**IN THE SUPREME COURT OF OHIO**

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| **CF HOMES LLC, *et al.,*** | ) | Case No. 2025-458 |
| **Defendants-Appellants,** | ) | ON APPEAL from the Court of Appeals for the Fifth Appellate District of Ohio |
| **-VS-** | ) | |
| | ) | Ct. of App. No. 2024CA00108, 2025-Ohio-522 |
| **DEPARTMENT OF DEVELOPMENT SERVICES FOR THE CITY OF NORTH CANTON,** | ) | |
| **Plaintiff-Appellee.** | ) | |

# MERIT BRIEF OF APPELLANT CF HOMES LLC

Maurice A. Thompson (0078548)
1851 Center for Constitutional Law
122 E. Main Street
Columbus, Ohio 43215
Tel: (614) 340-9817
MThompson@OhioConstitution.org

Thomas W. Connors
Mendenhall Law Group
190 North Union Street – Ste 201
Akron, OH 44304
Tel: (330) 888-1240
*TConnors@WarnerMendenhall.com*

*Attorneys for Defendant-Appellant*
*CF Homes LLC*

Brenden Heil (0091991)
Bricker Graydon LLP
1100 Superior Ave. – Ste 1600
Cleveland, OH 44114
Tel: (216) 523-5593
*BHeil@BrickerGraydon.com*

*Attorney for Plaintiff-Appellee*
*City of North Canton, Ohio*

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*"I question obviating probable cause altogether when the government establishes 'legislative or administrative' standards. This appears to be both ahistorical and a late judicial fabrication."*
-2025-Ohio-522, ¶28, 33 (King, J. concurring separately)

This Warrants Clause case uniquely focuses *not* on governmental entry into homes arising from *criminal* allegations or into commercial buildings used by regulated industries arising from regulatory infractions. Rather, this case is about the extent to which the Warrants Clause protects Ohioans *in their occupied homes* when Ohio municipalities attempt intrusions on grounds *unrelated* to criminal allegations. The City of North Canton claims such entry must be virtually unhindered. But the Ohio Constitution requires more.

Noncriminal home inspections, when nonconsensual and nonemergency, require warrants. See *Wilson v. Cincinnati,* 46 Ohio St.2d 138 (1976)(impermissible to impose penalty for homeowners' failure to consent to warrantless noncriminal search); *Baker v. City of Portsmouth*, No. 1:14CV5L2, 2015 WL 5822659 (S.D. Ohio Oct. 1, 2015)(noncriminal rental home inspections require warrants); *Thompson v. City of Oakwood, Ohio*, 307 F. Supp. 3d 761, 772 (S.D. Ohio 2018)(noncriminal inspection of homes for sale require warrants); *Pund v. City of Bedford, Ohio*, 339 F. Supp. 3d 701, 714 (N.D. Ohio 2018)(noncriminal inspections of homes for rent or sale require warrants).

These precedents and others are emphatic: requirement of a search warrant before government may enter one's home is important *due to the sanctity of Ohioans' houses*. But when should that warrant be issued?

In interpreting and applying the Ohio Constitution as equally or less protective than the Fourth Amendment in *noncriminal* search warrant proceedings, the Court of Appeals erroneously imports federal precedent and analysis into the prerequisite in Article I, Section 14 that *Probable Cause* be factually demonstrated before the issuance of a noncriminal warrant to search the entire interior of an

Ohioan's occupied home, citing *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967).

This Court should now reaffirm the original public (and longstanding) meaning of the *Probable Cause* safeguard in Article I, Section 14 as one that is meaningfully protective of not just *criminals*' privacy, but also noncriminal Ohioans' private residences. More specifically, the guarantee of *Probable Cause* in Article I, Section 14 of the Ohio Constitution requires – before a state judge may issue *any* warrant to search an occupied home, no matter how labeled – that municipalities demonstrate a *probability of something*. Namely, "the suspected wrongdoing at issue," "the existence of a nexus between the areas to be searched" and that wrongdoing, and "evidence establishing individualized suspicion exists allowing entry into a private home," since "[t]hese fundamental principles are critical to ensure that a court's finding of probable cause is firmly rooted in facts that support a constitutional intrusion into a private home." *Int. of Y.W.-B.,* 265 A.3d 602, 617–35 (Pa. 2021), ¶22. To hold otherwise would render both the warrant requirement emphasized above *and* the *Probable Cause* safeguard at issue here illusory hoops rather than substantive constitutional limits.

## STATEMENT OF THE CASE AND FACTS

"This case does not involve an attempted warrantless search, nor does it involve criminal charges." *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶19. Likewise, this case does not involve a facial or as-applied challenge to the City's ordinances. Rather, it is limited to a much more precise issue: should the City's Warrant Application below, to search *this* specific home, be granted or denied – when the record contains no evidence of unlawfulness or other threats therein.

To enforce its new rental inspection mandate, the City sought permission from Defendants to undertake the aforesaid search of 914 N. Main Street in North Canton. CF Homes LLC Member Lila Wohlwend politely declined, responding "we do not consent to the rental inspection," "if they are

optional, we are going to opt out of them," and "if you intend to obtain a warrant, please notify us ahead of time." See *Exhibit 1* to June 27, 2023 *Search Warrant Affidavit of Michael Porter.*

So the City sought a search warrant, citing two grounds. *First*, the "Code Enforcement Officer for the Department of Developmental Services for the City of North Canton" affirms under oath that "the real property located at 914 North Main Street in North Canton is owned by CF Homes," and "has never had a rental inspection." *Porter Affidavit*, ¶7-8. *Second*, "CF Homes sent the Department a letter denying the Department access." These two factual allegations are the sole facts unique to CF Homes upon which the City sought a search warrant. There is no factual allegation of any unlawful condition, threat, or conduct at 914 North Main Street.

To the contrary, the only facts in the record regarding the home(s) are those of CF Homes LLC member Lila Wohlwend and 914 N. Main Street tenant James Daniska (one of several tenants in the six-unit property), each of whom affirm that there are neither any meaningful violations of law nor any conditions that pose a hazard to anyone at 914 N. Main Street in North Canton. *Affidavit of Wohlwend,* ¶ 2, 3, 11; *Affidavit of Daniska,* ¶4-6. The only facts before Trial Court, from numerous sources, were that the home at 914 N. Main remains in excellent condition, and a threat to nobody.

Accordingly, when the City of North Canton filed a Warrant Application (properly construed as an initiating pleading in a civil case), CF Homes moved for Partial Judgment on the Pleadings or in the Alternative Partial Summary Judgment, exclusively on the issue of whether the Warrant Application before the court should be granted in light of the Ohio Constitution's *Probable Cause* guarantees.

In response, the Trial Court's June 20, 2024 Judgment Entry ("Entry," or "JE") correctly identified the primary issue as "does probable cause exist to issue the administrative warrant requested by North Canton," *JE*, p. 8.

But despite CF Homes raising exclusively Article I, Section 14 objections, the Trial Court extensively block-quoted the *Fourth Amendment's* interpretation from the second holding of *Camara* and the subjective public policy preferences of the Warren Court articulated therein. *Camara,* at 538 (holding that searches of private apartments for housing code violations require warrants, but then further holding that probable cause exists when a city is "securing citywide compliance with minimum physical standards private property," when there is a "need for the inspection" or "reasonable goals of code enforcement," when such searches could be "greatly hobbled" by enforcement of the text of the federal constitution, or when "the need or preventative action is great"). *JE,* pp. 11-12.

Employing this methodology, the Trial Court perfunctorily concluded, directly after simply block-quoting the foregoing passages of *dicta* from *Camara*, as follows:

> **In light of the foregoing, the Court finds that 'probable cause' for the requested administrative warrant in this case does not arise out of the facts of this particular case . . . Rather, it is a policy consideration by the Court that must be made in determining if probable cause exists."**

*JE*, p. 12 (emphasis added). The Trial Court then applied a fabricated balancing test to determine whether sufficient Probable Cause justified issuance of the Search Warrant: "the Court must determine if the public's need for effective enforcement of Chapter 703 *outweighs* CF Home's expectation of privacy, i.e. 'does a valid public interest justify the intrusion' . . . if so, probable cause exists for the issuance of the warrant." *JE*, pp. 12-13 (emphasis added). Unsurprisingly, the Court was able to instantly conclude that the City's "interests are legitimate and valid needs . . . the Court finds that the public need for effective enforcement of the regulation involved outweighs an owner's expectation of privacy . . . North Canton has established probable cause for the issuance of a warrant to inspect the rental premises owned by CF Homes at 914 North Main Street in North Canton, Ohio." *JE*, p. 13 (emphasis added).

To justify its conclusion, the Trial Court looked beyond the four corners of City's Search Warrant Affidavit, instead relying on the City's own legislative history, for evidence of "legitimacy" and "validity" of the City's "interests" and the "public need for effective enforcement." *JE*, p. 13. In support, it cited the following exclamations made by one member of North Canton City Council when the rental inspection mandate was being debated: "probably over a third of our housing stock in the city is rental property" and "we actually know very little about it," so "the question in my mind is, do these properties adequately protect the health, safety, and welfare of the people who are renting the property . . . I do not know." *JE*, p. 3.

In essence, following *Camara's* policy rationales induced the Trial Court into writing a subpar public policy whitepaper with no acknowledgement of independent protection of the Ohio Constitution, tenants' rights, or binding Ohio Supreme Court precedent.[1]

Although it acknowledged that "appellant focuses its argument on Article I, Section 14 of the Ohio Constitution, submitting that it offers more expansive protections than the Fourth Amendment to the United States Constitution," the Court of Appeals did not correct these errors. *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶11-14, 19. Instead, it too opted to resolve the matter through simply reciting large block quotes of *Camara,* concluding *"[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.,* ¶19.

The Court posited several grounds for this construction of *Probable Cause. First,* it claimed the clause in Article I, Section 14 that is not under review here is "nearly identical to the language contained

[1] In the interest of judicial economy, Appellant observes that the Trial Court's Entry addresses three issues not argued by Appellants below, suggesting that such arguments "*appear* to be asserted": whether the City's ordinances are in any part impermissibly vague, whether the City's ordinances impermissibly deny equal protection guarantees, and whether the City's ordinances force warrantless searches. See *Judgment Entry*, at pp. 5, 7, and 10 (Fn. 6), respectively. Appellants do not concur with the Trial Court's misimpressions of "appearances" and this Court need not invest time on those issues.

in the Fourth Amendment" and some holdings interpreting the *Search* and *Seizure* clause of Section 14 "afford the same level of protection as the United States Constitution." ¶20-21 (erroneously explaining "[t]hese protections against *unreasonable searches and seizures* have been similarly interpreted and applied. Article I, Section 14 does not alter our analysis of the issues, nor does it alter our application of *Camara"),* citing *State v. Robinette*, 80 Ohio St.3d 234 (1997); *State v. Hoffman*, 2014-Ohio-4795, ¶14.

