No. A10-0332

10

STATE OF MINNESOTA

IN SUPREME COURT

Robert McCaughtry, *et al.*,

Appellants,

v.

City of Red Wing,

Respondent.

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STATEMENT OF ISSUES

I. **Under the Fourth Amendment, as interpreted in *Camara v. Municipal Court*, 387 U.S. 523 (1967), municipalities may conduct systematic searches of the homes of ordinary, law-abiding citizens to look for housing-code violations without the residents' consent. In allowing these searches, *Camara* authorizes "administrative warrants," which do not comply with traditional "probable cause" requirements. Does Article I, § 10 provide any greater privacy protections than those adopted in *Camara*?**

Red Wing passed an ordinance mandating inspections of all rental homes and authorizing administrative warrants to conduct these searches. APP96. The district court concluded that no existing Minnesota case held that the Minnesota Constitution prohibited (or allowed) "administrative warrants" for home searches. APP69, 72. As a result, the court believed it did not have the authority to rule in Plaintiffs' favor, although it recognized that this Court may eventually embrace Plaintiffs' arguments. APP72. The Court of Appeals upheld the ordinance under the Minnesota Constitution, first applying *Kahn v. Griffin*, 701 N.W.2d 815 (Minn. 2005), to hold that the court would follow federal law, and then following *Camara* completely in its reasoning. APP7-8, 13-14.

This issue was preserved in Appellants' motions for summary judgment, Pls.' Mem. of Law in Supp. of Mot. for Partial Summ. J. (filed March 31, 2009) at 12, 16-44, Pls.' M.S.J. & Opp. To D's M.S.J. (filed May 26, 2009) at 44-45, as well as at the Court of Appeals, Br. of Appellants at 35-49, *McCaughtry v. City of Red Wing*, No. A10-332 (Minn. Ct. App. 2010), and it was also recognized by this Court in ruling that Appellants' action could move forward to the merits. APP30.

Apposite Authority:
Minn. Const. art. I, § 10
Kahn v. Griffin, 701 N.W.2d 815 (Minn. 2005)
State v. Larsen, 650 N.W.2d 144 (Minn. 2002)
Ascher v. Comm'r of Pub. Safety, 519 N.W.2d 183 (Minn. 1994)
Dist. of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949)

STATEMENT OF THE CASE

This case is about the right of Minnesota residents and property owners to be free from unreasonable searches of their homes and properties conducted without their consent and without any evidence that anything is wrong with their homes.

In 2005, Respondent City of Red Wing ("City" or "Red Wing") enacted a "rental dwelling license code" ("RDLC") that requires every rental home (both houses and apartments) to be licensed. In order to obtain a license, tenants and landlords must submit to a mandatory, and intrusive, city inspection. If they refuse, the RDLC authorizes the City to obtain "administrative warrants" to conduct the search, warrants for which the RDLC does not require any evidence of any housing-code violations at the homes to be searched.

Plaintiff-Appellants ("Plaintiffs") are tenants and landlords who value their privacy and do not wish to allow the City to enter and search their residences and properties. In November 2006, Plaintiffs filed suit under the Minnesota Uniform Declaratory Judgments Act, Minn. Stat. § 555.01, *et seq.*, raising several claims under the state and federal constitutions. APP47.

While the case was litigated in the district court[1] the City sought warrants to enter Plaintiffs' homes and properties on three separate occasions, but was denied each time. APP47-48, 53. The City never appealed those denials, but instead, after each of the first two, amended the RDLC and sought another warrant. APP47-49.

In their state constitutional claims, Plaintiffs contend that even if the RDLC is constitutional under the Fourth Amendment to the United States Constitution—as interpreted by the Supreme Court in *Camara v. Municipal Court*, 387 U.S. 523 (1967)—the ordinance fails to satisfy the requirements of Article I, Section 10 of the Minnesota Constitution because Minnesota provides greater protections for its citizens' homes and privacy rights. APP24, 30.

The district court dismissed Plaintiffs' action by concluding they lacked standing. APP53. For reasons of judicial economy, however, the court discussed the question of whether Article I, Section 10 of the Minnesota Constitution forbids government searches of homes absent probable cause to

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[1] The case was filed following the first warrant application in October 2006. APP47, 179. The case was dismissed by the district court in December 2009. APP53. During some of this time, from December 2006 until August 2008, the original action *Stewart v. City of Red Wing*, 25-CV-06-3391, was in federal court after the City removed it. The federal court remanded it back to state district court where it was consolidated with the other half of this action, *McCaughtry v. City of Red Wing*, 25-CV-08-1104. All three denials of warrant applications occurred in state district court.

believe a code violation is present inside. APP59-73. The district court believed it did not have the authority to rule in Plaintiffs' favor, although it recognized that this Court might eventually embrace Plaintiffs' arguments. APP72. Plaintiffs appealed to the Court of Appeals, both regarding the standing question and—again, for reasons of judicial economy—the merits argument the district court had discussed. Br. of Appellants at 3-5, *McCaughtry v. City of Red Wing*, No. A10-332 (Minn. Ct. App. 2010). Plaintiffs preserved their other claims, both state and federal, as the district court had not—and still has not—addressed them. *Id.* The Court of Appeals then affirmed that Plaintiffs lacked standing without commenting on the merits of any of Plaintiffs' claims. APP41-42.

This Court then reversed the decision that the Plaintiffs lacked standing and remanded back to the Court of Appeals to address Plaintiffs' state constitutional claims. APP34. ("Therefore, we remand to the court of appeals to consider the merits of appellants' challenge to the Red Wing rental inspection ordinance under the Minnesota Constitution."); [[cite]] (explaining that Plaintiffs argued that "an administrative warrant application requires individualized probable cause" and that the Minnesota Constitution's yet-to-be-developed administrative-warrant doctrine would prohibit the search of occupied buildings).

On remand, the Court of Appeals applied the methodology of *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005), and concluded the Minnesota Constitution provides no greater protection than the Fourth Amendment as interpreted in the U.S. Supreme Court's *Camara* decision. APP7-8, 13-14. Following *Camara*, it held that, although the Minnesota Constitution requires warrants issued on "probable cause," administrative warrants may be issued without individualized probable cause. *Id.* Just as in *Camara*, the court also found that the government's interest in conducting housing inspections outweighs the individual's private interests in not being subjected to a search. APP13. This is a balancing test satisfied by "legislative or administrative standards for conducting an area inspection." *Camara*, 387 U.S. at 538. Finally, the court found that, as in *Camara*, the RDLC's limits on "the discretion of officers in the field" are sufficient to preserve the ordinance's constitutionality. APP13.

FACTUAL BACKGROUND

This section first explains the ordinances at issue in this case. It then details the serious privacy concerns that the Plaintiffs, and people in general, have with these inspections. Finally, it presents evidence demonstrating that there is no need for Red Wing's inspection program.

Red Wing's Rental Dwelling Licensing Code and Housing Maintenance Code.

In 2005, Red Wing adopted the RDLC as part of its Housing Maintenance Code ("HMC"). Red Wing City Code §§ 4.30, 4.31 (APP80-104).[2] The ordinance requires all rental property owners to obtain an operating license for each housing unit they rent. *Id.* § 4.31, subd. 1(1) (APP96). But under the RDLC, no operating license can be issued to any owner unless the City first inspects the dwelling unit for compliance with the terms of the HMC. *Id.* § 4.31, subd. 1(3) (APP97). The City issued Plaintiffs temporary permits (currently set to expire in 2013) without requiring an inspection. APP47, 96.

The RDLC authorizes City inspectors to search every room of a person's home, as the HMC regulates items in every room. *See, e.g.*, HMC § 4.30, subd. 8(D) (APP91) ("All buildings and structures and all parts thereof shall be Maintained in a Safe and Sanitary condition."); HMC § 4.30, subd. 8(E)(1) (APP92) ("electrical service, lines, switches, outlets, fixtures, and fixture coverings and supports in every building or structure shall be in good repair" without limitation on what rooms those items are in). Inspectors have the discretion to search closets, cabinets, and other storage spaces, to ensure the

[2] The HMC and RDLC have been re-codified since this case first went up on appeal, but they have not changed in any material way for purposes of this litigation. Therefore, for ease of continuity of citations, both the parties and this Court in its opinion of December 28, 2011, have continued using the older code numbers.

property conforms to the HMC. RDLC § 4.31, subd. 1(3)(j), (n) (APP99). The only places inspectors may not search are containers, drawers, and medicine cabinets. RDLC § 4.31, subd. 1(3)(m) (APP99).

Under the HMC, City officials search for a broad swath of issues. Storage areas and the number of people living in a unit are both subject to inspection, and the HMC also contains a catch-all provision of undefined safety issues. *See* HMC § 4.30, subd. 4(A)(dd)(ii) (APP85-86) (prohibiting overcrowding of a portion of a dwelling with "long-term storage so as to prevent upkeep, maintenance or regular housekeeping"); HMC § 4.30, subd. 9(J) (APP96) (setting maximum occupancy standards); HMC § 4.30, subd. 4(A)(qq) & (vv) (APP87-88) (mandating all properties be kept in "Safe" condition, defining "Safe" as "*including but not limited to*" the specific "Unsafe" conditions listed in the HMC (emphasis added)).

The HMC specifically allows inspectors to report information about four different felonies to the police: evidence of methamphetamine labs and mistreatment of minors, vulnerable adults, and animals. RDLC § 4.31, subd. 1(3)(q) (APP100) (forbidding sharing information with "any current member of the Red Wing Police Department" except as "required by law" or regarding one of four listed felonies).

