

**IN THE BENTON COUNTY CIRCUIT COURT**

TERRY RAINWATERS and HUNTER  
HOLLINGSWORTH,

No. \_\_\_\_\_

Plaintiffs,

v.

The TENNESSEE WILDLIFE RESOURCES  
AGENCY; ED CARTER, Executive Director of  
the Tennessee Wildlife Resources Agency, in his  
individual capacity; and KEVIN HOOFFMAN,  
an officer of the Tennessee Wildlife Resources  
Agency, in his individual capacity,

Defendants.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. This state constitutional challenge seeks to vindicate the right of Terry Rainwaters and Hunter Hollingsworth, two Tennessee landowners, to be free from unreasonable warrantless entries and digital surveillance of their private properties.

2. Terry owns about 136 acres of rural property along the Big Sandy River in Camden, Tennessee, where he lives, farms, and hunts. Most of Terry’s property lies behind a locked gate and “No Trespassing” signs. It is not open to the public. Yet in December 2017, Tennessee Wildlife Resources Agency (TWRA) officers entered Terry’s property—without a warrant or probable cause—and installed two surveillance cameras to monitor Terry for potential violations of state wildlife laws. Before discovering the cameras, Terry had also seen TWRA officers wandering around his property without permission on several occasions.

3. Hunter owns about 93 acres of rural property along the Big Sandy River in Camden, Tennessee, where he farms, camps, and hunts. Hunter's property is landlocked, gated, and posted with "No Trespassing" signs. It is not open to the public. Yet in November 2017, TWRA officers entered Hunter's property—without a warrant or probable cause—and installed a surveillance camera to monitor Hunter for potential violations of state wildlife laws. Before discovering the camera, Hunter had seen TWRA officers wandering around his property without permission on several occasions. On at least three of those occasions, TWRA officer Kevin Hoofman spent hours wandering around Hunter's property taking covert photos and video footage of Hunter and his guests.

4. TWRA's intrusions onto Terry's and Hunter's properties violated Article I, Section 7 of the Tennessee Constitution. In Tennessee, every person has a right to be free from warrantless entries and digital surveillance of their private land. The people also have a right to be free from warrantless digital surveillance of their activities on private land. These kinds of intrusions are especially egregious where, as here, government officers search without probable cause to believe any offense is being committed. TWRA violated these protections.

5. Unfortunately, Terry and Hunter are not TWRA's only victims. For at least the past decade, TWRA officers have entered private property countless times—without a warrant or probable cause—to search for violations of state wildlife laws. During these searches, TWRA officers have routinely wandered around the properties, taken covert pictures and videos, and installed surveillance cameras to monitor private activities. TWRA's policy and practice of warrantless searches continues today.

6. This cannot go on. Article I, Section 7 of the Tennessee Constitution forbids this sort of roving surveillance of private land. To ensure that Terry and Hunter continue to enjoy

security and privacy on their properties, the Court should declare that TWRA's warrantless searches violated Article I, Section 7. And to ensure that landowners throughout Tennessee continue to enjoy security and privacy on their properties, the Court should declare that TWRA's policy and practice of warrantless searches violates Article I, Section 7 and permanently enjoin TWRA from conducting these and any similar searches in the future.

### **JURISDICTION AND VENUE**

7. Plaintiffs seek a declaratory judgment that TWRA's warrantless searches of Plaintiffs and their properties violated Article I, Section 7 of the Tennessee Constitution, and that TWRA's policy and practice of warrantless searches and TWRA's authority for these searches, Tenn. Code Ann. § 70-1-305(1), (7), continue to violate Article I, Section 7 of the Tennessee Constitution.

8. Plaintiffs also seek injunctive relief against TWRA's policy and practice of warrantless searches and against enforcement of Tenn. Code Ann. § 70-1-305(1), (7).

9. This Court has jurisdiction under *id.* § 16-10-101 and may grant the declaratory and injunctive relief requested under *id.* §§ 29-14-103, 16-10-101.

10. This Court may also grant the declaratory and injunctive relief and nominal damages requested under Article I, Section 17 of the Tennessee Constitution.

11. Venue lies in this Court under Tenn. Code Ann. § 20-4-104(1).

### **PARTIES**

#### **Plaintiffs**

12. Plaintiff Terry Rainwaters owns rural property in Camden, Tennessee, on which he lives, farms, and hunts. Defendants have conducted warrantless searches of Terry's property by entering and wandering around without his permission and by installing surveillance cameras

in his trees. As a result, Terry's property and privacy rights have been violated and he no longer feels secure on his own land.

