IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-1600

BRYAN C. SINGER, an individual, ERIKA L. NORDYKE, an individual, BEVERLY A. VAN DAM, an individual, JOSHUA L. DYKSTRA, an individual, 3D RENTALS, LLC, and DP HOMES, LLC,
Plaintiffs-Appellees,

v.

CITY OF ORANGE CITY and KURT FREDERES, in his official capacity as Orange City Code Enforcement Officer and Building Inspector,
Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SIOUX COUNTY
HONORABLE JUDGE JEFFREY A. NEARY

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF IOWA IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Iowa ("ACLU of Iowa"), founded in 1935, is a nonprofit, nonpartisan organization committed to protecting the principles embodied in the Iowa and federal Constitutions and our state's civil rights laws. Through direct representation, amicus briefs, and advocacy, amicus actively works to advance these principles in Iowa.[1]

The ACLU of Iowa has a longstanding interest in defending the right to be free from unreasonable searches under the article I, section 8 of the Iowa Constitution and the U.S. Constitution's Fourth Amendment. The ACLU of Iowa is also committed to addressing the problem of over-policing, particularly in Black and Brown communities.

Amicus believes that Iowans, as renters, have a right to be left alone under article I, section 8 of the Iowa Constitution. While the

[1] Pursuant to Appellate Rule 6.906(4)(d), amicus and its counsel declare that no party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund the preparation or submission of this brief; and no person or entity other than amicus curiae contributed money that was intended to fund preparing or submitting a brief.

government has a legitimate interest in regulating rental housing, including to ensure safe and sanitary housing for renters, these interests cannot justify Orange City's blanket policy of conducting nonconsensual searches of renter-occupied properties without warrants based on probable cause. Amicus also believes that in the absence of an individualized probable cause requirement for renters who do not consent to the inspections at issue, the challenged ordinance will disproportionately harm Iowans from racial and ethnic minority groups and those with low incomes who object to inspection and who are more likely to be renters than white, more affluent residents.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves the constitutionality of Orange City's Ordinance No. 825, a law that requires inspections of residential rental units for code violations every five years. The ordinance does not require that the government, as a condition of inspection, believe that a violation of the law has occurred or will be found, nor does it require the government to ensure that tenants have timely notice of the inspection. If a tenant does have notice and objects, the government must obtain an administrative warrant. However, as the district court concluded, the ordinance does not require that the warrant be based on individualized probable cause, restrict the scope of the search, or foreclose attendance of law enforcement at the search.

The district court correctly held that Orange City's ordinance violates article I, section 8 of the Iowa Constitution insofar as the ordinance fails to provide adequate safeguards for renters who do not consent to an inspection, but its rationale in doing so was too

limited for renters.[2] Its emphasis on the need for procedural safeguards during the administrative warrant process, albeit welcome, cannot make up for the absence of an individualized probable cause requirement for renter-occupied units to protect tenants who do not consent from intrusive inspections of their homes.

Amicus submits this brief to make three key points. First, in considering how to apply article I, section 8 of the Iowa Constitution, the Court should be mindful that the ordinance effectively invites criminal law enforcement, and it does so in a manner bound to disproportionately subject Iowans with low incomes and racial and ethnic minorities, who are more likely to rent, to more inspections of their most private space, the home. Second, this Court's recognition of Iowa renters' independent state constitutional rights is particularly crucial due to what this Court

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[2] The ACLU of Iowa's arguments herein are limited to renters, and we do not opine on the scope of protections for landlords or similarly situated parties.

has itself described as "ever-shrinking" Fourth Amendment protections. Third, an individualized probable cause requirement for renter-occupied properties still leaves the City with ample tools to ensure the safety of rental property and a fair rental market.

ARGUMENT

The district court correctly found that the mandatory inspection requirement of Ordinance No. 825 violates tenants' state constitutional rights. The ruling, however, fell short in protecting those rights under article I, section 8 of the Iowa Constitution.

