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No. 38 MAP 2026

In the Supreme Court of Pennsylvania

DOROTHY RIVERA, ET AL.,

Appellees,

v.

BOROUGH OF POTTSTOWN, ET AL.,

Appellants.

BRIEF OF AMICI CURIAE, THE PENNSYLVANIA ASSOCIATION OF REALTORS® AND THE NATIONAL ASSOCIATION OF REALTORS®

Appeal from the Order of the Commonwealth Court filed on December 9, 2025 at Docket Nos. 190 C.D. 2024 and 224 C.D. 2024

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I. INTEREST OF AMICI CURIAE

The Pennsylvania Association of Realtors® ("PAR") is Pennsylvania's statewide trade association representing more than 38,000 real estate professionals throughout the Commonwealth who participate in the sale, purchase, leasing, management, valuation, and use of residential and commercial real property. PAR's mission is to promote and protect advance the real estate profession, including preserving the private property rights of real property owners, landlords, and tenants.

The National Association of Realtors® ("NAR") is a national trade association representing over 1.4 million members involved in all aspects of the residential and commercial real estate industries, including brokers, salespeople, property managers, appraisers, counselors and other real estate professionals. Members belong to one or more of the approximately 1,200 local and 54 state and territory associations of REALTORS® and support private property rights, including the preservation of constitutional protections afforded to real property owners and occupants, and to ensure stable, fair regulatory frameworks for residential rental housing.

Each *amici* has a direct institutional interest in rules governing the boundary between private real property and governmental power. *Amici* also have an interest in ensuring that lawful rental housing is not singled out for regulatory burdens that materially diminish private ownership and possession. Intrusive inspection regimes

impose burdens on housing providers' use and management of property, affect decisions about whether to invest in and maintain rental housing, and invade the privacy of the tenants whose homes are rented.

Appellants, the Borough of Pottstown and Keith A. Place, the Borough's Director of Licensing and Inspections (collectively, the "Borough" or "Pottstown"), ask the Court to hold that a municipality may obtain a warrant to cross the threshold of a home without facts suggesting that the particular residence violates any law. Instead, the proposed justification is merely the property's lawful status as a rental and its place in a periodic inspection cycle. Appellants' rule would make the lawful decision to rent property the trigger for diminished constitutional protection. *Amici* have a direct interest in ensuring that the lawful exercise of property rights does not become the basis for a second class of constitutional privacy protection for the home.

II. SUMMARY OF THE ARGUMENT

A rented home is no less a home under Article I, Section 8. The Pennsylvania Constitution protects "houses" and "possessions" and commands that no warrant issue without probable cause. Pottstown nevertheless seeks compelled entry based only on rental status, the passage of time, and refusal of consent. Those facts may explain why Pottstown wishes to inspect; they do not establish why government may search that home.

Pennsylvania's constitutional text and history require a factual nexus between the cause asserted and the place to be searched. A lease does not weaken that protection. It reallocates private rights between owner and tenant, but transfers none to the government. The home remains a "house," and the tenant's lawful possession reinforces—not diminishes—the constitutional boundary.

Neither *Camara* nor "dragnet" terminology supplies the missing cause. Pennsylvania's intermediate appellate decisions did not independently resolve Article I, Section 8, and *Y.W.-B.* did not adopt *Camara* as Pennsylvania constitutional law. Nor do sister-state cases establish a contrary constitutional consensus. Instead, this Court's recent decision in *Punxsutawney Hunting Club* confirms the importance of Pennsylvania's independent constitutional text, property protections, and right to exclude.

Finally, policy cannot replace probable cause. The importance of safe housing cannot convert an absence of information into evidence of a violation, and refusal to consent cannot justify overriding that refusal. Article I, Section 8 does not tolerate a second class of privacy or property rights for homes simply because an owner and a tenant agree to a lease.

III. ARGUMENT

This case concerns the point at which government's authority to regulate private property becomes authority to enter it. Pennsylvania municipalities may prescribe reasonable standards for the health and safety of residential property; however, the power to regulate a home is not the power to cross its threshold. Article I, Section 8 supplies the constitutional boundary between the two. Pa. Const. art. I, § 8.

The constitutional boundary does not move because a home is rented. A lease allocates property rights between private parties. The owner retains title, a reversionary interest, contractual rights, and other incidents of ownership; the tenant receives present possession and the right, subject to law and the lease, to exclude others from the home. Pennsylvania law has long recognized both sides of that arrangement. *See, e.g.*, *Bartkowski v. Ramondo*, 219 A.3d 1083, 1095 (Pa. 2019) (recognizing presumptive right to quiet use and enjoyment as "inherent to our understanding of property ownership"); *Machipongo Land & Coal Co. v. Commonwealth*, 799 A.2d 751, 766 (Pa. 2002) (recognizing property as a "bundle" of property rights); *Commonwealth v. Gordon*, 683 A.2d 253, 258 (Pa. 1996) (recognizing the right to exclude and the significance of ownership, lawful possession, and control); *Willcox v. Penn Mut. Life Ins. Co.*, 55 A.2d 521, 528 (Pa. 1947) (recognizing possession, use, enjoyment, and disposition as constituent

incidents of property). Nothing about dividing the private bundle of rights enlarges the government's share of it. The government should not acquire a greater right to enter a Pennsylvania home because the owner has chosen to rent it.