13. Plaintiff Hunter Hollingsworth owns rural property in Camden, Tennessee, on which he farms, camps, and for most of his life has hunted. Defendants have conducted warrantless searches of Hunter's property by entering and wandering around without his permission, by taking pictures and recording videos of Hunter and his property, and by installing a surveillance camera in one of his trees. As a result, Hunter's property and privacy rights have been violated and he no longer feels secure on his own land.

### **Defendants**

14. Defendant Tennessee Wildlife Resources Agency is the state agency that enforces Tennessee's wildlife laws. Tenn. Code Ann. § 70-1-302(a)(2). TWRA has, through its officers or agents, conducted warrantless searches of Plaintiffs' properties by entering and wandering around without their permission, by taking pictures and recording videos of Plaintiffs and their properties, and by installing surveillance cameras in their trees. TWRA is headquartered at 5107 Edmonson Pike, Ellington Agricultural Center, Nashville, TN 37211.

15. Defendant Ed Carter is TWRA's Executive Director and is sued in his individual capacity. The Executive Director enforces Tennessee's wildlife laws and has both the statutory authority to enter private property without a warrant to search for violations, and the power to confer that authority on TWRA officers. Tenn. Code Ann. § 70-1-305(1), (7). Defendant Carter has, through TWRA officers, conducted warrantless searches of Plaintiffs' properties by entering and wandering around without their permission, by taking pictures and recording videos of Plaintiffs and their properties, and by installing surveillance cameras in their trees. His office is located at 5107 Edmonson Pike, Ellington Agricultural Center, Nashville, TN 37211.

16. Defendant Kevin Hoofman is a TWRA officer and is sued in his individual capacity. As a TWRA officer, Defendant Hoofman enforces Tennessee's wildlife laws and has been delegated authority by Defendant Carter to enter private property without a warrant to search for violations. Tenn. Code Ann. § 70-4-305(7). Defendant Hoofman has conducted warrantless searches of Plaintiffs' properties by entering and wandering around without their permission, by taking pictures and recording videos of Plaintiffs and their properties, and by installing surveillance cameras in their trees. His office is located at 200 Lowell Thomas Drive, Jackson, TN 38301.

## FACTS

### **Plaintiffs Own and Use Private Property in Camden**

#### *Plaintiff Rainwaters*

17. Terry Rainwaters is a mechanical technician and a lifelong resident of Camden, Tennessee, who owns about 136 acres of rural property along the Big Sandy River.

18. There are two houses on Terry's property. Terry lives in one with his college-aged son and rents out the other to a local tenant.

19. In addition to living there, Terry also uses the property to farm and hunt.

20. Terry's farming operation includes cultivating corn and soybeans for income.

21. Terry's farming operation is conspicuous. He uses several fields solely for crop cultivation, works on the land regularly, and keeps his equipment in a large shed on the property.

22. Terry's hunting activities are recreational. He has a hunting license and occasionally hunts game alone, with his son, and with guests for fun.

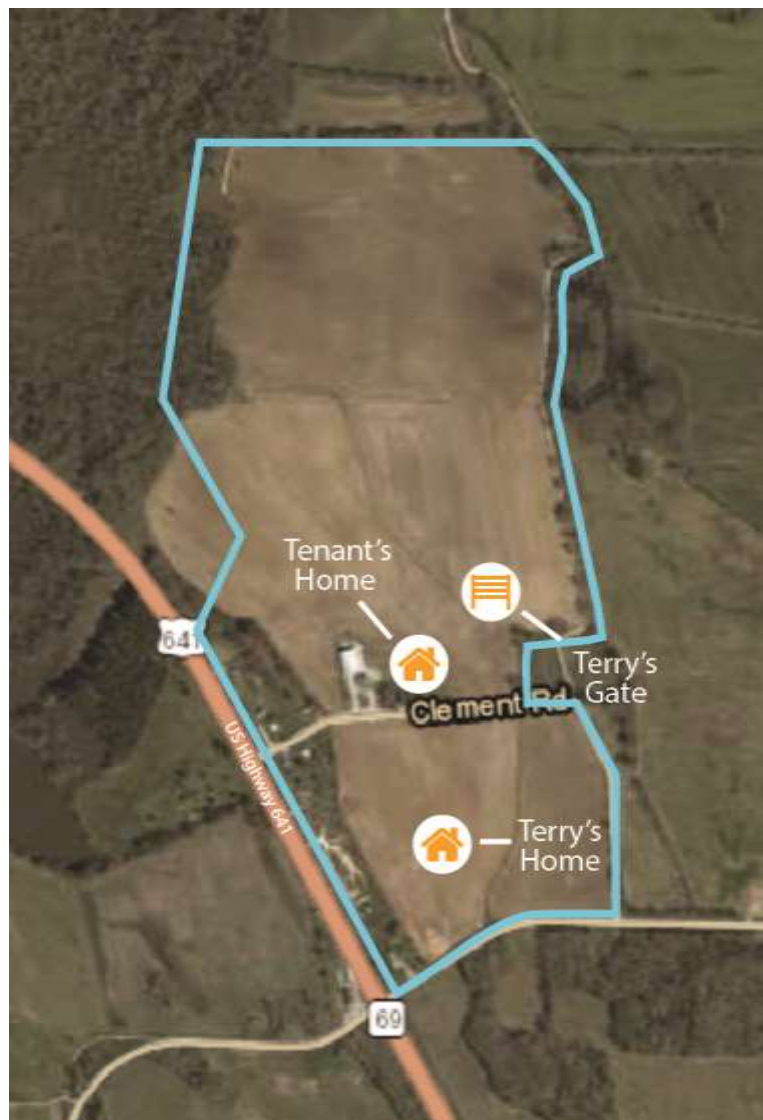
23. To enter Terry's property, a person must turn off U.S. Highway 641 onto Clement Road, which runs through a portion of the property.