Finally, if a person refuses an inspection, the RDLC mandates that "the City shall seek permission, from a judicial officer through an administrative

warrant, for its enforcement officer or his or her agents to conduct an inspection." RDLC § 4.31 subd. 1(3)(i) (APP99). The RDLC authorizes broad warrants, then leaves the task of "condition[ing] or limit[ing] the scope of the administrative warrant" to a "judicial officer." *Id.*

Privacy Interests of Tenants and Landlords.

Plaintiffs John W. Monroe and Jesse Stewart are tenants of rental dwellings located in Red Wing. By now, each has lived in his rented home for more than seven years. APP156 ¶ 2; APP162 ¶ 2. Each values having a landlord who respects his privacy. APP158 ¶¶ 15, 17; APP162 ¶¶ 5-6. They do not want to allow City inspectors into their homes. Tenant-plaintiffs have subjective expectations of privacy in their apartments. APP156 ¶¶ 5-6, 13-14; APP162 ¶¶ 4-5. They value their right to determine who will enter their homes and view their personal items and lifestyle, as well as who will have access to every part of their homes. *Id.* Both tenants believe an unwanted inspection would compel them to "hide, relocate or cover up all or most of my personal possessions in my own home," and that the intrusion would be an "affront to my personal dignity." APP157-58 ¶ 16; APP162 ¶ 7. John Monroe's privacy is "vitally important" to him. APP158 ¶ 17. In four years, he allowed only ten people to enter his home, including his lawyers in this

case. APP157 ¶ 14. Monroe succinctly describes tenants' privacy interests: "This is my home. It is where I live; it is me." APP158 ¶ 16.[3]

Plaintiffs Robert and Rebecca McCaughtry, Timothy and Rhonda McKim, Ryan R. Peterson, Douglas and Kim Sjostrom, and Bradley and Adriana Sonnentag own and operate rental properties in Red Wing, including the ones occupied by Plaintiffs Monroe and Stewart. Although they do not live in their rental properties, they keep valuable or sensitive personal property in their buildings. APP141 ¶ 5; APP145-46 ¶¶ 4, 5, 7, 9; APP150-52 ¶¶ 8, 9, 14. They do not wish strangers to view this property, and they also are committed to preserving the privacy of their tenants. APP141-42 ¶¶ 6-8; APP146 ¶¶ 7-9; APP151 ¶¶ 12-14.

Even a short visit to a person's home reveals all sorts of private information, from religious beliefs, to habits, personalities, emotional state, hobbies, and romantic life. *See* APP221-22 ¶ 58-60; APP169 ¶ 5; APP185 ¶ 8.

One of Plaintiffs' expert witnesses, research psychologist Dr. Jacob Benfield, confirms that involuntary government inspections of people's homes constitute a profound invasion of privacy. APP200-01 ¶ 8. People are more likely to feel their privacy is violated when: (1) information is obtained about

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[3] In a portion of his affidavit that is sealed (but accessible to this Court), Monroe goes into greater detail about his desire for privacy, the personal effects he would like to keep private, and the difficulty of concealing them during an inspection. *See* Monroe Aff. ¶¶ 7-12 (filed under seal with Pls.' Mot. for Partial Summ. J., Mar. 31, 2009).

personality; (2) first-hand consent was not given to collect the information; and (3) the information is obtained by outsiders who may be able to spread information beyond the person's control. APP205 ¶ 20. "On the whole, the inspection ordinance creates a very undesirable situation for occupants because it entails every component related to a loss of privacy." APP209 ¶ 27. This invasion of privacy is compounded as Red Wing inspection reports are public information.[4] *See* Minn. Stat. § 13.44, subd. 2 ("Code violation records . . . kept by any . . . city agency . . . with the responsibility for enforcing a state, county, or city health, housing, building, fire prevention, or housing maintenance code are public data."); *see also* APP135 (City stipulating reports are public).

Red Wing Has No Significant Need for Its Inspection Program.

The basis for adopting the inspection program was Red Wing's housing study, which was conducted in 2003 and found the City's housing stock to be older but generally in good condition. APP246; APP164; Def.'s Mem. in Supp. of Mot. for Summ. J. at 4 (filed May 5, 2009). The study contains no supporting data about housing conditions other than census data about the age of buildings. It contains no data about deterioration, maintenance,

[4] The City amended the RDLC after this case was filed to bar inspection data from being uploaded to GIS systems or turned over to law enforcement, with the exception of the four listed felonies. RDLC § 4.31, subd. 1(3)(p), (q) (APP100). However, as explained above, any other member of the public can access the reports.

health and safety issues, problems with Red Wing rental housing, or complaints about housing conditions. APP165-67.

Given the lack of support for the program in the first place, it is not surprising that the results of Red Wing inspections show that there is no overwhelming need for the inspection program. The city conducted over 800 inspections between December 2005 and May 2009. APP188 ¶ 7. During that time it did not order a single property vacated. APP195 ¶ 39. Inspectors found only 42 potentially serious code violations overall, only seven of which were in actual living spaces of tenants. *Id.* Further, 10 of the 42 had "significant exterior issues" which would constitute individualized probable cause that there was also an interior violation. APP194-95 ¶¶ 34-36, 40. Based on these and other statistics, Plaintiffs' architecture and building code expert testified this is "a program in search of a problem." APP195 ¶ 41.

ARGUMENT

There is only one question before this Court: whether it should adopt the diminished privacy protections the U.S. Supreme Court imposed when it invented the "administrative warrant" doctrine in *Camara*. It should not. Article I, Section 10 guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches." It also

states that "no warrant shall issue but upon probable cause." Red Wing's ordinance violates both of these guarantees.

Judicial protection under the Minnesota Constitution is "the first line of defense for individual liberties within the federalist system," and Minnesota courts have "a duty to independently safeguard the rights of [Minnesotans]." *Kahn*, 701 N.W.2d at 828 (citations omitted). This Court has explained it should look to the Minnesota Constitution as an independent source of liberty whenever the federal rule in question *either* (1) inadequately protects the rights of Minnesotans *or* (2) constitutes a sharp and unjustified departure from longstanding precedent. *Id.; see also State v. Anderson*, 733 N.W.2d 128, 140 (Minn. 2007); *State v. Askerooth*, 681 N.W.2d 353, 362 n.5 (Minn. 2004) (Minnesota courts will interpret the Minnesota Constitution to provide greater protection when "a more expansive reading of the state constitution represents the better rule of law."); Paul H. Anderson & Julie A. Oseid, *A Decision Tree Takes Root in the Land of 10,000 Lakes: Minnesota's Approach to Protecting Individual Rights under Both the United States and Minnesota Constitutions*, 70 Alb. L. Rev. 865, 912-16 (2007) (explaining the *Kahn* methodology).

Below, Plaintiffs show that the *Camara* administrative-warrant doctrine inadequately protects the liberty and privacy of Minnesotans and is a sharp departure from the traditional warrant requirement and the treatment of government entry into homes. This case satisfies both conditions, but the Court need only agree with Plaintiffs on either to rule in their favor.

I. *Camara*'s Approval of Administrative Warrants Provides Inadequate Protection for the Rights of Minnesotans.

This Court should hold that Article I, Section 10 forbids the government's use of administrative warrants to enter rental dwellings without consent for the purpose of conducting housing inspections. The federal rule, as articulated in *Camara*, does not adequately protect the rights of Minnesotans. First, Minnesota's legal traditions show profound respect for the home and privacy, as reflected in many different areas of law, including this Court's interpretation of Article I, Section 10. Second, this Court strongly disfavors the use of suspicionless searches or sweeps to find illegal conduct, showing special concern for their impact on ordinary, innocent people. Third, the administrative warrants of *Camara* do not carry the same protections against abuse as real warrants, issued upon real probable cause. This Court has never adopted *Camara*'s ruling, nor interpreted the Minnesota Constitution to allow administrative warrants based on

generalized or area-wide probable cause to search the homes of law-abiding citizens. It should not do so now.

A. *Camara* authorized warrants without any individualized probable cause to search the homes of law-abiding citizens.

In *Camara*, the U.S. Supreme Court held a warrant was required to enter a home to conduct an unconsented housing inspection. 387 U.S. at 539. The Court also explained, however, that such warrants need not be supported by traditional probable cause. Instead, "probable cause" in this context meant "reasonable legislative or administrative standards." *Id.* at 538. And such standards could be things like "the passage of time, the nature of the building (*e.g.*, a multi-family apartment house), or the condition of the entire area" and could "vary with the municipal program being enforced." *Id.* Thus, the mere fact that time had passed, that a residence was in a certain area of town, or that someone's careless neighbors had let their housing deteriorate could constitute "probable cause" for an administrative warrant to search a person's home. This novel approach was justified in order to achieve "universal compliance" with housing codes. *Id.* at 535.

B. Minnesota's legal traditions show great respect for both the home and privacy, and those traditions are reflected in its interpretation of Article I, Section 10.

Minnesota has strong legal traditions in three related areas that, taken together, show this Court should conclude Red Wing's ordinance violates the

Minnesota Constitution. First, Minnesota respects the unique role of the home and the importance of preserving its sanctity. Second, Minnesota protects the privacy of its citizens through both a constitutional right of privacy and a tort for violation of privacy. Third, Minnesota has a strong tradition of protecting the rights of Minnesotans against unreasonable searches and seizures and of interpreting the Minnesota Constitution as more protective of these rights than the federal constitution. In its interpretation of both constitutions, this Court continually emphasizes the unique place of the home and the importance of personal privacy. This case presents the convergence of these three related legal traditions in Minnesota, where all of these protections are at their zenith—Red Wing seeks to conduct suspicionless searches of ordinary citizens, in their own homes, where their privacy interests are at their highest.

