

NO. A10-0332

State of Minnesota
In Supreme Court

Robert McCaughtry, *et al.*,

Appellants,

v.

City of Red Wing,

Respondent.

**BRIEF OF ST. PAUL ASSOCIATION OF RESPONSIBLE
LANDLORDS AS *AMICUS CURIAE* IN SUPPORT OF THE
APPELLANTS**

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TABLE OF CONTENTS

INTRODUCTION..... 1

STATEMENT OF THE CASE AND FACTS..... 2

ARGUMENT 2

 I. The Court of Appeals Failed to Apply This Court’s Test Under the
 Minnesota Constitution for Government Intrusions Based Upon
 Non-Individualized Probable Cause 2

 II. Red Wing’s Mandatory-Inspection Ordinance Fails The *Ascher* Test 4

 A. Red Wing has not articulated a sufficiently persuasive reason
 to depart from individualized probable cause for inspections
 of tenants’ homes against the will of both the tenant and its
 landlord 4

 1. The current reality of landlords and tenants in
 Minnesota undercuts the necessity of mandatory
 inspections..... 5

 2. There exist many less privacy-restrictive alternatives
 to mandatory inspections that achieve the same desired
 ends 8

 B. The marginal benefits of mandatory inspections without
 individualized probable cause do not outweigh the privacy
 and other interests of landlords and tenants 14

CONCLUSION 18

TABLE OF AUTHORITIES

	Page(s)
<u>Minnesota Statutes</u>	
Minn. Stat. § 504B.161, subd. 1 (2008)	6
Minn. Stat. § 504B.245, subd. 2 (2008)	9
Minn. Stat. § 504B.285, subd. 2 (2008)	7
 <u>Minnesota Cases</u>	
<i>Ascher v. Commissioner of Public Safety</i> , 519 N.W.2d 183 (Minn. 1994)	passim
<i>Fritz v. Warthen</i> , 213 N.W.2d 339 (Minn. 1973)	6, 9
<i>Kahn v. Griffin</i> , 701 N.W.2d 815, 828 (Minn. 2005)	3
<i>Parkin v. Fitzgerald</i> , 240 N.W.2d 828 (Minn. 1976)	7
<i>State v. Jordan</i> , 742 N.W.2d 149 (Minn. 2007)	14
<i>State v. Larsen</i> , 650 N.W.2d 144 (Minn. 2002)	3, 4, 5, 14
 <u>Federal Cases</u>	
<i>Camara v. Municipal Court of San Francisco</i> , 387 U.S. 523 (1967).....	4, 5, 6, 8
<i>Michigan Dep't of State Police v. Sitz</i> , 496 U.S. 444 (1990).....	2, 5
<i>Payton v. New York</i> , 445 U.S. 573 (1980).....	14

Ordinances

Concord Municipal Code §14-401(c) 12

Red Wing Rental Dwelling Licensing Code § 4.31 passim

St. Paul City Code §192.04 11

Stockton Municipal Code § 8.32.060..... 11

Other Authorities

Anthony Downs, *The Challenge of Our Declining Big Cities* HOUSING POLICY DEBATE 359, 381 (1997)..... 16

Ian Crichton, Matt Rosenberg, and Joe Thompson, *Rental Unit Licensing: Applicability to Milwaukee*, The LaFollette Institute, p.2 (2002-03), available at <http://www.lafollette.wisc.edu/publications/workshops/2002-2003/spring/PA869/domestic/MilwRental-2003.pdf> 16

Institute of Real Estate Management, *Mandatory Inspections of Rental Property by Municipalities for a Fee* (August 2010) available at <http://www.irem.org/pdfs/publicpolicy/mandatory1.pdf>..... 12

Lawrence R. McDonough, *Wait a Minute! Residential Eviction Defense in 2009 Still Is Much More Than "Did You Pay the Rent?",* 35 WM. MITCHELL L. REV. 762 (2009)..... 6

