



Registry Matters Podcast

Episode 264

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0:00:00

Announcer

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0:00:17

Andy

Recording live from FYP Studios East and West, I got to do this quick transmitting across the Internet. This is episode 264. Registry matters, and anybody that listens to podcasts on compressed speed, and I just did that intro, there's no way they'll understand a word of what I just said. How are you tonight?

0:00:36

Larry

I'm doing awesome. Now let's just clarify, you said transmitting across the Internet, is that correct?

0:00:41

Andy

I said transmitting across the Internet, which there is no transmitting. We are like, I mean transmitting. That's the only way that I can do it. I don't see another word that I could use.

0:00:53

Larry

That's not the reason it did that, because the automation always picks it up as transmitted across the Internet.

0:00:58

Andy

Oh, I see. I see. Well, no, we that would. I mean, I guess by the time you're listening, it did get transmitted. So it's a done deal at that point. It's a past tense thing.

0:01:09

Larry

Sure.

0:01:12

Andy

You know my favorite thing is to listen to podcasts. I sit there by the bed. I have a podcast player by the bed which is just an old phone hooked up to a Bluetooth speaker. I listen to stuff all night long. It's downloaded on the phone. It's great. I love podcasts. But if you are on YouTube then please make sure that you go press the like and the subscribe button and all that stuff. And even in your podcast app you could go leave a 5 star review. Don't leave a one star review. Don't tell people that you didn't like it. Tell them how much you liked it. Even if you lie, what do you think?

0:01:41

Larry

Sounds like a good plan to me.

0:01:43

Andy

Oh, and also, somebody tells them that they're going to bring you a fancy shower head to the conference. Do you want to recap that real quick?

0:01:53

Larry

Yes, when you go to a hotel, as far as I'm aware of, everybody carries their own shower head because they use these massively reduced flow restricting devices to conserve water. So therefore, I think we've showed my shower kit. But yes, there's a shower kit that accompanies me on my out of state travel.

0:02:16

Andy

You we did cover that God episode 100. Maybe something like that. Go look it up.

0:02:24

Larry

So it's a beautiful plan. I think everybody, if they don't do it, they should.

0:02:28

Andy

We have a mountain of stuff to cover tonight, so we are going to dive in. I'm going to speak at extra fast pace so we can get this done in an hour and get everything jammed in. But please, first tell us what we're going to be talking about.

0:02:39

Larry

We're going to be talking about a magnificent decision from the Wyoming Supreme Court. We're going to be talking about a proposed actually it's an amendment to a to a piece of legislation in Florida Senate Bill 1252. And I think you have some questions that you fished out from the audience.

0:03:01

Andy

Yes, I did. Well we shall dive right in. I found this question. It was just part of a little dialogue that someone posted and says So the beginning of it goes my thought for the day. If the PFR registry laws are civil and not punitive, then why are the penalties so high? And I replied back to him. I said because. We haven't shown that it isn't punishment yet. The Kennedy Mendoza Martinez test used by the Supreme Court to determine if a civil regulatory scheme is punishment. One of the tests is if it imposes disabilities and restraints. Then someone replied back to me and said interesting on your last point which begs the question, why hasn't the PFR community and anti registration orgs? Why haven't they changed their focused argument? That's my question to you. Why is everyone so hell bent on things like recidivism as opposed to going after what you always, you know, always you have the majority of the time you are

telling people to go after the civil regulatory scheme, unfunded, mandate, all that stuff.

0:04:14

Larry

I think people focus on that because they have been told repeatedly by those who should know better and apparently, they don't know better. That the reason the Supreme Court ruled the way they did in the 2003 decision Smith versus Doe is because the Supreme Court found that recidivism was frightening and high, and the Supreme Court didn't find any such thing. That was a fact handed to them by the parties. The Supreme Court or any appellate court doesn't find facts. They review facts from the record below. And they review the laws and apply them to the facts that have been given to them. They don't develop the case. And so they look at that, that one line, and there's fighting high recidivism. But that came about because the PFR in Alaska moved for summary judgment and in response to summary judgment, the trial court has to assume everything that the state would have argued, which they have already pled. Their response, what they would argue if this case had gone to trial and and summary judgment had not been sought, they would have argued that recidivism was frightening and high. The trial court is obliged when parties move for summary judgment. They're stating there no material facts and dispute. Therefore, the state of Alaska had a fact that they established and handed to the trial judge with the acquiescence of the challenger, that the recidivism was frightening and high. The Supreme Court could not change that. Now they didn't have to put that line in there, but they could not change it. So the answer to your question is that people are hell bent and fixated on that because lawyers are telling them that the Supreme Court got it wrong. The Supreme Court did not get it wrong. They got it absolutely right based on how the case was postured as it was presented back then. I vehemently disagree with what their answer was, but their answer was totally logical. There were very few disabilities or restraints, if any, as the scheme existed at that time, and therefore they found that there weren't any disabilities or restraints. The person could work where they wanted to live, where they wanted to travel as they wanted to, and therefore there was nothing more than a civil regulatory scheme.

0:06:41

Andy

And just a quick question on this process. Had our side argued that point and then it were stricken from the summary judgment, could that have been done and then that would have gone up and boy would we live in a different landscape today?

0:06:55

Larry

Well, would you say it would have been stricken for summary judgment? There should never have been summary judgment, but that's hindsight. We're looking

backwards now and we see the mistake. They were looking forward at the time and there had never been a case like this before, it had never been dared to try to impose a restriction and an obligation on people after their sentence had expired. There were some states that had laws that felons had to register, but they were marginally enforced and there wasn't a whole lot to it. Once you registered with your sheriff, maybe in Mississippi or wherever the states where they had those, that was the end of your obligation. So therefore there was nothing to compare this to. So the lawyers looking forward at that time, what thought, Gee, there's no way this can stand up. I'm going to get my client immediate relief. I'm going to file for some judgment. Why do we want to wait 18 months, two years for a trial? That would have been what they would have been thinking at that time.

