IN THE SUPREME COURT OF OHIO

DEPARTMENT OF DEVELOPMENT SERVICES FOR THE CITY OF NORTH CANTON OHIO, *Plaintiff-Appellee*, v. CF HOMES LLC, *Defendant-Appellant*.	Case No. 2025-0458 On appeal from the Court of Appeals for the Fifth Appellate District of Ohio Case No. 2024 CV 108

BRIEF OF *AMICUS CURIAE* INSTITUTE FOR JUSTICE IN SUPPORT OF APPELLANT

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Institute for Justice (IJ) is a nonprofit, public interest law firm dedicated to securing the individual rights and freedoms of Americans through litigation in state and federal courts across the country. This is not IJ's first appearance before this Court. In *Norwood v. Horney*, 2006-Ohio-3799, IJ represented Ohio property owners whose homes were taken for a private economic development project. In a unanimous decision, this Court rejected the U.S. Supreme Court's expansive reading of what constitutes a "public use" in *Kelo v. City of New London*, 545 U.S. 469 (2005). *Norwood* at ¶ 65 ("[W]e decline to hold that the Takings Clause in Ohio's Constitution has the sweeping breadth that the Supreme Court attributed to the United States Constitution's Takings Clause[.]").

IJ has also defended the liberty of Ohioans against unreasonable administrative searches. In 2021, it represented Jeremy Bennett, a taxidermist whom the Ohio Department of Natural Resources (ODNR) subjected to repeated, arbitrary, and intrusive warrantless inspections of his private shop. *Bennett v. Mertz*, No. 2:21-cv-05318-ALM-KAJ (S.D. Ohio Nov. 16, 2021). In response to the lawsuit, ODNR issued a directive requiring its officers to acquire consent or a warrant before threatening taxidermists with criminal sanctions for refusing an inspection. *See* Andrew Wimer, *Victory for Ohio taxidermist who fought against warrantless inspections*, IJ (June 28, 2022), https://ij.org/press-release/victory-for-ohio-taxidermist-who-fought-against-warrantless-inspections/.

On the subject of *Camara* warrants for rental inspections, IJ has deep expertise, having litigated the matter before the highest courts of Iowa and Minnesota. *See Singer v. City of Orange City*, 15 N.W.3d 70, 77–78 (Iowa 2024); *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 157, 167 (Minn. 2017). Currently, IJ represents several tenants in a state constitutional lawsuit in

Pennsylvania whose homes have been searched under the authority of *Camara* warrants. That case is pending before the Pennsylvania Commonwealth Court. *Rivera v. Borough of Pottstown*, Nos. 190 C.D. 2024 & 224 C.D. 2024 (Pa. Commw. Ct.).

IJ has defended Americans' rights against unreasonable searches and seizures in state and federal courts across the country, *see, e.g.*, *Snitko v. United States*, 90 F.4th 1250, 1264–65 (9th Cir. 2024) (FBI retention of contents of private bank boxes constituted unreasonable seizure). *Rainwaters v. Tennessee Wildlife Resources Agency*, No. W2022-00514-COA-R3-CV, 2024 WL 2078231, at *16–17 (Tenn. App. May 9, 2024) (unpublished) (holding statute authorizing game wardens to trespass on private land unreasonable under the state constitution's search and seizure provision), and is a frequent litigant at the United States Supreme Court, with several impactful victories there in recent years. *See Martin v. United States*, 606 U.S. __, 145 S.Ct. 1689 (2025) (Federal Tort Claims Act immunity); *Devillier v. Texas*, 601 U.S. 285 (2024) (Fifth Amendment Takings Clause); *Gonzalez v. Trevino*, 602 U.S. 653 (2024) (First Amendment); *Timbs v. Indiana*, 586 U.S. 146 (2019) (incorporating Eighth Amendment Excessive Fines Clause to the states through the Fourteenth Amendment). Its expertise in the constitutional dimensions of rental inspections will be helpful to this Court.

INTRODUCTION

This case presents this Court's first opportunity to consider whether the administrative warrants endorsed by the U.S. Supreme Court in *Camara v. Municipal Court*, 387 U.S. 523 (1967), violate the probable cause requirement of Section 14, Article I of Ohio's constitution. In addressing that question, the Court may draw on a deep tradition: Ohio jurisprudence—like the colonial and early American legal systems it inherits—has long rejected the general warrants at issue here.

The Anglo-American tradition of search-and-seizure law recognized two types of warrants prior to *Camara*: general and specific, with the specific warrant being the only legitimate vehicle for judicially sanctioned intrusions on private property. This was a product of historic turmoil. The legal controversies concerning British officers' use of "reviled general warrants," (Cleaned up.), *Riley v. California*, 573 U.S. 373, 403 (2014), "were in the minds of those who framed the [F]ourth [A]mendment to the constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures." *Boyd v. United States*, 116 U.S. 616, 626–27 (1886). To end the practice of unfounded, open-ended searches, the Fourth Amendment mandated *specific* warrants by stating that "no Warrants shall issue[] but upon probable cause" and required that warrants state their objects with particularity. U.S. Const., amend. IV.

But in 1967, the U.S. Supreme Court broke from the Nation's tradition of requiring specific warrants to search private homes. In *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967), the Court ruled that "legislative or administrative standards"—i.e., generalized cause—satisfied the probable cause requirement for a new type of writ known today as the administrative warrant. This is an old idea re-packaged for the age of regulation and this Court should reject it as the framers did. *Camara* has no foundation in the history or original public meaning of Section 14, Article I of the Ohio Constitution.

Ohio's own history of search and seizure law indicates that the Founding Era aversion to general search powers was very much alive and well in this State during its founding in 1802 and constitutional convention in 1851. The statutes, cases, and customs regarding search and seizure in Ohio during the 1800s are instructive of the original public meaning behind Article I, § 14's use of "probable cause" and "unreasonable searches and seizures." Ohio Const., art. I, § 14. Together,

they reflect a settled principle: government entry into the home requires individualized probable cause for a warrant, i.e. evidence creating a likelihood that a crime or violation will be discovered.

Prudential concerns also favor specific warrants over general ones. General search powers concentrate arbitrary power in the hands of those who may abuse it, and when applied to homes, they threaten core liberty and privacy interests. In jurisdictions where administrative warrants have proliferated unchecked, the security of the home has been substantially diminished—often for no reason other than that a person rents rather than owns. Rental inspections are vague in scope and intrusive in execution. Yet the state interest in searching dwellings *not suspected of violating the law* pales in comparison to the depth of intrusions such inspections permit.