1. Minnesota places great value on the sanctity and privacy of the home as a refuge against government intrusion.

This Court recognized the special protections of the home embodied in Article I, Section 10 when it quoted William Pitt's famous 1766 speech condemning general warrants:

> The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter; the rain may enter, but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement!

State v. Larsen, 650 N.W.2d 144, 147 (Minn. 2002); *see also Thiede v. Town of Scandia Valley*, 217 Minn. 218, 226 n.2 & 227, 14 N.W.2d 400, 405 n.2 & 406 (1944) (quoting same speech and describing the robust protections afforded to the sanctity of the home as "fundamental law" recognized by the Minnesota Constitution). If the Crown may not enter a "ruined tenement," it is astonishing that Red Wing may enter every rental home in the city to ensure all electric outlets have plastic face plates. *See generally* Geoffrey G. Hemphill, *The Administrative Search Doctrine: Isn't this Exactly What the Framers Were Trying to Avoid?*, 5 Regent U. L. Rev. 215 (1995).

Minnesota's respect for the unique status of the home appears in dozens of this Court's decisions, in a variety of contexts, including search and seizure, privacy, self-defense, and liens. Minnesota adheres to the well-known maxim that a person's home is her castle. *See, e.g.*, *State v. Jackson*, 742 N.W.2d 163, 174-77 (Minn. 2007) (recognizing unique historical status of persons in their home at night); *Larsen*, 650 N.W.2d at 147 ("The right to be free from unauthorized entry into one's abode is ancient and venerable."); *State v. Carothers*, 594 N.W.2d 897, 900 (Minn. 1999) ("Minnesota has long adhered to the common law recognition of the home's importance, holding that 'the house has a peculiar immunity [in] that it is sacred for the protection of [a person's] family.'"); *State v. Hare*, 575 N.W.2d 828, 832 (Minn. 1998) (recognizing "defense of dwelling defense is rooted in the concept that 'a

man's home is his castle'"); *State v. Casino Mktg. Group*, 491 N.W.2d 882, 888 (Minn. 1992) (upholding telephone solicitations limitation, explaining the telephone is "uniquely intrusive" in light of "[t]he ancient concept that a man's home is his castle into which not even the king may enter") (internal quotations omitted)); *State v. Olson*, 436 N.W.2d 92, 96-97 (Minn. 1989) (upholding "[t]he right to be secure in the place which is one's home"); *State v. Kinderman*, 271 Minn. 405, 409-10, 136 N.W.2d 577, 580-81 (1965) (articulating "castle" doctrine and recognizing parent-homeowner's right to consent to search of son's room in his home); *Thiede*, 217 Minn. at 225, 14 N.W.2d at 405 (refusing to allow defendant town to remove plaintiffs from their home, stating "'Every man's house is his castle' is more than an epigram. It is a terse statement, in language which everyone should understand, of a legal concept older even than Magna Charta."); *Welsh v. Wilson*, 34 Minn. 92, 93, 24 N.W. 327, 328 (1885) (because the building was being used as a dwelling, no valid levy could be made by means of unlawful entry by sheriff); *Ferguson v. Kumler*, 27 Minn. 156, 159-60, 6 N.W. 618, 619-20 (1880) (recognizing homestead exemption protected property owner from forced execution sale).

The value of the home in Minnesota is reflected also in several of its statutes: its homestead exemption, which prevents the seizure of the home and which has been part of Minnesota law since at least 1851, *see* Rev. Stat.

of the Territory of Minn. § 93 (1851), 1858 Minn. Laws 89 (codified as amended at Minn. Stat. §§ 510.01 to 510.09); a statute permitting only daytime searches of homes unless specially authorized, Minn. Stat. § 626.14; and a statute protecting the right to defend one's home against intrusion. Minn. Stat. § 609.065. Each of these protects the home more than federal law does.[5]

Homes receive this unique protection because having a place where one can be free of intrusion is an essential element of freedom. People's homes reflect many private facts about them. As one of the landlords testified in this case, she can tell a large amount of information about someone just from a quick visit to the home:

> [O]ne tenant of mine has a makeshift Catholic chapel in his apartment. I can tell whether the person is living with another person and whether that person is male or female; whether they are lazy, messy, or excessively neat; whether they are reclusive and lonely; whether they are doing well financially or scraping by; whether they are ill; whether they have innocent hobbies like music and sports or offensive hobbies like pictures of half-naked women or 'Goth' posters. Artwork hanging on walls reveals a lot about an individual tenant. I often see money and jewelry lying around on dressers and countertops. I'm not looking for any of these things, but you just see them as you are entering any room.

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[5] Under federal law, the homestead and daytime search provisions are significantly narrower, and the "defense of dwelling" defense is not recognized. *See* 11 U.S.C. § 522(d)(1) (debtor may exempt aggregate interest in real property used as a dwelling only up to $21,625); Fed. R. Crim. Proc. 41(a)(2)(B) (defining "daytime" for purposes of searches as between 6:00 am and 10:00 pm).

APP169-70, ¶ 6. The two tenants in this case testified they would feel they had to remove or conceal all their personal effects if an inspector was going to enter against their wishes. *See supra* pp. 8-9. Being forced to remove or conceal one's own possessions in one's own home would undermine the sanctity of the home that is extolled by so many decisions of this Court. Homes are cherished as the one place where people do not need to conceal their private selves, because only invited guests may enter.

2. Personal privacy receives significant protection in Minnesota.

Minnesota also recognizes the importance of the right to privacy, both through constitutional protection and tort law. The constitutional right to privacy is rooted in express guarantees of the state constitution, among them Article I, Section 10. *State v. Davidson*, 481 N.W.2d 51, 58 (Minn. 1992); *Jarvis v. Levine*, 418 N.W.2d 139, 148 (Minn. 1988). Privacy in the home is one important aspect of the right to privacy. *See State v. Gray*, 413 N.W.2d 107, 111 (Minn. 1987) (recognizing state right to privacy for fundamental rights and citing *Thiede*, 217 Minn. at 224-25, 14 N.W.2d at 405-06, which identifies right to live in one's home as fundamental right).

This Court also has recognized a right to privacy under Minnesota common law and explained why this right is so important:

> The right to privacy is an integral part of our humanity; one has a public persona, exposed and active, and a private persona,

> guarded and preserved. The heart of our liberty is choosing which parts of our lives shall become public and which parts we shall hold close.

Lake v. Wal-Mart Stores, 582 N.W.2d 231, 235 (Minn. 1998). Although in *Lake*, the Court was talking about privacy in one's own body, the principle of privacy applies equally to the home. *Cf. State v. Perez*, 779 N.W.2d 105, 110-11 (Minn. Ct. App. 2010) (husband liable for videotaping wife in home bathroom without her knowledge or consent). In Red Wing, however, one cannot "hold close" the private parts of one's life if one happens to live in a rented home.

3. This Court's respect for both the unique status of the home and for privacy has been reflected in its protections against unreasonable searches and seizures.

The unique respect for the home and for privacy in Minnesota pervades this Court's search and seizure jurisprudence. Whenever this Court has been faced with a choice between providing greater or lesser protection for the home against search, this Court has provided greater protection—whether under Minnesota law, federal law, or both. This Court always shows great respect for the homes of ordinary citizens.[6]

The most significant case applying the importance of the home and privacy to search law is *State v. Larsen*, in which this Court recognized a

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[6] As discussed *infra*, Part I.C.1, homes of probationers and parolees do not receive the same respect.

"fundamental right" to be free from unauthorized entry into one's abode under the Minnesota Constitution. 650 N.W.2d at 147-48. In *Larsen*, the Court concluded that a conservation officer's warrantless entry into an ice-fishing house was unconstitutional, despite the longstanding, statutorily authorized practice of searching such "abodes" unannounced. *Id.* at 149. In rejecting the state's theory that warrantless entry was permissible, this Court held that conservation officers may enter an ice fishing house only when they have a warrant and probable cause to believe there has been a violation of the fishing and game laws. *Id.* at 154.

Larsen emphasized both the right to privacy and the right to be free from an unreasonable invasion into the home. Particularly striking is that this Court vindicated these rights in ice houses—shacks people might stay in for a day or two while they fished—because they *resembled* homes. *Id.* at 149. The Court noted that ice houses are "erected and equipped to protect [their] occupants from the elements and often provid[e] eating, sleeping, and other facilities;" that they give "privacy;" and that although an ice house is "clearly not a substitute for one's private dwelling, during the period of occupancy important activities of a personal nature take place." *Id.* at 149.

In *Larsen*, the Court ostensibly held that the search violated both the Fourth Amendment and Article I, Section 10. *Id.* at 154. However, two factors suggest that the decision was principally made under the state

constitution, rather than the federal. First, the Court's reasoning relied heavily on *Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183 (Minn. 1994), a case in which this Court rejected the U.S. Supreme Court's interpretation of the Fourth Amendment and interpreted Article I, Section 10 as affording more protection. *Larsen*, 650 N.W.2d at 150 ("Our ruling in *Ascher* is particularly informative here."). Second, the posture of the case was remarkably similar to *Camara*. In both, the courts were confronted with a warrantless search to enforce a regulatory code. *Compare* 650 N.W.2d at 145 *with* 387 U.S. at 525. In both, the courts rejected warrantless searches. *Compare* 650 N.W.2d at 154 *with* 387 U.S. at 540. But *Camara* went on to create the administrative-warrant doctrine, whereas *Larsen* suggested no such thing. *Compare* 650 N.W.2d at 153-54 *with* 387 U.S. at 534-35.