Minnesota Office of the Legislative Auditor, *Preserving Housing: A Best Practices Review*, Report #03-5, at 44-45 (April 2003) available at <http://www.auditor.leg.state.mn.us/ped/pedrep/0305all.pdf> (accessed 9/26/12) 10

<http://www.homelinemn.org> 7

<http://www.stpaul.gov/DocumentView.aspODID=6841> 11

http://www.tenant.net/Other_Areas/Minnesotakesource.html..... 7

<http://www.volunteerlawyersnetwork.org/clients/aboutus> 7

INTRODUCTION

St. Paul Association of Responsible Landlords (SPARL) urges this Court to hold that the Minnesota Constitution requires individualized probable cause for a city to inspect the home of a tenant when neither the tenant nor owner want the city to enter the tenant's home.¹

SPARL is a non-profit educational association for landlords, people interested in becoming landlords, and support services for the landlord industry. It recognizes the complexity of owning and managing rental property in a constantly changing legal and regulatory landscape and seeks to educate its members and develop their skills so they can have successful and responsible rental businesses. SPARL supports equitable laws and regulations that make fair rental housing operations and tenancy possible and encourages its members to understand and abide by all applicable laws, including housing codes. SPARL's members—besides suffering themselves from government entry into their properties without individualized probable cause—also desire to protect the privacy of their tenants, as cities often mandate landlord participation in the invasion of their tenant's rental home by requiring landlords to unlock the doors, even absent tenant consent.

By sharing the collective experience of its members, SPARL believes that this brief will assist this Court's analysis of the issues on review. SPARL argues that the

¹ SPARL certifies that this brief was not authored in whole or in part by counsel for either party to this appeal, and that no other person or entity contributed monetarily toward its preparation or submission.

Court of Appeals erred by declining to hold that Red Wing's inspection program violates the Minnesota Constitution. SPARL urges this Court to apply the test it developed for programs and searches that are not based on individualized probable cause. Red Wing's mandatory inspection program fails this test, which compares the marginal benefit of the challenged program over a less intrusive search to the privacy interests of individuals who suffer the invasion. SPARL therefore urges this Court to hold that Red Wing's inspection program violates the Minnesota Constitution.

STATEMENT OF THE CASE AND FACTS

SPARL concurs with and adopts Appellants' statement of the case and facts.²

ARGUMENT

I. The Court of Appeals Failed to Apply This Court's Test Under the Minnesota Constitution for Government Intrusions Based Upon Non-Individualized Probable Cause.

This case is specifically governed by a test developed by this Court in *Ascher v. Commissioner of Public Safety* to "determine whether the state has met its burden of articulating a persuasive reason for departure from the general requirement of individualized suspicion."³ *Ascher* itself departed from a United States Supreme Court precedent⁴ that allowed police to try to find drunk drivers by investigating all drivers through temporary roadblocks that were not based upon individualized suspicion. In doing so, this Court placed the burden on the City to articulate a "persuasive reason" to

² See Appellants' Brief 2-11.

³ 519 N.W.2d 183, 186 (Minn. 1994).

⁴ See generally *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990).

depart from individualized probable cause. First, the City must show that “it is impractical to require” the government to “develop individualized” probable cause and that “a departure from the individualized suspicion requirement will significantly help” the government achieve its goals.⁵ Second, the City must also show that “this outweighs the interests of ordinary citizens in not having their privacy or their freedom” interfered with by the government.⁶

Confirming that the *Ascher* test is not limited to vehicles, seizure, or the other specifics of *Ascher*, this Court also applied the same test in *State v. Larsen* to administrative inspections of ice houses without individualized probable cause.⁷ The *Ascher* test should likewise apply to the facts here. Because Red Wing’s mandatory inspections deviate from individualized probable cause, the city must satisfy its burden to show that its program is necessary in light of alternatives and that the marginal benefits of deviating from individualized probable cause outweigh the privacy interests of landlords and tenants. Red Wing has not done so.

