STATE OF WISCONSIN CIRCUIT COURT RACINE COUNTY

Vincent Milewski, *et al.*,

Plaintiffs,

v.

Town of Dover, *et al.*, Case No. 14-CV-1482

Defendants.

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

If the homeowner does not like his assessment, he cannot appeal it to the BOR.
-Gardiner Appraisal Service, LLC[1]

Gardiner is absolutely right. That's the whole problem. Under the interpretation advanced by Gardiner and the Town, the Plaintiffs cannot appeal their assessment to the BOR. And because they cannot appeal their assessment to the BOR, they cannot appeal it to the courts. No matter how absurd or obscene an assessment is, homeowners who stand on their Fourth Amendment rights have no ability to challenge it. Ever. Even if an assessor sends the homeowner a letter saying, "We're raising your assessment 500% solely because you didn't let us in and we hate it when people don't let us in," that homeowner has no recourse. In any forum. Once the homeowner refuses a warrantless search, the Defendants believe the government has the right to levy and collect a tax of any arbitrary amount, and the homeowner can do nothing about it.

[1] (Gardiner Resp. Br. at 7.)

That system cannot be constitutional. Homeowners must be given a remedy, whether that remedy is pre-deprivation or post-deprivation, to recover funds seized as a result of an improper tax. The law must permit the Plaintiffs to make their argument that they were overassessed.

RESPONSES TO TOWN ARGUMENTS

I. THE STATUTES UNCONSTITUTIONALLY PUNISH THE PLAINTIFFS FOR EXERCISING THEIR FOURTH AMENDMENT RIGHTS AND PERMIT THE TOWN TO DEPRIVE THE PLAINTIFFS OF PROPERTY WITHOUT DUE PROCESS OF LAW

A. Plaintiffs Are Bringing an As-Applied Challenge

Either of Wis. Stat. §§ 70.47(7)(aa) or 74.37(4)(a) might very well be facially unconstitutional. It could be that there are absolutely no circumstances where the government can prohibit a BOR challenge due to a refusal to permit a reasonable viewing, or where the government can prohibit a court challenge due to a refusal to first bring a BOR challenge. *See League of Women Voters of Wis. Educ. Network v. Walker*, 2014 WI 97, ¶15, 257 Wis. 2d 360, 851 N.W.2d 302 (to prevail in a facial challenge, plaintiff "must show that the law cannot be enforced under any circumstances) (emphasis added). It might be true that the two statutes can never be constitutionally applied in combination with each other. But this case is complicated enough, and the Plaintiffs seek only to prove that when combined together, those two statutes are unconstitutional as applied to their specific factual situation. This court can find in the Plaintiffs' favor on their constitutional argument without having to strike either of those statutes completely from the books.

For example, it might be constitutional to say "no BOR challenge" so long as some other avenue of relief (the courts) remains. Thus, in isolation, § 70.47(7)(aa) might be constitutional. It certainly would seem constitutional to say "no court challenge" if a homeowner just

completely ignored the administrative review requirement. Again, in isolation, § 74.37(4)(a) seems constitutional. Furthermore, it is even possible that the combination of the two statutes could be constitutional if a lack of full viewing occurred for reasons other than the exercise of Fourth Amendment rights – for example, if an owner is absent or the property is abandoned and facing foreclosure. A refusal to let an assessor onto property to view purely the exterior of the house (which the assessor has statutory authority to do without asking permission first) might permit the constitutional application of § 70.47(7)(aa) and § 74.37(4)(a). Those facts are not before this Court, and the Plaintiffs do not seek to argue that the laws cannot be constitutionally enforced in those scenarios. They ask the Court to rule that they cannot be constitutionally enforced in this scenario.

B. *Madison Teachers* Is Distinguishable

The Town argues that the recent case of *Madison Teachers, Inc. v. Walker*, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 requires the rejection of Plaintiffs' constitutional claims. (Town Resp. Br. at 3-6.) The Town compares the two cases, noting that the *Madison Teachers* plaintiffs argued that they were being "punished" for the exercise of their constitutional right to engaged in protected First Amendment activities (namely, speech and association), and here the Plaintiffs are arguing that they are being punished for the exercise of their constitutional right to engage in protected Fourth Amendment activities (namely, refusing to consent to a warrantless search of their home). Because the Wisconsin Supreme Court ruled that Act 10 was constitutional, the Town argues this Court must rule that the complained-of statutes here are constitutional.

