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November 30, 2016

VIA HAND DELIVERY

Ms. Diane M. Fremgen
Clerk of the Supreme Court
110 East Main Street, Suite 215
Madison, WI 53703

Re: Milewski, et al. v. Town of Dover, et al.
Appeal No. 2015AP001523
Racine County Case No. 2014-CV-001482
Our File No. 231.229059

Dear Ms. Fremgen:

Enclosed for filing please find twenty-two (22) copies of the **Brief of Defendants-Respondents Town of Dover and Board of Review for the Town of Dover**, and the original **Affidavit and Certificate of Hand Filing and Service by Mail** with regard to the above-captioned matter.

Please return a file-stamped copy of this letter to our office in the envelope provided.

Under cover of this letter, we are serving counsel of record with three (3) copies of the same.

Very truly yours,

Dustin T. Woehl

DTW/sl
Enclosures
cc: Thomas C. Kamenick, Esq.
Mitchell R. Olson, Esq.

STATE OF WISCONSIN
SUPREME COURT

Appeal No. 2015-AP-1523

Vincent Milewski and Morganne MacDonald,
Plaintiffs-Respondents-Respondents,

and

Town of Dover, Board of Review for the Town of Dover, and Gardiner Appraisal Service, LLC, as Assessor for the Town of Dover,
Defendants-Respondents,

AFFIDAVIT AND CERTIFICATE OF HAND FILING/SERVICE BY MAIL

I certify that the **Brief of Defendants-Respondents Town of Dover and Board of Review for the Town of Dover**, was served/sent via Electronic Filing and Hand Delivery to the Supreme Court of Wisconsin on November 30, 2016.

I further certify that the **Brief of Defendants-Respondents Town of Dover and Board of Review for the Town of Dover**, was served/sent via U.S. Mail to the following counsel and interested parties on November 30, 2016:

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Dustin T. Woehl

STATE OF WISCONSIN

Appeal No. 2015-AP-1523

Vincent Milewski and Morganne MacDonald,

Plaintiffs-Respondents-Respondents,

and

Town of Dover, Board of Review for the Town of Dover, and Gardiner Appraisal Service, LLC, as Assessor for the Town of Dover,

Defendants-Respondents,

Appeal from the Circuit Court of Racine County
Circuit Court Case No. 14-CV-1482
The Honorable Phillip A. Koss, Presiding

Brief of Defendants-Respondents Town of Dover and Board of Review for the Town of Dover

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Statement on Oral Argument

Oral argument has already been scheduled for January 19, 2017.

Statement of the Case . . . Nature of the Case

This is a review of the court of appeals' decision affirming the circuit court's denial of Milewski and MacDonald's summary judgment motion and granting the summary judgment motion of the Town of Dover and Gardiner Appraisal Service, LLC.

Statement of the Case . . . Statement of the Facts

Vincent Milewski and Morganne MacDonald own a house in the Town. The Town's contracted assessor, Gardiner, went about conducting a Town-wide assessment of real property in 2013. Gardiner sent a written notice to Petitioners stating that "We must view the interior of your property for the Town wide revaluation program which is in progress." It continues, "An assessor will stop by to view your property on Tues, Aug 20 at 6:10 PM." (R. 29: ¶ 10). A representative of Gardiner then visited the home at the appointed date and time requesting to inspect the interior. (R. 29: ¶ 11). Milewski and MacDonald refused. (*Id.*)

Gardiner then sent Milewski and MacDonald a certified letter requesting that they schedule a mutually convenient time for an interior view. Gardiner's letter also advised that if Milewski and MacDonald did not schedule a viewing, they would lose the ability to challenge the assessment before the Town Board of Review. Milewski and MacDonald decided not to allow Gardiner into their property. (R. 29: ¶12, Exh. B.; R. 29: ¶13, Exh. C.)

As Gardiner explains in its brief, the interior view is crucial in the assessment process to obtain sufficient information to arrive at an accurate, fair, and uniform assessment. Gregory Gardiner of Gardiner then assessed the property the best he could without the benefit of the information that an interior view would have yielded. He undertook an individualized assessment of the handful of properties for which they were refused interior access, based on the information available. (R.29:¶17-18).

Milewski and MacDonald were unhappy with Gardiner's assessment and undertook to challenge it before the Board of Review. However, because they refused Gardiner's reasonable written request to view the interior of the property, the Board of Review—following the Department of Revenue's advice—refused to entertain the challenge, pursuant to Wis. Stat. § 70.47(7)(aa), which prohibits a taxpayer from challenging an assessment after refusing the assessor's reasonable request to view the property. (*See* R. 26:21).

Milewski and MacDonald then attempted to challenge the assessment in court. However, because their challenge was never heard by the Board of Review, it cannot be heard in circuit court. *See* Wis. Stat. § 74.37(4)(a). To circumvent that obstacle, Milewski and MacDonald claim that Wisconsin's regime of property taxation, assessments, and appeals is unconstitutional.

