IN THE SUPREME COURT OF OHIO

CF HOMES LLC., *et al.,*	:	
	:	Case No. 2025-0458
Defendant-Appellants,	:	
	:	
	:	On appeal from the
v.	:	Fifth District Court of Appeals
	:	Stark County, Ohio
	:	
DEPARTMENT OF DEVELOPMENT SERVICES FOR THE CITY OF NORTH CANTON,	:	Court of Appeals Case No. 2024CA00108
	:	
Plaintiff-Appellee.	:	

APPELLEE'S, DEPARTMENT OF DEVELOPMENT SERVICES FOR THE CITY OF NORTH CANTON, MERIT BRIEF

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I. INTRODUCTION

This case involves the straightforward application of clear and established law involving an administrative search warrant. The City of North Canton ("City") created a rental licensing program for property owners that rent homes and apartments within city limits. In order to ensure that a property owned by Appellant CF Homes, L.L.C., ("CF Homes" or "Appellant") complied with the rental licensing program, the City sought a routine administrative search warrant to conduct a search of the rental units to maintain the public health, safety, and welfare of its residents. The City filed an application for an administrative search warrant with the Stark County Court of Common Pleas. The trial court evaluated the request, and, ultimately, issued the search warrant. But Appellant now seeks to unwind the *entire* administrative search warrant jurisprudence in Ohio.

The law surrounding administrative search warrants is not new. It starts with the Ohio Constitution, which states that "no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched[.]" Ohio Const., art. I, § 14. The General Assembly further authorizes warrants to search a home or property to determine whether conditions are hazardous to the public health, safety, and welfare. R.C. 2933.21(F) and R.C. 2333.22(B). Additionally, this Court previously held that a municipal ordinance establishing minimum standards to ensure that residential dwellings are safe, sanitary and fit for human habitation that an inspection of such residential dwellings by a housing inspector to survey the residential dwelling to ensure compliance with such standards does not violate the Ohio Constitution's prohibition against unreasonable searches and seizures. *State ex rel. Eaton v. Price*, 168 Ohio St. 123, 138 (1957).

Based upon this Court's decision in *Eaton* and the United States Supreme Court's decision in *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523 (1967) of the similarly worded provision in the federal Constitution, Ohio courts have routinely interpreted the Ohio

Constitution to allow administrative search warrants so long that probable cause exists. That probable cause can arise from evidence of existing code violations or a showing that reasonable legislative standards for conducting the administrative inspection are satisfied. *See, e.g., Kaim Properties, L.L.C., v. Mentor*, 2013-Ohio-4291, ¶ 40 (11th Dist.); *see also Camara* at 538.

Appellant asks the Court to upend the administrative-search-warrant process in Ohio and disregard decades of precedent. It claims—with no real justification—that the Ohio Constitution provides greater protection than the United States Constitution on this point. But there is no need for the Court to depart from its prior decisions here. The Fifth District followed this Court's precedent when it affirmed the trial court's issuance of the administrative search warrant. The court of appeals did not depart from this Court's prior decisions and did not affect or enlarge a municipality's ability to conduct a search of an Ohioan's home. This Court, along with state and federal courts on similar provisions, have long permitted local governments to obtain administrative search warrants to inspect homes when probable cause exists in order to protect the public health, safety, and welfare of residents.

That is what North Canton did here. The trial court and Fifth District agreed. This Court should too.

II. STATEMENT OF THE FACTS

A. The Trial Court Proceedings.

On July 6, 2023, the City filed an Application for an Administrative Inspection Warrant (the "Application") to conduct an inspection of a rental property at 914 North Main Street in North Canton which is owned by Appellant. R.1. The Application was not presented as a standard *ex parte* application for a search warrant pursuant to the procedures proscribed within R.C. Chapter 2933. Instead, the City filed the Application in the Stark County Common Pleas Clerk of Courts and the matter proceeded as a typical civil complaint.

Appellant's attorney filed a "Motion for Leave for Extension of Time to Respond to Plaintiff's Complaint." R.3. Appellant filed an answer and counterclaim. R.5. The City then filed a combined motion for judgment on the pleadings and motion for summary judgment and an answer to the counterclaims. R.7 and R.8. Appellant filed a response to the City's combined motion and filed its own combined motion for judgment on the pleadings and/or for summary judgment. R.11. The trial court ultimately granted summary judgment for the City; finding that the City "established probable cause for the issuance of a warrant to inspect the rental premises owned by CF Homes" and issued an administrative inspection warrant of the premises ordering that the "search warrant shall issue for the general inspection of 914 North Main St., North Canton, Ohio 44720 by Petitioner." R.12. at 12.