Pottstown's position would produce precisely that result. The Borough does not contend that its warrant applications identify facts suggesting that a code violation exists within the particular residence to be searched. Instead, it relies on facts that describe the property's regulatory status: the property is rented, the inspection date has arrived, and entry has not been voluntarily permitted. On that theory, constitutional protection turns not on the character of the place government seeks to enter—it remains a home—but on how private parties have allocated ownership and possession. An owner-occupied home would retain the requirement of individualized cause; the same home, upon being leased, would become subject to compelled government entry on a materially lesser showing.

Article I, Section 8 does not create that second class of homes.

Pennsylvania's constitutional text, history, property law, and precedent instead require a factual nexus between the cause asserted and the residence to be searched. This Court's recent decision in *Punxsutawney Hunting Club, Inc. v. Pennsylvania Game Commission* strongly reinforces that conclusion. 360 A.3d 828 (Pa. 2026) ("*Punxsutawney Hunting Club*"). *Punxsutawney Hunting Club* reaffirmed that Pennsylvania does not reflexively adopt federal search-and-seizure

doctrine; that "possessions" in Article I, Section 8 carries independent property content; that the right to exclude bears directly on the constitutional boundary; and that legislative authorization to enter private property does not itself define the scope of that boundary. *Id.* Those principles have still greater force where government seeks entry not onto land beyond the curtilage, but across the threshold of an occupied home.

Pottstown presents this case as a choice between two ready-made federal models: ordinary probable cause on one side and *Camara*'s administrative probable cause on the other. *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967). Article I, Section 8, however, requires a more searching inquiry. Pa. Const. art. I, § 8. Under *Commonwealth v. Edmunds*, the Court must examine Pennsylvania's own constitutional text, history and precedent, persuasive decisions elsewhere, and policy within this Commonwealth. 586 A.2d 887 (Pa. 1991). Each source points in the same direction: When the government asks a judge for compulsory authority to enter an occupied residence, probable cause must be tied to that residence and to the object of the proposed search. The government need not *establish* that a crime occurred, but it must present facts that give a judicial officer reason to believe that the code violation or condition exists at the place to be searched.

A. ARTICLE I, SECTION 8 REQUIRES INDIVIDUALIZED PROBABLE CAUSE BEFORE THE GOVERNMENT MAY ENTER A HOME

1. The constitution's text requires both particularity and probable cause.

The analysis must begin with the Pennsylvania Constitution, not the federal-law accommodation fashioned in *Camara*. Under *Edmunds*, this Court construes Article I, Section 8 according to its text, history, and precedent, persuasive authority from other jurisdictions, and policy within this Commonwealth. 586 A.2d at 894-95. That independent inquiry is essential because Pennsylvania's warrant provision predates the Fourth Amendment to the United States Constitution and reflects Pennsylvania's own constitutional judgment about governmental authority to search private places.

Article I, Section 8 protects "[t]he people" in their "persons, houses, papers and possessions from unreasonable searches and seizures." Pa. Const. art. I, § 8. "[N]o warrant to search any place" shall issue without particular description and "probable cause, supported by oath or affirmation subscribed to by the affiant." *Id.* Each part of that language must be given effect, with distinct requirements of particularity *and* probable cause.

Pottstown's theory collapses those requirements. The Borough can identify a particular address, but the asserted factual basis for entering that address is the same formula for every other residence: The property is rented; time has elapsed; and

consent has been withheld. While those facts explain why Pottstown wants to inspect the residence, they say nothing about whether the condition that is the object of the proposed search exists there.

That does not mean that administrative probable cause must be converted into probable cause of a crime. The object of this search is different, and the showing can account for that difference. The issuing authority must find a fair probability that the housing-code violation or condition for which government seeks compulsory entry exists in the residence to be searched. Complaints, observations, reliable reports, or other facts may, in an appropriate case, supply that nexus. Rental status and the passage of time, however, do not.

2. Pennsylvania's constitutional history rejects warrants resting on generalized grounds.

Pennsylvania's warrant protection predates the Fourth Amendment itself. *Edmunds*, 586 A.2d at 896 ("[C]ontrary to the popular misconception that state constitutions are somehow patterned after the United States Constitution, the reverse is true. The federal Bill of Rights borrowed heavily from the Declarations of Rights contained in the constitutions of Pennsylvania and other colonies."). The 1776 Declaration of Rights protected the people's "houses, papers, and possessions" from search, and condemned warrants issued without sworn statements "affording a sufficient foundation" or without particular description. Pa. Const. of 1776, Decl. of Rights § X. The 1790 Constitution strengthened that command, retaining protection

for "persons, houses, papers and possessions" and declaring that "no warrant to search any place" could issue without a particular description and "probable cause supported by oath or affirmation." Pa. Const. of 1790, art. IX, § 8. What the 1776 Constitution said "ought not" be granted without sufficient foundation became an unambiguous prohibition: "no warrant" without probable cause. Nothing in that text confined the command to evidence of crime. Instead, the search provision was distinct from the succeeding constitutional protections directed specifically to criminal defendants. *See id.* § 9.

