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 REPLY BRIEF AND ARGUMENT

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

AUTHORITIES

There is no argument, cases, or authority on this issue in this reply brief, as this issue was adequately addressed in Defendants' opening brief.

ARGUMENT

A. Iowa Has Rejected the Categorical Approach to Article I, Section 8 Urged by the Plaintiffs

The Iowa Supreme Court has rejected exactly what Plaintiffs are urging here—that Article I, Section 8 of the Iowa Constitution "*categorically* 'provides greater protection of individual privacy than the Fourth Amendment.'" *State v. Burns*, 988 N.W.2d 352, 366 (Iowa 2023) (emphasis original). Plaintiffs continue to erroneously state that "only probable cause is consistent with the text of Article I, § 8 and this Court's precedents." (Pl. Br. 27). The Court in *Burns* noted that it is the Court's "duty to independently interpret section 8 based on its words and history. Depending on the issue, this inquiry may lead [the Court] to conclude that section 8 provides protections that are the same as, greater than, or less than the protections provided by the Fourth Amendment." *Id*. However, this Court does not automatically ignore federal precedent. Rather, the courts give United States Supreme Court cases "respectful consideration." *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010).

Plaintiffs cite to the drafting of the bill of rights and George W. Ells in support of this categorical argument, which was cited by the majority in *State v. Short.* However, "Reading Ells's statement in its entirety, rather than the majority's shorthand version, he was clearly urging his colleagues to include

a due process clause in the Iowa Constitution so that it would have the same degree of protections against a rampant majority as the United States Constitution provided. He was not proposing a due process clause so that Iowa's courts could go on future solo missions to find new interpretations of constitutional provisions with established meanings." *State v. Short*, 851 N.W.2d 474, 521 (Iowa 2014) (Mansfield, J., dissenting).

The Plaintiffs citation to the 1904 case of *McClurg v. Brenton* similarly misses the mark. While *McClurg* discussed the right of the citizen to occupy and enjoy the home in the context of a common law trespass case against the City of Des Moines and various others for breaking into Plaintiff's home and engaging in justice vigilante, there is no reference to the Iowa Constitution in the case. *See McClurg v. Brenton*, 123 Iowa 368, 98 N.W. 881 (1904); *Burnett v. Smith*, 990 N.W.2d 289, 294 (Iowa 2023) (noting that *McClurg* did not reference the Iowa Constitution in discussing claims for direct actions for damages under Article I, section 8).

In this case the Court should construe Article I, Section 8 of the Iowa Constitution to have the same meaning as the Fourth Amendment. Iowa Courts "ordinarily 'interpret the scope and purpose of the Iowa Constitution's search and seizure provisions to track with federal interpretations of the Fourth Amendment' due to their nearly identical language[.]" *State v. Warren*,

955 N.W.2d 848, 859 (Iowa 2021) (quoting *State v. Brown*, 930 N.W.2d 840, 847 (Iowa 2019)); *see also State v. Short*, 851 N.W.2d 474, 511, 525-26 (Iowa 2014) (Waterman, J. dissenting) ("We should Construe Article I, Section 8 of the Iowa Constitution to Have the Same Meaning as the Fourth Amendment" because they "are worded virtually identically" and "[o]ur court, like most state supreme courts, has traditionally followed federal precedent in construing the same language in the state constitution.") (Mansfield, J., dissenting) ("When we choose to follow Fourth Amendment precedent, we are following standards that have already been put into practice around the country.").

Regardless, even under this Court's independent authority to construe the Iowa Constitution differently than the U.S. Constitution, there is no compelling rationale for this Court to depart from the federal standard for administrative search warrants in the context of non-criminal rental inspections, especially where there is no such search or warrant for this Court to even review.

Despite claims to the contrary, Defendants distinguished the post-*Ochoa* cases in detail in their opening brief. Plaintiffs' reliance on the cases of *State v. Kern*, 831 N.W.2d 149 (Iowa 2013) and *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013) has disappeared in their appeal brief, presumably

because of the glaring theme in the post-*Ochoa* cases—searches conducted by law enforcement of probationers and parolees based on the party's status, and those related to general law enforcement activities.