B. The Fifth District Proceedings.

The Fifth District affirmed the trial court's decision. In its opinion, the Fifth District explored the history of administrative search warrants dating back to the United States Supreme Court's seminal case in *Camara*. The Fifth District held that the probable cause standards to issue an administrative search warrant—a showing that reasonable legislative standards for conducting an inspection are satisfied—were satisfied. *Dept. of Development Servs. for North Canton v. CF Homes LLC*, 2025-Ohio-1342, ¶ 24 (5th Dist.) (the "Fifth District Opinion"). Judge King concurred, writing separately, and acknowledged that the law in both Ohio and in the federal courts required the Fifth District to affirm the trial court's decision. *Id*. at ¶ 34.

The Fifth District noted that the application "did not involve an attempted warrantless search, nor does it involve criminal charges." *Id*. at ¶ 19. Rather, this case involved the City's request for a judicial determination that a warrant should be issued that was subjected to "an adversarial litigation procedure" and Appellant was notified of the Application and was able to challenge it. *Id*. at ¶ 23. The City's codified ordinances gave notice to Appellant of the list of items

to be inspected as set forth in the rental unit inspection form and was, therefore, a valid public interest. *Id*. "The [City's] valid public interest justifies the intrusion contemplated, and as a result there is probable cause to issue a suitably restricted administrative warrant." *Id*. at ¶ 19.

This appeal followed.

III. ARGUMENT

Appellant's Proposition of Law No. I:

When municipalities seek warrants to force noncriminal interior searches, the requirement of *Probable Cause* in Article I, Section 14 is more protective of Ohioans' occupied homes than the Fourth Amendment baseline established in *Camara*.

The law has long drawn a distinction between criminal investigatory searches—where the search seeks to find evidence of a crime—and administrative inspection searches—where the search seeks compliance with local building, zoning, or housing codes. *Compare, Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320 (1978), citing *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987), *with Maryland v. Pringle*, 540 U.S. 366, 371 (2003), citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949). Both Ohio courts and federal courts recognize the constitutionality of exactly the type of administrative search warrant at issue in this case. *Kaim Properties, L.L.C. v. Mentor*, 2013-Ohio-4291 (11th Dist.); *State v. Finnell*, 115 Ohio App.3d 583 (1st Dist. 1996); *National Treasury Employees v. Von Raab*, 489 U.S. 656 (1989).

Appellant asks the Court to abrogate decades of jurisprudence of administrative search warrants. Appellant does not want this Court to "clarify" *Camara*; it wants this Court to entirely reject *Camara* and overrule this Court's decision in *Eaton*. This request by Appellant would render the standard practice for all routine administrative inspections that every Ohio governmental entity uses to maintain the public health, safety, and welfare unconstitutional. It also could potentially invalidate numerous state and local laws that are in place to keep Ohioans safe.

The Court need not lockstep the Ohio Constitution with the United States Constitution in order to rule for the City here. And, in fact, the language of the Ohio Constitution and this Court's prior precedent point the Court to affirm the Fifth District.

A. The Ohio Constitution does not provide a heightened or unique standard of probable cause for administrative search warrants.

Appellant claims that the Ohio Constitution provides a heightened standard of probable cause beyond the protections provided by the Fourth Amendment for administrative search warrants. This proposition is unsupported by the plain language of the Ohio Constitution. It also has no support in the case law—in Ohio or elsewhere. Appellant, however, is quick to criticize the Fifth District's reliance on the United States Supreme Court's decision in *Camara*. That overlooks this Court's reliance (and numerous other Ohio courts' reliance) on the United States Supreme Court's analysis—not as binding authority over a provision of the Ohio Constitution, but as a persuasive, informative look at how a similar provision is applied. And Appellant's position overlooks this Court's holding in *Eaton*.

1. The Ohio Constitution is its own document; and the Court must independently analyze it.

"'The Ohio Constitution is a document of independent force,' and—subject to the federal Supremacy Clause—[the Court is] 'unrestricted' in interpreting it independently from the United States Constitution." *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 19, quoting *Arnold v. Cleveland*, 67 Ohio St.3d 35 (1993), paragraph one of the syllabus. Typically, the federal Constitution provides a "floor" of rights, and state constitutions can then impose greater protections. *Id.* at ¶ 20, citing *Arnold* at paragraph one of the syllabus. State constitutions have long been considered the "primary protectors of individual rights." *Id.* at ¶ 21, citing Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV.L.REV. 489, 501-502 (1977).