*Second,* the Court of Appeals relied upon *policy concerns* and empirics not within the search warrant affidavit or otherwise within the record, rather than text or original public meaning, emphasizing "The stated purpose of the appellee's ordinance," "safety," "importance," "some landlords are not as conscientious," "renters may be less inclined to report," the "ordinance protects those tenants," "appellee's need," and "reasonable concerns." *Id*., at ¶22-23 (emphasis added).

*Third*, the Court of Appeals reasoned that even without evidence, "a municipality may obtain a warrant for administrative inspections of properties, and probable cause may be based upon *a showing that reasonable legislative standards for conducting an inspection are satisfied*." *Id*., at ¶24 (Emphasis added).

The concurrence properly dissented from the majority's interpretation of *Probable Cause*, observing that the majority's construction and application of the *Probable Cause* safeguard – not definitions of the text at all – were "obviating probable cause altogether," "ahistorical," and beyond what is "plainly rooted in the text, history, and tradition of Section 14."[2] *Id*., at ¶33.

[2] However, the concurrence mistakenly overlooked *Wilson v. Cincinnati,* 46 Ohio St.2d 138 (1976), for the proposition that, in Ohio, noncriminal home inspections, without consent, require search warrants. *Id*., at ¶34-35.

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law No. 1: 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 Court of Appeals relied exclusively on a strain of *federal* precedent delineating the Fourth Amendment, to ascertain "probable cause" to satisfy the Warrants Clause of Article I, Section 14 of the Ohio Constitution – despite differing history, precedents, and underlying values. However, this Court has never adopted the diminished and nontextual *Probable Cause* standard articulated in *Camara*, and ought not do so now.

*Camara* suggested, in the second half of its holding, a bifurcation and relaxation of the probable cause requirement of *the Fourth Amendment* with respect to what it coined "administrative" warrants, even when searching private homes. 387 U.S. 523, 87 S.Ct. 1727 (1967)("'probable cause' to issue a warrant to inspect *must exist if reasonable legislative or administrative standards* for conducting an *area inspection* are satisfied with respect to a particular dwelling").[3] The Court of Appeals' lock-stepping with *Camara* is neither required nor wise.

### A. Construing Ohioans' rights in lockstep with the previously-unadopted *Camara* exception is *not required*.

Federal precedents may diminish *Probable Cause* safeguards provided to homeowners by the *Fourth Amendment*. But this is by no means the final word on the protection of *Ohioans'* homes. Rather, this Court has long been emphatic that the Ohio Constitution's longstanding guarantees are not compromised whenever the United States Supreme Court deviates from a proper interpretation of tantamount provisions within the federal constitution:

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[3] Notably, the searches the City of North Canton seeks a search warrant to undertake here could not plausibly be characterized as "area searches." As the Trial Court's Entry acknowledges, fully two-thirds of the homes in any given area are exempt from the City's inspections. Trial Court Entry, p. 3 (only "rental property" is subject to inspection, and perhaps "a third of [North Canton's] housing stock in the city is rental property").

> If in the midst of current trends toward regimentation of persons and property, this long history of parallelism seems threatened by a narrowing federal interpretation of federal guaranties, it is well to remember that Ohio is a sovereign state and that the fundamental guaranties of the Ohio Bill of Rights have undiminished vitality. Decision here may be and is bottomed on those guaranties.

*Direct Plumbing Supply v. City of Dayton*, 138 Ohio St. 540, 38 N.E.2d 70 (1941).

One prominent example of this principle occurred in the wake of *Kelo v. City of New London*, in which this Court provided greater protection under the Ohio Constitution, despite shared "public use" text with its federal counterpart. This was on account of "the United State Supreme Court's diminishing protection of private property rights." *Moore v. Middletown*, 2010-Ohio-2962, ¶¶ 68-69.

As with *Kelo*, *Camara* altered its interpretation of the federal constitution to afford less protection to the home. Many have observed that the reconstruction of *Probable Cause* in *Camara* is precisely the type of "narrowing federal interpretation of federal guaranties" this Court contemplated in *Direct Plumbing Supply.* State supreme court justices have referenced *Camara,* through its "creation of a previously unknown form of administrative warrant" as "a sharp or radical departure from its previous decisions or approach to the law," a "retrench[ment] on Bill of Rights issues," or at least a "federal precedent [that] does not adequately protect our citizens' basic rights and liberties." *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 156–82 (Minn. 2017)(Anderson and Stras, dissenting).

Scholars concur, acknowledging that that *Camara* opened the door to subjectivity, bias, arbitrariness, and conditions where all warrant applications are reflexively granted. See, *inter alia*, Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of Camara and Terry,* 72 Minn. L. Rev. 383, 385-87 (1988) (arguing Supreme Court "significantly undermined the role of probable cause and set the stage for the long-term expansion of the reasonableness balancing test without proper justification or limits . . . Prior to *Camara*.... [a]lthough reasonableness sometimes necessitated making an exception for obtaining a warrant, probable cause remained sacrosanct, immune

from modification even in the name of reasonableness"); Jack Wade Nowlin, *The Warren Court's House Built on Sand: From Security in Persons, Houses, Papers, and Effects to Mere Reasonableness in Fourth Amendment Doctrine*, 81 Miss. L.J. 1017, 1059 (2012) (arguing open-ended policy-oriented standard" was a departure from the text of the Fourth Amendment and common law); Edwin J. Butterfoss, *A Suspicionless Search and Seizure Quagmire: The Supreme Court Revives the Pretext Doctrine and Creates Another Fine Fourth Amendment Mess*, 40 Creighton L. Rev. 419, 420 (2007) ("The door to suspicion-less searches and seizures under the Fourth Amendment was opened in the landmark case of *Camara* ... when the Court for the first time authorized a search without a showing of individualized suspicion"); Orin S. Kerr, *The Modest Role of the Warrant Clause in National Security Investigations*, 88 Tex. L. Rev. 1669, 1673 (2010) ("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"); and David A. Koplow, *Arms Control Inspection: Constitutional Restrictions on Treaty Verification in the United States*, 63 N.Y.U. L. Rev. 229, 307-08 (1988) ("The major creative act of *Camara* ... was the articulation of an unprecedented apparatus for authorizing administrative search warrants and subpoenas.... [T]he warrant must be issued by an impartial magistrate, but only upon a showing of a special type of probable cause that merely requires the inspecting agency to demonstrate that it has established rational standards guiding the sequence of inspection, and that the proposed subject of the investigation fits into that scheme").

Several principles confirm that this Court need not import this "narrowing federal interpretation of federal guarantees."

*First,* this Court has never explicitly adopted *Camara's* diminished guarantee of probable cause with respect to private residences, and is in no way bound by it.[4] This case calls for no precedent to be

[4] In fact, in *Wilson*, supra, six justices abstained from joining a concurrence seeking to adopt *Camara's* diminished standard of probable cause in dicta.

overturned, and no rights to be "expanded." To the extent that there may be careless *dicta* implying otherwise, this Court in *Bloom* holds that "unreasoned prior precedent" and "unreasoned pronouncements" interpreting Ohio Constitutional guarantees in lockstep with analogous federal guarantees require "reexamination" and are "appropriate to revisit . . . [n]otwithstanding principles of stare decisis." *Bloom*, ¶ 31. This is particularly true of cases that "involved federal constitutional claims with only a brief, undeveloped reference to the Ohio Constitution." *Bloom*, ¶ 31. And any prior lock-stepping with *Camara* by lower courts has thus far been "unreasoned." Before this Court is a surprisingly clean slate.

*Second,* federal courts' interpretation of the federal constitution does not control the meaning of the Ohio Constitution, even when state analogs are similarly-worded. *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 21, 23, 29 (cautioning against "reflexive imitation of the federal courts' interpretation of Federal Constitution"); *State v. Hackett*, 2020-Ohio-6699, ¶26 (Fisher, J., concurring)("coextensive provisions under the Ohio and United States Constitutions do not foreclose the possibility that '[i]n some circumstances, rights afforded to people under the Ohio Constitution are greater"); see also Clint Bolick, *Principles of State Constitutional Interpretation*, 53 Ariz. St. L.J. 771, 787 (2021)("The meaning was established at the time the provision was adopted . . . Even if the wording of both constitutions is identical, there is no constitutional justification for following federal precedent that only originates *after* the people of a state ratify their state constitution").

*Third,* the Fourth Amendment was not incorporated against the states until *Mapp v. Ohio,* 367 U.S. 643 (1961). Section 14 of Article I, adopted 110 years prior, was intended to function independent, not subservient to, federal jurisprudence. "Indeed, for most of the history of the United States, constitutional-rights litigation occurred predominantly in state courts and centered on state constitutional rights. It's no wonder why. The individual rights protected by the United States Constitution did not

originally apply to the states." *Matter of Adoption of M.M.C.*, 2024 WI 18, ¶40, 411 Wis. 2d 389, at 419 (Rebecca Grassl Bradley, J., concurring), citing Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, p. 13 (2018); *Barron ex rel. Tiernan v. Mayor of Baltimore*, 32 U.S. 243 (1833). *Camara* exclusively adjudicates the Fourth Amendment of the *United States* Constitution. As such, it no more dictates the analysis here than a ruling by the Hawaiian Supreme Court on the Hawaii Constitution. *Id.* ("we are not bound to walk in lockstep with the federal courts when it comes to our interpretation of the Ohio Constitution"), citing *State v. Smith*, 162 Ohio St.3d 353, 2020-Ohio-4441, ¶ 28.

*Fourth,* the United States Supreme Court has invited states to apply their search and seizure provisions more broadly than the Fourth Amendment. *Cooper v. California*, 386 U.S. 58, 62 (1967) (noting that states may "impose higher standards on searches and seizures than required by the Federal Constitution"). And other state supreme courts explain reasons for taking the Supreme Court up on the aforesaid invitation. *State v. Mixton*, 250 Ariz. 282, 303–04 (2021), at ¶98 ("It is especially hazardous to hitch the meaning of our constitution to the Supreme Court's Fourth Amendment jurisprudence, which . . . is in fact characterized by confusion and constant change . . . We should not follow that long and winding road of Fourth Amendment jurisprudence to its uncharted destination"), citing *State v. Ingram*, 914 N.W.2d 794, 797–98 (Iowa 2018)(holding that "we encourage stability and finality in law by decoupling Iowa law from the winding and often surprising decisions of the United States Supreme Court," and "take the opportunity to stake out higher constitutional ground"). Scholars have reinforced the coherent basis for divergence. Sutton, *What Does – and Does Not – Ail State Constitutional Law*, 59 U.Kan.L.Rev. 687, at 707 (2011)("Still less is there any reason to think that a highly generalized guarantee, such as prohibition on 'unreasonable searches, would have just one meaning for a range of differently situated sovereigns").