While Plaintiffs seem to disregard the party status in their briefing, this has not been ignored by the appellate courts in this state. *See State v. Sacco*, 856 N.W.2d 382 (table op.), 2014 WL 4930476 at *2 (Iowa Ct. App. 2014) (opining that the "[Iowa] supreme court [in *Short*] has now stated unequivocally that 'under article I, section 8 [of the Iowa Constitution], the warrant requirement has full applicability to home searches of both probationers and parolees by law enforcement.' . . . The protection the Iowa Constitution grants to probationers and parolees is greater than that provided by the Fourth Amendment to the United States Constitution."); *see also State v. Brooks*, 888 N.W.2d 406, 412 (Iowa 2016) (reviewing "recent article 1, section 8 caselaw regarding searches and seizures of probationers and parolees" including *State v. Baldon*, *State v. Kern*, and *State v. Short*).

Even in *State v. Wright*, which is relied on extensively by the Plaintiffs, the Court was specific in its holding:

> [W]e hold 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."

State v. Wright, 961 N.W.2d 396, 412 (Iowa 2021) (emphasis added).

Yet, Plaintiffs have cherry-picked portions of *Wright* that do not accurately portray the Iowa Supreme Court's ruling. The Court reiterated that it has "long held that a peace officer engaged in general criminal investigation acted unreasonably and unlawfully when he trespassed against a citizen without first obtaining a warrant based on probable cause." *Wright*, 961 N.W.2d at 405 (emphasis added). The Court did not define trespass as when "government officials have engaged in an investigative act that would be unlawful for a similarly situated private actor to perform." (Pl. Br. 44). This language was included in a citation to a law review article.[1] It was not the holding of the Court. Rather, the Court opined that "[w]ithin the meaning of article I, section 8, an officer acts unreasonably when, without a warrant, the officer physically trespasses on protected property or uses means or methods

[1] The Court referenced Baude & Stern, 129 Harv. L. Rev. at 1825–26 and in a parenthetical, provided that "a court should ask whether government officials have engaged in an investigative act that would be unlawful for a similarly situated private actor to perform. That is, stripped of official authority, has the government actor done something that would be tortious, criminal, or otherwise a violation of some legal duty? Fourth Amendment protection, in other words, is warranted when government officials either violate generally applicable law or avail themselves of a governmental exemption from it.')." *Wright*, 961 N.W.2d at 416.

of general criminal investigation that are unlawful, tortious, or otherwise prohibited."

Plaintiffs further provide an inaccurate portrayal of the recent ruling in *State v. Wilson*, 968 N.W.2d 903 (Iowa 2022). As the Court noted "police intrusion into the home implicates the very core of the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution." *Id.* at 911. The Court further provided that "a search and seizure violation under article I, section 8 of the Iowa Constitution may occur 'when, without a warrant, the officer physically trespasses on protected property . . ." *Wilson*, 968 N.W.2d at 913 (emphasis added). Notably, despite discussing Article I, Section 8, the claims in *Wilson* were evaluated under the framework of the Fourth Amendment. *Id.* at 911 n. 2 (noting that Plaintiff "does not suggest that the Iowa Constitution should be interpreted in a fashion different from the federal framework").

In *Wilson, Wright, Short, and Ingram,* all of the searches conducted by police officers were warrantless. While the City has yet to seek an administrative search warrant to conduct an inspection of a rental property, any such inspections would not be warrantless, would not be conducted by law enforcement, and would be sought based on "a showing that reasonable legislative or administrative standards for conducting an inspection are

satisfied with respect to [the] particular establishment." *In re Inspection of Titan Tire*, 637 N.W. 2d 115, 122 (Iowa 2001) (outlining the two ways for an administrative search warrant to establish administrative probable cause for the issuance of an administrative inspection warrant).

Again, contrary to Plaintiffs' claims, the Iowa Supreme Court's concern about Fourth Amendment cases is not with the narrow exception in *Camara*, but with the subsequent exceptions that were not jealously and narrowly drawn. *See State v. King*, 867 N.W.2d 106, 123 (Iowa 2015) (citations omitted) ("*Camara* . . . and the traditional exceptions to the warrant requirement are 'specifically established and well-delineated'"). Under the context of a rental inspection program, "Distinguishing between . . . special needs not related to general law enforcement and cases involving enforcement of criminal law is . . . as easy as the fact scenario presented in *Camara*." *State v. Ochoa*, 792 N.W.2d 260, 279-80 (Iowa 2010).