This Court in *Kahn* emphasized that it “can and will interpret our state constitution to afford greater protection of individual civil and political rights than does the federal constitution.”⁸ Indeed, courts have a “duty to independently safeguard the rights of our citizens.”⁹ And that is just what this Court did when it held in *Ascher* and again in

⁵ *Ascher*, 519 N.W.2d at 186.

⁶ *Id.*

⁷ 650 N.W.2d 144, 149 (Minn. 2002).

⁸ *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005).

⁹ *Id.*

Larsen that, unlike the United States Supreme Court’s interpretation of the Fourth Amendment,¹⁰ this Court interprets the Minnesota Constitution to permit departures from individualized probable cause only when the government can “articulate a persuasive reason” that shows both the necessity of the departure and that it outweighs the privacy interests of its citizens.¹¹

II. Red Wing’s Mandatory-Inspection Ordinance Fails The *Ascher* Test.

A. Red Wing has not articulated a sufficiently persuasive reason to depart from individualized probable cause for inspections of tenants’ homes against the will of both the tenant and its landlord.

The first part of the *Ascher* test evaluates the necessity of the challenged practice relative to an alternative practice that requires individualized suspicion or probable cause.¹² This Court has previously set a difficult standard for governments to overcome the presumption that individualized probable cause is necessary before an invasive search. In *Ascher*, for example, this Court struck down a practice even though “protection of human lives through deterrence of drunk driving” was at stake.¹³ In *Larsen*, “protection of the fishing resource” was at stake—which is a goal that should not be viewed lightly in Minnesota.¹⁴

While Red Wing may cite housing safety or similar goals to support its mandatory searches, it is likely that most government entities that want to invade our citizen’s

¹⁰ See *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 537-38 (1967).

¹¹ *Ascher*, 519 N.W.2d at 186.

¹² *Ascher*, 519 N.W.2d at 186; *Larsen*, 650 N.W.2d at 150.

¹³ *Larsen*, 650 N.W.2d at 150 (describing *Ascher* analysis); *Ascher*, 519 N.W.2d at 186.

¹⁴ *Larsen*, 650 N.W.2d at 150.

privacy without individualized probable cause could describe some public benefit that is at least superficially appealing. But Minnesota law requires a much higher standard than federal law for these types of invasions, and a laudable goal is not enough.¹⁵

1. The current reality of landlords and tenants in Minnesota undercuts the necessity of mandatory inspections.

The analysis in this case begins with the U.S. Supreme Court's 1967 decision in *Camara v. Municipal Court of San Francisco*, which permitted administrative warrants based upon generalized probable cause for a particular housing inspection program that was challenged under federal constitutional law.¹⁶ A necessary premise to that decision was that, according to the Court—in 1967—“the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures.”¹⁷ That premise is not sufficient here. First, Minnesota law, as described above, has already departed from federal constitutional law when the intrusion is not based upon individualized probable cause, so on its face, this is insufficient to uphold the program. Second, mandatory searching of all structures is probably the only way to obtain “universal compliance” with any law—including drug laws, drunk driving laws, and natural resource laws. This Court, however, in *Ascher* and *Larsen*, already rejected the necessity of universal compliance as permitted rationales to depart from individual probable cause.

¹⁵ Compare *Larsen*, 650 N.W.2d at 150 and *Ascher*, 519 N.W.2d at 186 with *Sitz*, 496 U.S. 444 and *Camara*, 387 U.S. at 537-38.

¹⁶ 387 U.S. at 537-38.

¹⁷ *Id.* at 535-36.

Third, the landscape for housing and tenants has changed quite dramatically since 1967, as tenants have many more resources and rights today to assure the health and safety of their homes. Thus, the benefits of Red Wing's program are less now than they may have been in 1967 because other resources and factors have reduced the likelihood that a tenant must live with an unsafe home, absent mandatory inspections.