***

Consequently, as a point of departure, this Court is no manner *precluded* from applying the Ohio Constitution – irrespective of what federal courts (or even state courts) have to say about the *Fourth Amendment's* separate guarantee of "probable cause" – to deny the City's Warrant Application here. Lock-stepping the Ohio Constitution with *Camara* is not required.

**B. Construing Ohioans' right to Probable Cause in lockstep with *Camara* is *inadvisable*.**

In lock-stepping with *Camara* below, the Court of Appeals relied exclusively on policy justifications rather than text, and "unreasoned pronouncements" overwhelmingly adjudicating *federal* claims and clauses within Article I, Section 14 other than the Warrants Clause at issue here. Solely on these grounds, and after simply block-quoting *Camara*, did the lower courts hold that search warrants should be issued to forcibly enter all North Canton homes. But Ohio history and tradition eschews reflexive deference doctrines and determination of constitutional meaning through policy-based arguments, while emphasizing textualism, greater protection for property rights related to the home, and separation of powers.

**1. Lock-stepping the Ohio Constitution with *Camara* requires diminishing the judicial role in a manner this Court correctly rejects.**

Implicit in the Court of Appeals determination – borrowing from *Camara* – is that the judicial branch must blindly defer to any municipality's unspoken finding that *Probable Cause* exists to search any and every home that is leased or offered for sale because every such home necessarily features otherwise hidden and dangerous unlawfulness: "a municipality may obtain a warrant for administrative inspections of properties, and probable cause may be based upon *a showing that reasonable legislative standards for conducting an inspection are satisfied*." *CF Homes, supra*., at ¶24. Likewise, so long as the city through some means demonstrates what could be construed as a "public's need" for search warrants and articulates a basic "public interest to justify the intrusion," the Trial Court intends to

continue issue search warrants to enter all North Canton homes. For, "if so, probable cause exists for the issuance of the warrant." *JE*, pp. 12-13.

However, this "City council wins whenever it articulates reasonable standards" approach to constitution rights is just reflexive deference and abdication of the judicial function. Ohio's Separation of Powers guarantee requires more than rubber stamping government power, as against constitutional limits, simply because "it seems like the local government means well."

*First*, this lock-stepping requires undermining separation of powers and deference principles *just clarified* by this Court in *Twism Enterprises v. State Bd. of Reg. for Pro. Engineers & Surveyors,* 2022-Ohio-4677. "The ultimate authority to render definitive interpretations of the law has long been understood as resting exclusively in the judicial power." *Twism*, supra, ¶33, citing *State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 169 (1916) ("The construction of the laws and constitution is for the courts * * *"). This Court explained:

> Mandatory deference also raises questions of judicial independence . . . how can the judiciary fairly decide the case when it turns over to one party the conclusive authority to say what the law means? . . . For this reason, it has been said that mandatory deference creates "systematically biased judgment" in cases where a government agency is a party.

*TWISM*, supra, at ¶34-35 ("We reject all forms of mandatory deference").

While the governmental actor before the Court in *Twism* was a state agency rather than a municipal government, the logic of *Twism* applies with equal force here. Namely, when determining the meaning and existence of *Probable Cause* to issue a warrant to search a particular property, the judicial branch owes no deference to how the municipality drafted the underlying ordinance it relies upon, or whether a municipality states that all homes within any particular category are *inherently* "suspicious."

Justice Scalia debunked such reflexive deference in *Lucas*, explaining that "Since such a justification [by government] can be formulated in practically every case, this amounts to a test of whether the legislature has a stupid staff. We think [a constitutional limit] requires courts to do more

than insist upon artful harm-preventing characterizations." *Lucas v. S.C. Coastal Council,* 505 U.S. 1003, 1025 (1992).

Second, this Court has previously been presented with and correctly rejected such deference to local governments as a rationale for receding from its role in protecting Ohioans' homes. In *Norwood*, this Court differentiated Ohio from the reflexive deference to local governments the United States Supreme Court had *just* applied to green-light trampling property rights in *Kelo.* It explained that whatever the "merit in the notion that deference must be paid to a government's determination that there is sufficient evidence to support a taking in a case in which the taking is for a use that has previously been determined to be a public use, *that deferential review is not satisfied by superficial scrutiny*." *Norwood v. Horney,* 2006-Ohio-3799, at ¶ 66, comparing Ohio jurisprudence with *Kelo v. City of New London CT,* 125 S.Ct. at 2669 (2005). Thus, the constitutional inquiry into "public use is not *established as a matter of law whenever the legislative body acts*." *Id.*

"To the contrary," this Court explained "defining the parameters of the power of eminent domain is a judicial function, and we remain free to define the proper limits of the doctrine." *Norwood,* at ¶ 67, citing *Merrill v. Manchester* (1985), 127 N.H. 234, 236 ("Whether a particular use is a public use is a question of law to be resolved by the courts").

Any rule of law otherwise is an affront to this state's separation of powers doctrine, which "would be unduly restricted" if the state could "*virtually immunize all takings from judicial review*." *Norwood,* at ¶ 67. Yet here, lockstepping with *Camara* would green-light *identical* reasoning to "virtually immunize" from judicial review all search warrant applications for noncriminal entry into occupied homes.

Just as there was no principled basis to reject these long-honored separation of powers principles just to blindly lockstep with *Kelo*, there is no basis to reject them just to blindly lockstep with *Camara*.

As a corollary, there is no principled basis upon which investigating local governments' claims of "public use" requires an undeferential judicial inquiry but investigating local governments' claims of *Probable Cause* would not. *Norwood,* at ¶ 67 (Thus, our precedent does not demand rote deference to legislative findings . . . but rather, it preserves the courts' traditional role as guardian of constitutional rights and limits").

*Third*, this Court served the role of guardian in the face of concerns expressed over "the diversity of local conditions," "great respect legislative declarations," and "local exigencies." *Norwood,* at ¶ 70 ("Notwithstanding explicit legislative findings, this Court has always made an independent determination"); see also *Kelo*, 125 S.Ct. at 2684 (Thomas, J., dissenting) (advocating that no deference should be given to "a legislature's judgment concerning the quintessentially legal question of whether the government owns, or the public has the right to use, the taken property").

Simply put, the City's proffered rule of law here removes state court judges from both the legal *and* the factual sides of the *Probable Cause* inquiry.[5] But this Court correctly identified in *Twism* and *Norwood* important state law principles justifying the rejection of such reflexive deference *on the meaning of the law*. To the City of North Canton's implication that all leased homes are inherently suspicious, this Court necessarily owes nothing.

**2. Lock-stepping the Ohio Constitution with *Camara* is *inadvisable* because Ohio correctly affords greater protection to property rights related to houses and homes.**

The City's attempt to physically intrude within private homes implicates not just *privacy* rights, but more correctly understood, *property* rights. Government searches implicate *property* rights, not just *privacy* rights. Government conducts a "search" when they seek to obtain information in either of two ways: (1) by physically trespassing upon an individual's person, house, papers, or effects, *see United States v. Jones* , 565 U.S. 400, 406–07, 132 S.Ct. 945 (2012) (holding GPS tracking of a vehicle for

[5] The inquiry is a mixed question of law and fact.

twenty-eight days was a search when agents physically trespassed upon the vehicle to install the tracking device), *or* (2) by intruding upon an individual's reasonable expectation of privacy, *see Katz v. United States*, 389 U.S. 347, 360–62, 88 S.Ct. 507 (1967). "The *Katz* reasonable-expectation-of-privacy test was *added to*, but not substituted for, the common-law trespassory test." *Jones*, supra. (Syllabus)(*Katz* added to the baseline the "expectations" test where no intrusion on property takes place, *Katz* "does not subtract anything from the Amendment's protections 'when the Government *does* engage in [a] physical intrusion of a constitutionally protected area").

Thus, ushering in intrusive, repeated, and comprehensive government searches of occupied homes – by force – is indeed an affront to Ohioan's foregoing property rights. See *Meier v. Sulhoff,* 360 N.W.2d 722, 726 (Iowa 1985)("While an administrative inspection aided by search warrant is not as great an intrusion in a constitutional sense as a warrantless entry upon show of credentials, it does encompass a right of forcible entry upon refusal to honor the warrant"). Further, such warrants green-light "a general, exploratory rummaging in a person's belongings." *Andresen v. Maryland*, 427 U.S. 463, 480 (1976). Accordingly, heightened constitutional concern over Ohioans' property rights, and their homes in particular, provides an additional grounds to strictly scrutinize the "probable cause" the City relies upon in an attempt to intrude upon and within constitutionally-protected private homes.

*First*, *Probable Cause* guarantees must be applied with their greatest breadth when local governments seek to breach *houses*: Section 14 explicates "houses" as property Ohioans maintain "the right of the people to be secure in." Houses are "first among equals" and safeguarding against "government intrusion" is at the "very core" of constitutional protections that draw "a firm line at the entrance to the house." *Int. of Y.W.-B.,* 265 A.3d 602, 617–35 (Pa. 2021), ¶22. Accordingly, governmental intrusion into Ohioans' homes, warrantless or otherwise, implicates *property* rights.[6] And

[6] With that said, the Ohio Supreme Court is clear that even an owner or operator of a business, much less the tenant, has a reasonable expectation of *privacy* in commercial property that "exists with respect to

because Ohio traditionally affords heightened protections for Ohioans' private property rights - especially the protection of private homes – it is prudent that the requirement of *Probable Cause* to issue a warrant enshrined in Article I, Section 14 should be strictly construed to protect Ohioans' occupied homes from sweeping generalized government searches.

*Second,* the right to exclude others – especially from homes – has always been revered by Ohio courts as a fundamental component of Ohioans' constitutionally-protected property rights. "One who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of [the] right to exclude." *State v. Holland,* 2019-Ohio-2351, ¶ 41; *State v. Harris,* 2023-Ohio-1544, ¶ 17. This "right to exclude others" is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *State ex rel. New Wen, Inc. v. Marchbanks*, 2020-Ohio-63, 159 Ohio St. 3d 15, 22, citing Kades, *Property Rights and Economic Development*, 45 Wm. & Mary L.Rev. 815, 818 (2004) (noting that the bundle of sticks constitutes "'various combinations of the rights to exclude, to use, and to alienate'"); *Bresnick v. Beulah Park Ltd. Partnership* (1993), 67 Ohio St.3d 302, 303; *Eastwood Mall, Inc. v. Slanco,* 1994-Ohio-433, 68 Ohio St. 3d 221, 223–24.

*Third,* the Ohio Constitution contains greater protection of private property rights related to the home than the United States Constitution – an elevated sanctity of "the home—the place where ancestors toiled, where families were raised, where memories were made." *Norwood*, ¶ 4. This elevated sanctity arises from the extra protection the Ohio Constitution affords to "[t]he rights related to property, *i.e.,* to acquire, use, enjoy, and dispose of property," as "among the most revered in our law and traditions":

> To be * * * protected and * * * secure in the possession of [one's] property is a right inalienable, a right which a written constitution may recognize or declare, but which existed

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administrative inspections designed to enforce regulatory statutes." *City of Strongsville v. Patel,* 2005-Ohio-620, ¶¶ 7-8.