Similarly, in *State v. Carter*, this Court held that a person's expectation of privacy in a self-storage unit is greater under the Minnesota Constitution than the Fourth Amendment because "the dominant purpose for such a unit is to store personal effects in a fixed location." 697 N.W.2d 199, 210-11 (Minn. 2005). This Court recognized the storage unit was less like a home than the ice house in *Larsen*, because it was "not a place where a person seeks refuge or conducts frequent personal activities." *Id.* at 209. But because the self-storage unit bore some resemblance to a home this Court

found it was entitled to greater protection than under the Fourth Amendment. *Id.* at 210-11.

This Court again relied on the Minnesota Constitution to ensure protection of the home when it concluded that even if the Fourth Amendment did not protect short-term social guests in a home, Article I, Section 10 did. *See In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003). Significantly, it reached that conclusion because it was necessary "to fully protect the privacy interest an individual has in his or her home." *Id.* "'[P]eople are not genuinely secure in their . . .houses . . . against unreasonable searches and seizures if their invitations to others increase the risk of unwarranted governmental peering and prying into their dwelling places.'" *Id.* at 576 (quoting *Minnesota v. Carter*, 525 U.S. 83, 108 (1998) (Ginsburg, J., dissenting)). It was thus the profound interest in preserving privacy in the home that caused this Court to provide independent protection under Article I, Section 10. 658 N.W.2d at 578; *see also State v. Johnson*, 742 N.W.2d 149, 156-58 (Minn. 2007) (upholding home owner's right to challenge a nighttime search, because he had the right to be secure in his personal effects and privacy even when he was absent from the home); *Garza v. State*, 632 N.W.2d 633, 639-40 (Minn. 2001) (Minnesota Constitution requires particularized circumstances justifying an unannounced entry into a personal dwelling); *State v. Othoudt*, 482 N.W.2d 218, 224 (Minn. 1992) ("The constitutional

right to be free from unjustified, official invasions of one's home is basic, and this court will not tolerate its violation.").

Each of these cases shows that, where a search involves entry into a home—or even an area with some home-like characteristics—this Court ensures that officers have a warrant supported by individualized probable cause in order to enter. Here, of course, Red Wing seeks to search actual homes—homes in which the tenant-plaintiffs have lived for years. If an ice house cannot be searched without individual probable cause and a storage unit cannot be searched without individual suspicion, then surely a search of a person's permanent home requires at least as much.

C. Suspicionless searches, particularly in the home, represent the very worst kind of rights violation.

The rental housing inspections in Red Wing are conducted without probable cause or any individualized suspicion of any kind. This Court has evaluated several situations involving suspicionless searches—sweeps conducted in the hope of finding someone engaged in wrongdoing—and the Court rejected this approach in every case except those that involved convicted criminals. Instead, this Court required some kind of evidence of *individual* wrongdoing—either individualized probable cause or individualized reasonable suspicion. Of particular concern was the effect of suspicionless searches on ordinary, innocent people. And this Court also has

consistently rejected the idea that suspicionless searches could be justified by their effectiveness or administrative convenience. Finally, when considering departing from the ordinary probable cause requirements, this Court places the burden on the government to establish that such a departure from the Constitution is necessary. Thus, a rule rejecting suspicionless searches of homes for housing-code inspections fits far better with existing Minnesota law than a rule permitting such inspections.

1. In stark contrast to *Camara*, this Court consistently rejects suspicionless search programs, because they violate the rights of ordinary people.

In all cases where this Court has considered a program of routine, suspicionless searches or seizures of ordinary citizens, this Court has rejected the program and instead required a specific reason for the search or seizure that justified the action taken against the particular individual. The Court's disapproval of such programs stems in large part from its concern for the violation of the rights of ordinary people who are innocent of any wrongdoing and are entitled to pursue their ordinary private activities without interference. In contrast, this Court permits such programs when they affect only convicted criminals. The approach of *Camara*, allowing suspicionless searches of thousands of ordinary homes, is alien to Minnesota.

This Court first confronted the question of suspicionless searching in *State v. Bryant*, where a police officer observed a public restroom that was

known as a place where sexual activity occurred. 287 Minn. 205, 206, 177 N.W.2d 800, 801 (1970). The officer had no reason to suspect any particular person but observed everyone in case someone did commit sodomy in the restroom. *Id.* This Court rejected the police officer's use of suspicionless searches to invade the privacy of ordinary people. *Id.* at 804.

The key to the Court's decision was the need to protect personal privacy of ordinary, law-abiding citizens. *Id.* at 802. The Court explained that even though the police observation did lead to arrests for illegal activity, that did not justify violating the privacy of innocent people. "In the very nature of things, in the process of protecting the innocent all search and seizure prohibitions inevitably afford protection to some guilty persons; but *the rights of the innocent may not be sacrificed to apprehend the guilty.*" *Id.* at 804 (emphasis added). In other words, the *purpose* of the search and seizure prohibitions is the protection of those who have done nothing wrong.

Then, in *Ascher*, this Court carefully considered the use of suspicionless sobriety checkpoints, where all cars are stopped at regular intervals. 519 N.W.2d at 184. The U.S. Supreme Court had concluded that as long as such stops were not discriminatory, they did not need to be based on individualized suspicion. *Id.* at 185-86 (discussing *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444 (1990)). This Court disagreed, holding that individualized suspicion was constitutionally required under the Minnesota

Constitution. *Id.* at 187; *see also Askerooth*, 681 N.W.2d at 358, 362-63 (disapproving police officer's policy of suspicionless detention by placing anyone driving without a license in his squad car); *Garza*, 632 N.W.2d at 638-39 (Minn. 2001) (disapproving generic justification for unannounced entry for search and instead holding that Minnesota Constitution required "particularized circumstances" justifying unannounced entries).

Again, this Court's concern with suspicionless searching was the impact on those who had done nothing wrong. In *Ascher*, people were subjected to only a two-minute delay and perhaps a quick glance in their automobile. 519 N.W.2d at 184. But this was too much of an invasion of "the interest of ordinary citizens in not having their privacy or their freedom of movement interfered with by police investigators who do not have any reason to suspect them of wrongdoing." *Id.* at 186; *see also O'Connor v. Johnson*, 287 N.W.2d 400, 404-05 (Minn. 1979) (quashing search warrant of attorney's office because, among other problems, search would have violated the right to counsel "of all of the attorney's clients," not just those involved in the suit, and because the attorney who was being searched was not suspected of any wrongdoing). Here, those same "ordinary citizens" are subjected to the greater invasiveness of an inspection of every room of their homes.

The above cases involved suspicionless searches for criminal activity, but *Larsen* involved a policy of suspicionless *administrative* searches for

violations of fishing regulations. *See*, *supra*, Part I.B.1. That policy was unconstitutional because, as discussed above, ice houses are temporary abodes that, at least in some ways, resemble homes. 650 N.W.2d at 149.

The only situations where this Court has upheld suspicionless search programs involve collecting DNA from convicted criminals. *See State v. Johnson*, 813 N.W.2d 1 (Minn. 2012); *In re Welfare of M.L.M.*, 813 N.W.2d 26 (Minn. 2012); *State v. Bartylla*, 755 N.W.2d 8 (Minn. 2008). Convicted criminals simply do not have the same expectation or entitlement to privacy as ordinary people. *Johnson*, 813 N.W.2d at 9; *Bartylla*, 755 N.W.2d at 16-17. Thus, cases upholding suspicionless search programs for criminals do not suggest the Court should be similarly lenient in upholding programs for suspicionless searches of ordinary, law-abiding individuals.

The thread running through the Minnesota caselaw is the need for some kind of individualized consideration of searches of ordinary people, whether it be individualized probable cause or individualized reasonable suspicion, and the unwillingness to authorize routine searches of ordinary, innocent people in order to ferret out wrongdoing.

In stark contrast, *Camara* justified suspicionless searches of homes on the theory that they would guarantee "universal compliance" with housing codes. 387 U.S. at 535. That reasoning, of course, can justify all kinds of suspicionless searches. The interest in punishing and preventing crime is *at*

least as significant as enforcing housing codes. A suspicionless search program authorizing searches of all automobiles and homes in a city, or just in a high-crime neighborhood, would no doubt lead to the punishment and prevention of violent crime and illegal drugs, for example. Indeed, it would probably be much more effective than the government's current methods. Yet such searches are still prohibited by the Minnesota Constitution (and, in many instances, the federal one as well). Even a strong desire to achieve important government ends does not mean that constitutional protections may be left behind. *See, e.g.*, *Ascher*, 519 N.W.2d at 186-87.

This Court should be no more persuaded by the need to enforce housing codes than it was by the need to reduce drunk driving in *Ascher*—or than it would be by a proposal to search all homes in a particularly crime-ridden neighborhood. The *Camara* administrative-warrant doctrine is simply a giant exception to the constitutional protections of the Fourth Amendment, and this Court should not follow it in interpreting Article I, Section 10.

2. When evaluating a program that abandons traditional constitutional guarantees, this Court places the burden on the government to justify that departure; Red Wing cannot meet that burden.

