

**IN THE COMMONWEALTH OF VIRGINIA
IN THE CIRCUIT COURT OF HENRICO COUNTY**

JAMES MEDEIROS, MAURICIO
TOVAR, BLUE WING LLC, and
ROBERT PIERCE,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
WILDLIFE RESOURCES,

Defendant.

No. _____

**PETITION
FOR DECLARATORY
JUDGMENT AND THE
IMPANELING OF A
JURY FOR THE
DETERMINATION OF
JUST COMPENSATION**

James Medeiros, Mauricio Tovar, Blue Wing LLC, and Robert Pierce (“Blue Wing” and, collectively, “Plaintiffs”) each own properties in the Commonwealth of Virginia (“Commonwealth”) that are posted with “No Trespassing” signs, which properties have been overrun frequently by hunting dogs and their owners.¹ The dogs run loose and loudly on Plaintiffs’ properties, disturbing the peace of their private homes, agricultural uses, and leased hunting cabins, chasing deer and presenting a safety risk to Plaintiffs’ clients, livestock, and families.

¹ Robert Pierce is a member of Blue Wing LLC’s corporate board. He tends and operates the property owned by Blue Wing LLC.

These invasions occur because of Virginia's "right to retrieve" law, Va. Code § 18.2-136, which takes from Virginians their right to decide who may enter their property, at what times, and under what conditions.

The invading hunters act largely without permission and in flagrant disregard for the "No Trespassing" signs posted on each of the Plaintiffs' properties. Virginia Code § 18.2-136 ("Right to Retrieve Law") gives hunters the special privilege to enter private land when carrying on a hunt for foxes or coons with dogs, and to also physically retrieve their dogs when hunting for any type of game, including deer. The constitutions of both Virginia and the United States regard the right to exclusive ownership of property as fundamental. The Right to Retrieve Law robs Mr. Medeiros, Mr. Tovar, Blue Wing, Mr. Pierce, and all other Virginians of their right to exclude hunters and their dogs from private property.

It is well settled that when property is taken for a public use, including a grant of access in favor of a preferred group, the government must pay just compensation for the value of the property interest taken. *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2074 (2021). The Commonwealth's enforcement arm for this law, the Department of

Wildlife Resources, therefore, must pay the constitutionally mandated just compensation owed to Plaintiffs for the damage and diminution in value resulting from the confiscation of their rights to exclude hunters and dogs from their private lands.

CONCISE STATEMENT OF THE CASE

1. Virginia's Right to Retrieve Law, codified under Virginia Code § 18.2-136, has taken the above-named Plaintiffs' right to exclude hunters and their dogs from their private properties, which right of exclusion is a fundamental attribute of property ownership.

2. Plaintiffs bring this Petition for Declaratory Judgment and pray for relief in the form of (1) a judgment declaring that Virginia's "right to retrieve" law works an uncompensated physical taking of their property in violation of Article I, § 11 of the Virginia Constitution and the Fifth Amendment to the United States Constitution as applied against the Commonwealth through the Fourteenth Amendment to the U.S. Constitution; (2) the impaneling of a jury to determine the measure of just compensation; and (3) all appropriate attorneys' fees and costs.

JURISDICTION & VENUE

3. This Court has subject-matter jurisdiction over Plaintiffs' petition for a declaratory judgment pursuant to Va. Code § 8.01-184 and the demand for constitutional just compensation for a taking pursuant to Va. Code § 8.01-187, Va. Const. art. I, § 11, and U.S. Const. amends. V, XIV.

4. Venue is proper in this Court pursuant to Virginia Code § 8.01-261, as the Department is an agency of the Commonwealth and is headquartered in Henrico County, Virginia, at 7870 Villa Park Drive, No. 400, Richmond, VA 23228.

PARTIES

Plaintiffs

5. Plaintiffs are a group of private landowners, some of whom are hunters themselves, or use and lease their own land for hunting, who have suffered repeated and routine invasions of their properties authorized by Virginia's Right to Retrieve Law and seek compensation for the deprivation of their right to exclude interloping hunters from their lands.