The problem with this argument is that it ignores a crucial distinction: in *Madison Teachers*, the court found that the plaintiffs had not been punished for exercising their rights, *Id.*, ¶¶ 40-44; here, the plaintiffs were punished. Thus, when *Madison Teachers* found Act 10

constitutional, it was not in spite of the punishment, but specifically because of the lack of punishment. *Id.* at ¶ 44. ("The limitations on permissible collective bargaining subjects imposed by Act 10 do not force general employees to choose between their constitutional right to associate and the benefit of collective bargaining.").

Specifically, the court found that Act 10 placed no burdens on the First Amendment rights of the government employee-plaintiffs. They still had complete freedom to voluntarily join an association of like-minded individuals, and they still had complete freedom to express themselves and petition the government, either individually or collectively. *Id.* at ¶ 42 ("The plaintiffs remain free to advance *any* position, on *any* topic, either individually *39 or in concert, through any channels that are open to the public."). They simply had lost the statutory privilege (not right) of being able to compel the government to negotiate in good faith on most bargaining topics.

Here, on the other hand, there is a punishment that is placed directly on those who exercise their Fourth Amendment rights. Such people are prohibited from ever challenging their property taxes, no matter how abusive of a tax might be levied on them. That is more than mere "pressure"; that is punishment, and unconstitutional. *See Dunn v. Blumstein*, 405 U.S. 330 (1972) (unconstitutional to punish the exercise of one constitutional right with the deprivation of another).

C. The Town's Arguments Ignore Plaintiffs' Fourteenth Amendment Rights to Due Process

Even if *Madison Teachers* does preclude the Plaintiffs' claim that the statutory scheme and the actions of the Town and its BOR unconstitutionally punished the Plaintiffs for exercising their Fourth Amendment rights, the Plaintiffs still have their Fourteenth Amendment claim. The statutes effect a taking of their property (through taxation) with zero process. The Town can set

any arbitrary assessment it likes, and the Plaintiffs cannot challenge that tax before or after it is collected. They have literally zero process if the statutes are read as the Town and Gardiner desire.

This argument is related to, but separate from, the unlawful punishment argument. Even if the government can punish homeowners who assert their Fourth Amendment rights in some ways, it absolutely cannot do so by seizing the homeowners' property without recourse. That goes too far. But the Town's brief fails to address this argument. At most, in its arguments on 42 USC § 1983, it claims that the government does not violate the Constitution when it fails to provide an appeal of an administrative decision. But the Town utterly fails to explain how the government can deprive a person of property with no recourse.

II. THE TOWN DEPRIVED THE PLAINTIFFS OF CONSTITUTIONAL RIGHTS IN VIOLATION OF 42 USC § 1983

The Town concedes that it has a policy "requiring Gardiner to inspect the interior of homes that it was assessing" (Town Resp. Br. at 8), but argues that the Plaintiffs were never deprived of a constitutional right. Just as Gardiner argues (Gardiner Brief in Support of Motion for Summary Judgment at 13), the Town claims that the Plaintiffs' Fourth Amendment rights were never violated because there was no search (Town Resp. Br. at 8-9). But as more fully explained in Plaintiffs' previous briefs (Pl. Br at 18-19, Pl. Resp. Br. to Gardiner at 10-11), no search was necessary for a deprivation; when a person stands on their constitutional rights and is punished for doing so, that right has been deprived. *Dunn v. Blumstein*, 405 U.S. 330, 341 (1972) (quoting *Harman v. Forssenius*, 380 U.S. 528, 540, (1965) ("'It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution.' Constitutional rights would be of little value if they could be . . . indirectly denied.'").

The Town also admits that the Plaintiffs have been deprived of their opportunity to challenge their property tax. (Town Resp. Br. at 9.) Yet they argue that such deprivation causes no loss of constitutional rights because the property tax challenge process is a state statutory creation. (*Id.*) That argument ignores the fact that the Plaintiffs have been deprived of property (money), with (under the Town and Gardiner's interpretation of the statutes) literally zero recourse to recover it. The government cannot deprive a person of property without due process of law. U.S. Constitution, XIV Amend. § 1.

III. THE PROPER REMEDY FOR THESE CONSTITUTIONAL VIOLATIONS IS FOR THE COURT TO REASSESS THE PROPERTY

Finally, the Town argues that if this Court finds a constitutional violation, it should remand the case back to the Town's BOR. That remedy is inappropriate.