> independently of and before such recognition, and which no government can destroy. * * * The fundamental principles set forth in the bill of rights in our constitution, declaring the inviolability of private property were evidently designed to protect the right of private property as one of the primary and original objects of civil society * * *." (Emphasis sic.) In light of these Lockean notions of property rights, it is not surprising that the founders of our state expressly incorporated individual property rights into the Ohio Constitution in terms that reinforced the sacrosanct nature of the individual's "inalienable" property rights, Section 1, Article I, which are to be held forever "inviolate."

*Norwood v. Horney*, ¶ 34-35. Given the individual's fundamental property, the courts' role in reviewing threats to those rights is, in Ohio, "important in all cases." *Norwood,* ¶ 74, 110 Ohio St. 3d 353, 376–77.

*Fourth*, Ohio common and statutory law recognizes the sanctity of the home through a doctrine not universally recognized amongst the states: the fundamental belief that "one's home is one's castle and one has a right to protect it and those within it from intrusion or attack." *State v. Thomas*, 77 Ohio St.3d at 327 (1997); *State v. Kozlosky*, 2011-Ohio-4814, ¶¶ 24-25.

Thus, when reviewing "the state's intrusion onto the individual's right to garner, possess, and preserve property," Ohio courts must employ a *heightened standard of review*, rather than *rubber-stamping* the putative governmental intrusion. *Norwood,* ¶ 88; see also *Yoder v. City of Bowling Green, Ohio,* No. 3:17-cv-2321, 2019 WL 415254, at 4 (N.D. Ohio Feb. 1, 2019). The import here is that an intrusion upon Ohioans' homes requires government to demonstrate compelling reasons first.

**3. Lock-stepping with *Camara* arbitrarily creates a more protective meaning of Ohio's singular *Probable Cause* guarantee for criminals and a less protective meaning for Ohio homeowners and tenants.**

The Court of Appeals' lock-stepping affords virtually no protection for noncriminal Ohioans' homes, while allotting significantly greater *Probable Cause* guarantees for the hotel rooms, automobiles, and cell phone of fentanyl dealers and murderers. This cannot be justified simply on the basis that the latter targets of these different types of searches may suffer more punitive results should those criminal searches uncover unlawfulness: courts do not differentiate between search warrants targeting *misdemeanor* crime as opposed to *felony* crime - - the protections are the same, despite potentially

disparate penalties. And in reality, the municipality's steep daily fines and mandates are far more onerous than a weekend in jail. See *Sessions v. Dimaya,* 584 U.S. 148, 184–85 (2018)(Gorsuch, concurring)("In fact, if the severity of the consequences counts when deciding the standard of review, shouldn't we also take account of the fact that today's civil laws regularly impose penalties far more severe than those found in many criminal statutes? Ours is a world filled with more and more civil laws bearing more and more extravagant punishments. Today's "civil" penalties include confiscatory rather than compensatory fines, forfeiture provisions that allow homes to be taken, remedies that strip persons of their professional licenses and livelihoods, and the power to commit persons against their will indefinitely. Some of these penalties are routinely imposed and are routinely graver than those associated with misdemeanor crimes—and often harsher than the punishment for felonies"); *Int. of Y.W.-B.,* 265 A.3d 602, 620-21 (Pa. 2021)("It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security").

Here, the import of Justice Gorsuch's wise observation is that a bifurcated standard of review with all "criminal" on the one side and "noncriminal" on the other cannot be justified on the basis of a greater or lesser severity of the consequences. Innocent Ohioans' houses and homes are entitled to at least as much Probable Cause scrutiny as the AirBnB of an alleged rapists on a nightly stay or those driving while intoxicated on public highways.

**4. Lock-stepping with *Camara* creates overbroad and inconsistent results within Ohio.**

Lockstepping with Camara is inadvisable in Ohio because of the many decentralized local government authorities in Ohio with regulatory power, as compared to other states. In light of this, the Court of Appeals' undue deference to government pronouncements results in a patchwork of uneven constitutional rights throughout the state. Ohioans in municipalities with ordinances or governmental interests deemed by courts to be sufficiently "reasonable" maintain less protection under a *statewide* constitution than those who live outside of such municipalities. Likewise, validating *Probable Cause* on the basis of the existence of an ordinance rather than individualized facts also means that any city's first warrant application will authorize search warrants against *any and every home* the City subsequently seeks to search pursuant to that ordinance. Subsequent judicial inquiries become hollow.

* * *

With respect to deferring to federal courts' application of *federal* guarantees, "[t]his sort of upward delegation does a tremendous disservice to the Ohio Constitution." *State v. Carter*, 2024-Ohio-1247. Here doing so would also defer to an unreasoned precedent that is inconsistent with Ohio text, history, values, and tradition, while doing a similarly tremendous disservice to Ohio homeowners and tenants.

**<u>Proposition of Law No. 2</u>: 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.**

The original public meaning of the term "probable cause" at the time framers and voters inserted it into the Ohio Constitution favors a stricter standard than that which would permit issuance of a warrant here.

"In interpreting constitutional text, we are guided by the principle that '[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *D.C. v. Heller,* 554 U.S. 570, 576–89 (2008). This method of

interpretation applies to "individual-rights provisions of state constitutions." *Id*. And no method of interpretation may be employed that renders the constitutional provision "nonsensical" or "incoherent." *Id*., at 577-578. The focus is on "the meaning at the time of the founding." *Id*., at 587.

And this Court recently endorsed the adage "we're all textualists now," elaborating that this means clarifying the meaning of a constitutional safeguard through ascertaining "the ordinary public meaning of its terms at the time of its enactment." *Maple Heights v. Netflix, Inc.,* 2022-Ohio-4174, 171 Ohio St. 3d 53, 62–63, ¶37-38. Thus, this Court requires Ohio courts to "consider how the language would have been understood by the voters who adopted the text," when "construing constitutional text that was ratified by direct vote." *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 35, ¶ 40, along with the "text, history, and tradition," and "the values underlying that text." ¶ 28, ¶ 56.

Applying this methodology – which the lower courts did not even attempt – no Ohioan voting to ratify Article I, Section 14 in 1851 would have thought warrants to search the interior of private homes could be issued for noncriminal matters, much less that they could be issued with the flippancy suggested by the Trial Court and Court of Appeals here.

**A. Contemporaneous definitions of *Probable Cause* require evidence suggesting the probability of unlawfulness located at the home a municipality seeks a warrant to search.**

*First,* the original public meaning of the term "probable cause" when the state and its voters opted to employ that language in 1851 is readily available because this safeguard was defined by the Ohio Supreme Court *that same year*. In *Ash v. Marlow,* the Court explained as follows: "'A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offence with which he is charged,' is a good definition of the term '*probable cause*." *Ash v. Marlow,* 1851 WL 16, at 3-4 (Ohio Dec. 1851)("What then is the meaning of the term probable cause? We are content to adopt this last, as the definition of what in the law constitutes 'probable cause'"). While this decision arose in the *criminal* context, that

does not justify changing *the meaning of the text* from requiring facts demonstrative of a *probability*. Because the lower courts here opted to simply lockstep with *Camara*, each ignored this case, and its value in revealing the original public meaning of the Warrants Clause in Section 14.

This understanding is consistent with the United States Supreme Court's use of the word "probable" in 1851. *Howard v. Ingersoll*, 54 U.S. 381, 390, 425 (1851)(inquiring into the "*the probable intention of the parties*," in a manner using "probable" synonymous with "likely" or "most likely," and doing the same later when reasoning as to "because nothing is more natural than to take a river for a boundary when a state is established on its borders; and wherever there is doubt, that is always to be presumed which is most natural and probable").

*Second*, contemporaneous dictionaries confirm the that this Court's definition of *Probable Cause* in 1851 was consistent with the original public understanding of that guarantee at the time. "Dictionary definitions are valuable because they are evidence of what people at the time of [an] enactment would have understood its words to mean." *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 704–06, 140 S. Ct. 1731, 1766 (2020); *Matter of Adoption of M.M.C.*, 2024 WI 18, ¶ 44 (advising consultation of "dictionaries contemporaneous with the text's adoption to help ascertain its meaning").

Take the most contemporaneous dictionaries within this Court's own law library. The 1855 *Bouvier Law Dictionary* defines "Probable Cause" as "When there are grounds for suspicion . . . and public justice and the good of the community require that the matter should be examined, there is said to be probable cause. . ." It also defines "probable" as "that which has the appearance of truth;" and "probability" as "that which is likely to happen . . ."

The 1850 *Websters American Dictionary of the English Language* did not define "probable cause." But it does define "probable" as "Likely; having more evidence than the contrary, or evidence

which inclines the mind to believe, but leaves some room for doubt." And it does define "probability" as "likelihood."

Consequently, voters in 1851 would have understood that their ratification of Article I, Section 14 required government - to obtain a search warrant to intrude within their homes - to prove likelihood, or "probability," that the search would yield evidence of the alleged wrongdoing.

This original meaning is bolstered by the reality that, despite the many permutations in which the term has since been employed, this Court has never retreated from that original requirement that evidence demonstrate a *probability* before any search warrant may issue:

> *The substance of all the definitions of probable cause is a reasonable ground for belief . . .* Thus, probable cause exists when the facts and circumstances are sufficient to provide a reasonable belief . . . "probable cause" requires "more than bare suspicion." The circumstances must demonstrate a "*fair probability*" . . .

*State v. Martin,* 2022-Ohio-4175 ¶17-18 (Emphasis added).

### B. The lower courts' redefinitions of *Probable Cause* fail textual, contextual, and purposivist analysis.

The Court of Appeals impermissibly advances a "slow linguistic drift in the text of constitutional guarantees over time," amending the text of Section 14 from *Probable Cause* to everything but, including "cause," "reasonable cause," "reasonable," "valid public interest," "important," "governmental need," "reasonable concerns," and "reasonable legislative standards for conducting an inspection are satisfied." *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶19, 22-24.

None of these nontextual standards require any *probability* of anything. And *each* is less protective of Ohioans homes than the actual text of Section 14, instead echoing something more akin to federal Rational Basis Review.

Moreover, this lower courts' importation of these Camara standards ignore the context of the Ohio Constitution: many of the foregoing terms, phrases, and standards were known to the framers in 1851, used elsewhere in that Constitution by the framers and presented to the voters, and deliberately not used in Article I, Section 14. But any method of constitutional construction requires acknowledgment that when the framers of the text employed terms and distinctions in a provision elsewhere – and presented those to the voting public – but did not include those same terms and distinctions in the provision being constructed, then those standards were deliberately rejected. See *State v. Gonzales*, 2017-Ohio-777, ¶50, 150 Ohio St. 3d 276, 287–91 (those enacting a provision are "assumed to have been aware of other provisions concerning the subject matter of the separate sections . . . use . . . of particular language in one part . . . but not in another part demonstrates that [the drafter] has chosen not to make that modification in the latter part"); see also *Meeks v. Papadopulos,* 62 Ohio St.2d 187, 191–192 (1980), citing *State ex rel. Darby v. Hadaway,* 113 Ohio St. 658, 659 (1925); *Maggiore v. Kovach,* 101 Ohio St.3d 184, 2004-Ohio-722, ¶ 27.

