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IN THE SUPREME COURT OF IOWA

NO. 23-1600

IOWA DISTRICT COURT
FOR SIOUX COUNTY
CASE NO. EQCV029175

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 PRESIDING

APPELLANTS' FINAL BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE PLAINTIFFS AND DENYING DEFENDANTS' MOTIONS AS TO THE CONSTITUTIONALITY OF THE CITY'S MANDATORY INSPECTION REQUIREMENT

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II. WHETHER THE DISTRICT COURT ERRED IN DENYING DEFENDANTS' MOTIONS AS TO RIPENESS AND STANDING

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ROUTING STATEMENT

This case should be retained by the Supreme Court because it concerns the constitutionality of a city ordinance and presents certain issues of first impression with respect to the enforceability of a rental inspection program which was implemented pursuant to the legislature's grant of authority under Iowa Code § 364.17. Iowa R. App. P. 6.1101(2)(b) and (c). Further, the ability of a City to enforce a rental inspection ordinance to ensure the health and safety of City residents is an issue of broad public importance that should be addressed by the Supreme Court. Iowa R. App. P. 6.1101(2)(d); *see also Lewis v. Jaeger*, 818 N.W.2d 165, 178 (Iowa 2012) ("The power to enforce housing codes relating to health and safety is traditionally among the core responsibilities of municipal government.").

STATEMENT OF THE CASE

This is an appeal by the City of Orange City, and Kurt Frederes, in his Official Capacity as Orange City Code Enforcement Officer and Building Inspector (collectively the "Defendants"), from the district court's Ruling on Defendants' Motion to Dismiss, Motion for Summary Judgment and Plaintiffs/Appellees, Bryan Singer, Erika Nordyke, Beverly Van Dam, Joshua Dykstra, 3D Rentals, LLC, and DP Homes, LLC's (collectively the

“Plaintiffs”) Cross-Motion for Summary Judgment, in the Iowa District Court in and for Woodbury County, the Honorable Jeffrey A. Neary presiding.

Plaintiffs filed a Petition at Law and Application for Temporary Injunction in the Iowa District Court for Sioux County on May 26, 2021 seeking declaratory and injunctive relief as to the City of Orange City’s rental inspection ordinance, with the sole claim being that the ordinance—specifically the provision allowing the City to seek administrative search warrants—violates Article I, Section 8 of the Iowa Constitution. (App. 8-24, Petition and Application). Defendants filed a Pre-Answer Motion to Dismiss on June 28, 2021 as to ripeness, standing, and the constitutionality of the ordinance. (App. 95-109). Following hearing on the Motion on July 26, 2021, the District Court denied the Motion on October 14, 2021. (App. 147-153, Ruling on Mt. to Dismiss). Defendants filed their Answer on October 25, 2021. (App. 155).

Defendants filed for summary judgment on March 17, 2022. (App. 161-162). In response to the motion, Plaintiffs requested additional time to respond. The motion was granted and hearing was set for September 30, 2022. Plaintiffs sought a second extension of time to respond and to amend the trial scheduling and discovery plan to set a briefing schedule, which was granted by the court on September 12, 2022. (D0075, Order Granting Mt. to Amend

Disc. Plan, 09/12/2022). Plaintiffs filed a cross-motion for summary judgment on March 27, 2023. (App. 290).

Hearing on the Motions for Summary Judgment proceeded on May 12, 2023. The district court entered a Ruling on the Motions for Summary Judgment on August 31, 2023. (App. 965-986). The ruling declared the mandatory inspection requirement of the ordinance unconstitutional, permanently enjoined the City from seeking an administrative search warrant to conduct inspections, and awarded Plaintiffs nominal damages. (App. 984-985).

On September 29, 2023, Defendants timely filed their Notice of Appeal. (App. 987). Defendants appeal to the Supreme Court of Iowa from the final order granting Plaintiffs' Motion for Summary Judgment, denying Defendants' Motion for Summary Judgment, permanently enjoining Defendants from enforcing the rental inspection ordinance, awarding Plaintiffs nominal damages, and the order denying Defendants' Pre-Answer Motion to Dismiss.

STATEMENT OF THE FACTS

On February 15, 2021, the City of Orange City enacted Ordinance Number 825, which requires inspection of all rental units within the City of

Orange City, Iowa. (App. 10, Petition, ¶ 10). The purpose of Ordinance Number 825 ("Ordinance") is:

> To protect, preserve and promote the physical health and social wellbeing of the people. To prevent and control the incidence of communicable diseases, to reduce environmental hazards to health, to regulate rental dwellings for the purpose of maintaining adequate sanitation and to protect the life safety and possessions of the people.

(App. 180, Ordinance § 4.01).

While the ordinance requires inspection of all rental units within the City, it provides property owners with the option to obtain an exemption from inspections from the City if the properties are inspected by a certified third-party inspection organization. (App. 180, Ordinance § 4.02(2)). Inspections under the Ordinance are required once every five (5) years. (App. 183, Ordinance § 4.08). However, re-inspection may "be held at a time sooner than five (5) years if concerns or violations were found during previous inspections or the Code Enforcement Department receives complaints of possible Building Code violations of a rental using during the five (5) year term." (*Id.*). Section 4.09 of the Ordinance states that "[i]f entry is refused the inspector shall have recourse to the remedies provided by law to secure entry, including, but not limited to, obtaining an administrative search warrant to search the rental." (App. 183, Ordinance § 4.09).

Enactment of the ordinance was prompted by similar ordinances in neighboring communities and at least four (4) deteriorating rental properties in Orange City. These properties had hand railings falling off, missing garage doors, broken windows, and deteriorating shingles that were falling off properties and exposing sheeting. (App. 270, Dep. Frederes 19:6-24). The specific goal of the inspections is to determine if the rental properties comply with the International Building Codes that have been adopted by the City of Orange City. (App. 275, Dep. Frederes 32:3-7).

As of November 1, 2022, there were 483 rental units in Orange City and approximately 354 had already been inspected. (App. 282, 1.707(5) Dep. Frederes 118:1-10). The inspections conducted to date have been largely successful in discovering code violations and protecting renters within the City. Examples of code violations that have been discovered include, but are not limited to, the addition of smoke detectors, carbon monoxide detectors, GFCI outlet/breakers, cover plates over breaker slots in breaker boxes, the discovery of dead batteries in smoke alarms, the addition of a handrail in a stairway, and the repairs of exhaust fans. (App. 287-288).

Despite claims to the contrary, the City inspector Defendant Kurt Frederes looks for code violations during the inspection, and not the contents of the home. Mr. Frederes does not open drawers during the inspections. He

does not move furniture or look at the books on the shelves. He does not look for any type of religious or political materials and is not looking at medications. He is not authorized to look in kitchen cabinets, bathroom cabinets, or bathroom vanities. He does not look at any of the tenants' personal effects. (App. 271-274, Dep. Frederes 25:12-18, 26:2-25, 27:1-16, 31:8-25, 32:1-7; App. 154, 1.707(5) Dep. 154:5-10; App. 284-285, 1.707(5) Dep. 184:10-25, 185:1).

