ACLU
AMERICAN CIVIL LIBERTIES UNION of MARYLAND
FOUNDATION

December 12, 2013

Angela D. Alsobrooks, State's Attorney
Office of State's Attorney
14735 Main Street
Upper Marlboro, MD 20772

Re: Brewer and Upchurch Nuisance Abatement Actions

Dear Ms. Alsobrooks:

We write on behalf of the American Civil Liberties Union (ACLU) of Maryland, Mrs. Cleo Brewer, Mrs. Dollie Upchurch, and the families of these two women, to urge your office to move to dissolve two nuisance abatement consent orders you initiated earlier this year, and to correct what seems to us to be an obvious misuse of the powers of the Office of the State's Attorney, which has caused real suffering for these families.

As explained below, we believe the State's Attorney's office should never have initiated these proceedings, and should not have coerced the families' "consent" to the two orders, which have served to exile men from the homes they grew up in; deprive an ill elderly woman the help and support of her caregiver grandson and great-grandson, and cause one family member to incur significant debt as a result of contracts he is unable to fulfill, among numerous other harms to the individuals, families, and community involved. The people directly affected by the orders include Mrs. Cleo Brewer, her grandson, and her great-grandson, who were all living at 4602 Burlington Road, in Hyattsville; and Mrs. Dollie Upchurch, and her brother, who were living at 4603 Burlington Road.

Maryland's nuisance abatement statute is intended to provide a remedy when properties are being used for drug activity that rises to the level of a public nuisance – and, by its terms, specifically targets properties being used for the manufacture, storage, or distribution of illegal drugs.[1] But, in this case, the State's Attorney's Office made no showing that either property was used for these activities or that any nuisance existed.

With respect to Mrs. Brewer's residence, the sole fact cited in the consent order to support the allegation that her home was a drug nuisance was that, eight months before the July court date, in September 2012 – when police conducted an

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[1] Md. Real Property Code §14-120(a)(5) (stating that a nuisance means a property that is used (1) by persons who assemble for the specific purpose of illegally administering a controlled dangerous substance; (2) for the illegal manufacture, or distribution of a controlled dangerous substance or controlled paraphernalia; or (3) for the illegal storage or concealment of a controlled dangerous substance in sufficient quantity to reasonably indicate under all the circumstances an intent to manufacture, distribute, or dispense a controlled dangerous substance or controlled paraphernalia.).

aggressive (and unjustified, in our view) raid and comprehensive search of the home – they managed to turn up less than two grams of marijuana in a bedroom nightstand.[2] The lone finding of a tiny quantity of marijuana eight months earlier does not suggest, let alone establish, that the property was being used as a drug house within the meaning of the statute. Rather, it is obvious that, in such small quantity, any drugs that were recovered were plainly for personal use.[3]

Similarly, in the Upchurch residence, the sole fact supporting the nuisance action filed by your office was that eight months earlier – again, after a raid and thorough search of the home – police recovered "a glass pipe with a white substance inside the pipe" in a bedroom.[4] Plainly, this single assertion is, on its face, insufficient to suggest substantial drug activity, or any other nuisance within the meaning of the statute.[5]

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Using these bare facts, your office sought orders that are remarkable in the damage they inflicted upon these two families and the extent to which they interfered with fundamental familial relationships. Each order sought total and absolute banishment of certain family members from their own homes and, indeed, the whole neighborhood, prohibiting even visits.

In the case of Mrs. Brewer, an ailing cancer patient, her grandson and great-grandson, both of whom she raised from childhood, were acting as caregivers. The State's Attorney's Office was made aware that these two men were helping her around the home and seeing to her basic care, such as meals, groceries, and chemotherapy appointments, yet sought an order that left Mrs. Brewer in a precarious position and deprived her of the care and comfort of the family members she helped raise when she most needed their help. Not only were Mrs. Brewer's grandson and great-grandson banished from living with her, but the terms of the order also prohibited them from even visiting Mrs. Brewer or coming to see her in the neighborhood. Worse still, the order sought banishment

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[2] The consent order does not actually state that police recovered marijuana from Mrs. Brewer's home. The exact description in the consent order is "...the following items were recovered: .02 grams of a green leafy substance inside an ash tray located next to the bed in the upstairs bedroom #3, and a black baggie containing a green leafy substance of 1.5 grams in the top drawer of the nightstand to the left of the bed in bedroom #3. Total weight of 1.7 grams and a street value of $34.00." Consent order para. 6.