At times, state courts searched for "analogous" provisions between state constitutions and the federal constitution and simply interpreted the provisions in lockstep. *Id.*, citing Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 174 (2018). It often meant that state courts would ignore the actual language of their own state constitution, including whatever history and tradition might have led to the adoption of that constitutional provision, and instead just deferred to how the United States Supreme Court interpreted the analogous provisions. *Id.* There has been a trend to depart from this lockstep approach—including from this Court. *See, e.g., id.* at ¶ 22-25.

But that does not mean that *all* provisions must be interpreted differently. *See, e.g., State v. Wogenstahl*, 75 Ohio St.3d 344, 363 (1996); *see also Moe v. Yost*, 2025-Ohio-914, ¶ 41-42 (10th Dist.). Indeed, this Court recently (and unanimously) articulated that when the wording of the provisions in the Ohio Constitution and the federal Constitution are nearly identical, the provisions were adopted in similar time periods, and the constitutional provisions have a foundation and basis in the same kind of understandings, the Court need not necessarily interpret the Ohio Constitutional provision differently than how the United States Supreme Court has adopted a similar provision. *See State v. Smith*, 2020-Ohio-4441, ¶ 27-29.

When construing the Ohio Constitution, we first look to the "text of the document as understood in light of our history and traditions." *Smith* at ¶ 29, citing *Arnold* at 43-46. Relevant here, Article I, Section 14 of the Ohio Constitution states:

> The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

The Ohio Constitution, of course, provides that no warrants may be issued without probable cause in felony criminal cases, *State v. Jones*, 2015-Ohio-483, ¶ 12, and offers even more protection in certain misdemeanor cases, *State v. Brown*, 2003-Ohio-3931, ¶ 22-25 (extending the Ohio Constitution's provision beyond that of the Fourth Amendment). The protection extends, too, to warrants regarding the detention of material witnesses. *State v. Eatmon*, 2022-Ohio-1197, ¶ 27 (aligning the Ohio Constitution's protection with how federal courts have similarly applied the federal Constitution).

This Court's only precedent discussing administrative searches is *Eaton*. In *Eaton*, the Court looked to whether an ordinance allowing a City of Dayton housing inspector to enter any dwelling at any reasonable hour to conduct an inspection to ensure that minimum housing standards had been met violated Article I, Section 14 of the Ohio Constitution. *Id*. at 123. The ordinance at issue determined that the housing standards were in the interests of the public health, safety and comfort because it established minimum standards which governed "utilities, facilities and other physical things and conditions essential to make dwellings safe, sanitary and fit for human habitation." *Id*. at 138. This Court held that the Dayton ordinance did not violate Article I, Section 14 of the Ohio Constitution because the right of a property owner "should be subordinate to the general health and safety of the community where he lives" especially considering the reasonableness of the housing inspector's inspection. *Id*. at 138.

2. The Ohio Constitution's provision and the federal Constitution's provision are nearly identical; and this Court can and should look to interpretation of the Fourth Amendment by the United States Supreme Court.

This Court's pronouncement regarding administrative search warrants doesn't stand on an island. It is consistent with how Ohio appellate courts have interpreted administrative-search-

warrant jurisprudence; and how the United States Supreme Court has applied nearly an identical provision in the Fourth Amendment to the federal Constitution.

The Fourth Amendment to the United States Constitution reads as follows:

> 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.

This Court's observation that "[t]he language of Section 14, Article I of the Ohio Constitution and the Fourth Amendment is virtually identical" is important. *State v. Robinette*, 80 Ohio St.3d 234, 238 (1997).

Sure, this Court has previously articulated that it "generally 'harmonize[s] [its] interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, *unless there are persuasive reasons to find otherwise*." (Emphasis in original.) *State v. Bembry*, 2017-Ohio-8114, ¶ 24. That is a *general* principle; and not one that the City is necessarily advocating for here. But, as the Court articulated in *State v. Smith*, 2020-Ohio-4441, when the constitutional provisions have nearly identical language, were adopted at similar times, and have a basis in the same understanding, the Court need not find a reason to interpret the provisions differently just to do so. This is one of those times.