STATEMENT OF THE FACTS

In 2022, the City of North Canton, Ohio ("City") enacted a rental registration ordinance requiring all leased homes to undergo government inspections for compliance with the City's 72-page Property Maintenance Code—a sweeping set of safety and sanitation regulations. North Canton Codified Ordinances ("NCCO") § 703.04(c); NCCO Part 17. The law requires the owners of leased properties to register with the county and have them inspected at intervals that vary based on the number of properties they own and whether and how many violations of the City's vast property code are discovered during the initial and subsequent inspections. NCCO § 703.04(c)(4). Critically, the Code does not require the City to show probable cause of a violation before searching a person's home. The refusal of a search alone is the only grounds necessary for the issuance of an administrative warrant for the refused search to take place without consent or cause. NCCO § 703.04(c)(4)(C)(i).

The places an inspector is authorized to look are staggering in scope and intrusive in depth according to the City's own checklist. *Dep't of Dev. Servs. v. CF Homes LLC*, 2025-Ohio-1342,

¶ 7 (5th Dist.). Searches for "pests" could lead an inspector into closed cupboards, cabinets, and closets where a tenant may store sensitive items. *Id.* Ensuring that "plumbing fixtures [are] in operating condition" will require an inspector to lift a toilet lid and pull back shower curtains. *Id.* Checking the "sewer clean-out openings" and "private disposal" system will lay bare the under-sink cabinet. *Id.* And searches for "visual evidence of bedbugs" may require a close inspection of a person's mattress, given the miniscule size of these insects—even the pulling of sheets to check the mattress's seams and box spring. *Id.*; EPA, *How to Find Bed Bugs* (accessed July 23, 2025) epa.gov/bedbugs/how-find-bed-bugs. Finally, whether "the dwelling unit [is] free of trash, recyclables, and food scraps" appears to dissipate any pretended limitations on where an inspector might look, given that such items may be found anywhere within a person's home. *CF Homes* at ¶ 7. The City's own code defines this search as "a *general* inspection." NCCO § 703.04(c) (emphasis added). The distinction between general and specific searches, as Amicus details below, is of great historical importance to the original public meaning of state and federal constitutional protections against unreasonable searches and seizures, with opposition to general searches being one of the motivating forces for the American Revolution itself. *See infra* Part II–A–1.

When Appellant CF Homes refused the search of its property, the City repaired to the Court of Common Pleas to seek a warrant, which the code provides the "Director of Permits … may obtain" "[i]f a property owner fails to schedule inspections for their property within thirty (30) days." NCCO § 703.04(c)(4)(C)(i). Appellant intervened in opposition to the warrant application, the trial court entered judgment in the City's favor, the Court of Appeals of Ohio (Fifth District, Stark County) affirmed, and now this Court has consented to jurisdiction to consider whether such an administrative warrant complies with the original public meaning of Section 14, Article I's probable cause requirement. Ohio Const., art. I, § 14; *CF Homes* at ¶¶ 8–14.

SUMMARY OF ARGUMENT

Ohio applies a two-step inquiry to determine whether Section 14, Article I affords greater protection than the Fourth Amendment. Step one asks whether tradition, history, and the common law authorized—or prohibited—the government conduct at issue. *See* Part I–A. Step two, reached only if the original public meaning of Ohio's constitution provides no clear rule, balances the government interest in searching or seizing property against Ohioans' security and privacy interests—here, the sanctity of their homes. *See id.*

First, there is no persuasive reason to follow *Camara*, as that case was untethered from the original public meaning of the Fourth Amendment's probable cause requirement. *See* Part I–B. It was a policy-driven departure from constitutional text and history, and its contours have never been sufficiently defined or justified. *See id.*

Second, the original public meaning of the search and seizure provision in Ohio's 1851 Constitution shares a common thread of history and background law with Section 5, Article VIII of Ohio's founding constitution, the U.S. Constitution's Fourth Amendment, and the founding constitutions of other states. *See* Part II–A–1. This shared history and parallel constitutional language confirm that probable cause was understood to require not only specificity in what may be searched, but in why a search is justified. *See id.*

Third, Ohio's own statutory history reinforces this understanding. From 1800 to the 1880s, statutory search powers were rare; suspicionless searches were rarer still; and no statute authorized warrants without particularized cause for searches of homes—whether owned or rented. *See* Part II–A–2. There is no historical basis in Ohio law for administrative searches of homes without *individualized* cause that a property contains evidence of a crime or code violation.

Fourth, even if history or text provided no clear answer, the City's interest in inspecting homes not suspected of any violation is plainly outweighed by the fundamental interest of Ohioans in the privacy and security of their homes. *See* Part II–B. As the breadth of the City's code and inspection checklist illustrates, these searches are sweeping and deeply invasive. *See id.* That they are inflicted solely on households because they rent—rather than own—their homes renders them constitutionally intolerable.

ARGUMENT

I. 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 proposition that Ohio's Constitution affords greater protection against general administrative searches than *Camara* is true for two reasons. First, as shown in Part I–A, Ohio interprets its constitution according to the original public meaning of its text. And second, as shown in Part I–B, the U.S. Supreme Court departed from original-meaning interpretation when arriving at its decision in *Camara*. As Part II will further demonstrate, the original public meaning of Section 14, Article I's requirement of "probable cause" and prohibition of "unreasonable searches" precludes the general administrative warrants endorsed by *Camara*.

In 1967, the U.S. Supreme Court held in *Camara v. Municipal Court*, 387 U.S. 523 (1967), that homes could be searched by health and building code inspectors who acquire administrative warrants. *Id.* at 538. These warrants, the Court explained, could satisfy the probable cause requirement of the Fourth Amendment even if the inspectors did not prove reasonable grounds to a judge that a violation would be discovered through their execution. *Id.* Instead, a warrant application's compliance with "reasonable legislative or administrative standards" such as "the

passage of time," "nature of the building," or "condition of the entire area" would be sufficient. *Id.* Thus, procedural regularity replaced the historical requirement of individualized cause.

The *Camara* rule represented a significant shift in federal Fourth Amendment jurisprudence away from the history, common law, and original public meaning of the U.S. Constitution. This Court has applied the federal administrative-search case law that spawned from *Camara*, including the *Camara* rule itself, but has never reconciled the original public meaning of Section 14, Article I with the concept of administrative warrants that issue without individualized probable cause. This Court should reject administrative warrants because (1) Ohio interprets its Constitution according to its original public meaning, and (2) *Camara* is an unpersuasive departure from the history-and-tradition approach to constitutional interpretation.

