

COMMONWEALTH OF VIRGINIA  
FOURTEENTH JUDICIAL CIRCUIT

L.A. HARRIS, JR., JUDGE

RICHARD S. WALLERSTEIN, JR., JUDGE

JOHN MARSHALL, JUDGE

RANDALL G. JOHNSON, JR., JUDGE

RONDELLE D. HERMAN, JUDGE



CIRCUIT COURT OF HENRICO COUNTY

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October 27, 2023

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**Re: Highlander v. Va. Dept. of Wildlife Res., et al., CL23-4100**

Dear Counsel:

Upon the arguments of counsel at the October 20, 2023 hearing, coupled with a review of the Motion and Briefs filed in this case and the Court's notes, the Court sustains the Defendants' Demurrer and Plea in Bar of Sovereign Immunity for the following reasons:

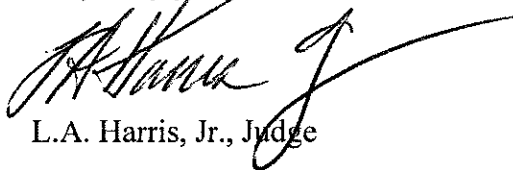
In Wellford v. Commonwealth, 227 Va. 297, 301 (1984), the Supreme Court of Virginia reiterated the rule established in Oliver v. United States, 466 U.S. 170, 177 (1984), that "the government's intrusion upon the open fields is not one of those 'unreasonable searches' proscribed by the text of the Fourth Amendment." "[T]he special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields," Hester v. United States, 265 U.S. 57, 59 (1924), and as such, "an individual may not legitimately demand privacy for activities conducted out of doors in fields, except in the area immediately surrounding the home." Wellford, 227 Va. at 302 (quoting Oliver, 466 U.S. at 178). This Court thus finds that, pursuant to the open fields doctrine, the Defendants' intrusion upon Plaintiff's open fields was not an "unreasonable search[]" proscribed by the text of the Fourth Amendment." Id. at 301.

In addition, circuit courts of this Commonwealth have consistently held that Article 1, § 10 of the Constitution of Virginia is not self-executing. See, e.g., Chandler v. Routin, No. CL02-1080, 2003 WL 23571249 (Va. Cir. Ct. Sept. 23, 2003) (holding that “[t]he provision[] of Section[] 10 [is] not self-executing and do[es] not support private causes of action”); Young v. City of Norfolk, 62 Va. Cir. 307 (2003) (holding that the lack of authority declaring a private right of action existing under this provision in the intervening two hundred twenty-seven years since the adoption of Art. 1, § 10 of the Virginia Constitution is conclusive that a private right of action does not exist under this provision). Thus, this Court finds that Article 1, § 10 of the Constitution of Virginia is not self-executing and does not support private causes of action. As such, sovereign immunity bars Plaintiff’s claims in this matter.

This Court thus sustains both Defendants’ Demurrer and Plea in Bar of Statutory Immunity. Thank you for a well-presented case.

Counsel for the Office of the Attorney General is directed to prepare an Order consistent with this decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "L.A. Harris, Jr.", with a long, sweeping horizontal line extending to the right.

L.A. Harris, Jr., Judge