

NO. A10-0332

State of Minnesota
In Supreme Court

Robert McCaughtry, et al.,

Appellants,

vs.

City of Red Wing,

Respondent.

**BRIEF AND ADDENDUM OF AMICUS CURIAE,
AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Introduction and Statement of *Amicus Curiae*¹

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization with approximately 300,000 members dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The American Civil Liberties Union of Minnesota (ACLU-MN) is one of its statewide affiliates. Since its founding in 1952, the ACLU-MN has engaged in constitutional litigation, both directly and as *amicus curiae*, in a wide variety of cases. Among those rights that the ACLU-MN has litigated to protect is the right to be free from unreasonable searches under the Fourth Amendment to the U.S. Constitution and Article I § 10 of the Minnesota Constitution.

The ACLU-MN believes that the principles of the Fourth Amendment apply to individuals in their homes regardless of whether that home is a rental housing unit. We recognize and acknowledge the fact that, due to the nature of the landlord-tenant relationship, the government has a legitimate interest in regulating rental housing. The government's legitimate interests include ensuring that tenants are not subject to substandard living conditions and providing both parties with adequate legal remedies to address breaches in the rental agreement. However, the government's legitimate interest in enforcing its rental housing code should not, and may not be accomplished at the expense of the rental housing tenant's right to be free from unreasonable searches and seizures. The ACLU-MN believes that it is inappropriate to victimize tenants by subjecting them to

¹ Counsel certifies that this brief was authored in whole by listed counsel for *amicus curiae* ACLU of Minnesota. No person or entity other than *amicus curiae* made any monetary contribution to the preparation or submission of the brief. This brief is filed on behalf of the American Civil Liberties Union of Minnesota, which was granted leave to participate as *amicus curiae* by this Court's Order dated August 21, 2012.

unreasonable searches all in the name of protecting their rights. There are other measures available that the government can employ to ensure that tenant's rights are protected while still respecting their right to be free from unreasonable searches and seizures.

There are few more vaunted American values than the privacy and sanctity of one's home. Yet the U.S. Supreme Court's precedent allows government agents to search those homes based on a generalized housing inspection scheme that does not require individualized probable cause. This ACLU-MN respectfully urges this court to hold Minnesota to a higher standard under Article I Section 10 of the Minnesota Constitution and require housing inspections to take place based on voluntary consent or a warrant that is based on individualized probable cause to believe that code violations will be found on a particular property. Ample case law interpreting the Minnesota Constitution should guide this court to this holding and such a requirement will not unduly hamper the ability of cities to address residential health and safety concerns.

Statement of the Case and Facts

The ACLU-MN concurs with the Appellants' Statement of the Case and Facts and adopts and incorporates the facts set forth in the Brief of Appellants and the Appendix to Brief of Appellants.

Argument

- I. **This Court should interpret Article I Section 10 of the Minnesota Constitution to require individualized probable cause for rental housing inspection warrants because the U.S. Supreme Court's decision in Camara v. Municipal Court of San Francisco does not adequately protect Minnesota citizens' basic rights and liberties.**

It is well settled that the expectation of privacy in one's home is "based on societal expectations that have deep roots in the history of the [Fourth] Amendment." Oliver v. United States, 466 U.S. 170, 178 n.8. (1981).

"Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." United States v. United States Dist. Court, 407 U.S. 297, 313 (1972). The Amendment's primary purpose is to "safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." Camara v. Municipal Court of San Francisco, 387 U.S. 523, 528 (1967). Despite recognizing this highly important constitutional value, the U.S. Supreme Court in Camara went on to create an "administrative search" doctrine that essentially excludes innocent apartment dwellers from these strong protections of the Fourth Amendment.

The Supreme Court recognized that housing inspections of a tenant's residence have a significant impact on the tenant's privacy interests protected by the Fourth Amendment. As such, administrative searches must include traditional safeguards, including a warrant procedure, to protect those Fourth Amendment interests. Camara, 387 U.S. at 534. However; the Court went on to blunt that right by allowing "administrative" search warrants to be issued as long as "reasonable legislative or administrative standards for conducting area inspection are satisfied with respect to a particular dwelling." Camara, 387 U.S. at 538.