Neither convenience nor preservation of evidence is sufficient to override constitutional concerns with suspicionless searches. Instead, this Court requires that the government prove that its interests justify departure

from ordinary constitutional standards. Thus, in *Larsen*, the Court acknowledged that fishing violations "may be difficult to detect and evidence may be destroyed before a warrant can be obtained, but ease in enforcing the law has never been a sufficient justification for government intrusion." 650 N.W.2d at 150 n.5; *see also Askerooth*, 681 N.W.2d at 365-66 (criticizing justification of officer convenience for use of routine squad car detentions for unlicensed drivers).

In *Ascher*, this Court made it clear that, under the Minnesota Constitution, the burden was on the *government* if it sought to deviate from the normal rule of individualized suspicion. 519 N.W.2d at 186-87. And it explained just how heavy that burden is. The U.S. Supreme Court in *Sitz* had found that the minimal nature of the intrusion (a short traffic stop), the general effectiveness of the sobriety checkpoints,[7] and the fact that the stops were entirely nondiscriminatory were sufficient to justify the program. 496 U.S. at 450-52. This Court, however, was not satisfied. "The real issue in this case is not . . . whether the police conduct in question is reasonable in some abstract sense, nor is it whether the police procedure is in some sense effective. Rather, the issue is whether the state has met its burden of

[7] The roadblock in *Ascher* also appears to have been effective in that 2.3% of those stopped were either arrested or cited. *See* 519 N.W.2d at 184. The U.S. Supreme Court found that a 1% arrest rate was sufficient to establish effectiveness. *See Sitz*, 496 U.S. at 455.

articulating a persuasive reason for departure from the general requirement of individualized suspicion. . . ." 519 N.W.2d at 186; *see also id.* ("The [U.S. Supreme] Court seems to have concluded that as long as stops are not discriminatory—that is, as long as everyone is stopped—stops need not be based on individualized suspicion. This in effect allows the corollary to supplant the basic guarantee of the rule.").

The rejection of the justifications of minimal intrusion, general effectiveness, and nondiscrimination is particularly significant, because these are the exact same justifications accepted by the U.S. Supreme Court in *Camara* to support the use of administrative warrants. In *Camara*, the U.S. Supreme Court pointed to the minimal nature of the intrusion, the supposed difficulty of enforcing housing codes without mandatory searches, and the fact that there were "reasonable" standards, *i.e.*, nondiscriminatory enforcement. 387 U.S. at 535-37. But if those justifications were not sufficient to justify a two-minute traffic stop, they certainly should not be sufficient to justify a search of a person's home.

Explaining what *would* be necessary to justify a suspicionless search program, *Ascher* suggested that "for example" it would be sufficient to show:

> (a) that it is impractical to require the police to develop individualized suspicion and that a departure from the individualized suspicion requirement will significantly help police achieve a higher arrest rate than they can achieve using more conventional means of apprehending alcohol-impaired drivers

> and (b) that this outweighs the interests of ordinary citizens in not having their privacy or their freedom of movement interfered with by police investigators who do not have any reason to suspect them of wrongdoing.

519 N.W.2d at 186. Thus, the government must introduce a substantial amount of evidence—showing that abiding by ordinary rules is impractical and showing that suspicionless searching will be "significantly" more effective than alternative measures. In addition, it has the burden of showing that the results to be achieved outweigh the privacy interests of those subjected to the program. *See also State v. Hershberger*, 462 N.W.2d 393, 399 (Minn. 1990) (striking down slow-moving vehicle sign requirement as applied to the Amish because government had not met its burden under the Minnesota Constitution of showing no alternative means to protect public safety).

Red Wing cannot hope to meet such a burden here. It has produced no evidence that alternate measures are impractical and no evidence that mandatory inspections are "significantly" better than the many possible alternatives. Plaintiffs, on the other hand, have shown that, here, the searches of hundreds of homes turned up very few conditions that were even potentially hazardous. APP195, ¶ 39, 41. Most code violations were minor. *Id.*

Moreover, Red Wing has presented no evidence that its results are "significantly" better than those it could achieve with methods that did not

dispense with individualized probable cause. There are a number of alternatives, including voluntary inspections, inspections upon complaint, inspections of properties with exterior deterioration, inspection of units where another voluntarily-inspected unit in the building had a type of violation likely to exist throughout the building, and inspections where owners would not provide a sworn statement of compliance with particular safety requirements. Each of these alternatives would provide either consent or individualized probable cause. The City also could institute a program that provides incentives for inspections. For example, if a landlord has his units inspected, he gets a "seal of approval" from the city that he can use as a marketing tool for prospective tenants. If a landlord chooses not to have inspections, he simply does not get the marketable approval. Red Wing has not shown that these alternatives will be impractical or that they would achieve significantly worse results; nor has it shown that its interest in finding housing-code violations outweighs the interest of ordinary citizens in maintaining their privacy in their own homes.

If the truly minimal privacy interests in *Ascher* outweighed the interest in reducing drunk driving, the Plaintiffs' significant interest in the privacy of their homes surely outweighs Red Wing's interest in enforcing its housing code.

D. Administrative warrants do not have the protections for individuals afforded by real warrants, issued upon individualized probable cause.

Traditional search warrants, issued upon individualized probable cause, offer genuine protection for individuals from improper government action. But although administrative warrants are issued upon something called "probable cause," that probable cause bears no resemblance to the individualized probable cause of traditional warrants. Administrative warrants are warrants in name only. They provide few of the guarantees and protections of traditional warrants. Even worse, they authorize searches for evidence of crimes. As such, administrative warrants do not adequately protect the rights of Minnesotans.

1. Administrative "warrants" are warrants in name only, supported by something that is not "probable cause."

The most important function of a traditional warrant is that a neutral magistrate ensures that there is a sufficient quantum of evidence that a crime has been committed. *See State v. Carter*, 697 N.W.2d 199, 204-05 (Minn. 2005) (probable cause means a "fair probability that contraband or evidence of a crime *will be found in a particular place*") (citation omitted and emphasis added). Thus, the neutral magistrate also ensures the evidence is linked to the person or place to be searched—evidence that John Smith deals in stolen goods will not support a warrant to search George Brown's home.

See, e.g., *State v. Mathison*, 263 N.W.2d 61, 63 (Minn. 1978). A traditional warrant ensures the search is limited in scope and that only certain things are searched for, in specific places. *See, e.g.*, *State v. Bradford*, 618 N.W.2d 782, 795 (Minn. 2000). It also ensures the warrant is being executed at an appropriate time of day, with or without the announcement of police. *See, e.g.*, *State v. Jordan*, 742 N.W.2d 149, 154 (Minn. 2007).

In contrast, an administrative warrant—although called a "warrant" and supported by something called "probable cause"—guarantees almost none of these things. It does not ensure there is any evidence of a code violation, much less that there is a "fair probability" of such a violation. It does not ensure the evidence is linked to the particular location to be searched—indeed, to the contrary, the U.S. Supreme Court suggested in *Camara* that the evidence could be imported from some *other* place or by simply showing that the property was a multi-family building. *Camara*, 387 U.S. at 538. Under Red Wing's code, the places to be searched are only very slightly limited—closed containers, medicine cabinets, and drawers are off-limits, but everything else may be searched. RDLC § 4.31, subd. 1(3) (APP99). The searches are broad-ranging, covering specific electrical and plumbing issues, storage, the number of persons living in the home, and general safety issues. *See supra* pp. 6-7.

As even *Camara* acknowledged, administrative warrants guarantee only that there is statutory authorization, the person appearing at the door is a government official, and the government is searching homes using some sort of nondiscriminatory criteria. 387 U.S. at 532. But that is a far cry from the textual requirement of "probable cause." It amounts to an authorization to search everyone's home because some people—other than those whose homes are being searched against their will—*may* have done something wrong. Such a blanket approach to searching cannot be reconciled with the purpose of Article I, Section 10.

2. *Camara*'s rule allows plain-view searches for evidence of crimes without probable cause.

Under federal law, administrative searches truly are general warrants allowing plain-view searches for criminal activity. In Red Wing, the code specifically authorizes inspectors to report to the police when they believe they have seen evidence of four specific felonies. RDLC § 4.31, subd. 1(3)(q) (APP100). A rule allowing searches of all rental homes, including the reporting of evidence of crimes, amounts to a rule permitting plain-view searches of thousands of homes for evidence of criminal activity.[8] The *Camara* rule thus profoundly threatens the rights of Minnesotans and is

[8] The California appellate court has rejected the use of administrative warrants under its state constitution when the potential for any sort of criminal penalty is present. *See Salwasser Mfg. Co. v. Mun. Court*, 156 Cal. Rptr. 292, 297-98 (Cal. Ct. App. 1979).

anathema to the guarantees of Article I, Section 10.

II. *Camara* is an Unjustified Departure from Longstanding Precedent.

In addition to rejecting federal constitutional interpretation that provides inadequate protection of rights, *see, supra,* Part I, Minnesota courts look to the state constitution to protect individual liberty when the governing U.S. Supreme Court authority represents a "radical" or "sharp" departure from precedent or a "general approach to the law" and there is no persuasive reason to follow the departure. *Kahn*, 701 N.W.2d at 828. As shown below, *Camara*, in conjunction with its predecessor *Frank v. Maryland*, was a sharp and radical departure from precedent. Further, there is no persuasive reason to follow it. Therefore, this Court is justified in adopting an independent state constitutional interpretation that provides greater protection to the homes of Minnesotans.