Founding-era Pennsylvania sources likewise understood that warrant protection served as a safeguard against unjustified governmental entry into homes and other private property. Samuel Bryan's *Centinel I* reminded Pennsylvanians that their Constitution secured their "houses, papers and possessions" against searches lacking a proper sworn foundation and particular description. Samuel Bryan, *Centinel I*, Independent Gazetteer (Oct. 5, 1787), reprinted in 13 *The Documentary History of the Ratification of the Constitution* 326, 329. Thomas Hartley spoke in the ratification convention of securing citizens' "lives, liberties, and property" and protecting their "rights and possessions." Thomas Hartley, Speech in the Pennsylvania Convention (Nov. 30, 1787), reprinted in 2 *The Documentary History of the Ratification of the Constitution* 425, 429. Early precedent treated the warrant requirement in the same terms. In 1814, Chief Justice Tilghman explained that

Pennsylvania's constitution guarded against warrants issued "without good cause" and instruments sufficiently general to become a "powerful engine of despotism." *Wakely v. Hart*, 6 Binn. 316, 318-19 (Pa. 1814).

The history contradicts Pottstown's theory. The government may not convert a generalized reason to inspect a class of properties into authority to search each private place without a sufficient factual justification tested by a neutral judicial officer. Neutrality may constrain arbitrary selection of property, but it cannot manufacture facts about what lies inside the selected home. Pottstown's theory would invert Pennsylvania's general-warrant history to make compulsory governmental entry constitutionally easier as the proposed search program becomes broader. Generality was the problem to which the warrant clause responded, not a substitute for the cause that clause requires.

3. Pennsylvania's independent constitutional tradition does not permit a federal administrative accommodation to displace the constitutional warrant command.

The Pennsylvania constitutional analysis does not involve a presumption that Article I, Section 8 must produce the same result as the Fourth Amendment; instead, the reverse proposition has been settled for decades. This Court explained that Pennsylvania's search-and-seizure provision has a history and purpose independent of federal doctrine and is "unshakably linked to a right of privacy in this Commonwealth." *Edmunds*, 586 A.2d at 898. In 2020, the Court reaffirmed that

tradition, holding that Article I, Section 8 may impose greater restrictions on governmental searches than federal law even where the United States Supreme Court has adopted a categorical rule permitting them. *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020).

Constitutional language must be read in its popular sense, as understood by the people adopting it. *McLinko v. Department of State*, 279 A.3d 539, 577 (Pa. 2022). *Alexander* directs attention to the charter as a whole in identifying the limits Pennsylvania has placed on governmental search authority. 243 A.3d at 206. Article I, Section 8's protections do not stand alone. Among the people's inherent and indefeasible rights under Article I, Section 1 are the rights of "acquiring, possessing and protecting property." Pa. Const. art. I, § 1. Article I, Section 8 then specifically secures "houses" and "possessions" and constrains governmental authority to search "any place." *Id.* § 8. Read together and against their history, those provisions reflect a state constitutional tradition in which private property, possession, privacy, and the power to exclude government are closely related.

Camara is entitled to respectful consideration; however, its administrative definition of probable cause is a federal constitutional accommodation adopted in 1967. It is not part of the text of Article I, Section 8, and it is not an original feature of Pennsylvania's warrant clause. The question under *Edmunds* is not whether *Camara* presents a workable federal rule, but whether Pennsylvania's own

Constitution permits a warrant authorizing entry into an occupied home when the issuing authority has been given no facts indicating that the object of the search will be found there. The text and history point to the same answer: it does not.

B. A LEASE DOES NOT DIMINISH CONSTITUTIONAL PROTECTION OF THE HOME

The constitutional place at issue here is not merely real estate—it is a home. Pennsylvania decisions have repeatedly treated the home as occupying the apex of constitutional protection. "Upon closing the door of one's home to the outside world, a person may legitimately expect the highest degree of privacy known to our society." *Commonwealth v. Flewellen*, 380 A.2d 1217, 1220 (Pa. 1977).

Nothing about a lease changes the private nature of the home. For the housing provider, the property may be an investment. For the tenant, it is the place where life occurs. For Article I, Section 8, it remains a "house" for whoever lives there. Pottstown's rule would make the protection of that house depend upon how the private bundle of property rights has been allocated. That is where Pennsylvania property law becomes important.

1. Pennsylvania law distinguishes ownership from possession and gives legal effect to the right to exclude.

A lease does not extinguish private property rights—it distributes them. As this Court recognized in *Commonwealth v. Monumental Properties, Inc.*, upon the

letting of property, the premises become the tenant's for the term and, if there is a house, "the house…is his castle." 329 A.2d 812, 822 (Pa. 1974).

Upon executing a lease, a tenant acquires lawful possession, including the substantial right to exclude others. The owner of the property retains fee title, the reversionary interest, contractual rights, and all other fundamental attributes of property ownership. The result of a lease is not the disappearance of constitutional property rights; it is their allocation among private parties.