Statement of the Case . . . Procedural History

The Town and the Board of Review moved for summary judgment arguing that Milewski and MacDonald lost their right to challenge the assessment before the Board of Review under Wis. Stat. § 70.47(7)(aa) and, consequently, also lost the right to challenge the assessment in circuit court under Wis. Stat. § 74.37(4)(a).

Milewski and MacDonald also moved for summary judgment arguing that the same statutes are unconstitutional and that they should be permitted to challenge the assessment in circuit court without allowing an interior view. They also argued that the Town violated 42 U.S.C. § 1983 by declining to hear their challenge after they exercised their Fourth Amendment rights by refusing an unreasonable search.

The circuit court held that the statutes at issue were constitutional and that Milewski and MacDonald did not have a right to proceed in front of the Board of Review or challenge the assessment in circuit court. Finally, the court held that the Town did not violate any aspect of the Constitution, and granted the Town summary judgment on the plaintiffs' § 1983 claims. Milewski and

MacDonald appealed, and the court of appeals affirmed the circuit court's decision.

Standard of Review

Because this appeal seeks review of the court of appeals' affirmance of the circuit court's summary judgment decision in favor of the Town, review is *de novo*. The decisions below turned on the conclusion that certain state statutes are constitutional, which continues to be the primary issue on appeal. The constitutionality of those statutes is an issue of law reviewed *de novo*. *Aicher v. Wis. Patients Comp. Fund*, 2000 WI 98, ¶ 18, 237 Wis. 2d 99, 613 N.W.2d 849.

I. The statutes are presumed constitutional, and for Milewski and MacDonald to prevail, they must prove their unconstitutionality beyond a reasonable doubt.

When the constitutionality of a statute is challenged, this Court begins with the presumption that all legislative acts are constitutional, and the Court must indulge every presumption to sustain the law. *Aicher*, 2000 WI 98, ¶ 18. Any doubt about the constitutionality of a statute must be resolved in favor of its constitutionality. *Id.* Consequently, it is insufficient for a party to demonstrate "that the statute's constitutionality is doubtful or that the statute is probably unconstitutional." *Wis. Med. Soc'y, Inc. v. Morgan*, 2010 WI 94, ¶ 37, 328 Wis. 2d 469, 787 N.W.2d 22 (citing *State v. Smith*, 2010 WI 16, ¶ 8, 323 Wis. 2d 377, 780 N.W.2d 90). Instead, the presumption can be overcome only if the party establishes the statute's unconstitutionality beyond a reasonable doubt. *Id.; Aicher*, 2000 WI 98 ¶¶ 18-19.

The presumption of statutory constitutionality is the product of the recognition that the judiciary is not positioned to make the economic, social, and political decisions that fall within the province of the legislature. *Aicher*, 2000 WI 98 ¶ 20. Those legislative determinations are at the heart of this case.

II. This is a *de facto* facial challenge.

Milewski and MacDonald have styled their case as an "as applied" constitutional challenge, but as the circuit court and court of appeals

recognized, this is a *de facto* facial challenge. A facial challenge "attacks the law itself as drafted by the legislature," and thus, cannot be enforced "under any circumstances." *Soc'y Ins. v. Labor & Indus. Review Comm'n*, 2010 WI 68, ¶ 26, 326 Wis. 2d 444, 786 N.W.2d 385. In an "as applied" challenge, the Court's "task is to determine whether the statute has been enforced in an unconstitutional manner," and no presumption of constitutionality exists. *Soc'y Ins.*, 326 Wis. 2d 444, ¶ 27.

Wisconsin's longstanding tax assessment statutes and regulations were applied to Milewski and MacDonald as they have consistently and uniformly been applied throughout Wisconsin. Milewski and MacDonald's challenge is to Wisconsin's real estate tax and assessment system itself, not on any anomalous application of that system. If the Court accepts Milewski and MacDonald's constitutional arguments—that the interplay of the statutes and regulations comprising Wisconsin's real estate tax assessment procedure violate the Fourth Amendment—the necessary result is that Wisconsin's real property tax system is itself unconstitutional and needs to be overhauled.

For as-applied challenges, there is no presumption that the statutes were applied in a constitutionally acceptable fashion, but Milewski and MacDonald still must prove "beyond a reasonable doubt" that the Town and Gardiner have applied Sections 70.47(7)(aa) and 74.37(4)(a) unconstitutionally. *Id.* Regardless of how the constitutional arguments are styled, Milewski and MacDonald cannot meet their burden for proving that the statutes are unconstitutional.

Summary of Argument

Milewski and MacDonald are trying to draw a proverbial line in the sand, or at the threshold, and argue that no government agent can ever enter their home for any reason without a search warrant, allowing their house to be assessed on everything but the part they live in and the part that constitutes about 70% of its value. They want to keep the assessor in the dark regarding the value of their home, but still want to be able to take the assessor to task and challenge the accuracy of the assessment, or else they've been deprived of their due process, they claim.

But this is not the law. Wisconsin's real property tax assessment regime in which homeowners are requested to allow the assessor to view their property in order to assess it and then are estopped from challenging the assessment if they refuse to allow the assessor to view the property does not involve Fourth Amendment searches at all. It involves, rather, a simple requirement that taxpayers disclose the information relevant to the value of their home if they want to argue that the value is something different than what the assessor determines.

