No. A15-1795

State of Minnesota

In Supreme Court

JASON WIEBESICK, JACKI WIEBESICK, and
JESSIE TRESELER,

Appellants,

v.

CITY OF GOLDEN VALLEY,

Respondent.

APPELLANTS' BRIEF AND ADDENDUM

INSTITUTE FOR JUSTICE
Anthony B. Sanders (No. 387307)
Meagan A. Forbes (No. 393427)
Lee U. McGrath (No. 341502)
520 Nicollet Mall, Suite 550
Minneapolis, Minnesota 55402
(612) 435-3451
asanders@ij.org
mforbes@ij.org
lmcgrath@ij.org

Attorneys for Appellants
Jason Wiebesick, Jacki Wiebesick,
and Jessie Treseler

BEST & FLANAGAN LLP
Ashleigh M. Leitch (No. 396575)
Allen D. Barnard (No. 004741)
Thomas G. Garry (No. 320717)
60 South Sixth Street, Suite 2700
Minneapolis, Minnesota 55402
(612) 339-7121
aleitch@bestlaw.com
abarnard@bestlaw.com
tgarry@bestlaw.com

Attorneys for Respondent
City of Golden Valley

Counsel for amici are listed on the following page.

William K. Forbes (No. 392186)
BOLT HOFFER BOYD LAW FIRM
2150 Third Avenue North, Suite 350
Anoka, Minnesota 55303
(763) 406-7015
william.forbes@bolthoffer.com

Bennett E. Cooper* (Ariz. No. 010819)
STEPTOE & JOHNSON, LLP
201 East Washington Street, Suite 1600
Phoenix, Arizona 85002
(602) 257-5217
bcooper@steptoe.com

Attorneys for Amici Curiae
Center for the American Experiment,
Cato Institute, and Electronic Frontier
Foundation

*Admitted *Pro Hac Vice*

Teresa Nelson (No. 269736)
AMERICAN CIVIL LIBERTIES
UNION OF MINNESOTA
2300 Myrtle Avenue, Suite 180
Saint Paul, Minnesota 55104
(651) 645-4097, Ext. 1220
tnelson@aclu-mn.org

Amicus Curiae

Mahesha P. Subbaraman (No. 392486)
SUBBARAMAN PLLC
222 South 9th Street, Suite 1600
Minneapolis, Minnesota 55402-3389
(612) 315-9210
mps@subblaw.com

Attorney for Amicus Curiae
Freedom Foundation of Minnesota

Susan L. Naughton (No. 259743)
LEAGUE OF MINNESOTA CITIES
145 University Avenue West
Saint Paul, Minnesota 55103
(651) 281-1232

Amicus Curiae

Jessica L. Mikkelson (No. 395536)
HOME Line
3455 Bloomington Avenue South
Minneapolis, Minnesota 55407
(612) 728-5770
jessm@homelinemn.org

Amicus Curiae

John T. Sullivan (No. 390975)
DORSEY & WHITNEY LLP
50 Sixth Street South, Suite 1500
Minneapolis, Minnesota 55402-1498
(612) 340-2600
sullivan.jack@dorsey.com

Attorneys for Amicus Curiae
InquilinXs UnidXs por Justica

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STATEMENT OF THE LEGAL ISSUE

> Under the Fourth Amendment, as interpreted in *Camara v. Municipal Court*, 387 U.S. 523 (1967), municipalities may search the homes of ordinary, law-abiding citizens to look for housing code violations. To do so, municipalities obtain "administrative warrants" that do not require individualized suspicion. Appellants tenant and landlords objected to an inspection and demanded a warrant. The district court denied the warrant application based upon *McCaughtry*. But, the court of appeals reversed, holding that the Minnesota Constitution does not protect Appellants' privacy to any greater degree than the Fourth Amendment. Does Article I, § 10 require individualized suspicion for a warrant to search a home for code violations?

This issue was raised in the City of Golden Valley's petition for an administrative warrant. Petition for Order Authorizing Inspection of Rental Property 1 (hereinafter "Petition"). It was also raised in Appellants' earlier letter to the City. Addendum ("Add.") 19.[1] The issue was again raised before the court of appeals, and in Appellants' petition for review. City's Ct. App. Br. *passim*; Petition for Review 1.

Apposite Authority:
Minn. Const. art. I, § 10
McCaughtry v. City of Red Wing, 831 N.W.2d 518 (Minn. 2013)
Kahn v. Griffin, 701 N.W.2d 815 (Minn. 2005)
Ascher v. Comm'r of Pub. Safety, 519 N.W.2d 183 (Minn. 1994)
State v. Larsen, 650 N.W.2d 144 (Minn. 2002)

[1] Appellants acknowledge their separate defense that the Fourth Amendment requires individualized probable cause is currently foreclosed by *Camara v. Municipal Court*, 387 U.S. 523 (1967). They raise it to preserve for a potential later stage of this litigation.

STATEMENT OF THE CASE

This case is about the right of tenants and landlords to be free from unreasonable searches of their homes and properties without any evidence that anything is wrong with their homes and properties.

The City of Golden Valley enforces a "Licensing of Rental Housing" ordinance that requires every rental home to be licensed. Petition, Ex. B. (Golden Valley City Code ("Code") § 6.29). All landlords and tenants must agree to permit periodic inspections to obtain and maintain a rental license. *Id* 4. (Code § 6.29, subd. 4(E),(F)). If a landlord or tenant refuses the inspection, the City may seek an administrative warrant—a warrant for which the ordinance does not require evidence of any housing-code violations of the home to be searched. *Id.*

Appellants Jason and Jacki Wiebesick ("the Wiebesicks") are landlords who value their privacy and the privacy of their tenants. They respected their tenants' desire to be free from an intrusive government inspection of their home. Add.19-20. Therefore, they and their tenants, Tiffani Simons and Appellant Jessie Treseler, opposed the City's request to search the tenants' home without any evidence that anything was wrong with it. *Id.*[2]

[2] Before the petition for review was filed, Simons moved out of the Wiebesicks' property and did not join in the petition. A new tenant has additionally now moved into the property, who also objects to the inspection.