Thus, according to the U.S. Supreme Court, intrusive housing inspections are reasonable under the Fourth Amendment if the government has reasonable standards for area-wide inspections that merely prevent the “unbridled discretion [of] executive and administrative officers ... as to when to search and whom to search.” Marshall v. Barlow’s Inc., 436 U.S. 307, 323 (1978).

In other words, under the administrative search doctrine set forth in Camara, the government need not show any specific knowledge of the conditions of a particular dwelling. The government can easily obtain a warrant merely by justifying the search based on the presence of a “reasonable” set of factors such as “the passage of time” and the overall condition of the area to be searched. Camara at 538.

The administrative search doctrine set forth in Camara eviscerates an individual’s right to the privacy and sanctity of his or her home by allowing intrusive inspections of every inch of that home by government agents based simply on a generalized area-wide inspection scheme.

A. Minnesota Courts are free to interpret the State Constitution more expansively than the Federal Constitution and they have a long history of doing so in order to extend protections for individual rights.

Generally, the Minnesota court will interpret the Minnesota Constitution to provide greater protection than the federal constitution’s counterpart when “a more expansive reading of the state constitution represents the better rule of law.” State v. Askerooth, 681 N.W.2d 353, 362 n.5 (Minn. 2004). The Minnesota Supreme Court provided a framework in Kahn v. Griffin, to explain the circumstances that warranted the Court’s departure from U.S. Supreme Court precedent:

Our precedent indicates that we are most inclined to look to the Minnesota Constitution when we determine that our state constitution's language is different from the language used in the U.S. Constitution or that state constitutional language guarantees a fundamental right that is not enumerated in the U.S. Constitution. Skeen, 505 N.W.2d 299. We take a more restrained approach when both constitutions use identical or substantially similar language. But we will look to the Minnesota Constitution when we conclude that the United States Supreme Court has made a sharp or radical departure from its previous decisions or approach to the law and when we discern no persuasive reason to follow such a departure. See Carter, 697 N.W.2d at 213; Wiegand, 645 N.W.2d 125; In re Welfare of E.D.J., 502 N.W.2d 779. We also will apply the state constitution if we determine that the Supreme Court has retrenched on Bill of Rights issues, or if we determine that federal precedent does not adequately protect our citizens' basic rights and liberties. Hershberger, 462 N.W.2d at 397-99; Friedman v. Comm'r of Public Safety, 473 N.W.2d 828, 830 (Minn.1991); Skeen, 505 N.W.2d at 313-15.

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

Minnesota Courts have long acted to protect the individual rights of Minnesotans in a multitude of areas. For example, the Minnesota Supreme Court has found greater protection under the state constitution for religious freedom, right to privacy, right to counsel, equal protection, and, of course, freedom from unreasonable searches. *See, e.g.*, Jarvis v. Levine, 418 N.W.2d 139, 148-9 (Minn. 1988) (privacy to make medical decisions); State v. Nordstrom, 331 N.W.2d, 901, 904-05 (Minn. 1983) (right to counsel); State v. Hershberger, 462 N.W.2d 393, 397-98 (Minn. 1990) (providing stronger right to free exercise of religion); State v. Russell, 477 N.W.2d 886, 889 (Minn. 1991) (establishing more vigorous test for equal protection violations); Ascher v. Comm'r of Pub. Safety, 519 N.W.2d 183, 186 (Minn. 1994) (invalidating law enforcement sobriety checkpoints as an unreasonable search). Women of the State of Minn. by Doe v. Gomez, 542 N.W. 2d 17, 30-31 (Minn. 1995) (recognizing greater privacy right to reproductive decisions).