The Fourth Amendment was ratified in 1791. Ohio's warrant history is more nuanced. The original Ohio Constitution, adopted in 1802, contained protection against unreasonable searches and seizures, and prohibited "general warrants, whereby an officer may be commanded to search suspected places, without probable evidence of the fact committed." *See* Ohio Const. of 1802, art. VIII, § 5. The language was changed, however, when a new Ohio Constitution was adopted in 1851 to the language that currently exists in Article I, Section 14. *See* Ohio Const., art. I, § 14. The

language adopted in 1851, of course, mirrors nearly identically that of the Fourth Amendment—which was ratified 60 years earlier. The framers of Ohio's 1851 Constitution, then, knew exactly the language they were using from the Fourth Amendment.

So, too, did this Court's interpretation of Article I, Section 14 near the time of its adoption. In fact, this Court noted then that the Ohio Constitution's provision and the federal Constitution's provisions "is in almost the same words." *Eichenlaub v. State*, 36 Ohio St. 140, 142 (1880). Even then, the Court acknowledged that the two did not apply to the same offenses. *Id.* at 142-143. This Court did note, though, that the provisions in the 1802 Constitution and the 1851 Constitution had "no other or different meaning." *Id.* at 143.

The Ohio Constitution is a document of independent force and authority; but the Court need not recreate the wheel simply because Appellant asks it to. The Fourth Amendment and Article I, Section 14 read similarly for a reason—they offer similar protections and Ohio voters desired for their Constitution to mirror the Fourth Amendment.

3. The United States Supreme Court's decision in *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523 (1967) is instructive regarding administrative search warrants.

Because Article I, Section 14 and the Fourth Amendment are similar provisions that offer similar protections, this Court can look to decisions by the United States Supreme Court for instructive guidance. This is not to say that the Court *must* follow the United States Supreme Court's decision; but only that it can look to another court's interpretation of a similar provision on a similar issue. The Court should do that here.

The United States Supreme Court has clarified that the traditional "probable-cause standard is peculiarly related to criminal investigations" and is "unhelpful in analyzing the reasonableness of routine administrative functions, especially where the [g]overnment seeks to prevent the development of hazardous conditions[.]" *National Treasury Employees v. Von Raab*, 489 U.S. 656,

667-68, (1989), citing *Camara* at 535. Although administrative searches are undoubtedly encompassed by the Fourth Amendment, "[p]robable cause in the criminal law sense is not required." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320 (1978), citing *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987). Furthermore, "in certain circumstances government investigators conducting searches pursuant to a regulatory scheme need not adhere to the usual warrant or probable-cause requirements[.]" *Griffin* at 873.

As such, the United States Supreme Court administrative inspection warrant jurisprudence has developed into three categories: (1) a reasonable suspicion that a code violation exists under *Marshall*, 436 U.S. at 320, (2) reasonable legislative or administrative standards for conducting the inspection have been satisfied under *Camara*, 387 U.S. at 536-38, or lastly (3) or "special needs, beyond the normal need for law enforcement" would make the traditional probable-cause requirement impracticable as proscribed under *Griffin*, 483 U.S. at 873.

"Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken." *Camara* at 538, quoting *Frank v. Maryland*, 359 U.S. 360, 383 (1959). "Time and experience have forcefully taught that the power to inspect dwelling places . . . is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts." *Id.* at 537.

The need for an administrative search warrant arises where a search must be undertaken as part of an effort "aimed at securing city-wide compliance with minimum physical standards for private property" or where "[t]he primary governmental interest at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety." *Id.* at

535. And the passage of time between inspections is a basis for issuance of an administrative warrant. *Id*. at 537.

Beyond the Fifth District here, at least one other appellate court has analyzed and examined the reasonable legislative and administrative standards applied to administrative inspection warrants. In *Kaim Properties, L.L.C. v. Mentor*, 2013-Ohio-4291 (11th Dist.), the city enacted a rental license and inspection ordinance essentially identical to the City's ordinance here. *Id.* at ¶ 1. Prior to obtaining a certificate of occupancy, the city required an inspection to ensure compliance with a variety of health, safety and welfare standards. *Id.* at ¶ 4. The Eleventh District upheld the city's rental-housing program and found that an administrative inspection warrant for the premises can be lawfully issued following the owner's refusal to allow inspection. *Id.* at ¶ 40. The court held that "it is well settled that the government can obtain a warrant for administrative inspections." *Id.* at ¶ 40, citing *Marshall*, 436 U.S. at 320. "[F]or purposes of an administrative search, probable cause justifying the issuance of a warrant may be based on evidence of an existing violation or on a showing that reasonable legislative standards for conducting an inspection are satisfied." *Id*. citing *Marshall* at 320.