A. *Camara* is a sharp departure from traditional Fourth Amendment protections.

Below, Plaintiffs explain what this Court has meant by "sharp departure." Plaintiffs then provide an overview of the background, adoption, and early history of both the Fourth Amendment and Article I, Section 10. Then, Plaintiffs discuss *Frank* and *Camara* and show that they constituted a sharp departure from that history.

1. The meaning of "sharp departure" under this Court's precedent.

In analyzing whether a U.S. Supreme Court decision constitutes a sharp departure, this Court looks at the prior interpretation of the federal and state constitutional provisions, the state of the law at the time that Minnesota ratified its parallel constitutional provision, and later discussions of the decision. *See Kahn*, 701 N.W.2d at 825-29 (discussing various relevant sources). A new legal rule or a different application of a balancing test may constitute a sharp departure. *See, e.g.*, *Ascher*, 519 N.W.2d at 186 (rejecting federal application of balancing test).

This Court has found a sharp or radical departure from precedent by the U.S. Supreme Court in many cases, including at least four involving searches or seizures. *See State v. Flowers*, 734 N.W.2d 239, 258 (Minn. 2007) (reaffirming rejection of federal rule allowing for arrests for minor traffic stops); *Askerooth*, 681 N.W.2d at 361–63 (holding confining a driver in a squad car's back seat and requesting consent to search the driver's vehicle unjustifiably expands the scope of a stop-sign-violation stop); *Ascher*, 519 N.W.2d at 186-87 (holding suspicionless sobriety checkpoints, permissible under the Fourth Amendment, constitute an unreasonable search and seizure under the Minnesota Constitution); *In re E.D.J.*, 502 N.W.2d 779, 780 (Minn. 1993) (holding, under Article I, Section 10, that a person is seized who has

been subjected to, but has not yet submitted to, a police officer's assertion of authority). In these cases this Court found a "sharp" departure because the U.S. Supreme Court departed from long-standing precedent and provided less protection for individual rights than the previous rule. *Cf. Askerooth*, 681 N.W.2d at 362 (finding "sharp departure" despite the lack of "clear" federal precedent to the contrary).

2. The history and original meaning of Article I, Section 10 indicate Minnesota's framers rejected warrants supported by less than individualized probable cause.

The text and history of Article I, Section 10 make plain that this provision was intended to require traditional probable cause for searches of the home.

Minnesota courts should "strive to ascertain and give effect to the intent of the constitution as indicated by the framers and the people who ratified it" when interpreting the Minnesota Constitution. *Kahn*, 701 N.W.2d at 825 (citation omitted)). On those occasions, the court will "look to the history and circumstances of the times and the state of things existing when the constitutional provisions were framed and ratified in order to ascertain the mischief addressed and the remedy sought by the particular provision." *Id.*

The text of Article I, Section 10 is virtually identical to the Fourth Amendment. Minnesota's framers believed the text of the Fourth

Amendment—as it had been interpreted and applied at the time of the state constitutional convention—was sufficient for the state's own bill of rights, and offered the same protections for privacy and the sanctity of the home. *See Debates & Proceedings of the Minnesota Constitutional Convention* 105 (Republican ed. 1858). Minnesota courts therefore regularly review the history of the ratification of the Fourth Amendment and cite to it as authority. *See, e.g., State v. Jackson*, 742 N.W.2d 163, 169-70 (Minn. 2007). A brief review of the Fourth Amendment's history thus will be helpful in understanding the original meaning and intent behind Article I, Section 10. The history shows that the Framers sought to eliminate the use of two novel types of warrants alien to the common law—general warrants and writs of assistance—that were not based on individualized probable cause, and were used primarily for regulatory-type inspections.

a. The Fourth Amendment was designed to forbid general warrants and writs of assistance.

The history and background of the Fourth Amendment was thoroughly summarized by the U.S. Supreme Court in *Boyd v. United States*, 116 U.S. 616, 624-30 (1886), *abrogation on other grounds recognized by Fisher v. United States*, 425 U.S. 391, 407-08 (1976). *Boyd* involved a civil forfeiture proceeding against two partners for fraudulently attempting to import 35 cases of glass without paying the prescribed duty. *Boyd* discussed the

importance of search warrant rules in a non-criminal context, and described a number of prominent events in England and the Colonies that led to the adoption of the Fourth Amendment. *See State v. Pluth*, 157 Minn. 145, 149-50, 195 N.W. 789, 790-91 (1923) (citing with approval *Boyd*'s description of the history and background of the adoption of the Fourth Amendment). *Boyd* identified two key concerns animating the Framers' codification of the common-law warrant doctrine into the Fourth Amendment—protection of the home from government intrusion and the necessity of individual probable cause to authorize a search.

First, *Boyd* described why James Otis's famous 1761 speech in *Paxton's Case* against writs of assistance was one of the main events leading to the adoption of the Fourth Amendment. *Boyd*, 116 U.S. at 625 & n.* (quoting and discussing speech). Writs of assistance empowered revenue officers to conduct regulatory searches for evidence of smuggled goods. The writs were general warrants authorizing the bearer to enter any house or other place to search for and seize "prohibited and uncustomed" goods. Carl J. Franklin, *Constitutional Law for the Criminal Justice Professional* 100 (1999). Opposition to these writs became a rallying point for the colonists; after the Revolution, the states, as well as the Constitutional Convention, adopted provisions like the Fourth Amendment curbing the government's authority to

search homes and businesses. *Id.*; *see also* Mass. Const. of 1780, pt. I, art. XIV; Va. Const. of 1776, art. I, § 10.

Boyd also discussed the important role of *Entick v. Carrington and Three Other King's Messengers*, a 1765 English case that condemned the Crown's use of general warrants to search private houses to discover books and papers that might be used to convict the owner of libel. 95 Eng. Rep. 807, 19 How. St. Tri. 1029 (1765). *Boyd* noted that *Entick* is one of the "landmarks of English liberty," and that "its propositions were in the minds of those who framed the Fourth Amendment to the Constitution and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures." 116 U.S. at 626-27. According to *Boyd*:

> The principles laid down in this opinion affect the very essence of constitutional liberty and security. . . . [T]hey apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence . . . .

Id. at 630. The *Boyd* Court considered *Entick*'s condemnation of general warrants as "settled [law] from that time to this," namely, 1886. *Id.* at 626. *Boyd* was written 30 years *after* Minnesota adopted the language of the Fourth Amendment in Article I, Section 10.

Thus, the Fourth Amendment rested on the twin foundations of protecting the privacy of the home and outlawing general searches without individualized probable cause. *See Schmerber v. California*, 384 U.S. 757, 767 (1966) ("[T]he overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusions by the State."); Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 642-48 (1999) (discussing why, for the Framers, the Fourth Amendment's primary purpose was to safeguard the "sacrosanct interest" persons have in their home). The Fourth Amendment's Framers sought to prevent non-criminal, *regulatory* searches of homes without individualized probable cause. *See Boyd*, 116 U.S. at 625; *Pluth*, 195 N.W. at 791 (one major purpose of Fourth Amendment was to prevent searches for the purpose of enforcing imposts and taxes). The Framers crafted a bright-line rule requiring warrants with individualized probable cause for *all* invasions of the home by government officials. *See* Davies, 98 Mich. L. Rev. at 658-59 (noting the Framers were most concerned about the use of general warrants for customs searches of the home and persecution of political opponents, and that crime was not a "pressing social problem" at the time). No distinction was made between criminal and "regulatory" searches.

When the Fourth Amendment required a "warrant" to conduct searches, it therefore required the specific, common-law warrants used from

time immemorial and based on individualized probable cause. This was the only key the government had to enter a person's home. *See Boyd*, 116 U.S. at 630; *District of Columbia v. Little*, 178 F.2d 13, 16-17 (1949), *aff'd on other grounds*, 339 U.S. 1 (1950); Thomas Y. Davies, *Correcting Search-and-Seizure History: Now-Forgotten Common-Law Warrantless Arrest Standards and the Original Understanding of "Due Process of Law,"* 77 Miss. L.J. 1, 28 (2007) (stating that the common law endorsed only specific warrants). The language of the Fourth Amendment thus ensured *all* searches, with very limited exigent exceptions, required a warrant supported by oath and based on individualized probable cause.

b. Minnesota's framers incorporated the original understanding of the Fourth Amendment into Article I, Section 10.

The framers of Minnesota's constitution shared this common understanding of the language of the Fourth Amendment (and of its state counterpart) as protecting the privacy of citizens and preventing the government from unjustifiably rummaging through their "houses, papers, and effects." *See Pluth*, 195 N.W. at 790-91. And in using the Fourth Amendment's language, the Minnesota framers adopted the traditional warrant doctrine, which was firmly entrenched in 1857. *Id.*

Early Minnesota caselaw also supports the conclusion that the warrant requirement was the central feature of Article 1, Section 10. *See, e.g.*, *State*

v. Stoffels, 89 Minn. 205, 209, 94 N.W. 675, 676 (1903) (holding statute authorizing searches for illegal liquor vendors did not authorize an "unreasonable" search because it required a warrant based on probable cause); *Olson v. Tvelte*, 46 Minn. 225, 225–26, 48 N.W. 914, 914 (1891) (stating that the common law principle "no warrant should issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched," was embodied in Article I, Section 10 of the state constitution).

Thus, a government search with no individualized probable cause; a search of the entire house including personal spaces; and a search that also can be reported to police would have been anathema to Minnesota's constitutional conventioneers. Minnesotans believed the text and traditions of the Fourth Amendment (as they existed in 1857) were "sufficient" for their own protections under Article I, Section 10. As so many Minnesota Supreme Court decisions show, those protections are still in place today. This Court can and should forbid administrative warrants for housing inspections under Article I, Section 10 of the Minnesota Constitution.

