In The Supreme Court of Ohio

Department of Developmental Services for the City of North Canton	)	Case No. 2025-0458
appellee,	)	
v.	)	On appeal from the Fifth District Court of Appeals, Case No. 24 CA 00108
CF Homes, LLC	)	
appellant.	)	

MERIT BRIEF OF FRIEND OF THE COURT OHIO REALTORS®
IN SUPPORT OF APPELLANT

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STATEMENT OF INTEREST OF FRIEND OF THE COURT OHIO REALTORS®

Ohio REALTORS® is Ohio's largest professional trade association—with over 35,000 members, who are mostly licensed real estate brokers and salespersons. A leader in this state's real-estate industry, Ohio REALTORS® provides its members with educational opportunities and information relevant to the profession, including updates on ethical considerations, professional development, and important legislative and judicial developments. Ohio REALTORS® values the privacy rights of all individuals and advocates against unwarranted governmental intrusion into private homes.

The organization also is concerned that local authorities might exploit inspection programs as a pretext to generate revenue from landlords.

Here, appellee North Canton's ordinance imposes registration fees starting at $100 for a single rental unit, with escalating fees for additional units. Licenses have limited durations, requiring periodic inspections and fees, even if the same tenant remains in the dwelling. The ordinance authorizes daily fines for non-compliance, with amounts potentially reaching up to $300 per day, as collectively specified in Section 703.99(a)(1)-(3). This raises concerns about enforcement driven by factors other than tenant safety. And as stated in our brief supporting jurisdiction, the danger of focusing on enforcement "based on caprice or on personal or political spite" is real. *Ohio ex rel. Eaton v. Price*, 364 U.S. 263, 271 (1960), (4-4 opinion).

FACTS

Although it purported to grant appellee North Canton the right to search throughout appellant's property, the trial court did not accept the rationales that the city advanced for doing so. Regardless, no rationale supports affirmance here. Before reviewing the applicable law, we will first summarize the ordinance at issue.

The ordinance. North Canton's rental-registration ordinance, codified at Chapter 703, imposes broad government intrusions upon private rental properties. The ordinance claims that its purpose is to "hold all property owners and agents to the same property maintenance standards as set forth in Part 17 of the Codified Ordinances of the City of North Canton and to provide a safe and sanitary environment for the residents and their guests of all rental dwelling units." However, neither Chapter 703 nor the lower courts required a showing of probable cause of any violation of Part 17 or unsafe or unsanitary conditions.

Instead, the ordinance requires all owners of rental units to register their properties and submit to "inspections" as a condition of maintaining a rental license.

These inspections are thus *not* tied to individualized probable cause or tenant complaints but are instead mandated across the board—allowing local government to scrutinize rental homes for a sweeping list of measures. The ordinance's scope encompasses inspections of the *entire* property: North Canton has developed a checklist covering every aspect of a home. It includes a search for "visual evidence of bedbugs."

Hence, inspectors may examine areas as personal as bedding. Without any inkling of probable cause, people's most personal possessions are exposed to governmental intrusion. And because licenses are only good for limited timeframes, people are exposed to multiple searches.

The ordinance says that if a warrantless search is refused, then the "Direct of Permits" may:

1. Seek a court-ordered warrant without any evidence of a violation of Part 17 of North Canton's codified ordinances, or

2. Issue a temporary six-month rental license.[1]

This assumes that warrants for inspections will invariably be granted.

However, consider a scenario where a property owner denies entry and the city decides to issue a six-month license under §7.03(C)(4)(ii). After the temporary license expires, the owner refuses a warrantless inspection again. The city applies for a search warrant under §7.03(C)(4)(i), but the court denies the request. Under the ordinance, the owner could not obtain a license because there was no "inspection." Thus, the owner must either face stiff penalties or consent to a warrantless search to obtain a rental license. This underscores a flaw in the ordinance—it doesn't account for the possibility of a court *denying* a search warrant. This exposes the built-in assumption that warrants

[1] Notably, the ordinance gives no guidance as to when to seek a warrant or grant a temporary license *See* Section 7.03(c)(4)(C)(i)-(ii), ("(C) If a property owner fails to schedule inspections for their property within thirty (30) days from the date the application for a Rental License is filed or declines to have the Rental Unit inspected the Director of Permits: (i) may obtain an order or warrant to inspect from a court of competent jurisdiction; or (ii) may issue the Owner a Six Month Rental License for that Rental Unit.")

will always be granted. This reflects the city's implicit belief that the probable-cause requirement enshrined in the Ohio Constitution is inconsequential in this context.