Shortly after the Ordinance was enacted, Orange City received letters protesting the Ordinance from: Beverly Van Dam and Bert Van Dam on behalf of 3D Rentals LLC; Joshua Dykstra on behalf of DP Homes, LLC; Amanda Wink and Carl Monroe; and Bryan Singer and Erika Singer. (App. 11-12, Petition, ¶¶ 16-17, 21-22). Orange City responded to these letters and stated that:

> At this time Orange City intends to continue to follow the process of the Rental Ordinance including inspection of your properties. At the time of setting up the rental inspections for your properties, Orange City will contact you to set up time for these inspections and expect to complete the inspections on the properties. In the event that the inspections are refused, the City at that time will take the necessary steps to complete the process per the terms of the ordinance.

(App. 188-191).

To date, none of the Plaintiffs' properties have been inspected pursuant to the Ordinance. (App. 11-13, 17-18, Petition, ¶¶ 18, 19, 23, 24, 46-53; App. 186-187, Affidavit Frederes ¶¶ 5-6; App. 188-191). Nor has the City sought or applied for any type of administrative search warrant to search the Plaintiff properties, or any rental properties within the City. (App. 289).

Plaintiffs filed a Petition at Law in the Iowa District Court for Sioux County on May 26, 2021. Plaintiffs' claim is that the provision in the ordinance allowing the City to seek administrative search warrants to conduct inspections violates Article I, Section 8 of the Iowa Constitution.

Defendants filed a pre-answer motion to dismiss on June 28, 2021, which was denied on October 14, 2021. Defendants filed for summary judgment on March 17, 2022. After various extensions, Plaintiffs filed a cross-motion for summary judgment on March 27, 2023. Hearing on the motions proceeded on May 12, 2023.

The district court granted Plaintiffs' motion and denied Defendants' motion on August 31, 2023. In doing so, the court "declare[d] unconstitutional the mandatory inspection requirement of Ordinance No. 825 . . . permanently enjoin[ed] Defendants from seeking an administrative search warrant to conduct inspections authorized under the current language set forth in the City's Ordinance . . . [and] award[ed] the Plaintiffs nominal damages of $1.00

for having to bring this action and raise the constitutional challenge." (App. 984, Order p. 20).

Defendants filed a timely notice of appeal on September 29, 2023.

ARGUMENT

As a preliminary matter, although Defendants are urging that the district court erred in ruling on ripeness and standing, at this stage, Defendants urge this Court to examine and find that Ordinance and the authority granted in the ordinance to obtain administrative search warrants does not violate Article I, Section 8 of the Iowa Constitution. Such a ruling is necessary to avoid future legal challenges if and when the City applies for and obtains such an administrative search warrant in the future. However, the fact that the City has yet to seek or obtain an administrative search warrant under the Ordinance, at any time, which obviously includes never having done so to inspect the Plaintiffs' homes, is precisely why Defendants repeatedly raised the issue of ripeness and standing at the lower court, and continue to do so appeal.

I. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF PLAINTIFFS AND DENYING DEFENDANTS' MOTIONS AS TO THE CONSTITUTIONALITY OF THE CITY'S MANDATORY INSPECTION REQUIREMENT

ERROR PRESERVATION

Defendants filed a pre-answer motion to dismiss on June 28, 2021 urging that the ordinances and the processes outlined therein were

constitutional. The motion was denied on October 14, 2021. The argument was renewed and expanded upon in Defendants' Motion for Summary Judgment filed on March 17, 2022. Plaintiffs filed a cross-motion for summary judgment on March 27, 2023. The Court denied Defendants' motion on August 31, 2023, and granted Plaintiffs' motion. The summary judgment order is a final order, and Defendants timely filed a notice of appeal on September 29, 2023.

STANDARD OF REVIEW

"A motion for summary judgment is appropriately granted when 'there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.'" *Behm v. City of Cedar Rapids*, 922 N.W.2d 524, 542 (Iowa 2019) (quoting Iowa R. Civ. P. 1.981(3)). Where constitutional challenges to statutes or ordinances are involved, the Court "review[s] the legal issues necessary for resolution of constitutional claims presented within the context of the summary judgment proceeding de novo. . . [and] all other legal issues for correction of errors at law." *Behm*, 922 N.W.2d at 542 (citations omitted). Because the primary legal issues pertaining to the District Court's ruling on the parties' Motions for Summary Judgment are necessary for resolution of constitutional claims, this Court should review the District Court's August 31, 2023 ruling de novo.

"A motion to dismiss challenges a petition's legal sufficiency." *Meade v. Christie*, 974 N.W.2d 770, 774-75 (Iowa 2022). The Court reviews "a district court's ruling on a motion to dismiss for the correction of legal error." *White v. Harkrider*, 990 N.W.2d 647, 650 (Iowa 2023).

A. The City's Ordinance was Passed Pursuant to Authority Granted by the Legislature and Advances the Public Policy of the State

In their Petition, Plaintiffs allege that because the Iowa Constitution requires a higher standard for issuing an administrative search warrant than the United States Constitution, the Ordinance threatens the "Plaintiffs and others similarly situated with a violation of their rights protected by Article I, Section 8 of the Iowa Constitution." (App. 18-19, Petition ¶¶ 56-59).

In this case, the Plaintiffs have made it clear that that are not challenging the ability of the City to enact this rental inspection program generally. (App. 134, Pl. Res. Mt. to Dismiss) ("Plaintiffs are challenging neither Iowa's statutory requirement that cities with populations over 15,000 enact inspection programs nor Orange City's authority to enact an inspection program generally."). "Rather, Plaintiffs' claim is that Orange City cannot rely on administrative warrants to conduct non-consensual inspections of tenants' homes without a showing of individualized probable cause." (*Id.*).

Even so, it is worth noting the Orange City rental inspection program is consistent with the laws of the legislature and public policy in the State of Iowa.

Iowa Code Section 364.17 requires cities with 15,000 residents or more to adopt a city housing code that includes "a program for regular rental inspections, rental inspections upon receipt of complaints, and certification of inspected rental housing[.]" Iowa Code Section 364.17(3). Cities are also authorized to adopt "housing code provisions which are more stringent than those in the model housing code it adopts or to which it is subject under [Section 364.17]." Iowa Code Section 364.17(7).

While Orange City is not a city with a population of 15,000 or more, "[c]ities with populations less than fifteen thousand may comply with this section." Iowa Code Section 364.17(6). "[I]t is clear that the general assembly expressly granted cities the authority to promulgate enforcement mechanisms of their respective housing codes." *Lewis v. Jaeger*, 818 N.W.2d 165, 178 (Iowa 2012).

Thus, the Iowa legislature has made it clear under Iowa law that the City of Orange City has the authority to enact such an ordinance and regulatory scheme. *See City of Fort Dodge v. Martin*, 695 N.W.2d 43 (table op.), 2004 WL 2677235 at *2 (Iowa Ct. App. Nov. 24, 2004) (noting that

rental inspection ordinances pursuant to Iowa Code § 364.17 "are authorized by the States delegation of police powers to municipalities pursuant to Iowa Code section 364.17(3) . . . ").

Additionally, the Iowa legislature has provided a right of entry and the authority to seek administrative search warrants "to all governmental agencies or bodies expressly or impliedly provided with statutory or constitutional home rule authority for inspections to the extent necessary for the agency or body to carry out such authority." Iowa Code § 808.14.

"A city may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents." Iowa Code § 364.1. The Iowa Constitution provides that "[m]unicipal corporations are granted home rule power and authority, not consistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly." Article III § 38A.

