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To:

Pennsylvania Game Commission

2001 Elmerton Avenue
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**Mark Gritzer, in his official capacity as an officer of the
Pennsylvania Game Commission**

Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, PA 17110

Pennsylvania Office of Attorney General

Strawberry Square
Harrisburg, PA 17120

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PUNXSUTAWNEY HUNTING CLUB, INC.,
and PITCH PINE HUNTING CLUB, INC.,

Petitioners,

v.

PENNSYLVANIA GAME COMMISSION, and
MARK GRITZER, in his official capacity as an
officer of the Pennsylvania Game Commission,

Respondents.

No. _____

NOTICE

You have been sued. If you do not file a written response to the enclosed Petition for Review within thirty days of service, a judgment may be entered against you without further notice. You may lose important rights.

/s/ John DeSantis

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Respondents.

No. _____

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This is a constitutional challenge to three Pennsylvania statutes that grant Pennsylvania Game Commission officers virtually unchecked power to enter private land to search for evidence of potential state hunting offenses. *See* 34 Pa. C.S.A. §§ 303(c), 901(a)(2), 901(a)(8). The statutes do not require officers to seek an owner's consent before entering private land. They do not require officers to obtain a warrant. They do not even require officers to have probable cause. Instead, the Warrantless Entry Statutes allow officers to enter private land whenever they please, to roam for hours in a general search for evidence, to spy on landowners as they go about their private business, and, if officers choose to make their presence known, to stop and inspect landowners for compliance with Pennsylvania's hunting laws.

2. Petitioners Punxsutawney Hunting Club and Pitch Pine Hunting Club have experienced these warrantless intrusions firsthand. Between them, the clubs own thousands of acres of property in north-central Pennsylvania. The clubs are gated and posted throughout with No Trespassing signs. There are houses on the properties where club members stay when they visit. And yet, despite these clear marks of private ownership, wildlife officer Mark Gritzer has repeatedly entered and searched Petitioners' land for evidence of potential state hunting offenses—often stopping club members mid-hunt or while traversing the property to inspect them for compliance.

3. That is unconstitutional. Article I, Section 8 of the Pennsylvania Constitution protects Petitioners’ right to be “secure in their . . . possessions from unreasonable searches.” The original public meaning of “possessions” encompasses private land over which the owner has exercised control. And warrantless searches of constitutionally protected property are presumptively unreasonable. Therefore, the Warrantless Entry Statutes—which authorize warrantless searches of land over which Petitioners have exercised substantial control—violate Article I, Section 8, and any future warrantless searches under the Statutes must be permanently enjoined.

4. Petitioners acknowledge that the Pennsylvania Supreme Court has held that Article I, Section 8 does not protect private land outside the curtilage. *Commonwealth v. Russo*, 934 A.2d 1199, 1213 (Pa. 2007). But *Russo* was wrong: The majority’s textual, historical, caselaw, and policy analyses were deeply flawed (in part due to inadequate briefing on both sides). As a result, wildlife officers have a blank check to enter and search private land across Pennsylvania without any constitutional constraints on their conduct. Petitioners—who have suffered and will continue to suffer under this regime—intend to ask the Pennsylvania Supreme Court to overrule *Russo*.

JURISDICTION

5. Petitioners are suing under the Pennsylvania Constitution and the Declaratory Judgments Act, 42 Pa. C.S.A. § 7532.

6. This Court has original jurisdiction under 42 Pa. C.S.A. § 761(a) because Petitioners are suing a Commonwealth agency and an officer of that agency in his official capacity.

PARTIES

7. Petitioner Punxsutawney Hunting Club, Inc. (“Punxsutawney”) is an 81-member hunting club that owns 4,400 acres of private land in Clearfield County. Since at least 2013, the Pennsylvania Game Commission, through its wildlife officer Mark Gritzer, has entered and searched Punxsutawney’s land several times without the club’s consent or a warrant. Punxsutawney wants the warrantless searches to stop.