A. This Court interprets Ohio's Constitution according to its original public meaning.

This Court's administrative-search cases have yet to independently engage with the text, original public meaning, and history underpinning Section 14, Article I. Before *Camara* set a higher federal floor, this Court held in *State ex rel. Eaton v. Price*, 168 Ohio St. 123 (1958), that searches of homes for administrative code compliance did not require a warrant or cause under Section 14, Article I. *Id.* at 138. But while that opinion considered persuasive precedents from other jurisdictions, it contained no discussion of the original public meaning of "probable cause" or the warrant requirement, resting instead on the reflexive observation that "[t]he right of a home owner to the inviolability of his 'castle' should be subordinate to the general health and safety of the community where he lives." *Id.* It arrived at the conclusion that searches of homes for code-compliance required neither individualized cause nor warrants. *Id.*

Three decades later, in *State v. VFW Post 3562*, 37 Ohio St.3d 310 (1988), this Court held that Section 14, Article I *does* require a warrant for administrative searches of buildings, relying

principally on *Camara* and federal cases that balanced government administrative interests against societal privacy expectations. *Id.* at 311, 314–17. However, in applying federal administrative-search precedent, this Court did not separately consider the foundations for determining the reasonableness of administrative searches (either with or without a warrant) under Section 14, Article I. Instead, it referenced federal precedent briefly and concluded that the search program under review violated both the federal and state constitutions. *Id.* at 314. As a result, Ohio was left with no distinct state-law framework for assessing the reasonableness of administrative searches—or for determining when a warrant may issue to search a home or business for administrative purposes.

This Court owes no deference to federal precedents. *State v. Brown*, 2003-Ohio-3931, ¶ 21. And with respect to its own, it "is entrusted with the duty to examine" them "and, when reconciliation is impossible, to discard its former errors." (Citation omitted.) *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶ 27. "This is particularly true when it comes to decisions like [*Price* and *VFP Post 3562*] in which this [C]ourt adopted a lockstep reading of [its] state Constitution without any independent analysis of the constitutional provision." (Citation omitted.) *Id.* at ¶ 28. Under such circumstances, this Court should "independently interpret the Ohio Constitution … based on the text, history and structure of that document." Justice R. Patrick DeWine, Ohio Constitutional Interpretation, Forthcoming 86 Ohio St. L.J., p.2 (2025), available online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4986929.

The Ohio Constitution is "a document of independent force" with a scope and meaning distinct from the federal Constitution, though it may employ similar language and recognize the same general categories of rights. *Brown* at ¶ 21 (quoting *Arnold v. Cleveland*, 67 Ohio St.3d 35, 169 (1993)). Indeed, this Court has at other times eschewed blind adherence to federal precedents

when considering the scope and protections of Section 14, Article I. In *Brown* (at ¶ 7), this Court held that the "Ohio Constitution provides greater protection than the Fourth Amendment … against warrantless arrests for minor misdemeanors," rejecting the U.S. Supreme Court's precedent from *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), in which that court upheld the arrest of a motorist for failure to wear a seatbelt.

To arrive at that conclusion, this Court adopted its reasoning from *State v. Jones*, 88 Ohio St.3d 430 (2000), an earlier, pre-*Atwater* decision in which it balanced the government interest in minor misdemeanor arrests against the greater liberty interest of persons to be free from them. *Brown* at ¶ 19 (citing *Jones*, 88 Ohio St.3d at 440). *Jones* announced the two-pronged inquiry in Ohio for determining whether the state constitution is more protective than the Fourth Amendment. First, this Court asks whether a historical common-law rule answers whether the state conduct at issue was a reasonable search or seizure at the Founding. *Jones*, 88 Ohio St.3d at 437–38. Second, and only if the Court is "unable to say that there was a clear practice either allowing or forbidding" the state action, it will balance the government interest against the citizen's liberty and privacy interests. *Id.* at 438–39; *Brown* at ¶ 22 (endorsing the *Jones* approach).

This differs significantly from the approach employed by other state courts. Minnesota is the only other State high court to consider, on the merits, whether to reject or adopt the administrative warrant rule from *Camara* on state law grounds. Guided by an interpretive doctrine that mandates a "restrained approach" where state and federal language are similar and grants deference to "the primacy of the federal constitution in matters affecting individual liberties," that court decided to follow *Camara* in *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 157, 167 (Minn. 2017). That court found that none of the three limited exceptions to Minnesota's lockstep doctrine were sufficiently proved. *Id.* The Washington and Iowa high courts have considered state-

law challenges to *Camara*, but neither independently construed their state constitutions as this Court does. *See Singer v. City of Orange City*, 15 N.W.3d 70, 77–78 (Iowa 2024) (noting lockstep) (citation omitted); *City of Seattle v. McCready*, 123 Wash.2d 260, 267 (1993) (en banc).

Here, this Court enjoys a freer hand in interpreting its own constitution than Minnesota's deference-forward approach. The original public meaning of Ohio's "probable cause" requirement and prohibition of "unreasonable searches" forbids government entry of homes without individualized probable cause. *See infra* Part II–A. While some evidence from Ohio's founding period indicates limited government inspection powers with respect to dwellings, none approached the breadth of scope and lack of oversight involved in modern administrative warrants or the ordinance authorizing them in the case at bar. *See infra* Part II–A–2.

B. *Camara* is not instructive of the original public meaning of "probable cause" or "unreasonable searches."

Other states, like Minnesota, apply a strong presumption in favor of following federal precedent when considering analogous state constitutional provisions, *see Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005), but this Court is not so constrained. *See Bloom*, 2024-Ohio-5029, ¶ 31 ("unreasoned pronouncements" of state constitutional provisions in federal lockstep not entitled to stare decisis). In the past, this Court has merely sought to "harmonize [its] interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, unless there are persuasive reasons to find otherwise." *Brown*, 2003-Ohio-3931, ¶ 22. There are persuasive reasons to find otherwise here.

Decided in an era when the U.S. Supreme Court prioritized policy over history, *Camara* lacks the foundation of sound constitutional interpretation: the original public meaning of the text. *See Arnold v. Cleveland*, 67 Ohio St.3d 35, 44 (1993) (consulting text and historical record to inform meaning of Section 4, Article I). Fifty-eight years after *Camara*, the U.S. Supreme Court

has yet to clarify what its legislative probable cause test actually means. Federal search-and-seizure jurisprudence confirms that *Camara* departed from the historical foundations of the right to be secure against unreasonable searches and seizures—and thus carries little persuasive weight.

Federal Fourth Amendment jurisprudence can be broken into three historical phases. First, during the *Boyd* Era, the Court interpreted the Fourth Amendment in accord with its textual focus on property, i.e., "persons, houses, papers, and effects" and consulted the common-law customs and practices of the Founding Era as well as this country's historical struggle against general searches during English and colonial rule to inform what constituted "probable cause" and "unreasonable searches and seizures." *See Gouled v. United States*, 255 U.S. 298, 308 (1921) (discussing original meaning); *Boyd v. United States*, 116 U.S. 616, 625–27 (1886) (discussing history of abusive general warrants).