This Court has not specifically adopted the reasoning in *Camara*. But it should look to it here in finding that Article I, Section 14 of the Ohio Constitution (1) permits administrative search warrants that are (2) based upon probable cause, (3) including whether reasonable legislative or administrative standards for conducting the inspection have been satisfied. It is consistent with the plain language of the constitutional provision. It flows from this Court's pronouncement in *Eaton*. And it is compatible with how the United States Supreme Court has interpreted and applied the Fourth Amendment—which mirrors the language and meaning of Article I, Section 14.

B. Appellant's reliance on standards developed through criminal search warrants are irrelevant.

The bulk of case law that Appellant relies on to suggest that the Ohio Constitution provides a heightened standard of probable cause are irrelevant—they either regard criminal investigatory search warrants (which are entirely differently) or are from other states that examine those state's constitutions that simply do not help this Court in determining the protection that Article I, Section 14 provides.

The cases that look at criminal investigatory search warrants *do* have heightened or additional standards—and for good reason. First, there are specific requirements enumerated within R.C. Chapter 2933. Second, Rule of Criminal Procedure 41 imposes additional requirements. For instance, a criminal investigatory search warrant must be issued to a prosecuting attorney and/or a law enforcement officer as required by Crim.R. 41(A). Further, that search warrant must be "directed to a law enforcement officer" pursuant to Crim.R. 41(C)(2). In the administrative inspection warrant context, the Crim.R. 41 requirements are directly in conflict with the unambiguous statutory language, which requires a search warrant to "be directed to the proper law enforcement officer *or other authorized individual*[.]" (Emphasis added.) R.C. 2933.24(A). Appellant entirely ignores these different standards articulated by Crim.R. 41 and R.C. Chapter 2933.

Instead, Appellant focuses on a recent Pennsylvania Supreme Court case, *Interest of Y.W.-B.*, 671 Pa. 103 (2021). In *Y.W.-B.*, the Philadelphia Department of Human Services, the equivalent of Ohio's children services agency, sought to conduct a child welfare home safety assessment based upon an anonymous tip of child neglect allegations. *Id*. at 115. The anonymous tip was based upon an allegation that the child accompanied mother to a political protest in front of a department of human services' office, and that the child had not eaten during an eight-hour period. *Id*. As a

result of the anonymous tip, the state agency initiated civil child-neglect proceedings and filed a petition in family court seeking to compel the parents' cooperation with an inspection of parents' home as part of the child-neglect investigation. *Id*. The trial court found probable cause and granted the petition to inspect the home. *Id*. at 119.

The Pennsylvania Supreme Court found that there was no probable cause to conduct the search of the home. *Id*. at 158. The court based its ruling on several grounds, but focused on the fact that there was no nexus between the allegations in the petition and child's home. *Id*. at 152. The court noted that the petition stated that "during an eight-hour period, while protesting before the [department of human services] it was 'unknown' whether Mother fed her child who was with her. This allegation has no connection whatsoever to the family's home." *Id*.

The court refused to rely on *Camara*, noting that "[t]he evidentiary principles used to guide an analysis of whether sufficient evidence exists to establish probable cause has developed over many years in a wide variety of contexts." *Id*. Further, the court noted that "*Camara* has no application with respect to home visits to investigate allegations of child neglect[]" because "probable cause to conduct a home visit depends upon whether probable cause exists to justify the entry into a particular home based upon credible evidence that child neglect may be occurring in that particular home." *Id*. at 135. Whereas an administrative inspection warrant involves a "decision to conduct an area inspection based upon its appraisal of the conditions in the area as a whole to protect the public[.]" *Id*.

Again, the Pennsylvania Supreme Court's interpretation of criminal search warrants regarding the congruence of the Fourth Amendment and the Article I, Section 8 of the Pennsylvania Constitution is not binding on this Court. And, even less so when the Pennsylvania constitutional provision contains different language than both the Fourth Amendment and Article I, Section 14

of the Ohio Constitution, for that matter. *Compare id.* at 129 *with* Ohio Const., art. I, § 14. Specifically, Article I, Section 8 of the Pennsylvania Constitution requires a "high level of particularity" and that warrants "describe 'as nearly as may be' the place to be searched . . .." *Y.W.-B.* at 129, quoting Pa. Const., art. I, § 8.