0:07:47

Andy

I'm with you, but I mean, but my question when you're going through the summary judgment judgments, whatever you, you have your item list on one side and you have your item list on the other side and. So can we agree to remove that one item before it goes forward? Is that? Is that how that works still?

0:08:07

Larry

No, the state would not have removed its defenses that it would have asserted. The state has put forward in its response when the lawsuit was filed, they would have said, and I don't have the pleading situation, but this is what they would have said. They would have said that if we go to trial, we will show that recidivism is frightening and high. Well, when you file for summary judgment, every defense of the non-moving party is assumed true. You have to make that assumption as a judge. Now as a judge you can say, well I believe there are facts in dispute here. Therefore, your motion for summary judgment has been denied.

0:08:45

Andy

Gotcha, Okay. Well, we can move on from here then because we have so much to do. Let us go over this has the Twitter verse, the social media, the e-mail thread verse going bonkers. And this is Florida's Senate Bill 1252 amendments. Do you want to set it up before I played this video clip?

0:09:12

Larry

Well, just very vaguely, there is a comprehensive bill dealing with a lot of things related to transportation in Florida and Florida, State Senator Lauren Book has proposed an amendment and the amendment has caused quite a consternation. So we're going to play a little clip here related to what's going on in Florida. Then we're going to kind of do a deeper dive and going through what the likely scenario is going to be and how it will unfold.

0:09:41

Andy

All right, well, hopefully all of my tech stuff works and we can. Do this little clip. Hi, that was the wrong clip. It's.

0:09:53

News Anchor

Possible. Once that man gets caught, he may have to get a new license plate.

0:09:57

News Anchor

Democratic Senator Lauren Book introduced a bill that would force sexual offenders to get bright green license plates. And that's not all. NBC Two's Madison Adams is digging deeper into the new bill that some say is extreme. Some people say that this is a good idea, while others say that the bright green license plates would unfairly single out sex offenders because they stand out from the rest, and they also say that they would cause harm. It's an absolutely terrible idea. Nobody should be singled out for a prior crime committed and be penalized their whole entire life for a crime that they already served time for, But some people who I talked to in Fort Myers today say bring on the bright green.

0:10:45

Random Person

I think that's the reason it's a good idea. So they could have their windows smashed in.

0:10:49

News Personnel

That possible violence is what Florida Action Committee is worried about.

0:10:54

FAC Guest

This green license tag that says to people you're a monster when they're not, that's extreme punishment. There, there, there will be a lawsuit. We don't know exactly what the plates would look like, but if the bill passes, any car an offender drives will be required to have a neon green plate, and it would be illegal to disguise it.

0:11:16

Interviewee

There might be a lot of privacy issues. There's a lot of privacy issues going on. I mean, I think that they already have the rules that they have to stay so many feet away they can't go around.

0:11:25

News Personnel

Book also wants all registered sex offenders to have the word sexual predator printed on the front of their Driver's license in the color red. [Random Comment] They get what they deserve. There's also fear that the bill would wrongly punish the offenders, family members who might use cars with special plates.

0:11:45

Interviewee

That's a tough one.

0:11:47

News Personnel

I called Senator Books Office multiple times today to find out why she wants this passed. I'm still waiting to hear back. I'm local in Fort Myers, Madison, Adams, NBC2.

0:11:59

Andy

Well, all right, so we just played that news clip. As you heard, PFR's in Florida could be forced to get bright green license plates. This is because Democratic Senator Lauren Book added this to Senate Bill 1252 on Tuesday night. If this passes as amended, all vehicles owned, driven or leased by offenders will be required to have a fluorescent green license plate. And it would also make it illegal to disguise the plate. What do you have to say to this, *Larry* ?

0:12:30

Larry

Of course, I'm disappointed that such an amendment would be offered, but Senator Book also wants all registered offenders to have the word sexual predator printed on the front of their driver's license and the color red.

0:12:45

Andy

Tell me a little bit about Miss Senator Lauren Book or Senator Miss Lauren Book, Miss Senator Lauren Book. Would that go? Is she a nobody or she relevant?

0:12:55

Larry

Oh, she's definitely relevant. She's not a nobody. She's the Senate Democratic leader. Now. There's not a lot of Democratic senators, but nonetheless, she's the caucus leader and she serves on a number of key committees.

0:13:07

Andy

Tell me, is it relevant who her father is in this conversation?

0:13:12

Larry

The Her Father's the Name of Ron Book and if you've seen the documentary called Untouchable, he's a significant focus of that movie and he's very powerful, very powerful lobbyist in Florida.

0:13:21

Andy

All right, well, let me read what her committee assignments are. She is on the Appropriations Committee. The Appropriations Committee on Education, the Appropriations Committee on Health and Human Services, the Judiciary Committee, the Rules Committee and the Joint Legislative Budget Commission. What part of Florida does she represent?

0:13:41

Larry

She's the senator from District 35, which is appears to be primarily in Broward County on the map.

0:13:46

Andy

I guess senators in at the state level don't work the same way where there's just two. They're almost like, why are why is there a difference in senators at the state level versus representatives? Because there's like hundreds on both sides.

0:14:00

Larry

The Senate chambers are generally smaller across the country than the than the corresponding House chamber. So in Florida, I don't remember the makeup, but there are fewer senators than House members. But you're covering an entire state that has millions and millions of people. So there are a lot of Senate seats in Florida. But she's definitely not a nobody.

0:14:19

Andy

For this to become law, the Republican controlled Florida House and Senate would have to pass it, and then Governor, wonderful human being Ron DeSantis would have to sign it into law. Do you think it can pass?

0:14:31

Larry

Oh, I would say it would definitely. It can pass. And if it does, the governor could not take the political risk of a veto. It would potentially be a career buster for him and we would have to make sure it does not get to him because if it gets to him he will definitely sign it, even if that provision has not been stripped out.

0:14:47

Andy

We talk pretty much all the time about you have to kill the bill. It's we can't kill this bill.