24. Once a person drives past Terry’s shed and the two homes, the road forks. Right continues down Clement Road and leads to property owned by Terry and his neighbors. Left turns onto a private road that Terry built, which leads through the majority of his property.

25. Terry does not permit public access to this latter portion of his property—the road is almost immediately blocked by a locked gate posted with “No Trespassing” signs.

26. Terry conducts the majority of his farming and hunting activities on the dozens of acres of private land beyond this gate.

27. The following map accurately depicts Terry’s property:



28. Because the property is private land on which Terry lives, farms, and hunts, Terry desires and expects privacy there. Indeed, privacy from unwanted visitors or intrusions is crucial to Terry's enjoyment of his property and to safe hunting practices.

29. At all times relevant to this suit, Defendants were aware of Terry's continuous possession and use of his property.

*Plaintiff Hollingsworth*

30. Hunter Hollingsworth is a railroad technician and a lifelong resident of Camden, Tennessee, who owns about 93 acres of rural property along the Big Sandy River.

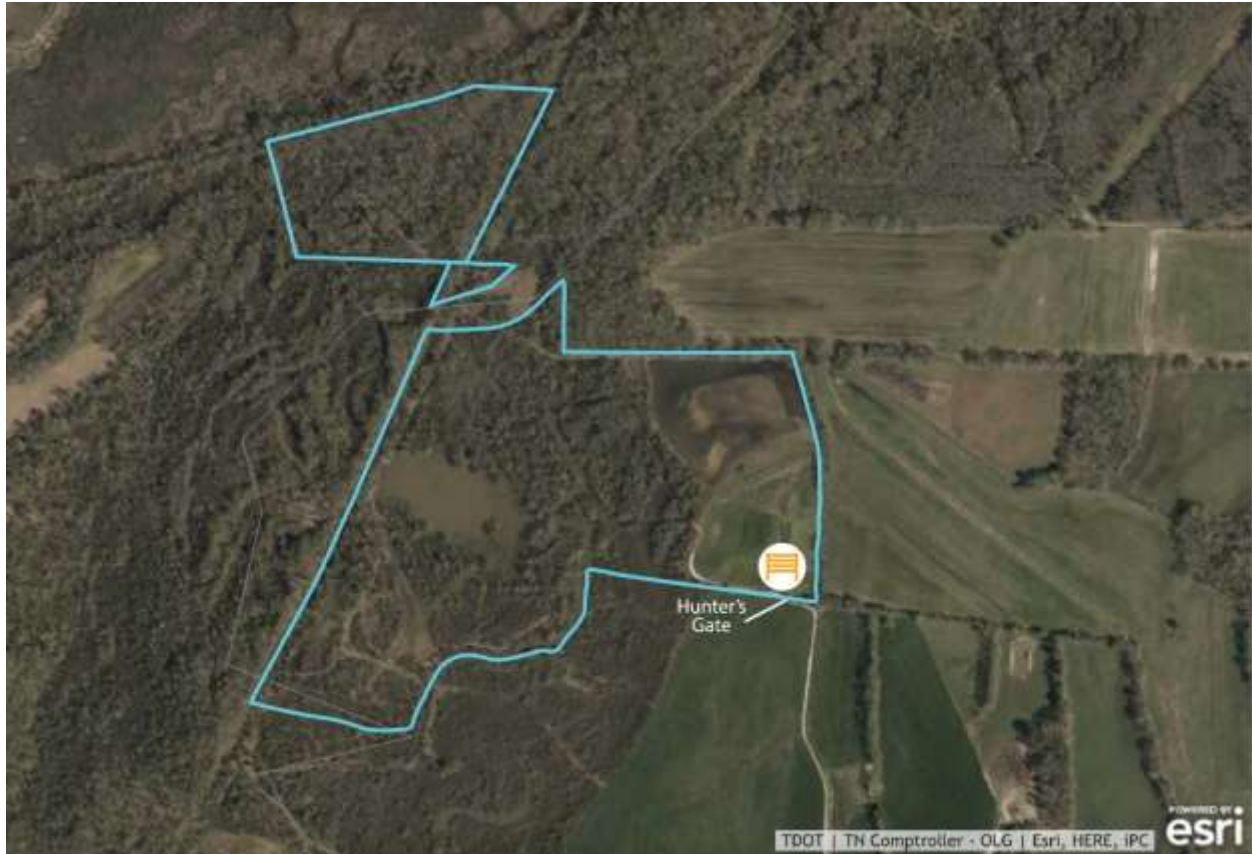
31. Hunter does not live on the property; he mostly uses it for recreational purposes, including farming, camping with friends, and hunting.