Pennsylvania search law recognizes that distinction. In *Commonwealth v. Garcia*, this Court explained that authority to consent to a governmental search depends on dominion and control and identified the landlord-tenant relationship as the familiar circumstance in which ownership does not authorize the landlord to consent to a search of the tenant's occupied premises. 387 A.2d 46, 55 (Pa. 1978). The Superior Court likewise recognized that a landlord's property interest or limited contractual right of access does not itself create common authority to consent to government entry. *Commonwealth v. Davis*, 743 A.2d 946, 951-52 (Pa. Super. 1999). In *Commonwealth v. Gordon*, this Court made the principle still clearer, recognizing the right to exclude as a principal right attaching to property and observing that a person who "owns or lawfully possesses or controls property" will ordinarily have a legitimate expectation of privacy by virtue of that power of exclusion. 683 A.2d 253, 258 (Pa. 1996). The disjunctive matters: Ownership is not

the only property interest the law recognizes. Lawful possession and control, and the concomitant right to exclude, also have constitutional significance. The right to exclude is no peripheral incident of ownership; the United States Supreme Court has described it as "one of the most treasured strands in an owner's bundle of property rights." *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982) (addressing the right to exclude in the context of compelled physical occupation of rental property).

Those doctrines fit the ordinary structure of a lease. The landlord's ownership interest on one hand, and the tenant's possession on the other, each remain legally meaningful. Both arise from the system of private property protected under Article I. The fact that title and possession reside in different hands supplies no reason to make the resulting home easier for government to enter.

Pottstown's rule produces an anomaly. When the fee owner occupies the residence, ownership and possession are bundled in one person and the home receives the ordinary protection of the warrant clause. When that owner exercises another incident of property ownership—the right to lease the premises—title and present possession become divided. Under Pottstown's theory, that private transaction materially reduces the constitutional protection attached to the home.

Article I, Section 8, however, contains no such rule. A lease redistributes sticks in the private bundle. It transfers none of them to the government.

2. An occupied rental dwelling is both a "house" and a lawful "possession."

An occupied rental residence is expressly a "house," and a tenant's lawful possession independently reinforces the constitutional protection. The founding-era understanding of "possession" confirms why leasing does not remove the home from Article I, Section 8's protection. Contemporary dictionaries and early Pennsylvania cases repeatedly used possession in connection with land, occupancy, estates, and present control. *See Punxsutawney Hunting Club*, 360 A.3d at 858 (collecting cases). Early Pennsylvania law distinguished actual possession from ownership and recognized possessory interests in land as legally consequential. *Id.* One person may own property while another lawfully possesses it—a division commonly found in residential leasing.

An occupied rental residence does not present some attenuated claim at the margin of Article I, Section 8. It is expressly a "house." Further, the tenant's lawful possession independently reinforces the private boundary government seeks authority to cross. A constitutional rule that treats this combination as a basis for *less* protection would turn the property structure of a lease on its head.

3. A residence is not a closely regulated business.

Pottstown's position also risks confusing the owner's economic use of property with the constitutional character of the place searched. Pennsylvania recognizes specialized administrative-search rules in closely regulated commercial

settings. Cases involving liquor establishments, waste disposal, mining, commercial trucking, and similar regulated industries reflect doctrines responsive to those particular contexts. *See, e.g.*, *Commonwealth v. Maguire*, 215 A.3d 566 (Pa. 2019); *Commonwealth v. Petroll*, 738 A.2d 993 (Pa. 1999); *Department of Environmental Resources v. Blosenski Disposal Service*, 566 A.2d 845 (Pa. 1989).

An occupied home does not become analogous to a junkyard, mine, or commercial trucking operation simply because its owner has leased it. The distinction is not merely technical; it marks the difference between regulating a commercial operation and crossing the threshold of the place where constitutional privacy is at its apex. Pottstown proposes to enter spaces where people sleep, dress, keep medicines and personal papers, practice religion, raise children, and store the details of private life. The fact that another person holds the fee and receives rent does not transform those rooms into a commercial inspection floor.

For the owner, renting is a lawful use of private property. For the tenant, the premises remain a home. The Constitution does not require the Court to choose between those interests. Both point in the same direction: the private property's threshold remains a constitutional boundary.

C. THE BREADTH OF THE REGULATORY PROGRAM CANNOT SUBSTITUTE FOR PROBABLE CAUSE

Understandably, Pottstown relies on *Camara*. But, the issue is whether *Camara's* modified conception of administrative probable cause satisfies Article I,

Section 8. Neither this Court nor the Commonwealth Court precedents on which Pottstown relies performed the complete state-constitutional analysis required under *Edmunds*. Ultimately, neither the breadth nor neutrality of the program supplies the individualized cause that Article I, Section 8 requires.

1. *Greenacres*, *Simpson*, and *Tobin* followed the *Camara* framework without resolving the independent meaning of Article I, Section 8.