8. Petitioner Pitch Pine Hunting Club, Inc. (“Pitch Pine”) is a 50-member hunting club that owns 1,100 acres of private land in Clearfield County. Since at least 2013, the Pennsylvania Game Commission, through its wildlife officer Mark Gritzer, has entered and searched Pitch Pine’s land several times without the club’s consent or a warrant. Pitch Pine wants the warrantless searches to stop.

9. Respondent Pennsylvania Game Commission (the “Commission”) is the agency that enforces Pennsylvania’s hunting laws. 34 Pa. C.S.A. § 322(a). Since at least 2013, the Commission, through its wildlife officer Mark Gritzer, has entered and searched Petitioners’ land several times without Petitioners’

consent or a warrant. Those warrantless searches will continue indefinitely unless enjoined by this Court.

10. Respondent Mark Gritzer is a wildlife officer for the Commission. In his official capacity as a wildlife officer, Gritzer enforces Pennsylvania's hunting laws. 34 Pa. C.S.A. §§ 303(a), 901(a)(1). Since at least 2013, Gritzer has entered and searched Petitioners' land several times without Petitioners' consent or a warrant. Those warrantless searches will continue indefinitely unless enjoined by this Court.

FACTS

The Clubs Are Private Places

Punxsutawney Hunting Club

11. Punxsutawney is a private hunting club founded in 1919.
12. The club owns 4,400 acres of contiguous land in Clearfield County, and has since its founding.
13. There are five dwelling houses on the property clustered around a central "camp" area.
14. The club is managed by a seven-member board of directors elected from the club's membership.
15. The board's current president is Frank Stockdale.
16. All new club members must be approved by the board.
17. Club membership is capped at 90 individuals.

18. The club currently has 73 Class A (stockholding) members and 8 Class B (non-stockholding) members, all of whom have a right to use the property for hunting and lodging purposes consistent with the club's rules.

19. One of the club's main purposes is to provide a private place where members can visit to spend quality time with close friends and family.

20. To that end, Punxsutawney only allows members and their guests to enter the club.

21. All entrances to the club are gated and posted with clearly visible No Trespassing signs to keep out intruders. *See* 18 Pa. C.S.A. § 3503(b)(1)(ii) (a property owner can give "notice against trespass" by "posting in a manner . . . reasonably likely to come to the attention of intruders").

22. All club boundaries and internal paths are posted with clearly visible No Trespassing signs and clearly visible purple paint lines to keep out intruders. *See* 18 Pa. C.S.A. § 3503(b)(1)(ii), (vi) (a property owner can give "notice against trespass" by "the placement of identifying purple paint marks on trees or posts on the property").

23. Members of the public recognize that the club is private property and do not enter unless invited.

24. Club members hunt throughout the entire property, and over the years have built trails and tree stands to help them do so.

25. The club's rules are designed to ensure members' ability to hunt legally while enjoying privacy from unwanted intruders.

26. Club members value privacy while hunting because hunting—whether individually or in small groups—is a solitary activity that requires patience and concentration. Unwanted intruders can ruin a good hunt.

27. By rule, members must obey all laws, including all Pennsylvania hunting laws.

28. By rule, all exterior gates to the club must be kept closed at all times unless the board directs otherwise.

29. By rule, members must pay dues by April 30 each year. Members who fail to pay dues are not allowed on the property until their outstanding dues are paid in full.

30. By rule, members may only bring guests on the property (including for overnight stays in the club's houses) if they obtain prior written approval from the club's secretary.

31. By rule, guests may only travel on club property if accompanied by a member.

32. Club members follow all the rules listed above.

33. Even when they are not actively hunting, Punxsutawney and its members desire and expect privacy from uninvited intruders on club property.

