

IN THE MAGISTERIAL DISTRICT COURT
38TH DISTRICT, MONTGOMERY COUNTY, 38-1-11/12

IN RE ADMINISTRATIVE
WARRANT TO SEARCH:

Docket No. _____

326 JEFFERSON AVENUE
POTTSTOWN, PENNSYLVANIA 19464

**DOROTHY RIVERA, EDDY OMAR RIVERA, AND STEVEN CAMBURN'S
MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO QUASH
THE WARRANT ISSUED TO SEARCH THEIR PROPERTY**

Matter Before the Court

Pursuant to Rule 208.3 of the Pennsylvania Rules of Civil Procedure, Dorothy and Eddy Omar Rivera, who reside in the property located at 326 Jefferson Avenue, and their landlord, Steven Camburn, who owns the property, respectfully move this Court to quash the administrative warrant issued on March 13, 2017, authorizing the Borough to inspect the Riveras' home and Camburn's property, or to stay the execution of this warrant while this motion is pending. The Riveras and Camburn submit this memorandum in support of their motion.

Statement of the Question Involved

Article I, Section 8 of the Pennsylvania Constitution protects "persons, houses, papers and possessions from unreasonable searches and seizures" and guarantees that "no warrant to search any place . . . shall issue . . . without probable cause."

The Borough of Pottstown wants to inspect the Riveras' home. The Riveras deeply value their privacy. They do not want the Borough to enter their home, and

they object to the inspection. On March 13, 2017, the Borough obtained an administrative warrant—thus authorizing the Borough to inspect the Riveras’ home. This warrant is not based on individualized probable cause of a housing-code violation in the Riveras’ home. Instead, this warrant was issued because the inspection sought is part of the Borough’s rental-inspection program.

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 of a housing-code violation.

Does Article I, Section 8, in contrast to *Camara*, require individualized probable cause of a housing-code violation for a warrant to search the Riveras’ home to issue?

Factual Background

I. Pottstown’s Intrusive Home Searches

The Borough of Pottstown enforces rental housing ordinances that require every rental home to be licensed. *See* Borough of Pottstown, Pa., Code of Ordinances (“Code”) §§ 5-801 *et seq.*; 11-201 *et seq.* Under these ordinances, all landlords and tenants are subject to inspections once every two years. §§ 5-801, 11-206(1). The ordinances authorize inspections to determine compliance with various housing and building code standards, “in addition to any other relevant requirements.” § 11-206(2)(A)–(D). If a landlord or tenant does not consent to the inspection, Borough

inspectors may seek an administrative warrant—which does not require evidence, or even suspicion, of a violation of the law in the home to be searched. § 11-203(I)(3).

These ordinances open up every square foot of the home to inspection and allow inspectors to check for undefined things like “habitability” and the tenants’ cleanliness. *See* § 11-206; *see also Licensing and Inspections, Residential Rental & Property Transfer Checklist*, Borough of Pottstown,

<http://www.pottstown.org/DocumentCenter/View/105> (“The interior & exterior of property and premises must be maintained in a clean, safe & sanitary condition.”).

Inspectors are further authorized to search for anything they may subjectively deem relevant in determining compliance with Pottstown’s building and housing codes.

See Code § 11-206(2).

Pursuant to these ordinances, inspectors can enter every room of the home—including bedrooms, bathrooms, kitchens, basements, hallways, attics and utility rooms—in addition to opening storage areas, bedroom closets, kitchen cabinets, and bathroom vanities and cabinets. Even appliances, such as refrigerators, stovetops, washers, stereos, and computers fall within the scope of Pottstown’s inspection program. Inspectors can also move furniture, including tenants’ beds, during an inspection, exposing tenants’ personal possessions. *Camburn Aff. Ex. 1 ¶¶ 16–18*. Accordingly, these inspections reveal all kinds of private information about tenants, including their religious beliefs, political views, habits, personalities, medical conditions, emotional states, hobbies and romantic lives. And in addition to granting the Borough access to tenants’ most intimate spaces, Pottstown’s

ordinances do not prevent inspectors from sharing information found in inspections with law enforcement.

