

HENRICO COUNTY CIRCUIT COURT

JOSHUA HIGHLANDER,
9619 Old Forge Road
Providence Forge, VA 23140

Plaintiff,

v.

VIRGINIA DEPARTMENT OF
WILDLIFE RESOURCES,
7870 Villa Park Drive, Suite 400
Villa Park 3,
Henrico, VA 23228

KRISTA ADAMS, conservation police
officer, in her individual and official
capacity,
6700 Courthouse Road
Providence Forge, VA 23140

ZACH HOWLETT, conservation police
officer, in his individual and official
capacity,
15215 Kent Pointe Lane
Lanexa, VA 23089

BONNIE BRAZIEL, conservation police
officer, in her individual and official
capacity,
389 Forest Road
Chesapeake, VA 23322

Defendants.

Case No. _____

**COMPLAINT AND PETITION FOR DECLARATORY, INJUNCTIVE, AND
OTHER RELIEF**

INTRODUCTION

1. This is a constitutional challenge to the Virginia Department of Wildlife Resources (DWR)'s policy and practice of searching private posted land and of seizing cameras from that land without the owner's consent, a warrant, or any meaningful constraints on officers' discretion. DWR's warrantless searches and seizures are standard operating procedure: DWR conducts these intrusions statewide, has done so for years, and will continue doing so until a court orders DWR to stop.

2. Plaintiff Joshua Highlander is a landowner in Providence Forge who has experienced DWR's intrusions firsthand. Mr. Highlander owns a 30-acre property where he lives with his wife and two young children.¹ The property is clearly posted on all sides with "no trespassing" signs, is located in a residential part of Providence Forge, and Mr. Highlander's children play around the house and in the surrounding woods. It's a private place. And yet, in April 2023, DWR officers parked in a nearby neighborhood, entered Mr. Highlander's property—walking right past his "no trespassing" signs—and seized one of his cameras.

¹ Mr. Highlander's wife and children are not named in this Complaint and Petition in order to preserve their privacy.

The officers did not have Mr. Highlander's consent or a warrant for either the entry or the camera seizure.

3. The officers made no attempt to talk to Mr. Highlander when they entered his property and took his camera. But they were there long enough to scare Mr. Highlander's wife and 6 year old son. On the day of the warrantless entry and camera seizure, Mr. Highlander's son and wife were out playing basketball in the yard next to the house. When his wife went to go retrieve the ball, which had rolled toward the woods, she looked up and saw a stranger in the woods wearing camouflage. Mr. Highlander's wife and son ran inside and told him, but when Mr. Highlander went outside to look, the stranger was gone. Mr. Highlander later confirmed that the stranger was one of the DWR officers who invaded his land and took his camera.

4. DWR's intrusions are unconstitutional. Article I, Section 10 of the Virginia Constitution forbids government officers from conducting warrantless fishing expeditions—roving searches and seizures of private property—in hopes of uncovering evidence against the owner. Because that is what DWR did to Mr. Highlander and how DWR will continue to operate moving forward, the Court should declare DWR's warrantless searches and seizures unconstitutional, order

DWR to return Mr. Highlander’s camera, order DWR to return or destroy any fruits of its warrantless searches and seizures (photos, notes, etc.), and enjoin DWR from conducting any similar warrantless searches or seizures moving forward.

JURISDICTION AND VENUE

5. Mr. Highlander brings this case under Va. Code Ann. § 8.01-184 (declaratory judgments), *id.* § 19.2-60 (return and suppression of illegally seized property), *id.* § 19.2-59 (damages for warrantless searches), and Va. Const. art. I, §§ 1 (declaring inherent rights), 10 (prohibiting general warrants), 11 (securing property rights), 17 (preserving unenumerated rights).

6. The Court has “original and general jurisdiction of all civil cases,” including this case, under Va. Code Ann. § 17.1-513.

7. The Court also has jurisdiction over declaratory judgment actions, including this case, under Va. Code Ann. § 8.01-184.

8. Venue lies in this Court under Va. Code Ann. § 8.01-261 because Defendants Krista Adams, Zach Howlett, and Bonnie Braziel are “officers of the Commonwealth [sued] in their official capacity” who have an “official office” at DWR’s headquarters in Henrico County.