In addition, the objective of a criminal search is inherently different than that of an administrative inspection warrant. While a warrant is required to conduct a non-consensual search, the objective of the search determines whether an administrative or a criminal warrant is required. *Michigan v. Clifford*, 464 U.S. 287, 294 (1984). Where the primary objective is to gather evidence of criminal conduct, then a criminal search warrant supported by criminal-type probable cause is required. *Id*. However, where the primary objective is to ascertain compliance with health and safety standards as set forth in regulatory ordinances, an administrative search warrant supported by less stringent probable cause requirements is appropriate. *See id*. After all, the inspection is of the rental housing itself, not personal belongings. *Camara* at 537.

Appellant also attempts to point to two cases that have no bearing whatsoever on this Court's decision. One, *Norwood v. Horney*, 2006-Ohio-3799, deals with the appropriation of private property by the government. Appellant attempts to show that the Court has, in the past, required heightened scrutiny when reviewing the use of the appropriation power. But this has no relevance to administrative search warrants. Two, *TWISM Ents., LLC v. State Bd. of Registration for Pro. Engineer & Surveyors*, 2022-Ohio-4677, explored whether the Court needs to defer to the judgment of an administrative agency. Presumably, Appellant cites to this case to posit that all administrative agencies are bad and can't be trusted. But, again, the relevance of this case is farfetched—especially in light of the fact that the City's rental-registration program requires that

the City request an administrative search warrant through the court system (which necessarily takes it out of the hands of solely the administrative agency).

C. Appellant was provided with a significant amount of due process that alleviates any constitutional deprivation or injury.

The most ironic thing in this case is that Appellant was afforded *more* due process than almost any other subject of a search warrant; yet still brought this appeal. Appellant certainly received more protections than any criminal defendant would have received prior to the issuance of a criminal investigatory search warrant and certainly more than any person subject to an administrative search warrant would have received.

That stems, in part, from the City's rental-registration program—which requires that the City secure "a warrant from a court of competent jurisdiction." North Canton Ordinance § 703.04(c)(4)(C). It also arises out of the way that the trial court treated the City's Application for the administrative search warrant in the first place. R.1. When the City filed the Application with the trial court, it was assigned a civil case number and proceeded on a civil-case track under the Rules of Civil Procedure.

The trial court contemplated the Application, an answer, counterclaims, a response to the counterclaims, and cross combined motions for judgment on the pleadings and for summary judgment. In short, the trial court heard from both sides, multiple times, on whether probable cause existed and whether the City had the authority to seek an administrative search warrant. Appellant had the opportunity to put on evidence and to raise legal arguments against the administrative search warrant prior to its issuance—which is more than what most all other subjects of warrants can say.

It strains credibility for Appellant to suggest that the City simply desired to exploit "illusory hoops rather than substantive constitutional limits." Appellant had the opportunity to (1) know

about the warrant, (2) file counterclaims to the warrant application, (3) obtain and put on evidence related to the warrant application, (4) file briefs against the warrant application, and (5) make arguments to the trial court related to the warrant application. That is due process.

D. This case is moot because Appellant received a six-month rental license.

Fundamentally, there is no longer any case or controversy for this Court to decide. Appellant has long since received its rental license pursuant to North Canton Codified Ordinance § 703.04(c)(4)(C)(ii). The relevant local regulation provides that if a property owner fails to schedule inspections the City may either: (1) seek the judicial authorization of a warrant or (2) grant a six-month rental license for the rental unit in question. *Id.* The City did initially request an administrative search warrant; but during the pendency of this case, the City issued a rental license to Appellant. Appellant continues to be able to operate the property in question as a rental in the City and the City has no intention of revoking that license unless there are legitimate grounds because of health and safety violations. Other than Appellant and its counsel's desire to create a new standard for probable cause when an administrative search warrant is sought, there is no current controversy for this Court to decide.

Appellant's Proposition of Law No. II:

> **The original public meaning of *Probable Cause* in 1851 connotes that courts must confirm evidence suggesting the probability, however slight, of unlawfulness located at the home the municipality seeks the warrant to search.**

Appellant's second proposition of law suggests that "probable cause" is some amorphous, mystical concept that is still being chased. But that ignores reality. This Court has long articulated what probable cause means; and should not disrupt its pronouncements now.