Pitch Pine Hunting Club

34. Pitch Pine is a private hunting club founded in 1919.
35. The club owns 1,100 acres of contiguous land in Clearfield County, and has since its founding.
36. Pitch Pine adjoins the southeastern portion of Punxsutawney's property.
37. There is one dwelling house located at Pitch Pine's central "camp" area.
38. The club is managed by a nine-member board of directors elected from the club's membership.
39. The board's current president is Jeff Fink.
40. All new members must be approved by a majority vote of the club's stockholding members.
41. Club membership is capped at 50 members.
42. The club currently has 25 Stockholding members and 25 Social members, all of whom have a right to use the property for hunting and lodging purposes consistent with the club's rules.
43. One of the club's main purposes is to provide a private place where members can visit to spend quality time with close friends and family.
44. To that end, Pitch Pine only allows members and their guests to enter the club.

45. All entrances to the club are gated and posted with clearly visible No Trespassing signs to keep out intruders. *See* 18 Pa. C.S.A. § 3503(b)(1)(ii) (a property owner can give “notice against trespass” by “posting in a manner . . . reasonably likely to come to the attention of intruders”).

46. All club boundaries and internal paths are posted with clearly visible No Trespassing signs and clearly visible purple paint lines to keep out intruders. *See* 18 Pa. C.S.A. § 3503(b)(1)(ii), (vi) (a property owner can give “notice against trespass” by “the placement of identifying purple paint marks on trees or posts on the property”).

47. Members of the public recognize that the club is private property and do not enter unless invited.

48. Club members hunt throughout the entire property, and over the years have built trails and tree stands to help them do so.

49. The club’s rules are designed to ensure members’ ability to hunt legally while enjoying privacy from unwanted intruders.

50. Club members value privacy while hunting because hunting—whether individually or in small groups—is a solitary activity that requires patience and concentration. Unwanted intruders can ruin a good hunt.

51. By rule, members must obey all Pennsylvania safety and hunting laws.

52. By rule, members must pay dues by November 1 each year. Members who fail to pay dues are not allowed on the property until their outstanding dues are paid in full.

53. By rule, members may reserve exclusive use of the club's house if they obtain prior written approval from the secretary/treasurer of the club's board.

54. By rule, members who reserve the club's house for an overnight stay may bring guests with them if the guests are accompanied, at all times, by the member who reserved the house.

55. Club guests may also visit the property without staying at the house, but only if a member obtains prior written approval from the president or the secretary/treasurer of the club's board and the member accompanies the guests while they are on the property.

56. Club members follow all the rules listed above.

57. Pitch Pine's members close all exterior gates after entering and leaving the property.

58. Even when they are not actively hunting, Pitch Pine and its members desire and expect privacy from uninvited intruders on club property.

The Commission Conducts Warrantless Searches of Private Land

59. To hunt game in Pennsylvania, a person must obtain a license from the Pennsylvania Game Commission and follow all relevant hunting laws and regulations. 34 Pa. C.S.A. §§ 2102(a), 2701(a).

60. The Commission and its wildlife officers have a “duty” to enforce Pennsylvania’s hunting laws and regulations. 34 Pa. C.S.A. §§ 322(a), 901(a).

61. By statute, wildlife officers “in the exercise of their powers and duties . . . have the right and authority to go upon or enter any property, posted or otherwise, outside of buildings.” 34 Pa. C.S.A. § 303(c).

62. By statute, wildlife officers “have the power and duty to . . . [g]o upon any land or water outside of buildings, except curtilage, posted or otherwise, in the performance of the officer’s duty.” 34 Pa. C.S.A. § 901(a)(2).

63. By statute, wildlife officers are authorized to conduct “inspections of persons, licenses and permits,” and private property including “tree stands” and “immediate hunting locations.” 34 Pa. C.S.A. § 901(a)(8).

64. These Warrantless Entry Statutes do not require wildlife officers to obtain consent or a warrant before entering private land to search for evidence of potential state hunting offenses.

65. Acting under the Warrantless Entry Statutes, the Commission’s wildlife officers routinely enter private land without consent or a warrant to search for evidence of potential state hunting offenses.

66. The Warrantless Entry Statutes do not require wildlife officers to establish probable cause or any suspicion that a crime is being committed before entering private land to search for evidence of potential state hunting offenses.