In *Greenacres Apartments, Inc. v. Bristol Township*, the Commonwealth Court stated that, following a refusal of entry, an administrative warrant could be supported by such matters as the passage of time, a complaint, or conditions in the area. 482 A.2d 1356, 1359 (Pa. Cmwlth. 1984). The Commonwealth Court's decision, however, preceded *Edmunds* and did not separately analyze the text, history, precedent, sister-state authority, and Pennsylvania policy bearing on the state constitutional warrant clause. *Id.*; *Edmunds*, 586 A.2d 887.

In *Simpson v. City of New Castle*, the Commonwealth Court likewise concisely concluded that an ordinance requiring inspections subject to constitutional restrictions sufficiently protected against unreasonable searches. 740 A.2d 287, 291 (Pa. Cmwlth. 1999). The Court did not address whether Article I, Section 8's probable-cause command differs from the federal rule.

The Commonwealth Court's decision in *Commonwealth v. Tobin* most directly adopted *Camara*'s administrative formulation, stating that administrative

probable cause may exist when reasonable legislative or administrative standards for an area inspection are satisfied with respect to the dwelling. 828 A.2d 415, 423 (Pa. Cmwlth. 2003). But *Tobin*, too, was an intermediate appellate decision and did not undertake the full state-constitutional analysis that controls here.

Those cases explain why the question is before this Court, but, standing alone, do not dispose of the question that this Court has now accepted. Pennsylvania's constitutional methodology does not permit federal doctrine to become state constitutional law simply through repetition.

2. *Interest of Y.W.-B.* described *Camara*; it did not adopt *Camara* under Article I, Section 8.

Pottstown also relies on *Interest of Y.W.-B.*, 265 A.3d 602 (Pa. 2021). That decision, however, did not hold that *Camara*'s conception of administrative probable cause satisfies Article I, Section 8 for routine warrants to enter rental homes.

Y.W.-B. involved government efforts to compel entry into a particular family residence. In discussing why generalized administrative justifications did not authorize the requested search, the Court considered *Camara* and authorities describing "dragnet" searches—search programs applicable to an entire defined category. *Id.* at 620-24. The Court ultimately required individualized cause for the entry before it. *Id.* at 624-28.

A discussion of federal doctrine is not its adoption as Pennsylvania constitutional law. If it were, *Edmunds*' independent inquiry could be avoided

whenever a previous decision had summarized a federal rule in another setting. The question now presented is the one *Y.W.-B.* did not decide: whether membership in a broad administrative program itself can satisfy the Pennsylvania Constitution's express probable-cause requirement for a judicial warrant to enter a home.

3. "Dragnet" describes the breadth of the program, but does not create facts about the home to be searched

Pottstown's dragnet theory suffers from a basic circularity: Individualized cause is unnecessary because every rental home is subject to the program; every rental home may then be searched because individualized cause is unnecessary. The government's decision to broaden a search program, however, cannot itself lower the constitutional protection of every place brought within it.

Suppose the Borough selected one rented residence for compelled inspection solely because it was rented and a fixed amount of time passed. The absence of facts indicating a violation in that residence would be evident. Selecting ten residences on that same basis would add no factual nexus; adding a schedule would not transform the same absence of information into probable cause. The constitutional burden does not decrease as the search program expands.

Neutral inspection criteria can be valuable—reducing favoritism, retaliation, or arbitrary selection by specifying when government will seek inspections. While neutrality may explain *which* home an inspector selects, it does not provide evidence about *what* government is likely to find inside that home. A rule requiring officials

to inspect every tenth house would be evenhanded but would not, standing alone, establish probable cause to search the tenth house.

Pennsylvania's warrant history makes the distinction especially consequential. Article I, Section 8 interposes a judicial officer to determine whether facts justify the government intrusion proposed. Pa. Const. art. I, § 8. If satisfaction of a legislatively prescribed inspection schedule itself constitutes cause, the judicial function becomes largely ceremonial: the magistrate confirms that the property fits the class the government has already chosen to search. That framework is simply administration, not an independent determination of probable cause.

4. Pennsylvania's roadblock, school-search, and special-needs cases do not erase the warrant clause at the residential threshold.

Appellants and supporting *amici* also invoke decisions permitting limited suspicionless searches or seizures in other settings, including *Commonwealth v. Tarbert*, 535 A.2d 1035 (Pa. 1987), *Commonwealth v. Blouse*, 611 A.2d 1177 (Pa. 1992), *Commonwealth v. Cass*, 709 A.2d 350 (Pa. 1998), and school-search decisions. Those cases do not govern here for two related reasons.

First, the cases cited principally concern whether particular warrantless practices are reasonable when objective guidelines and other safeguards cabin official discretion. This case, on the other hand, presents a more specific textual command. Pottstown seeks a judicial warrant, and Article I, Section 8 expressly

provides that "no warrant to search any place" shall issue without probable cause. Pa. Const. art. I, § 8.

Second, the place and intrusion differ fundamentally. A brief stop at a roadway checkpoint or a limited search in a public-school is not compelled entry into one's home—the location at which one is entitled to the highest degree of privacy. *Flewellen*, 380 A.2d at 1220.