If the taxing authority is seeking to conduct a Fourth Amendment search (there was no actual search here), then the regime in which the interior view is requested and then required as a condition precedent to a challenge satisfies the Fourth Amendment because it is reasonable. The tax assessor bears little resemblance to the British petty officer who, armed with a general warrant, could demand immediate and repeated entry into citizens' homes to perform sprawling and invasive searches. The tax assessor politely sends a letter requesting a view, explaining the assessment process, and explaining the need to allow a view as a prerequisite for challenging the assessment. The assessor does not look for crimes, and it is not a crime to deny him entry.

Wisconsin's real estate taxing regime also fits within the recognized exception for special needs, in which the government interest in searching the home is less to do with law enforcement and a warrant requirement would interfere with the government's special needs. Wisconsin has a compelling

"special" need to look inside people's homes because the Uniformity Clause in its Constitution requires taxation to be uniform. If some taxpayers can exclude the assessor and get away with being taxed only on the basis of circumstantial evidence, they are not being assessed uniformly with their neighbors who are being assessed based on the fair market value of their home pursuant to an accurate appraisal.

Milewski and MacDonald's due process claim fails because, since the Fourth Amendment is not implicated or violated, they are not being asked to choose one constitutional right over another. They are simply being held to equitable standards. Fairness requires that if they are going to challenge the assessment, they must disclose all evidence they have that is relevant to the assessment. To allow them to challenge the value of their home while keeping private to themselves the best evidence of value turns the idea of fairness on its head.

Argument

I. Milewski and MacDonald's argument fails because there was no Fourth Amendment search.

Not every entry into the home is a Fourth Amendment search. A certified private assessor requesting in writing to view the inside and outside of a home, by appointment, with advance notice, to determine its fair market value in order to determine the property owner's fair share of the tax burden is not the kind of "search" the Fourth Amendment was designed to address.

Milewski and MacDonald rely heavily on *Camara v. Mun. Court of S.F.*, 387 U.S. 523 (1967), but as the court of appeals held, that case is distinguishable. *Milewski v. Town of Dover, et al.*, 2015AP1523, ¶7-8, unpublished slip op. (Wis. Ct. App. May 4, 2016). In *Camara*, the Supreme Court extended a modified version of Fourth Amendment search and seizure warrant protections, previously thought to only apply in the criminal investigation context, to administrative searches for municipal code violations. In *Camara*, a housing inspector from San Francisco's health department on three occasions demanded warrantless entry into an apartment building to search for possible code violations. The owner objected and was criminally prosecuted for refusing entry and demanding a warrant. The Supreme Court held that the Fourth Amendment required the housing inspector to obtain an administrative warrant to investigate the possible violations.

The code enforcement search in *Camara* is far different from a view requested or performed by a Wisconsin assessor. The municipal code authorizing the inspections in *Camara* was extremely broad; it provided that inspectors "upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code." *Camara v. Mun. Court of S.F.*, 387 U.S. 523, 526 (1967). There was no limit in what the inspectors could look for or how often they could demand entry. The inspector simply had to show credentials, but was under no obligation to explain why the home was being inspected, on whose authority, or the scope of the inspection. Refusal

was a criminal offense, so the homeowner had no opportunity to question the inspection without risking criminal penalties. *Camara*, 387 U.S. 525. This lead the Court to conclude that "inspections of the kind we are here considering do in fact jeopardize "self-protection" interests of the property owner." *Id.*, 387 U.S. 523, 531 (1967).

The Court thus concluded that "[t]he practical effect of this system is to leave the occupant subject to the discretion of the official in the field." *Camara v. Mun. Court of S.F.*, 387 U.S. 523, 532, 87 S. Ct. 1727, 1733, 18 L.Ed.2d 930, 937 (1967). This is, of course, exactly the concern that underpinned the Fourth Amendment. *See, id.*, 387 U.S. at 532-33. To address this concern, the Court concluded that, instead of having a government official show up at the door and demand immediate entry purportedly pursuant to a lawful authorization to check for code violations, a warrant would serve to explain the authorization behind the search, why the home was being searched, and the limits of the search.

This same concern is not present under Wisconsin's tax assessment system. The assessor in the field has nothing approaching unfettered discretion. He or she must provide advance notice to homeowners when requesting to view their home for an assessment. *See, e.g.,* Wis. Stat. 70.47(7)(aa); (R. 29: Exh. A). The letter explains the purpose behind the assessment, the right to refuse the request and the consequences of that refusal. The advance notice gives the homeowner time to contact the taxing jurisdiction to verify the relationship with the assessor and have any questions about the assessment scheme explained. (R. 29: ¶12, Exh. B.). There is no risk of criminal sanctions for refusing, which, coupled with the advance notice, gives the homeowner ample opportunity to question the legitimacy, nature, and scope of the assessment.