> The courts and other appropriate agencies of the judicial branch of the government of this state may issue administrative search warrants, in accordance with the statutory and common law requirements

> for the issuance of such warrants, **to all governmental agencies or bodies expressly or impliedly provided with statutory or constitutional home rule authority for inspections to the extent necessary for the agency or body to carry out such authority**, to be executed or otherwise carried out by an officer or employee of the agency or body.

Iowa Code § 808.14 (emphasis added). "[Iowa Code] section 808.14 provides a right of entry in favor of any governmental agency in the exercise of permissible powers." *Christenson v. Iowa Dist. Court for Polk County*, 557 N.W.2d 259, 263 (Iowa 1996).

Through the City's home rule power under the Iowa Constitution and Iowa Code Chapter 364, the City is authorized to perform any function necessary to "protect and preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents." Pursuant to Iowa Code Section 364.17, that includes implementing and adopting enforcement procedures for regular rental inspections. Iowa Code § 808.14 expressly authorizes the City to seek administrative search warrants under these circumstances, as the City is provided with express statutory and constitutional authority to carry out the rental inspections. As the Iowa Supreme Court opined in *Christenson*, the City has a right of entry to exercise the permissible rental inspection enforcement procedures. This is consistent

with Section 4.09 of the City's ordinance, which is in accordance with the authority granted by the Iowa Constitution and laws of the State of Iowa.

B. The Ordinance Allowing the City to Seek Administrative Search Warrants Does Not Violate Article I, Section 8 of the Iowa Constitution

1. *Iowa Recognizes the Use of Administrative Search Warrants which do not Require Evidence of a Specific Violation*

As mentioned, Plaintiffs' sole claim in this case stems from their belief that inspections conducted pursuant to administrative search warrants without probable cause violate Article I, Section 8 of the Iowa Constitution. As a practical matter, the ordinance is not as limited as Plaintiffs claim, as it authorizes the code official "recourse to the remedies provided by law to secure entry, including, but not limited to, obtaining an administrative search warrant to search the rental unit." (App. 183, Ordinance § 4.09). Further, the Defendants have not yet attempted to avail themselves of recourse to the remedies provided by law, or even attempted to obtain an administrative search warrant in any court of law.

Regardless, contrary to the Plaintiffs' claims, the Iowa Supreme Court does not require individualized probable cause for issuance of an administrative search warrant, and therefore such a warrant—let alone an ordinance authorizing the City to seek an administrative warrant—does not violate Article I, Section 8 of the Iowa Constitution.

The Iowa Supreme Court has held that "[a]n administrative search warrant does not require the probable cause necessary for a criminal warrant." *State v. Carter*, 733 N.W.2d 333, 337 (Iowa 2007). Rather, "an administrative warrant can be obtained if there is a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied." *Id.* (quoting *O'Connor v. Ortega*, 480 U.S. 709, 723 (1987)). "[A]dministrative warrants are held to a lesser standard of probable cause than criminal search warrants . . . the purpose of such a warrant is not to discover evidence of crime but to secure compliance with code standards . . . Thus a finding of probable cause turns on the reasonableness of the inspection, not on proof that a violation would be found in a particular location." *State v. Green*, 540 N.W.2d 649, 654 (Iowa 1995).

In citing *In re Inspection of Titan Tire*, 637 N.W.2d 115 (Iowa 2001), the district court noted that "To establish administrative probable cause required for issuance of an administrative inspection warrant, there must be some plausible basis for believing that a violation is likely to be found." (App. 975, Order p. 11, n. 3). While evidence of a specific violation is one option for obtaining an administrative search warrant, the applicability of this requirement depends on whether the administrative warrant is based on either "(1) specific evidence of an existing violation; **or** (2) a showing that

reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular establishment." *In re Inspection of Titan Tire*, 637 N.W. 2d at 122 (emphasis added). Although *Titan Tire* analyzed an administrative warrant under the Fourth Amendment and not the Iowa Constitution, the Court held that the federal standard for administrative probable cause applied "to any administrative search warrant authorized under Iowa Code section 808.14." *Id.* at 122.

At this point, the City has never alleged that they have evidence of existing violations on Plaintiffs' properties, and thus, any administrative search warrants that the City might seek would be based on the reasonable legislative or administrative standards of the rental inspection program.

Defendants must show that the inspection is based "on the basis of a general administrative plan for the enforcement of [an] Act derived from neutral sources." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 331 (1978). "An administrative warrant is constitutional if it is issued pursuant to a neutral plan based on specific criteria and if the warrant application clearly and adequately explains how an inspection of the particular company falls within the plan." *Donovan v. Trinity Industries, Inc.*, 824 F.2d 634, 635 (8th Cir. 1987); *see also Barlow's, Inc.*, 436 U.S. at 321 (opining that a "warrant showing that a specific business has been chosen for an OSHA search on the basis of a

general administrative plan for the enforcement of the Act derived from neutral sources such as, for example, dispersion of employees in various types of industries across a given area, and the desired frequency of searches in any of the lesser divisions of the area, would protect an employer's Fourth Amendment rights."); *In re Inspection of Titan Tire*, 637 N.W.2d at 122 (citing *Barlow's, Inc.*).

Administrative warrants issued under Defendants' rental inspection program would be constitutional, as any such warrant would be pursuant to a neutral plan and any application would adequately explain how the inspection falls within the plan.

Further, the inspection program itself is neutral, as it equally applies to all rental properties within the City of Orange City. (App. 180, Ordinance § 4.02(1)). All properties require inspections at the same frequency and are subject to the same terms. (App. 183, Ordinance § 4.08). This program is designed to protect the greatest number of tenants. It does not target specific rental properties, as the procedure is used citywide. Therefore, "the potential for abuse is nonexistent." *Donovan*, 824 F.2d at 636-7. Further, the City has provided residents with an alternative to having the City inspector come into the properties by having the inspection done by a certified third-party inspection organization. (App. 180, Ordinance § 4.02(2)).

Additionally, any hypothetical application for an administrative warrant would likely set forth an adequate explanation as to how the inspection of a particular property falls within the City's plan and provide notice and an opportunity to be heard. Any application might provide: (1) that the property subject to inspection was a rental property rather than owner occupied; (2) that Iowa Code § 364.17 and the Ordinance authorize the City to perform rental inspections; (3) the number of rental properties already inspected ; (4) the number of rental properties expected to be inspected during a given year; and (5) the areas to be inspected as provided on the Rental Inspection Form. (App. 195). *See Donovan*, 824 F.2d at 637 (finding that a warrant application adequately explained why an inspection was within a program by including information about the classification of the business to be inspected, the projected number of inspections for the year, the cycle for inspections, how many other businesses were selected for inspection by the time the subject business was to be inspected, and how many other businesses had actually been inspected by the time the subject business was selected for inspection).

It is evident that the City's use of an administrative warrant as a means for enforcement of the Ordinance would be constitutional and does not require specific evidence of an existing violation. It is within the City's authority to

implement a rental inspection program and constitutionally seek administrative warrants as a means of enforcement upon a showing that the inspection program is neutral and providing an adequate explanation as to how the inspection falls within the program. While the City has yet to seek or need an administrative warrant to conduct an inspection, this procedure adequately protects the constitutional rights of the tenants while benefiting the interest of the greater public health, safety, and welfare.