Since *Camara* was decided in 1967, Minnesota law has become much more protective of tenants and the condition of their homes.¹⁸ For example, Minnesota tenants' rights legislation enacted in 1971 expressly implies certain unwaivable covenants related to habitability in every residential lease.¹⁹ Landlords owe the following obligations to their tenants: (1) "the premises and all common areas are fit for the use intended by the parties;" (2) the premises must be kept in "reasonable repair during the term of the lease;" (3) the premises must be "reasonably energy efficient;" and (4) the premises must be maintained "in compliance with applicable health and safety laws of the state."²⁰ In 1973, this Court added further teeth to this statute when it held that tenants can assert violations of these habitability covenants as a defense to unlawful detainer (eviction) actions.²¹ Tenants may also report any health, safety, housing, or building code issue to local government authorities to prompt an inspection, and landlords, under Minnesota

¹⁸ See generally Lawrence R. McDonough, *Wait a Minute! Residential Eviction Defense in 2009 Still Is Much More Than "Did You Pay the Rent?"*, 35 WM. MITCHELL L. REV. 762 (2009) (describing current state of landlord-tenant law).

¹⁹ See Minn. Stat. § 504B.161, subd. 1(a) (2008) (formerly codified at Minn. Stat. § 504.18 (1998)); *Fritz v. Warthen*, 213 N.W.2d 339, 340-41 (Minn. 1973).

²⁰ Minn. Stat. § 504B.161, subd. 1(a)(1)-(4) (2008).

²¹ *Fritz*, 213 N.W.2d at 342.

law, may not evict them for doing so, as retaliatory eviction based upon such a report is a defense to an eviction action.²² This changed legal landscape reduces the aggregate benefits of mandatory universal inspections because many health and safety issues in rental homes will be resolved by these legal protections.

Besides greater legal tools to assure adequate housing, tenants also have greater resources to properly utilize these tools.²³ Thus, even the most unsophisticated tenants have the resources available to ensure that landlords comply with building codes, and other legal requirements. In any event, even the most unsophisticated tenants could request an inspection in a voluntary-inspection program.

The common perception of landlords that developed in the 1960's and earlier of "slumlords" that just sit and collect cash while letting tenants' homes fall into disrepair is no longer accurate. While, like any profession, there is the occasional "bad apple," a slumlord will not survive long today with the elaborate laws and regulations governing rental property and the treatment of tenants. Indeed, when it comes to actual disputes between landlords and tenants, tenants—with increasingly favorable laws and additional resources—usually have the upper hand. Contrary to the antiquated stereotype of landlords, being a landlord today is a noble profession that is both hands-on and

²² See Minn. Stat. § 504B.285, subd. 2 (2008); see also *Parkin v. Fitzgerald*, 240 N.W.2d 828, 832-33 (Minn. 1976) (citing predecessor statute).

²³ See, e.g., <http://www.tenant.net/Other%20Areas/Minnesota/resource.html> (listing contact information for numerous resources that can assist tenants, including the Legal Aid Society); <http://www.volunteerlawyersnetwork.org/clients/aboutus> (network of lawyers that provide low-income individuals with free legal assistance, including housing issues); <http://www.homelinemn.org/> (non-profit tenant advocacy organization that provides free legal advice to tenants via a toll-free hotline).

challenging. Like any business, in order to succeed, a landlord must strictly adhere to a complicated maze of state and local laws, while keeping expenditures lower than revenues—which is not easy in the current economic environment. In fact, irresponsible landlords have trouble staying in business. Thus, given the advances in Minnesota landlord-tenant law since *Camara* was decided, the rationale underpinning *Camara's* endorsement of administrative warrants based on generalized probable cause is no longer persuasive.