0:14:56

Larry

This bill is going to be more difficult to kill, but that doesn't mean you can't kill the amendment. This is a comprehensive bill and therefore you are going to have a difficult time killing a bill, but we definitely need to get Senator Book's Amendment removed from the bill.

0:15:12

Andy

And Florida Action Committee fears the bill would wrongly punish the offenders family members who might use cars with special license plates. Do you think that that is a good argument to approach to get it removed?

0:15:25

Larry

Yes, it very much is. It's far better than the recidivism argument that I hear so often raised. And also you would want to hammer the constitutionality issue.

0:15:37

Andy

Expand on that just from like, I mean I think I have later I was going to ask you about Georgia, but it seems okay to ask it here. Isn't this like almost directly similar to the Georgia issue with the signs for Halloween?

0:15:52

Larry

Absolutely. And we're going to get into the constitutional issue more down below, but it is absolutely very similar and that precedential case from the 11th Circuit that we did victoriously will be very significant if this should need to be litigated. So absolutely there's a strong comparison. There's a slight difference and the Georgia sheriff's did not have the law behind them. If this passes, the Florida officials would have the law behind them. But just because you have the law behind you does not make something constitutional.

0:16:22

Andy

And the Florida Action Committee spokesperson stated this green license tag that says to people you're a monster when they're not, that's extreme punishment. There will be a lawsuit, Sarah Fiebig, I believe is how it would be pronounced of the Florida Action Committee said. There are unfortunately a lot of people out there that are vigilantes and this would put a target on their back. Is that a good public statement to use?

0:16:47

Larry

It's actually a very good public statement and I would support that approach. But it's not enough. You must focus on the constitutional aspect. Listen to the NRA. What do they always revert back to?

0:17:01

Andy

They say that you have a Second Amendment right to bear arms.

0:17:04

Larry

Correct. So as you can see from the news clip, public opinion is in favor of this amendment. Not entirely, but public opinion is going to be by and large, in favor of this amendment.

0:17:15

Andy

And we did hear in the clip that a person named Gean Scott said special license plates for PFR's wouldn't be a problem. They get what they deserve. That is something people need to know. It's easy that way. If you're going to do things that aren't normal, then you need to be associated with that. That brings me brings me back to the news clip. Can you finally admit that politicians grandstand to public opinion?

0:17:38

Larry

Oh, I think I've always admitted that and that some do. And Senator Book has political ambitions, I'm guessing possibly beyond being a state senator in Florida. She's possibly

positioning herself for another campaign. But having said that, she may genuinely believe that this will enhance public safety. After all, she, I think is a victim of some sexual abuse. And as I understand it anyway. But folks, remember, please don't hear this incorrectly. I condemn Senator Book and any Democrat who happens to support this, but first of all, they can't pass it with only Democratic votes because the Florida legislature is overwhelmingly Republican. So therefore you've got to hold your side accountable also. You've got to do the same condemnation I'm doing. But senator Book being that she is a Democrat and if she does have political ambitions she may be solidifying those political ambitions. And I think we talked to preshow about a woman named Katherine Harris who was I think the first Republican Secretary of State or maybe the 2nd, but Florida was largely a democratic state back in the late 90s before the transition came and she got thrust into the limelight after the election in 2000 with Bush versus Gore. And she decided that she would grandstand and do what she said was her job and she certified the election before the votes were counted. And she went on to be elected to Congress and she went on to run for the US Senate as well. This may be her agenda. I'm not in her head. But we need to get the Republicans involved on this. Florida is a Republican state.

0:19:26

Andy

Under current law, all licenses for the operation of motor vehicles or identification cards issued or reissued by the State to a PFR must have the marking of sexual predator on the front. All licenses or identification cards issued or reissued by the state to a PFR must have that marking on the front. How does Florida compare to other states?

0:19:48

Larry

Well, the research I did quickly for the show is that at least nine states have laws requiring PFR's to have a designation indicating such. On his or her license or identification court. But these designations range from Delaware's requirement of a Y to spelling out the words sexual predator or sexual offender. And therefore it it's all of the map. You can have a very discrete marking, or you can have a very ominous marking, and thankfully my state doesn't do that. I don't know about does Georgia do that or not.

0:20:24

Andy

Not that I have ever seen. No, they do not. I don't even. I think they may have tried it and I think it died almost instantly when I when I heard about it. But what? So I know that this has come up in courts. What have the courts held

on this? I recall recently Oklahoma and Alabama being new additions.

0:20:46

Larry

Yes, the courts have weighed in. Most recently the Supreme Court, I think of Louisiana ruled it. The Louisiana statute requiring a convicted PFR to have a driver's license or identification card with the word sexual offender in a bold orange font was found to be unconstitutional as it violated the 1st Amendment of the US Constitution by compelling speech. So, while the state certainly that this is what the court said, according to them, while the state certainly has a compelling interest in protecting the public, enabling law enforcement to identify a person as a PFR, Louisiana has not used the least restrictive means of advancing its otherwise compelling interest. The branded identification card requirement is unconstitutional.

0:21:29

Andy

And I was looking back at our FYP archives as well. FYP means, never mind in February 2019, Alabama's requirement that convicted PFR's bear the inscription. Criminal sex offender in bold red letters on the driver's license or identification cards was also found unconstitutional under the First Amendment as it is, as it unnecessarily compels speech, and it was not the least restrictive means of advancing a compelling state interest. Has anyone told the Florida legislature about these cases?

0:22:02

Larry

Yes, they have and most of what we've mentioned proceeding where we are now was it actually in the fiscal impact report that's available to all members of the legislature and to the public?

0:22:15

Andy

Just curious, I mean, would they have to have a special run of license plates and for them to make their 70,000 people on the registry in Florida, but let's just say 40,000 of them actually exist, So they're going to have to do a somewhat unique run of 40,000 license plates?

0:22:35

Larry

They'll do that. But you know, the funny thing is they'll require the PFR to pay for the special plate. That's what they'll do.

0:22:40

Andy

Doesn't that potentially put you in something of a debtor's prison? Like you're being like That makes it even more compelled speech. It's compelled[er][sic]. The transcription will not get that word.