Minnesota courts have been especially concerned about protecting privacy and ensuring that Article I Section 10 of the Minnesota Constitution adequately protects Minnesotans' basic right to be free from unreasonable searches and seizures. For example, in Jarvis v. Levine, the Minnesota Supreme Court acted to protect the right to bodily integrity by recognizing an independent right to privacy in the context of the forcible administration of drugs to a patient at a mental hospital. Jarvis, 418 N.W.2d at 148-9. Often the courts have taken pains to enumerate a separate state constitutional ground for their decision in order to ensure that the constitutional principle will stand even if it is later eroded by the U.S Supreme Court's Fourth Amendment jurisprudence. *See e.g.* O'Connor v. Johnson, 287 N.W.2d 400 (Minn.1979) (warrant authorizing search of attorney's office invalid under both federal and state constitutions); State v. Cripps, 533 N.W.2d 388 (Minn. 1995) (holding that underage patron in a bar was seized, within the meaning of Article I, Section 10 of the Minnesota Constitution, when an armed and uniformed police officer approached her and sought identification for proof of legal age to consume alcohol because objectively reasonable person would have believed that he or she was neither free to disregard police questions nor free to terminate encounter); State v. Wiegand, 645 N.W.2d 125 (Minn. 2002) (reasonableness requirement of Art. 1, Sect. 10 prohibits expanding the scope of a routine traffic stop to conduct drug dog sniff of motor vehicle absent reasonable articulable suspicion of drug related criminal conduct); State v. Larsen, 650 N.W.2d 144 (Minn. 2002) (holding that conservation officer's search of a fish house without a warrant, consent or probable cause violates constitutional protections against search and seizure under the Fourth Amendment of the United States Constitution and Article I, section 10 of

the Minnesota Constitution); In re Welfare of B.R.K., 658 N.W.2d 565, 578 (Minn. 2003) (“[E]ven if short-term social guests do not have a reasonable expectation of privacy under the Fourth Amendment, their expectation is legitimate under Article I, Section 10 of the Minnesota Constitution.”). Notably, the In re Welfare of B.R.K. Court noted that their result was necessary to “fully protect the privacy interest an individual has in his or her home.”

The Minnesota Supreme Court continues to reaffirm its authority to interpret the state constitution more broadly than the U.S. Constitution. For example, the Court in State v. Diede, 795 N.W.2d 836 (Minn. 2011) recently ensured that the right to be free from unreasonable searches and seizures under the Minnesota Constitution is vigorously enforced, citing the Minnesota Constitution as independent grounds for their decision.² In addition, the Minnesota Supreme Court made clear that Minnesota’s legal standard for assessing claims of inverse condemnation under the Minnesota Constitution differs from the Takings Clause under the U.S. Constitution, thereby providing a stronger basis to challenge regulatory takings in Minnesota. DeCook v. Rochester Int’l Airport Joint Zoning Bd., 796 N.W.2d 299 (Minn. 2011).

² The Minnesota Supreme Court also reaffirmed its authority to make independent determinations of fundamental fairness in the context of whether or not to retroactively apply a new rule of federal constitutional criminal procedure. Danforth v. State, 761 N.W.2d 493, 500 (Minn. 2009). While the Court in Danforth opted to voluntarily apply the standard articulated by the U.S. Supreme Court, the Court specifically noted that it was not bound by the U.S. Supreme Court’s determinations of fundamental fairness. Id.

B. Individualized probable cause is necessary to “fully protect the privacy interest an individual has in his or her home” because housing code enforcement routinely goes hand-in-hand with criminal law enforcement.

There can be no dispute that rental housing inspections are intrusive because they entail a government agent entering one’s home and rummaging through it in search of code violations. From the perspective of the home’s occupant, the experience is most certainly more intrusive than a conservation officer’s entry into a fish house on a lake or a stop in one’s vehicle at a sobriety checkpoint roadblock – both of which require individualized suspicion. *See Larsen*, 650 N.W.2d at 150; *Ascher*, 519 N.W.2d at 186.