Denial of consensual entry and litigation under the ordinance. North Canton sought to search inside the appellant's property and was refused warrantless access. A city agency then sued the company (but not the tenants) in common pleas court. On summary judgment, the court issued a search-warrant equivalent under color of Section 7.03(c)(4)(C)(i). The Fifth District affirmed—embracing the interpretation that no particularized probable cause is necessary under Ohio law.

The appeals court said that "probable cause" may be based "on a showing that reasonable *legislative standards* for conducting an inspection are satisfied." ¶24.

However, Ohio's constitution and general laws do not permit administrative searches conducted without any intention to seize criminal evidence. But even if this is permitted, the Ohio Constitution still requires the type of particularized showing of probable cause that is wholly lacking here. Allowing municipalities to "establish" legislative or administrative standards for the issuance of judicial warrants irrespective of probable cause would render the separation of powers meaningless.

As we previously explained in our memorandum in support of jurisdiction, textual differences exist between the Fourth Amendment and Ohio constitution. Those differences suggest that the Ohio constitution does not even permit searches—let alone suspicion-less searches—unaccompanied by an intent to "seize" anything. Rather than

reprinting those arguments here, we wish to use this brief to address a few key points about the relevant statutory scheme and appellee's ordinance.

ARGUMENT

Ohio REALTORS® agrees with appellant's proposition of law and statement that, if this court affirms, then "both the warrant" and "probable cause" safeguard become "illusory hoops rather than substantive constitutional limits." *Appellant's brief, p. 2*. Perhaps the best way to see why is to review North Canton's own ordinance and how it treats the statutory framework that it relies upon.

The city's ordinance betrays its true purpose through its cyclical design. Chapter 703 does not target structures with identified hazards, nor does it rely on credible evidence of unsafe conditions. Instead, it mandates inspections at fixed intervals—regardless of whether any complaint has been lodged, any violation observed, or any tenant concern raised. This is not a reactive safety measure tied to actual risk; it is a recurring government sweep untethered to probable cause or individualized suspicion.

If safety were the genuine goal, the city could focus its resources on properties with documented issues or verified hazards. Instead, it treats every rental unit as suspect and subjects each to an invasive inspection cycle, whether brand new or well-maintained. This one-size-fits-all schedule is not about preventing imminent harm—it is about control over a class of property owners and tenants, all without the predicate facts that justify a true safety inspection. It's the existence of the tenancy—not any

demonstrable danger—that triggers government intrusion. Despite this, we anticipate that the city will repeat a theme from its memorandum opposing jurisdiction—that the disputed search is a matter of routine application of Ohio statutory law.

Universalizing the city's view, every municipality in Ohio may easily have a court issue a warrant to search virtually every residence—owned or rented—in this state regardless of whether there's probable cause to do so. North Canton will argue that appellant got the benefit of adversarial litigation below, however, under the city's view, it's still a one-sided process: Cities may intrude without probable cause.

Relying upon R.C. 2933.21(F) and R.C. 2933.22(B), North Canton insisted in its jurisdictional memorandum that the Revised Code enables courts to commonly issue home-inspection warrants. But a rational reading of the text reveals otherwise.

First, R.C. 2933.21(F) provides:

> A judge of a court of record may, within his jurisdiction, issue warrants to search a house or place: ***
>
> For the existence of physical conditions which are or may become hazardous to the public health, safety, or welfare, when governmental inspections of property are authorized or required **by law**.[2]

In turn, R.C. 2933.22(B) provides:

> A warrant of search to conduct an inspection of property shall issue only upon probable cause to believe that conditions exist upon such property which are or may become hazardous to the public health, safety, or welfare.