It would be extremely unjust to delay this case (and the refund of Plaintiffs' money) further when the Town caused the problem in the first place. Yes, the statutes and cases say to follow the administrative procedure first. The Plaintiffs tried to do so, and it was the Town who closed that avenue of relief to them. Furthermore, none of the cases cited by the Town dealt with the issue of whether those administrative requirements could constitutionally be applied to property owners who asserted their Fourth Amendment right to refuse to consent to a warrantless search.

More importantly, the BOR has no statutory authority to change an assessment retroactively. The Plaintiffs have now paid two years' worth of unlawfully-high taxes. While the BOR could change the Plaintiffs' assessment going forward, it cannot change the assessment for the last two years.

This Court has the authority to retroactively set the proper assessment and order the Town to refund the unlawfully-collected taxes. *See* Wis. Stat. §§ 74.37(3), 74.39(3). And it

does not need a ruling from the BOR to do so. In fact, the Court owes the BOR's determination zero deference. *Metropolitan Associates v. City of Milwaukee*, 2011 WI 20, ¶ 2, 332 Wis. 2d 85, 796 N.W.2d 717 ("[D]e novo review is an entirely independent circuit court action in which the circuit court creates its own record and gives no deference to the Board of Review's determination."). The Plaintiffs paid the disputed tax so that they could get *de novo* review in this Court. It would make no sense to remand this case to the BOR to get a ruling that the Court can lawfully ignore.

Finally, remanding to the BOR is an entirely inappropriate remedy for a 42 USC § 1983 violation. That law provides for damages to be paid to successful plaintiffs. The BOR has no authority to calculate damages, only this Court can do that. If the Court finds that the Town's actions did in fact deprive the Plaintiffs of their Fourth and/or Fourteenth Amendment rights, the Plaintiffs would proceed to prove damages.

RESPONSES TO GARDINER ARGUMENTS

To begin with, this Court should seriously question the credibility of Gardiner, at least when it comes to their supposedly expert opinions on the assessment process. For a firm with, as they claim, lengthy assessment experience, they show a remarkable misunderstanding of the Assessment Manual that they are bound by law to follow. They state boldly, "There is no policy or accepted practice in Wisconsin to assess property based on interviewing owners." (Gardiner Resp. Br. at 4.) This is patently false, as demonstrated by their own evidence. The Assessment Manual describes in detail a "property owner interview" as a "means of receiving additional information on a property," including "any changes to the improvements since the date of purchase." Assessment Manual, 8-22-23 (attached as Exhibit B to the Second Affidavit of Thomas Kamenick filed in support of the Plaintiffs' Brief in Opposition to Gardiner's Motion for

Summary Judgment). This is necessary to, as the statute states, value property "from actual view or from the best information that the assessor can practicably obtain." Wis. Stat. § 70.32(1).

Gardiner also claims that "[t]here is no real purpose in walking around the exterior of a home." (Gardiner Resp. Br. at 6.) Again, this is flatly contradicted by the Assessment Manual. "The characteristics of the property, including the land, site improvements, buildings, and any other improvements *should be visually inspected* where possible. Assessment Manual, 7-22 (emphasis added). "[T]he assessor must make a thorough, detailed, and objective viewing of each property, noting relevant characteristics as they related to physical condition, effective age, and functional utility." *Id.* at 8-20. "Once the assessor has collected sufficient interior *and exterior* information, it is possible to subjectively consider the improvements and determine the proper grade. *Id.* at 8-23 (emphasis added). This as well is necessary to value property based on "actual view" of the property.

Gardiner complains that they had "insufficient data to work with" (Gardiner Resp. Br. at 6), but they failed to follow the assessment protocols set forth in the Assessment Manual. Had they done so, they would have obtained sufficient information to properly value the Property. (*See* Pl. Resp. Br. to Gardiner Br. at 15-16.)

IV. THE PROPER SCOPE OF PLAINTIFFS' MOTION AS IT RELATES TO GARDINER

Plaintiffs' Motion for Summary Judgment does not seek judgment declaring Gardiner in violation of 42 USC § 1983. Likewise, the portions of their Motion seeking judgment declaring that the Town violated Plaintiffs' statutory right to BOR review and violated 42 USC § 1983 have no bearing on Gardiner.