E. The original public meaning of Probable Cause in the 1851 Constitution is consistent with Probable Cause being supported by reasonable legislative standards.

Appellant claims that the historical understanding of "probable cause" cannot be satisfied through a showing of reasonable administrative regulatory scheme is incorrect. Appellant's Br. at 20. Appellant's argument that original understanding of the Article I, Section 14 of the Ohio Constitution requires a showing of some probability of unlawfulness is based on (1) courts defining probable cause in the criminal context; and (2) the definition of probable meaning generally "likely." *Id.* Neither of these arguments supports that probable cause for an administrative search warrant can only be shown in the same manner as a criminal warrant application.

At the time of the adoption of the 1851 Constitution, municipalities across the State had already adopted early versions of ordinances designed to protect their residents from substandard and unsafe housing conditions. *See*, Charter, Amendments, and General Ordinances of the City of Cincinnati 202, 208 (Day & Co. 1850) ("Cin. Fire Ord."); Charters of the village of Cleveland and City of Cleveland (Harris, Fairbanks & Co. 1851); Laws and Ordinances of the City of Dayton 273-74 (Anthony Stephens & Josiah Loell eds., Dayton Empire 1962). These provisions included the ability of municipal officials to conduct administrative searches without the need to articulate particular facts showing unlawfulness. For example, Cincinnati's early ordinance authorized "firewardens" to enter private residences on any weekday for the purpose of conducting an inspection. Cin. Fire Ord. These laws did not run afoul of Article I, Section 14 of the Ohio Constitution.

Clearly at the time of its adoption the residents of Ohio would have understood Article I, Section 14 as permissive of investigative searches as part of health and safety inspections pursuant to reasonable legislation. Additionally, shortly after the adoption of the 1851 Constitution, more municipalities across the State created their own health and safety regulations for buildings. *See*,

General Ordinances of the City of Columbus, Ohio 49 (H.E. Bryan, ed., Gazette Printing and Publishing House 1882); Laws and Ordinances, Published by Authority of City Council of the City of Toledo 171-72 (Commercial Steam Book & Job Press 1864).

This Court explicitly recognized this long history of recognizing searches pursuant to reasonable health and safety regulations were not a violation of Article I, Section 14. *Eaton*, 168 Ohio St. at 130 (it has long been "taken for granted throughout the United States that inspections of buildings, including dwellings, under reasonable regulations did not constitute 'unreasonable search and seizure' in the constitutional sense."). To date, this Court has continued this tradition and never ruled that a warrant is required for an administrative inspection. *Id*. In short, until *Camara* was decided in 1967 there was no understanding that a warrant may be required for a nonconsensual non-criminal health and safety search in Ohio. It was also further the general understanding at the time of the ratification of the 1851 Constitution that administrative searches pursuant to health and safety regulations were not a violation of Article I, Section 14 of the Ohio Constitution. Accordingly, contemporaneous interpretations of probable cause in 1851 support this Court affirming of the Fifth District's opinion.

F. Appellant's reliance on *Ash v. Marlow* is convenient, but misplaced.

To Appellant's credit, it found a case from this Court the year that that Article I, Section 14 was adopted that discussed probable cause. Appellant tries to claim this definition of probable cause as dispositive; but that fails to account for a few things that entirely undermine *Ash*'s applicability. It has none.

First, *Ash* involved a trial court providing a criminal definition of "probable cause" to the jury in its interrogatories for considering a claim of malicious prosecution. There, a plaintiff brought a malicious-prosecution claim against defendants that alleged they "falsely, and maliciously, and without any reasonable or probable cause," prosecuted the plaintiff. *Ash v.*

Marlow, 20 Ohio 119, 120 (1851). The defendants claimed that they had probable cause to believe that the plaintiff had committed the alleged crimes. The trial court charged the jury that "reasonable or probable cause * * * must be facts and circumstances so strong in themselves as to lead and persuade an impartial, ingenuous and reasonable man of common capacity, to believe that the plaintiff was guilty of the offense charged." *Id*. at 121-122.

Second, this Court has been clear that its definition of probable cause in *Ash* only applies to malicious prosecutions. *See Melanowski v. Judy*, 102 Ohio St. 153, 155 (1921) ("In actions for malicious prosecution . . . [w]hat constitutes probable cause has been defined by this court in the early case of *Ash*.").; *Rogers v. Barbera*, 170 Ohio St. 241, 246 (1960) ("An almost classic definition of probable cause, *as it pertains to a malicious prosecution action*, was adopted by this court, as follows, in *Ash*.").