II. The Riveras' and Camburn's Privacy Interests in Their Home and Property

The Riveras have lived in their rental home for five years and care about their privacy. Dorothy Rivera Aff. Ex. 2 ¶¶ 2–3, 7; Eddy Omar Rivera Aff. Ex. 3 ¶¶ 2–3, 7. They value their right to determine who will enter their home, and they do not want Borough inspectors to enter their home—much less to have access to every room and closet. Dorothy Rivera Aff. Ex. 2 ¶¶ 7–11; Eddy Omar Rivera Aff. Ex. 3 ¶¶ 7–12. They find rental inspections to be deeply offensive. Dorothy Rivera Aff. Ex. 2 ¶¶ 11–12; Eddy Omar Rivera Aff. Ex. 3 ¶ 10. The Borough inspected the property *before* the Riveras moved into their home, but it has not inspected the property while they have been living there.

Camburn received notice of the inspection in December 2016. Camburn Aff. Ex. 1 ¶ 11. Camburn discussed the upcoming inspection with the Riveras, and the Riveras informed him that they did not consent to the inspection. Camburn Aff. Ex. 1 ¶ 13. Camburn honored their wishes to be free from this government intrusion into their home and opposes the inspection. Camburn Aff. Ex. 1 ¶¶ 14–15. Camburn further believes that the Borough should not force its way into people's homes without landlords' and tenants' consent. *Id.* ¶ 14.

Together, the Riveras and Camburn sent a letter to Keith Place, director of the Borough's Department of Licensing and Inspections, informing Place that they would not voluntarily allow the Borough to inspect their home and property. March

8, 2017 Letter to Keith Place, Ex. 3. They further invoked their rights under Article I, Section 8 of the Pennsylvania Constitution, which “requires the government to meet a higher standard of probable cause to obtain a warrant to search a rental home than the standard articulated in *Camara*.” *Id.*

The Borough then applied for an administrative warrant *ex parte* to inspect the Riveras’ home. The Borough did not support this warrant application with individualized probable cause of a housing-code violation. This Court granted the warrant on March 13, 2017.

Argument

The administrative warrant and upcoming inspection violate the Riveras’ and Camburn’s right to be free from unreasonable searches and seizures, and the Riveras and Camburn ask this Court to quash the administrative warrant under Article I, Section 8 of the Pennsylvania Constitution. In the below subsections, the Riveras and Camburn (1) explain the protection traditional search warrants afford, (2) describe the U.S. Supreme Court’s holding in *Camara v. Municipal Court*, (3) identify the four-factor analysis Pennsylvania courts use in interpreting the Pennsylvania Constitution’s protections, and (4) demonstrate that Article I, Section 8 prevents the Borough’s use of this administrative warrant to search their home and property under that analysis. The Riveras and Camburn conclude by asking this Court to quash the administrative warrant.

I. TRADITIONAL SEARCH WARRANTS REQUIRE EVIDENCE TYING A PARTICULAR PERSON OR PLACE TO A CRIME.

The Fourth Amendment¹ (like Article I, Section 8 of the Pennsylvania Constitution) contains both a clause protecting against “unreasonable searches and seizures” and a clause requiring warrants to issue based on probable cause. Thus, under the Fourth Amendment, all searches must be reasonable *and* search warrants must be supported by probable cause.

Before the U.S. Supreme Court’s decision in *Camara*, if a search required a warrant, the warrant had to be supported by a neutral magistrate’s finding of individualized probable cause—evidence, presented under oath, tying a particular person or place to a crime. *See Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (stating that the government must put forth sufficient evidence that “a man of reasonable caution” would believe that “an offense has been or is being committed” for a warrant to issue); *see also McCarthy v. De Armit*, 99 Pa. 63, 69 (1881) (requiring “a reasonable ground for belief of guilt” for a warrant to issue). This requirement of individualized probable cause protects individuals from improper government action by ensuring that there is sufficient evidence of a violation of the law and that the evidence is linked to the person or place to be searched.

But in *Camara*, the U.S. Supreme Court invented a new type of warrant—the administrative warrant—and a new type of probable cause needed to obtain that

¹ The Fourth Amendment provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

warrant to conduct housing inspections. In doing so, the Court effectively read the probable cause requirement out of the Fourth Amendment's Warrant Clause and replaced it with a reasonableness inquiry, turning probable cause into a generalized balancing test of government and private interests.