Further, the Iowa Supreme Court suggested that administrative warrants to enforce municipal rental inspections would be constitutional in the case of *Fisher v. Sedgwick In and For Story County*, 364 N.W.2d 183 (Iowa 1985). In *Fisher*, the City of Ames adopted a housing code that included annual rental inspections as provided in Iowa Code § 364.17. *Id.* at 183. When the plaintiff did not consent to the entry and inspection of the property she rented, the City filed an application for an administrative search warrant. *Id.* at 183-84. After the plaintiff and property owners were given notice and a hearing was held, a "district associate judge ordered that an administrative search warrant be issued granting entry to the city officials charged with responsibility of making inspections under the applicable provisions of the city housing code." *Id*. at 184. However, the plaintiff again denied entry and sought review of the order for issuance of the challenged search warrant. *Id*.

While the warrant was not upheld "because the issuance of such compulsory process does not fall under the jurisdiction established for district associate judges", the Iowa Supreme Court reasoned that:

> [T]he city's procedure and the court's order in the present case could perhaps be upheld had the challenged warrant been issued by a district court judge. Nothing contained in our *Sulhoff* opinion denying warrant authority to the district court in the absence of statutory authorization would deny that court the authority under its general equity jurisdiction to issue an order for compulsory process (whatever label might be given to such process) upon notice and hearing to the affected parties.

Id.

Thus, not only are administrative search warrants authorized under Iowa law, the opinion in *Fisher* suggests that the use of administrative search warrants to enforce rental inspections would be authorized if the warrant or "whatever label might be give to such [compulsory] process" is issued by a court with the authority to do so.

2. *There is no Precedent in Iowa to Support the Departure from the Federal Standard Adopted in Camara*

Plaintiffs have urged throughout the litigation that Article I Section 8 provides greater property and privacy protections for administrative warrants than the U.S. Constitution. Plaintiffs' general contentions about the Iowa Constitution and search and seizure precedent sweep too broadly, and

Plaintiffs have not demonstrated that administrative warrants issued pursuant to the program would violate the Iowa Constitution.

The administrative search warrant process and procedural requirements were first adopted by the United States Supreme Court in *Camara v. Mun Ct. of San Francisco*, 387 U.S. 523 (1967). The Iowa Supreme Court on various occasions has cited approvingly the federal standard and the case of *Camara. See State v. Carter*, 733 N.W.2d 333, 337 (Iowa 2007) ("[T]he validity of an administrative warrant turns on whether 'reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling'" (quoting *Camara*, 387 U.S. at 538)); *State v. Ochoa*, 792 N.W.2d 260, 288 (Iowa 2010) ("In some civil contexts, the existence of an administrative structure of programmatic restraints has provided a potential alternative to individualized suspicion" (citing *Camara*, 387 U.S. at 538)); *In re Inspection of Titan Tire*, 637 N.W.2d 115, 122 (Iowa 2001); *State v. Green*, 540 N.W.2d 649, 654 (Iowa 1995) (quoting approvingly *Camara*, 387 U.S. 537-38 for the standard for administrative search warrants); *see also Fisher v. Sedgwick In and For Story County*, 364 N.W.2d 183, 184 (Iowa 1985), McCormick, J., dissenting (noting that any rental inspection "would have to meet the probable cause and reasonableness criteria in *Marshall* and *Camara*)).

While there are cases where the Iowa Supreme Court has departed from the federal constitutional standard, this Court has repeatedly stated, "[O]ur independent authority to construe the Iowa Constitution does not mean that we generally refuse to follow the United States Supreme Court decisions . . . Rather, it merely assures that we 'exercise . . . our best independent judgment of the proper parameters of the state constitutional demands' as we are constitutionally required to do." *State v. Gaskin*, 866 N.W.2d 1, 7 (Iowa 2015) (quoting *State v. Short*, 851 N.W.2d 474, 490 (Iowa 2014)).[1] There is no case that holds or suggests that the Iowa Supreme Court would depart from the *Camara* federal standard in the context of administrative search warrants for rental inspections.

Plaintiffs have focused on the opinions of *State v. Short*, 851 N.W.2d 474 (Iowa 2014), *State v. Ochoa*, 792 N.W.2d 260 (Iowa 2010), *State v.*

[1] Even those instances where the Iowa Supreme Court declines to follow federal precedent engender lengthy dissents that discuss a need for uniform guidelines to govern the state's divergence from federal rules. *See, e.g.*, *State v. Coleman*, 890 N.W.2d 284, 301 (Iowa 2017) (Waterman, Mansfield, Zager, JJ., dissenting); *Gaskin*, 866 N.W.2d at 50 (Waterman, Mansfield, Zager, JJ., dissenting) (advocating for neutral criteria in interpreting Iowa Constitution); *State v. Short*, 851 N.W.2d 474, 550–51 (Iowa 2014) (Waterman, Mansfield, JJ., dissenting) ("The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution are worded virtually identically and provide the same protection against unreasonable searches and seizures. Our court, like most state supreme courts, has traditionally followed federal precedent in construing the same language in the state constitution.").

Baldon, 829 N.W.2d 785 (Iowa 2013), and *State v. Kern*, 831 N.W.2d 149 (Iowa 2013) in alleging that the Iowa Supreme Court is hostile to searches in the absence of warrants supported by traditional and individualized probable cause. In doing so, Plaintiffs completely disregard the critical factual differences between these cases and the type of warrant that Plaintiffs are prematurely seeking to invalidate.

The opinions rendered in *Short, Ochoa, Kern,* and *Baldon* all relate to searches conducted by law enforcement based on a party's "status" as a parolee or probationer. *Baldon* concluded that a search provision contained in a **parolee's** parole agreement "did not represent a voluntary grant of consent . . . [and] [a]s such, the suspicionless search of [the parolee's] car violated article 1, section 8 of the Iowa Constitution." *State v. Baldon*, 829 N.W.2d 785, 808 (Iowa 2013) (emphasis added). *Ochoa* concluded that "**a parolee** may not be subjected to broad, warrantless searches by a general law enforcement officer without any particularized suspicion or limitations to the scope of the search." *State v. Ochoa*, 792 N.W.2d 260, 291 (Iowa 2010) (emphasis added). The specific question in *Short* was "the validity of a warrantless search of **a probationer's** home by police officers." *State v. Short*, 851 N.W.2d 474, 476 (Iowa 2014) (emphasis added). In *State v. Kern*, the Iowa Supreme Court reiterated that *Ochoa* prohibits use of Kern's "status

as a **parolee** to augment the suspicion held by the officers such that it alone could amount to probable cause" and held that the search of **parolee** Kern's home "required a warrant supported by probable cause[.]" 831 N.W.2d 149, 172, 176 (Iowa 2013) (emphasis added). These opinions provide additional protections under Article I, § 8 of the Iowa Constitution based on the party's status.

State v. Ochoa demonstrates how the Iowa Supreme Court does not disregard or question the *Camara* framework unless it is applied to general law enforcement activities or enforcement of criminal law. 792 N.W. at 279-280. The opinion also seems to find the *Camara* framework easy to differentiate from other "special needs exceptions":

> In the seminal case of *Camara*, the Supreme Court considered whether municipal housing inspectors could conduct housing inspections without possessing probable cause to believe that a particular dwelling contained code violations . . . The Court in *Camara* concluded that "probable cause" for search of a particular dwelling existed if reasonable legislative or administrative standards for conducting the search of houses in a general area were satisfied . . . The Court noted that the "primary governmental interest at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety." The point of the inspection was building safety, not "discovery of evidence of crime." . . . Distinguishing between cases involving special needs not related to general law enforcement and cases involving enforcement

> of criminal law is not always as easy as the fact scenario presented in *Camara*.
>
> . . .
>
> In some civil contexts, the existence of an administrative structure of programmatic restraints has provided a potential alternative to individualized suspicion . . . It is questionable whether such restraints against arbitrariness are sufficient in the context of general law enforcement activities. In any event, there are no such limitations in this case.