PARTIES

9. Plaintiff Joshua Highlander owns the 30-acre residential property at 9619 Old Forge Road in Providence Forge that is the subject of this lawsuit. He is challenging DWR's April 8, 2023 warrantless search and seizure of his land and camera, and DWR's policy and practice of warrantless searches and seizures.

10. Defendant DWR is the agency that enforces Virginia's hunting laws. Va. Code Ann. § 29.1-109(A). DWR has a policy and practice of searching private posted land, of seizing cameras from that land, and of searching those cameras without the owner's consent, a warrant, or any meaningful constraints on officers' discretion. On April 8, 2023, DWR officers entered Mr. Highlander's property, seized a camera, and searched it—all without his consent or a warrant.

11. Defendants Krista Adams, Zach Howlett, and Bonnie Braziel are sued in their individual and official capacities as conservation police officers ("DWR officers") assigned to DWR Region 1, where Mr. Highlander lives. DWR officers enforce Virginia's hunting laws. Va. Code Ann. § 29.1-200. On April 8, 2023, following official DWR policies and practices, Adams, Howlett, and Braziel entered Mr. Highlander's property, seized a camera, and searched it—all without his consent or a warrant.

FACTS

Mr. Highlander's property is a private place.

12. Joshua Highlander is a 37 year old husband, father of two young children, licensed real-estate salesperson, and lifelong resident of Providence Forge.

13. In 2019, Mr. Highlander bought a 30-acre property at 9619 Old Forge Road in Providence Forge and built a single-family home there.

14. Old Forge Road is a quiet, secluded, residential street lined with single-family homes, located in a subdivision called Minitree Hill. There are also residential subdivisions adjacent to Minitree Hill: one called Westview to the west, and one called Shirley Commons to the southwest.

15. Mr. Highlander bought the property and built a house there because he thought it would be an ideal spot to raise a family.

16. This is an accurate photo of Mr. Highlander's house:



17. Mr. Highlander lives in the home with his wife, his 6 year old son, and his 5 year old daughter.

18. Mr. Highlander has other family in the area, too. His father Rob Sr. lives just a few houses down the street on Old Forge Road, his grandparents live nearby in New Kent County, and his brother Rob Jr. lives nearby in Charles City County.²

19. Mr. Highlander and his family use their 30-acre property the way any family might: for work, play, and family affairs.

² Because Mr. Highlander's brother and father both share the last name Highlander, and both have the first name Robert, they are referred to throughout this Complaint and Petition as Rob Jr. and Rob Sr.

20. Mr. Highlander and his wife both have full-time jobs that allow them to work from home, so they spend most of their time at home during the day.

21. Mr. Highlander and his family regularly walk around the property together, including on trails and in wooded areas beyond their yard.³

22. Mr. Highlander's children regularly play outside in the yard and in the woods throughout the property.

23. This is an accurate photo of a basketball hoop and trampoline right next to Mr. Highlander's house where his children like to play:



³ References to Mr. Highlander's "family" throughout this Complaint and Petition refer to Mr. Highlander, his wife, and his two young children.

24. Mr. Highlander is also a lifelong hunter and hunts deer and turkey on his property when he has time. (A landowner does not need a hunting license to hunt on his own property, Va. Code Ann. § 29.1-301(A), but Mr. Highlander has a license anyway for when he hunts elsewhere.)

25. To help promote a healthy deer herd in his area, Mr. Highlander maintains a small food plot on his property. A “food plot” is a crop planted to feed wildlife (e.g., millet, oats, peas, clover, kale, corn).

26. DWR encourages food plots and considers it legal to hunt over them. See DWR, *Plantings to Attract Deer*, <https://dwr.virginia.gov/wildlife/deer/plantings/> (accessed June 5, 2023) (explaining that “[p]lanting forage for deer is a popular activity among many hunters and landowners in Virginia,” that “[f]ood plots are valuable for attracting deer, turkeys, rabbits, and other wildlife to specific areas for hunting or viewing,” and that “[p]lanting food plots is not considered baiting, so deer can legally be harvested in food plots”).

27. Mr. Highlander’s food plot is located about 150 yards from his house behind the woods shown in the picture in paragraph 23 above. The path shown on the left side of the picture leads to Mr. Highlander’s food plot.

28. Prior to April 8, 2023, Mr. Highlander had a camera mounted on a pole in the center of his food plot that he used to monitor the land and wildlife. The camera was motion-activated and took thousands of photos while it was up.