6. **James Medeiros** and his family own approximately 143 acres of real property located in Dinwiddie County at 5301 White Oak Road in Wilsons, Virginia 23894 whereon they reside in a private home (hereinafter “Medeiros Property”).

7. The Medeiros Property is posted with “No Trespassing” signs around its perimeter everywhere it borders a wooded area and conspicuously at the entrance to its private driveway.

8. Mr. Medeiros and his family operate numerous agricultural and other business ventures on the Medeiros Property, including a sawmill, dairy farm, poultry farm, and honey-gathering operation marketed under the brand White Oak Meadows.

9. Because of Mr. Medeiros’s business ventures, he keeps on this property between 700 and 1,000 free-ranging layer and broiler chickens, approximately 55 head of cattle, used for milk and USDA-certified grass-fed beef, 15 beehives, and 150 guinea hens used for natural pest control.

10. The broiler chickens and grass-fed cattle are pastured on the property, requiring the animals regularly to be rotated through the various pasture and wooded sections of the property.

11. To Mr. Medeiros' knowledge, none of the property owners neighboring the Medeiros Property within a half-mile own dogs.

12. **Robert Pierce** operates approximately 1,100 acres of real property in Halifax County located at 5223 Virgilina Highway, Virgilina, VA 24598 (hereinafter "Blue Wing Property"), which is posted with "No Trespassing" signs. The property is owned by Plaintiff Blue Wing LLC.

13. Mr. Pierce acquired the Blue Wing Property in April of 1994 and operates 1,026 acres of it predominately as a recreational hunting area through Blue Wing LLC.

14. The Blue Wing Property contains a hunting cabin, 39 hunting blinds, and is leased to guests for the purpose of hunting deer, quail, rabbit, and turkey.

15. The Blue Wing Property has two miles of frontage on Virgilina Highway and 11 gates that control ingress and egress for the property.

16. **Blue Wing LLC** is a corporation incorporated in the Commonwealth of Virginia. It owns the 1,100 acres of real property in Halifax County located at 5223 Virgilina Highway, Virgilina, VA 24598. Plaintiff Robert Pierce is a member of the governing board for Blue Wing LLC and operates the Blue Wing Property.

17. In addition to leasing land for hunting purposes, Blue Wing LLC conducts business on the Blue Wing Property as a Certified Tree Farm, exercising sustainable forestry best management practices, including a Long Leaf Pine restoration project.

18. Blue Wing LLC also maintains 20 miles of hiking and horseback riding trails for use by its members and a 500-yard rifle range. There are “Keep-Out / Guns in Use” signs along its perimeter.

19. **Mauricio Tovar** owns approximately 30 acres of real property in Chesterfield County located at 15421 River Road, Chesterfield, VA 23838 (hereinafter “Tovar Property”) where he lives with his wife and four children.

20. The property is posted with “No Trespassing” signs, including signs that are conspicuously visible to drivers entering the property through its private drive from the adjacent street.

21. Mr. Tovar also has his own hunting dog named Jack that lives on the Tovar Property. Jack, unlike the dogs that routinely overrun the Tovar property during hunting season, is well trained to recall. Mr. Tovar does not allow Jack to run free on others’ private property.

22. The Tovar Property contains a family home, barn, horse pasture, and horse-riding ring.

23. Mr. Tovar uses the barn's 10 horse stalls and the horse-riding ring for his horse-boarding business, which is often disrupted during the hunting season by interloping hunting dogs.

24. The barn also contains a coop for approximately 12-18 chickens, which are pasture-fed and free-ranged on the Tovar Property.

25. Since 2019, when Mr. Tovar purchased the property, dogs have been a repeated invasive nuisance on the Tovar Property during Virginia's deer-hunting season between October and January.

26. The dogs run through the Tovar Property, including into the horse-riding ring and chase the chickens near the family home, presenting a threat to the health and safety of Mr. Tovar, his family, his clients, and anyone else working with horses on the property during hunting season.