2. There exist many less privacy-restrictive alternatives to mandatory inspections that achieve the same desired ends.

The *Ascher* test compares the challenged search program with alternatives that do not require the government to invade privacy rights without individualized suspicion or probable cause.²⁴ Thus, in considering whether Red Wing has articulated a sufficiently persuasive reason for departing from individualized probable cause, this Court should only consider the marginal benefit of the mandatory inspection program over less intrusive alternatives. The most obvious alternative is that inspections can be prompted by individualized probable cause. This could come from tenant contact, reports or complaints, multiple code violations from outside the home, or anything else that could suffice as individualized probable cause.

The next alternative is consent. Any tenant with concerns about his or her housing could invite the inspector into the rental home. The inspections could also be prompted by landlords. While it may seem odd that a landlord would prompt a city inspection, the

²⁴ *Ascher*, 519 N.W.2d at 186.

landlord may do so for its own protection because it would use the inspection report as evidence of habitability in a future eviction lawsuit.²⁵ Red Wing, of course, is demanding to enter rental units against both the tenants' and landlords' consent.

If Red Wing's actual concern is that tenants won't know they can request an inspection or won't think to request an inspection, there are much less intrusive methods of overcoming this information deficiency. For example, a city could require landlords to provide tenants with information about a city's voluntary-inspection program. This information could explain how to contact the city, inspection requirements, common code violations, and even a list of what the inspector would examine. The city could make it mandatory to include this information in all rental leases and require landlords to post this information in common areas of the buildings. Indeed, the city itself—utilizing its list of rental properties from the rental licenses—could contact tenants directly each year, if it believed that would be more effective. Minnesota law provides tenants with a retaliatory eviction defense that tenants can invoke if landlords evict following a request for inspection, so Red Wing cannot argue that landlords would evict tenants for requesting an inspection.²⁶

An additional benefit to a voluntary-inspection program is that it would provide a landlord with choices between qualified inspectors, permit the landlord to choose the inspector, and allow the landlord to control the scheduling. Indeed, in a 2003 comprehensive study of best housing practices, the Minnesota Office of the Legislative

²⁵ *Fritz*, 213 N.W.2d at 342 (lack of habitability is a defense to an eviction action).

²⁶ See Minn. Stat. § 504B.245, subd. (2) (2008).

Auditor found that “[e]ncouraging voluntary compliance with the code requirements is the first best practice for administering housing codes.”²⁷ The Office of the Legislative Auditor further noted, “Voluntary compliance is less costly and time consuming to city staff than more aggressive enforcement and does not generate ill-will that more punitive actions can.”²⁸ Like the self-certification program discussed below, a voluntary - inspection program gives landlords agency over inspections of their property. Red Wing’s ordinance, as currently in effect, wrests the responsibility for inspections from the landlords and tenants and places it solely in the hands of the City’s inspectors.²⁹ Further, a city can incentivize landlords to participate in a voluntary-inspection program by including properties that pass the voluntary-inspection process to a list of the city’s preferred renters.

A city can even go a step further—without descending into un-consented intrusions into privacy— and require landlords, tenants, or both to sign an affidavit stating that certain items were in order and that the properties were in compliance with the applicable codes. The City of St. Paul, for example, requires landlords to sign an affidavit stating that they provided occupants of each unit with certain information about

²⁷ Minnesota Office of the Legislative Auditor, *Preserving Housing: A Best Practices Review*, Report #03-5, at 44-45 (April 2003) available at <http://www.auditor.leg.state.mn.us/ped/pedrep/0305all.pdf> (accessed 9/26/12).

²⁸ *Preserving Housing*, *supra* note 27, at 44.

²⁹ Red Wing Rental Dwelling Licensing Code (“RDLC”) § 4.31, subd. 1(3)(a) (providing that the City’s enforcement officers and his or her agents are authorized to inspect properties).

smoke detectors.³⁰ That form requires the signature of an individual that affirms that he or she personally inspected the smoke detectors and carbon monoxide detectors and that they are in good working order.³¹ St. Paul also permits owners of residences of two or fewer units to perform their own evaluations of their rental properties and prepare a disclosure report.³² This report must be made available to any prospective tenant.³³ St. Paul's ordinance allows landlords of these qualifying properties to be more proactive in the maintenance and reporting of housing conditions. Additionally, it empowers tenants because the landlord is required to inspect and report the condition of his or her units upon inquiry and before a tenant begins a lease. St. Paul's ordinance differs from Red Wing's because it places the onus on the property owner to inspect, maintain and report the condition of his or her property.

