to go clean a daycare." How many kids are going to be at the daycare when you're doing the cleaning service that's at two o'clock in the morning, Larry? [Larry: Probably not that many.]

Andy 41:03

Then "For food service, the difficulty arises from the employment of minors and the lack of the ability of registrants to supervise or instruct a minor. For construction, the problem involves the inability of a registrant to verify with the sheriff's department whether they are permitted to attend the jobsite before the job begins. Mr. Doll further testified that registrants tend to work jobs that are lower paid, not paid by a paycheck, do not have benefits, and do not provide worker's compensation for them.? Do you have a response to Mr. Doll?

Larry 42:54

He was a great witness. I agree with everything he said, and he was a good witness for our side.

Andy 43:00

And we have to go back to recidivism because I can't let that one go.

Larry 43:05

You just keep on.

Andy 43:09

Alright, so we're gonna get you worked up again for this reason. "Plaintiffs offered the testimony and reports of two expert witnesses regarding recidivism rates of PFRs and the efficacy of PFR laws. The court qualified Dr. Keith Hersh as an expert in the areas of recidivism rates of sexual offenders, the psychology of PFRs offending and recidivism, and the efficacy of treatment. Dr. Hersh testified that sexual offense recidivism rates for adult sex offenders in the United States is about 3% to 6% within the three-year period following the release into the community. The rate of

those who will commit a new sex offense between three years and five decreases among those who remained offense-free during the first three years. After the five years following the release into the community, the rate of recidivism continues to decrease and approaches zero over time." That testimony seems like it should hold some weight to me!

Larry 44:07

Well, I agree it does hold *some* weight, but also you omitted part of the testimony, I'm sure deliberately. How many times did you say you read this case?

Andy 44:18

I read, but I could only get so much of it in here.

Larry 44:21

Well, Dr. Hersh also testified that at approximately year ten, the risk of a PFR committing a sexual offense is nearly indistinguishable from that of a nonsexual offender. He further testified that the rate of sexual offenders committing any new crime is approximately 20% lower than the general recidivism rate of non-PFR-type offenders. But that still does not matter. As I've stated numerous times, this argument cannot be won for a number of reasons. First, the Supreme Court did not hold that the registry was constitutional due to the high recidivism rate. That was merely "dicta," not a significant factor in their 2003 decision. Second, the rate of recidivism is never zero, which then begs the question of, "How much recidivism is okay?"

Andy 45:07

So are you suggesting that we ignore recidivism altogether?

Larry 45:12

No. We should not ignore it altogether. We should use it in legislative arguments, in the right venue. It's not a winning hand, especially when your own expert witness testifies the way Dr. Hersh did. Dr. Hersh testified that a 2010 study of National Crime Victims Survey found that approximately 50% of all PFR-type offenses are not even reported. Dr. Hersh further testified that the recidivism rates are underestimated, but he was unable to identify the exact amount. Dr. Hersh testified that he agreed with the widely accepted notion that "the official recorded recidivism rates are a diluted measure of reoffending."

Andy 45:58

I do see that also, in paragraph 150. So "considering the 50% of unreported sex offenses, Dr. Hersh testified that he estimates that re-offense rates within the three-year timeframe following release would *raise* from 3% to 6% to closer to something like 6% to 12%."

Larry 46:19

Yes, and you did notice the source of that study, right?

Andy 46:22

I see that it was the "National Crime Victims."

Larry 46:26

Yes. So that's the people that we're going to somehow just believe. There are people up in Connecticut and other states that

just believe we're going to work hand-in-hand with these people. And they are the biggest source of our problems.

Andy 46:40

We should move over to my personal favorite, Larry. I think it's probably one of yours too, is the Kennedy vs Mendoza-Martinez test. May we go over that way?

Larry 46:49

Sure.

Andy 46:50

All right. So, in Smith vs. Doe, the Supreme Court found that the following "Mendoza-Martinez factors" were most relevant to its analysis: whether the regulatory scheme (1) has been regarded in our history and traditions as punishment; (2) imposes an affirmative disability or restraint; (3) promotes the traditional aims of punishment; (4) has a rational connection to a nonpunitive purpose; or (5) is excessive with respect to its purpose. The court noted that Mendoza-Martinez factors are "neither exhaustive nor dispositive," but rather are "useful guideposts." I assume that the judge found no punitive intent.

Larry 47:32

Correct. In paragraph 207, "the court thus concludes that the registry was intended as a nonpunitive, civil regulatory scheme."

Andy 47:42

"Resemblance to Traditional Forms of Punishment?" What did the court find on that one?

Larry 47:46

The court found that the record does not contain evidence demonstrating that the publication of information on the PFR website resembles traditional forms of punishment. Now remember, we claimed that we're originalist. We don't want to have that evolving stuff over time. And this doesn't resemble any punishment of colonial times. Our next quote, "Our system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." This is just simply restating what's already been factually determined.