The balancing cases themselves also demonstrate that an important governmental objective does not override constitutional limitations on the means used to pursue it. *Tarbert* and *Blouse* required carefully confined procedures. *Tarbert*, 535 A.2d 1035; *Blouse*, 611 A.2d 1177. In *Theodore v. Delaware Valley School District*, this Court rejected a suspicionless search program notwithstanding the importance of combating illegal drugs. 836 A.2d 76, 91 (Pa. 2003). Those cases cannot fairly be read to permit a court to dispense with the Constitution's express condition on the issuance of a warrant—least of all when the proposed search crosses the threshold of a home.

D. SISTER-STATE DECISIONS DO NOT ESTABLISH A CONSENSUS FOR *CAMARA*

Under *Edmunds*, decisions from other jurisdictions are valuable for their reasoning, not their numerical weight. 586 A.2d at 895. Viewed that way, the sister-state authorities do not establish that *Camara*'s federal accommodation follows inevitably from a state warrant clause like Pennsylvania's. Appellants collect

decisions from California, Florida, Kansas, Kentucky, Minnesota, Missouri, Nevada, Virginia, Washington, and other jurisdictions; however, the collection is less probative than it appears. Some cases decide only the Fourth Amendment question. Some reject a challenge without separately construing the state constitution. Others arise in states whose constitutions or interpretive doctrines require or strongly favor federal conformity. *See, e.g., Florida Department of Agriculture & Consumer Services v. Haire*, 836 So. 2d 1040, 1055 (Fla. Dist. Ct. App. 2003), aff'd, 870 So. 2d 774 (Fla. 2004) ("The Florida Constitution requires that Article I, Section 12, be construed in conformity with the Fourth Amendment to the United States Constitution."); *Ashworth v. City of Moberly*, 53 S.W.3d 564, 579 (Mo. Ct. App. 2001) (Missouri's guarantee against unreasonable searches and seizures is "coextensive with that of the Fourth Amendment.").

In *In re Wiebesick*, the Minnesota Supreme Court declined to construe its state constitution more protectively than *Camara*. 899 N.W.2d 152 (Minn. 2017). However, the court began from interpretive premises materially different from Pennsylvania's, employing a presumption favoring federal uniformity and emphasizing that its provision was adopted using language intended to track the Fourth Amendment. *Id.* at 157-58. Pennsylvania has no comparable starting point because its search-and-seizure protection predates the federal Constitution. Further, Pennsylvania protects "possessions," not merely "effects." Pa. Const. art. I, § 8.

Finally, *Edmunds* requires an independent analysis rather than a presumption that state law follows the federal floor.

Even *Wiebesick* did not treat the warrant process as a formality, emphasizing notice to occupants, an opportunity to be heard, potential limitations, and judicial consideration of restrictions on the timing and scope of inspection. *Wiebesick*, 899 N.W.2d at 166-68. The reasoning undercuts any notion that a magistrate's role is simply to confirm that a dwelling has reached its place on an inspection calendar. The dissent in *Wiebesick* made the danger explicit: when a warrant becomes available as a matter of routine, judicial review risks becoming a formality rather than the safeguard the warrant clause promises. *Id.* at 170-80 (Anderson, J., dissenting).

Other state decisions likewise demonstrate why federal administrative doctrine should not be treated as historically inevitable. In *State v. Ochoa*, involving a different type of suspicionless search, the Iowa Supreme Court recognized that modern administrative and special-needs doctrine represents a later development beyond traditional warrant principles and insisted on independent construction of the state charter. 792 N.W.2d 260, 267, 278 (Iowa 2010).

Even decisions operating within *Camara*'s framework frequently insist that an administrative warrant perform substantive judicial work. In *Sokolov v. Village of Freeport*, the New York Court of Appeals emphasized the warrant's role in

preventing arbitrary or pretextual inspections and rejected the suggestion that residential renting is an activity from which consent to warrantless government entry may simply be inferred. 420 N.E.2d 55, 60-61 (N.Y. 1981). In *Seattle v. Leach*, the Washington Court of Appeals reversed because the application at issue failed to provide enough information for the magistrate meaningfully to determine that the inspection program and its application to the property were reasonable. 627 P.2d 159, 161-62 (Wash. Ct. App. 1981). In *Platteville Area Apartment Association v. City of Platteville*, the Seventh Circuit rejected inspection practices untethered from the asserted regulatory object—the memorable point being that a smoke detector will not be found in a bureau drawer. 179 F.3d 574, 580-82 (7th Cir. 1999).

Louisville Board of Realtors v. City of Louisville is particularly instructive from a property perspective. 634 S.W.2d 163 (Ky. Ct. App. 1982). Although the Kentucky Court of Appeals permitted inspections associated with an owner's pre-rental application, it distinguished the situation after possession passed to the tenant, recognizing that the premises had become the tenant's home and that the owner's consent could not justify warrantless entry. *Id.* at 167-68.

Cases from other states demonstrate that administrative probable cause is not a constitutional inevitability, and that even jurisdictions accepting *Camara* recognize the substantial interest at stake when government seeks compulsory entry into a residence. Under *Edmunds*, sister-state cases are valuable for their reasoning,

not as a scorecard. 586 A.2d at 895. The reasoning that best fits Pennsylvania is that which takes seriously an independent warrant clause, the special status of the home, and a property tradition in which possession and exclusion have constitutional significance.