In the late 1800s, federal customs agents prosecuted E.A. Boyd on suspicion that he understated the value of an overseas order of plate glass—a federal crime. *Boyd*, 116 U.S. at 617–18. Relying on an 1874 Act of Congress, the agents compelled Mr. Boyd to produce papers it believed would prove its case. *Id.* The order did not require probable cause—which the revenue officers ostensibly lacked since they did not seek a traditional judicial warrant. *Id.* Mr. Boyd was convicted after surrendering the incriminating documents and the circuit court affirmed. *Id.*

The U.S. Supreme Court granted certiorari to decide whether the Fourth Amendment allowed the search and seizure of private property by subpoena *without cause*.[1] It reversed. *Boyd*, 116 U.S. at 638. The Court recounted the historical abuses of general warrants in both the American Colonies and England—writs of commission and statutes alike that authorized searches without individualized cause. *Id.* at 624–29. For nearly a century after *Boyd*, Fourth Amendment

[1] The Court also considered a related Fifth Amendment privilege question that has been overruled by subsequent precedent. *See Warden v. Hayden*, 387 U.S. 294, 302–05 (1967).

jurisprudence was grounded in the property-based terms of the Amendment—"persons, houses, papers, and effects"—and shaped by its historical core: the deep-rooted opposition to general searches. U.S. Const. amend. IV.

But as technology advanced, the Court struggled to locate adequate protections within the Fourth Amendment's text against increasingly non-physical intrusions enabled by modern surveillance. *See Olmstead v. United States*, 277 U.S. 438, 466 (1928) (holding tapping of telephone line did not constitute search because it did not involve a physical intrusion against a protected property interest).

Enter: The *Katz* Era, circa 1967. During this period, the Court set aside the text and history of the Fourth Amendment in favor of a new inquiry: whether government conduct invaded an "expectation of privacy" that society deemed reasonable. *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). That shift was signaled by three decisions handed down in 1967.

First, in *Katz*, Justice Harlan's concurrence crafted the "expectation of privacy" test that dominated the Court's jurisprudence until the early 2010s. Second, in *Warden v. Hayden*, 387 U.S. 294 (1967), the Court rejected the primacy of property rights under the Fourth Amendment, declaring that "[t]he premise that property interests control the right of the Government to search and seize has been discredited" and "[w]e have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property[.]" *Id.* at 304. The third decision was *Camara*—a watershed moment for administrative search doctrine. There, the Court drew a line between criminal and administrative enforcement, holding that the Warrant Clause applies in full only to the former. *Camara*, 387 U.S. at 538. So long as a law authorized the search and it could be labeled "administrative," warrants no longer required individualized probable cause—despite the Fourth Amendment's plain text to the contrary.

During the *Katz* Era, the Court allowed government intervention itself to erode societal privacy expectations—and with them, Fourth Amendment protections. *E.g. New York v. Burger*, 482 U.S. 691, 701 (1987) (reduced expectations of privacy from intrusive regulations rendered warrantless "administrative" inspections reasonable). The 1970s and '80s in particular saw a reimagining of warrant exceptions through this expectations-based lens. The automobile exception, once grounded in the historical subjection of stagecoaches and vessels to warrantless searches, was redefined around diminished expectations of privacy resulting from pervasive traffic regulations. *Compare Carroll v. United States*, 267 U.S. 132, 150–53 (1925) (history), *with New York v. Class*, 475 U.S. 106, 112–13 (1986) (pervasive regulation). Similarly, business inspections—once justified by a historically narrow set of exceptions—were subsumed into the "closely regulated" doctrine. *Compare Colonnade Catering Corp. v. United States*, 397 U.S. 72, 75–76 (1970) (citing *Boyd*, 116 U.S. at 624) (relying on historical treatment of liquor as subject to search), *with Burger*, 482 U.S. at 702 (relying on reduced privacy interests in regulated businesses); *see generally* Ann K. Wooster, *Validity of Warrantless Administrative Inspection of Business That is Allegedly Closely or Pervasively Regulated*, 182 A.L.R. Fed. 467 (2002) (documenting the myriad activities deemed "closely regulated" and thus subject to suspicionless searches). The Court shifted from historical limits to a balancing approach, leading lower courts to classify an ever-growing range of activities as "closely regulated" and thus subject to suspicionless searches.

What began in *Camara* as a doctrine suspending probable cause for administrative warrants soon became one that suspended the warrant requirement altogether—so long as the search was styled "administrative" and the activity "closely regulated." *See Burger*, 482 U.S. at 702–03. The policy-based rationale of *Camara*, its progeny, and other *Katz* Era precedents contrasts sharpy with

the original-public-meaning approach to constitutional interpretation favored by this Court and the U.S. Supreme Court of the *Boyd* and *Jones* Eras.

Finally, federal Fourth Amendment jurisprudence arrived at the *Jones* Era in 2012, marking a shift back toward *Boyd*, its grounding in the historical common law, and a recognition that the *Katz* privacy doctrine did not replace but instead augmented the baseline protections against unreasonable searches and seizures that were codified in 1791.

In *United States v. Jones*, 565 U.S. 400 (2012), the Court held that the placement of a GPS device on a vehicle was an unreasonable search because it was a common-law trespass to an "effect" used to obtain information notwithstanding whether the monitoring of a person's movements invaded societal expectations of privacy. *Id.* at 411. "What we apply," wrote the Court, "is an 18th-century guarantee against unreasonable searches, which we believe must provide *at a minimum* the degree of protection it afforded when it was adopted." *Id.* (emphasis in original). Thus, the great sea-change of the *Jones* Era is the recognition that "the *Katz* reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test." *Id.* at 409 (emphasis in original). No longer would physical intrusions on the home and its curtilage be governed by vague balancing. *See Florida v. Jardines*, 569 U.S. 1, 11 (2013) ("One virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred.").

In the decade since *Jones*, the Court has relied on background principles of property law and Founding Era history to determine whether state action constitutes "unreasonable searches and seizures." *See, e.g.*, *California v. Lange*, 594 U.S. 295, 309–13 (2021) (relying on history and the common law to find hot pursuit doctrine inapplicable to minor misdemeanors); *Torres v. Madrid*,

592 U.S. 306, 311–18 (2021) (consulting common law in ruling that shooting suspect who escapes is a "seizure"); *Jardines*, 569 U.S. at 11 (dog sniff at doorstep ruled an unreasonable search because it exceeded the common-law implied license of solicitation). The Court's reasoning in *City of Los Angeles v. Patel*, 576 U.S. 409 (2015), highlights the return of federal administrative-search case law to original public meaning as opposed to unfounded privacy balancing. In *Patel*, the Court considered whether hotels could be subjected to searches without warrants or individualized cause. *Id.* at 420. While the Court during the *Katz* Era simply balanced the government interest in regulating an industry against business owners' diminished expectations of privacy, the *Patel* Court reached back for the history and customs surrounding hotels and their close analogues from the Founding Era. *Id.* at 425–26. While some regulations existed, none subjected hotels to warrantless searches, informing the Court's holding that warrantless searches of hotels without cause for code compliance were unreasonable under the Fourth Amendment. *Id.* at 426.