1. **Redefining, construing, or interpreting *Probable Cause* to mean "<u>reasonable legislative standards for conducting an inspection are satisfied</u>" is impermissibly "technical," "secret," "unknown to ordinary citizens," "nonsensical," and "incoherent."**

"Normal meaning may of course include an idiomatic meaning, but *it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation*." *D.C. v. Heller,* 554 U.S. 570, 577 (2008). And no method of interpretation may be employed that renders the constitutional provision "nonsensical" or "incoherent." *Id*., at 577-578.

Here, there is no textual analysis, reasoning, or evidence that any Ohioan thought or could have thought that *Probable Cause* to issue a warrant to search an occupied private home could exist every time local government demonstrated "reasonable legislative standards for conducting an inspection are satisfied." Yet this is what the Court of Appeals held. *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶19, 22-24.

This construction is not only non-textual. It also engenders the incoherent results discussed previously. This construction requires (1) reflexive deference to local legislative branches on both the law and the facts; (2) the granting of every search warrant application within a political subdivision that has been deemed to have met this standard; (3) a state of affairs wherein the constitution protections of the Bill of Rights differ on the basis of which municipality a homeowner resides within.

It is not only beyond the grasp of what ordinary voters would have thought *Probable Cause* meant at the time; it is also well beyond what the most esteemed scholars of the day considered to be required before a warrant to search an occupied home could be granted. Cooley, *A Treatise on the Constitutional Limitations which rest upon The Legislative Power of the States* (1868), 303-304, 307-308 (judicial scrutiny of applications to search occupied homes must be "of more than ordinary strictness" and require more than "suspicion" due to the sacredness of "a man's premises . . . But as search warrants are a species of process exceedingly arbitrary in character, and not to be resorted to except for very urgent and satisfactory reasons, the rules of law which pertain to them are of *more than ordinary strictness* . . . the law requires the utmost particularity in these cases before the privacy of a man's premises is allowed to be invaded by a minister of the law").

**2. Redefining, construing, or interpreting Article I, Section 14 to creating bifurcated levels of *Probable Cause* <u>contingent on whether the proposed search is for criminal or noncriminal purposes</u> is beyond the text and inconsistent with the text and context of the Ohio Constitution.**

The Court of Appeals concluded that lesser or no *Probable Cause* is required to obtain a warrant to intrude upon Ohioans' occupied residential homes because the search sought by the City here is "unlike the search pursuant to a criminal investigation." *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶19. However, bifurcating the extent of rights afforded on this basis is unjustified by the text, history, and context of the Ohio Constitution.

*First*, the text of Section 14 makes no such implicit or explicit differentiation between criminal and noncriminal search warrants. Instead, it states the opposite: "<u>no</u> warrant shall issue, but upon

probable cause. . .” This plainly means no warrant *of any type*. Thus, the requirement of probable cause applies beyond just determinations of whether to issue a search warrant in a criminal investigation. See *Martin*, supra (“*all* the definitions of probable cause” demand “a reasonable ground for belief,” more than bare suspicion,” and “a fair probability” of a threat). And there is no reason to retreat from the text simply when local governments attempt to raise new and unique scenarios. For instance, this Court in *Bloom* explained that the requirement in Section 16 of Article I that “all courts shall be open,” means courts of *all types of courts,* including juvenile courts, because “all” is “straightforward and easily understandable,” even though “juvenile courts did not exist at the time of the drafting of the [Ohio Constitution].” ¶ 39-41. Just as Section 16 applies to *any type of court*, without differentiation, even those later created, Section 14 applies to *any type of warrant,* without differentiation, even those later created by municipalities. As such, there is also no basis for applying what is essentially an entirely different meaning or lesser degree of scrutiny to different types of warrants: *Probable Cause* will vary as a function of *the object of what is sought to be searched for*, but its original public meaning is *fixed*. And that fixed meaning should not be subverted by dicing and slicing search warrants into imaginative new categories.

*Second*, multiple provisions within Article I of the Ohio Constitution expressly distinguish between criminal and civil proceedings, illustrating that the framers and voters knew who to distinguish between the two standards, could have done so here, and deliberately refrained.

Section 5, adopted alongside Section 14 in 1851 after the text originally appeared in the 1802 Constitution – states “The right of trial by jury shall be inviolate, <u>except that, in civil cases</u>, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.” Ohio Const., art. I, § 5. The framers could have likewise drafted Section 14 to read “no warrant shall issue, but upon probable cause, except in civil cases.” They did not.

Section 6, adopted alongside Section 14 in 1851 after the text originally appeared elsewhere in the 1802 Constitution – states "There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime." Ohio Const., art. I, § 6. The framers could have likewise drafted Section 14 to read "no warrant shall issue, but upon probable cause, when the search may yield evidence for the punishment of a crime." They did not.

Section 10 – adopted in 1851 alongside Section 14 and amended 1912, after originally appearing in the 1802 Constitution – states, in pertinent part, "No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be the subject of comment by counsel . . ." Ohio Const., art. I, § 10. The framers could have likewise drafted Section 14 to read "in any criminal case, no warrant shall issue, but upon probable cause." They did not.

Section 11 – adopted alongside Section 14 in 1851 – states, in pertinent part, ". . . In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted." Ohio Const., art. I, § 11. The framers could have likewise drafted Section 14 to read "In all criminal prosecutions, no warrant shall issue, but upon probable cause." They did not.

Section 15 – adopted alongside Section 14 in 1851 – states "No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud." Ohio Const., art. I, § 15. The framers could have likewise drafted Section 14 to read "Except in any civil action, "no warrant shall issue, but upon probable cause." They did not.

Each of these sister provision of the Bill of Rights demonstrates several realities: (1) the framers of the text knew how to differentiate between civil and criminal actions and varying degrees of penalties; and (2) the framers of the text deliberately abstained from including an "unless," "except," or

other qualifier distinguishing criminal and civil searches or *Probable Clause* inquiries within Section 14. As such, the voting public in 1851 would have undeniably concluded that Section 14 contains no separate legal or factual standards governing the issuance of "civil" and criminal warrants. *Wiebesick*, supra., at 175-76 ("there is no textual support for differing probable cause standards for administrative and criminal searches [where a state constitution] speaks only of probable cause and gives no hint that the standard depends on the type of search conducted").

Thus "probable cause in both settings must be evaluated pursuant to certain basic principles developed primarily in search and seizure jurisprudence (given the abundance of caselaw in this area) – including the existence of a nexus between the areas to be searched and the suspected wrongdoing at issue." *Int. of Y.W.-B.,* 265 A.3d 602, 617–35 (Pa. 2021), ¶22 (requiring, in a noncriminal child neglect "spot check" context, a "clear showing, based upon competent and, as necessary, corroborated, evidence establishing individualized suspicion exists allowing entry into a private home).[7]

Thus, for instance, evidence of rat infestations within every home surrounding the home for which a city seeks a warrant may be sufficiently individualized to suffice as circumstantial evidence justifying the issuance of a warrant to search for rats at the final remaining home. This is *far different than*, but not *less searching than*, the criminal warrant procedure, because the object sought differs.

**3. Redefining, construing, or interpreting *Probable Cause* to mean "<u>cause</u>" is inconsistent with the text and context of the Ohio Constitution.**

Nonsensical and incoherent interpretations of *Probable Cause* necessarily fail. The Framers of the Ohio Constitution knew how to use the word "cause" or the phrase "any cause" as a noun on its own, and employed it repeatedly in other provisions contemporary to Section 14. See Article I, Section 9 ("In

[7] Nothing in the logic of the City's arguments here – or the lower courts' reasoning thus far – would prevent courts from rubber-stamping search warrant applications to regularly enter the home of first-time parents and search, comprehensively, for evidence of bad parenting on the basis that first-time parents may well not know how to parent. The externalities of bad parenting are undeniable, and paternalism directed toward protecting children is more justifiable than when directed toward protecting adult tenants.

any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him . . ."); Article II, Section 4 ("expel a member, but not the second time for the same cause"); Article II, Section 11 ("A vacancy in the Senate or in the House of Representatives for any cause . . ."); Article III, Section 18 ("for any of the causes specified in the fifteenth section of this article. . ."). Article IV of the Ohio Constitution – governing this judicial branch – repeatedly uses the term "cause" synonymously with "case." Art. IV, Sect. 2(a), 2(f), 3(B)(1)(f).

"Cause" and "any cause" are of course a much broader and qualitatively different standard than *Probable* Cause: any municipal motivation may be a "cause," however unjustified. It is also no limit on government power whatsoever. Converting Probable Cause to "cause," like the attempted conversion of "public use" to "public benefit," fails because a constitutional "requirement cannot be reduced to mere "hortatory fluff." *Norwood*, ¶66, citing *Kelo,* 125 S.Ct. at 2673 (O'Connor, J., dissenting)(explaining that "[t]o the contrary, it remains an essential and critical aspect in the analysis of any proposed taking."

**4. The Ohio Constitution's text, history, and context forecloses interpreting *Probable Cause* to mean "Reasonable" or "Reasonableness," or otherwise conflating the two.**

The lower courts, following *Camara* instead of text, explicitly announced its inquiry as one different than the meaning of *Probable Cause*, but instead "whether a particular inspection is reasonable – and thus in determining whether there is probable cause to issue a warrant for that inspection." ¶19. This conflates and mangles the two separate clauses of Section 14 in a manner never coherently explained. For instance, those who drafted and presented the voters with Section 14 knew how to use "reasonable" because they used it in the *first clause* of Section 14; but they deliberately rejected that standard in the second clause in favor of "probable." As such, no Ohio voter in 1851 would have

confused "probable" with "reasonable" in the way the lower courts did here. "Probable cause" is and must be treated as different than "reasonable."

While one may assert this also to be true of the federal constitution, it is *especially* true of the Ohio Constitution – due to textual distinctions. One seemingly trivial but relevant distinction between Section 14 and the Fourth Amendment lies in differing punctation: separation of the clauses with a semicolon rather than a comma. The minor punctuation differences may be significant in a novel way here. Semicolons join "two clauses that are related in topic but nevertheless [are] independent of one another." *Schroeder v. W. Nat'l Mut. Ins. Co.*, 865 N.W.2d 66, 70 (Minn. 2015). On the other hand, commas "indicate[] the smallest break in sentence structure" and "denote[] a slight pause." *The Chicago Manual of Style* ¶ 6.18 (15th ed. 2003). Since the 1700s, a comma has been used to signify "a point, by which a period is subdivided into its least constructive parts." David S. Yellin, *The Elements of Constitutional Style: A Comprehensive Analysis of Punctuation in the Constitution*, 79 Tenn. L. Rev. 687, 715 (2012).