Id. at 279-280, 288.

There is no indication that the Iowa Supreme Court had any type of concern regarding the application of *Camara* in a non-criminal context. *See City of Fort Dodge v. Martin,* 695 N.W.2d 43 (table op.), 2004 WL 2677235 at *2 (Iowa Ct. App. Nov. 24, 2004) ("Without regular inspections and certifications . . . the state and its municipalities have no way of ensuring that rental housing units meet health and safety standards.").

The opinion provided in *Ochoa* suggests that the Iowa Supreme Court's dilemma is not with the *Camara* decision, but with the federal cases which took the narrow exception set forth in *Camara* and created exceptions that were not "jealously and narrowly drawn." *See Ochoa*, 792 N.W.2d at 285. Specifically, the departure in the context of the cases where the special needs exceptions and alternative warrant requirements are applied to general law

enforcement activities and enforcement of criminal law. *Id*. at 279-280; *see also State v. Wright*, 961 N.W.2d 396, 412 (Iowa 2021) ("a peace officer engaged in *general criminal investigation* acts unreasonably under article I, section 8 when the peace officer commits a trespass against a citizen's house, papers, or effects without first obtaining a warrant based 'on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.'" (citing Iowa Const. art. 1, § 8) (emphasis added)).

Here, like in *Camara*, distinguishing between the rental inspections authorized by the ordinance and searches related to criminal investigations and general law enforcement is "easy." *Ochoa*, 792 N.W.2d at 279.

Contrary to Plaintiffs' claims, the Ordinance at issue does not authorize the City of Orange City to engage in general law enforcement or enforce criminal law. The ordinance's purpose is well defined in promoting the health and safety of City residents. To achieve the purpose of the ordinance, inspections allow the City to observe and identify the conditions of rental properties and to determine if the rental properties comply with the International Building Codes that have been adopted by the City of Orange City. (App. 275, Dep. Frederes 32:3-7). The rental inspection checklist proves

that the inspections are based on health and safety and not "general law enforcement" activities. (App. 195).

The code enforcement officer Kurt Frederes is the sole employee responsible for conducting inspections. Law enforcement officers do not have a role in inspections. As of November 1, 2022, 73% of the rental properties in the City had been inspected. (App. 282, 1.707(5) Dep. Frederes 118:1-10). Despite this, law enforcement has not been contacted regarding anything an inspector observed during the course of an inspection. (App. 284, 1.707(5) Dep. Frederes 184:1-9; App. 699. 1.707(5) Dep. Frederes 155:8-21).

Plaintiffs have misconstrued and exaggerated the fact that there is nothing within the Ordinance about police to imply that "nothing in the Ordinance prevents a police officer from accompanying the inspector." (App. 699. 1.707(5) Dep. Frederes 155:8-21). If there was evidence of illegal activity, such as drug use or a "meth lab," the inspector would contact the City attorney for direction. It is worth examining the specific testimony on this issue:

> Q: I'm just trying to understand what – when that would be needed, when the inspector would need to contact someone about what they've seen inside of the property.
>
> A: We wouldn't contact – we would not inform police or contact police on anything inside a rental house.
>
> Q: So if you were conducting an inspection and you were in the basement and there was a meth lab, no one – no

> inspector would contact the City to inform them that there was an illegal meth lab in someone's rental property?
>
> A: I would contact the City attorney and follow his recommendations.

(App. 700-701, Dep. 156:16-25, 157:1-4).

The simple truth is that despite Plaintiffs repeatedly attempting to create a criminal component to these inspections, the rental inspections are not conducted by law enforcement, the inspector is not accompanied by law enforcement, and there is no law enforcement activity involved in the inspections.

The facts at issue here are fundamentally different than the Iowa cases that have applied an independent interpretation to Article I Section 8. It is evident that the Iowa Supreme Court has not abandoned the *Camara* framework in the context of administrative warrants utilized for civil inspections. In exercising the "best independent judgment of the proper parameters of the state constitutional demands," both Iowa and various persuasive precedent dictates that the Orange City Ordinance adequately protects the Plaintiffs' rights and liberties. *State v. Gaskin*, 866 N.W.2d 1, 7 (Iowa 2015).

3. *As Enacted the Rental Inspections are Reasonable and the Ordinance Achieves its Purpose*

Throughout the litigation, Plaintiffs have made broad and sweeping allegations regarding the extensiveness of the inspections. Contrary to Plaintiffs' assertions, while performing the rental inspections, the inspector Kurt Frederes does not move furniture, open drawers or cabinets, look for religious or political material, or look at a tenant's personal effects. (App. 271-274, Dep. Frederes 25:12-18, 26:2-25, 27:1-16, 31:8-25, 32:1-7; App. 154, 1.707(5) Dep. 154:5-10; App. 284-285, Dep. 184:10-25, 185:1). Mr. Frederes is simply looking for code violations rather than examining the contents of the home. (*Id.*).

Plaintiffs have made no showing that the Ordinance is unreasonable or overly intrusive. Rather, Defendants have demonstrated that the Ordinance was enacted to promote the welfare of tenants while maintaining their right to privacy. (App. 286-287; App. 270-275, Dep. Frederes 19:6-24, 25:12-18, 26:2-25, 27:1-16, 31:8-25, 32:1-7; App. 283-285, 1.707(5) Dep. 154:5-10, 184:10-25, 185:1).

Plaintiffs' prior briefing alleges that that the constitutionality of a search depends on a variety of factors including its invasiveness, purpose, justification, and efficacy. While Defendants maintain that the cited cases are completely distinguishable, as they involve searches, rather than inspections, that have actually been conducted and involve both criminal law and general

law enforcement activities, the inspections that have been conducted to date pursuant to the ordinance demonstrate how the ordinance is effective at achieving its purpose.

As of November 1, 2022, there were 483 rental units in Orange City and approximately 354 had already been inspected. (App. 282, Dep. 118:1-10). To achieve the purpose of the ordinance, inspections allow the City to observe and identify the conditions of rental properties and to determine if the rental properties comply with the International Building Codes that have been adopted by the City of Orange City. (App. 275, Dep. 32:3-7). City residents have been very cooperative in responding and remedying any failed inspections within the City. Examples of violations that have been found and remedied include, but are not limited to, the addition of smoke detectors, carbon monoxide detectors, GFCI outlet/breakers, cover plates over breaker slots in breaker boxes, the discovery of dead batteries in smoke alarms, the addition of a handrail in a stairway, and the repairs of exhaust fans. (App. 287-288).

While Plaintiffs and their “experts” claim that the violations were not “serious” and that self-inspections could have discovered violation such as smoke alarms, it is not up to the Plaintiffs or their experts to make the decisions about how the inspections take place, what is “serious,” or what

constitutes a violation. The City has made the decision to pass an ordinance and implement an inspection program that is supported by the public policy in the State of Iowa and Iowa Code § 364.17. The efforts to downplay the inspections to date should not distract the Court from the sole legal issue in this case, which is whether the ordinance authorizing the City to seek inspections pursuant to administrative search warrants violates the Iowa Constitution.