Camara is thus a product of the rudderless *Katz* Era of Fourth Amendment jurisprudence and it is only a matter of time before it is rejected by the Court's post-*Jones* focus on the Amendment's text and history, which categorically prohibit general warrants. *See Boyd*, 116 U.S. at 624–25; *see also infra* Part II. This Court has never pegged its own state constitutional jurisprudence to the vicissitudes of federal case law, which have waxed and waned with respect to "[t]he right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures[.]" Ohio Const., art. I, § 14. To the extent it looks for persuasive guidance in federal precedent, it should look to the *Boyd* and *Jones* Eras instead of *Camara*.

II. Proposition of Law No. 2: 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 a warrant to search.

The proposition that individualized cause is required for a warrant to issue is true for several reasons. First, this Court's interpretive methodology for its constitution stresses the

importance of consulting the common law and historical tradition to inform the original public meaning of text, and a review of the common law and history of search and seizure practices during the Founding Era and Ohio's history confirm that individualized cause was necessary for searches of homes. *See* Part II–A. Second, even if this Court finds no clear rule distilled from history and the common law, the balance of interests between government's desire to search homes not suspected of violating any law on the one hand and the privacy and security of persons in their homes on the other weighs in favor of the sanctity of Ohioans' homes. *See* Part II–B.

A. Ohio's history and tradition recognize a common-law requirement of individualized cause for home searches.

Ohio maintains a strong originalist tradition of interpreting its state constitution according to the original public meaning of its text. *See* DeWine, 86 Ohio St. L.J. at p.2 (citing Ervin H. Pollack, *Ohio Unreported Judicial Decisions Prior to 1823*, 71 (1952)) (discussing *Rutherford v. M'Faddon* (1807) and Ohio's originalist tradition). Thus, an inquiry into the search and seizure customs on which Ohio relied in adopting the terms "probable cause" and "unreasonable searches" for its state constitution is warranted. A review of this nation's historical search practices and early statutes and inspection powers in Ohio reveal that searches of dwellings required evidence supporting individualized cause during the nation's founding in the 1700s and Ohio's in the 1800s.

From early in this state's history, it has followed an original-public-meaning methodology in interpreting its constitution. *Id.* at pp.5–6. Thus, the way an Ohioan would have understood "the right of the people to be secure," "unreasonable searches," and "probable cause" in 1851 when Ohio's current constitution was ratified fixes the meaning of those terms. But Ohio's 1851 Constitution was not its first. This state's prior 1802 constitution contained much the same language in codifying the core protections of Section 14, Article I. And that language in turn resembled that of the U.S. Constitution's Fourth Amendment from 1791, and before that the

Massachusetts Declaration of Rights from 1780. Other state constitutions from the nation's Founding Era likewise provide meaningful context and insight into the foundations and original understanding of Ohio's Section 14, Article I. When Ohio's 1851 Constitution employs the same language as related state and federal constitutional provisions, "one might reasonably argue that th[e drafters] intended for the Ohio provision to have a similar meaning." *Bloom*, 2024-Ohio-5029; *see also Decker v. State*, 113 Ohio St. 512, 522–23 (1925). Thus, the relevant history involves the shared background of common law, custom, and early statutes governing searches and seizures in the American colonies around the 1700s as well as those specific to Ohio during its formative period from the early to mid-1800s. On review, those sources resoundingly condemn general searches without particularized cause, whether executed with or without a warrant.

1. America's Founding Era history evidences an aversion to general searches.

The language in Ohio's Section 14, Article I imputes a shared history with the earlier federal and state constitutions that preceded it, which began with the execution of general warrants in America and England during the 1700s. Academic scholarship has plumbed the history underpinning constitutional search and seizure protections and as Fourth Amendment scholar and legal historian Thomas K. Clancy recognized, "The core complaint of the colonists … was the general, suspicionless nature of the searches and seizures. … As they sought to regulate searches and seizures, the framers held certain principles to be fundamental, of which particularized suspicion was in the first rank." (Footnotes and citations omitted.) *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 U. Mem. L.Rev. 483, 528 (1995). High-profile litigation on both sides of the Atlantic at that time fueled the drive toward specific warrants, and ultimately, the drafting of the state and federal constitutional provisions

codifying this requirement of individualized "probable cause" for warrants to drive out general warrants in favor of specific ones.

In 1662, English legislation authorized the issuance of writs for officers of the Crown to search and seize private properties to enforce the customs laws without first proving their suspicion or cause to a magistrate. *See* An Act for Preventing Frauds and Regulating Abuses in His Majesties Customes, 14 Car. II, ch. 11, § 44 (1662), in 5 Stat. of the Realm 393, 394. Writs of assistance, whereby an officer was entitled to search anywhere he pleased and conscript locals to help were "synonymous with the power to search itself." Clancy, 25 U. Mem. L.Rev. at 501 n.64 (quoting Jacob W. Landynski*, Search and Seizure and the Supreme Court* 32 n.53 (1966)). These writs, often employed in the American Colonies did not require individualized cause and delegated "practically absolute and unlimited" discretion to their wielder. Nelson B. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* 54 (1970).

In Boston, the prominent lawyer and Son of Liberty James Otis delivered a blistering, five-hour oration against writs of assistance in the landmark *Paxton's Case*, wherein he argued that warrants must be specific and issued based on individualized cause. William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 601–1791* 377–78 (2009) (quoting Brief of Otis, *Paxton's Case*, (Mass. Feb. 24–26, 1761), *Massachusetts Spy*, Thu., 29 Apr. 1773 (vol. 3, no. 117), p. 3, cols. 1–2) (the common law required "*special writs* …whereby an inspector "*suspects such goods to be concealed in* THOSE VERY PLACES HE DESIRES TO SEARCH.") (Emphasis and capitalization in original)). The year was 1761 and John Adams, who was sitting in the courtroom that day would later write that it was the day when "the child Independence was born." *Boyd*, 116 U.S. at 625. Adams would later draft Article XIV of the Massachusetts Declaration of Rights to prohibit general government searches without cause in language that would reverberate

throughout other States' constitutions, including Ohio's, and be used as a template for the U.S. Constitution's Fourth Amendment. *See* Leonard Levy, *Origins of the Bill of Rights* 158 (1999) ("[A] straight line of progression runs from Otis's argument in 1761 to Adams's framing of Article XIV … to Madison's introduction of the proposal that became the Fourth Amendment.").