As it has done in the past, this Court should interpret article I, section 8 independently from federal law, and go beyond the insufficiently protective standard set forth in *Camara v. Municipal Court*, 387 U.S. 523 (1967), as applied to renters who object to an inspection of their units. In particular, the Court should hold that any housing inspection ordinance for renter-occupied properties must—to pass constitutional muster—require a showing of individualized probable cause akin to that in criminal proceedings for nonconsensual searches. This requirement is necessary not only to protect Iowans in their homes, the most

private of places, but also to help address the ordinance's disproportionate application to Iowans with low incomes and racial and ethnic minorities, who are more likely to rent than white, more affluent Iowans.

I. The City's ordinance applies unevenly and invites criminal law enforcement consequences.

The home "plays a central role in" the life of the resident, "providing sanctuary, comfort, seclusion, security, and identity." *State v. Ochoa*, 792 N.W.2d 260, 289 (Iowa 2010). And housing inspections of renter-occupied properties, where a government agent enters one's home and rummages through it in search of code violations, are incredibly intrusive from the perspective of the resident.

The burdens of the ordinance challenged in this case as applied to renters who object to an inspection do not fall equally on Orange City residents, though. And the stakes are high because the inspections effectively invite criminal law enforcement.

A. The inspection program—insofar as it authorizes searches of renter-occupied properties regardless of consent—disproportionately burdens people with low incomes and racial and ethnic minorities.

People with low incomes and racial and ethnic minorities are more likely to rent than own their homes as compared to white, more affluent residents and thus be subject to the City's inspection ordinance and its intrusions.

For example, Census data show that in Orange City, 95% of owner-occupied housing units are occupied by white householders, compared to 79% for renter-occupied housing units. App. 1. While 80% of white households own their residences, more than half of the households of every other racial or ethnic group are renting. *Id.*

The same disparities are present statewide: Iowa has the fifth-highest racial disparity in homeownership in the country.[3] Across Iowa, non-white households account for only 7% of the owners but 21% of the renters. App. 1. More than half of non-white

[3] America's Health Rankings, United Health Foundation, *Homeownership Racial Disparity in United States*, https://perma.cc/QQ7W-L3MP (last visited Apr. 8, 2024).

households rent the place they reside in, compared with one in four white households. *Id.*

And while amicus is not aware of income distribution data for Orange City, stateside data distinguishing between owners and renters is highly uneven: in 2019, approximately 39% of owner-occupied households earned less than the statewide median, while more than 74% of renter households fell in that group.[4] The disparity is exacerbated by the increase in housing prices, which has contributed to the growth of net worth for homeowners but not renters. Existing data shows that, from 2012 through 2018, the share of households in Iowa able to afford the median-priced existing single-family home gradually decreased.[5]

The ordinance's lack of an individualized probable cause requirement for units in which a tenant does not consent to an inspection also disproportionately harms Iowans with limited resources because they are least able to afford navigating the

[4] Rosen Consulting Group, LLC, *Housing by the Numbers: Iowa Homeownership and Affordability Outlook*, at 24 (Jan. 2022), https://perma.cc/D8U4-PHE4.

[5] *Id.*

administrative warrant process; a probable cause requirement for nonconsensual inspections of renter-occupied units would at least reduce the burdens on tenants who object to an inspection. In Iowa, families earning less than 30% of the state median already face significant challenges in finding places to live, with state stock of affordable rental units covering only 42% of their needs.[6] Approximately 63% of such families already have more than half of their income spent on housing costs and utilities, leaving little for food, childcare, and other living expenses.[7] Yet, even under the district court's rationale in this case, the onus would remain on these same renters—many of whom already struggle to get housing and make ends meet—to object and seek to be heard at administrative warrant hearings that are effectively rubberstamp proceedings.

[6] National Low Income Housing Coalition, *The Gap: Iowa*, https://perma.cc/WU9C-ST8X (last visited Apr. 8, 2024).

[7] *Id.*

B. Housing inspections of renter-occupied units may subject renters to criminal investigation and prosecution.

Housing inspections of renter-occupied units can reveal much about rental residents' private lives, including their general income level, hobbies, religious beliefs and practices, reading and musical interests, medical conditions, sexual practices, and a multitude of other private, personal details that can be gleaned from observing the interior of one's home and the things and people in it. That intrusion into the home is alone substantial.