Like St. Paul, cities of comparable size and scope across the country have addressed this issue by adopting self-certification programs.³⁴ In Stockton, California, qualified property owners, i.e., property owners who have "well-maintained residential units with no existing violations of state housing law or [the city municipal code]" may inspect their property and certify under penalty of perjury that the property meets the minimum code requirements as listed on the affidavit.³⁵ The self-certification option

³⁰ See <http://www.stpaul.gov/DocumentView.aspx?DID=6841> (required form).

³¹ *Id.*

³² St. Paul City Code §192.04.

³³ *Id.*

³⁴ Other cities that have adopted self-certification programs include: Santa Cruz, CA; Sacramento, CA; and Richmond, CA.

³⁵ Stockton Municipal Code § 8.32.060.

benefits the property owner through reduced fees and fewer on-site inspections. Like Stockton, in Concord, California, the self-certification program is made available to property owners who do not have (1) existing violations of city municipal code or the state building, housing and health and safety codes; (2) outstanding citations, inspections, or abatement fees; and (3) who possess a current business license for the facility.³⁶ The city of El Cajon, California has taken a similar approach.³⁷ In El Cajon, the city has focused its efforts on the neighborhoods it has identified as needing the most improvement.³⁸ In those neighborhoods, the city surveys the exterior of each property and sends self-inspection letters to owners of properties that appear to be in compliance with health and safety codes.³⁹ Only those properties that appear to have exterior code violations are inspected by the city.⁴⁰

The benefits of these self-certification programs are multifold. First, they reward landlords who have complied with the municipal and state housing codes by not subjecting them to unnecessary inspections. Under Red Wing's inspection program, landlords are not authorized to perform inspections of the dwelling units they operate and own. Self-certification programs put the onus of responsibility for the upkeep and maintenance of the property on the individuals who possess the knowledge and

³⁶ Concord Municipal Code §14-401(c).

³⁷ For discussion of El Cajon, CA self-inspection program, see Institute of Real Estate Management, *Mandatory Inspections of Rental Property by Municipalities for a Fee* (August 2010) available at <http://www.irem.org/pdfs/publicpolicy/mandatory1.pdf>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

responsibility for the property—the landlords themselves. Second, self-certification programs allow the city to focus its limited resources and attention on properties that present the most issues. As in El Cajon, Red Wing and other Minnesota cities can focus on the exteriors of rental housing to identify code violations in plain view that would provide individualized probable cause to justify issuing a warrant to inspect the interior of the buildings. Finally, since landlords, not inspectors, will perform the inspections, the tenants’ privacy concerns should be alleviated.

In any event, the marginal benefit of these mandatory inspections is very small relative to less intrusive alternatives. Moreover it is limited to the benefit of inspecting only those units where neither the landlord nor the tenant want the government to enter, and there is no individualized probable cause. Any argument that these inspections are necessary to minimize the likelihood of future fire or other damage from one unit to the rest of the city is undercut by the fact that these inspections only apply to rental units. If that were the actual reason for the program, the city would base its inspection program on much different factors than whether the unit is renter or owner-occupied. Indeed, Red Wing requires a showing of individualized probable cause for inspections of owner-occupied homes.⁴¹ Red Wing’s program, therefore, makes renters second-class citizens compared to those that own their own homes. In sum, analyzing these inspections relative to the wealth of alternatives adopted by other cities demonstrates that the public

⁴¹ RDLC § 4.31, subd.1(3)(c) (permitting inspections of owner-occupied residential units “when reason exists to believe that a violation of an applicable subdivision of the HMC exists[.]”).

interest is “surely no greater than at stake in *Ascher*—protection of human lives through deterrence of drunk driving” or “the protection of the fishing resource.”⁴²

B. The marginal benefits of mandatory inspections without individualized probable cause do not outweigh the privacy and other interests of landlords and tenants.