In England, shortly after *Paxton's Case*, a series of cases prominently challenged the power of English officers to search private papers and properties without first proving individualized cause to a magistrate. The opinion of the King's Bench in *Wilkes v. Wood*, 98 Eng. Rep. 489 (K.B. 1763), is the leading example. On bare suspicion that John Wilkes had authored a political tract critical of the Crown, a group of officers arrested him, searched his home, and carried off boxes of his papers under the authority of a general warrant, which the court later invalidated as contrary to English liberty. Cuddihy, *The Fourth Amendment*, at 440–49. Another English case decided just two years later, *Entick v. Carrington*, 19 St. Tr. 1029, 1073 (K.B. 1765), found unconstitutional a similar search executed under a general warrant on the ground that it was contrary to the common-law requirement that warrants be specific, grounded on probable cause, and issued by as well as returnable to a magistrate. *Id.* Both *Wilkes* and *Entick* have repeatedly been cited and relied upon by the United States Supreme Court, historians, and legal scholars as foundational condemnations of the general warrant and "'monument[s] of English freedom' 'undoubtedly familiar' to 'every American statesman' at the time the Constitution was adopted, and considered to be 'the true and ultimate expression of constitutional law.'" *Brower v. Cty. Of Inyo*, 489 U.S. 593, 596 (1989) (quoting *Boyd*, 116 U.S. at 626); *see also, e.g., Stanford v. Texas*, 379 U.S. 476, 484 (1965) (describing the *Wilkes* opinion as "a wellspring of the rights now protected by the Fourth Amendment"); *Boyd*, 116 U.S. at 626–27 (maintaining it can be "confidently asserted" that the Wilkes case and its results "were in the minds of those who framed the Fourth Amendment").

No caveat from the specific warrant requirement for administrative functions was recognized until *Camara*, nor would such a distinction have made sense at the Founding, given that the dictates of commission-based writs issued by courts to customs officers, search warrants issued by executive agents, and the quasi-judicial/quasi-executive functions of England's Star Chamber and Court of High Commission melded administrative and investigative functions. *See* Cuddihy, *The Fourth Amendment*, at 57 (discussing High Commission practices), 171 (discussing Star Chamber practices), 446–58 (discussing the executive writ in *Entick v. Carrington*).

Several state constitutions from the Founding Era make clear that general warrants would not continue in the wake of English rule. *E.g.* Pa. Const., art. X (1776) (prohibiting "warrants without oaths or affirmations first made, affording a sufficient foundation for them"); N.C. Const., art. XI (1776) (prohibiting "general warrants" issued "without evidence of the fact committed"). Of these, the Virginia Declaration of Rights is the best example. It forbade "general warrants, whereby an officer or messenger may be commanded to search suspected places *without evidence of a fact committed*." Va. Decl. of Rights, § 10 (1776) (emphasis added). Nearly identical language appears in Ohio's 1802 Constitution, revealing its shared history and meaning:

> That the people shall be secure in their persons, houses, papers and possessions, from unwarrantable searches and seizures; and that *general warrants, whereby an officer may be commanded to search suspected places, without probable evidence of the fact committed*, or to seize any person or persons not named, whose offenses are not particularly described, and without oath or affirmation, are dangerous to liberty, and shall not be granted.

Ohio Const., art. VIII, § 5 (1802) (emphasis added).

During Ohio's most recent constitutional convention, this language was harmonized with the text of the U.S. Constitution's Fourth Amendment but without any notes of discussion evidencing a change in meaning. The current language of Section 14, Article I still prohibits "unreasonable searches and seizures" and requires "probable cause." Ohio Const., art. I, § 14. Read

together and in light of the preceding language of Ohio's 1802 Constitution, as well as the history and common-law traditions it inherited from the American Colonies and England itself, Section 14, Article I prohibits general warrants and requires particularized cause. Indeed, this Court's opinion in *State v. Kinney*, 83 Ohio St.3d 85 (1998), which emphasized the importance of "practical, common-sense decision-making by magistrates" concerning the probable cause and particularity requirements of Section 14, Article I, considered America's historical struggle against general warrants, touching upon *Wilkes*, *Entick*, and *Paxton's Case*, recognizing them as foundational. *Id.* at 87–88, 95.

Thus, it can be confidently maintained that the English and American history underpinning Ohio's Section 14, Article I establishes that the constitutional liberty it defends is incompatible with the execution of warrants devoid of affidavits proving specific evidence of individualized cause against the homes of Ohioans. A review of search powers concerning private homes and leaseholds in Ohio from the 1800s provides further evidence that Section 14, Article I requires "evidence of a fact committed" before a warrant may issue for the search of a person's home. Ohio Const., art. VIII, § 5 (1802); Va. Decl. of Rights, § 10 (1776).

2. Searches of dwellings required individualized cause in Ohio during the 1800s.

A review of inspection laws in Ohio from the 1800s to the 1880s reveals that few search powers aside from the traditional judicial warrant existed for the search of dwellings and other structures. Laws that authorized administrative searches of dwellings categorically required individualized suspicion and cause specific to the properties searched preceding their execution.

The common law of property has long recognized landlord-tenant relationships whereby a person may purchase for a term the possessory interest in land and dwelling houses. 2 William Blackstone, *Commentaries on the Laws of England* 88 (1766). Such arrangements were common

during the mid-1800s and therefore known to the drafters of Ohio's 1851 Constitution. *See The Evening Post*, Dec. 17, 1853, at 3 (multiple rental ads); *The Cincinnati Enquirer*, Jun. 7, 1844, at 3 (rental ad for houses on Fourth St. and Eighth St.); *see also The Evening Post*, Sept. 15, 1845, at 4 (ad for landlord's multiple rentals). Looking further back to Ohio's early post-statehood history, approximately one third of the state's residents were leaseholders. *See* Lee Soltow, *Inequality Amidst Abundance: Land Ownership in Early Nineteenth Century Ohio*, 88 Ohio Hist. J. 133, 135 (1979). Thus, it cannot be said that residential leaseholds were (or are now) a new or emerging use of property that demands a *de novo* balancing of government interests against the privacy and security of tenants in their homes. *Cf. Johnson v. Smith*, 104 F.4th 153, 170 (10th Cir. 2024) (noting "history is less important when dealing with a 'new or emerging industry,'" but finding dog kenneling was not new or emerging in 1991 when statute created suspicionless inspection power). Instead, this Court should look to the customs, laws, and practices regarding inspections of residential structures during the early to mid-1800s in Ohio to inform the meaning of "unreasonable searches" and "probable cause" in Section 14, Article I.