27. Mr. Tovar is concerned over the risk of liability that a hunting dog causes a horse-related incident involving a client and the cost of time spent rounding up dogs on his property.

28. Typically, during a hunting season, hunters enter the property not less than three times without permission, despite the property's "No Trespassing" signs, to retrieve their dogs. The dogs themselves are a regular and routine menace during hunting seasons.

29. Mr. Tovar recognizes the dogs as hunting dogs because of their breeds and distinctive orange collars, and the hunters as hunters by their orange hats, other apparel, and accoutrement, including dog boxes in the backs of their trucks.

30. Hunters entering the property to retrieve their dogs have told Mr. Tovar that they have the right under Virginia law to do so, even without his permission.

Defendant

31. The **Virginia Department of Wildlife Resources** (hereinafter "Department") is a department of the Commonwealth responsible for the regulation of hunting within the Commonwealth and enforcement of the laws and regulations of the Commonwealth and Department respecting hunting, including but not limited to Va. Code § 18.2-136.

32. On information and belief, the Department's Law Enforcement Division has responsibility for dealing with hunting-dog-related complaints and employs over 100 conservation police officers for dealing with those complaints.

33. The Virginia Code provides that "[a]ll sheriffs, police officers or other peace officers of this Commonwealth shall be ex officio conservation police officers[,]" Va. Code § 29.1-202, "[c]onservation police officers shall have jurisdiction throughout the Commonwealth to enforce the hunting, trapping and inland fish laws[,]" Va. Code § 29.1-203(A), and "conservation police officers shall assist the Director [of the Department] in discharging his official duties." Va. Code § 29.1-204.

CONCISE STATEMENT OF DISPOSITIVE FACTS

34. Plaintiffs reallege, adopt, and incorporate by reference the foregoing paragraphs as though fully set forth herein.

35. Plaintiffs own properties located respectively in Dinwiddie County, Chesterfield County, and Halifax County, Virginia.

36. All of Plaintiffs' properties are conspicuously marked with "No Trespassing" signs.

37. Virginia's Right to Retrieve Law grants "[f]ox hunters and coon hunters" a statutory right to enter Plaintiffs' properties in pursuit of game with their hunting dogs "when the chase begins on other lands." Va. Code § 18.2-136.

38. The Right to Retrieve Law also grants "hunters of all other game" the statutory power to enter Plaintiffs' properties "to retrieve their dogs." Va. Code § 18.2-136.

39. Under the Right to Retrieve Law, hunters "can lawfully retrieve dogs even when access has been expressly denied by the landowner." Virginia Department of Game and Inland Fisheries, *A Report on Deer Hunting with Dogs* 3 (Jan. 2016) (Department of Game and Inland Fisheries subsequently renamed Virginia Department of Wildlife Resources), available at <https://dwr.virginia.gov/wp-content/uploads/deer-hunting-with-dogs.pdf>.

40. Defendant, the Virginia Department of Wildlife Resources, is responsible for the enforcement of the Right to Retrieve Law.

41. Plaintiffs have each suffered repeated invasions of their private properties by hunters and hunting dogs since they have owned and operated their separate properties whereby hunting dogs run loose

on their properties and hunters enter their properties to follow and to collect their dogs. For each Plaintiff, these invasions have occurred as recently as this past deer-hunting season in Virginia.

42. Plaintiffs have suffered a diminution in the value of their properties by having their right to exclude hunters and their hunting dogs from their private properties.

43. On March 15, 2022, Plaintiffs mailed a letter to Ryan Brown, the Executive Director of the Department of Wildlife Resources, demanding that the Department initiate condemnation proceedings concerning their properties for the value and interest taken by the continued enforcement of the Right to Retrieve Law. *See* Exhibit 1.

44. The Department responded to that letter, declining to initiate condemnation proceedings or otherwise provide for the payment of just compensation to which Plaintiffs are constitutionally entitled. *See* Exhibit 2.