This difference in punctuation should not simply be swept aside; it must mean *something*. *See State v. Short*, 851 N.W.2d 474, 500-01 (Iowa 2014) (noting that the Iowa Constitution uses a semicolon where the United States Constitution uses a comma and concluding that "the semicolon illustrates ... that in order to avoid being declared 'unreasonable' or unlawful, under [the Iowa Constitution], a warrant is ordinarily required."); *State v. Ochoa*, 792 N.W.2d 260, 268-69 (Iowa 2010) (relying in part on the semicolon separating the warrant clause and the reasonableness clause in the Iowa Constitution to hold that "the Reasonableness Clause cannot be used to override the Warrant Clause," even though there was "no contemporaneous explanation of the use of the semicolon"). Accordingly, at least some other states with text utilizing the semicolon have construed their protections as broader than the federal baseline. See *In re Inspection of Titan Tire*, 637 N.W.2d 115, 125–26 (Iowa 2001).

Therefore, basic rules of grammar lead to the conclusion that the semicolon in Section 14, textually creates two *independent* requirements: first, that Ohioans maintain a right "to be secure in

their persons, houses, papers, and effects against unreasonable searches and seizures" and second, that "no warrant shall issue but upon probable cause." This reality bolsters what should be two already-obvious conclusions.

The Warrants Clause of Section 14 begins "*no warrant* shall issue" and concludes without employing a "reasonableness" standard. The fact that the reasonableness standard is the operative term in the wholly separate Search and Seizure Clause demonstrates that the framers deliberately rejected such a standard by excluding the use of a reasonableness standard in the Warrants Clause: "probable cause" is and must be treated as different than "reasonable."

Thus, the standard the lower courts applied here, essentially "*some warrants may issue so long as reasonable*" is wholly nontextual. Because they ignored textualism and history, they applied the wrong standard. And because they applied the wrong standard (a standardless one at that), they reached the wrong result.

In sum, nothing within the Ohio Constitution's text or history absolves Ohio cities from demonstrating a probability unlawfulness before they may obtain a warrant to comprehensively search an occupied private residence. And nothing within text or history suggests that *criminals* should be entitled to more constitutional protection than *noncriminal Ohioans within their homes*. Evidence-free warrant applications to search Ohioans' occupied homes must be denied.

### C. Imbuing "probable" as dispositive of whether an Ohio judge should issue a warrant to search an occupied home is consistent with *the purpose* of Article I, Section 14.

The textual analysis above sufficiently negates the Court of Appeals' truncation of Ohioans' Probable Cause guarantees. Originalist arguments for consideration of context further justify a more scrutinizing inquiry into whether *Probable Cause* exists to justifying intrusion into a private home.

"A constitution should be interpreted in light of its objectives, particularly those that are stated," and this necessarily includes "preambles" and broad declarations of support for liberties elsewhere

within the text, as "guideposts while interpreting more specific provisions" to "help vindicate our state constitution's promise." Bolick, *Principles of State Constitutional Interpretation*, at 789-790. Constitutional context thus explains "what one would ordinarily be understood as saying, given the circumstances in which one said it." Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2397–2398, 2457 (2003); *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 704–06, 140 S. Ct. 1731, 1766 (2020)(J. Alito and Thomas, dissenting)(eschewing any "exotic understanding of" a term that, with respect to ordinary voters, "would not have crossed their minds").

Here, the delegates who framed the Ohio Constitution's Bill of Rights emphasized its purposes as defense "against encroachments of power, and securing to all the largest liberty." I Smith, *Debates of the Ohio Convention* (1851, reprinted 1933), at 69–70. This purpose is reinforced by the 1851 additions of the Preamble and Sections 1 and 20 of Article I of the Ohio Constitution. All articulate a goal of protecting individual liberty from government intrusion in sweeping terms.[8]

"From this review, the commitment of the framers of the Ohio Constitution and of the people in adopting it to freedom from unsanctioned governmental seizures is unmistakable." *State v. Blackburn*, 63 Ohio Misc. 2d 211, 215–19, (Mun. 1993)(holding "[t]he intent of the framers of the Ohio Constitution, and the intent of the people in adopting it, dictate" greater protection under Section 14 of Article I). Simply adopting the Court of Appeals judgment and its importation of the *Camara* exception would unduly *narrow* the extent to which the *Probable Cause* safeguard protects liberty, security, and private property. Aside for

[8] Respectively, "*We, the people of the State of Ohio, grateful to the Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution;" "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety;" and "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people."* These liberty-oriented provisions cast a shadow that influences the remainder of the Ohio Constitution, requiring the remainder to be read in the context of a "presumption of liberty." See Randy E. Barnett, *Restoring the Lost Constitution: The Presumption of Liberty* (Princeton, NJ: Princeton University Press, 2004).

being an affront to original public meaning, it undermines the foregoing intentions of the framers of the Ohio Constitution that informs that meaning.

The requirement that government prove a *probability of some unlawfulness* at the home it seeks to search is bolstered by the understanding in this period of time that search warrants to search within homes were "obnoxious to very serious objections," and thus "a search warrant's use was confined to cases of public prosecutions instituted and pursued for the suppression of crime, and the detection of and punishment of criminals"). This historical context sheds light on a second textual deviation from the Fourth Amendment: Article I, Section 14 qualifies that the *Probable Cause* otherwise demonstrated must also "particularly describing the place to be searched and the person and things to be seized." In 1851, issuing a warrant to search within a house was such an affront to property and personal rights that it out only take place when there was both a person *and* things to be seized. Government needed to be looking for *a crime and criminal*, not just looking *around*.

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For all of the foregoing reasons, this Court should leave undisturbed the definition of *Probable Cause* it articulated in *Ash v. Marlow* in 1851. It should likewise leave undisturbed its more modern acknowledgement that "[t]he substance of all the definitions of probable cause is a reasonable ground for belief . . . probable cause exists when the facts and circumstances are sufficient to provide a reasonable belief," or "a fair probability." It should then *simply apply* these standards – in light of the housing inspection housing inspection context – to determine whether the City's Warrant Application below meets them.

**D. The City's Warrant Application below should have been denied because it demonstrated *no probability of anything*.**

This Court cannot and should not reflexively defer to any notion that it is "probable" that there is a dangerous condition within any Ohioan's home upon the overbroad grounds supplied by the City here:

(1) the home is leased; (2) the home is "aging;" (3) the owner politely declined to consent to a search. None of these factors demonstrative a likelihood of the harboring of a dangerous condition. If they did, then *Probable Cause* would exist to justifying issuing a warrant to search the interior of nearly any occupied home.

Attempted employment of these considerations to manufacture *Probable Cause* designations is eerily analogous to Ohio local governments past reliance on overbroad standards to manufacture blight designations:

> The Norwood Code sets forth a fairly comprehensive array of conditions that purport to describe a "deteriorating area," including those found by the trial judge in this case: incompatible land uses, nonconforming uses, lack of adequate parking facilities, faulty street arrangement, obsolete platting, and diversity of ownership. In addition, the trial court identified the following factors as supporting the determination that the neighborhood was deteriorating: increased traffic, dead-end streets that impede public-safety vehicles, numerous curb cuts and driveways, and small front yards. <u>But all of those factors exist in virtually every urban American neighborhood</u>. Because the Norwood Code's definition of a deteriorating area describes almost any city, it is suspect. Similarly, some of the factors upon which the court relied, such as diversity of ownership, could apply to many neighborhoods.

*Norwood v. Horney*, 2006-Ohio-3799, ¶ 93-94, 98 ("In essence, 'deteriorating area' is a standardless standard"), citing *Beach–Courchesne,* 80 Cal.App.4th at 407, 95 Cal.Rptr.2d 265 ("If the showing made in [this] case were sufficient to rise to the level of blight, it is the rare locality in California that is not afflicted with that condition"); *Birmingham v. Tutwiler Drug Co*. (Ala.1985), 475 So.2d 458, 466 (the area alleged to be blighted "was typical of much of downtown Birmingham").

"Aging," like "deteriorating," applies to all individuals and property. And declaring all leased homes inherently suspicious is logically indistinguishable from declaring all leased homes inherently blighted. These are "standardless standards" for *Probable Cause* – no more than impermissible "bare suspicion" – that reduce the guarantee to "mere hortatory fluff." Issuing a warrant on these grounds would justify issuing a warrant to search *any* home – rental or owner-occupied; vacant, for-sale, or just-

purchased. Just as such a broad standard cannot justify a permanent condemnation, it cannot justify its lesser sibling: regular temporary intrusions.

Moreover, it is revealing that the City, in the past several years, has been unable to identify even one fact *specific to* the home(s) it seeks to search here that could even arguably justify the need for a search. A less suspicious home has apparently never existed. Without more, the City's Warrant Application should be denied.

Pursuant to the originalist and textualist doctrines articulated in *State ex rel. Cincinnati Enquirer v. Bloom* this Court should intervene to enjoin inadvertent lock-stepping that diminishes constitutional protection of Ohioans' homes – just as this Court did with "public use" in *Norwood v. Horney* two decades ago. This requires rejection of the Warrant Application below.

**E. Lock-stepping with *Camara* impermissibly requires elevating subjective and ill-considered policy preferences over the Ohio Constitution's text, context, history, and purpose.**

Public Policy considerations should not override the foregoing original public meaning of *Probable Cause* and its required denial of the warrant application here. Yet *Camara*, and transitively the lower courts here, advises determining *Probable Cause* on the basis of nothing other than such subjective policy positions. Moreover, even cursory scrutiny negates these positions. Accordingly, this Court should not abandon the text to lockstep with *Camara*.

**1. Elevating policy considerations over text, history, or original public meaning is impermissible.**

"It is not for judges to superimpose their values on the constitution. A constitution's text "is the very *product* of an interest balancing by the people," which judges cannot "conduct for them anew" in each case. *Matter of Adoption of M.M.C.,* 2024 WI 18, ¶40, 411 Wis. 2d 389, at 419 (Rebecca Grassl Bradley, J., concurring). This "balance struck by the people of [the state], as embodied in the constitution, demands our unqualified deference." *Id*., citing *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26, (2022).