On April 9, 2015, the City informed the Wiebesicks that their property was due for an inspection. Petition 3. On April 30, 2015, they and their tenants sent a letter to the City invoking their rights under the Fourth Amendment and Article I, Section 10, informing the City that they refused to allow it to enter their property without a warrant, and stating they contend such a warrant must be supported by individualized suspicion of a housing-code violation. Add.19.

On September 4, 2015, the City applied for an administrative warrant in district court, and the court ordered a hearing, explaining it did so because of the Minnesota Supreme Court's decision in *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013) (*McCaughtry II*) and its "recognition that it is a judge's duty to exercise its warrant authority in a way that passes constitutional muster." Add.14-15.

At the hearing on September 17, 2015 the City conceded it lacked individualized suspicion of any code violations. Add.15.

Then, on September 24, 2015, the court denied the warrant application. Add.18. Relying on *McCaughtry II*, it concluded Article I, Section 10 requires a higher standard for issuing an administrative warrant to search a home than the Fourth Amendment, as interpreted in *Camara v. Municipal Court*, 387 U.S. 523 (1967). Add.16-18.

The City then appealed to the court of appeals, which reversed. Add.2. It held *McCaughtry II* gave no indication of whether Article I, Section 10 requires a higher standard of probable cause than the Fourth Amendment. Add.5, 11. It then applied the factors of *Kahn v. Griffin*, 701 N.W.2d 815 (Minn. 2005), and concluded that the privacy protections of *Camara*, where individualized suspicion is not needed to invade someone's home, are sufficient under Article I, Section 10. Add.7-11. Appellants then petitioned this Court to answer the question left open in *McCaughtry II*.

FACTUAL BACKGROUND

This section first describes Golden Valley's expansive rental inspection program. It then explains the grave privacy concerns that the Wiebesicks and their tenants have had, and have, with the City entering their property to conduct a rental inspection.

I. Golden Valley's Intrusive Searches of Homes.

Enacted in 2007, Golden Valley's rental licensing ordinance purports to ensure compliance with the City's Property Maintenance Code. Petition Ex. B; *see also id.* Ex. A (Code § 4.60). To apply for and renew a license, landlords must annually submit an application to the City and pay a fee. Petition Ex. B 2-3 (Code § 6.29, subd. 4(A), (C)). In addition, the ordinance mandates periodic inspections. *Id.* 4 (Code § 6.29, subd. 4(E)). It requires a code official to

"determine the schedule of periodic inspections." *Id.* Tenants are required to allow the City access to "any part" of their homes "for the purpose of effecting inspection, maintenance, repairs or alterations as are necessary" to comply with the City's rental licensing ordinance. *Id.* (Code § 6.29, subd. 4(F)).

If a landlord or tenant refuses to permit access to any part of their home, the code official may secure an administrative warrant.[3] *Id.* The City inspector interprets the ordinance to give him "the authority to inspect a rental property at any time to determine whether it is in compliance with City Code and state law." Petition 2 (Aff. of David Gustafson ¶ 7). The City has established a policy of conducting inspections every three years, but it maintains that this policy does not limit the City's authority to conduct inspections "at any time." *Id.*

The ordinance also does not limit the scope of these inspections. Inspectors enjoy unfettered access to every room in the home, as city code

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[3] The code official may also pursue other remedies at law, including "issuing an administrative citation, denying a Rental License application, revoking or suspending a Rental License, or denying a renewal license." *Id.* Failure to get a license while renting out a property can result in misdemeanor charges. *Id.* 11 (Code § 6.29, subd. 16)).

The requirement that the landlord and tenant allow inspections regardless of whether the City seeks or obtains a warrant is itself unconstitutional even under *Camara*. This is because they would be punished for simply exercising their Fourth Amendment right to demand a warrant. *See Camara*, 387 U.S. at 540. Because the City has applied for a warrant and has not revoked the Wiebesicks' license, or otherwise punished any of Appellants, that issue is not before this Court. *See also Crook v. City of Madison*, 168 So. 3d 930 (Miss. 2015) (cannot condition rental license on consent for an inspection); *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2452 (2015).

regulates items in every room, including all outlets, walls, windows, floors, and doors. *See* City of Golden Valley, Inspection Checklist, Rental Housing: Interior.[4] Inspectors may further inspect the refrigerator, washer and dryer.[5] Inspectors can also look for things that relate to the tenants' lifestyle choices, like cleanliness and sanitation.[6] Lastly, nothing in the ordinance prevents inspectors from bringing police into tenants' homes or from sharing information with law enforcement.

II. The Wiebesicks' Experience with Inspections, Including the City Sending Police Officers into Their Tenants' Home.

The Wiebesicks have held a rental license for their property located at 510 Jersey Avenue, Golden Valley, Minnesota since 2011. Petition 2. It was last inspected in 2012. *Id.* 3. At that time, both they and their then-tenants opposed the inspection and refused to allow the City to enter and inspect without a warrant. Add.31.[7] The City obtained an administrative warrant and inspected the property on April 30, 2012. Add.34. When the City executed that warrant, the inspector came to the home with two armed police officers. *Id.* One officer

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[4] *Available at* http://www.goldenvalleymn.gov/homeyard/rent/pdf/rental-housing-checklist-interior.pdf.

[5] *Id.*

[6] *Id.* (permitting inspection of the floor for no "tripping hazards," the toilet for "sanitary conditions" and the kitchen to ensure sanitation and "no accumulated garbage").

