In the Supreme Court of Ohio

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

JURISDICTIONAL MEMORANDUM OF *AMICUS CURIAE* PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLANT

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Pursuant to Ohio S.Ct.Prac.R. 7.06, Pacific Legal Foundation ("PLF") submits this Jurisdictional Memorandum of Amicus Curiae in support of Appellant.

Since 1973, PLF, widely regarded as the most experienced and successful nonprofit legal organization of its kind, has advanced the principles of individual rights and limited government—in state and federal courts—advocating for the views of thousands of supporters nationwide. In particular, PLF is known for its defense of private property rights, including in *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023); *Sackett v. E.P.A.*, 598 U.S. 651 (2023); *Wilkins v. United States*, 598 U.S. 152 (2023); *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), *Knick v. Twp. of Scott*, 588 U.S. 180 (2019), *U.S. Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590 (2016); *Koontz v. St. Johns River Water Mgmt. Dist*., 570 U.S. 595 (2013), *Sackett v. E.P.A*., 566 U.S. 120 (2012), and *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

PLF is experienced in cases concerning the constitutionality of administrative searches, which involve complex and often novel Fourth Amendment issues. *See Stavrianoudakis v. USFWS*, 108 F.4th 1128 (9th Cir. 2024) (representing licensed falconers required to submit to unannounced searches); *Vondra v. City of Billings*, 736 F.Supp.3d 933 (D. Mont. 2024) (representing massage therapists required to submit to unannounced searches) (pending decision at Ninth Circuit); *Johnson v.*

Smith, No. 2:22-CV-1243, 2023 WL 3275782 (D. Kan. May 5, 2023) (before 10th Cir.) (amicus); *Mexican Gulf Fishing Co. v. United States Dep't of Com.*, 60 F.4th 956 (5th Cir. 2023) (amicus); *see also Caniglia v. Strom*, 593 U.S. 194 (2021) (amicus); *LMP Servs., Inc. v. City of Chicago*, No. 123123, 2019 WL 2218923 (Ill. May 23, 2019) (amicus); *United States v. Spivey*, 870 F.3d 1297 (11th Cir. 2017), *cert. denied*, 138 S.Ct. 2620 (2018) (amicus). This experience, coupled with PLF's unique point of view, will assist the Supreme Court of Ohio in resolving the issues presented.

INTRODUCTION

This Court should grant jurisdiction to consider whether administrative warrants for residential dwellings must be supported by probable cause particularized to the "place to be searched." Ohio Const. art. I, § 14. The lower court's reliance on *Camara* and its diluted standard of cause sidestepped a question central to the property and privacy interests of many Ohioans: Does Ohio's Constitution bear greater fidelity to the common-law rule favoring specific warrants for searches of homes than the U.S. Supreme Court has accorded under the Fourth Amendment?

Camara was decided at the inception of an era during which the U.S. Supreme Court departed from the text and history of the Fourth Amendment to measure searches and seizures not by the fixed common-law rules that determined

reasonableness in 1791 but based on arcane balancing tests requiring judges to divine societal expectations of privacy against a backdrop of rapidly expanding regulation. *See* Brief of Pacific Legal Foundation as Amicus Curiae, *Johnson v. Smith*, 104 F.4th 153, No. 23-3091, Dkt. No. 010110889384, at *16–39 (10th Cir. July 17, 2023) (collecting and examining cases and history). Although the Court has since returned to the common-law and property-principles baseline for interpreting Fourth Amendment interests, it has not yet had occasion to revisit *Camara* and determine whether administrative warrants may still issue on a standard lesser than probable cause that is particularized to the "place to be searched," as the text, history, and original public meaning of the Fourth Amendment require. U.S. Const. amend. IV.

This Court need not wait for the U.S. Supreme Court to overrule *Camara*. In determining whether to depart from the federal rule, its precedents (1) consult the historical common law, and (2) balance the government interest against the constitutionally protected liberty interest. Here, both favor rejection of the *Camara* standard. This Court should consent to jurisdiction and reaffirm the historical axiom that a person's home is their castle.

STATEMENT OF THE CASE AND FACTS

The Fifth District Court of Appeals below considered whether a warrant properly issued for the search of a residential, leased property on a standard of cause that only required the municipal agency to believe that a dwelling was possessed by

a leaseholder. *Dep't of Dev. Servs. for the City of N. Canton v. CF Homes LLC*, 5th Dist. Stark No. 2024CA00108, 2025 WL 522699, at *2 (Feb. 14, 2025) (citing Section 703.04(c)(4)(C)). It interpreted Article I, § 14 as being in lockstep with the U.S. Constitution's Fourth Amendment with respect to administrative warrants, and therefore held that under *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967), the warrant did not need to be based on probable cause of an existing violation but may satisfy the probable cause requirement by complying with "reasonable legislative standards for conducting an inspection." *CF Homes*, 2025 WL 522699, at *8–9 (quoting *Kaim Properties, LLC v. Mentor*, 2013-Ohio-4291 (11th Dist. 2013)). Consequently, it ruled that the warrant satisfied the requirements of Article I, § 14 because the City of North Canton's Codified Ordinances authorized searches of all leased dwellings where consent is refused. *Id.* at *9.