Andy 48:24

Another one they listed was, "What about the traditional form of punishment via banishment?"

Larry 48:30

Well, again, we love our original interpretation. There are a lot of people that are in this audience that believe that they should all be originalist. And the Supreme Court has explained that banishment of offenders, historically, meant that they could "not return to their original community," and that was banishment of an offender. They were expelled from the community. North Carolina law does not expel anyone from a community. And the court also stated that the record reveals a low number of identifiable homeless individuals. On the PFR registry of 25,063 on the North Carolina registry, only 411 are classified as homeless. Now, maybe we ought to reconsider that perhaps we should have a broader look at how to interpret law, but if you're into that original interpretation, and the word "banishment" should be interpreted as it was understood in colonial times, it was

understood in colonial times to mean "expelled," and they have not been expelled. They have had some exclusion zones, but they have not been expelled. So this is not banishment as defined in colonial times.

Andy 49:46

And then what about the "registry being the same as probation?" What are you gonna do to spin that one, Mr. Fancy Pants?

Larry 49:53

Well, it's not even close. You can just read directly in paragraph 244 "The conditions of probation are set forth at N.C. Gen. Stat. § 15A-1343(a1) and may include the following: house arrest; community service; submission to a period or periods of confinement in a local confinement facility; substance abuse assessment, treatment and monitoring; and abstention from alcohol consumption, and submission to alcohol monitoring." None of these conditions apply as conditions of the registry." Perhaps maybe on Halloween, you might be told to stay home. And that usually applies to people who are under supervision. But "Regular conditions of probation must include the following: remaining in the jurisdiction of the court unless granted written permission by the court or probation officer; reporting to the probation officer as directed by the court or probation officer; satisfying child support obligations; remaining gainfully employed or pursuing a course of study or vocational school" That may be a part of conditions of probation, that you rehabilitate yourself and attending an abuser treatment program if responsible for acts of domestic violence. There's a number of things that you're required to do on probation that the registry can't require you to do! So people who say that it's the same, it's not the same.

Andy 51:13

You're hopeless.

Larry 51:16

I'm hopeless? What do you mean, I'm hopeless?

Andy 51:18

I'm just saying you're hopeless because the registry does do a lot of -- it doesn't impose the "getting a job", per se, but it's very debilitating.

Larry 51:29

But you can't say it's the same as probation. There are some very limited similarities. You have a reporting schedule. In many jurisdictions, like for example, if you have a four-times-a-year obligation, they'll give you a schedule, and they'll tell you that you come in within ten days of your birthday, or whatever. There's similarities but, as recognized in Smith, unlike a violation of a condition of probation, post-release supervision, or parole, that could result in revocation and imprisonment without any new criminal charges or a trial, in contrast, any violation of the registry would require full prosecution, from arrest and indictment to trial and appeal, before the state could impose any punishment. So in that regard, it's dramatically different. They can yank your probation for the slightest technical violation. They can't yank your registry for that because they have to bring a criminal charge against you.

Andy 52:27

I'm going to make a little side note here, Larry, that anybody that is on the website in Florida, listen to that little section over and over again. When you're not living in Florida, but you're on their website, what are the -- what's the word? What's the threat of prosecution if you're just "on their website?"

Larry 52:46

Well, I don't know of any threat of prosecution from just being on the website.

Andy 52:50

That's my point. I'm just using that sort of like because "there's no threat of prosecution." They can't do these things to you. None of those things apply to you. You're just on a website.

Larry 52:59

Well, it's not JUST a website. That's irritating, and it has its drawbacks, but it's not the same as being actively registered. And I don't know why I have to have this argument over and over again because I get hate mail every single time saying how stupid I am, that I can't understand that being on the website is the same as being registered. And I don't know why I have to keep explaining. You have no conditions being on a website, none. You're not obligated to do anything.

Andy 53:24

To move along. In Smith vs. Doe, the Supreme Court considered whether the challenged Alaska statutes imposed "physical restraints" or "resembled the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." The judge stated, "The record supports that those subject to the challenged amendments are free to change jobs, residences and alter their physical appearance with no supervision. Nor do the challenged amendments require Plaintiffs or other registrants to seek permission to change jobs, residences, or alter their physical appearance." Do you agree?

Larry 54:00

I do. The evidence before the court showed this to be the case. It said, "The Court finds that the residency, employment, and premises restrictions contained in the challenged amendments, as well as the in-person registration requirements, impose at most minor or indirect disabilities or restraints." I disagree that they're minor or indirect. But I do agree that you don't have to get permission to do these things. You can do these things. You can move to any place you want to. Now, if they have exclusion zones, you may find yourself in one. And you better get out of it pretty fast if you are, but you can. You don't need permission to move to any place.