29. The camera was manufactured by a company called Reveal by Tactacam. The company offers subscription plans that wirelessly upload and store customers' photos online. Until the events giving rise to this lawsuit, Mr. Highlander had a monthly subscription for the camera in his food plot. Because he no longer has use and possession of his camera, he has since canceled that subscription.

30. Mr. Highlander has never harvested a deer on his property, and has not even attempted to shoot a deer on his property within at least the past year.

31. Mr. Highlander values and expects privacy on his entire property—including control over who can enter it—for several reasons.

32. First, Mr. Highlander does not want strangers sneaking around his property and having access to his family, including his children when they are playing out in the yard or in the surrounding woods.

33. Second, Mr. Highlander does not want strangers hiding nearby when he is out walking the property with his family or friends, when he could be

having intimate conversations (about family affairs, finances, religion, politics, or anything else) that he would not want others overhearing.

34. Third, Mr. Highlander does not want strangers sneaking around while he is hunting, which is extremely dangerous for everybody involved and could result in somebody getting accidentally shot.

35. Because Mr. Highlander values and expects privacy on his entire property, one of the first things he did when he bought the property in 2019 was post 100 “no trespassing” signs at regular intervals (about every 20 feet) on the trees along his property line.

36. These “no trespassing” signs are clearly visible and there is no way that anybody could enter Mr. Highlander’s property from any side without seeing them.

37. This is an accurate photo of one of the signs that is currently posted along Mr. Highlander’s property line (the signs are all identical):



38. Mr. Highlander uses “no trespassing” signs because Virginia law recognizes them as a legally sufficient way to exclude unwanted intruders. *See* Va. Code Ann. §§ 18.2-119, -134.1.

39. If Virginia law changed, and something more was legally required for Mr. Highlander to exclude unwanted intruders from his property, he would take those steps.

DWR has a policy and practice of warrantless searches and seizures.

40. Virginia regulates hunting. Va. Code Ann. § 29.1-501; DWR, *Hunting & Trapping in Virginia*, <https://dwr.virginia.gov/wp-content/uploads/media/2022->

2023-Virginia-Hunting-and-Trapping-Regulations-Digest.pdf (collecting hunting regulations) (accessed June 5, 2023).

41. For example, hunters may only take deer and turkey during certain seasons, using certain weapons, and in certain quantities. *See* 4 Va. Admin. Code §§ 15-90-10 *et seq.*, 15-240-10 *et seq.*

42. Violating these and most other hunting laws and regulations is a Class 3 misdemeanor punishable by a \$500 fine. Va. Code Ann. §§ 29.1-521(D), 18.2-11(c).

43. DWR deploys conservation police officers throughout Virginia to enforce the state's hunting laws and regulations. Va. Code Ann. §§ 29.1-109, -200.

44. DWR officers "patrol the vast and diverse geographical expanses of the Commonwealth" in order to "enforc[e] the laws related to hunting, fishing, and boating." DWR, *Virginia Conservation Police*, <https://dwr.virginia.gov/conservation-police/> (accessed June 5, 2023).

45. As part of its "patrol[s]," DWR has a longstanding policy and practice of entering posted private land without the owner's consent, a warrant, or even probable cause, to search around for evidence of potential hunting violations.

46. As part of its “patrol[s],” DWR has a longstanding policy and practice of placing surveillance cameras on posted private land without the owner’s consent, a warrant, or even probable cause, to search for evidence of potential hunting violations.

47. As part of these “patrol[s],” DWR has a longstanding policy and practice of seizing privately owned cameras from posted private land without the owner’s consent, a warrant, or even probable cause, to search for evidence of potential hunting violations.

48. DWR’s policy and practice of camera seizures also includes a policy and practice of accessing photos physically stored on those cameras without the owner’s consent, a warrant, or even probable cause, and of attempting to use the photos against the owner in criminal investigations and prosecutions.

49. DWR does not place any constraints on its officers’ discretion to enter private posted land, to seize cameras from that land, or to access photos physically stored on those cameras. DWR does not, for example, limit the timing, frequency, duration, or scope of its officers’ entries or camera seizures, nor does DWR require its officers to obtain approval from a supervisor (or anybody else)

before entering private posted land, seizing a camera from that land, or accessing photos physically stored on that camera.