II. IN *CAMARA* THE U.S. SUPREME COURT INVENTED ADMINISTRATIVE WARRANTS AND DEPARTED FROM TRADITIONAL PROBABLE CAUSE.

In *Camara*, a tenant in San Francisco was arrested for objecting to a warrantless rental-housing inspection of his apartment home and challenged the warrantless inspection under the Fourth Amendment. 387 U.S. at 525–27. The U.S. Supreme Court ruled that a warrant was required under the Fourth Amendment before the city could enter the tenant's home. *Id.* at 538. At the same time, however, it invented the administrative warrant. The Court found that, under the Fourth Amendment, municipalities need only show a more general type of probable cause in order to obtain an administrative warrant. *Id.* And the Court stated that this type of probable cause exists so long as there are “reasonable legislative or administrative standards” for conducting the inspections, which may include the passage of time, the type of housing, or the characteristics of the area. *Id.* The Court justified this lesser standard of probable cause because it found these inspections were not personal in nature and “involve[d] a *relatively limited invasion of the urban citizen's privacy.*” *Id.* at 537 (emphasis added).

Although administrative warrants (warrants issued without individualized probable cause) are permissible under the Fourth Amendment as interpreted in

Camara, administrative warrants to search people’s homes and properties have no place under the Pennsylvania Constitution, which protects people’s privacy and requires traditional, individualized probable cause for searches of the home. The Pennsylvania Constitution, which predates the federal Constitution, is often interpreted to provide greater protection against unreasonable searches and seizures than the Fourth Amendment, and the Pennsylvania Constitution provides greater protection here.

III. PENNSYLVANIA COURTS CONDUCT A FOUR-FACTOR ANALYSIS IN DETERMINING WHETHER THE PENNSYLVANIA CONSTITUTION PROVIDES GREATER PROTECTION THAN THE FEDERAL CONSTITUTION.

In Pennsylvania, courts are required to “undertake an independent analysis of the Pennsylvania Constitution, each time a provision of that fundamental document is implicated.” *Commonwealth v. Edmunds*, 586 A.2d 887, 894–95 (Pa. 1991) (finding that Pennsylvania courts are free to reject federal precedent in interpreting Article I, Section 8). When a case implicates a provision of the Pennsylvania Constitution, four factors must be briefed and analyzed in determining whether it provides greater protection than its federal counterpart. These factors are (1) the text of the Pennsylvania constitutional provision; (2) the history of the provision, including Pennsylvania case law; (3) related case law from other states; and (4) policy considerations, including unique issues of state and local concern, and applicability with modern Pennsylvania jurisprudence. *Id.* at 895.

The Riveras and Camburn address each factor below and show that the administrative warrant to search their home and property violates Article I, Section 8 of the Pennsylvania Constitution.

IV. THE ADMINISTRATIVE WARRANT VIOLATES THE PENNSYLVANIA CONSTITUTION.

The administrative warrant authorizing the search of the Riveras' home is not based on individualized probable cause of a housing-code violation and therefore permits the Borough to search the entire property against the Riveras' will without evidence anything is wrong with the home. This administrative warrant violates Article I, Section 8, which provides a higher level of protection against invasions of privacy in the home than the Fourth Amendment as interpreted in *Camara*.

A. The Text of Article I, Section 8 Protects the Home from Unreasonable Searches and Seizures and Requires Warrants Based on Individualized Probable Cause.

Turning to the first factor, the Riveras and Camburn first analyze the text of Article I, Section 8. The text of Article I, Section 8 is similar to the Fourth Amendment and provides:

Security from Searches and Seizures

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and *no warrant to search any place* or to seize any person or things *shall issue* without describing them as nearly as may be, nor *without probable cause*, supported by oath or affirmation subscribed to by the affiant.

Pa. Const. Art. I, § 8 (emphasis added).

Article I, Section 8 was first adopted in 1790, but the Pennsylvania Constitution’s probable cause requirement dates back to Pennsylvania’s first constitution in 1776. *See* Pa. Const. of 1776 ch. I, cl. 10.²

When Pennsylvania first adopted this constitutional protection, the term “warrant” was understood to require individualized suspicion of a violation of a law. *See* Richard Burn, *A New Law Dictionary: Intended for General Use, as well as for Gentlemen of the Profession* 718 (1792) (internal citations omitted) (“Before the granting of the warrant, it is fitting to examine upon oath the party requiring it, as well as to ascertain that there is a felony or other crime actually committed . . . [and] to prove the cause and probability of suspecting the party against whom the warrant is prayed.”); *see also* John Bouvier, *A Law Dictionary: Adapted to the Constitution and Laws of the United States, and of the Several States of the American Union; with References to the Civil and Other Systems of Foreign Law* 499, 641 (1848) (“That [warrants] be not granted without oath made before a justice of a felony committed, and that the complainant has probable cause to suspect they are in such a house or place, and his reasons for such suspicion . . . The reprehensible practice of issuing blank warrants which once prevailed in England, was never adopted here.”).