67. Acting under the Warrantless Entry Statutes, the Commission's wildlife officers sometimes enter private land without probable cause or any suspicion that a crime is being committed to search for evidence of potential state hunting offenses.

68. In practice, the Commission's wildlife officers enter and search private land under the Warrantless Entry Statutes even if the property is posted, gated, used, and occupied.

69. During these warrantless searches, the Commission's wildlife officers sometimes roam around private land for hours looking for evidence of potential state hunting offenses.

70. During these warrantless searches, the Commission's wildlife officers sometimes stop vehicles traveling on private land (e.g., on internal trails) to inspect individuals for compliance with state hunting laws.

71. The Commission's warrantless entries and searches of private land are standard procedure statewide, have been for at least the past 25 years, and continue today.

72. A landowner who refuses a wildlife officer consent to enter or search his property commits a “summary offense of the first degree” and can be fined \$1,500 and thrown in jail for three months. 34 Pa. C.S.A. §§ 904(a), 925(b)(5).

73. Respondent Gritzer is a wildlife officer who has been employed by the Commission since at least 2013.

74. On information and belief, since at least 2013, Respondent Gritzer been assigned to enforce hunting laws in Clearfield County.

75. Since at least 2013, Respondent Gritzer has regularly entered and searched private land in Clearfield County without the owner’s consent or a warrant pursuant to the Warrantless Entry Statutes cited above.

76. On information and belief, Respondent Gritzer will, for the foreseeable future, continue to enter and search private land in Clearfield County without the owner’s consent or a warrant pursuant to the Warrantless Entry Statutes cited above.

The Commission Conducts Warrantless Searches of the Clubs

Punxsutawney Hunting Club

77. Punxsutawney’s members have seen Respondent Gritzer on club property on several occasions when neither the club nor any member had consented to his presence.

78. On occasions when Respondent Gritzer has been spotted on club property without consent, members have observed him entering and traveling throughout club property on foot, on bicycle, and by truck.

79. On occasions when Respondent Gritzer has been spotted on club property without consent, he has sometimes approached club members while they were traveling or hunting on the property. The following examples offer a non-exhaustive list.

80. On or about May 19, 2019, club member Joe Waroquier spent a morning turkey hunting from a location at least a mile into the property.

81. After a few hours without any success, Waroquier stood up and started gathering his things to leave when Respondent Gritzer approached him from behind.

82. Respondent Gritzer asked whether Waroquier had had any success hunting that morning. Waroquier replied that he had not. No citation was issued.

83. Waroquier was upset that Respondent Gritzer had entered the club's property without permission and that Gritzer had approached him from behind mid-hunt.

84. However, that was far from the first time Waroquier has seen Respondent Gritzer on the property. Waroquier—who spends over half of his

time at the club each year—has spotted Gritzer on the property traveling by foot, bicycle, and truck over a dozen times from 2013 through 2021.

85. On one of those occasions, Waroquier asked Respondent Gritzer why he was on the property so often. Gritzer stated that Punxsutawney has “more hunters than any other clubs in the area,” so he had a greater chance of catching a hunting violation on Punxsutawney’s property than elsewhere.

86. On information and belief, Respondent Gritzer’s statement that he patrols Punxsutawney so often because it has “more hunters than any other clubs in the area” is an accurate statement of his motivation for frequently entering and searching the club’s property.

87. On December 2, 2019, club members John Schwartz and Eldon Mohney were sitting in an enclosed tree stand hunting deer at least a half-mile into the property when they noticed Respondent Gritzer approaching them.

88. To reach the tree stand, Respondent Gritzer followed footprints Schwartz and Mohney had left in the snow when they walked from their cars earlier that morning.

89. When Respondent Gritzer reached the stand, he identified himself as a wildlife officer and entered the stand.

90. When Respondent Gritzer entered the stand, he asked if Schwartz and Mohney were the owners of the two cars parked on the property nearby. Schwartz and Mohney replied that they were the owners.