The second aspect of the *Ascher* test compares the marginal benefits of the mandatory inspections with the privacy and related interests of landlords and tenants.⁴³

In this case, the privacy interests are as great as they can be because Red Wing wants to inspect actual homes without consent or individualized probable cause. Indeed, “one’s private dwelling” is the standard upon which all other expectations of privacy are measured.⁴⁴ The U.S. Supreme Court recognizes that “the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.”⁴⁵ And the Minnesota Supreme Court in *State v. Jordan* confirmed that these privacy interests are just as strong when the homeowner is not present during the search.⁴⁶

Although landlords often have a right under the lease to enter for maintenance or limited other reasons, an entry by the government, particularly an inspector, is different in both kind and scope. The landlord or its maintenance person may go into the home under a freely-entered contract (the lease) and with permission, and limits the scope of the interference to the strict needs of the particular project or other defined reason for

⁴² *Larsen*, 650 N.W.2d at 150; *Ascher*, 519 N.W.2d at 186.

⁴³ *Id.*

⁴⁴ *Larsen*, 650 N.W.2d at 149 (comparing fish house to private dwelling to conclude that there is a reasonable expectation of privacy in a fish house).

⁴⁵ *Payton v. New York*, 445 U.S. 573, 585 (1980).

⁴⁶ *State v. Jordan*, 742 N.W.2d 149, 158 (Minn. 2007).

entering. The government inspector, however, enters the home upon the government's demand—without consent—and systematically examines it from top-to-bottom and end-to-end. Moreover, it is the fact of unwanted *government* entry that creates the uncomfortable feeling in our citizens (no matter how benign the purpose) and implicates the Minnesota Constitution and U.S. Constitution in such a way that distinguishes us from less free societies.

The landlords themselves have separate privacy interests as they may store items on parts of the property that are inaccessible to tenants. Moreover, forcing inspections against the consent of tenants interferes with a tenant's enjoyment of the property, which is the value that the tenant receives in consideration for its rent to the landlord. Indeed, despite the common portrayal of tenants and landlords as at odds with each other, many landlords are actually very protective of their tenants, and that extends to mandatory inspections against the tenant's will. While perhaps counterintuitive, it is not surprising because a city (or other external source) that reduces a tenant's quiet enjoyment is also reducing the market value of the landlord's property. A tenant may value this property less than a property in a neighboring city or state that does not force itself into the tenant's home. This loss of value is independent of the more straight-forward market-value reductions that occur from inspection or licensing fees and the actual costs of responding to an inspection.

Mandatory housing inspections may also perversely harm the poorest and least sophisticated tenants—the supposed beneficiaries of this program—by raising the price

and reducing the supply of low-cost housing.⁴⁷ Indeed, Anthony Downs from The Brookings Institution explains in a housing study that “[i]f housing codes were stringently enforced at high quality levels, thousands of households would be thrown out on the streets.”⁴⁸

This Court should also consider the reality of housing inspections—as opposed to how they may appear on the printed page of a municipal ordinance. In practice, code enforcement is rarely uniform, and there may be varying standards from city to city and inspector to inspector.⁴⁹ Housing inspectors have a tremendous amount of subjective discretion, and do not limit themselves to health and safety issues. Indeed, Red Wing’s ordinance requires City inspectors to disclose certain crimes to the Red Wing Police Department.⁵⁰ Although the ordinance only identifies four felonies by name—an active or inactive methamphetamine lab, mistreatment of one or more minors, mistreatment of one or more vulnerable adults, or mistreatment of one or more animals—inspectors are also obligated to disclose anything required by law.⁵¹ In essence, Red Wing’s ordinance enlists City housing inspectors to serve as surrogate criminal law enforcement officers.