[7] Appellant Jason Wiebesick, through Wiebesick Rental, submitted an amicus brief in *McCaughtry II*. Some of the following facts are taken from that brief, which is reproduced in this Addendum. Add.21-38.

followed the inspector and tenant throughout the home while the other remained in the living room near the front door. *Id.* Two more officers remained in marked vehicles on the street. *Id*. Jason Wiebesick asked one of the officers if it was normal for officers to be present during an inspection, and the officer replied that it was when a warrant was required. *Id.* The City found no violations during the inspection. *Id.*

ARGUMENT

This case asks this Court to answer a question it left unsettled in *McCaughtry II*: whether Article I, Section 10 of the Minnesota Constitution forbids the use of warrants not backed by individualized probable cause[8] to conduct a nonconsensual inspection of a rental residence to determine housing-code compliance. The district court concluded that under *McCaughtry II* such warrants are not allowed in Minnesota, but the court of appeals disagreed. This Court should reverse the court of appeals and reject the diminished privacy protections the U.S. Supreme Court allowed when it invented the "administrative warrant" doctrine in *Camara*.

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

[8] As the court did in *McCaughtry II*, Appellants use "individualized probable cause" and "individualized suspicion" interchangeably. *McCaughtry II*, 831 N.W.2d 518, 523 n.2 (Minn. 2013).

mandates "no warrant shall issue but upon probable cause." In *McCaughtry II*, this Court strongly, but implicitly, indicated that Article 1, Section 10 prohibits the use of administrative warrants to conduct housing inspections in specific warrant applications. Its actual holding reserved the question for another day.

The court of appeals, however, concluded that *McCaughtry II* gave no indication on the scope of Article I, Section 10. Instead, it applied the factors of *Kahn v. Griffin*, 701 N.W.2d 815 (Minn. 2005), and concluded that individualized suspicion is not required. Add.7-11.

That was incorrect, for two reasons. First, although it was not the holding of the case, *McCaughtry II* only makes sense if an application for an administrative warrant may be denied for a lack of individualized probable cause. Second, under the factors of *Kahn v. Griffin*, Article I, Section 10 provides a higher level of protection for privacy than the *Camara* standard.

Below, Appellants explain that the district court properly was guided by *McCaughtry II* in denying the City's petition for an administrative warrant, and the court of appeals was wrong to reverse it. However, even if *McCaughtry II* is set aside, the court of appeals incorrectly applied the *Kahn* factors. This is true for three independent reasons: first, the *Camara* administrative-warrant doctrine inadequately protects the liberty and privacy of Minnesotans, as made clear in this Court's decisions such as *Ascher v. Commissioner of Public Safety*, 519 N.W.2d

183 (Minn. 1994); second, *Camara* and its predecessor, *Frank v. Maryland*, 359 U.S. 360 (1959), were a sharp departure from the traditional warrant requirement and the treatment of government entry into homes';, and, third, *Camara* and *Frank* were a retrenchment on Bill of Rights issues.

I. STANDARD OF REVIEW

Review of the court of appeals' application of constitutional provisions is *de novo*. *State v. Wicklund*, 589 N.W.2d 793, 797 (Minn. 1999). However, within that *de novo* review, in deciding whether Article I, Section 10 departs from traditional requirements of individualized probable cause, the government must demonstrate that individualized probable cause is (1) impractical, and (2) outweighs the intrusion into the privacy of ordinary citizens for whom there is no reason to suspect wrongdoing. *Ascher*, 519 N.W.2d at 186. This, Golden Valley fails to do.

II. *McCAUGHTRY II* IMPLIES THAT THE MINNESOTA CONSTITUTION REQUIRES INDIVIDUALIZED SUSPICION FOR AN ADMINISTRATIVE WARRANT.

The court of appeals disregarded a strong implication of *McCaughtry II*. Unlike the court of appeals, the district court correctly relied on the implication of *McCaughtry II*, and this Court may do so as well.

In *McCaughtry II*, a group of landlords and tenants challenged Red Wing's rental licensing ordinance under Article I, Section 10 of the Minnesota

Constitution. 831 N.W.2d at 520. The ordinance required landlords and tenants to submit to periodic rental inspections, but unlike here, where only a warrant application is at issue, the landlords and tenants challenged the ordinance itself in a declaratory judgment action, and on its face. *Id.* Therefore, this Court was confronted with the issue of whether Red Wing's ordinance was facially unconstitutional.

In that context, the Court ended up not explicitly answering the ultimate constitutional question presented here, concluding that "whether the Minnesota Constitution prohibits the issuance of an administrative warrant" to conduct a housing inspection is an "unsettled question." *Id.* at 525. The Court came to this conclusion because it said a judge could apply individualized probable cause to a warrant application. *Id.* at 524 (concluding the ordinance "d[id] not *preclude* a district court from requiring that the City establish individualized suspicion before a warrant will issue"). In other words, Red Wing's ordinance was constitutional on its face because a judge might herself require individualized probable cause for the warrant and thus the ordinance would not be facially unconstitutional. *Id.* at 525.

The court of appeals concluded that the district court erred by relying on *McCaughtry II* to deny the City's warrant application. The court of appeals simply took this Court's statement in *McCaughtry II* that the issue was an

"unsettled question" and determined there was nothing more to draw from the case. Add.5. Yet, the court of appeals overlooked a strong implication of *McCaughtry II* that has direct relevance here: This Court in *McCaughtry II* sanctioned district court judges requiring individualized suspicion before issuing administrative warrants, *exactly what the district judge did in this case*.

This implication may be dicta, but it is dicta with an engraved invitation. Here's why.

Under *McCaughtry II* it is permissible for a district court judge to deny an administrative warrant application because she wants to apply the individualized suspicion standard. *McCaughtry II*, 831 N.W.2d at 525 (holding that under the ordinance "regardless of whether the ordinance authorizes suspicionless searches—the court retains the power to require individualized suspicion in any given case"). But why would a judge do that in the first place, instead of applying the *Camara* standard? Because she simply likes it?