However, Plaintiffs also seek a declaration that Sections 70.47(7)(aa) and 74.37(4)(a) are unconstitutional as applied to them. This portion of the Motion is relevant to Gardiner, as

Gardiner relies on those statutes in its own Motion for Summary Judgment seeking to dismiss all of the Plaintiffs' claims against Gardiner.

V. FAIR MARKET VALUE IS THE BEST WAY TO MAKE BEFORE-AND-AFTER COMPARISONS, AND REGARDLESS, THE SAME PATTERN OF DISCRIMINATORY ASSESSMENT IS DEMONSTRATED WHEN ASSESSED VALUES ARE USED

A. Using Fair Market Value Is the Best Tool for Making Comparisons of the Same Property Before and After an Assessment

The Plaintiffs are arguing that Gardiner assessed its property in a discriminatory and retaliatory manner. To do so, Plaintiffs have shown that within their subdivision, Gardiner uniformly raised the assessments of properties that were not internally viewed, and uniformly lowered the assessments of properties that were internally viewed.

When making before-and-after comparisons, there are two possible methods: comparing the previous assessed value to the new assessed value, or comparing the previous fair market value to the new assessed value. Both methods have their flaws. Using the previous assessed value means using a value that is out of date; in this case, nine years out of date. Using the previous fair market value means using a value that is up to date, but an estimate. Nevertheless, using the previous fair market value is the better comparison.

Assessments aim to match fair market value. The law requires property to be assessed "at the full value which could ordinarily be obtained therefor at private sale." That is the very definition of "fair market value." *State ex rel. Levine v. Board of Review of Vill. of Fox Point*, 191 Wis. 2d 363, 372, 528 N.W.2d 424, 427 (1995) ("Section 70.32(1), Stats., seeks to ensure a uniform method of taxation by requiring assessors to assess real estate *at its fair market value*, using the "best information" that the assessor can practicably obtain. Fair market value is commonly defined as the amount the property could be sold for in the open market by an owner

willing and able but not compelled to sell to a purchaser willing and able but not obliged to buy.") (emphasis added). Therefore, to get the best before-and-after comparison, the new fair market value should be compared to the previous year's fair market value, rather than the fair market value of the property nine years ago.

It is true that the previous year's fair market value is an estimate. But that estimate is supposed to be fairly accurate and close to the property's true fair market value. Their own evidence makes this clear: "Minor differences between the estimated fair market value and the property owner's opinion of value shouldn't raise concern. Large differences require further investigation." Assessment Manual, G-3 (attached to Gardiner's Response Brief). The law does not permit the fair market value estimates to vary more than slightly from actual assessments. Municipalities are supposed to revalue property to full value every five years,[2] Wis. Stat. § 70.05(5)(b), and if the old assessed value of any major class of property[3] is more than 10% greater or lesser than the class value determined by the Department of Revenue (upon which the estimated fair market value of each property is based), the municipality is basically sent back to assessment school. *See* §§ 70.05(5)(d), (f), 73.08.[4] If the problem of deviation between assessed and full market value persists, the Department of Revenue takes over, *see* §§ 70.05(5)(g), 70.75(3). If 2012's estimated fair market values were so far off as to make an unfair comparison with 2013's assessed fair market value, it is because the Town and Gardiner failed in their duty to keep the estimated fair market values up to date.

[2] The Town of Dover, having waited nine years, failed this requirement.
[3] The various classes of property are defined at Wis. Stat. § 70.05(5)(a)1m.
[4] If a municipality is off by more than 10% two years in a row, the Department of Revenue can require it to participate in an education program under § 73.08. §§ 70.05(5)(d)(f).

B. Even if the 2004 Assessed Values Are Used, the Same Pattern of Discrimination Is Apparent

Regardless of whether the current assessments are compared to last year's fair market value or the 2004 assessment, the same pattern appears. Gardiner raised the assessments of those properties it did not internally view, and lowered the assessments of those it did. It beggars belief to think that this is a coincidence – that it just so happened that the 2012 estimates were low on the four properties that were not internally inspected, and high for nearly everyone else.