0:22:51

Larry

That's what they're going to do in all likelihood, because we got to raise the revenue somewhere, so why not assess it to the offender?

0:22:59

Andy

That makes it more disabilities and restraints, Larry .

0:23:03

Larry

It does.

0:23:04

Andy

OK. Well, OK. So from my sources and I hear it has generated a lot of activity with Florida Action Committee. I'm guessing it's because it's narrowly tailored. So it's not, it's not just these Joe Schmoes. So the reason why everyone is all up in arms about it is because of impacting effectively everyone.

0:23:23

Larry

That is correct. This this is no way narrowly tailored. As far as I can see it, it applies to everybody on the PFR list.

0:23:29

Andy

Does that make it better or worse to fight?

0:23:34

Larry

Oh, it makes it more advantageous from a legal challenge perspective, because you can do a lot of things if you narrowly tailor it to an individualized assessed need. But when you throw this blanket restriction out there, I wish people could learn that you can do almost anything if you tailor it to the offender. But when you do the blanket broad brush, you have these problems.

0:23:55

Andy

And so I would say Florida is generally considered a wealthier state. So, I would imagine that there's going to be a lot of money piled onto this to fight it.

0:24:09

Larry

I wish I could have that kind of faith that there's going to be a lot of money piled on.

0:24:12

Andy

All right, well, let me ask you this. In the case of a family and it's a shared vehicle, they covered this in the article a little bit. If your spouse or kid. So my kid is like about to learn to drive and so now I have some fluorescent green license plate and my 16 year old kid hops in the car and goes drives down to the grocery store to pick up some food. He's driving around in a car that says he's a PFR and that's not going to draw a crap ton of attention to him. He didn't do anything wrong. Why is he then forced to drive in a car that

would have that plate on it? How does anybody think that this is a good idea?

0:24:46

Larry

Well, of course the response would be he's not being forced to drive the car. He doesn't have to drive it, but it's very dangerous at risky, but he doesn't have to drive it.

0:24:56

Andy

Well, well, that's true. I do. Would this qualify as facially unconstitutional? Do I have the term right. I'm trying to use these words in a sentence for the first time.

0:25:12

Larry

As this legislation is drafted. You would need to be able to make the argument that there's no set of circumstances by which this could be constitutional. You could make the argument, but I think it it would fail that this is facial and constitutional because I do believe you could have a very narrowly tailored group of people where this might be constitutional. But in all likelihood, that would be one of the arguments that would be made. If a challenge is necessary. This is facially unconstitutional. But to get to that standard of facial unconstitutionality there has to be no circumstances by which something can be done.

0:25:51

Andy

I'm trying to. What would the scenario be like? Is this if they only go after let's just say SVP's? I mean I don't know if how what you want to try to. Thread that needle, but this is saying all 80,000 people on the registry in Florida, you have to do this.

0:26:09

Larry

But what if, let's say we narrowly tailored it? What if trying not to ensnare the entire registry list? What if you said people who had traveled by vehicle to meet a minor? Only those would be subject to this. Now, then you've also when you tailor it that way you've reduced the population from 80,000 to 2500, but you've also got a criteria that's much easier to justify where?

0:26:39

Andy

Don't you have something of due process? Is that? Does that qualify as that term?

0:26:44

Larry

Well, we haven't got to that part yet, but you have had the due process of your offense, the factual basis for your offense if you traveled by vehicle and particularly if you picked the vehicle up within the zone of a high school or sporting event or something, I could conceive of a scenario where you could have a very limited success with doing this, but it would only be a very small segment of the population that this could be narrowly tailored enough to where you

could justify it. Senator Book and the and the radical people that are for this, they're not going to be interested in doing that. They want to punish everybody. This is a 2nd, 3rd and 4th bite at the apple. They want to inflict more punishment and shame and to further their political career because this sells well. We heard it in the clip just now, right?

0:27:31

Andy

I believe so. And I mean Florida's already marking license plates in the tiniest of tiny fonts that you almost need a magnifying glass to look at. There's some code on there that, but no one would ever see this unless they knew to look for it and it doesn't stand out or anything. So they're obviously trying to close that loophole of having the tiny little marking to have something big that's all bright and flourishing. It's almost like you have a 4th of July fireworks coming off of your license plate and your driver's license.

0:27:59

Larry

Yes.

0:28:01

Andy

So let's go back into the whole Georgia conversation and back four years ago, five years ago there was a case in Georgia that we that were they were putting signs in the yards and that received an injunction which I'm going to then tie this back together with that. The next question is? Will they be able to receive an injunction same as they did in Butts County, Georgia of putting these signs out, so then marking the license plates and do, yeah, having the green license plates and marking the driver's licenses, will they be able to get an injunction do you think?

0:28:33

Larry

I believe that it would be extremely likely that one would be granted in this case, and you know, I seldom say that. But in this case, we have the circuit 11th circuit which includes Florida. We have a precedential case with that issue with the Halloween signs and we have other cases that are compelling like what we just discussed earlier in terms of Louisiana and across the country where this issue has been litigated. So therefore, we would be able to show there's two primary components of the injunction we have to show that irreparable harm would result and that we're likely to let me back up. The first component is, are we likely to win on the case law that exists? Is this case as the binding precedent exists right now favorably? Is there enough comparison with the existing case law that you're going to win? And the answer is yes. So then we move on to step two of the injunction. Can you show this court that without the injunction that there will be irreparable harm, not speculative harm like IML [International Megans Law], but irreparable harm. So we're going to have to show them with solid evidence, the bad things that will happen, and I think we can do that. I think we can show them what would

happen if a minor was driving a PFR's car. I think we can show them some anecdotal evidence of threats and maybe some solid evidence of threats, but I think we can get there. So the injunction is far more likely in this case than it was in any other case that I've seen where people have pontificated about an injunction because we got to meet those two tough standards and I think we can meet both of them.