But the intrusion does not stop there. Orange City's ordinance creates the risk that renters will be subjected not only to criminal investigation but also prosecution based on evidence discovered during the housing searches. Indeed, these dangers for renters are heightened given that, under the ordinance—which permits broad inspections—rental inspectors can go places where police officers likely could not under a properly circumscribed criminal warrant. As listed in the City's Rental Inspection Form, the inspector may open doors, walk through hallways, and look inside closets and under beds, all without any particularized expectation of finding

evidence of a legal violation there.[8] *Compare State v. McGrane*, 733 N.W.2d 671 (Iowa 2007) (holding that police officers who were lawfully present on the premises to implement an arrest did not have authority to search upstairs area of the home).

That the inspections can be done without notice to the tenant and without being scheduled makes the intrusion particularly invasive. Once inside the home for an inspection that a tenant may not even know about, an inspector may see controlled substances, firearms, pornography, stacks of cash, or items that appear to the inspector to have been stolen. Potentially incriminating possessions simply cannot be unseen, regardless of whether the inspector started out looking for them. Should the inspector relay this information to law enforcement, as the City admits an inspector may, Appellants' Br. 38, it could be difficult for a renter to challenge the use of that evidence in court. *Cf. State v. Davis*, 228 N.W.2d 67, 72–73 (Iowa 1975), *overruled on other grounds by State v. Hanes*,

[8] City of Orange City, *Rental Inspection Form*, available at https://perma.cc/8RC8-M2X7.

790 N.W.2d 545 (Iowa 2010) (excluding a bottle of marijuana in an open drawer that police officers saw in plain view).

Moreover, while Orange City has yet to dispatch its inspectors alongside police officers, this Court would be right to worry about the implications of that type of joint action in Orange City and other Iowa jurisdictions. For years, some cities nationwide have alarmingly bundled rental housing inspection schemata with criminal law enforcement strategies. *See generally* Nicole Stelle Garnett, *Ordering (and Order in) the City*, 57 Stan. L. Rev. 1, 14–19 (2004). "[M]ultiagency enforcement 'sweeps' of struggling neighborhoods" have resulted in mass evictions, property closures, and criminal prosecutions. *Id.*; *cf. Armendariz v. Penman*, 75 F.3d 1311, 1313 (9th Cir. 1996) (en banc), *overruled on other grounds by Crown Point Dev., Inc. v. City of Sun Valley*, 506 F.3d 851, 853 (9th Cir. 2007) (describing sweeps based on broad discretionary summary power of building officials of low-income housing units by city officials, police, firefighters, and inspectors, leading to building closures, evictions, and forced relocation of tenants to other parts of the city).

II. This Court should interpret article I, section 8 to require individualized probable cause for renter-occupied nonconsensual housing inspections.

The district court stopped short of holding that article I, section 8 of the Iowa Constitution requires a showing of individualized probable cause to justify housing inspections of nonconsensual renter-occupied properties. This Court should go further. Consistent with its "duty to independently interpret the Iowa Constitution," *State v. Wright*, 961 N.W.2d 396, 402 (Iowa 2021), the Court should expressly part ways with the Fourth Amendment holding in *Camara*, which is insufficiently protective of the rights of tenants who do not consent to inspections. Instead, this Court should hold that—as a matter of state constitutional law—individualized probable cause is the touchstone for administrative warrants to inspect homes where a renter does not consent to the inspection.

A. *Camara* offers insufficient Fourth Amendment protection to renters subject to housing inspections.

In *Camara*, the U.S. Supreme Court held that under the Fourth Amendment, a residential tenant had a "constitutional right

to insist that [housing] inspectors obtain a warrant to search" his home. 387 U.S. at 540. However, *Camara* rejected the contention that such a warrant be based on the "probable cause test from the standard applied in criminal cases." *Id.* at 538. Instead, the Supreme Court held that administrative search warrants may issue as long as "reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." *Id.* Such standards need not "depend upon specific knowledge of the condition of the particular dwelling"; instead, the government may rely on factors such as "the passage of time" and the overall condition of the area to be searched. *Id.*

Camara's vague language and loose factors have allowed the use—and abuse—of administrative warrants in a variety of contexts, ranging from health inspections, to inventory searches, drug testing, searches of probationers, sobriety checkpoints, and surveillance programs.