⁴⁷ See Ian Crichton, Matt Rosenberg, and Joe Thompson, *Rental Unit Licensing: Applicability to Milwaukee*, The LaFollette Institute, at 1-2 (2002-03), available at <http://www.lafollette.wisc.edu/publications/workshops/2002-2003/spring/PA869/domestic/MilwRental-2003.pdf> (analyzing and advising against a mandatory housing inspection program in Milwaukee).

⁴⁸ Anthony Downs, *The Challenge of Our Declining Big Cities*, 8(2) HOUSING POLICY DEBATE 359, 381 (1997).

⁴⁹ See Crichton, Rosenberg, and Thompson, *Rental Unit Licensing: Applicability to Milwaukee*, The LaFollette Institute, at 1.

⁵⁰ RDLC §4.31, subd. 1(3)(q)(ii).

⁵¹ RDLC §4.31, subd. 1(3)(q)(i)-(ii).

Through the use of suspicion-less administrative warrants, Red Wing's ordinance empowers housing inspectors to do what police officers cannot—enter a home without a warrant based on individualized probable cause.

Further, Red Wing's ordinance gives City inspectors nearly unfettered access to the tenants' residences. Instead of identifying some level of cause necessary to select which units should be inspected, Red Wing's ordinance only places minor limitations on the extent to which an enforcement officer can invade an inhabitant's privacy rights. While enforcement officers are not allowed to take photographs or video recordings of the areas inside the dwelling nor are they permitted to "open containers, drawers, or medicine cabinets" without court permission or the consent of the tenant or landlord,⁵² inspectors may open cabinets or closets when reasonably necessary to inspect for the existence of code violations.⁵³ Although these limitations ostensibly provide some level of privacy for tenants and/or landlords, the statute fails to define what is "reasonably necessary." Thus, there is potential that a tenant or landlord will overestimate the authority of the inspector and feel obligated to consent to searches of otherwise non-searchable areas, or worse, the inspectors will over-reach and attempt to exert more authority than they possess.

Moreover, many cities may view these inspections as revenue sources that raise funds through excessive licensing fees and required permits for items that end up on the inspection report—and there are always items that end up on the inspection report, no

⁵² RDLC §4.31, subd. 1(3)(l)-(m).

⁵³ RDLC §4.31, subd. 1(3)(n).

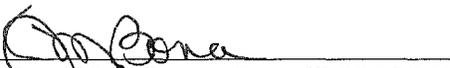
matter how conscientious the landlords and tenants are. Indeed, housing inspectors have a financial incentive to find items to report because they need to justify their continued existence. The costs that landlords spend on licensing fees and complying with these inspections ultimately end up either raising the rents for tenants, or limiting the improvements in quality that the landlord can afford to make. These inspections are quite burdensome and costly, and subject both landlords and tenants to the subjective whim of a government official with a surprising amount of discretion.

CONCLUSION

For the reasons described above, the St. Paul Association of Responsible Landlords, as *amicus curiae*, urges this Court to reverse the decision of the Court of Appeals and hold that Red Wing's mandatory inspection program violates Article I, Section 10 of the Minnesota Constitution.

Dated: September 27, 2012

Respectfully submitted,

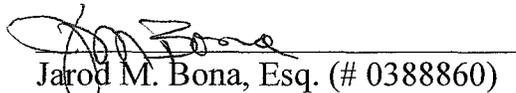
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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minnesota Rule of Civil Appellate Procedure 132.01, subds. 1 and 3(a), for a brief produced with a 13 point proportional font, Times New Roman. The brief is printed on 8-1/2 by 11 inch paper with written matter not exceeding 6-1/2 by 9-1/2 inches. The length of the brief is 3971 words, as determined by the word counter of the word processing software, Microsoft Office Word 2003, which was used to prepare the brief.

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