0:30:15

Andy

So to compare this to IML just in my brain and go ahead and send me all your hate mail, all your IML people. It's a fairly smallish group of people that is able to travel internationally, financially or just with the desire to do so. Like you probably could financially but you don't really care to. You have to then bring out the document to show to customs and whomever you're trying to show it to, that's a fairly small group of people, and it's also upon request. Same thing with a driver's license. It's certainly much larger in scope, but only when you go to buy some booze or something like that. I mean, you end up showing it more, but it's still sitting in your pocket almost all the time. But now, as soon as your garage door opens up, or if you happen to be parking on the street, *Larry*, I didn't even think about that one until just now. Your car just happens to be out you know, swinging in the wind and people will see your car. You're going to wake up every day and all of your windows are busted in every day. So how? Like, I don't see how this could ever possibly make it through. I God, they're going to pass it and they're going to sign it, but it has to immediately get shut down.

0:31:27

Larry

Well, I think that there's a good shot it would be shut down. But the difference in IML, I know people are going to get angry, but the difference was very stark. IML was speculative. We did not know at the time it was passed and signed what the marking was going to be. We know precisely what the marking is going to be if this amendment is held into the legislative proposal and makes it to the governor and he signs it. So we did not know at the time it had been signed. It was left up to the bureaucracy of the US State Department to figure out what the marking would look like. So therefore, when you're speculating when requesting an injunction of what might happen, you can't get there from here because we do not know. A court cannot award you an injunction because of speculation. The harm has to be real and imminent and that's what the court is doing. The court is calling time out and saying I'm going to give you relief that you have not won yet and therefore it has to be an extremely high standard. I'm not changing my view at all. This is word for word. What I said when IML was passed, and the brilliant lawyers were wanting to file the challenge. I said it is premature, it is not ripe and it wasn't ripe and the court agreed with me.

0:32:53

Andy

A question to chat says. And you won't be able to get insurance either for your car, because every three days you'll be like, sorry, I have to find another claim of broken windows. They're going to drop your insurance.

0:33:05

Larry

I hadn't even thought about that. Now that's funny.

0:33:06

Andy

That I didn't either. I mean that's a mess. I don't. Do you have anything else before I have one last question for you. Do you have anything else you want to bring up before my last question?

0:33:18

Larry

So well, do you? No, I guess I've covered it. What do you have to ask?

0:33:23

Andy

Well, my one last question is, do you think there is any chance of a veto by Governor Ron De Santis?

Larry

Hysterical Laugh

Andy

I'll take that as a no.

0:33:35

Larry

I would say it's an extremely low possibility. You just can't veto something like this. DeSantis is a fairly young man still, and all people who were in the know, they think that he has political ambitions. Can you imagine what he would look like if he was tarred and feathered with not protecting vulnerable children in Florida? You can't ask him to do that. He would sign this. If it makes it to him with that amendment. I can't see any way he can be to it.

0:34:07

Andy

Moving along then?

0:34:10

Announcer

Registry Matters Promo Deleted.

0:34:56

Andy

P You put a case in here from the Wyoming Supreme Court. How is Wyoming even big enough to have a Supreme Court? *Larry* ? That would be my first question.

0:35:08

Larry

I don't know, but apparently they do.

0:35:10

Andy

I guess so. And I'll have to tell the audience that I've never heard you quite so excited about a case for real like you

midweek or so. Thursday, Wednesday, you called me and rambled on for 30 or 45 minutes. The case is James Bullard Minter versus the state of Wyoming. Why are you so flippin excited about this case? And I've read it and I'm not seeing all that you're excited about.

0:35:37

Larry

Well, that's why you're not in my seat, because you can't see that, but I can. This win is actually fantastic, and the case is one of the most fascinating cases I've written about or discussed on this podcast. And as we go through it tonight, you'll be able to see many important legal issues combined into one single case, which is unusual. My hope is that our listeners will have a better understanding of 1, binding precedential decisions, 2, cases that aren't binding but are cited as persuasive authority, and 3, that textual interpretations aren't always detrimental to our cause, but most of the time they are. But not always.

0:36:14

Andy

All right. Well then, I will set it up a bit. James Bullard Minter pled guilty in 1999 to misdemeanor sexual battery in Georgia. In 2019, Minter was living in Casper, WY, when a federal agency informed the Wyoming Division of Criminal Investigation DCI that it had intercepted a firearm suppressor addressed to Minter. DCI performed a background check on Minter and discovered his Georgia conviction. DCI directed the Natrona County Sheriff's Office to inform Minter that his conviction required him to register in Wyoming. Did the Georgia conviction require registration?

0:36:57

Larry

No, it did not.

0:36:58

Andy

Say that again.

0:37:02

Larry

No, it did not. The old conviction in Georgia did not require registration. That means at the time, he had never been registered prior to ordering that suppressor. So, ordering that suppressor might not have been the most brilliant thing he ever did.

0:37:21

Andy

So, according to the court, the State of Georgia offered Minter a plea agreement by which it would reduce the charge against him to misdemeanor sexual battery and the parties would jointly recommend a sentence of 12 months with a credit of time served. Minter agreed and completed a sworn statement which contained no facts concerning his crime and stated I pled guilty to sexual battery, the Georgia code, blah blah blah. What were the original charges?

0:37:49

Larry

The original charges were child molestation.

0:37:51

Andy

You're not allowed to say those words. I have heard you. I prefer to not use these terms, *Larry*. I've heard you pontificate through the years. The court must establish a factual basis for the crime, that criminal conduct occurred within the court's jurisdiction, and that all necessary elements of the offense were met in order to accept a plea of guilty. I'm no lawyer, but that seems a bit thin to me for an inadequate factual basis.

0:38:19

Larry

You're correct, this was a very thin presentation as a factual basis. However, the sloppily done plea is what ultimately saved him from registration in Wyoming. The Georgia court accepted Minter's plea to the lesser charge and sentenced to 12 months confinement with credit for time served. And this means that he likely was released at the conclusion of the plea hearing because that was the beater of the deal for him. He got to go free.