4. *Errors of the District Court*

In the district court's August 31, 2023 order, the court granted Plaintiffs' motion for summary judgment and denied Defendants' motion for summary judgment. In doing so, the court "declare[d] unconstitutional the mandatory inspection requirement of Ordinance No. 825 . . . permanently enjoin[ed] Defendants from seeking an administrative search warrant to conduct inspections authorized under the current language set forth in the City's Ordinance . . . [and] award[ed] the Plaintiffs nominal damages of $1.00 for having to bring this action and raise the constitutional challenge." (App. 984, Order p. 20).

In doing so, the district court erred in disregarding the presumption of constitutionality of the ordinance, in reversing the role of the court and legislature in evaluating the provision of the ordinance that authorizes the City

to apply for administrative search warrant, and declaring the entire mandatory inspection requirement of Ordinance No. 825 unconstitutional.

In ruling on the constitutionality, the court specifically found as follows:

> The Court finds here that there needs to be more safeguards or protective measures put in place as there are currently none in place in Iowa for the district court to use when considering a request or an application for an administrative search warrant. This Court looks to those protective measures set out by the Minnesota Supreme Court in Golden Valley. Under the present system, once the administrative warrant is issued, the occupant receives no notice, has no way of knowing the scope of the inspection of his or her premises, and no way of knowing the lawful limits of the inspector's power to search and no means to challenge the scope or limits until after the search has been completed. Tenants have a "very tangible interest in limiting the circumstances under which the sanctity of [their] home may be broken by official authority" and so have a "constitutional right to insist that the inspectors obtain a warrant to search." *Camara*, 387 U.S. at 531, 540, 87 S.Ct. 1727. This Court believes that the insistence on obtaining a warrant to search requires the concomitant requirement that the warrant application process contain certain basic protections for the party who will be subject to the search upon the issuance of a search warrant.

(App. 982-983, Order p. 18-19).

The Court went on to discuss the procedural safeguards that the Court believed were necessary "in order for the Ordinance to pass constitutional review." (App. 983, Order p. 19). The court ultimately concluded as follows:

> The Ordinance fails therefore because there needs to be more than just a purpose stated for the administrative warrant and none of the above safeguards are required to be utilized in the Ordinance for the administrative search warrant process. The Court finds without the safeguards noted above or similar ones, the administrative warrant violates Plaintiffs' rights under Art. I, § 8.

(App. 984, Order p. 20).

This analysis misses the mark for a number of compelling reasons. First, as has been discussed extensively, there was no such administrative warrant issued in this case. Second, and significantly, the Court seems to claim that the procedural safeguards must be contained in the actual language of the ordinance.

As this Court is well-aware, there is a presumption that the ordinance is constitutional. "[S]tatutes are cloaked with a presumption of constitutionality . . . [and] [t]he challenger bears a heavy burden, because it must prove the unconstitutionality beyond a reasonable doubt." *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002) (citations omitted). "Moreover, the challenger must refute every reasonable basis upon which the statute could be found to be constitutional . . . [and] if the statute is capable of

being construed in more than one manner, one of which is constitutional, [the Court] must adopt that construction." *Id.* (citations and quotations omitted).

Likewise, the district court's analysis seems to reverse the role of the municipality and the courts. The district court's belief that there are no Iowa cases that discuss safeguards or protective measures "for the district court to use when considering a request or an application for an administrative search warrant" does not mean that the City needs to include such procedural safeguards in the language of the ordinance, let alone that such omissions should declare unconstitutional the entire mandatory inspection program.

There is no such requirement under the law or constitution in the State of Iowa. In fact, it is well established that a court "sit[s] as a court of law, not a council of revision . . . and [the] powers of judicial review are judicial, not legislative, in nature." *Moore v. Harper*, 600 U.S. 1, 53 (2023) (internal quotations and citations omitted); *see Williams v. United States*, 401 U.S. 667, 697 (1971) (opining that the Court's "powers of judicial review are judicial, not legislative, in nature."); *see also State v. Certain Intoxicating Liquors*, 194 N.W. 283 (Iowa 1923) (opining that "[a] court is not privileged to amend the law. Its function is interpretative (jus dicere), not legislative (jus dare)."); *Kupper v. Schlegel*, 224 N.W.813, 815 (Iowa 1929) (stating that "[t]he legislative function is jus dare (to make or create), whereas the function of a

court is jus dicere (to construe or interpret).”); *Dutch v. Marvin*, 34 N.W. 465, 466 (Iowa 1887) (opining that [t]he courts cannot, by mere inference from the general policy of the statutes of the state, create rights in their favor; but the legislature must be presumed to have enumerated all that was intended to be created or conferred. If cases of special hardship are liable to arise under the statutes as they now exist, the remedy must be provided by the legislature; the courts cannot create such remedy.”).

The court’s ruling also seems to completely disregard the fact that an administrative search warrant—if sought—would be reviewed by a judge to determine if the requisite cause was met for each particular warrant. *See* Iowa Code § 808.14 (stating “[t]he courts and other appropriate agencies of the judicial branch of the government of this state may issue administrative search warrants, in accordance with the statutory and common law requirements for the issuance of such warrants, to all governmental agencies or bodies expressly or impliedly provided with statutory or constitutional home rule authority for inspections to the extent necessary for the agency or body to carry out such authority, to be executed or otherwise carried out by an officer or employee of the agency or body.”); *see also Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 323 (stating that “[a] warrant . . . would provide assurances from a neutral officer that the inspection is reasonable under the Constitution,

is authorized by statute, and is pursuant to an administrative plan containing specific neutral criteria."); *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 162 (Minn. 2017) (stating that "[administrative search warrants] are issued by neutral judicial officers, who must ensure that there is authority for the inspection, that reasonable standards exist, and that the inspection is not arbitrary . . . In other words, unlike general warrants and writs of assistance, an administrative search warrant under *Camara* does not authorize 'a general, exploratory rummaging in a person's belongings.'") (internal quotation omitted)).

This judicial review for cause can ensure that the appropriate safeguards are met under *Camara*. The court's belief that any such procedural safeguards are necessary when applying for a warrant cannot render "unconstitutional the mandatory inspection program of Ordinance No. 825."

While Defendants urge that the case of *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152 (Minn. 2017), is persuasive and instructive, the district court incorrectly relied on it in finding that the ordinance itself requires language with procedural safeguards.

In *City of Golden Valley*, the Minnesota Supreme Court evaluated an administrative search warrant that had actually been sought. In almost identical fashion to the current case, the appellants, tenants and landlords

residing in Golden Valley, informed the City of Golden Valley that they did not consent to the triennial inspection that was required for maintaining the landlords' rental license "on the ground that a search without a warrant based on individualized suspicion violate[d] the United States Constitution and the Minnesota Constitution."

The City then filed a petition with the district court "for an administrative search warrant to inspect the property for compliance with the [City's] code . . . The district court denied the petition for the administrative search warrant, reading [Minnesota] precedent to 'foreclose issuance of a search warrant' without suspicion of a code violation. The court of appeals reversed[]" and the tenants and landlords appealed to the Minnesota Supreme Court. *City of Golden Valley*, 899 N.W.2d at 155-56.