32. Hunter's property is landlocked and gated. To enter, a person must drive down a private road, unlatch a neighbor's gate and walk through a neighbor's fenced cow pasture (through which Hunter owns an easement), and then unlatch a second gate at the entrance to Hunter's property.

33. Hunter does not permit public access to his property—there are “No Trespassing” signs posted around the gate at the property's entrance.

34. Hunter's farming operation, while less extensive than Terry's, is also conspicuous. He uses certain fields exclusively for crop cultivation and works on the land regularly.

35. The following map accurately depicts Hunter's property:



36. Because the property is private land on which Hunter farms, camps, and hunts, Hunter desires and expects privacy there. Indeed, privacy from unwanted visitors or intrusions is crucial to Hunter's enjoyment of his property and to safe hunting practices.

37. At all times relevant to this suit, Defendants were aware of Hunter's continuous possession and use of his property.

38. Indeed, Defendant Hoofman and other TWRA officers had interacted with Hunter on his property several times prior to the warrantless searches described below.



### **TWRA Conducts Warrantless Entries and Surveillance of Private Property**

39. Article XI, Section 13 of the Tennessee Constitution recognizes that “[t]he citizens of this state shall have the personal right to hunt and fish, subject to reasonable regulations and restrictions prescribed by law.”

40. TWRA exists to “enforce by proper action and proceedings, the existing laws of this state relating to wildlife.” Tenn. Code Ann. § 70-1-302(a)(2).

41. To hunt game in Tennessee, a person must obtain a license from TWRA and follow all relevant hunting laws and regulations. *See id.* § 70-4-105(a).

42. For example, a person may only hunt during “open seasons,” *see id.* § 70-4-107, and may not use “bait, which includes any grain . . . for the purpose of killing, injuring, or capturing any birds or animals protected by the wildlife laws of this state,” *id.* § 70-4-113(a).

43. To “[e]nforce all laws relating to wildlife,” TWRA’s Executive Director is empowered to “go upon any property, outside of buildings, posted or otherwise . . . .” *Id.* § 70-1-305(1).

44. The Executive Director may also “[d]esignate employees of [TWRA], officers of any other state or of the federal government who are full-time wildlife enforcement personnel, to perform [his] duties and have [his] powers . . . .” *Id.* § 70-1-305(7).

45. Based on this authority, TWRA officers routinely enter private property—without a warrant or probable cause—to search for potential violations of wildlife laws.

46. During these warrantless searches, TWRA officers routinely wander around private property for hours in search of potential violations.

47. During these warrantless searches, TWRA officers routinely take covert pictures and videos of properties and their owners.

48. During these warrantless searches, TWRA officers routinely install surveillance cameras on private properties to capture images of their owners and guests.

49. These warrantless searches are standard TWRA policies and practices, have been for at least the past decade, and continue today.

50. Defendant Hoofman is a TWRA officer who, over the past decade, has regularly conducted warrantless searches, including by entering private property without permission, by taking covert photos and videos, and by installing cameras on private property pursuant to Tenn. Code Ann. § 70-1-305(1), (7) and TWRA's policies and practices.