91. After a brief conversation, Respondent Gritzer noted that the tree stand did not have a sufficient amount of fluorescent orange on it, and that he could issue a citation for that if he wanted.

92. Ultimately, Schwartz promised that he would remedy the problem and Respondent Gritzer left the scene without issuing any citation.

93. Schwartz and Mohny were surprised that Respondent Gritzer had entered the club's property without permission and upset that Gritzer had interrupted their hunt.

94. On or about December 2, 2019, club member and president of the club's board, Frank Stockdale, was driving on one of the club's internal trails when Respondent Gritzer surprised him by stepping out into the path and signaling for him to stop.

95. When Stockdale stopped, Respondent Gritzer approached his car, asked what Stockdale was doing, and asked to see his gun, ID, and hunting license. Stockdale replied that he was not hunting and was not carrying a gun, and produced his ID and hunting license.

96. Respondent Gritzer did not issue Stockdale any citation.

97. Stockdale was surprised that Respondent Gritzer had entered the club's property without permission and that Gritzer had stopped his car and interrogated him simply for driving through the property.

98. On December 3, 2019, club member Joe Burns was driving on one of the club's internal trails toward the "camp" area when Respondent Gritzer surprised Burns by stepping out into the path and signaling for Burns to stop.

99. When Burns stopped, Respondent Gritzer approached the car, greeted Burns, and noticed that there was a gun inside.

100. Respondent Gritzer asked if Burns's gun (a rifle) was loaded. Burns replied that there was a round in the magazine.

101. Respondent Gritzer asked Burns to unload his gun and asked to see Burns's ID and hunting license. Burns complied.

102. During the interaction, Respondent Gritzer noted that he enjoys walking the club's property and that he "had been all over" the property that week.

103. On information and belief, Respondent Gritzer's statement that he "had been all over" the club's property that week was true.

104. Ultimately, Respondent Gritzer issued Burns a citation for driving with a loaded gun in the car.

105. Burns was surprised that Respondent Gritzer had entered the club's property without permission and that Gritzer had stopped his car and interrogated him simply for driving through the property.

106. On December 7, 2019, club member Harlan Bleiler parked his truck on one of the club's internal trails at least a mile into the property and started walking the trail with the intent of finding a spot to hunt deer.

107. When Bleiler got about 200 yards away from his car, he noticed a state vehicle driving in his direction down the trail.

108. When the vehicle reached Bleiler, Respondent Gritzer and another (unknown) wildlife officer exited the vehicle and asked Bleiler to produce his ID and hunting license.

109. Bleiler usually carries his ID and hunting license with him, but he realized he had accidentally left them in his backpack in his car, so he walked the officers back to his car.

110. At the car, the officers checked Bleiler's ID and hunting license.

111. During the interaction, Bleiler asked why the officers were on the club's property. Respondent Gritzer replied that he was there "targeting road hunters."

112. On information and belief, Respondent Gritzer's statement that he was on the club's property "targeting road hunters" was true.

113. Bleiler found Respondent Gritzer's statement odd, given that the club's internal trails are more dirt paths than "roads" and are not open to the public.

114. Ultimately, Respondent Gritzer issued Bleiler a citation for failing to carry his license while hunting.

115. Bleiler was surprised that Respondent Gritzer had entered the club's property without permission and that Gritzer had interrogated him simply for walking through the property.

116. Neither the club nor its members consented to any of Respondent Gritzer's entries or searches described above.

117. To reach all of the locations described in the examples above, Respondent Gritzer would have had to pass by plainly visible No Trespassing signs, purple paint, locked gates, or a combination of these.

118. Respondent Gritzer did not show the club's board or its members a warrant for any of the entries or searches described above.

119. On information and belief, Respondent Gritzer neither sought nor obtained a warrant for any of the entries or searches described above.

120. On information and belief, Respondent Gritzer did not establish probable cause or any suspicion that a crime was being committed when he entered the club on any of the dates described above.

121. Other club members have reported seeing Respondent Gritzer on the club's property without permission or a warrant both before and after the examples listed above.