² Chapter I, Clause 10 of the Pennsylvania Constitution of 1776 provided:

That the people have a right to hold themselves, their houses, papers, and possessions free from search and seizure, and *therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them*, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described *are contrary to that right, and ought not to be granted*.

Pa. Const. of 1776 ch. I, cl. 10 (emphasis added).

Further, probable cause was also understood to require individualized suspicion of a violation of the law. *See* Bouvier, *supra*, at 371 (“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”) (emphasis in original). The plain text of Article I, Section 8 thus expressly protects the home from unreasonable searches and seizures and requires warrants based upon probable cause.

The text of Article I, Section 8 is similar to the Fourth Amendment; however, the Pennsylvania Supreme Court has found that, in interpreting Article I, Section 8, courts are “not bound to interpret the two provisions as if they were mirror images, even where the text is similar or identical” and has looked to the other factors to determine the protection that Article I, Section 8 offers. *Edmunds*, 586 A.2d at 895–96 (citing *Commonwealth v. Tarbert*, 535 A.2d 1035, 1038 (Pa. 1987)). Therefore, in addition to the plain text of Article I, Section 8, the remaining factors carry weight in understanding the meaning of this provision.

B. History and Pennsylvania Caselaw Show That Article I, Section 8 Protects Against Suspicionless Searches of the Home.

The next factor Pennsylvania courts consider in interpreting the Pennsylvania Constitution is the history of the provision, including Pennsylvania caselaw interpreting the provision. The history of Article I, Section 8 reveals that Pennsylvania’s warrant requirement was adopted to protect against suspicionless searches of people’s homes and businesses, and the Pennsylvania Supreme Court

has repeatedly recognized the crucial role this history plays in interpreting Article I, Section 8.

1. The History of Article I, Section 8

Pennsylvania’s “constitutional protection against unreasonable searches and seizures existed . . . more than a decade before the adoption of the federal Constitution, and fifteen years prior to the promulgation of the Fourth Amendment.” *Commonwealth v. Sell*, 470 A.2d 457, 466 (Pa. 1983); Pa. Const. of 1776 ch. I, cl. 10. When Pennsylvania’s framers drafted this provision, their driving concern was protecting people’s privacy. *Edmunds*, at 897. This was because the British crown had used “general warrants” to search colonists’ homes and businesses. *Id.* Like the administrative warrant here, these general warrants authorized sweeping, suspicionless searches of people’s homes and businesses. *Id.* at 897 (citing White, *Commentaries on the Constitution of Pennsylvania*, 157–58 (1907) (explaining that Pennsylvania’s warrant requirement was intended to combat the use of general warrants which had prevailed until the reign of George III in England); *Wakely v. Hart*, 6 Binn. 316, 319 (1814) (describing Article I, Section 8’s rejection of general warrants as a “solemn veto against this powerful engine of despotism”) (emphasis in original)). Article I, Section 8’s protections were devised to abolish these infamous general warrants. *Id.* And to the drafters, requiring warrants based upon individualized probable cause was essential to fully safeguard privacy in the Commonwealth. *Id.*

Today, the language of Article I, Section 8 remains nearly identical to the language in its counterpart in Pennsylvania’s first constitution more than 200 years ago. The Pennsylvania Supreme Court recognizes that “[t]he survival of th[is] language . . . through over 200 years of profound change in other areas demonstrates that the paramount concern for privacy first adopted as a part of our organic law in 1776 continues to enjoy the mandate of the people of this Commonwealth.” *Sell*, 470 A.2d at 467.

Accordingly, Article I, Section 8’s “twin aims” are—and have always been—“the safeguarding of privacy and the fundamental requirement that warrants shall *only* be issued upon probable cause.” *Edmunds*, 586 A.2d at 899 (emphasis added). Indeed, individualized probable cause is the “linch-pin” courts use in safeguarding privacy and determining whether a search warrant may issue. *See id.* (quoting *Commonwealth v. Miller*, 518 A.2d 1187, 1191 (Pa. 1986)). The requirement of individualized probable cause is important because it “is designed to protect us from unwarranted and even vindictive incursions upon our privacy,” to “insulate[] us from dictatorial and tyrannical rule by the state, and [to] preserve[] the concept of democracy that assures the freedom of its citizens.” *Id.* (quoting *Miller*, 518 A.2d at 1191–92).