Far from being backed up by criminal sanctions, Wisconsin's assessment view can be deferred by homeowners if they are willing to live with the results of an assessment based on only partial information. Milewski and MacDonald were allowed to choose whether to let Gardiner view the property. Since they

chose not to allow an interior view of their home, there indisputably was "no entry of the home" and thus, no "search." The fact that there was a consequence to their decision, which they knew about in advance, does not result in a "search" for Fourth Amendment purposes.

The home entry request in this case is more akin to the one in *Wyman v. James*, 400 U.S. 309 (1971), in which the Supreme Court held that home visits for welfare verification purposes are not searches under the Fourth Amendment. In *Wyman*, the plaintiff was receiving welfare assistance from the State of New York and was scheduled to be visited in the home by a caseworker, as required under New York law. The plaintiff refused to allow the visit and her benefits were terminated as a result.

The plaintiff argued that a home visit would violate the Fourth Amendment. The Supreme Court disagreed. *Id.* at 317-18. The Court held that a caseworker visit was not a "search" under the Fourth Amendment because "the visitation in itself is not forced or compelled" and as a result "there is no entry of the home and there is no search." *Id.*

Wyman distinguished *Camara* and other administrative search cases, noting that those cases "concerned a true search for violations . . . and arose in a criminal context where a genuine search was denied and prosecution followed." *Id.* at 309. 324-25. The Court found it relevant that, unlike the plaintiff in *Camara*, Mrs. James was not going to be prosecuted criminally for refusing, and the only consequence was that she would lose government benefits. *Id.* 400 U.S. at 325.

The request for an interior home view is like the request for a home visit in *Wyman*. Neither involve a "true search for violations" and neither involve criminal consequences for denying entry. Both result only in possible financial consequences that the homeowner is informed of before choosing. There is no forced search and the Fourth Amendment is not implicated in this case.

This case is very similar to the example the Court used in *Wyman* to explain its holding:

> It seems to us that the situation is akin to that where an Internal Revenue Service agent, in making a routine civil audit of a taxpayer's income tax return, asks that the taxpayer produce for the agent's review some proof of a deduction the taxpayer has asserted to his benefit in the computation of his tax. If the taxpayer refuses, there is, absent fraud, only a disallowance of the claimed deduction and a consequent additional tax. The taxpayer is fully within his "rights" in refusing to produce the proof, *but in maintaining and asserting those rights a tax detriment results and it is a detriment of the taxpayer's own making.* So here Mrs. James has the "right" to refuse the home visit, but a consequence in the form of cessation of aid, similar to the taxpayer's resultant additional tax, flows from that refusal. The choice is entirely hers, and nothing of constitutional magnitude is involved.

Wyman v. James, 400 U.S. 309, 324 (1971) (emphasis added).

Like the plaintiff in *Wyman* and the hypothetical plaintiff in the Court's example, Milewski and MacDonald face no criminal penalties for refusing entry into their home. The only consequence is a tax detriment of their own making. Like the taxpayer who is unable to meet his burden to prove entitlement to deductions as a consequence of withholding relevant information, taxpayers who deprive the assessor of crucial evidence of their home's fair market value cannot meet their burden of establishing a fair market value more favorable than the assessment.

The Court was not swayed by Justice Marshall's dissent, which argues, as Milewski and MacDonald do, that the requirement of a home entry to obtain information was not absolutely necessary, because the government could have obtained good enough information through other means: "Mrs. James offered to furnish any information that the appellants desired and to be interviewed at any place other than her home. Appellants rejected her offers and terminated her benefits solely on the ground that she refused to permit a home visit." *Id*, 400 U.S. at 338 (Marshall dissenting). By rejecting this argument, *Wyman* tells us that the government need not compromise its program and content itself with second-best evidence.

II. Wisconsin's assessment scheme and its requirement of allowing full assessments, including interior viewing, as a precondition to challenging an assessment, does not violate the Fourth Amendment, because it is reasonable.

Milewski and MacDonald place great emphasis on the fact that Wisconsin's real property assessment procedures do not require assessors to obtain a warrant. Contrary to Milewski and MacDonald's argument, however, Fourth Amendment jurisprudence lacks any bright-line rule purporting to require a warrant for *every* home search. Under Supreme Court precedent, a home search can be constitutional, even without particularized probable cause and judicial warrant, if it is part of a reasonable regulation or statutory regime.

A. Reasonableness is the ultimate test under the Fourth Amendment.

Reasonableness is the touchstone of the Fourth Amendment. *Kentucky v. King*, 563 U.S. 452 (2011); *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *Hamilton v. Village of Oak Lawn*, 735 F.3d 967, 971 (7th Cir. 2013). The Supreme Court has recognized, therefore, that a search of the home, unsupported by either a warrant, individualized suspicion, or "special needs" may nonetheless be constitutional under the Fourth Amendment if it is reasonable. *Samson v. California*, 547 US 843, 848 (2006).

There is no bright-line test for reasonableness, rather "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." *Camara,* 387 US at 536-37; *see also Vernonia Sch. Dist 47A v. Acton.*, 515 U.S. 646, 652-53 (1995) (internal quotation marks omitted) ("[W]hether a particular search meets the reasonableness standard is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.")