3. The Fourth Amendment was understood to apply to searches of homes from the founding era until the coming of *Frank v. Maryland*.

This settled understanding of the Fourth Amendment—which required a traditional warrant based on individualized probable cause for searches of

the home—lasted until at least 1950, judging from the District of Columbia Circuit's noteworthy opinion in *District of Columbia v. Little.* 178 F.2d at 16-17. In *Little*, the court affirmed the lower court's reversal of a woman's conviction for refusing to open her door to a D.C. health inspector who did not possess a warrant. The court cited the same "settled" law announced in *Boyd* and many other cases[9] to conclude that government intrusions into the home required a warrant—one based on traditional probable cause. The court stated the following in response to the argument that the warrant requirement was meant only for criminal searches, not health or housing inspections:

> *The basic premise of the prohibition against searches was not protection against self-incrimination; it was the common-law right of a man to privacy in his home*, a right which is of the indispensable ultimate essentials of our concept of civilization. It was firmly established in the common law as one of the bright features of the Anglo-Saxon contributions to human progress. It was not related to crime or to suspicion of crime. It belonged to all men, not merely to criminals, real or suspected. So much is clear from any examination of history, whether slight or exhaustive. The argument made to us has not the slightest basis in history. It has no greater justification in reason. *To say that a man suspected of crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity.*

Little, 178 F.2d at 16-17 (emphasis added); *see also* Ernst Freund, *The Police Power: Public Policy & Constitutional Rights* 43 (1904) (explaining that

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[9] *See Little*, 178 F.2d at 16 n.5 (listing Supreme Court cases discussing invasion of home by government officers).

"every [administrative inspection of a private house] against the will of the owner should be based on judicial authority complying with the constitutional requirements with regard to searches."); 4 William Blackstone, *Commentaries on the Laws of England* 223 (1765-69) ("[T]he law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to be violated with impunity . . . . For this reason no outward doors can in general be broken open to execute any *civil* process; though, in criminal causes, the public safety supersedes the private." (emphasis added)).

The reasoning of *Little* represents a settled point of American law from *Entick* in 1765 until 1959, when *Frank v. Maryland* was decided.[10]

4. The U.S. Supreme Court makes a sharp and radical departure from the "settled" common law rule for warrants in *Frank v. Maryland* and *Camara v. Municipal Court.*

Camara, in conjunction with its predecessor *Frank v. Maryland*, was a sharp departure from longstanding precedent in two ways. The Fourth Amendment embodied two basic principles: first, a search requires a warrant

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[10] There is not much caselaw before *Frank v. Maryland*, 359 U.S. 360 (1959) on the exact issue of the Fourth Amendment and housing inspections because before the Fourth Amendment was incorporated in *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949), federal courts had little cause to address the issue. Most housing inspections are, of course, performed pursuant to state and local regulations. Unusually, *Little* concerned a federal enclave, the District of Columbia. In addition, few cities had housing inspection programs before the 1950s. *See* Note, "Municipal Housing Codes," 69 Harv. L. Rev. 1115, 1115-16 (1956).

and second, a "warrant" requires individualized "probable cause." *Frank* rejected the first principle, holding that certain home searches did not require warrants, and then *Camara* restored the warrant requirement but rejected probable cause. In rejecting these core principles, both courts evidenced a lack of concern for the privacy of the home that was totally out of keeping with the prior understanding of the Fourth Amendment.

a. *Frank*: Home searches do not require warrants, and the right to be secure in one's home is only on the "periphery" of the Fourth Amendment's protections.

In *Frank v. Maryland*, the Court upheld a state court conviction of a homeowner who refused to permit a municipal health inspector to enter and inspect his premises without a search warrant. *Frank*, 359 U.S. 360, 361-62, 373 (1959). A Baltimore city inspector had responded to a complaint about an unsanitary house. *Frank*, 359 U.S. at 361. As a result, the inspector sought to examine the defendant's basement without a warrant and the defendant refused. *Id.* The defendant argued the attempted search violated the Fourth Amendment. *Id.* at 362.

The Court held the Fourth Amendment did not even apply to sanitation inspections of the home. This holding was based upon the allegedly long history of that kind of inspection and "modern needs." *Id.* at 371-72. It stated that the Fourth Amendment was only meant to protect (1) the right to exclude officials who lack any legal authority, *i.e.* no ordinance at all allowing

the search, and (2) the right to exclude officials searching for evidence of criminal activity. *Id.* at 365.

This turned the Fourth Amendment on its head, holding that it protected those suspected of criminal activity but not innocent people who merely wanted to be left alone. In actuality, the Fourth Amendment was adopted to protect innocent people, not criminals. *See, e.g.*, *State v. Wiegand*, 645 N.W.2d 125, 131 n.5 (Minn. 2002); *Dunaway v. New York*, 442 U.S. 200, 214-15 (1979).

Frank's startling turn-around can be explained by the Court's demeaning attitude toward the interest of those who would resist an inspection, stating "the inspection touch[es] at most upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion[.]" *Id.* at 367. That constituted a sharp departure from the Court's prior Fourth Amendment precedent, such as *Boyd*, in which the home was the most protected area. Now a citizen's interest in the privacy of his home was at the "periphery."

The four dissenters relied on the history of the common-law protections of the privacy of the home built into the Fourth Amendment to excoriate the majority for what it called a great dilution of "the right of privacy which every homeowner had the right to believe was part of our American heritage." *Id.* at 374 (Douglas, J., dissenting). Reviewing the relevant history, the dissent

concluded: "We are pointed to no body of judicial opinion which purports to authorize entries into private dwellings without warrants in search of unsanitary conditions." *Id.* at 384 n.2 Most importantly, the *Frank* dissenters described how the Fourth Amendment's warrant requirement was a defense against government invasions of the home for non-criminal investigative purposes, namely, regulatory or *administrative* searches conducted by general warrant or writs of assistance. *Id.* at 376; *see also id.* at 378 (quoting *Little*, 178 F.2d at 16-17).

Given the earlier discussion, *supra* Part II.A.2, on the history of the Fourth Amendment, *Frank*'s holding that the Fourth Amendment does not apply to housing inspections and that the interests of privacy in the home are at the "periphery" of its protections cannot be labeled anything but a "sharp departure."

b. *Camara:* Warrants are needed to search the home, but the newly-invented administrative warrants do not require real probable cause.

In *Camara*, the Court corrected *Frank*'s error that the Fourth Amendment does not apply at all to home inspections. *Camara* required a warrant for home inspections. But instead of requiring a "warrant" as traditionally understood, the Court fabricated a new type of "warrant," justified by a lesser "probable cause" in order to conduct these involuntary home inspections. This was the first such departure from the warrant

requirement of its kind and marked a return to the general warrants despised and forbidden by the framers of both the Fourth Amendment and Article I, Section 10. Once again, the Court showed a lack of concern for violation of the home, a disregard that contradicted the prior understanding of the Fourth Amendment.

In *Camara* a tenant in a San Francisco apartment refused to consent to what the Court called "a routine annual inspection for possible violations of the city's Housing Code." *Camara*, 387 U.S. at 526. The tenant was prosecuted and in his defense argued the ordinance allowing a warrantless inspection violated the Fourth Amendment. *Id.* at 527. The Court agreed, overruling *Frank* and also ruling that a person cannot be punished for demanding a warrant be issued before an inspection. *Id.* at 534, 540. Further, it explicitly rejected the "peripheral" description of the Fourth Amendment's protection of the home. *Id.* at 530.

But while it rejected *Frank*'s denigration of the home as a justification for not requiring a warrant, it then relied on that same diminished view to justify its new, general "probable cause" standard. And, astoundingly, given its rejection of *Frank*'s "peripheral" characterization of home privacy, it stated administrative warrants were acceptable "because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime" and therefore "involve a *relatively limited invasion of the urban citizen's*

privacy." *Id.* at 537 (emphasis added). This could have been a line in *Frank* itself. Thus, with one hand *Camara* corrected *Frank*, and with the other it relied on the same dismissive attitude toward the sanctity of the home to reduce Fourth Amendment protections.

The Fourth Amendment (like Article I, Section 10) contains both a clause protecting against "unreasonable" searches and seizures and a clause requiring probable cause for a warrant. All searches, of course, need to be reasonable, and, in the case of warrantless searches, courts weigh the government's need for the search against the individual's right to be free of the search.[11] *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1, 20 (1968) (stop and frisk on the street). Before *Camara*, where the search required a warrant, that warrant had to be supported by probable cause—evidence tying a particular person or place to a crime—and the other familiar requirements of a sworn statement and a particular description of the search. *See, e.g.*, *Jones v. United States*, 357 U.S. 493, 498 (1958).

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[11] This Court of course applies reasonableness balancing all the time, but it does so by making a specific inquiry into the individual circumstances of the search. *See, e.g.*, *State v. Carter*, 697 N.W.2d 199, 209-11 (Minn. 2005) (balancing an individual's privacy interest in his self-storage unit against government's interest in drug detection based on specific facts, including the size and purpose of the storage unit)). And it has used reasonableness balancing to assess warrantless search programs. *See, e.g.*, *Ascher*, 519 N.W.2d at 186-87. As discussed above, Part I.C, this Court is deeply skeptical of suspicionless search programs of ordinary citizens with no individualized assessment.