The administrative warrant here violates Article I, Section 8’s twin aims. Rather than safeguarding privacy and ensuring that individualized probable cause exists before the Borough may enter the Riveras’ home, it closely resembles the general warrants of the past that Article I, Section 8 was adopted to forbid. Just as

general warrants authorized the British to invade colonists' homes and businesses to search for violations of British law, this administrative warrant authorizes the Borough to invade the Riveras' and Camburn's privacy to search for housing-code violations based merely on generalized, highly speculative suspicion. And, as explained above, it also allows a search without a warrant based upon individualized probable cause. Thus, the administrative warrant the Court granted here contravenes Article I, Section 8's history and original meaning.

2. Pennsylvania Caselaw Interpreting Article I, Section 8

The administrative warrant at issue is also incompatible with Pennsylvania case law interpreting Article I, Section 8. When governmental action threatens to diminish Article I, Section 8's twin aims, the Pennsylvania Supreme Court has not hesitated to interpret Article I, Section 8 to provide greater protection against unreasonable searches and seizures than the Fourth Amendment provides. *See, e.g., Sell*, 470 A.2d at 467–69 (rejecting *United States v. Salvucci*, 448 U.S. 83 (1980), and granting a defendant charged with a possessory crime automatic standing to challenge the admissibility of seized property because Article I, Section 8 “mandates greater recognition of the need for protection . . . of privacy”); *see also Commonwealth v. Shaw*, 770 A.2d 295, 299 (Pa. 2001) (ruling a warrant is required for seizure of hospital-administered blood-alcohol results under Article I, Section 8 when the Fourth Amendment did not require a warrant); *Theodore v. Del. Valley Sch. Dist.*, 836 A.2d 76, 88 (Pa. 2003) (applying a stricter test compared to the test articulated by the U.S. Supreme Court under the Fourth Amendment and finding

that a suspicionless student-search program violated Article I, Section 8 because the school could not show that the program addressed an actual problem).

Pennsylvania's higher privacy safeguards are especially acute when the government seeks to depart from the traditional requirement of individualized probable cause.

For example, in *Edmunds*, 586 A.2d at 901, 905–06, the Pennsylvania Supreme Court declined to adopt a “good faith” exception to the exclusionary rule under Article I, Section 8, even though the U.S. Supreme Court had adopted the good faith exception in *United States v. Leon*, 468 U.S. 897 (1984). The Pennsylvania Supreme Court rejected *Leon* because Article I, Section 8 protects a “strong right of privacy” and has a “clear prohibition against the issuance of warrants without probable cause.” *Id.* at 901. The Pennsylvania Supreme Court was concerned that a good faith exception “would directly clash with those rights of citizens as developed in our Commonwealth over the past 200 years.” *Id.*

The Pennsylvania Supreme Court's deep concern for safeguarding Article I, Section 8's strong right of privacy also drove it to reject federal precedent in *Commonwealth v. DeJohn* in which it held that a depositor has standing to challenge the seizure of his or her bank records. 403 A.2d 1283, 1289–91 (Pa. 1979). In contrast, the U.S. Supreme Court had held in *United States v. Miller* that citizens have no legitimate expectation of privacy in their bank records because they assume the risk that information shared with a bank may be revealed to the government. 425 U.S. 435, 443 (1976). The Pennsylvania Supreme Court disagreed and found that Pennsylvanians have a reasonable expectation of privacy in their

bank records. *DeJohn*, 403 A.2d at 1291. The Pennsylvania Supreme Court was particularly concerned about the private information that the government could discover in a depositor's bank records without a warrant, including "many aspects of his personal affairs, opinions, habits and associations." *Id.* at 1289–90 (quoting *Burrows v. Superior Court*, 529 P.2d 590, 596 (Cal. 1974)). The Pennsylvania Supreme Court simply could not accept this type of invasion into people's private lives in light of the mandates of Article I, Section 8. *Id.*