As the Supreme Court explained in a case upholding warrantless and suspicionless searches of released prisoners, "Under our general Fourth

Amendment approach we examine the totality of the circumstances to determine whether a search is reasonable within the meaning of the Fourth Amendment." *Samson v. California*, 547 US 843, 848 (2006) (quoting *United States v. Knights*, 534 US 112, 118 (2001) (internal quotation marks omitted)). "Whether a search is reasonable is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Id.*

There is also no hard-and-fast rule requiring warrants based on probable cause and individualized suspicion, even when the search is of a person's home:

> . . . the Fourth Amendment imposes no irreducible requirement of such [individualized] suspicion . . . . Therefore, although this Court has only sanctioned suspicionless searches in limited circumstances, namely, programmatic and special needs searches, *we have never held that these are the only limited circumstances in which searches absent individualized suspicion could be "reasonable" under the Fourth Amendment.*

Id. at 856, n.4 (internal citations and quotation marks omitted, emphasis added)

Reasonableness rules. And Wisconsin's uniform real estate assessment system is reasonable under the balancing test set forth in *Samson* as well as under the longstanding approval of warrantless "special needs" searches.

B. Wisconsin's assessment procedures, including the interior view, are constitutional because they are reasonable under the Fourth Amendment's general balancing test.

1. An interior view of the house is critical under the Uniformity Clause of the Wisconsin Constitution.

Part of the Fourth Amendment's reasonableness test is the governmental interest behind the searches. Milewski and MacDonald suggest that the governmental interest at stake here is maximizing tax revenue, which they argue is less important than the interests at issue in cases where courts have

found a warrant was necessary—such as the interest in entering a person's house to arrest a felon. This assumption ignores the fact that Wisconsin's assessment regime is a key servant of the Uniformity Clause of the Wisconsin Constitution, art. VIII, § 1. Wisconsin clearly has a substantial interest in upholding its Constitution.

1.a. Wisconsin's Uniformity Clause protects citizens against unequal and unfair taxation.

The Uniformity clause's "purpose . . . is as worthy as it is necessary. It is 'to protect the citizen against unequal, and consequently unjust taxation.'" *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 426, 147 N.W.2d 633, 643 (1967) (quoting *Weeks v. Milwaukee*, 10 Wis. 242, 257 (1860)).

Milewski and MacDonald give short shrift to the government interest behind requiring an interior view before homeowners can contest the assessment. It is not that municipalities want to view the interior of homes to maximize the amount of taxes they can charge homeowners. The total amount of tax revenue the government realizes does not turn on the results of individual assessments—that amount is determined before assessments are performed. The only purpose of tax assessments is to ensure that the tax burden is shared fairly among the citizens.

Unlike other taxpayers, real property taxpayers play a zero-sum game. The taxing jurisdiction levies taxes sufficient to generate the revenue it needs to collect, then divides that by the total assessed value of all the taxable property to determine its mill rate. It then determines each taxpayer's obligation by multiplying that mill rate by the assessed value of his or her property. Jack Stark, *The Uniformity Clause of the Wisconsin Constitution*, 76 Marq. L. Rev. 577(1993). Therefore, if one taxpayer's assessment is too low, the mill rate applicable to every piece of taxable property in the jurisdiction will be higher than it should be and the owner of every other piece of taxable property in the jurisdiction would pay an incorrect amount because the total amount levied remains constant. *See Slauson v. City of Racine*, 13 Wis. 444 (1861).

The notion that homeowners should be taxed uniformly based on the value of their real property is at least as old as Wisconsin's Constitution. The Uniformity Clause arose out of the 1848 Wisconsin Constitutional Convention. The 1846 Convention had adopted a constitution that was rejected by the people, but cleared the ground for the Uniformity Clause by defeating a resolution that would have exempted real estate from taxation. *The Attainment of Statehood*, 222 (Milo M. Quaife ed. 1928). Taxing real estate was a way of promoting equality. Speaking of the defeat of the real estate exemption, Warren Chase pointed out that "they had already successfully combated the principal of exempting certain privileged kinds of property from taxation." *Id.* at 413.

The Uniformity Clause requires all homes to be valued the same way. In Wisconsin's first reported uniformity clause case, *Knowlton v. Bd. of Supervisors*, 9 Wis. 378 (1859), the Court struck down an ordinance limiting taxes on one class of real property, concluding that "the valuation must be uniform, the rate must be uniform." *Id.* at 389. In arriving at its conclusion, the Court expressed its interpretation of the Uniformity Clause as promoting equity, equality, and justice:

> ... when property is the object of taxation, it should all alike, in proportion to its value, contribute towards paying the expense of such benefits and protection. These are plain and obvious propositions of equity and justice, sustained as we believe by the very letter and spirit of the constitution. . . .
>
> The act of laying a tax on property consists of several distinct steps, such as the assessment or fixing of its value, the establishing of the rate, etc.; and in order to have the role or course of proceeding uniform, each step taken must be uniform. The valuation must be uniform, the rate must be uniform. Thus uniformity in such a proceeding becomes equality; and there can be no uniform rule which is not at the same time an equal rule, operating alike upon all the taxable property throughout the territorial limits of the state, municipality or local subdivision of the government, within and for which the tax is to be raised.