Yet, as anticipated Plaintiffs continue to attempt to drum up a law enforcement presence and component to the City's rental inspections, with this concern also being echoed by the ACLU. There is no evidence in this case as to any law enforcement involvement in inspections. Despite the Plaintiffs claiming that the ordinance does not prevent law enforcement from accompanying the inspector, the ordinance plainly states that inspections shall

be conducted by the code enforcement department and specifically, the code official. (App. 183, Ordinance § 4.08 – 4.09). The code official is Kurt Frederes, and not any law enforcement officer in the City of Orange City. Likewise, the City is not conducting any sort of "multiagency sweep" of struggling neighborhoods, a concern which is outlined by the ACLU.

Further, Plaintiffs continue to claim that the inspections are "unrestricted in scope" and that the inspector has unlimited discretion to conduct "wall-to-wall" home searches under the ordinance. Yet, a simple review of the ordinance and evidence in this case discloses that the City inspector is simply looking for code violations within the properties, as he is only able to inspect what is visible on the date of the inspection. (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).

The focus on health, safety, and code violations is also exemplified by the rental inspection checklist. This checklist, on which Plaintiffs so heavily rely, is similar to checklists employed by a considerable number of municipalities across the State of Iowa. *See* CITY OF DES MOINES RENTAL INSPECTION CHECKLIST, https://cms2.revize.com/revize/desmoines/document_center/Neighborhood%20Services/Neighborhood%20Inspection/Community%20Development%20-%20Inspection%20Check%20Sheet.pdf?pdf=Inspe

ction%20Check%20Sheet&t=1713539070990&pdf=Inspection%20Check%20Sheet&t=1713539070990 (last accessed April 19, 2024); CITY OF DAVENPORT RENTAL PROPERTY INSPECTION CHECKLIST, https://www.davenportiowa.com/common/pages/DisplayFile.aspx?itemId=18350187 (last accessed April 19, 2024). CEDAR RAPIDS, RENTAL INSPECTION CHECKLIST, https://cms8.revize.com/revize/cedarrapids/Building%20Services/Housing/RENTAL%20INSPECTION%20CHECKLIST-FY2023.pdf (last accessed April 19, 2024); CITY OF ANKENY RENTAL PROPERTY SAFETY INSPECTION CHECKLIST, https://www.ankenyiowa.gov/DocumentCenter/View/348/Rental-Housing-Inspection-Checklist-PDF (last accessed April 19, 2024); CITY OF WEST DES MOINES, RENTAL HOUSING INSPECTION GENERAL DEFICIENCY AND FEE INFORMATION, https://www.wdm.iowa.gov/home/showpublisheddocument/325/638410164355530000 (last accessed April 19, 2024).

Because Plaintiffs cannot demonstrate that there is any criminal or law enforcement role in the City's rental inspections, that the inspection program itself is unconstitutional, and that this Court would depart from the *Camara* framework in a non-criminal context—especially in a case where there is no warrant or search for this Court to review—judgment should be entered for the Defendants.

B. The Health, Safety, and Public Policy Benefits Justify the Ordinance and Administrative Warrants as a Means of Enforcement

As has been a continued theme throughout the litigation, Plaintiffs continue to complain that Orange City did not have "widespread problems" with rental properties, that there were code procedures in the City that could have dealt with the deteriorating properties that led the City to establish the program, and that there were alternatives to the mandatory inspection ordinance passed by the City. These complaints rise to nothing more than mere policy disagreements with the laws passed by the governing body. The City is entitled to pass the laws that it sees fit to address the health and safety of community residents. This is especially true in this context where the ordinance is authorized by and supported by the public policy of the State of Iowa in Iowa Code § 364.17, and implemented by countless cities across the State.

Similarly, the filed amicus brief seems to suggest that the City has a range of tools available to achieve the interests of health and safety without requiring inspections of rental properties without individualized probable cause. However, as noted by the Iowa Court of Appeals, "[W]e believe a case-by-case inspection regime, triggered on cause, would be administratively unworkable and would not equally promote Iowa's public policy of providing quality rental housing to its citizens as the inspection scheme contemplated by

section 364.17, and enacted by the city . . .” *City of Fort Dodge v. Martin*, 695 N.W.2d 43 (table op.), 2004 WL 2677235 at * 2 n. 2 (Iowa Ct. App. 2004) (affirming district court’s injunction preventing landlord from collecting rent and evicting tenants for failure to pay rent until properties were inspected and certified by the City).