No. A judge applies one standard, as opposed to another standard, *because she is legally required to do so*. For example, in criminal warrant applications judges apply the well-known individualized probable cause standard, not because they simply like it but because it is legally required by the U.S. and Minnesota constitutions. They do not—and could not—apply a higher standard—*e.g.* clear and convincing—even if they wanted to. So when this Court

said that a judge in Red Wing *could* apply the individualized-suspicion standard to that city's ordinance, as opposed to the *Camara* standard, that means there was some legal reason that would *require* that judge to do so. A judge would apply the individualized-suspicion standard *because the Minnesota Constitution requires it*. Conversely, a judge could not simply require a higher standard that was not legally required any more than she could impose differing burdens of proof in her discretion.

Appellants nevertheless recognize that the implications of *McCaughtry II* are not dispositive. This case squarely presents the question left open in *McCaughtry II*: Does the Minnesota Constitution require individualized suspicion to obtain a warrant to perform a nonconsensual housing inspection? And this is a question that needs to be resolved.

III. THE MINNESOTA CONSTITUTION REQUIRES INDIVIDUALIZED PROBABLE CAUSE FOR A WARRANT TO SEARCH THE HOMES OF ORDINARY CITIZENS.

This brief now turns to the factors of *Kahn v. Griffin*, which are the criteria by which this Court decides whether the Minnesota Constitution is more protective of individual rights than the U.S. Constitution, as interpreted by the U.S. Supreme Court. This Court requires a higher standard when *any* of these three factors are present: (1) that the Supreme Court's precedent provides inadequate protection for the rights of Minnesotans; (2) that a case from that

Court constitutes "a sharp or radical departure from its previous decisions or approach to the law and . . . we discern no persuasive reason to follow such a departure"; and (3) that a case retrenches on the Bill of Rights. *Kahn*, 701 N.W.2d at 828.

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

This Court should hold that Article I, Section 10 forbids warrants not backed by individualized probable cause to enter rental homes for the purpose of conducting housing inspections. The *Camara* standard 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 Minnesota courts' 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.

1. *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, however, explained that such warrants need not be supported by traditional

probable cause. *Id*. at 538. Instead, "probable cause" in this context meant "reasonable legislative or administrative standards." *Id.* 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 a warrant to search a person's home. This novel approach was justified in order to achieve "universal compliance" with housing codes. *Id.* at 535.

2. Minnesota's Legal Traditions Show Great Respect for Both the Home and Privacy, and Those Traditions Are Reflected in the Interpretation of Article I, Section 10.

Minnesota has three strong legal traditions that, taken together, show this Court should conclude the district court was correct in denying the City's warrant application and the court of appeals was wrong to reverse. 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 the 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—Golden Valley seeks to conduct a suspicionless search of ordinary citizens, in their own home, where their privacy interests are at their highest.

a. 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*, 14 N.W.2d 400, 405 n.2 & 406 (Minn. 1944) (quoting same speech and describing robust protections afforded to the sanctity of the home as "fundamental law" under the Minnesota Constitution). If the Crown may not enter a "ruined tenement," Golden Valley certainly cannot enter a rental home to

ensure tidy kitchens. *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 the 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, 136 N.W.2d 577, 580-81 (Minn. 1965) (articulating "castle" doctrine); *Thiede*, 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*, 24 N.W. 327, 328 (Minn. 1885) (no valid levy could be made by means of unlawful entry by sheriff into dwelling); *Ferguson v. Kumler*, 6 N.W. 618, 619-20 (Minn. 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. ch. 71, § 93 (1851), 1858 Minn. Laws ch. 35, § 1 (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.[9]

[9] 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. P. 41(a)(2)(B) (defining "daytime" for purposes of searches as between 6:00 am and 10:00 pm).

Homes receive this unique protection because having a place where one can be free of intrusion is an essential element of freedom. As the district court recognized, "the privacy interest in one's home is well-recognized as of greatest constitutional significance." Add.18 (citing *McCaughtry II*, 831 N.W.2d at 528 (P. Anderson, J., concurring)). People's homes reflect many private facts about them, including their religion, their relationship status, their financial health, whether they have an illness, their habits and hobbies, and even their emotional state. Such facts are discernable just through viewing someone's bookshelves, nightstand, kitchen counters, mantelpiece, bedroom closets, bathroom medicine cabinets, etc., all of which Golden Valley has access to under the warrant it is seeking. Homes are cherished as the one place where people do not need to conceal their private selves, because only invited guests may enter.

b. 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*, 14 N.W.2d at 405).

The 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).

c. Minnesota'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 the state's search and seizure jurisprudence. Whenever the Court has been faced with a choice between providing greater or lesser protection for the home against search, it has provided greater protection—whether under Minnesota law,

federal law, or both. Minnesota always shows great respect for the homes of ordinary citizens.[10]

Justice Paul Anderson summarized this jurisprudence in his concurrence in *McCaughtry II*, examining three foundational cases:

> Minnesota has a proud tradition of applying its constitution more broadly than the United States Constitution when acting to protect the privacy interests of its citizens. … In the context of the case before us, this tradition can best be defined by three of our leading cases: *Ascher; State v. Larsen*; and *Carter*.

McCaughtry II, 831 N.W.2d at 528-29 (citations omitted).

He was right. This Court should adopt the reasoning of his concurrence.

In the first of these three cases, *Ascher*, 519 N.W.2d at 187, this Court considered the constitutionality of suspicionless roadblocks for DWI enforcement. The roadblocks involved "minimally-intrusive," two-minute vehicle stops. *Id.* The U.S. Supreme Court had previously found that, under the Fourth Amendment, these stops did not need to be based on individualized suspicion as long as they were not discriminatory. *Id.* at 185-86 (discussing *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444 (1990)). This Court disagreed, finding that Article I, Section 10 required individualized suspicion for even a short, two-minute investigatory stop. *Ascher*, 519 N.W.2d at 187. The case concerned

[10] As discussed *infra*, Part III.A.3.a, homes of probationers and parolees do not receive the same respect.

something of the highest public concern, safety from drunk drivers on public roads, and nevertheless rejected searches without individualized suspicion.