The Supreme Court of Minnesota considered "whether Article I, Section 10 of the Minnesota Constitution require[d] probable cause of the sort needed in a criminal investigation for a warrant to inspect a rental unit for housing code violations." *Id.* at 156. The appellants—tenants and landlords residing in Golden Valley—argued that "Minnesota has a unique history of interpreting the Minnesota Constitution to be more protective of privacy and individual rights than the United States Constitution." *Id.* at 164. In ruling, the court stated that "Appellants invite us to be the first state supreme court to

depart from the United States Supreme Court's decision in *Camara* and hold that Minnesota's constitution requires more: probable cause of the sort required in a criminal investigation" *Id.*

The court articulated that it would "not 'cavalierly construe [the] state constitution more expansively' that the United States Constitution . . . nor [would it] reject a United States Constitution 'merely because [it] want[ed] to bring about a different result.'" *Id*. at 157. The Court rejected the same argument that Plaintiffs are advancing here:

> True, we have been more protective of home and privacy than the United States Supreme Court, but those cases involved warrantless searches. This case is fundamentally different. *Camara* requires a warrant with a neutral official determining the reasonableness of an administrative search . . . This aspect of *Camara* substantially protects the rights and liberties of Minnesotans.
>
> . . .
>
> In this case, under the City's ordinance, the intrusion is "relatively limited . . . As the City's inspection checklist shows, housing inspections are not aimed at discovering concealed personal effects; rather, the inspection focuses on structural items, doors and locks, windows, kitchen sanitation, appliances, ventilation, fire protection, and electrical, plumbing, and heating systems.
>
> . . .

> These types of inspections are less intrusive than . . . criminal searches[.] . . . the public interest at stake in housing inspections is weighty.
>
> . . .
>
> As the City's code states, housing inspections protect public health, safety, and welfare by ensuring that rental units meet the minimum standards of safety and functionality . . . The public has a strong interest in preventing dangerous conditions from developing, even unknown or unintentionally, that would be hazardous to the tenants, their neighbors, and the citizens of the City as a whole . . . The *Camara* framework for administrative search warrants, properly implemented, adequately protects our citizens' basic rights and liberties

Id. at 165-68. Ultimately, the court held that "under Article I, Section 10 of the Minnesota Constitution, an administrative search warrant need not be supported by individualized suspicion of a code violation when the warrant issued by a district court satisfies an ordinance containing reasonable standards." *Id.*

Contrary to the district court's rationale, there is no holding that required the City of Golden Valley to include protections in the ordinance itself. In fact, the Minnesota Supreme Court took an "opportunity to clarify the appropriate procedure ***for district courts*** to use when considering a petition for an administrative search warrant." *Id.* at 168. (emphasis added). Thus, in addition to the case of *Golden Valley* having evaluated an

administrative search warrant that had been issued, the district court erred in using the opinion to require that the procedural safeguards be included in the language of the ordinance itself.

The district court also relied on the case of *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013), in suggesting that the ordinance should contain procedural safeguards. Yet, the Minnesota Supreme Court did not require such procedural safeguards in the ordinance itself, and the *McCaughtry* decision affirmed the denial of a facial constitutional challenge because the Plaintiffs could not show that the licensing statute was unconstitutional in all potential applications, like Plaintiffs are unable to do here. *McCaughtry*, 831 N.W.2d at 524-25 ("although the ordinance does not *require* individualized suspicion, it does not *preclude* a district court from requiring that the City establish individualized suspicion before a warrant will issue." (emphasis original)). This was confirmed by the Minnesota Supreme Court in *Golden Valley*, which noted that "In *McCaughtry*, we only assumed *arguendo* that individualized suspicion was required for an administrative search warrant . . . and concluded that we "*need not decide the unsettled question* of whether the Minnesota Constitution prohibits the issuance of an administrative warrant under the Red Wing Licensing Inspection ordinance absent some individualized suspicion of a housing code

violation." *City of Golden Valley*, 899 N.W.2d at 157 (quoting *McCaughtry*, 831 N.W.2d at 524-25 (emphasis original).

Despite these differences and the district court's improper reliance on *McCaughtry* and *Golden Valley* in ruling in favor of the Plaintiffs, Defendants urge that this Court follow the rationale of the Minnesota Supreme Court in *Golden Valley*, and find that there is no basis for interpreting Article I, Section 8 of the Iowa Constitution to provide greater protection to tenants and landlords than the Fourth Amendment of the U.S. Constitution. *See id.* at 167-68. Like in *Golden Valley*, the circumstances in which the Iowa Supreme Court has provided more protection under Article I, § 8 of the Iowa Constitution are materially and fundamentally different than the case at hand, and all related to law enforcement engaging in criminal investigation. Considering these differences, as well as the Iowa Supreme Court's ongoing regard for *Camara*, it is evident that *Camara* protects the rights and liberties of Iowans, just as it does for Minnesotans.

Lastly, while Defendants urge that the entirety of the district court's order should be overturned, should this Court disagree, the order must be narrowed as it sweeps too broadly, and beyond the relief that the Plaintiffs were seeking. In addition to declaring that the administrative warrant violates Plaintiffs' rights under Article I, Section 8, the Court "declare[d]

unconstitutional the mandatory inspection requirement of Ordinance No. 825." As noted, Plaintiffs have conceded in this case that they are not challenging "Orange City's authority to enact an inspection program generally" and that their "claim is that Orange City cannot rely on administrative warrants to conduct non-consensual inspections of tenants' homes without a showing of individualized probable cause." (App. 134). In the event that the Court agrees with Plaintiffs as to the unconstitutionality of administrative search warrants being sought without traditional individualized probable cause, the order should be narrowed, and not declare the entire mandatory rental inspection program unconstitutional.

In the end, because the program is constitutional, because administrative search warrants do not require traditional individualized probable cause, and because there is no indication that the Iowa Supreme Court would depart from the *Camara* framework, judgment should be appropriately entered for the Defendants.

II. THE DISTRICT COURT ERRED IN DENYING DEFENDANTS' MOTIONS AS TO RIPENESS AND STANDING

ERROR PRESERVATION

Defendants filed a pre-answer motion to dismiss on June 28, 2021 urging that the Plaintiffs did not have standing and that this matter was not

ripe for judicial review. The motion was denied on October 14, 2021. The arguments were renewed in Defendants' Motion for Summary Judgment filed on March 17, 2022. The Court denied the motion on August 31, 2023, adopting the rationale contained in the court's previous order. The summary judgment order is a final order, and Defendants timely filed a notice of appeal on September 29, 2023.

STANDARD OF REVIEW

The Court reviews a motion to dismiss, motions for summary judgment, and questions of standing and ripeness for errors at law. *See Madden v. Iowa City*, 848 N.W.2d 40, 44 (Iowa 2014) (motions to dismiss); *Homan v. Branstad*, 864 N.W.2d 321, 327 (Iowa 2015) (standing); *Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006) (summary judgment).

A. This Matter is Not Ripe for Judicial Review

A constitutional question arises when there is "a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant a declaratory judgment." *Sierra Club Iowa Chapter v. Iowa Dept. of Transp.*, 832 N.W.2d 636, 648 (Iowa 2013) (quoting *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 474 (Iowa 2004)). "The action must involve a controversy that presently exists rather than 'a mere abstract question.'" *Covington v. Reynolds ex. Rel State,* 949

N.W.2d 663 (table op.), 2020 WL 4515691 (Iowa Ct. App. Aug. 5, 2020) (quoting *Citizens for Responsible Choices*, 686 N.W.2d at 474). "A case is ripe for adjudication when it presents an actual, present controversy, as opposed to one that is merely hypothetical or speculative." *Greenbriar Group, L.L.C. v. Haines*, 854 N.W.2d 46, 50 (Iowa Ct. App. 2014) (quoting *State v. Wade*, 757 N.W.2d 618, 627 (Iowa 2008). "If a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it." *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 432 (Iowa 1996). The purpose of the ripeness doctrine is

> to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.