This Court should grant jurisdiction to reconsider the diluted probable cause standard of *Camara* as a matter of state constitutional law and clarify that outdated precedents like *State ex rel. Eaton v. Price*, 168 Ohio St. 123 (1958), no longer govern administrative searches under Article I, § 14.

ARGUMENT

I. THIS COURT SHOULD EXPRESSLY RECOGNIZE *PRICE* AS OVERRULED

The lower courts require greater clarity on the extent to which Article I, § 14 protects Ohioans' homes from arbitrary searches premised on the "special need" of enforcing compliance with the ever-growing reams of regulatory and municipal codes. In *State ex rel. Eaton v. Price*, 168 Ohio St. 123, 123 (1958), this Court held that such administrative inspections do not constitute unreasonable searches, even when they intrude on dwellings without a warrant. *Id.* at 138. Judge King's concurring opinion below[1] demonstrates that, although intervening precedents ought to be read to have abrogated that holding by implication,[2] it is still being relied on to the detriment of Ohioans' constitutionally protected privacy interests in residential properties.

This case presents the court with an opportunity to clarify the scope of Article I, § 14 in its application to the ever-expanding category of administrative searches. Broadly speaking, government searches can be broken into two categories: administrative and investigative. An administrative search is one that serves a

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[1] *Dep't of Dev. Servs. for North Canton v. CF Homes LLC*, 5th Dist. Stark No. 2024CA00108, 2025 WL 522699, at *10 (Ohio Ct. App. Feb. 14, 2025) (King, J., concurring) (citing *Price*, 168 Ohio St. at 138).

[2] *See, e.g.*, *Wilson v. City of Cincinnati*, 46 Ohio St.2d 138, 144 (1976) (applying *Camara* to invalidate warrantless home inspection scheme).

primary purpose *other than* crime control, often referred to as a "special need" of government. *Ferguson v. City of Charleston*, 532 U.S. 67, 78–81 (2001) (considering whether drug testing policy for pregnant women served "special need"); *State v. Orr*, 91 Ohio St.3d 389, 392 (2001) (upholding drivers' license checkpoint). Investigative searches, by contrast, are those that have crime-control as their predominant purpose. *Compare Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990) (upholding sobriety checkpoint aimed at protecting motorists), *with City of Indianapolis v. Edmond*, 531 U.S. 32, 40 (2000) (drug-interdiction checkpoint had primary purpose of criminal investigation). Building-code inspections such as the one at issue in this case are but one species of administrative search.

While the warrant requirement has been more rigorously applied to the criminal-investigative functions of the state, the "special needs" warrant exceptions have often been justified by diminished expectations of privacy, even when that diminishment is caused by government intervention in the first place. For example, some courts have considered whether an industry can be regulated through warrantless searches based, in part, on how long the government has *already* exposed it to warrantless searches. *E.g. Killgore v. City of South El Monte*, 3 F.4th 1186, 1191 (9th Cir. 2021) (recognizing 30 years as providing a long enough period of regulation to rescind the warrant requirement for an industry); *but see Johnson v. Smith*, 104 F.4th 153, 160 (10th Cir. 2024) (requiring a more "deeply rooted" history of

government control). The downward ratchet of property and privacy protections that result from administrative regulations has a profound effect on the fundamental liberties defended by Article I, § 14 and the Fourth Amendment. This Court should take this opportunity to put Ohio on a path toward greater respect for the privacy of the home than the federal courts have afforded under *Camara* and the other "special needs" cases as the lines between the states "investigative" and "administrative" functions continue to blur.