On a review of Ohio's historical statutes and case law, there is no evidence that leased dwellings were ever accorded less constitutional protection against government entries than dwellings owned in fee simple absolute, excepting brothels to the extent they can be considered to entail leasehold interests. *See* Act of 1869, 3 Ohio Stat., ch. 23, § 310, at 1974 (1876) (brothels); *Antoszewski v. State*, 31 N.E.2d 881, 884–85 (8th Dist. 1936) (no waiver of right against searches by renting space to tenant); *Holek v. Taylor*, 3 Ohio Law Abs. 105, 105 (7th Dist. 1924) ("affidavit and search warrant" for search of leased property); *see also Oystead v. Shed*, 13 Mass. 520, 523 (1816) (right against unreasonable searches extends to "permanent boarders, or those who have made the house their home"). Indeed, courts in Ohio and other jurisdictions typically required

warrants supported by individualized cause even for inspections of structures put to commercial and industrial uses before the *Katz* Era. *See People v. Malinsky*, 232 N.Y.S.2d 843, 846 (N.Y. Sup. Ct. 1962) (collecting cases) (citing *Antoszewski*, 31 N.E.2d 881).

Ohio's few statutes concerning administrative inspections from 1800 through the 1880s confirm that warrants were the norm and individualized cause through specific evidence was required for the search of a dwelling's interior. While Ohio occasionally created a statutory inspection power for dwellings, those powers had particularized warrant or consent requirements built into their text, or else were limited to exterior places.

An 1846 law provided that while officers were empowered to enter structures, including "tenements" (apartments) to enforce regulations on gambling, they were required to obtain a warrant based on particularized cause. Act of Jan. 17, 1846, §§ 1, 5, Ohio Gen. Stat. ch. 51, at 438 (1854) (providing for warrants requiring an "affiant['s] reason to believe" evidence will be found). Property tax assessors were likewise authorized by statute to enter private properties but were barred from entering buildings without consent. Act of Mar. 2, 1846, § 25, 2 Ohio Pub. Stat. ch. 697, at 1270 (1853). Coroners also were required to obtain a warrant on evidence of a person's death. Act of Jan. 5, 1809, ch. 83, § 6, 1809 Ohio Laws 403, 406.

The closest historic analogue to suspicionless code-compliance inspections of the sort contemplated by *Camara* comes from an 1883 act providing that all buildings of multiple stories must have exterior fire escapes. Act of April 19, 1883, No. 653, §§ 2573, 2575, 1883 Ohio Laws Adj. Sess. 188. But even this law did not permit entries *inside* the homes of Ohioans. While fire marshals were also empowered to inspect the escape ropes that inns and public houses were required to maintain as a backup for their fire escapes, "tenement house[s]" were not subject to this requirement and therefore exempt from those rope inspections. Act of April 19, 1883, No. 653,

§§ 2573, 2575, 1883 Ohio Laws Adj. Sess. 188; *see also Rose v. King*, 49 Ohio St. 213, 222 (1892). The only other residential structures in Ohio subject to suspicionless during this period were government-run institutions and brothels. *See* Act of Mar. 8, 1831, ch. 85, § 5, 1831 Ohio Laws 638, 639 (poor houses); Act of April 17, 1867, § 9, Ohio Pub. Stat. ch. 1776, at 2983, 2985 (1861) (asylums); Act of Mar. 13, 1843, § 6, Ohio Gen. Stat. ch. 61, at 482, 483 (1854) (prisons); Act of 1869, 3 Ohio Stat., ch. 23, § 310, at 1974 (1876) (brothels). There is no established history during this period of suspicionless, residential code-compliance inspections, whether by warrant or without.

Some cities in Ohio, like Cincinnati, did have inspection ordinances on the books during the 1800s, but they were targeted at marketable goods as opposed to dwellings, and Cincinnati's in particular was expressly repealed in 1847 by the State legislature. *See* Ohio Rev. Stat. of 1879, § 2579 (preempting local inspection laws); Act of Feb. 5, 1847, § 3 1846 Ohio Local Laws 38 (prohibiting Cincinnati from enforcing compulsory inspection ordinances).[2] Other laws evidence Ohio's preference for specific warrants, even as opposed to the historic practices in other states.

While some states required suspicionless inspections of homes to enforce the militia rolls, Ohio favored a self-reporting scheme whereby evidence of enrollment with the local militia was to be furnished by each household rather than enforced by unannounced residential intrusion. *See* Act of Mar. 28, 1857, § 5, 1857 Ohio Laws 2d Sess. 45–46 (requiring certification in place of inspection); Cuddihy, *The Fourth Amendment*, at 208 (discussing militia inspections). Some other jurisdictions likewise provided suspicionless inspection powers for health officers during the

[2] *See also* Charter, Amendments, and General Ordinances of the City of Cincinnati 2 (1850) (keeping inspection ordinances on the books despite statute "abolishing all *compulsory* inspections"), *available at* https://digital.cincinnatilibrary.org/digital/collection/p16998coll15/id/239748/.

1800s to investigate infectious diseases[3] but not Ohio. Instead, an act of 1869 required that local officers inspect only upon complaint and based on a "reasonable belief" that an "infectious or contagious disease" was present in a residence for which abatement was necessary. Act of 1869, 3 Ohio Stat., ch. 23, § 306, at 1973–74 (1876); *see also* 1839 Stat. of Wis. Territory 125–26 (requiring "complaint made under oath" for such inspections).

Of structures in Ohio, only particularly hazardous uses, like underground mines, were subject to suspicionless inspections during this period. *E.g.* 1 Ohio Rev. Stat. § 292 (1876) (providing for inspections of mines). Other suspicionless inspection powers existed for closely regulated industrial *products* but the laws authorizing them did not provide expressly for home entries. Instead, the inspections were typically scheduled and requested by the manufacturers of powders, spirits, foods, and flammable products to credential the quality and salability of merchants' goods. *See* Act of Mar. 9, 1831, Ohio Gen. Stat, ch. 58, at 468–72 (1854) (foodstuffs); Act of May 1, 1862, 1 Ohio Stat., ch. 285, § 3, at 293 (1876) (flammable oils and coal).

On a close review of the sparse inspection powers designated by Ohio law from 1800 through the 1880s, it is clear that only a few applied to purely residential structures, and of these none were permitted without individualized cause. Thus, the best understanding of the original public meaning of "probable cause," as understood from a review of the Founding Era history, customs, and laws of both the American colonies and Ohio is that probable cause requires "probable evidence of the fact committed." Ohio Const., art. VIII, § 5 (1802). The history, custom,

[3] The cities of New York, Brooklyn, and Boston (by virtue of special legislation) could conduct suspicionless home inspections to search for contagious diseases. *See, e.g.*, Act of May 14, 1867, ch. 908, § 10, 1867 N.Y. Laws 2265, 2270 (Homeowner or occupant in "the cities of New York and Brooklyn" shall "give [health inspector] free access to [] house and to every part thereof" to inspect for an "infectious, pestilential or contagious disease … ."); Act of May 12, 1871, ch. 280, § 44, 1871–75 Special Mass. Laws 1142, 1155 (similar for Boston houses).

and tradition of Ohio search and seizure law requires particularized cause in all instances for searches of the interior of a person's home.