Pitch Pine Hunting Club

122. Pitch Pine's members have seen Respondent Gritzer on club property on several occasions when neither the club nor any member had consented to his presence.

123. In 2018, a group of club members were having coffee in the club's house when they noticed, through a window, a stranger walking down a path leading out of the club's property.

124. Club member Ed Elschied, who was among the group staying at the house, went outside to ask the stranger who he was. When confronted, the stranger identified himself as Respondent Gritzer.

125. Elschied asked what Respondent Gritzer was doing on the club's property. Gritzer replied that he was "doing a routine foot patrol."

126. On information and belief, Respondent Gritzer's statement that he was "doing a routine foot patrol" was true.

127. Elschied then asked if Respondent Gritzer wanted to come into the house and speak with anybody. Gritzer replied that he didn't "have time for that" because he had "a huge area to cover."

128. Respondent Gritzer left without issuing any citation.

129. After Respondent Gritzer left the property, a club member who was staying with Elschied at the house went out and followed the footprints Gritzer had left in the snow. The footprints revealed that Gritzer had parked

at the front of the dirt path leading into the property and had walked a loop of the woods near the house.

130. Elschied was surprised that Respondent Gritzer had entered and roamed the club's property without permission and that Gritzer did not even appear to suspect that anybody was doing anything illegal.

131. On June 21, 2013, Respondent Gritzer sent Pitch Pine a written warning on the Commission's official letterhead.

132. The letter alleged that "[o]n June 18, 2013, signs of [bear] feeding were found on [the club's] property."

133. The letter stated that "[t]his property was being observed for several days" and that "evidence of numerous bears had been documented at this food source during the surveillance period."

134. The letter directed the club to cease all supposed bear-feeding activities.

135. Later that summer, during the week of July 4, club member Jon Mikesell was staying at the club's house with friends and family on a week-long vacation.

136. Mikesell and his guests were sitting on the front porch watching deer and birds graze on some bird seed he had put out, when Respondent Gritzer came speeding down the dirt path leading to the house in a truck.

137. When Respondent Gritzer reached the house, he exited the truck and demanded to know “who was in charge.”

138. Mikesell, who had reserved the house for the week, stated that he supposed he was in charge.

139. Respondent Gritzer accused Mikesell of putting the bird seed out to feed bears. Gritzer explained that he had been watching Mikesell and his guests for multiple days from a hidden spot on the club’s property, and that he would not have been visible because he was wearing camo and had used binoculars to watch them from a distance.

140. On information and belief, Respondent Gritzer’s statements that he had been watching Mikesell and his guests for multiple days from a hidden spot on the club’s property, and that he would not have been visible because he was wearing camo and had used binoculars to watch them from a distance, were true.

141. Mikesell denied feeding bears and stated he was simply feeding deer and birds so that his guests, who were from the city, could watch some wildlife during their vacation.

142. Respondent Gritzer left without issuing any citation.

143. Mikesell was surprised that Respondent Gritzer had entered the club’s property without permission and that Gritzer had spied on him and his guests for multiple days.

144. Neither the club nor its members consented to any of Respondent Gritzer's entries or searches described above.

145. To reach all of the locations described in the examples above, Respondent Gritzer would have had to pass by plainly visible No Trespassing signs, purple paint, locked gates, or a combination of these.

146. Respondent Gritzer did not show the club's board or its members a warrant for any of the entries or searches described above.

147. On information and belief, Respondent Gritzer neither sought nor obtained a warrant for any of the entries or searches described above.

148. To Pitch Pine's knowledge, no club member has been cited for any hunting offense during at least the past decade.

INJURY TO PETITIONERS

149. Respondents' warrantless entries and searches of Petitioners' land have invaded Petitioners' property and privacy rights and have hindered their ability to use and enjoy their land in peace.

150. The Warrantless Entry Statutes, along with the fact that it is a crime for Petitioners to refuse a wildlife officer consent to enter their property without a warrant, 34 Pa. C.S.A. §§ 904(a), 925(b)(5), have deprived Petitioners of their right to exclude unwanted intruders from their land.