In 1958, this Court upheld an ordinance under the Ohio Constitution that permitted warrantless, suspicionless searches of homes to enforce a building maintenance code, even where that ordinance punished noncompliance with criminal sanctions. *State ex rel. Eaton v. Price*, 168 Ohio St. 123, 123, 138 (1958). The U.S. Supreme Court in *Camara v. Municipal Court* ruled a short time later that a nearly identical ordinance was unconstitutional under the U.S. Constitution's Fourth Amendment: "[W]e hold that ... such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual." 387 U.S. at 533. Since then, the U.S. Supreme Court has consistently required warrants for administrative searches of private properties, except in a narrow subset of cases involving regulated industries posing a "clear and significant risk to the public welfare" like firearm distributers and nuclear power plants. *See City of Los Angeles v. Patel*, 576 U.S. 409,

424–26 (2015) (requiring warrants for administrative searches of hotel guest registers); *see also Marshall v. Barlow's, Inc.*, 436 U.S. 307, 324 (1978) (requiring warrants for OSHA inspections).

Because this Court has applied the warrant requirement to administrative searches of dwellings under Article I, § 14 in the 70 years since *Price* was decided, it should recognize that *Price* is no longer good law and should not be relied upon by the lower courts in determining the contours of constitutional protections against unreasonable searches and seizures. But there is reason also to go further and find that the Ohio Constitution provides greater protection than the Fourth Amendment when it comes to government demands to enter Ohioans' homes without a specific warrant.

II. THE COMMON LAW FAVORED SPECIFIC WARRANTS

To determine whether the Ohio Constitution provides greater protection than the Fourth Amendment, this Court asks (1) whether there was a controlling rule at common law and (2) whether the state's interest outweighs the citizen's liberty interest. *State v. Jones*, 88 Ohio St.3d 430, 437 (2000) (describing these as "prongs"); *see also State v. Brown*, 143 Ohio St.3d 444, 447–51 (2015) (applying *Jones*). While Ohio courts have from time to time applied the administrative warrant rule from *Camara*, this Court has not yet examined whether such warrants, which are based

on general rather than specific cause, pass muster under Article I, § 14 of the Ohio Constitution.

The merits of this appeal will require this Court to consider whether a warrant issued on the basis of neutral legislative standards alone—here, the municipal code allowed issuance without any supporting evidence—adheres to the common-law rules governing "reasonable" as opposed to "unreasonable" searches and seizures. The historical record concerning searches and seizures considered warrants unsupported by specific cause to be "general" rather than "specific" and therefore "expressly contrary to the common law." William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602–1791* 546 (Oxford 2009) (quoting Letter No. 9, John Dickinson, *Farmer's Letters* 45–46 (1768)); *see id.* ("'Farmer' had a pervasive, deep impact on colonial legal opinion and provided one of the foremost American precedents for the Fourth Amendment.").

The language employed in Article I, § 14 follows the same template as the U.S. Constitution's Fourth Amendment, which was based in turn on Article 19 of the Massachusetts Declaration of Rights. U.S. Const. amend. IV; Mass. Const. art. XIV.; *see* Leonard Levy, *Origins of the Bill of Rights* 158 (Yale Univ. Press 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."); *see also* Thomas K. Clancy, *The Framers' Intent: John Adams, His*

Era, and the Fourth Amendment, 86 Ind. L.J. 979, 1027–29, 1050–51 (2011). It is, therefore, proper to look for guidance in the colonial experience of searches and seizures under British rule. This is important because the history that motivated John Adams to pen the words for the Massachusetts Declaration of Rights requiring specific warrants (by mandating probable cause and particularity) was the oppressive use of general warrants by the British to enforce unpopular customs laws of general application: "These general warrants allowed government officers to search a property or person for evidence of wrongdoing without designating what they were looking for or why they had suspicion to search." *Verdun v. City of San Diego*, 51 F.4th 1033, 1051 (9th Cir. 2022) (Bumatay, J., dissenting). The traditional rule is that a warrant rests on probable cause particularized to a specific place where evidence or a condition of nonconformity will be found; a warrant not supported by specific cause is therefore general in nature. *See Dalia v. United States*, 441 U.S. 238, 254–55 (1979). In this sense, *Camara* represents an atextual and ahistorical innovation, as the political, legal, and cultural traditions that took firm root in both England and Colonial America by the 1760s required specific rather than general warrants for searches and seizures. *See* William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602–1791* 667–68 (Oxford 2009) (state constitutions during the Founding era culminated the transition from general to specific warrants); *id.* at 538–

40 (describing American "revulsion" toward the general warrant kindled by the *Wilkes* case in England).

