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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

**VIRGINIA:**

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

THE RAPTOR CONSERVANCY OF VIRGINIA )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VIRGINIA DEPARTMENT OF GAME AND INLAND FISHERIES )  
 )  
 )  
 Serve: 7870 Villa Park Dr., Suite 400 )  
 Henrico, Va. 23228 )  
 Defendant. )  
 )

Case No.: 2017 04911

**COMPLAINT FOR INJUNCTIVE RELIEF AND  
MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff The Raptor Conservancy of Virginia ("RCV"), by counsel, moves this Court pursuant to Virginia Code § 8.01-620 to prevent the Defendant, Virginia Department of Game and Inland Fisheries (the "Department") from removing RCV's educational, falconry, propagation, and exotic birds of prey. Pursuant to Va. Code § 8.01-629, RCV requests the court grant a temporary injunction without notice prior to a hearing given the nature of the complaint. RCV further requests that the Court grant a permanent injunction for the same purpose.

**I. Parties**

1. Plaintiff RCV is a nonprofit organization dedicated to (1) rehabilitation and release to the wild of injured, ill or orphaned native Virginia birds of prey; (2) education of the public about raptors and preservation of their habitat; and (3) endeavoring to increase the wild population of endangered and threatened raptors.

2. Defendant Department is a Virginia state government agency. According to the Department's website, its vision is "Leading wildlife conservation and inspiring people to value

the outdoors and their role in nature” and its mission is three-fold: (1) “Conserve and manage wildlife populations and habitat for the benefit of present and future generations”; (2) “Connect people to Virginia’s outdoors through boating, education, fishing, hunting, trapping, wildlife viewing, and other wildlife-related activities”; and (3) “Protect people and property by promoting safe outdoor experiences and managing human-wildlife conflicts”.

## **II. Jurisdiction and Venue**

3. This is an action for injunctive relief under Va. Code § 8.01-620.
4. Venue is proper pursuant to § 8.01-261, as Fairfax County is the residence of RCV.

## **III. Facts**

5. RCV has spent the last 19 years rehabilitating injured birds of prey like owls, hawks, falcons, eagles, and kites and making presentations with educational, non-releasable birds of prey, including to local schools, scout functions, and community events. As examples, in 2017, RCV has presented at the Walker Nature Center in Reston, Virginia, the John Marshall Library in Alexandria, Virginia, at a cub scout meeting in Fairfax, Virginia, and Haycock Elementary School in Falls Church, Virginia. So, RCV had two main types of birds: educational birds and rehab birds. RCV also has falconry birds used in the sport of falconry and propogation birds used for breeding raptors; these birds can be exhibited for educational purposes.

6. Kent Knowles is the president of RCV, holds a permit to exhibit wildlife for educational purposes, and is a Category IIA rehabilitator, which authorizes him to handle birds of prey under the Virginia exhibit and rehabilitation permits. The exhibit permit authorizes RCV to possess education birds. Mr. Knowles may also designate sub-permittees to handle the educational birds during presentations by notifying the Department that additional named individuals will be sub-permittees under the exhibit permit.

7. On March 3, 2017, Randy Francis, a Wildlife Permits Coordinator in the Henrico office of the Department, sent Mr. Knowles an e-mail requesting a meeting with Mr. Knowles within 30 days to discuss "potential misuse of your current permits," without giving any more details.

8. Mr. Knowles was scheduled for major surgery and could not meet with Mr. Francis within 30 days. Mr. Knowles underwent that surgery on March 17, 2017, remained in the hospital for 10 days to recover, and is currently in an in-patient rehabilitation facility.

9. RCV understands that on March 17, 2017, RCV's outside counsel called Mr. Francis on Mr. Knowles' behalf. RCV understands that on that call RCV's outside counsel explained that Mr. Knowles would not be to meet for at least several weeks due to the major surgery occurring that day, and asked instead for Mr. Francis to explain the concerns he had and that most importantly, outside counsel asked Mr. Francis what could be done to rectify the administrative paperwork issues that Mr. Francis identified. RCV understands that Mr. Francis noted that those persons who plan to handle the birds of prey under the exhibit permit would need to be designated as sub-permittees in writing by Mr. Knowles.