Calling housing inspections an “administrative search” rather than a search for evidence of criminal conduct should be of little comfort given that rental housing inspection schemata often go hand-in-hand with criminal law enforcement strategies. *See Nicole Stelle Garnett, Ordering (and Order in) the City*, 57 Stan. L. Rev. 1, 14-19 (2004) (detailing “multiagency enforcement ‘sweeps’ of struggling neighborhoods that include property inspections among a range of disorder-suppression devices” in numerous cities including Tampa, Atlanta, Houston, Omaha and San Antonio). For example, a 2003 multiagency sweep conducted in Tampa Florida, dubbed “Operation Commitment” paired police officers, property inspectors and drug and prostitution counselors in some of the city’s worst neighborhoods. In addition to code violations, one “sweep” also included seven felony arrests. *Id.* at 14. *See also Nicole Stelle Garnett, Relocating Disorder*, 91 Va. L. Rev. 1075, 1091 (2005) (chronicling the use of rental housing inspections in community policing efforts to curb urban disorder and suggesting that lack of vigorous court oversight has encouraged cities to incorporate sweeps into their community policing efforts).

The City of Red Wing is not the only Minnesota city to link rental housing licensing with crime control. A quick perusal of city codes from other cities around the state shows that numerous cities have adopted rental licensing and inspection programs that are linked with various crime control strategies including crime-free multi-housing programs that require landlords to initiate actions against tenants for criminal conduct even in the absence of a criminal conviction. *See e.g.* Plymouth City Code 410.42³ (requiring landlords to “take appropriate action, with the assistance of the City, to prevent” enumerated criminal conduct deemed disorderly); Duluth City Code Sec. 29A-40⁴ (requiring licensed landlords to initiate unlawful detainer actions for enumerated criminal “disorderly behavior” of tenants and/or their guests); St. Louis Park City Code §8-331 (same).

Indeed, the record in the instant case includes ample evidence to suggest that City of Red Wing’s rental inspection program was created largely as a subterfuge for identifying and rooting out criminal activity in the city. While the City has put forth limited evidence that there are housing problems in the City, a review of the record leads to the inevitable conclusion that the primary motivation for adopting the rental inspection program was crime reduction and nuisance control. The original goal of the program was to minimize police calls for service, cutting down on “bad” behavior by rental housing tenants, and encouraging surveillance of tenants for criminal activity by requiring that all landlords participate in the Crime-Free Multi-Housing program. Pls’ Proposed Findings of Fact &

³ Available online at <http://plymouthmn.gov/Modules/ShowDocument.aspx?documentid=751> (accessed 9/19/12).

⁴ Available online at http://www.stlouispark.org/webfiles/file/administration/2361-08_rental_housing_ordinance.pdf (accessed 9/19/12).

Conclusions of Law ¶ 16 (citing numerous affidavits and various deposition testimony). In April 2004, the Housing Code Committee reached a consensus that, in addition with tenant complaints, law-enforcement or fire calls would trigger inspections. *Id.*, ¶ 17 (citing Rosenthal and Kuhlmann depositions).

The major selling points for the draft code presented by the City to the public at an August, 2004 open house was the need to address excessive police calls, “problem properties,” “disorderly” tenants, assist the police department, and mandate participation in the Crime-Free Multi-Housing Program. *Id.*, ¶ 18 (citing Rental Dwelling License Code Q&A and various affidavits).

The City’s rental inspection and licensing ordinance was adopted in 2005 as part of the Housing Maintenance Code (“HMC”) and RDLC. Red Wing City Code §§ 4.30, 4.31; APP80-104 (current version). Under the ordinance, all rental property owners are required to obtain operating licenses for the housing units that they rent. *Id.* § 4.31, subd. 1(1); APP96. As a condition of receiving an operating license, the landlord would first have to submit to a City inspection of the home to ensure that it met all of the requirements of the HMC. *Id.* § 4.31, subd. 1(3); APP97. When it became effective in August 2005, the City promoted the inspection program using a PowerPoint presentation that noted the purposes of crime reduction, reduction of excessive police calls, and helping the police promote public safety. Pls’ Proposed Findings of Fact & Conclusions of Law ¶ 19 (citing HMC PowerPoint slides and Cook deposition).