50. In other words, DWR gives its officers complete, unilateral authority to decide whose property to enter, when to enter it, whose cameras to seize and search, and when to seize and physically search them.

51. DWR's policy and practice described above is widespread, ongoing, and will continue until a court orders otherwise.

DWR entered Mr. Highlander's property, seized his camera, and searched it—all without a warrant.

52. Mr. Highlander has never been cited, convicted, or even accused of committing a hunting offense.

53. On April 8, 2023, Mr. Highlander harvested a turkey on his property at around 7:45am. He shot the turkey near his property line, hundreds of yards away from his food plot.

54. It was legal for Mr. Highlander to harvest the turkey because it was the first day of Virginia's spring turkey hunting season, he shot the turkey before noon, he properly logged the turkey using DWR's Go Outdoors mobile app, and he only harvested one turkey that day (the daily bag limit). *See DWR, Hunting & Trapping in Virginia*, at 26, 47.

55. Regardless, later that day, three DWR officers—Krista Adams, Zach Howlett, and Bonnie Braziel (“the officers”)—entered Mr. Highlander’s property without his consent and seized the camera that was mounted in the center of his food plot. The officers did not have a warrant to enter Mr. Highlander’s land or to seize his camera.

56. The officers entered Mr. Highlander’s property at around 2:45pm, seven hours after he had stopped hunting turkey and almost three hours after the window to hunt turkey had closed.

57. Earlier in the day, Rob Jr. was out hunting turkey on a private farm in Charles City County, and Rob Sr. was out hunting turkey on a private farm in New Kent County. Rob Jr. manages both properties, and all three Highlanders (Mr. Highlander, his brother, and his father) have the owner’s permission to hunt on both properties.

58. Like Mr. Highlander’s property, the properties on which his brother and father were hunting were posted all around with “no trespassing” signs and had legal food plots on them.

59. On March 22 and 23, following USDA-recommended farming practices, Mr. Highlander’s brother and father bush-hogged all three food plots

and then used a tractor (and later a truck, after the tractor unexpectedly broke down) to broadcast millet seed over the food plots. Mr. Highlander, his brother, and his father have traditionally replenished their food plots with fresh seed around this time every spring. That is how they maintain their established food plots.

60. On April 8, 2023, before the DWR officers went to Mr. Highlander's property, the officers entered the properties on which Mr. Highlander's brother and father were hunting and seized at least three cameras in which he has an ownership interest. The officers did not have consent or a warrant to enter either of these properties or to seize the cameras.

61. While the officers were on the property where Rob Jr. was hunting, they issued him a ticket for allegedly hunting turkey over bait, Va. Code Ann. § 29.1.521(A)(4)—an offense Rob Jr. denies committing and is actively contesting.

62. Rob Sr. was not issued a ticket on April 8, 2023, or on any later date.

63. After the DWR officers left the properties on which Rob Jr. and Rob Sr. were hunting, the officers next decided to target Mr. Highlander. The officers' only basis for deciding to visit Mr. Highlander's property on April 8, 2023, was

that they believed he owned a food plot that was similar to the (legal) food plot on the property where Rob Jr. had been hunting earlier that day.

64. To reach Mr. Highlander's property, the officers drove their DWR trucks to the Shirley Commons subdivision and parked in a cul-de-sac just a few hundred yards from Mr. Highlander's property line.

65. The officers put on full camouflage outfits, including "leafy jackets" to blend into Mr. Highlander's woods, and walked through a private parcel (not owned by Mr. Highlander) until they reached his property line.

66. The officers crossed Mr. Highlander's property line—walking right past his clearly visible "no trespassing" signs—and patrolled the property until they found his food plot.

67. The officers then seized Mr. Highlander's camera—physically removing it from the pole to which it was mounted—and then walked out of Mr. Highlander's property back to their trucks.

68. At some point while the officers were on Mr. Highlander's property, one of the officers was visible from the part of Mr. Highlander's yard where his children play.

69. At that time, Mr. Highlander's wife and 6 year old son were out playing basketball when Mr. Highlander's wife spotted one of the DWR officers (to her, a stranger) walking in their woods wearing full camouflage.

70. The red circle in this photo accurately depicts the opening in the woods through which Mr. Highlander's wife saw the DWR officer:



71. Mr. Highlander's wife and son ran inside and his wife told him— while he was showering—that there was a stranger in the woods. But when Mr. Highlander went outside to look, the DWR officers had left.

