



Written by [Bob Adelman](#) on September 26, 2024

Pro-gun Group Urges Maryland's Supreme Court to Clarify State's Red Flag Law

The pro-gun Second Amendment Foundation (SAF) [filed an appellant brief with Maryland's Supreme Court](#) on Wednesday, urging it to clarify a complaint filed but languishing in a lower court since August 2023. The lawsuit, [Willey v. Brown](#), complains that the state's "red flag law" (RFL, aka Extreme Risk Protective Order, or ERPO) is unconstitutional because it violates the Fourth Amendment's protection against unreasonable searches and seizures:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon *probable cause*, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [Emphasis added.]



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Maryland's red flag law, passed in 2018, lowers the standard from probable cause to "reasonable grounds" and, until used by a corrupt city official to punish a local citizen, had never been challenged in court.

Susan Webb, director of planning and zoning for Dorchester County, Maryland, has been harassing citizen Donald Willey for nearly 20 years. In 2021, she used the state's red flag law to avenge Willey's "insolence" over her repeated complaints.

The 2023 Complaint

The complaint was reviewed by *The New American* a year ago. Here are excerpts from the lawsuit:

This cautionary tale about the danger of an unconstitutional law wielded by an abusive and dishonest public official, proves the old adage that truth is sometimes stranger than fiction....

In May 2021, Webb launched a new campaign of harassment by letter from one of her inspectors to Willey advising that he was in violation of the County Code due to rubble, junk, and untagged vehicles in his yard.

Webb then issued three "Uniform Civil Citations" (the "Citations") to Willey requiring him to pay fines: one relating to the condition of his yard, one for allegedly running an illegal



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business on his property, and one for purported “unpermitted disturbance to 100-foot tidewater buffer.” ...

Webb soon realized that the condition of Willey’s yard was not properly addressed in this manner and withdrew the yard infraction Citation.

At a meeting with Willey without his attorney about the two remaining Citations, an incensed Webb attempted to intimidate him by aggressively pushing copies of the Citations toward Willey on a table and threatening to fine him \$5,000 a day for the “business” infraction and \$5,000 a day for the “tidewater buffer” infraction.

Willey has never operated a business on his property.

After this initial meeting, Willey’s attorney confronted Webb with the reality that Willey did not have any “business” on his property and that the “tidewater buffer” infraction was not applicable to Willey.

Webb reluctantly withdrew these remaining Citations.

Undeterred, Webb commenced an enforcement proceeding against Willey in Dorchester County Circuit Court in July 2022 relating to the alleged condition of his yard. The parties resolved this proceeding by [a] Consent Order dated November 3, 2022, whereby Willey agreed to remediate any alleged yard infractions no later than May 31, 2023, and that Webb’s inspectors could enter the property to assess compliance, but only after notice to his attorney....

On May 30, 2023, Webb and one of her inspectors, Tyler Bennett (“Bennett”), conducted a compliance inspection of Willey’s property. Although Willey had indeed made substantial and costly efforts to ensure compliance with the Consent Order, and in fact had achieved substantial compliance, Webb was not satisfied.

According to a Notice of Violation issued to Willey on June 1, 2023, “the inspection revealed tall grass/weeds/vegetation 12” or higher, which is in violation of the Dorchester County Nuisance Ordinance,” with correction required by June 7, 2023, on pain of fines....

On June 2, 2023, Webb and Bennett drove to Willey’s property in Fishing Creek without notice to his attorney as was required by the Consent Order, in order to serve him with one or more of the aforementioned Notices of Violation.

When Webb and Bennett arrived in a marked County vehicle at Willey’s property, he was outside in his yard. Willey respectfully declined to accept in-hand service of the Notices and instead politely asked Webb to communicate with his attorney. Instead, an irate Webb refused to leave, berated Willey, and yelled at him that his fence had to be taken down. In response, Willey told Webb: “you’re stupid.”

Webb, apparently not satisfied, lingered and continued to berate Willey even after he said “bye” several times....

At no time on June 2, nor during multiple prior interactions with Webb and her inspectors, did Willey ever (a) brandish or otherwise display a firearm or any other weapon, (b) have a firearm or any other weapon on his person or immediately accessible, or (c) make any verbal threats or even raise his voice....