0:38:44

Andy

And as I was reading the opinion, I'm impressed that he never called the registration officials once he arrived in Wyoming. He moved to Wyoming in August of 2007. When he arrived there, he researched his obligation to register and found a Wyoming Supreme Court case that he that he read as saying only those convicted of a felony PFR type thing had to register in Wyoming. Because he was not convicted of a felony, Minter believed he was not required to register in Wyoming. You have to give him credit for not continuing to pursue the question. We've talked about that a bunch of times. Hey, can I call you the second, the third, the 4th, the 5th time and ask you again and again and again? Do I have to register?

0:39:24

Larry

I have to give him credit indeed. Unlike Mr. McGuire down in Alabama when he moved there from Colorado, McGuire had never been required to register in Colorado either. But he couldn't help himself. He had to go in to verify that he was not required to register in Alabama. And they told him, well, yes, you do have to register in Alabama. And that's the result of a half a million dollars' worth of litigation later which ultimately was lost in the 11th Circuit. And he's registering. And had he kept his mouth shut, he may never have had to register because they might not ever known him. This guy [Minter] lived in Wyoming for years and years and years. No problem. No problem at all until he ordered the firearm suppressor.

0:40:07

Andy

Right. And I'm recalling the guy in North Carolina that called two or three times, was told one time not to register, and then he called back and said and said something like that, that they told him, Oh yeah, you now you got to register.

0:40:19

Larry

That is correct. People for some reason can't take no for an answer.

0:40:24

Andy

OK, for the legal folks in the audience, can you tell us the name of the case, Minter research to determine that he was not required to register?

0:40:32

Larry

Yes, I can because it was in the opinion the case was Snyder versus the Sate of Wyoming and for anybody wants to look it up. It's 912 Pacific 2nd starting at a page 1127 and it was issued in 1996. Which stated that under the act, a PFR must register. A PFR who must register is any person who has been convicted of a certain felony sex offense in which the victim was less than 16 years of age and the offender was at least four years older than the victim, and the conviction occurred after July 1, 1985. He concluded that he didn't fit that category after looking at Snyder versus State. So he said I'm going to leave this alone. Kudos. You did the right thing. If you'd have stayed off of that damn Internet and not ordered firearm suppressor, you wouldn't have gone through all what you've gone through.

0:41:21

Andy

I do have to ask, what is I? I know what a silencer is. What is the difference between a silencer and a suppressor? Hopefully someone in chat can answer this before we get out of the section. All right Then, after being directed to register, I presume that he went ahead and acquiesced.

0:41:38

Larry

He did. Minter registered as directed but filed a petition in District Court seeking relief from the requirement.

0:41:45

Andy

What did the District Court do after that?

0:41:48

Larry

Well, the District Court amazingly granted the relief that he had sought.

0:41:52

Andy

And I'm guessing that the issue did not end there.

0:41:56

Larry

It did not the DCI remember the Department of Criminal Investigation. They intervened and they moved the court for relief from the judgment. The District Court then vacated its previous judgment and granted the DCI summary judgment saying that he did have to register.

0:42:15

Andy

All right, so the state's intervention resulted in a 180 by the court.

0:42:20

Larry

It did, but amazingly, after the DCI review, the District Court decided that Minter's misdemeanor conviction in Georgia was the equivalent of felony second degree sexual abuse of a minor in Wyoming. Now how did they amazingly have that epiphany?

0:42:38

Andy

I noticed that I found it amazing that the Natrona NATRONA, Natrona County District Attorney's Office joined Minter's petition. It asserted that based on the information the state has, it is incredibly difficult to know what the facts or circumstances of the petitioner's conviction were. That because we said that before that there was very light on details. So how would they come up with what the equivalent was?

0:43:04

Larry

Well, that they're in, you're correct. The District Attorney also stated that it had to rely on the elements comparison to determine the equivalent Wyoming offense which it agreed with sexual battery and that's on page three of the opinion. It further asserted a review of petitioner's criminal history indicates he has no criminal activity or conviction since serving his sentence in Georgia. For 20 years, he has remained a law abiding citizen. To require him to register 20 years later with no further criminal involvement seems unjust.

0:43:35

Andy

Do district attorneys make these types of admissions for PFR's?

0:43:40

Larry

I say generally speaking they do not, but I can't think of ever seeing a case like this. This is an amazing feat that you get a District Attorney and anybody in Wyoming can tell us where Natrona County is. It's a little bit of the nuances of that county, but to get a District Attorney prosecution office to offer support for removal and for non-registration is amazing.

0:44:05

Andy

Looks like Natrona County encompasses. Well, shoot, I just had it. It just showed me what it was. Anyway, all right, the district court's summary judgment was obviously appealed. And what were the issues that they raised on the appeal?

0:44:23

Larry

Well, the issues before the Wyoming Supreme Court were one may DCI rely on dismissed charges to determine the facts or circumstances out of which an alleged PFR's conviction arose. And two, may DCI require someone to register before it determines he or she has been convicted of a registrable offense? Remember the more serious charge was dismissed for the plea agreement that one, you didn't like me to say that was dismissed. We only have a misdemeanor here remaining.

0:44:53

Andy

By the way, it is. It's Casper, roughly in that ballpark. Well, all right. So unfortunately, the DCI's position that it knew Minter to be an offender when it required him to register, and they based it on its assumption that it may rely on a dismissed charge to determine the facts and circumstances of a conviction. What did the court think about the DCI's argument to that?

0:45:17

Larry

They did not find that argument to be persuasive.

0:45:20

Andy

This case turned on statutory interpretation. This is an area that you love because you can show that textualism can result, I would say that you usually say that it results in bad outcomes. Can you admit that sometimes textual interpretations can be good?

0:45:36

Larry

I've admitted that over the years. But this is the reason why I don't declare myself to be one thing or the other. I'm trying to win.

0:45:45

Andy

Oh, I have a clip for that.

0:45:47

Audio Clip

Trying to win the game.

