



Written by [Raven Clabough](#) on April 7, 2011

## Delaware Families Contend with Overreaching Laws

When Delaware State Police and the Delaware Department of Transportation (DelDOT) attempted to uphold an unconstitutional Delaware “Clear Zone” law that prohibits trees and other objects from being within seven feet of the pavement’s edge in a residential subdivision as it relates to a basketball hoop, John and Melissa McCafferty exercised peaceful resistance and utilized the law to maintain their rights.



In 2010, the McCaffertys, as well as several other residents within the same subdivision, received a warning letter from the state of Delaware regarding the location of their basketball hoops. The residents immediately contested the letter and sought the aid of local representatives to assist in the matter.

Regardless of both the outcry of the residents involved and the input of sympathetic local lawmakers, the Delaware Department of Transportation failed to adequately address the opposition to the warnings. Without warning, police cars and heavy machinery belonging to DelDOT arrived at the homes of the residents on Friday, March 25, and forcibly removed the basketball hoops.

Melissa McCafferty climbed atop her basketball hoop in the hopes that this would deter the workers, and it did so momentarily. Eventually, however, four state trooper vehicles arrived at the McCafferty’s residence and threatened to arrest the family if they continued to resist.

Melissa’s husband, John, explained the scenario to *The New American*:

Despite the countless correspondence underway between our representatives and DelDOT, [DelDOT] basically said, ‘heck with you, we’re going to take the basketball hoops. While our lawyers were trying to negotiate the matter, we elected not to file suit, hoping instead to come up with an amicable solution to the matter. But they ambushed us.

Not only were neighbors appalled by the violation of property rights at the hands of the state troopers and DelDOT workers, but by the behavior of those same DelDOT workers.

According to John McCafferty, some of the workers used foul language in addressing his wife, going so far as to call her the “c-word.” Even worse, when John proceeded to “defend his wife’s honor,” the Lieutenant on duty, Jennifer Griffin, ordered him to “stop taunting the DelDOT workers” and to go into his home with his wife.

Likewise, when John McCafferty requested two hours in order to pursue a restraining order against DelDOT, Lieutenant Griffin refused.

A front loader then proceeded to remove the pole from the ground, dropping it in the process, and then placed it in the dump truck and hauled it away.



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Video footage of the interactions between the family and the officers on duty reveal Lieutenant Griffin assuring the family that once DelDOT took down the basketball hoop, the family would be permitted to keep the hoop and pole. However, once the hoop was brought down, the workers proceeded to take the pole and the family was informed that they could not take possession of *their own pole* at the time but would have to pick it up later, after it was hauled away.

Perhaps the most ironic element of the entire scenario is that the 61-year old basketball hoop, which sits in a quiet cul-de-sac where there is little traffic, has never been the source of contention until the clash with DelDOT. Over the years, complaints have never even been called in to the local police regarding the basketball hoop or the noise made by the children who use it — until now. The entire incident erupted from an elderly neighbor's anonymous complaint that somehow managed to be routed to the Department of Transportation.

Whether the statute in question could even be applied to the McCaffertys and their basketball hoop is also debatable. As noted by Delaware State Representative Bryon Short in a letter addressed to DelDOT Secretary Carolann Wicks:

I believe it is best to start with the statute that is arguably applicable to the facts: Section 525 of Title 17 of the Delaware Code, titled "Maintenance of clear zones within rights-of-way" ("Section 525"). This statute was enacted during the 139th Session of the Delaware General Assembly, spanning from 1997 - 1998.

Section 525 provides DelDOT with jurisdiction and, thus, authority to act if the facts in question satisfy the requirements of the statute. However, I am not certain this is the case. The reason for this is that the type of road in question is not entirely clear to me. Consequently, it is equally unclear whether Section 525 applies. Specifically, Section 525(b) describes how the statute is to be applied *if* the statute applies to the given situation. I would appreciate if you could provide insight on this issue and legal support for your position that Section 525 applies to the basketball hoops.

Likewise, Short emphasizes in his letter that the statute in question is "discretionary in nature," meaning "the statute supplies DelDOT with authority to act, but does not mandate that DelDOT take action." It seems that this is an instance in which absolutely power corrupted absolutely.

Furthermore, both the McCaffertys and Representative Short contend that the "law" being enforced is actually an ordinance that was a last-minute addition to a finance bill by the Secretary of Transportation. That same Secretary failed to add a grandfather clause that would have been necessitated by the addition of the ordinance. Short wrote:

Finally, as I noted, Section 525 was enacted in the 139th General Assembly (i.e., in the years 1997 - 98). However, many, if not all, of the basketball hoops complained of were installed years before Section 525 was enacted. The General Assembly could have made the effect of this law retroactive. To do so, the General Assembly must have intended the law to be retroactive and included language that makes plain the General Assembly's intent for the law to have retroactive effect. However, there is nothing that I have seen that would support the proposition that Section 525 was intended by the General Assembly to have retroactive effect. As such, I believe that these basketball hoops were "grandfathered" under Section 525.

In the end, four families including the McCaffertys were able to retrieve their basketball hoops, but the outcome, which entailed having to claim and bring back their own property that was taken from their



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own land, has done little to assuage the families' frustration. Meanwhile, another four basketball hoops remain in state custody.

The maximum fine for being "in violation" of the statute in question, according to John McCafferty, was \$25, along with a \$15 retrieval fee, both of which were waived for the McCafferty family.

Despite the waivers, however, one cannot help but recognize the absurdity of the math involved. When one weighs the cost of the fines against how much taxpayer money was invested in the entire ordeal, from the cost of the troopers and DelDOT workers present at the McCafferty residence to the cost of the machinery, one wonders if the state can possibly justify its handling of the situation just from the economic point of view — the violation of the homeowners' rights notwithstanding.

As John McCafferty told *The New American*, "What transpired is in violation of a number of constitutional rights, including due process and property rights."

*Photo: Melissa McCafferty safeguards her basketball hoop from Leviathan's overreach*



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