Unsurprisingly, the malleable standard in *Camara* and its progeny has drawn considerable criticism. Scholars have described the doctrine as "incoherent," "abysmal," "devoid of content," and a

"doctrinal embarrassment of the first order." Eve Brensike Primus, *Disentangling Administrative Searches*, 111 Colum. L. Rev. 254, 257 (2011). And when courts apply the Fourth Amendment to weigh a "government's card representing the citizenry's 'right' to safety" against "an individual's claim of a right to privacy," David rarely beats Goliath. Scott E. Sundby, *"Everyman"'s Fourth Amendment: Privacy or Mutual Trust Between Government and Citizen?*, 94 Colum. L. Rev. 1751, 1765 (1994).

This Court, too, has criticized the U.S. Supreme Court's Fourth Amendment doctrine for its "uncertainty and lack of clarity," *Wright*, 961 N.W.2d at 411, and "ever-shrinking" protections, *State v. Ingram*, 914 N.W.2d 794, 799 (Iowa 2018). It has detailed how the U.S. Supreme Court, in case after case, has "dramatically and substantially undercut[] . . . the traditional warrant requirement, probable cause, and particularity requirements of search and seizure law." *Short v. State*, 851 N.W.2d 474, 500 (Iowa 2014). And it has described federal doctrine in this area as "not merely complex and contradictory, but often perverse."

Id. at 488 (quoting Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 758 (1994)).

B. This case calls out for a departure from the federal constitutional standard set in *Camara*.

In light of the shortcomings of federal Fourth Amendment precedent, this Court has charted its own path in ensuring Iowans' robust protection from unreasonable searches. Relying on the Iowa Constitution's "[s]trong emphasis on individual rights," it has invalidated warrantless searches of a parolee's motel room, *Ochoa*, 792 N.W.2d at 291–92, a probationer's apartment, *Short*, 851 N.W. at 506, a closed container in a vehicle, *State v. Gaskins*, 866 N.W.2d 1, 16–17 (Iowa 2015), and an impounded automobile, *Ingram*, 914 N.W.2d at 821. It has called for a heightened requirement of consent to searches, rejecting the legal fiction of blanket consent from signing a parole agreement, *State v. Baldon*, 829 N.W.2d 785, 797 (Iowa 2013), and the inherently coerced consent given in a traffic stop on a highway, *State v. Pals*, 805 N.W.2d 767, 802 (Iowa 2011). Oftentimes this Court has taken pains to enumerate a separate state constitutional ground for the decision in order to ensure that the constitutional principle will stand, lest it be eroded

by the U.S Supreme Court's Fourth Amendment jurisprudence. *See, e.g.*, *Pals*, 805 N.W.2d at 771–72; *Ochoa*, 792 N.W.2d at 291–92.

As it has in previous cases, this Court should interpret article I, section 8 of the Iowa Constitution as more protective than the Fourth Amendment, particularly given renters' interests in being free from unreasonable searches in the most private of spaces: their homes. The home "plays a central role in" the life of a resident, "providing sanctuary, comfort, seclusion, security, and identity." *Ochoa*, 792 N.W.2d at 289. And this Court has recognized that "[i]nvasions of the home by government officials" pose "a matter of 'grave concern,'" *id.* at 285, 289, a proposition that holds true for renters and owners alike. Indeed, from the perspective of a home's occupant, the experience is most certainly more intrusive than having someone rummage through discarded trash or look into an impounded car, both of which require at least individualized suspicion in Iowa. *See Wright*, 961 N.W.2d at 420; *Ingram*, 914 N.W.2d at 816.