### **TWRA's Warrantless Entries and Surveillance of Plaintiffs' Properties**

#### *Plaintiff Rainwaters*

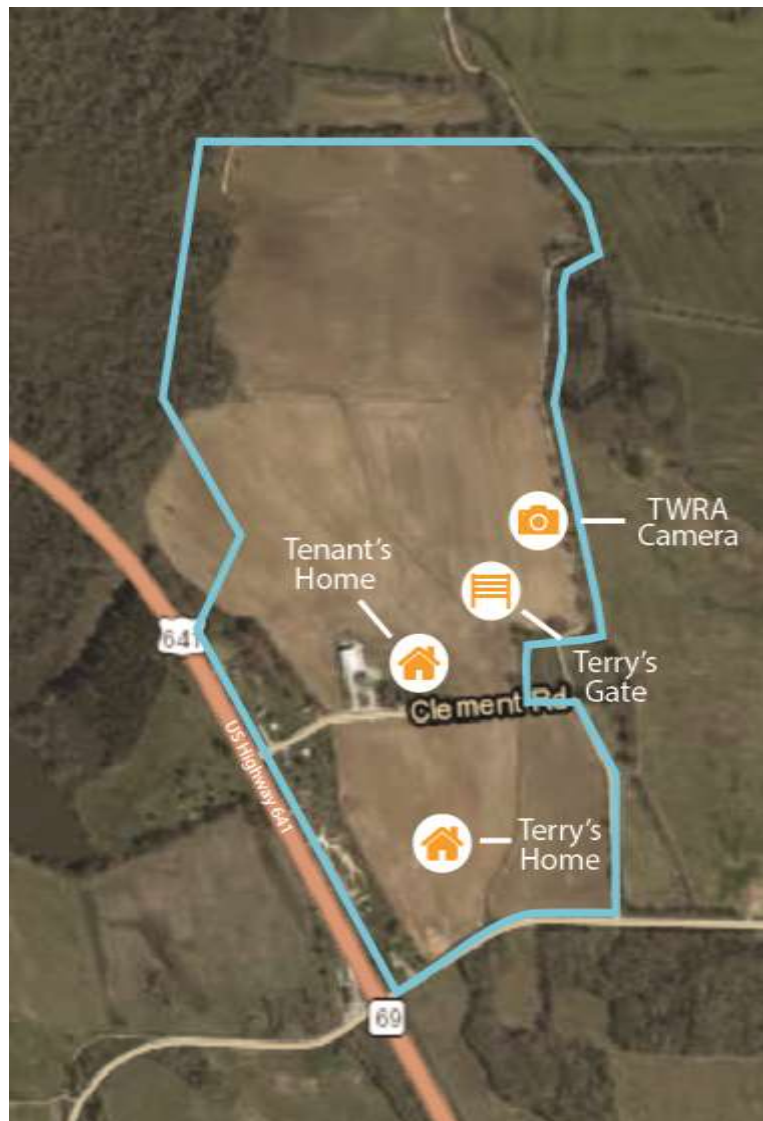
51. Terry Rainwaters has had a Tennessee hunting license for decades and has never committed any hunting offense.

52. In December 2017, Terry's son was driving north on Terry's private road—on the portion of the property past the locked gate and “No Trespassing” signs—when he noticed an unmarked camera hanging from a string in one of Terry's trees.

53. The camera was positioned in a tree directly along Terry's private road and had a clear view of a large portion of Terry's property.

54. From the camera's vantage point, it was able to capture images of people and cars moving past, of Terry's and his son's private activities, and even of the back of Terry's tenant's home.

55. The following map accurately depicts the location of the camera installed on Terry's property:



56. After noting the camera's position, Terry's son continued driving north until he reached a portion of a neighbor's property that Terry leases, at which point Terry's son noticed a second unmarked camera.

57. This second camera was affixed to a tree directly along Terry's private road.

58. A branch on the tree appeared to have been cut to give the camera a clear view of the property.

59. From the second camera's vantage point, it was able to capture images of people and cars moving past, as well as of Terry's and his son's private activities.

60. Unsettled by his discoveries, Terry's son notified Terry about the cameras.

61. Later that day, Terry went to observe the cameras himself. Like his son, he was unsettled by the cameras.

62. Terry was disturbed that somebody had entered his private land without permission to physically tamper with his property and monitor his activities.

63. Within two days—before Terry could decide what to do about the cameras—they had disappeared.

64. On information and belief, both of the cameras Terry discovered on his property in December 2017 were installed by TWRA officers.

65. Terry has seen TWRA agents, including Defendant Hoofman, wandering around his property without permission several times in the past.

66. On information and belief, the TWRA officers who installed the cameras entered Terry's property without a warrant or probable cause to believe an offense had been committed.