In the next case, *State v. Larsen*, the Court recognized a "fundamental right" to be free from unauthorized entry into one's abode under the Minnesota Constitution. 650 N.W.2d at 147-48. The Court concluded 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 supporting warrantless entry, the Court held 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 the 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 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*.

Further, like Golden Valley's inspection scheme, *Larsen* concerned a "regulatory scheme," a phrase it used seven times. *Id.* at 150-53. It likened the fishing regulatory scheme to the regulation of traffic. *Id*. at 153. Indeed, although classified as a misdemeanor, the penalty for angling with one extra fishing line (as Larsen did) is $50, plus $75 in surcharges.[11] Golden Valley's rental code is at least as punitive, making any violation a misdemeanor. Petition Ex. B 2 (Code § 6.29, subd. 16). Also, tenants can themselves violate the code and are potentially liable. *See, e.g., id*. (Code § 6.29, subd. 11(B)) (tenant responsible for sanitation and illegal for tenant to occupy in certain cases); International Property Maintenance Code 2012[12] § 309.3 (tenant responsible for pest elimination).[13]

The third case, *State v. Carter*, 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). The court recognized the storage unit was less like a home than the ice house in *Larsen*

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[11] *See* 2016 State Payables List, Natural Resources Violations (DNR), Minnesota Judicial Branch, http://www.mncourts.gov/JusticePartners/Statewide-Payables-Lists.aspx.
[12] The IPMC 2012 is available at https://law.resource.org/pub/us/code/ibr/icc.ipmc.2012.html.
[13] Golden Valley has adopted the IPMC by reference. Petition, Ex. A (Code § 4.60, subd. 1).

because it was "not a place where a person seeks refuge or conducts frequent personal activities." *Id*. at 209. But because it bore some resemblance to a home, it was entitled to greater protection than under the Fourth Amendment. *Id*. at 210-11.

The Court also relied on the Minnesota Constitution 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)). *See also State v. Jordan*, 742 N.W.2d 149, 156-58 (Minn. 2007) (upholding homeowner's right to challenge a nighttime search because he had the right to be secure in his personal effects and privacy even when absent); *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).

Each of these cases shows that, where a search involves entry into a home—or even an area with some home-like characteristics—Minnesota ensures that officers have a warrant supported by individualized probable cause in order to enter. Here, of course, Golden Valley seeks to search an actual home. 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 home requires at least as much.

Despite the highly relevant precedent of *Ascher*, *Larsen*, *Carter* and other opinions of this Court, the court of appeals quickly distinguished them all because they were criminal cases. It stated:

> We are not persuaded that criminal cases are instructive in the housing-inspection context. The purpose, scope, and procedure of a rental-housing inspection is fundamentally different from that of a search for evidence of criminal activity. As a result, the balancing of the public's need for the search and the invasion it entails also differs.

Add.9.

With all due respect to the court of appeals, this is simply not true. Contrast the search the Wiebesicks and their former tenants endured in 2012—where two armed police officers entered the tenants' home, and where the inspector had the right to look into virtually every nook and cranny of their residence—with the two-minute pull-overs of automobiles in *Ascher*, the glance at fishing lines in an ice shack in *Larsen*, and the dog sniff of a storage unit in

Carter. Rental housing inspections reveal much more of a person's private life than any of these lesser burdens. In addition, the fact that they may lead to criminal penalties (although, as explained above, this can be true of rental inspections also), is irrelevant, or at most a minor factor in the balancing of interests. This is because Article I, Section 10 exists to protect everyone, *especially* ordinary, innocent people who simply do not want to be searched. *State v. Wiegand*, 645 N.W.2d 125, 131 n.5 (Minn. 2002).

3. Suspicionless Searches, Particularly in the Home, Represent the Very Worst Kind of Rights Violation.

Golden Valley wants to conduct a rental inspection without 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, the 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 the 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, the 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.

a. In stark contrast to *Camara*, Minnesota 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, it 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, the Court permits such programs when they affect only convicted criminals. The approach of *Camara* is alien to Minnesota.

The 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. 177 N.W.2d 800, 801 (Minn. 1970). The officer had no reason to suspect any particular person was going to commit sodomy but observed everyone in the restroom in case someone did. *Id*. The court rejected the police officer's use of suspicionless searches to invade the

privacy of ordinary people. *Id*. at 804.

The key to the *Bryant* 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, 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).

Then, in *Ascher*, the court carefully considered the use of suspicionless sobriety checkpoints. 519 N.W.2d at 184. The court held that individualized suspicion was constitutionally required under the Minnesota Constitution. *Id*. at 187; *see also McCaughtry II*, 831 N.W.2d at 529 (P. Anderson, J., concurring) (*Ascher*'s holding was "[b]ased primarily on the State's failure to show that there was individualized suspicion"); *State v. Askerooth*, 681 N.W.2d 353, 358, 362-63 (Minn. 2004) (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 (disapproving generic justification for unannounced entry for search and instead holding that Minnesota Constitution required "particularized circumstances" justifying unannounced entries).

Again, the 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 even that was too much of an invasion into the lives of ordinary citizens. *Id*. at 187. 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 III.A.2.c.

The only situations where the 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 law-abiding individuals.

The thread running through the Minnesota caselaw is the need for some kind of individualized consideration of searches of ordinary people, and the unwillingness to authorize routine searches of ordinary, innocent people.

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. But the justification of "universal compliance" can, of course, justify all kinds of suspicionless searches. The interest in universal compliance with many criminal laws—and in punishing and preventing violations of those laws—is *at least* as significant as enforcing housing codes. For example, 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 and may even be more effective than 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.

b. When evaluating a search that abandons traditional constitutional guarantees, Minnesota places the burden on the government to justify that departure; Golden Valley cannot meet that burden.