72. Mr. Highlander later walked out to his food plot and noticed that his camera was missing from the pole in the center of the plot.

73. Because Mr. Highlander did not personally see DWR officers seize his camera, he first called the New Kent County sheriff's office and reported the camera stolen.

74. The next day, however, New Kent County sheriff's deputy Brittany Laprade informed Mr. Highlander that DWR was in possession of his camera, and that the matter was therefore out of her office's hands. Ms. Laprade also stated that DWR told her Mr. Highlander "would get a call from DWR by the end of the week." Over eight weeks later, Mr. Highlander has still not received a call from DWR.

75. No DWR officer obtained Mr. Highlander's consent or a warrant to enter his property on April 8, 2023.

76. No DWR officer has obtained Mr. Highlander's consent or a warrant to enter his property on any occasion.

77. A law enforcement officer who obtains a warrant is required to "give a copy of the search warrant and affidavit to the person to be searched or the owner of the place to be searched" and to do so "prior to undertaking any search or seizure pursuant to the search warrant." Va. Code Ann. § 19.2-56.

78. No DWR officer showed Mr. Highlander a warrant or affidavit to search or seize any of his property on April 8, 2023.

79. No DWR officer has ever shown Mr. Highlander a warrant or affidavit to search or seize any of his property.

80. A law enforcement officer “who seizes any property [pursuant to a warrant] shall prepare an inventory thereof, under oath” and “inventory of any seized property shall be produced before the circuit court of the county or city where the search was conducted.” Va. Code Ann. § 19.2-57. Further, “the officer executing the warrant shall endorse the date of execution thereon and the officer or his designee shall file the warrant, with the inventory attached . . . within three days after the execution of such search warrant in the circuit court clerk’s office, wherein the search was made, as provided in § 19.2-54.” *Id.*

81. Since DWR’s search and seizure of Mr. Highlander’s property on April 8, 2023, no DWR officer has filed a warrant or inventory of property seized in New Kent County (where Mr. Highlander lives and the search occurred) related to the incident.

82. DWR remains in possession of the camera its officers seized from Mr. Highlander’s property, plus the other three cameras they seized earlier in the

day from the properties on which Mr. Highlander's brother and father were hunting.

83. After the DWR officers seized the camera from Mr. Highlander's property, Defendant Adams physically opened the camera and removed the storage card in order to access photos on the card. On information and belief, Adams then downloaded copies of thousands of photos from Mr. Highlander's camera, stored them on her computer, and has been reviewing the photos to see if she can find any evidence that Mr. Highlander has violated any hunting law or regulation.

84. In other words, Defendant Adams seized Mr. Highlander's camera without a warrant and has been effectively using that camera to retroactively spy on Mr. Highlander.

85. After seizing Mr. Highlander's camera, opening it, removing its storage card, and downloading photos from the card, Defendant Adams obtained a search warrant directed to Reveal by Tactacam—the company that made the camera and that hosts online photo storage for its customers—for any additional photos associated with Mr. Highlander's camera.

86. Again, no DWR officer ever sought or obtained a warrant to enter Mr. Highlander's property on April 8, 2023, to seize his camera, or to physically search his camera.

INJURY TO PLAINTIFF

87. Defendants' warrantless searches and seizures of Mr. Highlander's land and camera have invaded his property and privacy rights and have reduced his ability to use and enjoy his land in peace.

88. DWR's policy and practice of warrantless searches have deprived Mr. Highlander of his right to exclude unwanted intruders from his land.

89. DWR's warrantless seizure on April 8, 2023, and ongoing policy and practice of warrantless seizures have deprived Mr. Highlander of his ability to control the possession and use of his personal property—the camera that was seized, his private photos, and any future camera that he chooses to put up.

90. Defendants' warrantless search on April 8, 2023, and ongoing policy and practice of warrantless searches have made it impossible for Mr. Highlander and his family to enjoy the full degree of privacy from intruders that they expect on their land. Mr. Highlander's son, for example, was afraid for several weeks to

play outside in the family's yard and woods alone because DWR officers might be watching.

91. Mr. Highlander and his family (his wife and two young children) now experience anxiety over the fact that DWR officers can sneak around their property and spy on them whenever the officers please.

92. Mr. Highlander has refrained from replacing the camera that DWR officers seized from his food plot because he has no way to prevent the officers from simply entering his land and taking the next one he puts up.