Further, when Red Wing amended its ordinance in October 2008, the RDLC maintained a direct connection to its crime control purpose. The ordinance includes a

provision that specifically requires inspectors to report information about four different crimes: evidence of meth labs, mistreatment of minors, vulnerable adults, and animals. RDLC § 4.31, subd. 1(3)(q); APP100 ("The City will not share information regarding the condition of the unit or its occupants obtained through inspections . . . with any current member of the Red Wing Police Department . . . unless: (i) such disclosure is required by law, or (ii) such disclosure to such person or agency is needed to abate an active or inactive methamphetamine lab, mistreatment of one or more minors in violation of Minn. Stat. Section 609.377 or .378, mistreatment of one or more vulnerable adults in violation of Minn. Stat. Section 609.23 through .233, or mistreatment of one or more animals in violation of Minn. Stat. Section 343.21.").⁵

The ordinance purports to limit disclosure of other criminal conduct; however, it does not do so effectively. For example, the presence of marijuana in an apartment is not a “condition of the unit” and unless the occupant is actually smoking the drug when the inspector is present, it is not a “condition” of the occupant.⁶ The ordinance does not

⁵ These enumerated crimes are all felonies with very high penalties. *See* Minn. Stat. § 152.021 subds. 2a, 3 (up to 40 years in prison and/or a \$1,000,000 criminal fine for manufacturing any amount of methamphetamine); Minn. Stat. § 609.377, subd. 6 (up to 10 years in prison and/or \$20,000 criminal fine for malicious punishment of a child); Minn. Stat. § 609.2325, subd. 3 (up to 15 years in prison and/or \$30,000 criminal fine for mistreatment of vulnerable adult); Minn. Stat. § 343.21, subd. 9 (up to 4 years in prison and/or \$10,000 criminal fine for animal abuse)

⁶ The definition of the word “Condition (noun)” includes “1. state of repair – the particular state of repair or ability to function of an object or piece of equipment – The car is still in good condition; 2. state of health - a state of physical fitness or general health – out of condition; 3. disorder – a physical disorder; 4. way of being – a general state or mode of existence, especially one characterized by hardship or suffering; 5. something that must exist for something else to happen, e.g. to bring a situation about or make a contract valid – a condition of the agreement; 6. status position, rank or social status.” Encarta Dictionary: English (North America).

prohibit the reporting of criminal conduct to Federal law enforcement agents. Moreover, there is no guarantee that even this ineffective language won't be changed or even eliminated in the future. It is well-established law under the U.S. Constitution that the government may use evidence derived from non-law-enforcement searches, i.e., searches not based on a reasonable belief regarding the commission of a crime, that otherwise satisfy the Fourth Amendment's reasonableness requirement to prosecute crimes; thus, in the administrative context, inspectors lawfully on the premises may report any violations of law that they find. United States v. Duka, 671 F.3d 329 (3d Cir. 2011) cert. denied, 132 S. Ct. 2754 (U.S. 2012). Without this Court's intervention to require individualized probable cause for housing inspections, the City of Red Wing and other cities throughout the State of Minnesota will continue to be allowed to do indirectly, through the use of suspicionless administrative housing inspection warrants, what it cannot do directly without obtaining a warrant based on individualized probable cause.

Even if it was crystal clear that these inspections have no law enforcement purpose whatsoever, "the home is 'the most essential bastion of privacy recognized by the law.'" In re Welfare of B.R.K. 658 N.W.2d at 576, *citing* Minnesota v. Carter, 525 U.S. 83, 109 (1998). Like a search by law enforcement officers, the search by housing inspectors can be incredibly intrusive, subjecting the home's occupant to a search that can include opening and inspecting cabinets and closets and seeking consent from the occupant to open containers, drawers and medicine cabinets. In addition to identifying code violations, inspectors also have the authority to encourage tenants to repair or change items in their home. Such itemized suggestions from a government inspector about how one keeps one's home are

simply inappropriate. This is exactly the type of intrusive search for which that this Court must require a showing of individualized probable cause rather than the near rubberstamp “administrative warrant” that is allowed by the U.S. Supreme Court under Camara.