Neither convenience nor preservation of evidence is sufficient to override constitutional concerns with suspicionless searches. Instead, Minnesota 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*, the 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. "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 articulating a persuasive reason for departure from the general requirement of individualized suspicion. …" *Id.* at 186.

The rejection in *Ascher* of minimal intrusion, general effectiveness, and nondiscrimination is particularly significant because these are the same justifications accepted by the U.S. Supreme Court in *Camara* to support the use of administrative warrants. 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.[14] Explaining what *would* be necessary to justify a suspicionless search program, *Ascher* suggested that "for example" the government must introduce a substantial amount of evidence—evidence showing that abiding by ordinary rules is impractical and that suspicionless searching will be "significantly" more effective than alternative measures. 519 N.W.2d at 186. *Ascher* further suggested that the government must show that the results to be achieved outweigh the privacy interests of those subjected to the program. *Id.*; *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).

Golden Valley cannot hope to meet such a burden here. It has produced no evidence that alternate measures are impractical and no evidence that

[14] Indeed, the "ease of enforcement" argument was made in favor of the infamous writs of assistance, the very instruments the Fourth Amendment was adopted to abolish. *See* Philip Hamburger, *Is Administrative Law Unlawful?* 274-75 (2014).

mandatory inspections are "significantly" better than the many possible alternatives. All it has said is that it has found some code violations in some properties. *See* City's Ct. App. Br. 5. The City has failed to demonstrate it cannot protect tenants' health and safety other than by invading the most sacred space in their lives.

There are a number of alternative measures Golden Valley could use, 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 self-inspect and provide a sworn statement of compliance with particular safety requirements, with heavy penalties if later found wrong. Each of these alternatives would provide either consent or individualized probable cause. Golden Valley also could institute a program that provides incentives for inspections.[15] Golden Valley 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 privacy in their own homes.

[15] Amici in support of Appellants will be discussing alternative measures as well in their briefs.

Despite Golden Valley's lack of evidence, the court of appeals did not think any alternative measures could be used. Yet, it provided very little analysis on why this is so. It simply said "[u]nlike drunk driving, which can often be detected through non-intrusive observation" similar techniques are not available for some interior code violations, and "for a variety of [unstated] reasons, tenants are not well-situated to report code violations to the city." Add.10. But this did not come close to meeting the burden that *Ascher* demands.

First, regarding the differences between drunk driving and the housing code, the government's interest in keeping drunk drivers off the road is at least as strong as its interest in preventing housing code violations. Further, the court of appeals ignored the fact that the stop in *Ascher* was much less intrusive than the search at issue here. *See* Checklist, *supra* 5 n.4 (itemizing various potential violations). It also ignored the fact that many alternative code enforcement measures can detect internal violations, or incentivize their detection and elimination. Examples are exterior inspections that give rise to individualized suspicion that additional violations are present on the inside, and landlord certification with penalties when the certification is shown to be false.

Second, regarding the court of appeal's skepticism toward tenants reporting code violations, there are existing protections in Minnesota law forbidding landlords from retaliating against tenants. Minn. Stat. § 504B.441

makes it unlawful for landlords to retaliate and puts the burden on landlords to disprove retaliation if the retaliation is made within 90 days of a complaint. In conjunction, Minn. Stat. § 504B.395 provides tenants, and housing-related neighborhood organizations, with a cause of action. Further, Minn. Stat. § 504B.285, subd. 2 provides tenants with defenses in an eviction action if it is made in retaliation for a tenant enforcing rights under state or local housing codes. The court of appeals was entirely silent on these protections.

If the government could not meet the burden of demonstrating that the truly minimal privacy interests in *Ascher* were outweighed by the interest in reducing drunk driving, Golden Valley certainly cannot meet its burden of demonstrating that the fundamental interest in the privacy of the home outweighs Golden Valley's interest in enforcing its housing code through warrants obtained without evidence when alternative enforcement measures are available.

4. 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. 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.

a. 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 Carter*, 697 N.W.2d at 204-05 (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). The neutral magistrate also ensures the evidence is linked to the person or place to be searched. *See, e.g.*, *State v. Mathison*, 263 N.W.2d 61, 63 (Minn. 1978). Thus, a traditional warrant ensures the search is limited in scope, is being executed at an appropriate time of day with or without police, 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); *see also State v. Jordan*, 742 N.W.2d 149, 154 (Minn. 2007).

In contrast, an administrative warrant guarantees almost none of these things. It does not ensure evidence of a code violation, much less a "fair probability" of such a violation. It does not ensure evidence is linked to the particular location to be searched—indeed, to the contrary, *Camara* stated 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.

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. *Id.* 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 cannot be reconciled with the purpose of Article I, Section 10.

b. *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. Nothing prevents Golden Valley inspectors from speaking to police when they believe they have seen evidence of crimes. Indeed, the Wiebesicks' own experience is that Golden Valley sends police officers *inside the home* when conducting an inspection. Add.34. The *Camara* rule allowing searches of all rental homes amounts to a rule permitting plain-view searches of homes for evidence of criminal activity. That rule profoundly threatens the rights of Minnesotans and is anathema to the guarantees of Article I, Section 10. And, of course, even if a person has no

criminal activity to hide, this deep intrusion into a person's privacy threatens those guarantees.

B. *Camara* and *Frank* Are an Unjustified Departure from Longstanding Precedent.

Under the second *Kahn* factor, courts ask whether 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. The court of appeals ruled *Camara* was not such a departure because it actually provided more protection than had been recognized in the case *Frank v. Maryland* issued only eight years before *Camara*.[16] Add.8. This allowed the court to avoid addressing the historical evidence, detailed in this Part *infra*, that *Camara*'s administrative warrants are a sharp departure from previous law.