0:45:49

Andy

The court stated when interpreting statutes, we seek the legislature's intent as reflected in the plain and ordinary meaning of the words used in the statute, giving effect to every word, clause, and sentence. Most importantly, the court stated, the omission of words from a statute is considered to be an intentional act by the legislature and,

like this Court, will not read words into a statute when the legislature has chosen not to include them. This sounds familiar. I remember the Nebraska case and Maryland case where textual interpretation did not end well for us.

0:46:22

Larry

You have a great memory in the Nebraska case. For those who weren't listening back then, that was a PFR that moved to Nebraska from Colorado, where he had a requirement to register in Colorado and in Nebraska he had done his research and those who have juvenile adjudications that occur in Nebraska do not have to register. And he goes in and gets into a bar room brawl in Lincoln I think or somewhere in Nebraska. And when they run his background, they say he's has a conviction in Colorado. And they looked at him, they said, well you're not registered here. And he says, oh well this is a state that doesn't register people who have a juvenile adjudications. And so, the court looked at it and they said, well wait a minute, I'm looking at the statute, it says any person who enters Nebraska who is required to register in another state is required to register in Nebraska. And he says you don't register juveniles. But they said, well wait but you are a person are you not? And he said, well yes I guess I would qualify as a person and you are required to register If you're in Colorado, well yes you've got a point there. You did enter Nebraska did you not? Yes. Well then why are we here? Because looking at the text they got to the conclusion that if the Nebraska Legislature had wanted to exempt non Nebraska convictions that they would have. And the same similar thing happened in Maryland with the child porn conviction for the where the kids were texting one another. They said well you are a person aren't you? Well, yes. You did text the your private parts to another person, right? Well, as we look at the statute then they want to, they want all of a sudden they want to become purpose driven, they want to deviate and they want to say well, but the intent of the law it was to catch adults texting pictures of their junk. And they said, well, they didn't say that well, the same thing in Nebraska. They didn't say that anyone who enters Nebraska who has [been adjudicated as a juvenile], They could easily said anyone who enters Nebraska, with the exception of those adjudicated as juveniles. But they didn't do that. So, a textual interpretation came out against us. When you declare yourself to be one thing solidly without thinking it through, you end up in this conundrum. A textual interpretation can be good. And most of the time it for us it's not going to be good. But in this case, I'm ecstatic because it's good and I can report on a textual interpretation and I can show you that I'm not against textualism when I can win with it.

0:48:50

Andy

The act requires an offender to register, and it defines that term succinctly. Offender means a person convicted of a

criminal offense specified in their Wyoming statute, I guess is what that means in 7-19-302 part G through part J and then 6-2-702. 6-2-703 look in the show notes for it and in addition an offense in any other jurisdiction containing the same or similar elements. He was convicted of sexual battery. Isn't that a PFR type offense?

0:49:27

Larry

It can be, but it depends on the factual basis if it demonstrates that there was a sexual motivation for the touching. Georgia is one of the few states that has if you touch a minor in their private parts. There has not. There does not need to be proof presented that there was a sexual motivation for the touching. But here's where the plea comes back to bite them in the butt. Due to the thin plea inquiry done by the court, there was no factual basis established that that touching was for sexual motivation. But under Georgia law he was not required to register because that was the same condition in Georgia that if they had shown that there was sexually motivated touching. But part of the plea agreement resulted in that disclosure and that factual basis not being established. My guess is that the prosecution had a fairly weak case, and they were afraid that they would come away with no conviction at all and therefore they took the misdemeanor conviction and they figured we'll get him next time. We got a year's worth of confinement out of him and if he does this again will whack his hand pretty strong next time, but that the thin plea is what really sunk their case because that was a sloppily done plea and it came back to haunt them.

0:50:46

Andy

Well, it is, and this is pretty neat. It's pretty fascinating. The court then stated. It follows that the conduct that DCI may consider determining a registrable offense must be conduct for which the offender was convicted. They pointed out that states that allow consideration of conduct underlying an offense to determine equivalents have included, like have concluded likewise. What states did they cite for that?

0:51:12

Larry

They cited to several states outside Wyoming, including a few cases from Georgia. In addition, they cited Doe v. Fricz, spelled FRICZ and the Fricz court rejected reliance on abandoned pleadings where the offender is defined as one convicted of offense and if you abandoned in that case they said you can't rely on something that was filed against someone and was abandoned. And they also cited a case from the state of New Mexico Supreme Court in that state versus Hall from 2012. And yours truly worked on the Hall case. The Hall court held that to determine equivalence courts must look beyond the elements of the conviction to the defendant's actual conduct. Remember they didn't have a factual basis establishing the conduct. If the prosecution had to had to been as sloppy if they had said for the record

your honor, had this case going to trial we would have shown that Mr. Minter did this with a sexual motivation for the touching of the private parts, but that wasn't established in a factual basis. They just took that little handwritten thing that he said I broke this law.

0:52:21

Andy

This is one of the points that you always wanted to make. These non-Wyoming cases were not binding at all. But were they? Were they persuasive authority?

0:52:31

Larry

Correct, that's exactly what they were cited as. And the Wyoming Supreme Court was very diligent and going through a lot of persuasive authority. They didn't want to be hanging out there saying we're the first ones that's come up with such a nutty outcome. So, they cited authority that was not binding upon them, but they said these are greatly analyzed cases that are similar to what we're looking at here.

0:52:56

Andy

The state did not give up easily. Is that correct? They tried to argue that there's a federal SORNA.

0:53:02

Larry

They did try to argue that, and fortunately that did not gain much traction either. The court stated quote, the federal Sex Offender Registration and Notification Act does not compel a different result. Contrary to the DCI 's assertion, the Wyoming Act is not required to comply with SORNA.

0:53:23

Andy

I've heard you say that for years. Now that there isn't a federal registry, I'm guessing that the court, or at least their law clerks are tuned into the RM the Registry Matters podcast that they learned the stuff from you.