Accordingly, this Court has already correctly rejected arbitrary judicial balancing tests through subjective assessments of "importance," "public interest," or "public need." For instance, this Court recently concurred that resolving judicial questions through standards like "public interest" is "so vague and amorphous as to make principled judicial application of the doctrine nearly impossible." *State ex rel. Martens v. Findlay Mun. Ct.,* 2024-Ohio-5667, ¶ 21. More specifically, this Court observed the fatally flawed nature of the judicial branch taking up such a standard: "[h]ow is a court to determine when something is of such '*great importance* and *interest to the public*?" *Id*. Thus, this Court has *just* explained why employing a test saturated with standardless policymaking is impermissible. *Martens,* ¶ 21 ("Indeed, the continued existence of the [public right standing] doctrine in our caselaw invites judges to engage in standardless policymaking"); see also *State v. Francis*, 2024-Ohio-5547, ¶¶ 20-21 ("the state has focused on policy-based arguments about why hybrid representation presents serious practical difficulties that should be avoided . . . It is unclear to me why the state made these policy-based arguments, because whether hybrid representation would now be beneficial or a procedural nightmare is irrelevant to whether the text and original meaning of the Ohio Constitution guarantees a right to hybrid representation").

Likewise, Justice Kavanaugh recently explained why judicial balancing tests like the one on display in *Camara* – and transitively in the Trial Court and Court of Appeals decisions below – should be avoided. It is because they require subjective judicial policymaking:

> Whatever the label of the day, *that balancing approach is policy by another name*. It requires judges to *weigh the benefits against the burdens* of a law and to uphold the law as constitutional if, in the judge's view, the law is sufficiently *reasonable* or *important*.
>
> ***
>
> One major problem with using a balancing approach to determine exceptions to constitutional rights is that *it requires highly subjective judicial evaluations of how important a law* is . . . *The subjective balancing approach forces judges to act more like legislators* who decide what the law should be, rather than judges who "say what the law is." That is because the balancing approach requires judges to weigh the benefits of a law against its burdens—*a value-laden and political task that is usually reserved for the political branches*.

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> Because it is unmoored, the balancing approach presents the real "danger" that "judges will mistake their own predilections for the law."

*United States v. Rahimi*, 602 U.S. 680, 731–34, 144 S. Ct. 1889, 1920–22 (2024)(emphasis added), citing A. Scalia, Originalism: The Lesser Evil, 57 U. Cin. L. Rev. 849, 863 (1989). Consequently, when considering whether to a adopt a legal doctrine like that of Camara's second holding, this Court should scrutinize whether it is dependent on vague and subjective balancing and policy conclusions.

**2. *Camara* and the lower courts have determined whether to issue warrants to search occupied homes on the basis of *policy* rather than law.**

After a careful reading of *Camara*, it is no surprise that the Trial Court here, in lock-stepping with *Camara*, reasoned "probable cause does not arise out of the facts," but "rather, it is a policy consideration by the Court that must be made." *Camara* did not even attempt to wrestle with the text or original public meaning of *Probable Cause* in the Fourth Amendment (much less anything specific to Ohio, of course).

Instead, in its second holding within the case, the Warren Court relied solely on subjective and uninformed policy conclusions. It found *Probable Cause* to search homes in noncriminal contexts anytime there are "reasonable legislative standards for conducting an inspection are satisfied." *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶19, 22-24.

But how could *Probable Cause* be interpreted to means this?

*First*, through courts operating as junior varsity legislators. In the view of *Camara* and the lower courts, text and original meaning matter less than whether granting warrant applications to facilitate such searches appeals to "*dominant public opinion*," "*public acceptance*," and what "the *public interest* demands," *Id*., at ¶19, citing *Camara*, at 536-37. Indeed, the lower courts implicitly admit their conception of *Probable Cause* and its application here is a jettisoning of any textual (much less original public meaning) analysis in favor of outright *policymaking*, indicating that what actually matters is that

it "*gives full recognition to the competing public and private interests here at stake*." *Id*., at ¶19, citing *Camara*, at 538-39.

And judges alone, without the benefit of whitepapers or legislative hearings, are to determine "whether any other canvassing technique would achieve *acceptable results*," whether granting those warrant applications is necessary due to "*the need* for the inspection" or "*the reasonableness of the goals of code enforcement*." ¶19, citing *Camara*, at 536-37 (claiming "the need for the inspection must be weighed in terms of these reasonable goals of code enforcement," "the need for preventive action is great," and "the need for periodic inspections of certain facilities without further showing of cause to believe that substandard conditions dangerous to the public are being maintained).

*Second, Camara* twisted the meaning of *Probable Cause* through resort to unreasoned, vague, and subjective conclusions that such searches are with "*cause*," with "*reasonable cause*," "*reasonable*," pursuant to a "*valid public interest,"* "*important*," or a "*governmental need*." Through subjective and beside-the-point assertions that granting bare bones warrant applications are justified by "reasonable concerns," by what a municipality's inspections were "*aimed at*" or "the primary governmental interest at stake," or "the reasonableness of the goals of code enforcement." *Id*., at ¶19, citing *Camara,* at 535-37. Through feelings that –when municipalities want warrants to search occupied private homes – all that matters is whether a judge thinks there is "a *reasonable governmental interest*," "*a valid public interest* justifies the intrusion contemplated." *Id.,* at ¶19, citing *Camara*, at 538-39 (claiming "if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted warrant").

*Third*, instead of text, it is enough by *Camara's* standard to meet the constitutional requisite of *Probable Cause* if courts simply feel that such searches are "*important*," and "involve a relatively limited invasion of the urban citizen's privacy." ¶19, citing *Camara*, at 536-37.

*Fourth,* the *Camara* exception to *Probable Cause* arises from a policy-based opposition to providing constitutional guarantees like *Probable Cause* with a construction or application – no matter how accurate – that actually protects citizens at the inconvenience of government. *Id.,* at ¶19, citing *Camara*, at 536-37 (*government power "would be greatly hobbled* by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts").

*Fifth*, *Camara* rests on the premise that there is no point in working out the meaning or application of *Probable Cause* "where considerations of health and safety are involved," since that is, to some jurists, simply too important. *Id*., at ¶19, citing *Camara*, at 538-39.

*Finally,* the Court of Appeals – apparently drawing inspiration from *Camara's* policymaking – added its own *policy concerns* to *Camara* to support obviating the Ohio Constitution's text: adults who rent their home should be treated paternalistically: "*some landlords are not as conscientious*," "*renters may be less inclined to report*," and the "*ordinance protects those tenants*." *Id*., at ¶22-23 (emphasis added). Such subjective policy rationales ought not be employed to change or override the plain meaning of *Probable Cause* in Article I, Section 14.

**3. The public policy conclusion of *Camara* and the lower courts ought not override the Ohio Constitution.**

**a. Judicial assessment of "*dominant public opinion*," "*public acceptance*," and what "*the public interest demands*" cannot override text.**

Attenuating the *Probable Cause* requirement due to "public opinion" is a political or policymaking consideration – not a judicial consideration. And constitutions are written accomplish precisely the opposite. *Sogg v. Zurz*, 2009-Ohio-1526, ¶ 13 ("The argument is made that the constitution emanated from the people and that the welfare of the people is paramount to any private interest. Very true, but written constitutions have heretofore been framed chiefly to protect the weak from the strong and to secure to all the people 'equal protection and benefit.' They have been

constructed upon the theory that majorities can and will take care of themselves; but that the safety and happiness of individuals and minorities need to be secured by guaranties and limitations in the social compact, called a constitution").

**b. Judicial "*recognition to the competing public and private interests here at stake*" cannot diminish what Probable Cause requires.**

Balancing "competing public and private interests" is a legislative policymaking function, not a judicial function. Moreover, Ohioans balanced these interests through enacting the text of Article I, Section 14 in 1851 – which balances in favor of "the private interests" of protecting Ohioans homes, not the "public interest" of ameliorating administrative inconvenience to local governments. See *Matter of Adoption of M.M.C.,* 2024 WI 18, ¶40, 411 Wis. 2d 389, at 419 (Rebecca Grassl Bradley, J., concurring)( The "balance struck by the people of [the state], as embodied in the constitution, demands our unqualified deference"), citing *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26, (2022). The framers and the voters to decide what is "important" or "in the public interest through including or excluding text when they enact a constitution.

**c. Judicial favoritism toward searches "*aimed at*" "*health and safety*" or another "reasonable government interest" or "valid public interest" because of "*importance*" cannot diminish what Probable Cause requires.**

*First*, inquiring whether completing a search without the hinderance of the *Probable Cause* requirement is "important" or "in the public interest" is vague and subjective.

*Second,* the foregoing public policy conclusions upon which *Camara* and the lower courts here rest are beyond the judicial function. It is also for the framers and the voters to decide what is "important" or "in the public interest through including or excluding text when they enact a constitution. Ohioans included no "importance" exception to the *Probable Cause* requirement. Instead, they thought it "important" to require government, before entering their houses, to prove *Probable Cause* – as understood in 1851.

*Third,* it is "a basic principle that the requirement of probable cause to permit entry into a private home is not excused based upon any relative perceived societal importance." *Int. of Y.W.-B.,* 265 A.3d 602, 619-20 (Pa. 2021)(rejecting attenuation of Probable Cause to search within the home even though "protection of children is an essential societal value"), citing *Mincey v. Arizona*, 437 U.S. 385 (1978)(rejecting argument that "the extreme importance of the immediate investigation of murders justified a warrantless search of a murder scene," since even "the public interest in the investigation of other serious crimes" does not justify suspending constitutional safeguards). It is indeed arbitrary for courts to assert that "health and safety" are sufficiently "important" to justify attenuating Probable Cause guarantees while those same guarantees must be honored in the very most important circumstances of investigating serious crime.

Moreover, the City is preoccupied with *how those occupying homes are living* as a matter of health and safety. *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶7 (the City is searching for "trash," "food scraps," and "mildew"). This rationale knows no limiting principle. Many senior citizens are known to have difficult in maintaining the homes they own as they age. Is this alone *Probable Cause* for municipal government to regularly obtain search warrants intruding into their homes?

Thankfully not, because there is no "health and safety," "building inspector" or "code enforcement" exception written into the text of Ohio's Bill of Rights. See *Int. of Y.W.-B.,* at 627-28 ("We expressly hold that there is no 'social worker exception' to compliance with constitutional limitations on an entry into a home without consent or exigent circumstances.").

**d. Judicial favoritism toward *paternalism* cannot diminish what Probable Cause requires.**

The Court of Appeals' paternalism reflects an odious philosophy that, in this instance, requires perceiving tenants as mindless second-class citizens incapable of looking after themselves. But

embracing such a philosophy to make policy is for legislators rather than judges. And here, the Ohio General Assembly has already fully balanced tenants' rights and protections through the Revised Code.

The General Assembly provides this policy throughout the State of Ohio through a comprehensive statewide regulatory regime largely-oriented toward providing remedies when tenants occupy substandard residential housing. R.C. 5321.19 ("The general assembly finds and declares that Chapter 5321 of the Revised Code is a statewide and comprehensive legislative enactment regulating all aspects of the landlord-tenant relationship with respect to residential premises."). In doing so, the General Assembly at no point declares a necessity or importance of suspending traditionally-understood *Probable Cause* guarantees to achieve its policy goals.