Abbott Laboratories v. Gardner, 387 U.S. 136, 148-89 (1967) (unrelated statute superseded). In *Gospel Assembly*, the plaintiff sought declaratory and injunctive relief based on the Department of Revenue's intention to conduct an audit of plaintiff's books. The Iowa Supreme Court opined that:

> [P]laintiff's allegations about what the Department *intends* to do at some unspecified future time cannot obscure the fact that as yet the Department has taken no formalized, legally enforceable action . . . that would define precisely the scope of its requests . . .

> On the record before us, we believe that a decision at this time on the merits of the issues presented by plaintiff would be premature adjudication of the type that the ripeness doctrine is designed to prevent.

Gospel Assembly v. Iowa Dept. of Revenue, 368 N.W.2d 158, 161 (Iowa 1985) (emphasis added).

An actual, present controversy does not exist as Defendants have not inspected the Plaintiffs' properties. Rather, like the Department in *Gospel Assembly*, the City of Orange City has only indicated that it *intends* to conduct rental inspections in accordance with the process of the rental ordinance. While the Plaintiffs have objected to the ordinance, no actual inspections have occurred at any of the Plaintiffs' residences nor has notice of a pending or anticipated inspection been issued to the Plaintiffs. (App. 11-13, 17-18, Petition, ¶¶ 18, 19, 23, 24, 46-53; App. 34, 45 53, 61, Exhibits 1(C), 2(C), 3(B), and 4(B) in support of Pl. App. for Temp. Inj.).

Additionally, Defendants have not obtained or sought to obtain administrative warrants to procure inspections of the Plaintiffs' properties, nor have they needed to apply for any such warrants in the City, even though at least 354 rental properties have been inspected. (*Id.*; *See Blackburn v. City of Orange Beach*, 2021 WL 1572563, at *6 (S.D. Ala. Apr. 21, 2021) (opining that "Blackburn ha[d] not sought a variance so he does not have a final

decision as to these restrictions which would make his claims ripe . . . Instead, Blackburn 'abandoned the [municipal] process in favor of this federal suit.' . . . [His] claims are not ripe for review because he lacks a final decision."); *See also Tobin v. City of Peoria, Ill.*, 939 F. Supp. 628, 635 (C.D. Ill. 1996) (noting that "this contingent possibility is insufficient to render the Inspection Ordinance unconstitutional because the alleged injury is not immediate and real. '[T]he possibility that circumstances will arise in the future [in which a Plaintiff will be coerced into consenting to a warrantless inspection] does not state a case or controversy ripe for judicial determination.'").

The Plaintiffs are seeking redress on the basis that their constitutional rights *may* be violated sometime in the unknown future. The controversy as framed by the Plaintiffs does not presently exist; therefore, this action is not ripe for review.

B. The Plaintiffs Do Not Have Standing

Similarly, the Plaintiffs do not have standing to bring this suit. A plaintiff must have standing to invoke a court's jurisdiction. *Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 432 (Iowa 2008). In order to establish standing, "the complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444,452 (Iowa 2013). "The injury

cannot be ‘conjectural’ or ‘hypothetical’ but must be ‘concrete’ and ‘actual or imminent.’” *Godfrey v. State*, 752 N.W.2d 413, 423 (Iowa 2008) (quoting *Alons v. Iowa Dist. Court*, 698 N.W.2d 858, 867-68 (Iowa 2005)). “‘Simply anticipating some wrong or injury’ is not enough for standing.” *Alons*, 698 N.W.2d at 872 (internal quotations omitted). “[T]he burden [is] on plaintiffs to show (1) a specific, personal, and legal interest in the litigation, and (2) injury.” *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 789 (Iowa 1994).

No action has been taken by Defendants to perform an inspection of Plaintiffs’ properties pursuant to the Ordinance. Further, other than the letters sent in response to Plaintiffs’ adversarial objections to the Ordinance, Plaintiffs have presented no factual basis to support that they have been “injuriously affected” as required by Iowa law.

As discussed in *Iowa Citizens for Community Improvement v. State*, 962 N.W.2d 780, 791 (Iowa 2021), “If the court can’t fix your problem, if the judicial action you seek won’t redress it, then you are only asking for an advisory opinion.” In this case, the Plaintiffs essentially asked the district court to determine as a matter of law the method and manner in which the City can draft and enforce the rental inspection ordinance, if and when the City chooses to seek legal recourse to enforce the ordinance. This challenge was

made quite clear by Plaintiffs' admission that they were not challenging the authority to enact a rental inspection program generally. (App. 134).

As noted previously, the ordinance provides the City with an enforcement mechanism but does not limit the City to administrative search warrants, as it authorizes the code official "*recourse to the remedies provided by law* to secure entry, including, *but not limited to*, obtaining an administrative search warrant to search the rental unit." (App. 183, Ordinance § 4.09) (emphasis added). "[T]o a large extent the plaintiffs are simply seeking broad abstract declarations in this litigation." *Iowa Citizens for Community Improvement*, 962 N.W.2d at 792.

This was exemplified by the district court's ruling, which reads as an advisory opinion, essentially informing the City what language and protections must be contained in the ordinance. (App. 984, Order p, 20) ("The Ordinance fails therefore because there needs to be more than just a purpose stated for the administrative warrant and none of the above safeguards are required to be utilized in the Ordinance for the administrative search warrant process.").

As plainly stated by the Iowa Supreme Court, "We do not issue advisory opinions." *Schmidt v. State*, 909 N.W.2d 778, 800 (Iowa 2018). As

such, Defendants continue to maintain that Plaintiffs do not have standing and that this matter is not ripe for judicial review.

CONCLUSION

"Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts. The need for preventive action is great, and city after city has seen this need and granted the power of inspection to its health officials; and these inspections are apparently welcomed by all but an insignificant few." *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967) (citations and quotations omitted)

For the reasons expressed herein, the district court erred in denying Defendants' motion to dismiss, granting Plaintiffs' motion for summary judgment, denying Defendants' motion for summary judgment, permanently enjoining Defendants from enforcing the rental inspection ordinance, and awarding Plaintiffs nominal damages. Defendants the City of Orange City and Kurt Frederes respectfully request that the Court overturn the judgment of the district court and enter judgment in their favor.

REQUEST FOR ORAL SUBMISSION

Appellants ask to be heard in oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1) (d) and 6.903(1) (g) (1) or (2) because:

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/s/ Zachary D. Clausen May 6, 2024

CERTIFICATE OF SERVICE

I, Zachary D. Clausen, hereby certify that on the 6th day of May, 2024, I served Appellants' Final Brief on Plaintiffs and the Clerk of the Supreme Court by EDMS.

/s/ Zachary D. Clausen

CERTIFICATE OF FILING

I, Zachary D. Clausen, further certify that I filed the Appellants' Final Brief via EDMS on the 6th day of May, 2024

/s/ Zachary D. Clausen

CERTIFICATE OF COST

It is certified that the actual cost paid by Appellants for submitting this brief was $0.00 as it was filed electronically by EDMS.