The court of appeals got the year wrong on when to ask the "sharp departure" question. This error had profound consequences for Appellants

[16] The court also stated that *Camara* could not be a sharp departure because "no state has rejected the *Camara* standard" under its own constitution. Add.8. This reason can be quickly dispatched in this footnote. While that assertion is technically correct, it is also very misleading. No state supreme court has either rejected or adopted the *Camara* standard under its own constitution. A handful of intermediate state courts of appeals have applied *Camara* to their own state constitutions with no analysis as an afterthought in a Fourth Amendment case, *see, e.g.*, *Louisville Bd. of Realtors v. City of Louisville*, 634 S.W.2d 163, 166 (Ky. Ct. App. 1982), but no state supreme court has even done this. Thus no appellate court—intermediate or supreme—has investigated this issue with any seriousness. That does not mean *Camara* and *Frank* were not a sharp departure.

below. This Court should not make the same temporal mistake.

Camara and *Frank* must be considered *together* on the issue of housing inspections. The correct timeframe in which to ask whether there was a "sharp departure" is 1959 and 1967 together. Both cases, taken together, were a sharp and radical departure from precedent because they rejected hundreds of years of understanding about the dangers of general warrants. The fact that *Camara* dialed back some, *but not all*, of *Frank*'s departure, does not inoculate it from scrutiny.

The following explains why *Camara* and *Frank* were a sharp and radical departure and why there is no persuasive reason to follow *Camara*.

1. *Camara* and *Frank* Are a Sharp Departure from Traditional Fourth Amendment Protections.

This section explains what this Court has meant by "sharp departure." It then provides an overview of the background, adoption, and early history of both the Fourth Amendment and Article I, Section 10. Finally, it discusses *Frank* and *Camara* and shows that they constituted a sharp departure from that history.

a. The meaning of "sharp departure" under Minnesota's precedent.

To determine whether a U.S. Supreme Court decision constitutes a sharp departure, the Court looks at the prior interpretation of the federal and state constitutional provisions, the state of the law at the time that this state 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).

The Court has found a sharp or radical departure from precedent by the U.S. Supreme Court in many cases, including many 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 the 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).

b. 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 it was intended to require individualized 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). This Court therefore regularly reviews the history of the ratification of the Fourth Amendment and cites to it as authority. *See, e.g.*, *Jackson*, 742 N.W.2d at 169-70. And that 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.

i. 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 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*, 195 N.W. 789, 790-91 (Minn. 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 individualized probable cause to authorize a search.

Both of these concerns arose in *Boyd*'s discussion of two famous cases. 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.4 (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 home 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; during and 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.

Second, *Boyd* 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." 116 U.S. at 626-27. 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); Davies, 98 Mich. L. Rev. at 658-59 (noting the Framers were most concerned about using general warrants for customs searches of the home); Comment, *State Health Inspections and Unreasonable Search*: *The* Frank *Exclusion of Civil Searches*, 44 Minn. L. Rev. 513, 521 n.29 (1960) (penalties for colonial customs violations uncovered via writs of assistance were civil, not criminal). 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.

ii. 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.*

From a textualist perspective, the dictionary definition of "probable cause" from the time underscores that *Camara*'s "probable cause" was simply unknown. The 1862 edition of the famous dictionary of John Bouvier defined probable cause as "When there are *grounds for suspicion* that a person has committed a crime or misdemeanor, and public justice and the good of the community require that the matter should be examined, there is said to be a *probable cause* for making a charge against the accused . . . ."2 John Bouvier, *Law Dictionary* 385 (11th ed.

1862) (first emphasis added). Thus, in 1857 "probable cause" meant actual, individualized evidence.

Further, early Minnesota case law also supports the conclusion that the original understanding of Article 1, Section 10 was the same as that of the Fourth Amendment. *See, e.g.*, *State v. Stoffels*, 94 N.W. 675, 676 (Minn. 1903) (search reasonable because it required a warrant based on individualized probable cause); *Olson v. Tvelte*, 48 N.W. 914, 914 (Minn. 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 Minnesotans of 1857. Minnesotans believed the text and traditions of the Fourth Amendment of 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 should not reject them as the U.S. Supreme Court did in *Frank* and *Camara*.

c. 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 13 (1949). 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 lacked a warrant. The court cited the same "settled" law announced in *Boyd* and many other cases[17] 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 belonged to all men, not merely to criminals, real or suspected. …. *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).

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

The holding of *Little* was reflected in earlier constitutional treatises. One in particular was Ernst Freund's, a Progressive-era champion of an increased scope of the police power and "a leading academic apologist for administrative law." Philip Hamburger, *Is Administrative Law Unlawful?* 228 (2014). However, even Freund concluded that inspections of private homes must be based on constitutional requirements, which before *Frank* and *Camara* meant a warrant backed by individualized probable cause.[18] *See* Ernst Freund, *The Police Power: Public Policy & Constitutional Rights* 43 (1904) (explaining that "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."); Add.41. Other authorities agreed. *See, e.g.*, Henry Campbell Black, *Handbook of American Constitutional Law* 507 (2d ed. 1897) (stating in a section entitled "Search Warrants in Aid of Sanitary Regulations," that a search warrant would be necessary "if an entry into a private house could not be obtained, for such purposes, without the employment of force"); Add.43; Leroy Parker & Robert H. Worthington, *The Law of Public Health and Safety and the Powers and Duties of Boards of Health* 110 (1892) (explaining how a health board should apply for a warrant before a justice of the peace when "there is reasonable ground for believing a nuisance to exist");

[18] Before *Camara any* warrant required individualized probable cause. *See infra* Part III.B.1.e.

Add.46; *see also* 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 … .").

Thus, the reasoning of *Little* represents a settled point of American law from *Entick* in 1765, through nineteenth century legal scholars, through *Little* itself, until 1959 when *Frank v. Maryland* was decided.[19]

d. 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 *Frank*, was a sharp departure from longstanding precedent in two ways. The Fourth Amendment embodied two basic principles: First, a search of a home requires a warrant, and second, a "warrant" requires individualized "probable cause." *Frank* rejected the first principle, holding that certain home searches did not require warrants, and thus did not need to then address the second. *Camara* restored the first principle

[19] There is not much case law before *Frank v. Maryland*, 359 U.S. 360 (1959) on the exact issue of the Fourth Amendment and administrative inspections of private homes 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).