Knowlton, 9 Wis. 378, 388.

Uniformity requires that real property may not be *partially* exempted from taxation. *Knowlton* explained "there cannot be any medium ground between absolute exemption and uniform taxation." *Id.*, 9 Wis. at 392. In *Gottlieb v. City of Milwaukee*, 33 Wis.2d 408, 147 N.W.2d 633 (1967), the Urban Redevelopment Law authorized certain municipalities to freeze the assessments on property in certain areas. The Court found the assessment freeze to be an unconstitutional partial exemption. The Court followed *Knowlton* and summarized its holding as follows: "In *Knowlton* the court held that once property is selected for taxation it must be taxed *in its entirety* and the same rate must be applied to it as to all property in the tax district." *Gottlieb*, 33 Wis.2d at 418-19, 147 N.W.2d at 639 (emphasis added).

A parallel to the prohibition on partial exemptions is that all real property must be assessed at its fair market value. Wis. Stat. § 70.32(1). *Knowlton* mandated that "the course of mode of proceeding in levying or laying taxes shall be uniform." *Knowlton,* 9 Wis. at 389. Using different assessment methods to assess different homes would therefore violate the Uniformity Clause. *See, e.g., State ex rel. Boostrom v. Bd. of Review*, 42 Wis.2d 149, 160, 166 N.W.2d 184, 190 (1969) (holding that an assessment increasing the value of all agricultural land 40% while individually assessing other kinds of real property violated the Uniformity Clause).

1.b. Viewing both the inside and outside of a home supports the Uniformity Clause.

The government interest in allowing assessors to view both the exterior and interior of a home to arrive at its fair market value should be obvious. Homes, like books, cannot fairly be judged on their covers. The fair market value of a home does not just turn on its exterior. No prospective purchaser would buy a home, or be able to determine a fair price for it, without being allowed to look on the inside.

The State of Wisconsin has determined that an interior view by an assessor is an integral part of the assessment process. Pursuant to Wis. Stat. § 70.32, municipal assessors must assess property using the methodology in the

Assessment Manual. This effectuates the overarching purpose of the Assessment Manual, which is to "discuss and illustrate accepted methods, techniques and practices with a view to more nearly uniform and more consistent assessments of property at the local level." Wis. Stat. § 73.03.

The Wisconsin Property Assessment Manual, published by the Wisconsin Department of Revenue under the authority of Wis. Stat. § 73.03, explains that upon entering the field, "[m]easuring improvements and interior viewing" is crucial to the data collection process. Manual, Ch. 8, p.22. "[T]he assessor must make a thorough, detailed, and objective viewing of each property, noting relevant characteristics as they relate to physical condition, effective age, and functional utility." *Id.*, p.20. After this information is obtained through a viewing, "it is possible to subjectively consider the improvements and determine the proper grade" and assessed value. *Id.*, p.23.

As Gardiner explains in detail in its Brief, and as is set forth in the rules and regulations governing real estate assessment in Wisconsin, the interior of the home can account for around 70% of a home's value. Many aspects of the interior can affect value. The home's very condition is one example. A home originally built with hand-carved woodwork would be worth more than one using the cheapest materials. On the other hand, if the woodwork falls into disrepair and rots away, that would negatively affect the value of the home, while a homeowner's decision to replace cheap materials with newer high-quality replacements will increase the value. The list of examples is almost infinite: old carpeting replaced with hard-wood floors and kitchen and bathroom remodels are other examples. A "fully updated" house is obviously worth more than one that has not been maintained over the course of a decade.

If the assessors' access to the locus of 70% of the value of a home is made to turn on the grace of particular homeowners, who can withhold this evidence without any consequence, and assessors are forced to assess in partial darkness as to the subclass of homes whose owners refuse a view, but can still challenge the assessment, uniformity and consistency will suffer.

The likely result of this disparity and lack of uniformity, if allowed without any consequences, would be the type of inequality the founders feared—over taxation of homeowners who allowed assessors to view the interior of their home. It is logical to infer that most of the homeowners who refuse an interior view have made changes that increase the value of their home, while those whose home's interiors have deteriorated would welcome an assessment to decrease their taxes.

The Uniformity Clause is threatened by this free-rider problem. If most homeowners allow the assessor into their homes to get an accurate assessment, but some homeowners are allowed to force the assessor to make his or her assessment without that crucial information and are still allowed to try to decrease their assessment by challenging it in other respects, the probable consequence is that wealthy homeowners will be able to avoid paying their fair share of taxes by hiding their interior improvements. The tax burden will be disproportionately borne by those who either cannot afford improvements, or those who chose to invest in the exterior of their homes.

1.c. That other states might have different assessment systems is a red herring.