151. Due to Respondents' warrantless entries and searches, Petitioners are not able to offer their members the full degree of privacy from unwanted intruders that members expect on the property.

152. Due to Respondents' warrantless entries and searches, many of Petitioners' members have reported experiencing anxiety over the fact that wildlife officers can surveil them, follow them around, or stop them while traveling on the property at any time.

153. The knowledge that wildlife officers can surveil club members, follow them around, or stop them while traveling on the property at any time has reduced club members' enjoyment of the property.

154. Also, Respondents' practice of sneaking around Petitioners' land without permission when people are hunting is dangerous. That is especially so when Respondent Gritzer enters and sneaks around the clubs dressed in camo. Petitioners do not want their members to accidentally shoot a wildlife officer while hunting simply because they were unaware of the officer's presence.

155. Unless the Warrantless Entry Statutes and Respondents' policy and practice enforcing them are declared unconstitutional and permanently enjoined, Respondents will continue to conduct nonconsensual warrantless entries and searches of Petitioners' land and Petitioners will continue to suffer the injuries described above.

LEGAL CLAIM

(Pa. Const. art. I, § 8—Unreasonable Warrantless Searches)

156. Article I, Section 8 of the Pennsylvania Constitution provides:

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affidavit.

157. The word “possessions” in Article I, Section 8 encompasses private land over which the owner exercises control, whether by posting, gating, use, occupancy, or otherwise.

158. The word “possessions” in Article I, Section 8 also encompasses fixtures and structures on such private land, including gates and tree stands.

159. Warrantless searches of “possessions” under Article I, Section 8 are presumptively unreasonable.

160. Petitioners’ properties described above are “possessions” under Article I, Section 8.

161. Respondents searched Petitioners’ possessions when they entered Petitioners’ posted, gated, used, and occupied land without permission to look for evidence of potential state hunting offenses.

162. In addition to searching Petitioners’ possessions by conducting physical entries, Respondents searched Petitioners’ possessions by intruding

onto posted, gated, used, and occupied land on which Petitioners and their members reasonably expect privacy.

163. All of Respondents' searches of Petitioners' possessions were, and continue to be, conducted without consent.

164. All of Respondents' searches of Petitioners' possessions were, and continue to be, conducted without a warrant.

165. Many of Respondents' searches of Petitioners' possessions were, and continue to be, conducted without probable cause that a crime is being committed.

166. Many of Respondents' searches of Petitioners' possessions were, and continue to be, conducted without any suspicion that a crime is being committed.

167. All of Respondents' searches of Petitioners' possessions were, and continue to be, unreasonable and violate Article I, Section 8.

168. All of Respondents' searches of Petitioners' possessions were, and continue to be, conducted under the authority of the Warrantless Entry Statutes, 34 Pa. C.S.A. §§ 303(c), 901(a)(2), 901(a)(8).

169. The Warrantless Entry Statutes violate Article I, Section 8 to the extent they allow nonconsensual warrantless searches of private land that is posted, gated, occupied, and used.

170. Unless Respondents are permanently enjoined from conducting nonconsensual warrantless searches of Petitioners' land, Petitioners will suffer continuing and irreparable harm.

171. Petitioners acknowledge that the Pennsylvania Supreme Court has held that Article I, Section 8 does not protect private land outside the curtilage. *Commonwealth v. Russo*, 934 A.2d 1199, 1213 (Pa. 2007).

172. But *Russo* was wrong: The majority's textual, historical, caselaw, and policy analyses—in part due to inadequate briefing on both sides—were deeply flawed. See *Commonwealth v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991) (instructing parties to brief and courts to weigh “at least” state constitutional text, state history, relevant cases from other states, and state policy when interpreting the Pennsylvania Constitution).

173. On text: The original public meaning of the word “possessions,” as used in Article I, Section 8 when it was adopted, included private land over which the owner has exercised control. The parties failed to properly brief, and the *Russo* majority failed to examine, that original public meaning.