(warrants) but rejected the second (individualized probable cause). In rejecting these core principles, both opinions 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.

i. *Frank*: Home searches do not require warrants.

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. 359 U.S. at 361-62, 373. A Baltimore city inspector responded to a complaint about an unsanitary house and asked to examine the defendant's basement. *Id*. at 361. The defendant refused, was cited for refusing, and 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 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. *See, e.g.*, *Wiegand*, 645 N.W.2d at 131 n.5; *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 jurisprudence 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 excoriated the majority for what they 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 warrants 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 III.B.1.b, 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."

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

In *Camara*, the Court corrected *Frank*'s error that the Fourth Amendment does not apply at all to home inspections. But instead of requiring a "warrant" as traditionally understood, the Court sharply departed from that tradition and fabricated a new type of "warrant," justified by a lesser "probable cause" in order to conduct these involuntary home inspections. This marked a return to the general warrants despised and forbidden by the Framers of both the Fourth Amendment and Article I, Section 10.

In *Camara* a San Francisco tenant refused what the Court called "a routine annual inspection for possible violations of the city's Housing Code." 387 U.S. at 526. The tenant was arrested and prosecuted, and in his defense argued the ordinance mandating 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. Together, *Camara* and *Frank* constituted a sharp departure.

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. *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 individualized 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).

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 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 longstanding 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 supra* Part III.A.2.a.

e. *Camara* and *Frank* cannot be seen as anything but a "sharp departure."

That this "administrative warrant" and its balancing test constituted a radical or sharp departure 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).

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—from *Katz v. United States*, 389 U.S. 347 (1967), decided the same year as *Camara*—and stands in contrast to the prior doctrine of zealously using the Fourth Amendment to protect property interests—such as a person's home. And, in a series of cases the Court has recognized and reversed that error. *See United States v. Jones*, 132 S. Ct. 945, 949-50 (2012) (reestablishing "property based" Fourth Amendment protections left dormant since *Katz*, and holding *Katz*

"deviated" from those protections); *Florida v. Jardines*, 133 S. Ct. 1409, 1417-18 (2013) (police bringing drug-sniffing dog to front porch of a home is a search because of home's special Fourth Amendment protection). It has also recognized that the bright-line trespass rule extends to civil cases. *See Grady v. North Carolina*, 135 S. Ct. 1368, 1371 (2015).

This, now corrected, 45-year period where the Court watered down the Fourth Amendment's protections against intrusions on property parallels the concurrent period where the Court has watered down the warrant requirement since *Camara*. Thus, the U.S. Supreme Court admitted that the shift away from the protection of "houses, papers, and effects" was a "deviation" from prior precedent, just as Appellants argue here, and that its jurisprudence represented a deviation from the meaning of the Fourth Amendment as understood from the time of its adoption to the mid-20th century.

2. 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 below, *Camara* creates a rule of law where criminals receive greater protections of their privacy than law-abiding

citizens. And it allows systematic invasions of privacy based upon the most general of excuses.

a. *Camara* gives suspected 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 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. And, as explained above in Part III.A.2.c, adoption of *Camara*'s

reasoning under the Minnesota Constitution would lead to the absurd result of more suspicion being required for a search of ice houses, self-storage facilities, and cars. If the Appellant tenant wishes to keep his personal "effects" private, rather than keeping them in his home, perhaps he should move them to his car, self-storage unit, or even ice house. Under *Camara*, his personal possessions would be safer from prying eyes in those places than in his own home.

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 individualized probable cause.

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

For the same reasons discussed *supra*, Part III.A, 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*.

C. *Camara* and *Frank* Were a Retrenchment on Bill of Rights Issues.

The third *Kahn* factor is when the U.S. Supreme Court has retrenched on Bill of Rights issues. *Kahn*, 701 N.W.2d at 828. For the same reasons that *Camara* and *Frank* constituted a radical or sharp departure, they also constituted a

retrenchment on the Bill of Rights. *See supra* Part III.B, especially III.B.2.e (enumerating scholars describing *Camara*'s abandonment of traditional individualized probable cause). The court of appeals should therefore be reversed on this ground as well.

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*. Appellants have demonstrated (1) administrative warrants inadequately protect the rights of Minnesotans; (2) *Camara* and *Frank* were a sharp departure from the general approach to warrants prevalent in our history; and (3) *Camara* and *Frank* were a retrenchment on the Bill of Rights. Accordingly, Appellants ask this Court to reverse the decision of the court of appeals and hold that the use of administrative warrants without individualized probable cause to conduct involuntary housing-code inspections of homes is forbidden under Article I, Section 10 of the Minnesota Constitution.

DATED this 22nd day of September, 2016.

/s/ Anthony B. Sanders
Anthony B. Sanders (No. 387307)
Meagan A. Forbes (No. 393427)
Lee U. McGrath (No. 341502)
INSTITUTE FOR JUSTICE
520 Nicollet Mall, Suite 550
Minneapolis, Minnesota 55402-2626
Tel.: (612) 435-3451
Fax: (612) 435-5875
Email: asanders@ij.org, mforbes@ij.org,
lmcgrath@ij.org

Attorneys for Appellants

CERTIFICATE OF COMPLIANCE

1. I hereby certify that Appellants' foregoing brief conforms to the requirements of Minn. R. Civ. App. P. 128.02 and 132.01, subds. 1 and 3(a) for a brief produced with a proportional font.

2. The length of Appellants' brief is 13,713 words.

3. Appellants' brief was prepared using Microsoft Word 2010 in 13-point Book Antiqua.

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/s/ Anthony B. Sanders
Anthony B. Sanders (No. 387307)