Pennsylvania jurisprudence also repeatedly recognizes that a person's privacy is at its greatest in the home. See *Commonwealth v. Brion*, 652 A.2d 287, 289 (Pa. 1994) ("Upon closing the door of one's home to the outside world, a person may legitimately expect the highest degree of privacy known to our society.") (quoting *Commonwealth v. Shaw*, 383 A.2d 496, 499 (Pa. 1978)); see also *Commonwealth v. Mason*, 637 A.2d 251, 256–57 (Pa. 1993) (finding that the police's forcible entry into an apartment without a warrant or exigent circumstances violated Article I, Section 8); *Commonwealth v. Bricker*, 666 A.2d 257, 261 (Pa. 1995) ("We have long recognized the sanctity of the home in this Commonwealth . . ."). That is because "[f]or the right to privacy to mean anything, it must guarantee privacy to an individual in his own home." *Brion*, 652 A.2d at 289.

For instance, in *Brion*, the Pennsylvania Supreme Court found that the government's warrantless use of a body wire to record a conversation in the home of a non-consenting criminal defendant violated his right to privacy in his home under

Article I, Section 8. 652 A.2d at 289. The Court was particularly concerned that there was no prior determination of probable cause by a neutral judicial authority before the government intercepted the recording, and the Court could not allow such an intrusion into the home to stand without a warrant supported by individualized probable cause. *Id.*

The thread running through all these cases is that privacy is sacred in Pennsylvania—and it is most sacred in the home.

No Pennsylvania court has squarely addressed the validity of administrative warrants under the Pennsylvania Constitution. On three occasions, the Commonwealth Court has considered landlords' federal and state constitutional challenges under only federal law, and the landlords have lost. *See Commonwealth v. Tobin*, 828 A.2d 415, 423–24 (Pa. Commw. Ct. 2003) (endorsing administrative warrants supported by reasonable legislative and administrative standards under *Camara*); *Simpson v. City of New Castle*, 740 A.2d 287, 291 (Pa. Commw. Ct. 1999) (suggesting that the rental-inspection ordinance would survive a facial challenge because it provided for warrants subject to constitutional limitations and only citing *Camara*); *Greenacres Apartments, Inc. v. Bristol Twp.*, 482 A.2d 1356, 1359–60 (Pa. Commw. Ct. 1984) (rejecting an apartment complex's challenge to a rental-inspection ordinance because the ordinance permitted the city to obtain a *Camara*-style warrant—but not analyzing the apartment complex's state constitutional claim). But these cases are distinguishable from this case. The landlords in these cases did not press their state constitutional arguments as distinct from their

federal constitutional arguments, and the Commonwealth Court did not consider the history of the Pennsylvania Constitution or state caselaw interpreting the provision. The court also did not address the privacy interests of the landlords' tenants.

Here, the Riveras and Camburn simply want to keep their home and property private. The administrative warrant authorizing the search of their home and property is not supported by the type of individualized probable cause that Article I, Section 8 commands. It also conflicts with decades of jurisprudence recognizing the important history of Article I, Section 8 and requiring individualized probable cause for warrants to issue. Accordingly, Pennsylvania caselaw shows that Article I, Section 8 protects against the instant suspicionless search of the Riveras' home and Camburn's property and requires this administrative warrant to be quashed.

C. No State High Court Has Squarely Addressed Whether the Use of An Administrative Warrant to Search a Rental Home Violates Its State Constitution.

The next factor Pennsylvania courts consider in interpreting Article I, Section 8 is caselaw in other jurisdictions, including other courts' analyses under their own constitutions. *See Edmunds*, 586 A.2d at 899.

No state high court has squarely addressed whether its state constitution requires that housing-inspection warrants be supported by individualized probable cause. In fact, only one state supreme court, the Minnesota Supreme Court, has even considered this issue, and it has not decided it. *See McCaughtry v. City of Red*

Wing, 831 N.W.2d 518 (Minn. 2013). A similar case is again pending at the Minnesota Supreme Court. See *City of Golden Valley v. Wiebesick (In re Admin. Search Warrant)*, 881 N.W.2d 143 (Minn. Ct. App. 2016), review granted (Minn. argued Jan. 4, 2017).