Camara, however, effectively read the probable cause requirements out of the Warrant Clause and replaced them with a reasonableness inquiry. Instead of looking at whether a violation of the law had been shown to be "probable," *Camara* used the balancing test of government and private interests and then *called* that probable cause, even though the inquiry was completely different. It did not even look at the particular search or any individual circumstances but focused instead on the type of search and whether there were "legislative or administrative standards" for conducting that search. Turning probable cause into a generalized balancing test, instead of the well-established individualized inquiry that the Framers included in the Fourth Amendment, radically departed from the previous understanding of the Warrant Clause.

Camara's departure only became possible because the U.S. Supreme Court departed from the long-standing idea that the home was the central place worthy of traditional Fourth Amendment protections. Minnesota, however, retains that respect for the home that the U.S. Supreme Court abandoned in *Camara*. *See* Part I.B.1, *supra*.

5. *Camara* cannot be seen as anything but a "sharp departure."

That this "administrative warrant" and its balancing test constituted a "radical departure" under the framework of *Kahn* cannot be seriously

disputed. Scholars of the Fourth Amendment agree that these types of warrants simply did not exist before *Camara*. Further, the U.S. Supreme Court itself has admitted that the type of balancing test *Camara* used did not previously exist in Fourth Amendment jurisprudence.

First, whatever their opinions on administrative warrants as a policy matter, scholars are in agreement that *Camara* invented administrative warrants out of whole cloth. Professor Wayne R. LaFave stated at the time that, "To say that the probable cause required by the Fourth Amendment is not a fixed test, but instead involves a sort of calculus incorporating all the surrounding circumstances of the intended search, constitutes *a major departure* from existing constitutional doctrine. And it could well be a departure with a multitude of consequences." Wayne R. LaFave, *Administrative Searches and the Fourth Amendment: The* Camara *and* See *Cases*, 1967 Sup. Ct. Rev. 1, 12-13 (emphasis added). Others agree. *See, e.g.*, David A. Koplow, *Arms Control Inspection: Constitutional Restrictions on Treaty Verification in the United States*, 63 N.Y.U. L. Rev. 229, 307 (1988) (*Camara* "departed significantly from the case-by-case exploration of probable cause demanded in most other search contexts"); Edwin J. Butterfoss, *A Suspicionless Search & Seizure Quagmire: The Supreme Court Revives the Pretext Doctrine & Creates Another Fine Fourth Amendment Mess*, 40 Creighton L. Rev. 419, 420 (2007) ("The door to suspicionless searches and

seizures under the Fourth Amendment was opened in the landmark case of *Camara v. Municipal Court of San Francisco*, when the Court for the first time authorized a search without a showing of individualized suspicion."). Fourth Amendment scholar Orin Kerr frankly states: "In *Camara*, the Court overruled *Frank* and held that a warrant was required for such inspections. But there was a catch: the warrant that was required *was unlike any warrant previously known*." Orin S. Kerr, *The Modest Role of the Warrant Clause in National Security Investigations*, 88 Tex. L. Rev. 1669, 1673-74 (2010) (emphasis added); *see also* Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of* Camara *and* Terry, 72 Minn. L. Rev. 383, 393-94 (1988) ("Prior to *Camara* the warrant clause had dictated the meaning of the reasonableness clause. . . . *Camara*, in contrast, reversed the roles of probable cause and reasonableness.").

Second, as if this were not enough, the U.S. Supreme Court has recently itself recognized that substitution of a balancing test for the bright-line rule that all trespass on "houses, papers, and effects" constitutes a search is of recent vintage and stands in contrast to the prior doctrine of zealously using the Fourth Amendment to protect property interests—such as a person's home. *See United States v. Jones*, 132 S. Ct. 945, 949-50 (2012). This parallels the watering-down of the warrant requirement in *Camara*.

Jones involved the placement of a GPS device on a person's car to track his movements. *Id.* at 948. The Court explained that until the 1960s, its jurisprudence in the area of the Fourth Amendment had been "property-based." *Id.* at 950. Thus, "for most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas ('persons, houses, papers, and effects') it enumerates." *Id.* With *Katz v. United States*, 389 U.S. 347, 351 (1967) (decided the same year as *Camara*), and other cases, the Court "deviated" from that approach in identifying what constituted a search and instead focused on the "reasonable expectation of privacy" test. *Jones*, 132 S. Ct. at 949-51.[12] *Camara* similarly shifted from an established rule about the meaning of probable cause to one where probable cause was determined by "reasonableness"—and it made that shift because of its lack of concern for the invasion of the home. *See Camara*, 387 U.S. at 537.

Thus, in *Jones*, the U.S. Supreme Court admitted that the shift away from the protection of "houses, papers, and effects" was a "deviation" from prior precedent, and, just as Plaintiffs argue here, that its jurisprudence

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[12] This Court has nominally adhered to the *Katz*-type analysis, even when considering searches within the home. *See, e.g.*, *State v. Jordan*, 742 N.W.2d at 156. However, as discussed *supra*, this Court has consistently given greater weight to the interest of privacy in one's person, home, and effects than the federal courts. *See* Parts I.B & I.C, *supra*. Thus, this Court has, in practical effect, adhered to the original and stricter rule when searches invaded constitutionally protected areas.

represented a deviation from the meaning of the Fourth Amendment as understood from the time of its adoption to the mid-20th Century.

B. There is no persuasive reason to follow *Camara*'s sharp departure.

Because *Camara*'s endorsement of administrative warrants constituted a sharp departure from traditional protections of individual rights this Court should reject it in interpreting Article I, Section 10, especially given that there is no persuasive reason to follow it. As detailed above, *Camara* allows systematic invasions of privacy based upon the most general of excuses. And it creates a rule of law where criminals receive greater protections of their privacy than law abiding citizens.

1. *Camara* gives criminals greater protections than innocent people.

When a person is suspected of a crime, the police must have probable cause to search his home. But under *Camara*, when the city has no reason to suspect a crime or even a housing code violation, inspectors may nonetheless enter and search the entire home. Under *Camara*, suspected criminals thus receive greater protection than wholly innocent people.

Even when the reasons for a search are very important, absent exigent circumstances, the government is still required to demonstrate individualized probable cause, and the Framers specifically made that a requirement of our Constitution.

> [W]e cannot forgive the requirements of the Fourth Amendment in the name of law enforcement. This is no formality . . . but a fundamental rule that has long been recognized as basic to the privacy of every home in America. . . . [I]t is not asking too much that officers be required to comply with the basic command of the Fourth Amendment before the innermost secrets of one's home or office are invaded.

State v. Frink, 296 Minn. 57, 62, 206 N.W.2d 664, 667 (1973) (quotation omitted).

Perversely, *Camara* requires less suspicion to justify a search for housing-code violations than is required to justify a search for evidence of criminal activity. Even in an exigent situation like a "*Terry* stop," a police officer still must have reasonable suspicion based on *specific* and articulable facts that a *particular* person has committed, is committing, or is about to commit a crime.[13] *See Terry*, 392 U.S. 1. Not so under *Camara*. And, as explained in Part I.B.3, adoption of *Camara*'s reasoning under the Minnesota Constitution would lead to the absurd result of less suspicion being required for a search of ice houses, self-storage facilities, and cars. If the tenants of Red Wing wish to keep their personal "effects" private, rather than keeping them in their homes, perhaps they should move them to their cars, self-storage units, or even ice houses. Under *Camara*, their personal possessions would be safer from prying eyes in those places than in their own homes.

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[13] Minnesota has stricter rules for "stop and search" situations than the U.S. Supreme Court has required under the Fourth Amendment. *See, e.g.*, *State v. Burbach*, 706 N.W.2d 484 (Minn. 2005); *Askerooth*, 681 N.W.2d 353.

Whether a government official searches an innocent person's home without permission in order to find evidence of a crime or to check for housing-code violations, this Court should require a warrant, supported by actual probable cause.

2. The need to enforce housing codes does not justify rewriting the Constitution.

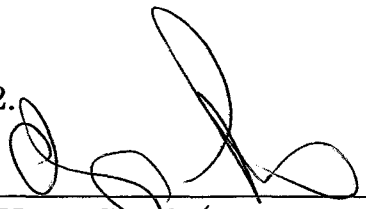
For the same reasons discussed *supra*, Part I.C.1, this Court should not be persuaded to follow *Camara* by the supposedly overriding need to enforce housing codes. We do not sacrifice the demands of individualized probable cause for the sake of "universal compliance" in other areas of law, nor should we here. There is no persuasive reason to follow *Camara*.

CONCLUSION

The Minnesota Constitution protects the sanctity and privacy of the home to a greater degree than currently provided by the Fourth Amendment under *Camara*. Plaintiffs have shown that (1) administrative warrants inadequately protect the rights of Minnesotans; (2) *Camara*'s administrative-warrant doctrine is a sharp departure from the general approach to warrants prevalent in our history and (3) there is no persuasive reason to follow *Camara* under the Minnesota Constitution. Accordingly, Plaintiffs ask this Court to hold that the use of administrative warrants to conduct involuntary

housing-code inspections is forbidden under Article I, Section 10 of the Minnesota Constitution.

DATED this 20th day of September, 2012.



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STATE OF MINNESOTA

IN SUPREME COURT

Robert McCaughtry, et al.,

Appellants,

CERTIFICATION OF BRIEF LENGTH

v.

No. A10-0332

City of Red Wing,

Respondent.

1. I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. 132.01, subds.1 and 3(a), for a brief produced with a proportional font.

2. The length of this brief is 13,963 words, excluding the cover, table of contents, table of authorities, signature block and this certificate.

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