93. Mr. Highlander has also refrained from replacing the camera that DWR officers seized from his food plot because he fears that DWR will again use his own camera to spy on him.

94. Mr. Highlander wants to continue hunting on his land but is now hesitant to do so because there is no way for him to know if DWR officers are sneaking around, and he does not want to accidentally shoot a DWR officer simply because he was unaware of the officer's presence.

95. Unless DWR's policy and practice of warrantless searches and seizures is declared unconstitutional and permanently enjoined, Defendants will continue to conduct warrantless searches and seizures of Mr. Highlander's land

and cameras (if not other property), and he and his family will continue to suffer the injuries described above.

LEGAL CLAIMS

Claim I

Article I, Section 10 of the Virginia Constitution Unreasonable Camera Seizures

96. Plaintiff incorporates paragraphs 1–95 as if fully set forth below.
97. Art. I, § 10 provides: “That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”
98. Art. I, § 10 forbids unreasonable seizures of private property.
99. Warrantless seizures are always unreasonable unless a historically recognized exception to the warrant requirement applies.
100. Defendants seized Mr. Highlander’s camera without a warrant and no historical exception applies.
101. Separately, seizures conducted without probable cause are always unreasonable.

102. Defendants seized Mr. Highlander's camera without probable cause to believe that he had violated any law or regulation.

103. Separately, seizures conducted without any meaningful constraints on the seizing officer's discretion are always unreasonable.

104. Defendants' policy and practice of warrantless seizures places no meaningful constraints on the seizing officer's discretion, and that was true when Defendants seized Mr. Highlander's camera.

105. For any of these reasons, Defendants' seizure of Mr. Highlander's camera was unreasonable and violated Art. I, § 10.

106. Because the camera seizure was unconstitutional, Defendants must immediately return Mr. Highlander's camera, return or destroy any fruits of the warrantless seizure (photos, notes, etc.), and suppress their use as evidence. *See* Va. Code Ann. § 19.2-60 ("A person aggrieved by an allegedly unlawful search or seizure may move the court to return any seized property and to suppress it for use as evidence.").

107. Unless Defendants' policy and practice of warrantless seizures is declared unconstitutional and permanently enjoined, Mr. Highlander and his family will suffer continuing and irreparable harm.

Claim II
Article I, Section 10 of the Virginia Constitution
Unreasonable Camera Searches

108. Plaintiff incorporates paragraphs 1–95 as if fully set forth below.

109. Art. I, § 10 provides: “That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”

110. Art. I, § 10 forbids unreasonable searches of private property.

111. Warrantless searches are always unreasonable unless a historically recognized exception to the warrant requirement applies.

112. Defendants searched Mr. Highlander’s camera when they physically opened it, removed its storage card, and downloaded photos from the card in order to obtain information.

113. Defendants searched Mr. Highlander’s camera when they physically opened it, removed its storage card, and downloaded photos from the card in a way that violated his reasonable expectation of privacy.

114. Defendants searched Mr. Highlander's camera without a warrant and no historical exception applies.

115. Separately, searches conducted without probable cause are always unreasonable.

116. Defendants searched Mr. Highlander's camera without probable cause to believe that he had violated any law or regulation.

117. Separately, searches conducted without any meaningful constraints on the searching officer's discretion are always unreasonable.

118. Defendants' policy and practice of warrantless searches places no meaningful constraints on the searching officer's discretion, and that was true when Defendants searched Mr. Highlander's camera.

119. For any of these reasons, Defendants' search of Mr. Highlander's camera was unreasonable and violated Art. I, § 10.

120. Because the camera search was unconstitutional, Defendants must immediately return Mr. Highlander's camera, return or destroy any fruits of the warrantless search (photos, notes, etc.), and suppress their use as evidence. *See* Va. Code Ann. § 19.2-60 ("A person aggrieved by an allegedly unlawful search or

seizure may move the court to return any seized property and to suppress it for use as evidence.”).

121. Because the camera search was unconstitutional, Mr. Highlander is entitled to nominal damages (\$1) from Defendants Adams, Howlett, and Braziel. *See* Va. Code Ann. § 19.2-59 (“Any officer or person violating the provisions of this section [by searching property without a warrant] shall be liable to any person aggrieved thereby in both compensatory and punitive damages.”).