This is not to say that a specific *warrant* is required in all instances—merely *cause*. Indeed, emergency circumstances often necessitate immediate action, but in these cases background principles of property and search-and-seizure law require particularized justification, such as in the case of rendering emergency aid—there must be a reason to believe someone on a particular property *requires* that aid. *See Caniglia v. Strom*, 593 U.S. 194, 204–05 (2021) (Kavanaugh, J., concurring) ("[T]he exigent circumstances doctrine allows officers to enter a home without a warrant in certain situations, including … to render emergency assistance to an injured occupant; or to protect an occupant who is threatened with serious injury." (collecting cases)).

B. Balancing favors leaseholders' right to be secure against suspicionless searches of their homes.

Rental inspections are often touted by their proponents as a cost imposed on landlords to prevent them from inflicting substandard conditions on their tenants. But it is not the landlord's possession and privacy that are disturbed by these intrusions—it is the tenants who make these houses and apartments their homes who must submit to them and suffer the embarrassment, indignity, and loss of privacy.

In the event this Court is "unable to say that there was a clear practice either allowing or forbidding" general administrative warrants at common law, the balancing inquiry favors a requirement of individualized probable cause. *See Jones*, 88 Ohio St.3d at 438. Weighed against the fundamental privacy and property rights of Ohioans to exclude the government from their homes, the City's interest in searching homes *not suspected of anything* is but a shadow of an interest. Where balancing is concerned, this Court should consider (1) the strength of Ohioans' rights to privacy and security in their homes against (2) the depth of intrusion effected by

residential searches, and (3) the weakness of the City's idiosyncratic desire to search for code compliance only within residences that are (a) subject to leaseholds, and (b) *not* suspected of code violations.

First, the privacy and security interests of leaseholders are no less vital than those of homeowners. "People call a house 'their' home when legal title is in the bank, when they rent it, and even when they merely occupy it rent free." *Minnesota v. Carter*, 525 U.S. 83, 95–96 (1998) (Scalia, J., concurring). Yet, the City's suspicionless administrative warrant program targets *only* leased residences. The home has historically been considered the place of ultimate protection for the liberties and privacies of American life. From the U.S. Supreme Court's acknowledgement in the *Boyd* Era case of *Silverman v. United States*, 365 U.S. 505 (1961), that at the "very core" of this protection "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion," *id.* at 511, to the *Jones* Era opinion in *Florida v. Jardines*, 569 U.S. at 6, in which the Court described "the home" as "first among equals" in the calculus of constitutional liberty against unreasonable searches and seizures, the importance of the place one calls a home cannot be overstated. *See Golden Valley*, 899 N.W.2d at 177–78 (Anderson, J., dissenting) ("[P]rivacy rights are at their apex in one's own home." (Cleaned up.)).

Second, the depth of intrusion into the private lives of Ohioans affected by searches of their homes without cause is staggering. A great deal can be learned about a person's physical and mental health, religion, political beliefs, hygienic rituals, and even sexual practices. Because inspections by warrant are not predicated on consent or notice, they can take place at any time. Further, their scope—due to increasingly granular zoning codes—are quite broad. Thus, an inspector executing general administrative warrants may step on a tenant's prayer rug with their dirty shoe, come across a tenant's prescription bottles that point toward a serious or stigmatizing

condition, discover evidence of a recent sexual encounter, or find pregnancy and ovulation tests in a private bathroom. Pending litigation in Pennsylvania has illuminated the dark reality of administrative code-compliance warrants in this regard.

Pottstown, Pennsylvania, operates a similar program to many across the country in which code inspectors may obtain warrants without cause to search leaseholders' properties for compliance with the local zoning code. Through discovery, tenants challenging these searches have discovered that inspectors "have seen sex toys, bondage gear, and nude photographs of the residents whose homes they [were] invading." Opening Brief for Designated Appellants, *Rivera v. Borough of Pottstown*, Nos. 190 C.D. 2024, 224 C.D. 2024, at p.14 (filed July 24, 2024), *vacated and remanded in appellants' favor*, 22 A.3d 1229 (Table) (Pa. Commw. Jan. 6, 2020). Further, they learned "what medicines the residents take" and "about the residents' religious practices." *Id.* And code inspectors are human. They talk about their work just as anyone else does. This means they're talking about the private lives, secrets, and embarrassing sights and information they find in unwitting tenants' homes. As one Pottstown inspector admitted during his deposition, he has "'enough stories … to write a book' and acknowledged that he discusses inspections with his family and shares 'war stories' with his friends." *Id.* Thus, general administrative searches of homes are not intrusive only in theory but also in practice. There are real American tenants on the receiving end of administrative warrants with as many secrets—for good and bad—as any fee simple homeowner. But fee simple homeowners need not open their homes to the wandering eyes, and later the flapping lips, of a government inspector under rental inspection schemes.

On the other side of the equation is the government's interest. If this Court is to find such intrusive searches reasonable, particularly with respect to the seemingly arbitrary targeting by the City of leaseholders alone, then there must be a commensurately heavier government interest

justifying them. There is not. The interest at play is a general interest in health and building standards. But it is not the dilapidated house the City suspects may fall down or the converted garage with reports of loose wires suspended above pooling water that the government wants to inspect. Instead, it is properties *not* suspected of code violations. It is properties for which there is specifically *zero* evidence that they pose a hazard, danger, or even minor nonconformity with the zoning code.

Furthermore, it is residential homes the government wants to inspect, not nuclear power plants. There would be more weight behind a government argument for suspicionless searches of buildings used for a purpose that is inherently dangerous and requires closer supervision. *See Donovan v. Dewey*, 452 U.S. 594, 602 (1981) (underground mines subject to suspicionless search because "the mining industry is among the most hazardous in the country" and had a "poor health and safety record"); 1 Ohio Rev. Stat. § 292 (1876) (providing for inspections of mines). Homes do not fall into this category. Thus, the government interest in searching the homes of leaseholders for which there is no cause to believe a dangerous or nonconforming condition will be found pales in comparison to "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman*, 365 U.S. at 511. The general warrant, even in its modern administrative form, is "the worst instrument of arbitrary power" and "the most destructive of [American] liberty and the fundamental principles of law." (Cleaned up.) *Boyd*, 116 U.S. at 625 (quoting James Otis). It should not be tolerated in Ohio.

CONCLUSION

This Court should reject *Camara* and interpret Section 14, Article I of the Ohio Constitution to prohibit administrative warrants from issuing on generalized cause, instead requiring that probable cause of a code violation will be discovered by a search of the subject property. This rule

cleaves to the original public meaning of probable cause and preserves the balance of power between the investigative functions of the state and the fundamental right to be secure in one's home from arbitrary government intrusion.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this August 11, 2025, the foregoing was served upon all parties of record via the Court's e-filing system.

/s/ Robert E. Johnson
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