67. On information and belief, the TWRA officers who installed the second camera cut a branch from one of Terry's trees.

68. Ever since discovering TWRA's surveillance cameras, Terry has felt insecure on his own property. He feels a constant sense of anxiety that a TWRA officer or camera may be watching him, monitoring his activities, or prying into his private life.

69. Terry has shared these experiences with other property owners in the Camden hunting community, many of whom revealed that TWRA officers had also entered and installed cameras on their properties without permission, a warrant, or probable cause.

*Plaintiff Hollingsworth*

70. For most of his life, and at all times relevant to this lawsuit, Hunter Hollingsworth has had a Tennessee hunting license.

71. On November 20, 2017, Defendant Hoofman entered Hunter's property—without a warrant or probable cause—and began wandering around in search of violations of wildlife laws.

72. During his November 20 warrantless search of Hunter's property, Defendant Hoofman spent hours walking around, taking pictures, and recording video footage of Hunter's property to collect evidence of what he began to suspect was illegal baiting.

73. On November 30, 2017, Defendant Hoofman returned to Hunter's property—again without a warrant—and spent several more hours walking around and recording video footage.

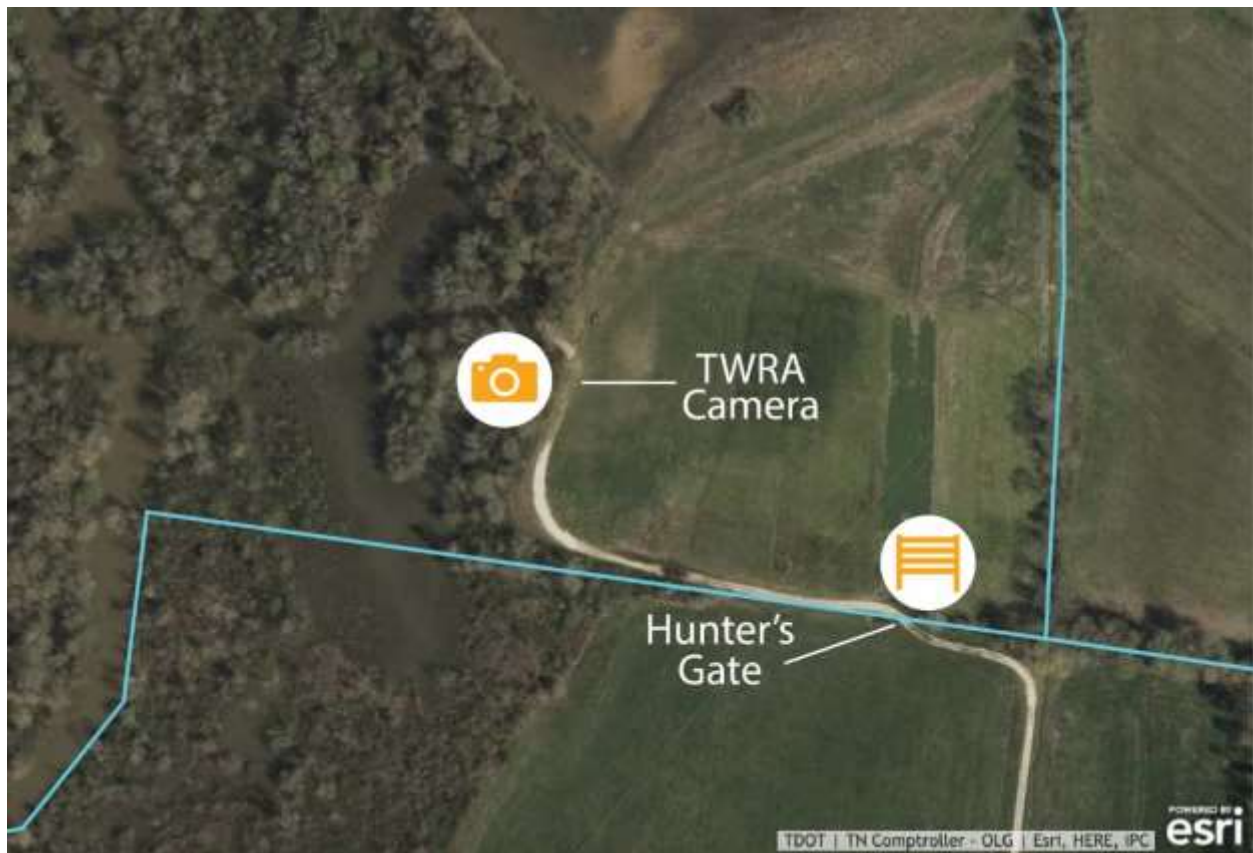
74. During his November 30 warrantless search of Hunter's property, Defendant Hoofman installed a surveillance camera in one of Hunter's trees.