FACTUAL ALLEGATIONS

The Medeiros Property

45. Plaintiffs reallege, adopt, and incorporate by reference the foregoing paragraphs as though fully set forth herein.

46. The Medeiros Property has been subject to repeated invasions by hunters and their dogs acting under color of lawful authority according to Va. Code § 18.2-136 since Mr. Medeiros acquired the property. These invasions have occurred as recently as Virginia's past deer-hunting season.

47. During the first deer-hunting season following Mr. Medeiros' acquisition of the property, he and his wife were alarmed by the sight and sound of approximately 20 hunting dogs circling their house, chasing their chickens and baying loudly.

48. When Mr. Medeiros confronted a hunter standing nearby wearing an orange cap, the hunter informed him that "we [the local hunting club] have permission to hunt this property."

49. Then-Lieutenant Scott Naff of the Virginia Department of Wildlife Resources, with whom Mr. Medeiros spoke the following week, informed Mr. Medeiros that the Virginia Code's Right to Retrieve Law allowed hunters access to the Medeiros Property at the hunters' discretion to send and retrieve their dogs and that there was nothing Mr. Medeiros or the Department could do about it.

50. The intrusions on the Medeiros Property have continued predictably each deer-hunting season between October and January when hunting dogs enter the property, disturb the cattle, run loose through the pastures where the Medeiros' animals feed. The dogs bark and howl loudly around the Medeiros' private home, and kill their chickens.

51. Mr. Medeiros recognizes the dogs as hunting dogs according to their orange collars, breeds, and the hunters wearing orange caps, camouflage, and other accoutrement of recreational hunting, sometimes including firearms, who enter the Medeiros Property to retrieve them.

52. Hunters' dogs enter the Medeiros Property without leave on most days during hunting season often including multiple dogs, multiple times per day.

53. Mr. Medeiros notices hunters entering his property to retrieve their dogs approximately five times each hunting season since he has owned the property, but more unauthorized entries likely occur without notice.

54. Three specific instances stand out among these regular invasions of the Medeiros Property:

55. First, on or about November 24, 2021, Mr. Medeiros witnessed a hunter and his son, identified by their apparel, enter his property without permission or solicitation, and retrieve their hunting dog near the Medeiros home.

56. Mr. Medeiros confronted the pair as they were walking to their vehicle to leave after collecting the dog and the hunter confirmed that he was indeed a member of the local Diamond Hill Hunt Club.

57. Second, during the 2017 or 2018 deer-hunting season, Mr. Medeiros confronted a pair of hunters who had entered his property from nearby woods, past conspicuously posted “No Trespassing” signs, to retrieve a hunting dog.

58. The hunters were headed straight for his cattle pasture where the cattle had been bedded down for the night.

59. Not being able to eject them from his property, with the words of Lieutenant Naff in his mind, Mr. Medeiros directed them around his cattle pasture to retrieve the dog through a path that would not result in the spooking of his cattle.

60. Third, on or about December 11, 2021, Mr. Medeiros received a scheduled delivery of five head of cattle, including two bulls and three

steers that was unreasonably interrupted due to hunting dogs running loose on the Medeiros Property.

61. For approximately two hours, hunting dogs were running amidst the cattle pasture, disturbing the cattle grazing there and preventing Mr. Medeiros from having the newly delivered cattle unloaded from their trailer and introduced to the existing herd.

62. In the end, Mr. Medeiros was forced to leave the cattle trailer in the field with the newly acquired bulls and steers until the dogs were gone.

63. Attempting to shoo the dogs away from the cattle pasture and attempt to capture them so that the new cattle could be released required pulling staff from the sawmill operation at the Medeiros Property to deal with the nuisance.

64. Over the years, Mr. Medeiros has suffered losses by hunting dogs in the form of dead chickens, injured cattle, and disruptions to his family life and business operations.