C. Individualized probable cause is the “better rule of law” because it will provide greater protection for marginalized populations.

The Minnesota Supreme Court considers a number of factors when determining whether to interpret the Minnesota Constitution more broadly than the U.S. Constitution. See Kahn, 701 N.W.2d at 82 (citing seven non-exclusive factors courts may review). The overarching theme of those factors is to ensure that Minnesota courts adopt and implement the “better rule of law.” Askerooth, 681 N.W.2d at 362 n.5; see also Terrence J. Fleming and Jack Nordby, *The Minnesota Constitution: “Wrapt in the Old Miasmal Mist,”* 7 Hamline L. Rev. 51, 76 (1984). “In determining the proper resolution of a case under the Minnesota Bill of Rights, the court may legitimately consider the resolution it finds the most intellectually persuasive and socially satisfactory.” Fleming and Nordby, 7 Hamline L. Rev. at 76–77.

When the Court has determined either that a federal precedent does not adequately protect the rights of Minnesotans or constitutes a “sharp departure” from a long-standing approach to the law, it generally turns to the Minnesota Constitution because that federal precedent is not the “better rule of law.” By focusing on the “better rule of law”, the Court is able to fortify their decision to independently apply the Minnesota Constitution. See, e.g., Ascher, 519 N.W.2d at 187. The intrusive nature of administrative housing inspections and the impact that these inspections have on marginalized populations should lead this Court to conclude that the Camara administrative-warrant doctrine is not “the better rule of law.”

As discussed above, from the perspective of the tenant, housing inspections are incredibly intrusive. Much can be learned about a tenant's private life from entering their home including: their general income level, hobbies, religious beliefs and practices, decorating style, the books he or she reads, the musicians he or she listens to, whether he or she has any medical conditions, and multitude of other private personal details that can be gleaned from observing the interior of one's home. Administrative warrants in essence require rental housing tenants - but not private homeowners - to give uninvited guests open access to their kitchen, bedroom, and bathroom where they can easily observe all of this private information.

Moreover, the intrusion on the private lives of tenants has a disparate impact on populations that are traditionally marginalized such as immigrants, people living in poverty, and racial and ethnic minorities. As noted in Gomez, "Minnesota possesses a long tradition of affording persons on the periphery of society a greater measure of government protection and support than may be available elsewhere." Gomez, 542 N.W.2d at 30. According to data the U.S. Census Bureau, renter-occupied housing units are more likely to include racial and ethnic minorities than owner-occupied housing units. Addendum at 3. 98.6% of the occupants of owner-occupied housing units are White, non-Hispanic, compared to only 88.4% of the occupants of renter-occupied housing units. Id. Moreover, virtually no owner-occupied housing units are occupied by African Americans and people of Hispanic or Latino origin. The statewide demographics show similar disparities. Add. at 1. And because rental housing ordinances similar to the one at issue here are being adopted throughout the state, the impact on marginalized populations in Minnesota will continue to grow. As

municipalities are turn to housing inspection regimes, their primary goal appears to be controlling and reducing crime and other “disorderly” behavior. *See* Garnett, 91 Va. L. Rev. at 1088; Garnett, 57 Stan. L. Rev. at 13. Without more vigorous oversight by this Court in the form of stronger protections against unreasonable searches and seizures than those afforded under the U.S. Constitution and Camara, cities in Minnesota will continue to use rental housing inspection regimes as a shortcut for traditional law enforcement strategies and the people who will bear the brunt of those abuses will be “persons on the periphery of society.” Put simply, Camara is not the “better rule of law” and should be rejected by this Court.