Orange City relies heavily on *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152 (Minn. 2017), a Minnesota Supreme Court decision that upheld a housing inspection ordinance so long as the inspection process included notice to a tenant and an opportunity to be heard in the administrative warrant proceeding. While this Court has looked to sister courts' decisions in parting ways with the federal doctrine, *see, e.g.*, *Ingram*, 914 N.W.2d at 810–12, there is no reason that *City of Golden Valley* should supply the outer bounds of what is necessary in Iowa to satisfy article I, section 8. *See also State v. Lyle*, 854 N.W.2d 378 (Iowa 2014) (prohibiting mandatory minimum sentencing for juvenile defendants before other sister courts follow suit).

Most importantly, procedural requirements for notice and an opportunity to be heard—although necessary here—cannot suffice to cure the violation of article I, section 8's express requirement that a warrant be supported by "probable cause." The Framers of the Iowa Constitution sought to prohibit the exact type of "general warrants" authorized by the ordinance here: those "without

probable cause and without particularity as reflected in pre-Revolutionary practice." *Wright*, 961 N.W.2d at 409.

At bottom, this Court should "jealously . . . follow[] an independent approach" in enforcing the warrant requirement, *Short*, 851 N.W.2d at 492; *Ochoa*, 792 N.W.2d at 267–69, and hold that individualized probable cause is required for the inspections countenanced by Orange City's ordinance.

III. Requiring individualized probable cause before inspecting nonconsensual renter-occupied properties would still leave the City with tools to address health and safety.

Amicus recognizes that localities may have an interest in regulating rental properties to promote the health and safety of tenants, and to otherwise prevent the exploitation of tenants in a rental housing market where landlords routinely have the upper hand. However, the City has a range of tools available to achieve these interests without requiring inspections of properties where renters do not consent to them and where individualized probable cause cannot be shown.

First, if properly justified by the government's interests, Orange City might still require inspection even absent a showing of

individualized probable cause in certain circumstances not present for renters in this case. For example, the City might inspect non-occupied properties, which could include properties entering the public market for the first time and those between tenant transitions. Accordingly, even with a requirement for individualized probable cause for units in which an existing renter objects to an inspection, Orange City could further its interest in ensuring the "safety and functionality" of rental properties, Appellants' Br. 49, while doing so in a way that avoids nonconsensual intrusions into a property currently used as someone's home.

Second, Orange City could take a number of steps to help bring to light ongoing violations that might supply probable cause for more fulsome inspections, or that might target those units where a tenant affirmatively requests an inspection. For example, Orange City could launch a public campaign to educate tenants about their rights and to provide tenants with tools to advocate for their own rights when it comes to substandard housing conditions. The city could also provide tenants with information about common

or dangerous housing code violations and ask them to report violations in their units or buildings. This information could be mailed to tenants or even posted in common areas of the building. Even further, Orange City could create and staff a tenant's rights hotline for city residents or provide funding and assistance to establish an Orange City tenants' union that could independently advocate for safe and fair rental housing conditions in the city. Finally, the city could act to assuage tenants' fears of retaliation by prohibiting lease provisions that penalize tenants for allowing housing inspectors in without the landlord's permission and by enacting penalties against landlords who retaliate against tenants who report housing code violations.[9]

Under the suggested measures, the overall number of inspections may fall, but for good reason: Iowa renters will enjoy freedom from intrusive, nonconsensual searches lacking a probable-cause justification in the places they call home.

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[9] Such a prohibition is also consistent with Iowa public policy as set forth in Iowa's Right to Assistance Act, prohibiting, *inter alia*, landlords from limiting a tenant's right to summon law enforcement assistance or from penalizing a tenant for exercising that right. Iowa Code § 562A.27B.

CONCLUSION

For the foregoing reasons, amicus urges affirmance of the district court's judgment under the rationale that article I, section 8 of the Iowa Constitution requires tenant consent or individualized probable cause supporting a warrant to conduct housing inspections of renter-occupied properties when a renter does not consent to them.

Dated: April 8, 2024

Respectfully submitted,

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COST CERTIFICATE

I hereby certify that the cost of printing this brief was $0.00, paid in full by the ACLU of Iowa.

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1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i)(1) because:

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2024, a copy of the foregoing was served on all parties, through counsel, by EDMS.

/s/ Rita Bettis Austen
Signature of server