10. RCV believes it had previously provided the necessary sub-permittee paperwork to the Department to allow others to handle the exhibit birds but could not find the paper work with Mr. Knowles too ill and not at home to look for it. To avoid any doubt, on March 21, 2017, a new sub-permittee written designation for the permits related to education were submitted to the Department.

11. Instead of constructively working with RCV to address any administrative deficiencies, Mr. Frances sent an email on March 23, 2017, stating, in part, that he intended to

suspend RCV's exhibit and rehab permits and that he would not add the six designated sub-permittees to the exhibit permit.

12. In the March 23, 2017 email, Mr. Francis stated that RCV "may begin to place his rehabilitation birds with the Blue Ridge Wildlife Center located in Boyce, VA as they have the appropriate permits, skilled staff and space for the affected birds. Before movement commences, DGIF and the Blue Ridge Wildlife Center must be notified within 48 hours of the move. If [RCV] chooses not to place the birds [itself], then VDGIF will do so on a day and time convenient to us." Based on that threat, RCV placed its 33 rehab birds with the Blue Ridge Wildlife Center. The Blue Ridge Wildlife Center decided to release 10 immediately from RCV's facility. Upon placement, the Blue Ridge Wildlife Center decided to immediately euthanize 4 of the rehab birds. RCV believes that the Blue Ridge Wildlife Center is likely to euthanize 9 of the 12 remaining non-releasable birds. RCV is unsure of the Blue Ridge Wildlife Center's intentions with respect to the remaining 7 birds.

13. In the March 23, 2017 email, Mr. Francis stated that Mr. Knowles "may continue to hold his exhibition birds but they are not to be exhibited until his suspension has ended. He may continue to hold his falconry birds but they too must not be taken out and hunted or exhibited in any way until his suspension ends."

14. On April 3, 2017 at 3:48 p.m., in a voicemail left at RCV, Mr. Francis stated he was coming to RCV on the morning of April 4, 2017 to remove the remainder of the birds from the facility, which includes the educational birds and the falconry birds.

15. RCV and Mr. Knowles are committed to correcting any missing paperwork, and believe they have already done that with their submissions designating the sub-permittees on the exhibit permit.

16. In addition, RCV would have 30 days to appeal any suspension of its Permit to Exhibit Wildlife in Virginia.

#### IV. Argument

17. To issue a temporary restraining order, courts consider “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Real Truth About Obama, Inc. v. Fed. Election Comm’n*, 575 F.3d 342, 346 (4th Cir. 2009), *cert. granted, judgment vacated*, 559 U.S. 1089 (2010), and *adhered to in part sub nom. The Real Truth About Obama, Inc. v. F.E.C.*, 607 F.3d 355 (4th Cir. 2010); *see also Wings, L.L.C. v. Capitol Leather, LLC*, 88 Va. Cir. 83 (Va. Cir. Ct. 2014) (stating that, with respect to preliminary injunctions, “several circuit courts of this Commonwealth have adopted the standard set by the Fourth Circuit”); *Long & Foster Real Estate, Inc. v. CLPF - King St. Venture, L.P.*, 74 Va. Cir. 87 (Va. Cir. Ct. 2007) (following prior Fourth Circuit test).

18. First, RCV is likely to succeed on the merits. Mr. Knowles holds a “Permit to Exhibit Wildlife in Virginia,” authorized by § 29.1-412 and § 29.1-417 of the Code of Virginia and 4 VAC 15-290-60, 4 VAC 15-30-40 (“the permit”). The permit authorizes Mr. Knowles to possess and exhibit wild birds native to Virginia for educational purposes. While the wildlife held under the permit remains in the stewardship of the Department, the Department may only relocate the wildlife “for just cause.” *Permit to Exhibit Wildlife in Virginia*, Sec. A.2. That burden cannot be met here.

19. Mr. Knowles received an e-mail notice from the Department on March 3, 2017, indicating the “potential misuse of several of [his] permits” and requesting he respond “with at least four dates (Mondays, Tuesdays or Thursdays) within the next 30 days that you are available to travel to Richmond ... to meet with our staff.” RCV responded the following week, notifying

the Department that he could not travel to Richmond within the requested time because he could not travel long distances under doctor's orders due to a recent medical issue. Instead, Mr. Knowles engaged counsel to assist while he was dealing with his medical issue, which eventually resulted in surgery.