122. Unless Defendants’ policy and practice of warrantless searches is declared unconstitutional and permanently enjoined, Mr. Highlander and his family will suffer continuing and irreparable harm.

Claim III
Article I, Section 10 of the Virginia Constitution
Unreasonable Searches of Posted Property

123. Plaintiff incorporates paragraphs 1–95 as if fully set forth below.

124. Art. I, § 10 provides: “That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”

125. Art. I, § 10 forbids unreasonable searches of private property.

126. Warrantless searches are always unreasonable unless a historically recognized exception to the warrant requirement applies.

127. Defendants searched Mr. Highlander's property when they entered it in order to obtain information.

128. Defendants searched Mr. Highlander's property when they entered it in a way that violated his reasonable expectation of privacy.

129. Defendants searched Mr. Highlander's property without a warrant and no historical exception applies.

130. Separately, searches conducted without probable cause are always unreasonable.

131. Defendants searched Mr. Highlander's property without probable cause to believe that he had violated any law or regulation.

132. Separately, searches conducted without any meaningful constraints on the searching officer's discretion are always unreasonable.

133. Defendants' policy and practice of warrantless searches places no meaningful constraints on the searching officer's discretion, and that was true when Defendants searched Mr. Highlander's property.

134. For any of these reasons, Defendants' search of Mr. Highlander's property was unreasonable and violated Art. I, § 10.

135. Because the search that led to Defendants' camera seizure was unconstitutional, Defendants must immediately return Mr. Highlander's camera, return or destroy any fruits of the warrantless searches (photos, notes, etc.), and suppress their use as evidence. *See* Va. Code Ann. § 19.2-60 ("A person aggrieved by an allegedly unlawful search or seizure may move the court to return any seized property and to suppress it for use as evidence.").

136. Unless Defendants' policy and practice of warrantless searches is declared unconstitutional and permanently enjoined, Mr. Highlander and his family will suffer continuing and irreparable harm.

137. Mr. Highlander acknowledges the Virginia Supreme Court has held that Art. I, § 10 does not protect land located "away from the dwelling house and curtilage." *McClannan v. Chaplain*, 116 S.E. 495, 497 (Va. 1923). But *McClannan*—a century-old decision that flouts Art. I, § 10's textual protection for "places," the framers' and ratifiers' historical aversion to unconstrained searches of private property, and the common law—was wrongly decided and should be overruled.

Mr. Highlander therefore brings this claim to raise “a good faith argument for . . . reversal of existing law.” Va. S. Ct. R. 3.1.

138. In the alternative, even if the Court holds that Art. I, § 10 does not protect the right to be free from warrantless (or unreasonable) searches, there are other provisions in the Virginia Constitution that reserve and protect the same right. Art. I, § 17 states: “The rights enumerated in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed.” And Art. I, §§ 1 & 11 recognize an “inherent” and “fundamental” right to private property, including land. These provisions reserve and protect landowners’ fundamental right to be secure from warrantless (or unreasonable) searches.

REQUEST FOR RELIEF

Plaintiff requests the following relief:

A. A judgment declaring that Defendants’ warrantless search of Plaintiff’s land, warrantless seizure of his camera, and warrantless search of his camera violated the Virginia Constitution;

B. A judgment declaring that Defendants’ policy and practice of warrantless searches of posted private land, warrantless camera seizures, and warrantless camera searches, violates the Virginia Constitution;

C. An order enjoining Defendants to return Plaintiff's camera under Va. Code Ann. § 19.2-60, or through the Court's equitable power to enforce Plaintiff's constitutional rights;

D. An order enjoining Defendants to return or destroy any photos they have accessed, including any notes they have created based on those photos, and to suppress their use as evidence under Va. Code Ann. § 19.2-60, or through the Court's equitable power to enforce Plaintiff's constitutional rights;

E. Nominal damages (\$1) against Defendants Adams, Howlett, and Braziel, under Va. Code Ann. § 19.2-59 for searching Plaintiff's camera without a warrant;

F. A permanent injunction barring Defendants from searching Plaintiff's land, seizing his cameras, or searching his cameras without his consent or a warrant moving forward;

G. An award of Plaintiff's cost and expenses;

H. Any further relief this Court deems just and proper.

Respectfully submitted this 7th day of June, 2023,



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**Pro hac vice applications to be filed*