Andy 54:35

Okay, so we've been going at this for probably forty-five minutes. Because we have the other little segment, can we move on? What did the court say about recidivism?

Larry 54:46

Well, in paragraph 284, the court noted that plaintiffs put forward experts who contended that the registry laws do not decrease recidivism and may, in fact, increase recidivism. However, the court gives little weight to both Dr. Hersh's and Dr. Prescott's

testimony in this regard, given the evidence that it's widely understood that "the official recorded recidivism rates of [PFR] offenders are a diluted measure of re-offending," and that 50% of sexual offenses remain unreported. That's thanks to our own experts.

Andy 55:18

I am really dumbfounded by your continued obstinance on this issue. Why can't you admit that the underlying reason for the registry is not valid?

Larry 55:26

Ah, well, I can. And I have admitted that. Unfortunately, I cannot admit that this is a basis for a solid constitutional challenge. In paragraph 291, the court stated, "Even if this Court accepted Plaintiffs' contention that the sex offender recidivism is lower than commonly believed, Plaintiffs have not offered credible evidence that the risk of recidivism does not exist at all. Even if a small percentage of recidivism is prevented by the challenge restrictions, the Court finds that North Carolina's interest in public safety is furthered." Remember my analogy about loading a gun with 100 rounds and only one of them being a live round? I've asked, "How many of you would stand in front of that gun, knowing that only one bullet could harm you?" And I don't get any volunteers! It's not a valid argument. This is the reason the NRA never uses a similar argument. They know that an undetermined number of people *could* be saved with some modest restrictions on gun ownership. They know that! That's why they will not go down that path.

Andy 56:30

Can you at least admit that the North Carolina General Assembly could have made a better choice to prevent sexual offenses other than the registry?

Larry 56:39

Ah, I can admit that. But unfortunately, it's not the role of our courts to determine public policy. Paragraph 295 addresses that and it says, "This Court is not tasked with determining whether the North Carolina legislature has made the best choice possible to address the problem it seeks to remedy. Rather, the question before the court is whether the regulatory means chosen are reasonable in light of the nonpunitive objective." And they cited Smith vs. Doe, 538 U.S. at 105.

Andy 57:11

Do you think, sir, that this will be appealed?

Larry 57:13

I understand that notice of appeal has already been filed.

Andy 57:18

And will that one work?

Larry 57:22

This is such a well written opinion. It took two years from the trial, a little over two years, to render this opinion. And there's so many deferences that go to the trial judge on weighing the credibility of these witnesses, determining who to believe, how much weight to give each person's testimony. And it's hard for me to believe that there's a good chance of this being overturned on appeal. Now, I

certainly hope that it is, because we are fully invested in this case, both the national and the state chapter. But it's hard for me to see that this is gonna be an easy lift to overturn.

Andy 58:05

Now, I just kinda have to poke fun at you, because you are the legal strategist for NARSOL, are you not?

Larry 58:12

I'm one of the team, yes.

Andy 58:14

And didn't you see all these glaring holes to be filled before this went before the court?

Larry 58:22

I did not, because this particular attorney does not consult with non-attorneys. Therefore, I didn't have anything to do with the pleadings. I didn't have anything to do with review of the pleadings. Contrast that with the Georgia case, I was provided every pleading and I was offered feedback. And some of my feedback was actually incorporated into the pleadings in the Halloween challenge in Georgia. But this attorney is far smarter than I am.

Andy 58:44

I see. Well clearly, as based on the outcome, very well!

Larry 58:51

I'm glad you can understand that.

Andy 58:52

I think we should send you to some sort-of-like hack school where you can just pay a few thousand bucks and we can get you some letters, and then you'd be "an attorney."

Larry 59:00

I'm 181 years old now. I don't have the energy to do all this.

Andy 59:04

I said we would pay some money. I didn't say we would actually have you DO anything ...

Larry 59:08

Oh, so someone else would write it. I would just look at it?

Andy 59:11

You would just be handed a piece of paper that says, "Graduate of the Law College of Quackery."

Larry 59:19

Alrighty.

Andy 59:20

(laughs) I have nothing else for this evening. We are at almost fifty-nine minutes. I don't think there's anything more that we need to cover this evening.

Larry 59:30

All right. What are we doing next week?

Andy 59:32
We are not going to be here because one of us is going to be very, very, very, very far away from a microphone.

are also amazing, and they make all of this possible, and I appreciate each and every one of you very much. And I'll see you in two weeks!

Larry 59:38
Alright, so that means we'll see our audience in two weeks.

Larry 1:00:11
Good night.

Andy 59:41
That is correct, yes. We will see them in two weeks. Make sure you go over to a registrymatters.co where all the show notes are available and you can find links to everything including patreon.com/registrymatters. And I don't have anything else. I think you're fantastic, everything is great and wonderful, and the content you help provide and all that is amazing! Listeners, they

Announcer 1:00:14
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