174. On history: Article I, Section 8 (originally Chapter 1, Clause 10) was ratified as part of the Constitution of 1776, and “was therefore meant to reduce to writing a deep history of unwritten legal and moral codes which had guided the colonists from the beginning of William Penn's charter in 1681.” *Edmunds*, 586 A.2d at 896. That history included a respect for property rights,

including the right to “possess” and to exclude unwanted intruders from private land. The parties failed to properly brief, and the *Russo* majority failed to examine, that history.

175. On other state cases: State high court decisions from other states whose constitutions protect “possessions” have held that private land over which the owner has exercised control receives protection from unreasonable searches. The parties failed to adequately brief, and the *Russo* majority either failed to examine or wrongly distinguished, those cases.

176. On state policy: Exempting all private land from protection under Article I, Section 8 conflicts with Pennsylvania’s policy that the right to possess and protect land—including by excluding others—is a fundamental right. *See* Pa. Const. art. I, §§ 1, 10, 11. It also conflicts with Pennsylvania’s policy that wildlife officers must comply with the “minimum standards applicable to all law enforcement officers” under Article I, Section 8. *Commonwealth v. Ickes*, 873 A.2d 698, 703 (Pa. 2005). The parties failed to adequately brief, and the *Russo* majority either failed to examine or wrongly discounted, these conflicts.

177. Ultimately, Petitioners agree with former Chief Justice Cappy, who dissented in *Russo* because “a constitutional rule which permits state agents to enter private land in outright disregard of the property owner’s efforts to maintain privacy is one that offends the fundamental rights of

Pennsylvania citizens.” *Russo*, 934 A.2d at 1214 (Cappy, C.J., joined by Baldwin and Baer, JJ., dissenting).

178. Petitioners—who have suffered and will continue to suffer under the regime *Russo* authorized—intend to ask the Pennsylvania Supreme Court to overrule *Russo*. See Pa. Rule of Prof'l Conduct 3.1 (allowing lawyers to bring cases based on “good faith argument[s] for . . . reversal of existing law”).

REQUEST FOR RELIEF

Petitioners therefore respectfully request:

179. A judgment declaring that the Warrantless Entry Statutes, 34 Pa. C.S.A. §§ 303(c), 901(a)(2), 901(a)(8), and Respondents’ policy and practice of nonconsensual warrantless searches of private land over which the owner has exercised control, violate Article I, Section 8 of the Pennsylvania Constitution, both facially and as applied to Petitioners.

180. An order permanently enjoining Respondents from enforcing the Warrantless Entry Statutes by searching Petitioners’ land or any other land over which the owner has exercised control, without consent or a warrant.

181. An award of attorneys’ fees, costs, and expenses.

182. Any further legal and equitable relief the Court deems just and proper.

Dated: December 16, 2021

Respectfully submitted,

/s/ John DeSantis

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*Pro hac vice motions to be filed

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2021, I am sending the foregoing Petition for Review to a third-party process server for service upon the persons and in the manner indicated below, which satisfies the requirements of Pa. R.A.P. 121:

Service in person as follows:

Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, PA 17110

**Mark Gritzer, in his official capacity as an officer of the
Pennsylvania Game Commission**
Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, PA 17110

Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, PA 17120

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 16, 2021

/s/ John DeSantis

John DeSantis

Counsel for Petitioners

VERIFICATION

I, Frank Stockdale, hereby state that:

1. I am an authorized representative of a Petitioner in this action;
2. The statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same; and
3. I understand that the statements in the Petition for Review are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Signed: Frank Stockdale

Dated: 12-14-2021

VERIFICATION

I, Jeffrey Fink, hereby state that:

1. I am an authorized representative of a petitioner in this action;
2. The statements made in the foregoing Petition for Review are true and correct to the best of my knowledge, information, and belief, and I expect to be able to prove the same; and
3. I understand that the statements in the Petition for Review are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Signed: Jeffrey Fink

Dated: 12/13/21