II. Requiring individualized probable cause will not render the City of Red Wing’s inspection program ineffective.

To the extent that the city’s inspection program is aimed at ensuring that its housing stock is free of conditions that are dangerous to human life, the city can meet that goal even if they are required to show individualized probable cause that there are code violations before obtaining a search warrant.

According to the City, they have already licensed over 75% of the rental units in the city. Def’s Proposed Findings of Fact & Conclusions of Law ¶ 59. That leaves a small percentage (less than 25%) of the City’s rental units for which they still need to obtain consent or a warrant for the inspection. The number that the City would actually inspect is even smaller given that “more than 40% of the units licensed by Red Wing have never been inspected by anyone.” Pls’ Proposed Findings of Fact & Conclusions of Law ¶ 91.

Moreover, Census records show that renter-occupied housing units account for only 23.7%

of the occupied housing units in the City. Add. at 3. Thus, the overall odds that some code violations will be missed by the City is relatively low and likely not much higher than they would be if the City were not required to demonstrate individualized probable cause.

By focusing on the tenants, the City can more easily identify problem properties and demonstrate that there is individualized probable cause to believe that code violations exist. First, the City could embark on a public campaign to educate tenants about their rights and to empower tenants to advocate for their own rights when it comes to substandard housing conditions. The City could also provide tenants with information about some of the most common and some of the most dangerous housing code violations and ask them to report violations in their unit or their building. This information could be mailed to tenants or even posted in common areas of the building. Finally, the City should act to assuage reluctant tenants' fears of retaliation by enacting strict penalties against landlords who retaliate against tenants who report housing code violations.

With owners, the City could provide incentives such as low-interest loans or other financial assistance to owners who come forward and disclose the serious code violations in their building that will require significant resources to fix. The City could then partner with landlords to address health and safety issues rather than approaching the issue in an adversarial setting of forced suspicionless inspections.

Finally, like the two properties in which the City has already found potentially hazardous code violations, the City could focus on the exteriors of rental housing to identify code violations in plain view which would provide the individualized probable cause to believe that code violations exist inside the building. Pls' Proposed Findings of Fact &

Conclusions of Law ¶¶ 97-98 (noting that most potentially serious conditions were not located inside tenant living spaces).

It is clear from the language of the ordinance and the record itself that the City does not believe that it is necessary to inspect every housing unit in the City in order to adequately protect the health and lives of its residents. The inspection program only applies to rental housing and only allows enforcement officers to inspect owner-occupied residential units “when reason exists to believe that a violation of an applicable subdivision of the HMC exists...”. RDLC § 4.31, subd. 1(3)(c). This suggests that, at least for owner-occupied housing units, the City recognizes and is sensitive to the need for a showing of individualized probable cause when conducting intrusive searches of people’s homes. It also suggests that the City understands that the need to show individualized probable cause will not significantly hamper their ability to keep residents safe, even when those owner-occupied dwellings are part of a multi-family building of owner-occupied condominiums or townhomes. Even then, enforcement action against owner occupied housing is limited to specific code violations that don’t relate to components and systems. RDLC § 4.30, subd. 5. Thus, the City has already recognized that it can achieve its public health and safety goals by inspecting only a fraction of all the housing units in the City.

III. Conclusion

For all of the foregoing reasons, the American Civil Liberties Union of Minnesota, *amicus curiae*, urges this Court to reverse the decision of the Court of Appeals and to reject the U.S Supreme Court's holding in Camara and hold that Article I Section 10 of the Minnesota Constitution requires housing inspections to take place with consent or a warrant based on individualized probable cause to believe that code violations will be found in the property to be inspected.

Dated: September 20, 2012

Respectfully submitted,

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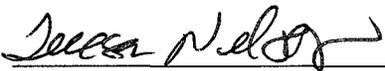
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CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. By automatic word count, the length of this brief is 5037 words. This brief was prepared using Microsoft Word 2007.

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