Milewski and MacDonald argue that an interior view is not absolutely necessary, and imply that Wisconsin's system violates the Fourth Amendment by incorporating one, simply because other taxing jurisdictions have different systems. What other jurisdictions do is irrelevant to the constitutionality of Wisconsin's approach. New York, for example, is one of the only states in the nation that does not have a Uniformity Clause in its constitution. *See, gen., Wade J. Newhouse*, Constitutional Uniformity and Equality in State Taxation, 612 (1959), and *William L. Matthews, Jr.*, Constitutional Uniformity and Equality in State Taxation, 38 Ky. L.J. 31 (1949-50). In the New York case cited by Milewski and MacDonald, the assessor did not uniformly seek interior views of any other homes under an assessment regime, as is required in Wisconsin, or even attempt to explain why one was necessary, but rather, only asked for an interior view of this one property *after* its assessment had

been challenged, raising the obvious question of how an interior view could be relevant to support the reasonableness of its original assessment at all. *See, In re Jacobowitz v. Bd. of Assessors for the Town of Cornwall*, 121 A.D.3d. 294, 304 (N.Y. App. Div. 2nd Dept. 2014). That court even acknowledged that the Town might still be able to gather sufficient information to obtain a warrant forcing an interior inspection to obtain information to defend the assessment.

States are also not required to handicap their programs by completely avoiding all searches at all costs. "As [the Supreme Court] made clear in *Knights*, the Fourth Amendment does not render the States powerless to address these concerns *effectively*." *Samson v. California*, 547 U.S. 843, 854 (emphasis in original). The Supreme Court explicitly rejected the notion, propounded by Milewski and MacDonald, that one state's system is constitutionally defective simply because other states have been able to further similar interests without searches; concluding that other state's procedures were of "little relevance" to its determination whether a state's "system is drawn to meet its needs and is reasonable . . ." *Id* at 855.

None of the cases cited by Milewski and MacDonald examine Wisconsin's specific system, or the interplay that exists in Wisconsin between a constitutional requirement that property tax be assessed and taxed uniformly at full fair market value and the attempted application of the Fourth Amendment to hamper that assessment.

2. The intrusion under Wisconsin's real property tax assessment program is relatively minor.

We have seen that the government interest is to uphold the Wisconsin Constitution and protect Wisconsin citizens from unfair and unjust taxation. The other part of the reasonableness balance is the intrusiveness of the search. Milewski and MacDonald emphasize that the search is of the home, and argue, in effect, that warrantless searches of the home are *per se* unreasonable. They paint with too broad a brush, however. Looking at all the facts and circumstances of Wisconsin's assessment system, as we must, it is apparent that the intrusion is not so great.

The viewing of the interior of the home by the assessor is nothing like the general writs of assistance Milewski and MacDonald analogize them to. The most crucial difference is that, unlike the hypothetical petty officer, an assessor cannot simply show up at the door unannounced and demand entry. There are protections in place. The assessor must provide notice in advance, and the homeowner can schedule an appointment at a convenient time. The allowance of several days' notice was a factor the Supreme Court relied on in *Wyman* in concluding that if the home entry was a search, it was reasonable. *Wyman*, 400 U.S. at 318-24; *see also Pierce v. Smith*, 117 F.3d 866, 875 (5th Cir. 1997) (interlude between request and search supports finding of Fourth Amendment reasonableness).

That the interior view can be done at a date and time of the homeowner's choosing should alleviate the professed concern that the assessor will stumble upon marijuana plants or other contraband and report that to the government. Milewski and MacDonald have not pointed to any evidence that any assessor in Wisconsin has ever searched a home for anything other than the information necessary to perform an appraisal or that one has ever reported a homeowner to the police for any criminal violation based on information accidentally (or intentionally) obtained during an appraisal. The appointment procedure gives homeowners time to tuck away any personal property they do not want the assessor to see.

The intrusion is clearly less than in searches where the government is checking the homeowner's compliance with civil or criminal rules and the homeowner faces the specter of being found guilty of violations and having to pay fines or criminal consequences. Like in *Camara*, "because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy." *Camara,* at 537; *see also Wyman*, 400 U.S. at 324-25 (noting that the fact that the search was not overly invasive or done in search of criminal activity militated in favor of finding it reasonable and thus constitutional under the Fourth Amendment). Here, the home view is not even in search of code violations or

enforced by criminal processes and therefore, unlike in the searches in *Camara*, they do not "jeopardize 'self-protection' interests" of the homeowner. *Id.* at 531.

Homeowners are also given a chance to reconsider their refusal after seeing the proposed assessment. If they have second thoughts after seeing the proposed assessment, they have an opportunity to meet with the assessor to discuss any issues they have with the appraisal before it is finalized. Wisconsin Property Assessment Manual Chapter 18, p. 16 (last revised 2014). If they want to contest the assessment, after seeing the numbers, they can allow the reasonable view of their property and the assessor will reassess the property. Milewski and MacDonald actually took advantage of this opportunity during the last assessment, and they complain that the homeowners in their subdivision who changed their minds and allowed an internal view saw reduced assessments. Homeowners are actually given the advantage of initially rolling the dice by denying an interior view, with the option to change their minds if the assessment is higher than they want. If the gambit pays off, however, and they are happy with the assessment (given their unique knowledge of the interior of their home), they can accept the appraisal based on incomplete information.