75. The camera was positioned a few hundred yards beyond the gated entrance to Hunter's property in a spot along the private road leading through the property.

76. To ensure the camera had a clear view of the property, Defendant Hoofman cut one of the tree's branches.

77. From the camera's vantage point, it was able to capture images of people and cars moving past, as well as of Hunter's private activities.

78. The following map accurately depicts the location of the camera installed on Hunter's property:



79. On December 15, 2017, Defendant Hoofman entered Hunter's property—again without a warrant—and spent several more hours walking around, taking pictures, and recording video footage.

80. During his December 15 warrantless search of Hunter's property, Defendant Hoofman observed Hunter and his guests hunting.

81. After spotting Hunter, Defendant Hoofman spent several minutes covertly recording video footage of Hunter and his guests.

82. Eventually, Defendant Hoofman exited his hiding place and confronted Hunter about what Defendant Hoofman believed were potential hunting violations.

83. At one point during the conversation, Hunter commented that “nobody invite[d]” Defendant Hoofman onto the property, to which Defendant Hoofman replied: “When you bought your hunting license you invited me.”

84. Later that day, Defendant Hoofman followed Hunter to a friend’s house, hid in the friend’s bushes, and covertly recorded video footage of Hunter having a conversation in the friend’s driveway.

85. On December 24, 2017, Defendant Hoofman entered Hunter’s property—again without a warrant—and spent several more hours walking around, taking pictures, and recording video footage.

86. On January 26, 2018, Hunter was driving into his property when, for the first time, he noticed the surveillance camera that Defendant Hoofman had affixed to one of his trees.

87. Because the camera was unmarked, Hunter took it down and brought it home.

88. When Hunter removed the camera’s memory card, he discovered over 1,000 photos that had been taken and wirelessly transmitted since November 30, 2017.

89. One of the first photos, dated November 30, shows Defendant Hoofman installing the camera.

90. Later photos show Hunter, his guests, and TWRA officers (alone) entering and leaving the property.

91. Since learning of Defendant Hoofman’s warrantless entries and digital surveillance, Hunter has felt invaded by TWRA’s illegal entries and he continues to fear TWRA’s assumed power to wander around his property taking photos and videos, tampering with his property, and installing cameras in his trees—all without judicial authorization.

92. Ever since these events, Hunter has felt insecure on his own property. He feels a constant sense of anxiety that a TWRA officer or camera may be watching him, monitoring his activities, or prying into his private life.

93. Hunter has shared these experiences with other property owners in the Camden hunting community, many of whom revealed that TWRA officers have also entered and installed cameras on their properties without permission, a warrant, or probable cause.

94. In August 2019, Hunter was prosecuted for federal baiting offenses and for “stealing” the camera Defendant Hoofman installed.

95. In October 2019, Hunter agreed to plead guilty to one count of dove baiting, to pay a \$3,000 fine, and to forfeit his Tennessee hunting privileges for three years; the remaining charges were dropped.

### **INJURY TO PLAINTIFFS**

96. Defendants’ warrantless searches of Plaintiffs and their properties have invaded Plaintiffs’ property and privacy rights.

97. Defendants’ warrantless entries and digital surveillance of Plaintiffs’ properties have caused Plaintiffs to feel a constant sense of anxiety that a TWRA officer or camera may be watching them, monitoring their activities, recording their conversations, or prying into their private lives.

98. Defendants’ warrantless entries and digital surveillance of Plaintiffs’ properties have caused Plaintiffs to spend time specifically searching for cameras that may be hidden on their properties. Hunter has even made special trips to his property for the sole purpose of searching for cameras.



99. Defendants' warrantless entries and digital surveillance of Plaintiffs' properties have made Plaintiffs less willing to invite guests onto their properties for fear that the guests will be subjected to unwarranted intrusions and surveillance.

100. Defendants' warrantless entries and digital surveillance of Plaintiffs' properties have caused Plaintiffs to spend less time hunting on their properties—not only because Plaintiffs value their privacy, but because hunting while TWRA officers may be hiding in close proximity (e.g., in bushes, behind trees) is extremely dangerous.

101. In short, Defendants' warrantless searches of Plaintiffs and their properties have reduced Plaintiffs' ability to use and enjoy their land in peace.