E. *PUNXSUTAWNEY HUNTING CLUB* CONFIRMS THE GOVERNING PRINCIPLES THAT HAVE GREATER FORCE AT THE THRESHOLD OF A HOME

Pennsylvania's 1776 and 1790 constitutional texts, its opposition to generalized search authority, *Wakely*, *Edmunds*, *Alexander*, the special status of the home, and Pennsylvania property law independently supply the state-constitutional foundation for requiring individualized probable cause. This Court's recent decision in *Punxsutawney Hunting Club* is instructive because this Court confirmed, in construing the same constitutional provision, several premises directly relevant to this case.

First, federal doctrine is not the answer merely because it is federal doctrine. *Punxsutawney Hunting Club* overruled *Commonwealth v. Russo*, 934 A.2d 1199 (Pa. 2007), and rejected the Fourth Amendment's open-fields rule after conducting the independent analysis Pennsylvania law requires. *Punxsutawney Hunting Club*, 360 A.3d at 855-77. The Court concluded that Article I, Section 8 provides greater protection to private land than the Fourth Amendment. *Id.* at 877. While the Court's conclusion does not establish that Pennsylvania invariably provides greater

protection in every search context, it demonstrates something more pertinent: when federal doctrine diverges from Pennsylvania's constitutional text, history, and property tradition, Pennsylvania follows its own charter.

Second, *Punxsutawney Hunting Club* held that "possessions" carries independent property content. The Court examined founding-era definitions, early Pennsylvania authorities, state statutes, and Article I, Section 1's protection of the right to acquire, possess, and protect property, refusing to treat the federal Constitution's narrower reference to "effects" as controlling the scope of Pennsylvania's distinct text. *Id.* at 855-59.

Third, *Punxsutawney Hunting Club* treated the right to exclude as constitutionally significant. Drawing upon Pennsylvania property law, the Court recognized that control over access to private property bears on the protection Article I, Section 8 affords. *Id.* at 861-62.

Those principles apply with particular clarity to an occupied rental home. A tenant possesses the premises by lawful right and holds a legally-recognized power to exclude others. The owner retains a separate and equally lawful set of property interests. The division of those interests does not render the property public.

Punxsutawney Hunting Club concerned private land beyond the curtilage. The Court held that government officers could not enter qualifying private land without a warrant supported by probable cause or a recognized exception. *Id.* at 881. The

constitutional claim here starts at the core of privacy protections—within the home itself. Pottstown seeks a judicial warrant authorizing officials to cross the threshold of an occupied residence and conduct an extensive interior inspection.

If Article I, Section 8 protects a private boundary beyond the curtilage where the owner has taken lawful steps to exclude intruders, it would be anomalous to afford a weaker factual predicate at the threshold of a home merely because the homeowner has exercised the lawful choice to rent it. *Punxsutawney Hunting Club* extended Pennsylvania's protection outward from the constitutional core—it did not invite contraction.

Punxsutawney Hunting Club demonstrates that legislative authorization cannot supply the constitutional authority that probable cause does not. While the General Assembly authorized Game Commission personnel to enter private property in performing their duties, those statutes remained subject to Article I, Section 8. The hierarchy is the same here. The General Assembly or a municipality may establish lawful housing standards, create inspection programs, or authorize officials to seek warrants in circumstances permitted by law. But, neither legislation nor ordinance can amend the constitutional condition upon which a judicial warrant may issue.

The power to regulate does not carry an automatic constitutional easement across the threshold.

F. THE BOROUGH'S POLICY ARGUMENTS CANNOT REPLACE PROBABLE CAUSE

Pottstown emphasizes that some dangerous housing conditions cannot be detected from a sidewalk; however, an inability to see what lies inside a home is not evidence that a violation lies inside it. The Borough's logic is entirely unconstrained. Hidden conditions can exist in owner-occupied homes as readily as in rentals. If government's inability to determine whether a violation exists became the factual justification for entry, the warrant requirement would be weakest precisely when government knows the least. Article I, Section 8 does not convert an absence of information into probable cause.

The importance of housing safety does not alter the constitutional inquiry. Pennsylvania's cases repeatedly recognize that constitutional protections may make government enforcement more difficult. A limitation on government power often imposes costs on government. *Alexander*, 243 A.3d at 198. *Punxsutawney Hunting Club* recently applied the same principle where enforcement officials argued for broader access to private property. *Punxsutawney Hunting Club*, 360 A.3d at 876.

Amici do not minimize the legitimate public interest in safe housing. Their members participate throughout the Commonwealth in the sale, purchase, lease, management, valuation, and use of real property. Those activities depend upon stable property rules and safe, habitable housing. But, recognition of the governmental

interest does not answer the distinct constitutional question of when government may compel entry.