To the contrary, the General Assembly has promulgated policies obviating the necessity for further paternalism by the City in favor of a market-based approach replete with checks and balances. Landlords are already obliged to "Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety; Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition; Keep all common areas of the premises in a safe and sanitary condition; Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by the landlord; [P]rovide and maintain appropriate receptacles for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of a dwelling unit, and arrange for their removal; [and] Supply running water, reasonable amounts of hot water, and reasonable heat at all times, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection." R.C. 5321.04(A).

To enforce these obligations, statewide policy expressly provides checks when "a landlord fails to fulfill any obligation imposed upon him by section 5321.04 of the Revised Code, or any obligation imposed upon him by the rental agreement, if the conditions of the residential premises are such that the tenant reasonably believes that a landlord has failed to fulfill any such obligations, or if a governmental agency has found that the premises are not in compliance with building, housing, health, or safety codes that apply to any condition of the premises that could materially affect the health and safety of an occupant . . ." R.C. 5321.07(A). Specifically, a tenant may escrow rent, "apply to the court for an order directing the landlord to remedy the condition" and "an order reducing the periodic rent due the landlord until the landlord remedies the condition," or even "terminate the rental agreement." R.C. 5321.07(B).

To safeguard these remedies "a landlord may not retaliate against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, or bringing or threatening to bring an action for possession of the tenant's premises because (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety; [or] (2) The tenant has complained to the landlord of any violation of section 5321.04 of the Revised Code . . ." R.C. 5321.02(A)(1) and (A)(2).

Even further, R.C. 5321.02 provides exclusive remedies available to tenants who may have suffered from such retaliation: "the tenant may: (1) Use the retaliatory action of the landlord as a defense to an action by the landlord to recover possession of the premises; (2) Recover possession of the premises; or (3) Terminate the rental agreement." R.C. 5321.02(B)(adding "In addition, the tenant may recover from the landlord any actual damages together with reasonable attorneys' fees.").

Of course, residential tenants themselves may also sully the home. To safeguard against that possibility, the General Assembly requires residential tenants to maintain the home, abstain from crime, and avoid creating nuisances. R.C. 5321.05(A).

And here again, the General Assembly, as a matter of policy, vests the authority to check any tenant's creation of nuisances in the most interested party – the homeowning landlord,[9] providing that, in the event of a tenant violation, "the landlord may recover actual damages and reasonable attorney's fees, terminate the rental agreement, maintain an action for the possession of the premises, or obtain injunctive relief. R.C. 5321.05(C).

Likewise, in enacting inspection-specific policy, the General Assembly has never articulated an "importance" or "necessity" to dispense with traditional *Probable Cause* guarantees. R.C. 715.26(B) provides that a municipal corporation may "provide for the inspection of buildings or other structures." Concomitantly, in emboldening the municipalities to regulate for "the purpose of insuring the healthful, safe, and sanitary environment of the occupant," the General Assembly never declared a necessity or importance in accomplishing this through eviscerating meaningful *Probable Cause*.

Concomitantly, owner-occupancy functions in the total absence of the foregoing checks and balances, arguably making a greater case for mandatory home inspections in *that* context. The City's contentions, bereft of any limiting principle, arbitrarily exclude such homes only for the time being.

These realities mitigate against diminishing the textual guarantee of *Probable Cause* to satisfy the lower courts' fealty to paternalism.

**e. Blind judicial assessment of "whether any other canvassing technique would achieve *acceptable results*," and therefore "*the need* for the inspection" cannot diminish what Probable Cause requires.**

The claim of the City and the lower courts is that dispending with anything resembling the original public meaning of *Probable Cause* is absolutely "necessary" to obtain answers to the four pages of questions that the Court of Appeals chronicles. *Dept. of Dev. Services for City of North Canton Ohio v. CF Homes LLC*, 2025-Ohio-522, ¶7. However, a comparison of this list with reality displays

[9] Notably, the City here only seeks diminished probable cause for "rental" inspections, but its theory applies to what are typically labeled "pre-sale" and "point of sale" inspections applicable to home buyers and sellers.

otherwise. *Wiebesick*, supra., at 179-80 (mistakenly, "the court assumes – with no evidence – that no other method of enforcement would achieve acceptable levels of compliance. But other cities have adopted different, less intrusive, methods of enforcement").

*First,* the majority of Ohio municipalities do not require any type of rental, pre-sale, or point-of-sale inspection. The absence of an annual requirement does not forbid reasonable investigations by municipalities or health departments upon their own initiative or upon credible complaints made by tenants, neighbors, or other reliable third parties. Such evidence may provide individualized suspicion necessary to justify issuance of a search warrant.

*Second,* the City may ameliorate its "need" to suspend *Probable Cause* protections by *asking* tenants – whom they claim they are "protecting" – to voluntarily consent to an inspection. This is something North Canton never attempted.

*Third*, since "checklist" is posed as a series of questions, the City could ameliorate its "need" to suspend *Probable Cause* by simply asking these questions to the homeowner, any tenants, and reliable third parties. The overwhelming majority of the questions posed require only layman knowledge about the home. For instance, whether there are "working smoke detectors in each sleeping room," windows, doors, toilets, kitchen sinks, hot water, and bathtubs or showers, pests or not, and adequately heating or cooling can be easily reported on a questionnaire – if necessary, filled out under penalty of perjury and accompanied by photographs or the certification of the homeowners' contractors, where applicable. Answers to these questions may on occasion provide evidence sufficient to generate individualized suspicion supporting issuance of a search warrant. The City of Bowling Green, as one example, operates precisely such a regulatory regime. See *https://www.bgohio.org/671/Rental-Inspections* (last checked August 7, 2025).

*Fourth,* the City could ameliorate its "need" to suspend *Probable Cause* protections by simply joining the large number of other municipalities that exclusively conduct a plain view inspection of the exterior of homes from public property (which requires no search warrant). This method provides for more than sufficient evaluation of junk, trash, windows, roofs, and downspouts and gutters. *Id*., at ¶7 Such evaluation may on occasion provide evidence sufficient to generate individualized suspicion supporting issuance of a search warrant.

*Fifth,* neither the City nor *Camara* or the lower courts articulated why *state action* through intrusion by *government itself* is "necessary." The City could ameliorate its "need" to suspend *Probable Cause* protections by requiring inspections and/or certification by *private* inspectors – who as state-licensed professionals – cannot be dismissed as incompetent, biased, or unethical. R.C. 4764.02(A) requires state licensure to "conduct a home inspection . . . for compensation or other valuable consideration." And R.C. 4764.01 confirms that a "home inspection" is essentially the same as what the City seeks to impose here. See 4764.01(C)("'Home inspection' means the process by which a home inspector conducts a visual examination of the readily accessible components of a residential building for a client"). These private home inspectors generate written reports containing all of the details the City here claims it seeks. See R.C. 4764.01(D).[10]

And many other state-licensed professionals could also competently and credibly inspect and evaluate the very issues the City claims *Probable Cause* must be suspended to accomplish. Professional engineers are licensed pursuant to Chapter 4733 of the Revised Code. Pest controllers are licensed.

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[10] "Home inspection report" means a written report prepared by a licensed home inspector for compensation and issued after an on-site inspection of a residential property. A report shall include all of the following: (1) Information on any system or component inspected that, in the professional opinion of the inspector, is deficient to the degree that it is deficient; (2) The inspector's recommendation to repair or monitor deficiencies reported under division (D)(1) of this section; (3) A list of any systems or components that were designated for inspection in the standards of practice adopted by the board under division (A)(10) of section 4764.05 of the Revised Code but that were not inspected; (4) The reason a system or component listed under division (D)(3) of this section was not inspected.

Heating, ventilating, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, and hydronics contractors are all licensed professionals pursuant to Chapter 4740, R.C. 3781.102, R.C. 3783.06 (certified electrical inspectors); and/or R.C. 715.27. Real estate brokers licensed under Chapter 4735 are also educated and otherwise equipped to evaluate and report on the issues the City claims it seeks to know. Less qualified than any of the foregoing – and exempt from all training, testing, and credentials requirements – is "a person who is employed by or whose services otherwise are retained by this state or a political subdivision of this state for the purpose of enforcing building codes." R.C. 4764.03(A).

The City of Springdale, as just one example, permit homeowners to utilize *private* home inspectors. And while the City Toledo now requires lead inspection and abatement for older homes there, even these complex inspections do not require *government* inspectors.[11]

In conclusion, if "necessity," or a "least restrictive means" test were truly the touchstone of the analysis here, the City of North Canton's Warrant Application would fail such scrutiny. In fact, the only reason the City needs to establish *Probable Cause* at all is because *it* chooses the most intrusive and least discerning possible means to accomplish its avowed ends. It has thus manufactured the "need" for the exception from the text of *Probable Cause* that it now seeks.

Consequently, The City's position here demands not only the elevation of *policy viewpoints* over constitutional text. It further requires this court to accept the transparently-spurious assumption underlying those policy arguments: that only *government* inspectors intruding annually into occupied homes can accomplish its objectives.

* * *

[11] Specifically, the City of Toledo mandates "Local Lead Inspections," which are visual assessment of property and environmental samples in search of lead. Toledo Municipal Code Section 1760.07(a) (16). It does so not through forcing itself into occupied residences, but by authorizing the use of private contractors who qualify as "Local Lead Inspectors" Toledo Municipal Code Section 1760.07(a)(16).

This Court fixed the original public meaning of *Probable Cause* in 1851. Pursuant thereto, a search warrant to intrude within an Ohioan's occupied home cannot be issued without government demonstrating a *probability* of unlawfulness specific to where within that home it seeks to search. Redefinitions, reconstructions, and misinterpretations of Probable Cause, along with public policy rationales seeking to override it, must be rejected. Accordingly, the City of North Canton's Warrant Application here should have been denied.

## CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals decision below and issue a mandate ordering the denial of the City of North Canton's Warrant Application in this case.

Respectfully submitted,

*/s/ Maurice A. Thompson*
Maurice A. Thompson (0078548)
1851 Center for Constitutional Law
122 E. Main Street
Columbus, Ohio 43215
Tel: (614) 340-9817
*MThompson@OhioConstitution.org*

Thomas W. Connors
Mendenhall Law Group
190 North Union Street – Ste 201
Akron, OH 44304
Tel: (330) 888-1240
*TConnors@WarnerMendenhall.com*

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served by email and this Court's electronic filing system to the Plaintiff-Appellee's counsel below this 8th Day of August, 2025.

Brenden Heil (0091991)
Bricker Graydon LLP
1100 Superior Ave. – Ste 1600
Cleveland, OH 44114
Tel: (216) 523-5593
*BHeil@BrickerGraydon.com*

/s/ *Maurice A. Thompson*
Maurice A. Thompson

# APPENDIX

***Article I, Section 14*** ("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.")

***Opinion and Judgment Entry,*** Stark County Court of Appeals, Fifth Appellate District, Case No. 2024CA00108, 2025-Ohio-522