[3] In fact, in recent years the penalty for possessing 10 grams or less of marijuana was reduced to a maximum jail term of 90 days. Md. Code. Crim. Ann. § 5-601(c)(2)(ii).

[4] Neither the complaint nor the order actually state what substance was recovered. Order para. 7.

[5] By contrast, for example, in *Becker v. State*, 363 Md. 77 (2001), involving a nuisance abatement complaint that a private business had become a haven for drug activity, there was extensive evidence before the Court, including testimony of five police officers regarding the extent of drug activity; records related to successful sting operations conducted at the business; testimony from area residents that drug activity was rampant; and evidence that police had responded to 486 drug-related calls concerning the property and the nearby area in a four-year period. *Id.* at 81-82.

of friends and acquaintances of her grandson and great-grandson from Mrs. Brewer's home, meaning that neither of them could send friends to check up on Mrs. Brewer in their absence without risking arrest or violation of the order.

With respect to the Upchurches, at the time of the order Mrs. Upchurch's brother had been overseeing significant renovations to the home in which he had grown up, and had decades-long landscaping contracts with neighbors in the area. The order banishing him from his home rendered him homeless; caused him to lose a lucrative job; and made it impossible for him to fulfill his longstanding contracts, resulting in significant debt. Inexplicably, your office refused his request for an exception that would allow him to take care of these contracts rather than incur additional debts.

We will not recount the many other ways in which these orders have affected both those who were banished and those who remain, but we note that the orders also impose significant constraints upon the homeowners, Mrs. Brewer and Mrs. Upchurch, requiring them to obtain leases for anyone living in the home and prohibiting them from housing people with certain types of background, regardless of whether or not they are family members or loved ones. Failure to comply exposes them to further penalties, including the possible shuttering of their homes.

As troubled as we are by your decision to pursue these improper orders, we are taken aback at the tactics deployed by your office and the police to coerce these families into "consenting" to them. The inadequacies of the evidence and the extraordinary overbreadth of the orders went totally untested by the Court, because the State's Attorney's Office, together with the police, threatened the two elderly, unrepresented homeowners that they would lose their homes if they did not agree to the orders voluntarily. Rather than receiving a hearing, each family was taken into a room by the State's Attorney and police and told that they must either sign the order, consenting to its terms, or the family home would be taken. Your office provided no additional evidence to support the nuisance allegation and suggested no less burdensome alternatives to "abate" any nuisance that existed. Rather, your office used the fear of the homeowners that they would be left homeless to coerce their consent and to force them to pressure their own family members to sign orders banishing them from their own homes.[6]

In sum, there are grave doubts about the existence of any nuisance in these cases, the validity of the draconian measures the families were coerced into accepting; and the propriety of the actions of your office in seeking and obtaining the consent of the families under threat of losing their homes. We urge you to take steps to dissolve the consent orders so that the Brewer and Upchurch families

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[6] Indeed, in the case of the Upchurches, when Michael Upchurch did not want to sign the Consent Order, he was asked to leave the room. Police than told Dollie Upchurch that he was running a prostitution ring out of the home, something law enforcement officials may have known would be abhorrent to Mrs. Upchurch, due to her strong religious beliefs. This allegation was never substantiated and was not mentioned in the Complaint, but was presumably raised with Dollie Upchurch alone to discredit Michael Upchurch and to induce her to consent.

may gather for the Christmas holidays. Time is of the essence, both because of the upcoming holidays, and especially because Mrs. Brewer's health has recently deteriorated. Thus, we ask that you contact us as soon as practicable to discuss this matter. Although we hope to avoid the need for litigation, we are prepared to pursue litigation on behalf of our clients to vindicate their rights.

We look forward to hearing from you.

Sincerely,

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cc: Renee Battle-Brooks, Assistant State's Attorney