Appellant tries to have the Court adopt the definition of "probable cause" from *Ash*. This is just a step too far—a jury charge of the definition of probable cause in the context of a malicious prosecution rather than probable cause supporting a warrant.

G. The definition of probable cause is well known.

This Court has noted that "probable cause, is a term that has been defined as 'a reasonable ground for belief of guilt.'" *State v. Moore*, 2000-Ohio-10, ¶49, quoting *Carroll v. United States*, 267 U.S. 132, 161 (1925). More recently, this Court, in analyzing "probable cause" in the juvenile-bindover context, noted that "[p]robable cause is a familiar concept in the law. As the name suggests, probable cause 'deals with probabilities.'" *State v. Martin*, 2022-Ohio-4175, ¶ 16, quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003), citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949). And the very basis "of all the definitions of probable cause is a reasonable ground for belief of guilt[.]'" *Id*. at ¶ 20, quoting *Pringle* at 371, quoting *Brinegar* at 175. "Thus, probable cause exists when the facts and circumstances are sufficient to provide a reasonable belief that the

accused has committed a crime." *Id.*, citing *Brinegar* at 175-176, citing *Carroll* at 162. The probable cause "inquiry requires the judge to review all the circumstances and make 'a practical, common-sense decision' as to whether probable cause is present." *Id.*, quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

H. The General Assembly has established probable-cause standards for administrative searches; and the City adhered to those standards.

Not only does the Ohio Constitution require probable cause, the General Assembly has articulated probable-cause standards. *See* R.C. 2933.22(B) and R.C. 2933.21(F). These codified probable-cause standards authorize a court to issue a warrant to search a "house" for "the existence of physical conditions which are *or may become* hazardous to the public health, safety, or welfare, when governmental inspections of property are authorized or required by law." (Emphasis added.) R.C. 2933.21(F). And a court may only issue such a warrant "upon probable cause to believe that conditions exist upon such property which are *or may become* hazardous to the public health, safety, or welfare." (Emphasis added.) R.C. 2933.22(B). This is precisely what the trial court and the Fifth District looked at in this case.

The trial court did not "rubberstamp" the rental-registration program here. The trial court evaluated the "reasonableness" of the City's ordinance standards and the Fifth District in turn evaluated these standards de novo and found them to be reasonable and noted the "standards were satisfied in this case." Fifth District Opinion at ¶ 24.

> The stated purpose of the [City's] ordinance regarding the registration and inspection of rental properties was to establish a registry of rental units so that the [City] could ensure that properties rented within the city limits complied with certain safety issues, such as the presence of smoke detectors, carbon monoxide detectors, and other safety measures; to hold all property owners and agents to the same property maintenance standards as set forth in Part 17 of the Codified Ordinances of the City of North Canton; and, to provide a safe and sanitary environment for the residents and their guests of all rental dwelling units.

Id. at ¶ 22. As the Fifth District noted, "[t]here is no 'unreviewed discretion of the enforcement officer' in this case, as the trial court ensures the reasonableness of the requested warrant." *Id*. at ¶ 23.

The Fifth District astutely noted that the City's administrative search warrant was subjected to "an adversarial litigation procedure." *Id*. The appellate court also found that the "ordinance provides a definitive standard by which the administrative warrant may issue and contains a clearly defined purpose" and "the inspection checklist provides very specific parameters by which the inspection may be completed." *Id*. at ¶ 26. The City's "ordinance provides a definitive standard by which the administrative warrant may issue and contains a clearly defined purpose." *Id*. There is no dispute here that the City filed its application with the trial court, the matter proceeded on the typical track for civil litigation, and the trial court reviewed the facts and the law before issuing the administrative search warrant. The trial court and the Fifth District agreed that probable cause existed and upheld the warrant based upon the reasonable legislative standards for conducting the inspection. *Camara*, 387 U.S. at 538.

This Court's should affirm the Fifth District's decision; such a decision is supported by the original understanding of Article I, Section 14 and the City's compliance with the long history of reasonable standards established by both local and state health and safety regulations.

IV. CONCLUSION

For the reasons stated above, the Court should affirm the Fifth District's judgment.

Respectfully submitted,

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