The Tovar Property

65. The Tovar Property has been subject to repeated invasions by hunters and their dogs acting under color of lawful authority according

to Va. Code § 18.2-136 since Mr. Tovar acquired the property, including as recently as Virginia's past deer-hunting season.

66. During the 2020-2021 deer-hunting season, between the months of November and January, two hunting dogs entered the Tovar Property.

67. The dogs were identifiable as hunting dogs by their location-tracking collars.

68. The dogs entered the horse pasture on the Tovar Property, spooking the horses.

69. The dogs proceeded to the family home where two hunters wearing orange hats collected them from the property.

70. When confronted about keeping their dogs off the property, one of them suggested to Mr. Tovar that he ought to fence his property if he didn't want hunters and their dogs traversing it and spooking his horses.

71. Fortunately, no one was in the horse pasture or riding ring while the horses became spooked by the dogs.

The Blue Wing Property

72. The Blue Wing Property has been subject to repeated invasions by hunters and their dogs acting under color of lawful authority according to Va. Code § 18.2-136 since Blue Wing acquired the property, including as recently as Virginia's past deer-hunting season.

73. Hunters or their dogs running freely on the Blue Wing Property have disrupted hunts, cookouts, and other activities on the leased hunting property, presenting a safety threat and burden.

74. It has been a common practice of hunters that are not parties to any lease contract with Mr. Pierce or Blue Wing LLC to release their dogs on neighboring properties or the neighboring right-of-way fronting the Blue Wing Property, and then to follow and retrieve the animals on the Blue Wing Property, both in vehicles and on foot.

75. As a consequence of retrieving their dogs, hunters have driven deep ruts in the right-of-way fronting the Blue Wing Property as well as in the property's private drive(s).

76. Hunters have likewise pulled the posts from gates barring ingress and egress on the Blue Wing Property in the course of retrieving their dogs.

77. When confronted about being present on the Blue Wing Property with their dogs outside deer season, hunters have claimed to be hunting coyotes, but their dogs are observed freely chasing the deer on the property that Blue Wing's lessees pay for the privilege to hunt.

78. Mr. Pierce and Blue Wing LLC have lost clients as a result of the disruptive nature of dogs running freely across the Blue Wing Property.

79. The hunting dogs have become such a nuisance on the Blue Wing Property that Mr. Pierce has installed a kennel to house dogs that can be captured and kept awaiting retrieval by their owners.

80. Whenever a hunter requests permission from Mr. Pierce to retrieve his or her dog, Mr. Pierce has granted it. Nonetheless, hunters continue to invade the Blue Wing Property without seeking permission to enter.

The Commonwealth's Guidance regarding the Right to Retrieve Law has been inconsistent, leaving the rights and obligations of property owners and hunters unclear

81. A published opinion of the Virginia Attorney General and at least one ruling without a published opinion by a Virginia Circuit Court

have interpreted the Right to Retrieve Law to operate as merely an exception to criminal liability.

82. A 1964 Virginia Attorney General opinion states that the law does not effect a taking because it simply excepts certain “trespassers [from] criminal prosecution” while the confining statement “expressly reserves this civil remedy [for trespass] to the landowner.” Opinions of the Attorney General and Report to the Governor of Virginia 143 (1964). This was before that confining statement was excised from the law by the General Assembly. *See* 1988 Va. Acts 764, Va. Code § 18.2-136 (“Right of fox, coon, bear and deer hunters to go on lands of another[.]”).

83. In 2011, the Supreme Court of Virginia affirmed a Virginia Circuit Court ruling without opinion rejecting a claim that the Right to Retrieve Law effects an uncompensated taking of property in violation of the Commonwealth and Federal Constitutions. A petition for writ of certiorari was thereafter denied. *Polin v. Virginia*, 566 U.S. 938 (2012).