102. But for Defendants' warrantless searches of Plaintiffs and their properties, TWRA's policy and practice of warrantless searches, and Tenn. Code Ann. § 70-1-305(1), (7), Plaintiffs would have suffered none of these harms in the past and would suffer none of them in the future.

### **LEGAL CLAIM**

#### **(Tenn. Const. art. I, § 7—Unreasonable Warrantless Searches)**

103. Article I, Section 7 of the Tennessee Constitution provides:

That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not be granted.

104. The word “possessions” in Article I, Section 7 encompasses all privately owned property over which a person exercises dominion, including (but not limited to) the home and its curtilage, farmland, hunting grounds, camping areas, roads, woods, and even individual trees.

105. Plaintiffs' properties described above are "possessions" within the meaning of Article I, Section 7.

106. Defendants searched Plaintiffs' possessions within the meaning of Article I, Section 7 by entering their properties without permission in order to find evidence of violations of wildlife laws.

107. Defendants searched Plaintiffs' possessions by wandering around their properties without permission in order to find evidence of violations.

108. Defendants searched Plaintiffs' possessions by taking pictures and videos on their properties without permission in order to find evidence of violations.

109. Defendants searched and/or seized Plaintiffs' possessions by physically installing surveillance cameras in their trees in order to find evidence of violations.

110. Defendants searched and/or seized Plaintiffs' possessions by physically cutting branches from their trees in order to find evidence of violations.

111. The word "persons" in Article I, Section 7 encompasses Plaintiffs' bodies, activities, and movements on their properties.

112. Defendants searched Plaintiffs' persons within the meaning of Article I, Section 7 by conducting digital surveillance of their bodies, activities, and movements in order to find evidence of violations.

113. Defendants also violated Plaintiffs' reasonable expectations of privacy by conducting these searches on properties Plaintiffs own, regularly use, and have conspicuously marked as private.

114. All of Defendants' searches of Plaintiffs and their properties were conducted without a warrant or other judicial authorization.

115. All of Defendants' searches of Plaintiffs and their properties were therefore unreasonable and violated Article I, Section 7 of the Tennessee Constitution.

116. Accordingly, Plaintiffs ask the Court to enter judgment declaring that Defendants' past searches of Plaintiffs and their properties violated Article I, Section 7 of the Tennessee Constitution.

117. Defendants' policy and practice of warrantless entries onto private property and warrantless digital surveillance of private property and its owners violates Article I, Section 7 of the Tennessee Constitution for the same reasons stated in paragraphs 103–115.

118. Accordingly, Plaintiffs ask the Court to enter judgment declaring that Defendants' policy and practice of warrantless searches violates Article I, Section 7 of the Tennessee Constitution.

119. On information and belief, all of Defendants' warrantless searches were, and continue to be, conducted pursuant to Tenn. Code Ann. § 70-1-305(1), (7).

120. Accordingly, Plaintiffs ask the Court to enter judgment declaring Tenn. Code Ann. § 70-1-305(1), (7) unconstitutional both on its face and as applied to Plaintiffs.

121. Unless Defendants are enjoined from conducting future warrantless searches of Plaintiffs and their properties, from enforcing Defendants' policy and practice of warrantless searches, and from enforcing Tenn. Code Ann. § 70-1-305(1), (7), Plaintiffs will suffer continuing and irreparable harm.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

A. For a judgment declaring that Defendants' warrantless searches of Plaintiffs and their properties violated Article I, Section 7 of the Tennessee Constitution;

B. For a permanent injunction barring Defendants from conducting any similar warrantless searches of Plaintiffs and their properties in the future;

C. For a judgment declaring that Defendants' policy and practice of warrantless entries onto private property and warrantless digital surveillance of private property and its owners violates Article I, Section 7 of the Tennessee Constitution;

D. For a permanent injunction barring Defendants from enforcing their policy and practice of warrantless entries onto private property and warrantless digital surveillance of private property and its owners;

E. For a judgment declaring that Tenn. Code Ann. § 70-1-305(1), (7) violates Article I, Section 7 of the Tennessee Constitution, both on its face and as applied to Plaintiffs;

F. For a permanent injunction barring Defendants from enforcing Tenn. Code Ann. § 70-1-305(1), (7), both on its face and as applied to Plaintiffs;

G. For an award of \$1 in nominal damages against Defendants Carter and Hoofman in their individual capacities;

H. For an award of attorneys' fees and court costs; and

I. For all other legal and equitable relief to which Plaintiffs may be entitled.

RESPECTFULLY SUBMITTED this 14th day of April, 2020.

By: /s/ Jack A. Leonard  
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\*Motion for admission *pro hac vice* to be filed