20. Counsel for RCV contacted the Department on March 17, 2017, and asked how to address the alleged permit issues. The Department instructed counsel that those persons who plan to handle the raptors under the exhibit permit would need to be designated as sub-permittees in writing by Mr. Knowles. The same day, Mr. Knowles had major surgery, for which he remained hospitalized for 10 days and remains in an in-patient rehabilitation facility today. Nevertheless, on March 21, 2017, Mr. Knowles designated sub-permittees in an e-mail to the Department. Without acknowledging the sub-permittee designations and constructively working with RCV counsel to address the administrative deficiencies, the Department instead replied in an e-mail, threatening to suspend Mr. Knowles' exhibit permit and refusing to add the six designees to the wildlife exhibit permit. On April 3, 2017 at 3:48 p.m., the Department stated in a voicemail to RCV's Executive Director, without a reason, that it intended to "remove the remainder of the birds from the facility" on April 4, 2017.

21. Based on these communications between RCV and its representatives and the Department, the Department does not have "just cause" to relocate the RCV birds. RCV and Mr. Knowles attempted to work cooperatively with the Department to address any alleged administrative shortcomings, during a very difficult month when Mr. Knowles was not available due to major surgery that the Department was immediately made aware of. Moreover, Mr. Knowles has been unable to determine whether the appropriate paperwork was previously submitted, prior to the Department raising any issues. Rather than reciprocate in kind, the

Department refused to grant the sub-permittee designation, which would have obviated the need for any action against the wildlife, without providing any basis whatsoever. Without supporting and adequate reasons, Mr. Knowles is likely to succeed on the merits that the Department does not have "just cause" to relocate the wildlife.

22. Second, RCV is likely to suffer irreparable harm in the absence of preliminary relief. Based on the Department's prior threats, RCV was coerced into sending their rehabilitation birds to another bird sanctuary at which RCV understands 4 rehabilitation birds have already been euthanized and 9 will likely be euthanized. The Department has not provided any assurances that the birds it now seeks to remove from RCV will not similarly be euthanized. Thus, RCV is likely to suffer irreparable harm in the absence of preliminary relief.

23. Third, the balance of equities tips in RCV's favor. If RCV keeps the birds, no harm will come to the birds. If the Department removes the birds, the birds may be euthanized, as some of RCV's other birds were euthanized when they were similarly transferred to another facility. Thus, the balance of equities tips in RCV's favor. Indeed, Mr. Francis is taking advantage of the situation when Mr. Knowles is recovering from major surgery. Instead, Mr. Francis should process the sub-permittee designation to allow other skilled individuals, including RCV's Executive Director, to exhibit and handle the birds.

24. Fourth, an injunction is in the public interest. Again, if RCV keeps the birds, no harm will come to the birds. If the Department removes the birds, the birds may be euthanized, as some of RCV's other birds were euthanized when they were similarly transferred to another facility. There is no public interest in euthanizing these birds. On the other hand, the public has an interest in RCV maintaining these birds. RCV has used the educational birds and falconry birds that the Department has stated it is removing today to educate the public about birds of

prey and preservation of their habitat, including through presentations for local schools, scout functions, community events and other groups and by presenting information about the value of predators like these birds of prey in the balance of nature.

WHEREFORE, RCV respectfully requests that this Court:

1. Enter a temporary restraining order preventing the Department from removing RCV's educational, falconry, propogation, and exotic birds of prey;
2. Enter a permanent injunction preventing the Department from removing RCV's educational, falconry, propogation, and exotic birds of prey; and
3. Award such other and further relief as this Court deems just and proper.

**THE RAPTOR CONSERVANCY OF  
VIRGINIA**

By: 

Counsel

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VERIFICATION

1. I am Gabby Hrycyshyn and am the Executive Director of the Raptor Conservancy of Virginia ("RCV").
  
2. I have personal knowledge of RCV and its activities, including those set out in the foregoing complaint, and if called upon to testify, I would testify as to the factual matters stated in the complaint.
  
3. The factual statements in the foregoing complaint are true and correct to the best of my knowledge.

I, Gabby Hrycyshyn, declare under penalty of perjury that the foregoing is true and correct.

Dated: April 4, 2017

  
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Gabby Hrycyshyn