84. As noted above, a previous codification of the Right to Retrieve Law contained a confining statement specifying that it not “be construed to affect in any way the civil rights of a landowner as against trespassers against his property.” 1946 Va. Acts 575-76 (“An Act to amend and re-

enact Section 49, as amended, of the Game, Inland Fish and Dog Code of Virginia, relating to hunting, fishing or trapping on the property of another”). The separation of this language from the Right to Retrieve Law, and its ultimate deletion by the General Assembly from the Virginia Code, demonstrates that landowners no longer possess the civil remedy to eject hunters who enter private property without permission under color of the Right to Retrieve Law.

85. This understanding is bolstered by the experiences of Plaintiffs in their interactions with hunters who claim the privilege to enter their properties without permission.

86. Likewise, the present position of the Department is in conformity with this construction. In 2016, the Department published *A Report on Deer Hunting with Dogs*, in which it claimed that hunters “can lawfully retrieve dogs even when access has been expressly denied by the landowners.” *Id.* at 3.

87. Published opinions of the Virginia Attorney General subsequent to the 1964 opinion discussed above reflect a similar position. For example, a 1988 opinion states that the Right to Retrieve Law “authorizes these hunters, in the appropriate season, to follow their dogs

onto private or posted lands[.]” 1987-88 Va. Op. Att’y Gen. 261, 1988 WL 408961, at *2. A 1999 opinion describes the law as “provid[ing] that fox hunters engaged in a chase that originated on permitted land may follow their dogs onto prohibited land.” 1999 Va. Op. Att’y Gen. 109, 1999 WL 463381, at *3.

88. Whether the Right to Retrieve Law works as an exception to criminal liability or as a civil access privilege in the style of an easement is a matter of great public importance primed for declaratory review, since the practical effect of the law has been nonenforcement of Plaintiffs’ rights to exclude hunters and hunting dogs from their properties.

LEGAL CLAIM

The Right to Retrieve Law takes Plaintiffs’ right to exclude hunters from their properties without just compensation

89. Plaintiffs reallege, adopt, and incorporate by reference the foregoing paragraphs as though fully set forth herein.

90. The Right to Retrieve Law takes Plaintiffs’ property without compensation for a public use in violation of Article I, § 11 of the Virginia Constitution and the Fourteenth and Fifth Amendments to the United States Constitution.

91. Article I, § 11 of the Virginia Constitution provides “[t]hat the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use,” and “[n]o private property shall be damaged or taken for public use without just compensation to the owner thereof.”

92. The Fifth Amendment to the United States Constitution provides likewise that “private property [shall not] be taken for public use, without just compensation” and is incorporated against the Commonwealth of Virginia through the Fourteenth Amendment. U.S. Const. amend. V; *Chicago, Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226 (1897).

93. Plaintiffs maintain fundamental private property interests in their rights to exclusive ownership of their respective properties described in this Petition, *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982)) (“The right to exclude is ‘one of the most treasured’ rights of property ownership.”).

94. The Right to Retrieve Law “appropriates a right to physically invade [Plaintiffs’] property[,]” *Cedar Point*, 141 S. Ct. at 2074, for the

benefit of hunters and their dogs, thus effecting a physical taking *per se* for a public use within the meaning of *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), and *Cedar Point Nursery*, 141 S. Ct. 2063.

95. The Department is responsible for the enforcement of the Right to Retrieve Law, causing substantial damage and diminution in the value of Plaintiffs' properties, and is therefore in breach of the implied contract to pay compensation for takings of private property for the public's use. *See Kitchen v. City of Newport News*, 275 Va. 378, 384 (2008).

PRAYER FOR RELIEF

NOW THEREFORE,

1. Plaintiffs respectfully petition this Court for relief in the form of:
2. A judgment declaring that the Right to Retrieve Law takes Plaintiffs' private property without just compensation within the meaning of Article I, § 11 of the Virginia Constitution and the Fifth Amendment to the United States Constitution;
3. Upon such a finding, order the impaneling of a jury, pursuant to Virginia Code § 8.01-187, to determine just compensation in this case;

4. Order the award of all appropriate attorneys' fees and costs to Plaintiffs.

Dated: April 12, 2022.

Respectfully submitted,

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