Attached to Vincent Milewski's Third Affidavit is a chart showing the change in property values using the 2004 assessment instead. (Milewski Aff. #3, Exhibit A.) The chart makes clear that the pattern of discriminating against homeowners who do not permit a warrantless entry by the assessor exists regardless of whether 2013 assessments are compared to 2012 fair market values or 2004 assessments. The 2004 assessment still shows that the four properties that did not receive interior inspections had their assessments raised by substantial and fairly similar amounts (10.65%, 11.65%, 12.12%, and 11.83%). Two of those properties, after their owners relented and permitted a warrantless entry, subsequently saw substantial decreases (22.24% and 12.84%).[5] And that data still shows that homeowners who permitted warrantless entry had their assessments lowered. Of the 37 owners who consented to warrantless entry, only one had their assessment increased, and that assessment was tiny - $1,000 or merely 0.51%. That single outlier does not detract from the overall pattern – submit to warrantless entry, get favorable treatment. Refuse, get treated harshly.

[5] The factual support for the revaluation of those two properties after their owners relented and permitted interior inspections is set forth on Page 4 of the Plaintiffs' Brief in Opposition to Gardiner's Motion for Summary Judgment.

VI. GARDINER IS THE TOWN OF DOVER'S ASSESSOR

Once again, Gardiner produces no evidence that it was the Town's "expert help" rather than its official assessor. They simply rest on their denial of a request to admit, which in and of itself is not evidence that the assertion is wrong, while ignoring the substantial evidence the Plaintiffs' have produced in support of their contention.

VII. THE TOWN HAS A POLICY OF REQUIRING INTERIOR INSPECTIONS

The Town has conceded that it has a policy "requiring Gardiner to inspect the interior of homes that it was assessing." (Town Resp. Br. at 8.) The Plaintiffs have also submitted evidence in support of the existence of that policy.[6] (Pl. Br. at 3) Gardiner is simply wrong.

VIII. NONE OF THE FACTUAL DISPUTES GARDINER RAISES ARE MATERIAL TO THE PLAINTIFFS' CURRENT MOTION FOR SUMMARY JUDGMENT

As a reminder, the only portions of the Plaintiffs' Motion for Summary Judgment relevant to Gardiner are the portions seeking to declare Sections 70.47(7)(aa) and 74.37(4)(a) unconstitutional as applied to the Plaintiffs. That portion of the Motion relies on the simple and undisputed facts that the Plaintiffs refused an interior inspection and were then refused the opportunity to challenge their resulting assessment at the BOR meeting. The factual disputes raised by Gardiner are irrelevant to that issue. Plaintiffs believe that they were subject to retaliation and are prepared to prove it. But the statutory penalty for the exercise of Fourth Amendment rights and absence of due process would be unconstitutional even in the absence of

[6] Gardiner criticizes the Plaintiffs' use of statements by the Town's attorney as inadmissible hearsay. (Gardiner Resp. Br. at 2.) Those statements are not hearsay, because they are not being produced to prove the truth of the matter asserted (that state law does not require interior inspections), but rather that the Town has a policy of requiring interior inspections. Furthermore, the statement is not hearsay because it is a statement by a party opponent. Wis. Stat. § 908.01(4)(b) ("A statement is not hearsay if . . . [t]he statement is offered against a party and is . . . [t]he party's own statement, in either the party's individual or a representative capacity.").

retaliation. Thus, the amount of decrease and increase for the various Lorimar Estates properties (Gardiner Resp. Br. at 2-3, 5) is irrelevant to the constitutional question that is to be resolved by this motion.[7]

Nor do Gardiner's claims that it has no motive to retaliate matter at this stage. (Gardiner Resp. Br. at 2.) A trier of fact might very well find that Gardiner wanted homeowners to do things its way and sought to punish those unwilling to go along.[8] But whether it actually did so need not be determined to resolve the pending motion. Finding retaliation is unnecessary to determine whether the Town can lawfully prohibit the Plaintiffs from appearing at the BOR meeting.

Whether eleven years ago Mr. Milewski was prohibited from speaking or just prohibited from saying anything of consequence,[9] whether Gardiner told the Plaintiffs their 2004 assessment was based on an assumption of a basement remodel or an assumption of unspecified improvements, and which exact meeting it was where Gardiner made particular comments (Gardiner Resp. Br. at 5, Linda Gardiner Aff., ¶¶7-8) are also irrelevant to that issue. They have nothing to do with whether it is constitutional to prohibit property owners who assert their Fourth Amendment rights from challenging their property taxes.