1. The breadth of the interior inspection demonstrates why a warrant based upon probable cause is not a mere formality.

The search at issue is not a fleeting entry into a commercial receiving area. The record describes an inspection checklist encompassing roughly 130 items throughout the interior of a residence, including rooms, closets, electrical systems, fixtures, and other household conditions. (Opening Brief of Designated Appellants at 13-14, 24.) Inspectors acknowledged encountering intensely private effects, including medications, religious materials, and sexual items. *Id.* The record further reflects instructions concerning contact with police upon encountering what inspectors regarded as evidence of criminal conduct. *Id.* at 15-18. These facts are not offered to transform the questions presented into an as-applied challenge; rather, they illustrate why the constitutional requirement of cause matters.

When a magistrate is asked to authorize government agents to cross the threshold of a home and move through its private rooms, the judicial function cannot be ceremonial. The warrant process is not satisfied merely because the government correctly fills out the paperwork necessary to identify the next property in a regulatory cycle. Article I, Section 8 requires a judicial determination that compulsory entry is justified before it occurs. Pa. Const. art. I, § 8.

Independent judicial review matters to tenants and owners alike. The tenant's present possession and privacy are immediately invaded; their right to exclude is overridden without cause. The owner's property has been made the situs of compelled governmental entry. Dividing those interests between two people does not make either interest disappear, much less convert their combination into diminished constitutional protection.

2. Refusal to consent cannot supply the cause needed to override that refusal.

An occupant's or owner's decision to insist on constitutional process cannot help establish probable cause. The inspection scheme contemplates that government will first seek consensual access and, if access is refused, may seek a warrant. That sequence may be unobjectionable in itself, but refusal reveals nothing about whether defective wiring, unsafe plumbing, a missing smoke detector, or some other code condition exists within the home.

A constitutional right to withhold consent would mean little if exercising the right became the government's factual showing for compelled entry. The occupant's "choice" is an untenable catch-22; permit entry, or the refusal becomes the justification for compelled entry. Even *Camara* recognized the occupant's right to decline voluntary entry and require the government to obtain a warrant. 387 U.S. at 539-40. Pennsylvania law governs what must support that warrant. A person's

insistence that government satisfy Article I, Section 8 cannot itself provide the cause Article I, Section 8 requires.

3. The Court can decide the constitutional question without approving or disapproving other inspection mechanisms.

Pottstown and supporting *amici* identify various other mechanisms by which governments seek to enforce housing standards. This case, however, does not require the Court to decide the constitutionality of every complaint-based inspection, every inspection undertaken with valid consent, every emergency entry, every inspection connected to a separate government program, or every other mechanism that may arise under materially different circumstances. The Court need not prospectively approve or strike down inspection regimes that are not presented by the questions accepted for review.

The narrower answer is sufficient. When government asks a judicial officer for compulsory authority to enter an occupied home, the residence's status as rental property, the arrival of a periodic inspection date, and the occupant's refusal to consent do not themselves establish probable cause that a housing-code violation or other object of the search will be found there.

If government has additional facts establishing the constitutionally required nexus, it may present them to the issuing authority. Other lawful methods of enforcement remain subject to the constitutional standards applicable to those

circumstances. What government may not do is turn the lawful decision to rent a residence into the missing factual predicate for entry.

IV. CONCLUSION

This case ultimately turns on the distinction between the government's authority to regulate private property and its authority to enter it. A municipality may impose lawful obligations concerning the conditions of residential property. The existence of those obligations, however, does not supply constitutional authority to cross the threshold of the home. Property does not become public merely because it is regulated, nor does possession cease to be private because the right stems from a lease rather than title.

The distinction between regulation and government access is especially important in the real estate market. Private property is rarely a single indivisible entitlement. Ownership consists of legally enforceable interests in possession, use, disposition, access, and exclusion. Those interests may be sold, financed, leased, reserved, or divided in countless lawful ways. Real estate law depends upon respecting those allocations. Article I, Section 8 should not make constitutional protection turn on whether every stick in that bundle of rights happens to remain in a single person's hands.

The owner who leases a home has exercised a property right—not surrendered the home's constitutional status. The tenant who receives possession has

acquired a property interest, not entered a constitutionally inferior dwelling. And government acquires no additional stick in the bundle merely because those private interests have been divided. The bundle of rights may be allocated between landlord and tenant, but Article I, Section 8 does not divide the constitutional protection of the home accordingly. A rented home remains a home.

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Date: November 2, 2026

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania*: *Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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I certify that this Brief complies with the word-count limits of Pa. R.A.P. 2135 because the brief contains 6,995 words, as determined by the word count feature of the word processing system used to prepare the brief.

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Date: November 2, 2026

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IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DOROTHY RIVERA, ET AL.	:	
Appellees,	:	
v.	:	
	:	No. 38 MAP 2026
BOROUGH OF POTTSTOWN, ET AL.	:	
Appellants	:	

CERTIFICATION PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 531(b)

Pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(2) and (4), Amici Curiae, The Pennsylvania Association of Realtors® and The National Association of Realtors®, certify that no person or entity other than Amici Curiae, their members, or their counsel (1) paid, in whole or in part, for the preparation of, or (2) authored, in whole or in part, the Brief of Amici Curiae, which was filed in support of Appellees Dorothy Rivera, Eddy Omar Rivera, Kathleen O'Connor, Rosemarie O'Connor, Estate of Thomas O'Connor, and Steven Camburn.

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