
Medeiros v. Virginia Department of Wildlife Resources: A Fight for Property Rights

Description

Jim Medeiros lives and works on his rural farm in Wilsons, Virginia, which he posted with "no trespassing" signs to keep hunters and their dogs from disturbing his cattle, chicken, and family home. But he knew something was wrong when the hunting dogs started running freely and frequently across his property and hunters were traipsing brazenly across his pastures. This feeling was compounded when a conservation officer for the state Department of Wildlife Resources told him that because of Virginia's "Right to Retrieve Law," those hunters were allowed to openly enter his property, despite the no-trespassing signs and without his permission.

After a particularly fraught evening when a hunting dog slaughtered several of his chickens inside their coup, Jim decided enough was enough. After attempting unsuccessfully to convince the legislature to change the law, he joined with other Virginia landowners who have experienced difficulties with the Right to Retrieve Law and with the help of Pacific Legal Foundation, [filed a constitutional lawsuit](#) under the state and federal right to just compensation for takings of property.

Just last year, the Supreme Court ruled that when a law or regulation confiscates a person's right to exclude people who would otherwise be trespassers, the law or regulation takes a valuable and fundamental property right. Indeed, the "right to exclude," as the Court labeled it, is the very attribute of private property that makes property private. Thus, Jim and his fellow property owners [sued](#) the Virginia Department of Wildlife Resources for the value of that right that was taken from them.

The Right to Retrieve Law states that hunters "may follow their dogs on prohibited lands" to continue a hunt for foxes or raccoons and "may go upon prohibited lands to retrieve their dogs" when hunting other game. But the government quickly filed a motion to dismiss the case, arguing that the Right to Retrieve Law only decriminalizes trespassing rather than giving hunters a right to enter private land. A Virginia Circuit Court judge in Henrico County heard arguments on this motion in late August and entered an order dismissing the case shortly thereafter, agreeing with the government that the law does not grant access but only decriminalizes trespassing because the law is located in a portion of the Virginia Code devoted to crimes and offenses against the Commonwealth.

Yet, the text of the Right to Retrieve Law contains no language expressly limiting it to being a decriminalization and it has long been viewed and used as a civil right of access by hunters. Because the Virginia and U.S. constitutions require the payment of just compensation to landowners whose property rights have been taken for a public use, Jim and his fellow plaintiffs plan to appeal to the Virginia Court of Appeals.

So far, the ruling is better than none for rural Virginia property owners because it at least finds that trespassing by hunters is illegal, if not criminal. It remains to be seen whether this will affect the frequency of intrusions by hunters on Jim's and others' properties.



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