Finally, whether Gardiner's letters are better characterized as a "demand" or a "request" (Gardiner Resp. Br. at 4) is not even a factual dispute. The letter is what it is and says what it says. Plaintiffs would argue that a letter threatening harsh reprisals for failure to comply, regardless of how politely worded, is a "demand," but the point is tangential.

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[7] Furthermore, Plaintiffs' numbers are not "wrong," they use the recorded 2012 fair market values rather than the 2004 assessments as a point of comparison.

[8] Plaintiffs have produced substantial evidence in support of their assertions of retaliation, and have requested time for additional discovery if the Court believes their evidence is insufficient to at least put into dispute Gardiner's evidence to the contrary. (Pl. Resp. Br. to Gardiner at 2-7.)

[9] The Town's refusal to permit Mr. Milewski to discuss or challenge his 2004 assessment at the open book session was probably unlawful. Section 70.47(7)(aa) prohibits challenges at the BOR meeting, not the open book sessions.

IX. THE STATUTES ARE UNCONSTITUTIONAL AS APPLIED TO THE PLAINTIFFS

This issue has been heavily briefed elsewhere (*see supra*, 2-5; Pl. Br. at 10-17; Pl. Resp. Br. to Town at 5-7), and rehashing the arguments at length is not necessary. But Gardiner's statement that the Plaintiffs have provided no law in support of their argument is implausible. Plaintiffs have cited to several cases supporting their assertion that the government cannot enter private residences without a warrant for an administrative purpose and cannot punish homeowners who refuse to consent to such searches. *Donovan v. Dewey*, 452 U.S. 594, 598, n. 6 (1981) ("Absent consent or exigent circumstances, a private home may not be entered to conduct a search or effect an arrest without a warrant."); *Payton v. New York*, 445 U.S. 573, 587, 590 (1980) ("Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment. . . . [T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant."); *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 540 (1967) ("[W]e therefore conclude that [the renter] had a constitutional right to insist that the inspectors obtain a warrant to search and that [he] may not constitutionally be convicted for refusing to consent to the inspection."); *Black v. Village of Park Forest*, 20 F. Supp. 2d 1218, 1230-31 (N.D. Ill. 1998) (striking down a $60 fee imposed on people who refused to consent to an administrative search of their home); *Schlesinger v. Town of Ramapo*, 807 N.Y.S.2d 865, 11 Misc. 3d 697 (S. Ct. Rockland Co., NY 2006) (concluding that the Fourth Amendment prohibited the court from compelling the homeowner to permit an interior inspection for tax assessment purposes).

Gardiner too cavalierly dismisses *Schlesinger*. (Gardiner Resp. Br. at 7.) While the case is not precedential, and does not address a statutory scheme of warrantless inspections, it does

demonstrate (1) that courts do not shy from making logical extensions of the holding in *Camara*, and (2) that the Fourth Amendment prohibits the government from compelling homeowners to consent to warrantless inspections. If *Camara* prevents a court from compelling interior inspections, how can a statute accomplish the same result? Even to the extent that the government has a legitimate need for information about the interior of a home, the court recognized it has other methods available to satisfy that curiosity. *Schlesinger*, 807 N.Y.S. at 868.

Gardiner makes no response to any of these cases other than the only case, *Schlesinger*, without precedential value. Gardiner does not explain how it could be constitutional for the Town to punish the Plaintiffs for asserting their Fourth Amendment rights, when it was unconstitutional for San Francisco to punish Roland Camara for asserting his Fourth Amendment rights. Gardiner does not explain how Wisconsin's system of warrantless administrative searches of private homes is permissible in light of all the Supreme Court cases saying it is not. The only thing Gardiner says is that no Wisconsin court has found this precise situation unconstitutional yet. But no Wisconsin court has been faced with this issue until now.

CONCLUSION

Gardiner is essentially arguing that because this state of affairs has been the status quo in Wisconsin, this Court should give a pass to a law that permits the government to search homes without a warrant under pain of significant penalty. That this Court should give its stamp of approval to a system where government threatens punitive taxation if you do not permit them to pry into your private life. That system cannot stand. Will vindicating the Plaintiffs' rights make the tax man's job a little harder? Sure it will, just like the Fourth Amendment makes police and prosecutors' jobs harder. The Fourth Amendment is supposed to make government's job harder.

It draws a line the government cannot cross without a warrant, and that line is the front door of your home.

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