[2] All emphasis in this brief is added.

Before delving into these statutes, it's important to first note that these are special provisions relating to the issuance of warrants by Ohio's courts. "The sovereignty of the state in respect to its courts extends over all the state, including municipalities, whether governed by charter or general laws," and "None of the various provisions of Article XVIII of the Constitution of Ohio are effective to abridge the sovereignty of the state over municipalities in respect to its courts." *Cupps v. City of Toledo*, 170 Ohio St. 144, 150 (1959), syllabus. It therefore follows that there must be a statutory provision enabling a court to grant a municipality (such as North Canton) a search warrant ***before we even reach the limitations that the Ohio constitution imposes upon any such issuance***.

North Canton must agree, or else it wouldn't have mentioned the statutes in the first place. The city overlies upon these statutes in support of its ordinance.

First, the General Assembly has made the statewide determination that R.C. 2933.21(F) only ever applies "when governmental inspections of property are authorized or required **by law**." Whenever the General Assembly uses the phrase "by law," it means "by statute." Relatedly, this court has recently implicitly recognized that the phrase "by law" means by statute. *State ex rel. Maumee v. Lucas Cnty. Bd. of Elections*, 2025-Ohio-2516, (construing charter provision enabling removal of city officials "as provided by law" as not incorporating the salient statutory law.) The courts below have failed to identify any statute that authorizes or requires the disputed inspection/search at issue in this case. However, in candor, R.C. 715.26(B) does purport to give

municipalities certain powers to inspect buildings and other structures. Assuming this extends to residences, it still does not cover things such as bedding and appliances. *See*, *Dept. of Dev. Services for N. Canton v. CF Homes LLC*, 2025-Ohio-1342, ¶7 (5th Dist.)

Moreover, any potential reliance upon R.C. 715.26 begs the question of whether R.C. 2933.22(B) is satisfied. These two statutes must be read *in pari materia* as the latter says that a "warrant of search to conduct an inspection of property shall issue only upon probable cause to believe that conditions exist upon such property which are or may become hazardous to the public health, safety, or welfare."

North Canton is likely to argue that R.C. 2933.22(B) enables the issuances of warrants to search within any property that could someday theoretically threaten public health or safety. However, the words, "may become" should mean there is *current* probable cause that the property poses a hazard—such as visible dilapidation or deterioration—not merely that it could hypothetically become hazardous in the future just by existing.

To be sure, R.C. 715.26(B) mentions the words "insecure," "unsafe" and "structurally defective." This is the category of hazard that R.C. 2933.22(B) would enable the issuance of a warrant to inspect. And even if these statutes would allow municipalities to act before conditions ripen into actual danger, they don't authorize blanket or suspicion-less searches of all properties. The phrase "may become" presupposes *some* factual predicate—a credible basis to believe the property is on a path

toward becoming dangerous, unsafe, or uninhabitable. Without such a tether, the provision would effectively swallow the Fourth Amendment and Article I, Section 14 limits—transforming a narrow preventive power into a roving license to search.

Therefore, affirming would indeed render the Ohio constitution's warrant requirement and its associated probable-cause safeguard illusory. To avoid this, any local power to "inspect" must operate within constitutional guardrails; "may become" does not displace probable-cause or other con law principles. If "may become" were taken to mean "anything that could someday, in theory, become dangerous," then every property in Ohio qualifies for inspection at any time—because all structures eventually deteriorate over time. That would produce a regime indistinguishable from a general warrant, which is squarely prohibited. Courts must reject constructions that render statutory language surplusage or that raise serious constitutional concerns when a narrower, commonsense reading is available.

CONCLUSION

Perhaps most telling of all is that North Canton's inspection regime is cyclical and also may be variably triggered by a mere change in ownership or tenancy, which has absolutely nothing to do with structural concerns.

Respectfully submitted,

/s/ Andy Mayle

CERTIFICATE OF SERVICE

I emailed a copy of this brief to all counsel on August 11, 2025.

/s/ Andy Mayle