In *McCaughtry*, a coalition of landlords and tenants challenged the Minnesota city of Red Wing’s rental-licensing ordinance under Article I, Section 10 of the Minnesota Constitution—a provision which has also been interpreted to provide greater protection against unreasonable searches and seizures than the Fourth Amendment. 831 N.W.2d at 520. The ordinance required landlords and tenants to submit to periodic rental inspections, and the landlords and tenants challenged the ordinance on its face. *Id.* The Minnesota Supreme Court concluded that the ordinance survived the facial challenge because a judge retained the authority to require individualized probable cause of a housing-code violation in a specific warrant application. *Id.* at 525. And because a judge could apply a higher standard under the city’s ordinance, the court did not decide the state constitutional question. Instead, it stated, “Whether the Minnesota Constitution requires individualized suspicion for housing code searches is an unsettled question.” *Id.* at 522.

McCaughtry offers little guidance here, but it is worth noting that the Minnesota Supreme Court *only* found the ordinance to be constitutional because a judge *could* require individualized probable cause for a warrant to issue under the

ordinance. *McCaughtry* therefore favors requiring individualized probable cause for a warrant to search a rental home.

D. Policy Considerations Favor Interpreting Article I, Section 8 to Forbid the Borough’s Use of an Administrative Warrant to Search The Riveras’ Home and Camburn’s Property.

Finally, the Pennsylvania Supreme Court takes into account policy considerations in interpreting Article I, Section 8. In evaluating policy considerations, the Pennsylvania Supreme Court “go[es] beyond the bare text and history of that provision as it was drafted 200 years ago, and consider[s] its application within the modern scheme of Pennsylvania jurisprudence.” *Edmunds*, 586 A.2d at 901.

As the Riveras and Camburn have already shown, *Camara* is incompatible within the modern scheme of Pennsylvania jurisprudence interpreting Article I, Section 8, which places far more weight on protecting privacy and the sanctity of the home. *Camara* opens up law-abiding citizens’ homes to invasive rental inspections without a shred of evidence anything is wrong inside. Using *Camara*-style administrative warrants, Borough inspectors have unfettered access to every square foot of renters’ homes, including their bedrooms, bathrooms, closets, and cabinets. Camburn Aff. Ex. 1 at ¶ 16. And Borough inspections reveal all kinds of information about renters’ private lives, including their political and religious beliefs, romantic lives, and health—information the Pennsylvania Constitution guards from prying government eyes. *Id.* ¶¶ 17–18. *Camara* eviscerates Article I,

Section 8's strong protection of privacy and its warrant requirement by forcing people to open their homes for the government's suspicionless searches.

Here, the Borough's interest in enforcing its housing and building codes does not justify departing from Pennsylvania's longstanding requirement that warrants be supported by individualized probable cause.

Notably, in *Edmunds*, the Pennsylvania Supreme Court refused to accept the government's need to enforce the law as a justification for departing from Article I, Section 8's warrant requirement when it refused to accept the "good faith" exception to the exclusionary rule. *Edmunds*, 586 A.2d at 899. The Pennsylvania Supreme Court considered that declining to adopt the good faith exception could arguably affect public safety. *Id.* But even this policy consideration did not justify watering down Article I, Section 8's requirement that warrants be supported by individualized probable cause. *Id.* at 904. Just as the Pennsylvania Supreme Court declined to accept this speculative justification in *Edmunds*, so should this Court here.

Further, there are many alternative ways the Borough can enforce its housing and building codes without requiring mandatory, suspicionless searches of private homes. Some of these approaches include:

- Voluntary inspections;
- Voluntary inspections coupled with tenant education;
- Inspections of properties with deteriorated conditions outside;
- Inspections of units where another voluntarily-inspected unit in the building had a type of violation likely to exist in other units;

- Inspection upon complaint;
- Self-inspections with owners providing sworn statements of compliance, and inspections if owners do not provide these sworn statements.

The above approaches would all permit the Borough to enforce its housing and building codes without violating citizens' privacy and property rights.

These policy considerations—protecting privacy and the sanctity of the home—favor quashing this administrative warrant.

Relief

The Riveras' and Camburn's analysis of the above four factors demonstrates that this administrative warrant violates Article I, Section 8 of the Pennsylvania Constitution. The Riveras and Camburn respectfully request that this Court issue an order quashing the administrative warrant authorizing the Borough to enter their home and property located at 326 Jefferson Avenue, Pottstown, Pennsylvania 19464. They alternatively request that this Court stay the execution of the challenged warrant while this motion is pending.

DATED: March 13, 2017

Respectfully submitted,

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* Motion for Admission *Pro Hac Vice*
Pending.