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Webb decided to punish Willey by asking a local judge, under Maryland’s red flag law, to issue an ERPO, which would allow local law enforcement to remove his firearms and ammunition, by force if necessary. She also inflicted further damage by using another part of the law to command that Willey undergo various mental and physical indignities, including a blood draw and providing a urine sample. It also included a mental-health evaluation, after which the physician declared Willey to be “under stress.”

Webb Lied Repeatedly

To obtain the judge’s order, Webb had to lie repeatedly on the demand form. As we reported last August:

Lie No. 1: She declared on the form required that Willey posed an immediate and present danger of causing personal injury to himself, to herself, or to someone else, by merely possessing a firearm.

Lie No. 2: She declared that Willey had been “making threats of violence by firearms to myself and other departmental employees on numerous occasions.” But she didn’t provide any details as the RFL application demanded.

Lie No. 3: She alleged that Willey possessed an unknown number of firearms, but without providing any details or amplification: “These allegations were nothing more than a guess — Webb had never spoken to Willey about his firearms and had no other lawful method of determining which firearms Willey possessed.”

Lie No. 4: Another section of the form required Webb to provide a description of just how “respondent has unlawfully, recklessly, or negligently used, displayed, stored, possessed, or brandished a firearm.” Webb merely inserted three dates, nothing more.

Lie No. 5: Elsewhere on the form, Webb stated that “On three recent occasions myself and staff were warned of threats of violence from Mr. Willey.” Willey had never threatened violence of any kind against Webb or her subordinates on any occasion.

When Willey finally had his chance, under the law, to confront Webb with her lies, she withdrew her complaint. She had obtained her ounce of flesh. Or so she thought.

Willey and the Second Amendment Foundation filed [the suit](#) last summer, declaring that

The Maryland RFL is unconstitutional as applied to Willey and unconstitutional on its face.

Accordingly, Plaintiffs [Willey and the SAF] bring this challenge to vindicate their rights under the Second, Fourth, and Fourteenth Amendments to the United States Constitution, and to immediately and permanently enjoin enforcement of the Maryland RFL as required to conform the RFL to the Constitution’s text as informed by our Nation’s history and tradition....

Plaintiffs hereby demand trial by jury.

The Appellant Brief

There the matter rested, until Wednesday. The appellant brief asks the state’s high court to resolve just two questions:



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1. What legal standard does the term “reasonable grounds” mean in the state’s red flag law?
2. Does the state’s red flag law permit an ERPO to be issued upon a standard less than “probable cause?”

Once the high court answers these questions, the lower court — the U.S. District Court for Maryland’s Northern Division — can then move ahead and grant the relief sought by Willey and the SAF. That relief includes a declaration by the court that the law is unconstitutional and thus unenforceable. It also provides financial remuneration and restitution for the indignities suffered by Willey, as well as legal fees to the SAF and the attorneys the group has employed to bring the case against Webb and the State of Maryland.

According to the SAF news release:

“This case is about how so-called ‘red flag laws’ can be weaponized against private citizens, and in order to flesh this out for our federal case, we’re asking the Maryland high court to define the meaning of ‘reasonable grounds’ in the state ERPO statute,” SAF founder and Executive Vice President Alan M. Gottlieb explained.

“Answers to our questions will help make our case against Maryland’s law,” noted SAF Executive Director Adam Kraut. “Red flag laws are based on the inherently Orwellian belief that you can take actions against someone for an alleged crime that hasn’t occurred.

Such laws authorize seizure and punishment for a crime nobody committed but which could occur at some place and time in the future. The concept is absurd.”

If justice is served and Maryland’s red flag law is ruled unconstitutional, the ruling would have national implications. Connecticut enacted the nation’s first red flag law in 1999, followed by Indiana in 2005. Nineteen other states (and the District of Columbia) have since passed nearly identical laws. And Biden’s Department of Justice is actively urging other states to enact similar legislation. A proper ruling in Maryland would provide a much-needed precedent to neuter these laws.

Related article:

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