0:53:35

Larry

I would say that's probably a good shot that they did but probably not. But hopefully they certainly used binding precedent from the 10th Circuit and I failed to put the name of that case in. But the 10th Circuit has held that federal SORNA does not compel a state to do anything. Instead, it conditions the states' receipt of certain federal funds on substantial implementation of SORNA's registration requirements and that's on page 11 of the opinion. But it has been by position for many years that you could abandon your registry tomorrow if you wanted to. Now you're going to have a lot of U hauls headed in your direction, but you're not required to have a registry, you're not required to do anything. And there's nothing the federal government can do about it. And I'm glad to see that the wild wing Supreme Court, I feel vindicated. They have said

what I have been preaching for so long. Someone finally gets it.

0:54:31

Andy

The DCI threw the sink at the case, it seems. They claimed that they would be impeded from expeditiously registered registering offenders. What was the court's reaction to that?

0:54:43

Larry

They weren't persuaded that they stated, well, we understand the desire for expediency of registering an offender. The risk in interpreting this provision otherwise is wrongful registration and is beyond dispute that negative consequences flow from registration as a PFR. They referenced the Wyoming statute, which requires notification to neighbors within 750 feet if the offender is registered under a certain section of the act. I'm not sure who all that it covers, but they recognize that there are negative consequences. Kudos to them.

0:55:19

Andy

And then the court stated the legislature took care to ensure that the only persons required to register under subsection 302(o), and any other sections of the Act, those whom the DCI had determined were in fact offenders. And it's very interesting with what they stated. The care with which the Act is drawn as part of the reason we have upheld its constitutionality against challenges that it violates the ex post facto clause of the United States Constitution. Did they not admit that the registration process is punitive?

0:55:52

Larry

They came very close. When you look at what they said and what I just read above that they said that that has negative consequences flow from registration and then they say what they just said there. They came very close to admitting that they know that the registry is punitive. And I'm evaluating right now how useful this might be in some future litigation.

0:56:16

Andy

Would you care to even prematurely speak to that? I'm curious.

0:56:22

Larry

Well, if I don't think we can use it directly against the court, but it may be that someone on that court has opened the door by an indirect invitation to say we kind of get it, but you people haven't proven it to us yet. And this would get my heart palpitating in terms of trying to find the right challenge in Wyoming to go in and show that it is in fact punitive and has significant disabilities. Because you said so yourself in this decision, you said that the consequences

flow from this and how important it is and how you've only upheld it because that it is a civil regulatory scheme. So, to me, the door has become slightly open for a challenge in Wyoming.

0:57:06

Andy

Interesting. All right, well, we are kind of like running up against some time here. The court's conclusion states the act defines an offender as one convicted of a registerable offense. Because the requirement to register as a PFR is premised on a conviction, DCI may not rely on dismissed charges to determine individuals' registration requirements. Additionally, DCI may not require someone to register before it knows he or she was convicted of a registerable offense. What would you say happens next?

0:57:38

Larry

Well, nothing immediately other than the state may file a motion for reconsideration from the court. That's not likely to go anywhere, but I don't see anything. There's nowhere else to take this to this. It's not a Supreme Court case.

0:57:54

Andy

All right. Well, then, would that work?

0:57:58

Larry

Well. The likely thing would be that the law is going to be changed. The legislature will seek to overturn this. The DCI is going to say we're hamstrung now big by this runaway court, and they'll likely try to change the law. And since the advocacy effort is fairly weak in Wyoming, it's very conceivable something like that could pass easily. But in the meantime, they're stuck with this guy. Mr. Minter is done registering. Now what would be funny would be if they passed a law as they bring him back after the new law passes.

0:58:33

Andy

I don't think he would find that funny. I mean, we could probably call him up and ask him if he thinks it'd be funny and get him on the record saying no, that wouldn't be funny.

0:58:42

Larry

Well, funny, doesn't mean haha roaring laughter, but if he spent all this money which he spent a ton of money with all this litigation. I don't think it's been provided pro bono. If he were to have the legislature act at the DCI's instigation to change the law so that conduct that didn't result in a conviction can be considered, if it can be shown by, say, a preponderance of the evidence. DCI I can tell you they look a little bit vindictive here. They could have just let it go when the court originally granted him relief. I would say that they would come back, and they would try to force him

to register and this whole merry go round would start all over again if they if that happens.

0:59:22

Andy

And then I assume that the massive advocacy group in Wyoming needs to step up to the plate and keep an eye on this and then go fight at the Capitol when it happens.

0:59:31

Larry

They need to do that. They need to hire me. This is my calling. I'm the person who can help you strategize, but I can't do it because I'm not there. But in terms of what you need to do, you need to get with a very good strategist, and you need to get some boots on the ground up there in Cheyenne when the legislature is in session. You need to establish relationships and say hey guys the DCI is going to propose this crap and it's bad case law. I mean, this is good case law, but what you're going to do is create bad case law because we're going to have to litigate against you again if you pass this, because that's what they're going to tell you to do. This is great case law the way it is. You have to be convicted of offense. You cannot look at dismissed charges.

1:00:11

Andy

All right. Anything else that you want to say before we close this out?

1:00:16

Larry

I think we've had a great episode. I'm so happy with this case. I just can't get over how wonderful it is.

1:00:22

Andy

You're happy as a pig and shit, is that what I remember you saying?

1:00:27

Larry

Something along that line. You can't say that on a family program.

1:00:31

Andy

This isn't a family program. Believe me, none of the topics covered here are anything related to. Well, they're related to family, but they're not a family program. We need to get that straight. Well, please make sure that you head over to registrymatters.co, subscribe in your favorite podcast app, and then go over to YouTube. And I need to continue to thank all the patrons of the show. You help makes this endeavor possible. And so I definitely need to thank them and go over to patreon.com/registry matters to sign up for just as much as a buck a month and you can listen to the show live and you'll get it as soon as I release it on Sunday morning. I've been doing it late Saturday night, so some people are getting it like midnight Sunday morning, but without anything else. *Larry*, I bid you a farewell and I hope

you have a wonderful rest of your weekend and I'll talk to
you soon.1:01:27
Larry
Thank you and good night.

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