While constitutional scholars and historians may disagree about the extent to which the Fourth Amendment prohibits certain species of warrantless searches, they nearly uniformly agree that one of the primary historical motivations behind the Amendment and its state-law analogues was the prohibition of general warrants. *See* Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 553 (2000) (arguing the Fourth Amendment's central prohibition concerned general warrants rather than "unreasonable searches" *per se*); William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602–1791* 378 (Oxford 2009) (discussing James Otis's famous legal argument against the writs of assistance in *Paxton's Case*); Orin Kerr, *The Digital Fourth Amendment* 9–11 (Oxford 2025) (discussing the history of legal backlash during the Founding Era against general warrants in both England and the American Colonies); Nelson B. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* 51–78 (1970) (detailing the history of general warrants in the American Colonies that led to the development of the Fourth Amendment); Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1192 n.50 (2016) ("Cuddihy rightly critiqued Davies for narrowing the category of unreasonable searches and seizures to include only general warrants.") (cleaned up). The very first of these, in

fact, was the Virginia Declaration of Rights, which *expressly* prohibited general warrants. Cuddihy, *The Fourth Amendment*, *supra*, at 603–04.

As William Cuddihy observed, "The identity of the general warrant as a trigger of capricious searches, seizures, and arrests has been a driving criticism of it since its origin as an Elizabethan instrument of religious control in the 1580s" and "[p]recedents against general warrants of arrest and search are thus profuse and ancient." William Cuddihy, *Warrantless House-to-House Searches and Fourth Amendment Originalism: A Reply to Professor Davies*, 44 Tex. Tech. L. Rev. 997, 998–99 (2012). The history of the development of search and seizure law within the Anglo-American tradition from early English history through the drafting of the colonial and U.S. Constitution's bills of rights has been marked by the transition from general search warrants to specific ones. *See generally* Cuddihy, *The Fourth Amendment*, *supra* (thoroughly detailing this history). Indeed, even as early as 1680, there was growing "recognition of the idea that general warrants were an arbitrary exercise of governmental authority against which the public had a right to be safeguarded." Lasson, *supra*, at 38–39.

There is ample evidence that specific warrants were required by the common law at the time of the Founding, which this Court should consider in interpreting the Ohio Constitution, given that it is framed after the Massachusetts and federal models. Indexing "probable cause" to neutral legislative standards renders any warrant that

issues general rather than specific and, therefore, such warrants issue in derogation of the historically recognized common-law rule against general warrants. This common-law insistence on specific warrants was not merely a procedural formality but a safeguard for the liberty interests that Ohioans, like their colonial predecessors, held most dear—the sanctity of their homes. The North Canton ordinance's authorization of searches based on neutral standards alone, as applied to CF Homes' leased property, echoes the general warrants that history condemned. To determine whether Article I, § 14 tolerates such a standard, this Court must weigh the government's interest against the fundamental privacy rights at stake.

III. LIBERTY INTERESTS ARE AT THEIR ZENITH IN THE HOME

The weakness of the government interest and strength of the liberty interest at stake in general searches of leased dwellings likewise favors rejecting *Camara* and its ahistorical standard of "probable cause." *See Jones*, 88 Ohio St.3d at 437. Here, the government's interest appears to be the desire to inspect leaseholds (and only leaseholds) to ensure that dwellings comply with municipal standards for safety and sanitation. Given that the law focuses on a subset of homes, the government interest is accordingly weaker than if it had sought entry to *all* properties. By contrast, the liberty interest of Ohioans to enjoy the security and privacy of their homes and be free from government intrusions is a liberty of the highest order.

As the U.S. Supreme Court has recently observed, "when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable government intrusion.'" *Florida v. Jardines*, 569 U.S. at 6 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). In one of its most compelling reviews of common-law search and seizure practices, the U.S. Supreme Court likewise recounted in *Payton v. New York* as follows: "In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." 445 U.S. 573, 590 (1980).

When called upon to consider whether minimal intrusions into the home might be justified, the Court has riposted that "[i]n the home ... all details are intimate details, because the entire area is held safe from prying government eyes." *Kyllo v. United States*, 533 U.S. 27, 37 (2001); *see also Caniglia v. Strom*, 593 U.S. 194, 199 (2021) (refusing to extend community caretaking exception from cars to homes). Both property and privacy interests are strongest within the home. There is thus strong reason for this Court to reject *Camara*'s watered-down probable cause rule as inconsistent with the common law, history, and balance of interests.

CONCLUSION

This Court should consent to jurisdiction to resolve whether general administrative warrants may issue. By expressly overruling *Price* as inconsistent with modern precedent, rooting Article I, § 14 in its common-law preference for specific warrants, and prioritizing the liberty interests at their zenith in the home, this Court can ensure Ohioans' constitutional protections exceed the federal floor set by *Camara*.

DATED: April 1, 2025.

Respectfully submitted,

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By: /s/ *Allison D. Daniel*
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CERTIFICATE OF SERVICE

I certify that on this 1st day of April, 2025, the foregoing was served upon all parties of record via the Court's e-filing system.

By: /s/ *Allison D. Daniel*
ALLISON D. DANIEL