Further, the suggestion that a “public campaign” to educate tenants about their rights or “hotline” would be an adequate alternative to an inspection program is striking. Plaintiffs and the ACLU are essentially attempting to convince this Court that there is no rationale to treat rental properties different than owner-occupied homes in the City. Such an argument fails and completely ignores the public policy in the state and the backdrop of landlord/tenant inequities throughout the history of this country. *See* Iowa Code § 364.17; *Camara v. Mun Ct. of City and Cnty. of San Francisco*, 387 U.S. 523 (1967) (citations and quotations omitted) (“Time and experience have forcefully taught that the power to inspect dwelling places . . . is of indispensable importance to the maintenance of community health ...”).

“By relieving tenants of the burden of having to force reticent landlords to make needed repairs, systematic inspections can help ensure that a locality’s rental housing stock is maintained and that residents live in healthy conditions.” Amy Ackerman, et. al., *A Guide to Proactive Rental Inspection*

Programs, CHANGELAB SOLS. 4 (2014), https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs_Guide_FINAL_20140204.pdf (last accessed April 19, 2024) (citations omitted) (noting that periodic rental inspections in Los Angeles corrected more than a half a million habitability violations over a seven year period, that Sacramento's dangerous building cases were reduced by 22% over a five year period, and that the City of Greensboro in North Caroling brought more than 8,700 properties up to minimum standards in a four year period).

The ACLU also claims that the inspection program disproportionately burdens people with low incomes and racial and ethnic minorities. While Defendants have no reason to dispute the cited statistics, the statistics do nothing more than show that those same groups are more likely to rent than own. In making this argument, the ACLU completely disregards the fact that "Often, the most vulnerable tenants don't complain[,]" and that "the housing inhabited by the most vulnerable populations, which is frequently the worst housing, is often the most likely to fall through the cracks of a complaint-based code system." *Id.* at 5 (citations omitted) (discussing language barriers, disabilities, limited income, and fear of retaliation or increased rent as rationale for periodic rental inspection programs).

The burden or inconvenience of a rental property being inspected once every five years under the ordinance is slight when compared to the health and safety of City residents. *See Lewis v. Jaeger*, 818 N.W.2d 165, 178 (Iowa 2012).

Plaintiffs also discount the fact that notice of the inspections is provided, and that the ordinance provides property owners with the opportunity to obtain an exemption from inspections by the City if the properties are inspected by a certified third-party inspection organization. (App. 183, Ordinance § 4.02(2)). Thus, if the Plaintiff owners truly do not want to be burdened by the allegedly intrusive inspections, Plaintiffs can avoid city conducted inspections by arranging for their own inspector and providing the City with certification of the inspection.

As a practical matter, it is worth pointing out that Orange City's ordinance provides greater protections for its residents than other ordinances throughout the State, including in Cities that have less than 15,000 residents. Rather than consent for inspections being implied by the owner submitting the registration application, the Orange City ordinance contemplates refusal of entry and provides a process for such refusal under § 4.09 of the ordinance. *See, e.g.* CITY OF NEWTON RENTAL HOUSING INSPECTION PROGRAM ADMINISTRATION POLICY, https://www.newtongov.org/DocumentCenter/Vie

w/5896/Rental-Housing-Inspection-Program-Administrative-Policy (last accessed April 21, 2024); CITY OF GRINNELL RENTAL CODE PROGRAM ADMINISTRATIVE POLICY https://www.grinnelliowa.gov/DocumentCenter/View/2070/Rental-Code-Program (last accessed April 21, 2024); City of Knoxville Ordinance No. 20-05, Section § 8-10-4, https://www.knoxvilleia.gov/DocumentCenter/View/1606/Rental-Inspection-Program (last accessed April 21, 2024).

C. Prematurely Invalidating the City's Rental Inspection Ordinance Will Have a Detrimental Effect on Inspection Programs throughout the State

Iowa cities which adopt or are subject to Iowa Code Chapter 364.17 "shall adopt enforcement procedures, which shall include a program for regular rental inspections, rental inspections upon receipt of complaints, and certification of inspected rental housing[.]" Iowa Code § 364.17(3)(a). Prematurely invalidating the City's ability to conduct rental inspections would have a dramatic impact on rental inspection programs throughout the State of Iowa, including in those cities which are required to have rental inspection programs under Iowa Code § 364.17. *See* Des Moines Municipal Code § 60-8 ("Where it is necessary to make an inspection to enforce provisions of this code, or whenever the administrator has reasonable cause to believe that there exists a condition in violation of this code, the administrator is authorized to

enter. . . If the administrator's entry is refused, the administrator may pursue a municipal infraction and/or obtain an administrative search warrant as provided by law to gain entry onto the real estate for the purpose of inspection or otherwise as provided by law."); Sioux City Municipal Code § 1.01.010 ("Whenever consent to enter upon property or to inspect any structure on property pursuant to a municipal ordinance is withheld by the person having the lawful right to exclude or deny entry, the city officer or employee having the duty to enter upon the property or conduct the inspection of the structure may apply to the Iowa District Court in and for Woodbury County, pursuant to Iowa Code Section 808.14, for an administrative search warrant."); Cedar Rapids Municipal Code § 29.07 ("When the *code official* has first obtained a proper inspection warrant or other remedy provided by law to secure entry, an owner or occupant or person having charge, care or control of the building or premises or unit shall not fail or neglect . . . to permit entry therein for by the code official").

This is especially true if the ruling is made under the current facts, where the City has never been issued or even applied for an administrative search warrant to search the Plaintiffs' properties.

Further, a decision holding that the City's rental inspections require traditional and individualized probable cause would call into question all

administrative search warrants issued under the authority granted by the legislature in Iowa Code § 808.14, which was enacted shortly after the Court's decision in *Meier v. Sulhoff*, 360 N.W.2d 722 (Iowa 1985), which annulled a writ filed by the Iowa Commissioner of Labor after the denial of an application for an administrative search warrant to enforce Iowa OSHA. *See Meier v. Sulhoff*, 360 N.W.2d 722, 723-723 (Iowa 1985) (filed January 16, 1985); Iowa Code § 808.14 (effective May 7, 1985); *see also* Iowa Code § 135.141(2)(d) (authorizing "an employee or agent of the [Department of Public Health] [to] enter into and examine any premises containing potentially dangerous agents with the consent of the owner or person in charge of the premises or, if the owner or person in charge of the premises refuses admittance, with an administrative search warrant obtained under section 808.14."); *In re Inspection of Titan Tire*, 637 N.W.2d 115, 119 (Iowa 2001).

Inspection programs throughout the State are of vital importance to State and municipal government. The Iowa legislature has recognized the role of protecting and promoting the health, safety, and welfare of renting citizens under Iowa Code § 364.17 and has provided the authority for cities to seek administrative search warrants to carry out their home rule authority. This Court should not declare unconstitutional the entirety of the mandatory

inspection program in Orange City, especially without having the benefit of any application or search to review.

D. Procedural Safeguards Do Not Need to Be Included in the Language of the Ordinance

Despite getting the relief that they sought in the district court and asking this Court to affirm, Plaintiffs actually seem to disagree with the district court's rationale. (Pl. Br. 26) ("But the district court's reliance on *Golden Valley* is misplaced. Although *Golden Valley* created laudable *procedural* safeguards for obtaining and executing administrative search warrants, it removed the *evidentiary* safeguard—the only issue in this case—inherent in the probable cause requirement.).

Plaintiffs are also suggesting that the City rejects even the district court's guardrails discussed in the *City of Golden Valley* case. As is made plainly clear in Defendants' opening brief, the City's issue is not with the holding in *City of Golden Valley* or the procedure that the Minnesota Supreme Court announced for courts to use when considering applications for administrative search warrants, but the district court's finding that such procedural safeguards need to be included in the language of the ordinance itself. If the City chooses to apply for an administrative search warrant, it is for a district court to determine that the safeguards and requisite cause is met. *See City of Golden Valley v. Wiebesick*, 899 N.W.2d 152 (Minn. 2017)

("Ultimately, the district court should use its sound discretion to determine the particular limitations on the administrative warrant based on the needs of the particular tenant and inspector.").

As such, this Court should overturn the judgment of the district court which declared unconstitutional the entirety of the mandatory rental inspection requirement and permanently enjoined the City from seeking an administrative search warrant under the language of the ordinance.

CONCLUSION

Defendants City of Orange City and Kurt Frederes respectfully urge that this Court reverse the judgment of the district court and enter judgment in their favor.

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 Reply 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 Reply Brief via EDMS on the 6th day of May, 2024,

/s/ Zachary D. Clausen