Homeowners who chose to withhold information relevant to the assessment of their homes are not left defenseless. The Wisconsin statutes include protection against intentional (retaliatory) assessments. The argument in this case that there was a retaliatory assessment is unfounded, as is addressed in detail in Gardiner's brief.

Sections 70.501 and 70.503 impose civil penalties and liability on an assessor "who intentionally fixes the value of any property assessed by that person at less or more than the true value thereof . . . ." Wis. Stat. § 70.501. Any assessor who is guilty of such a violation is "liable in damages to any person who may sustain loss or injury thereby, to the amount of such loss or injury; and any person sustaining such loss or injury shall be entitled to all the remedies given by law in actions for damages for tortious or wrongful acts."

Wis. Stat. § 70.503. Thus, should an assessor attempt to punish a property owner by imposing a punitive assessment, he risks not only a fine, but liability for the amount of the excess tax imposed on the property owner.

3. A warrant would be a mere formality.

Milewski and MacDonald place great emphasis on the fact that assessors do not obtain warrants before viewing the interior of the home. They have, however, failed to directly address what such a warrant would look like, how it would help, or why it would be necessary. Even a cursory review of the administrative search cases following *Camara* demonstrate that the notion of a warrant does not make sense for the uniform assessment of the homes in a taxing jurisdiction.

As the Supreme Court made clear in *Samson v. California*, any judicial warrant that is required by the Constitution can be issued *only* on a finding of probable cause, although the Court has perhaps relaxed its notion of probable cause for administrative searches. In the context of administrative searches like the one in *Camara*, where the agent in the field has almost limitless discretion, a warrant supported by probable cause makes some sense. If a municipality is going to search for violations of certain building codes, a warrant can explain why the property was chosen for a search and can limit the scope of the search to looking for just those code violations. *See, e.g.,, Marshall v. Barlow's, Inc.*,436 U.S. 307,322-23 (1978) (warrant requirement for OSHA inspections would address the almost unbridled discretion of field agents as to when to search and whom to search by providing assurance that inspection was authorized by statute and advising owner of scope of inspection).

But what would a warrant look like for a view of the interior of the home if one is required under Wisconsin's assessment system as Milewski and MacDonald want? Milewski and MacDonald complain that Wisconsin does not use its own administrative warrant procedure in tax assessment cases, but a brief review of the statute and its sample affidavit and warrant demonstrates that the concept does not make sense. The form warrant included in Wis.

Stat. § 66.0119 states that "there now exists a necessity to determine if said premises comply with (section . . . . of the Wisconsin statutes) or (section . . . . of ordinances of said municipality) or both . . ." *Id.* It then tells the sheriff, etc. "you are commanded forthwith to search the said premises for said purposes." *Id.*

What good would this do in the context of Wisconsin's tax assessment scheme? The Uniformity Clause and the statutory and regulatory scheme implementing it determine and establish as a matter of law the need for universal and uniform assessments that include interior and exterior views of all homes being assessed. The assessor's certified letters to the homeowners explain all of this and provide time for the homeowner to follow up with questions. There is no particularized analysis to be performed by a judge or administrator—everything is built into the process. Neither is there any probable cause of anything other than that the home has an interior.

Uniformity is best served when all homes are viewed inside and out. No particularized showing is required. It is not enough under the Uniformity Clause that the assessor can view the interior of *some* homes, but for others must either put an assessment together based on circumstantial and incomplete evidence that can later be challenged or meet some as-of-yet unspecified additional burden to prove he or she needs to view the interior of some homes.

With or without the type of warrant used in code violation cases, which Milewski and MacDonald seem to insist on, the longstanding rules and procedures in the statutes and regulations are doing all the heavy lifting. The assessment scheme itself provides the procedural safeguards and limitations on the assessor's "search," not an administrator or judicial officer who would presumably parrot those rules in a warrant on a case-by-case basis. If a warrant is required, it must be issued in every instance, making it a mere formality.

4. Wisconsin's system is actually less invasive than it would be if assessors viewed the interior of homes under warrants.

Milewski and MacDonald's insistence on warrants could lead them, and other Wisconsin homeowners, down an unintended path. The warrant, far from being the Founders' favored remedy, was actually the main problem. "[Our] constitutional fathers were not concerned about warrantless searches, but about overreaching warrants." T. Taylor, Two Studies in Constitutional interpretation 41 (1969). "It is perhaps too much to say that they feared the warrant more than the search, but it is plain enough that the warrant was the prime object of their concern. Far from looking at the warrant as a protection against unreasonable searches, they saw it as an authority for unreasonable and oppressive searches . . . ." *Id.*

The framers' fears would perhaps be borne out if Wisconsin were forced to alter its regime of voluntary internal views with procedural tax consequences for refusal to a system of mandatory searches supported by warrant. Under Wisconsin's scheme, but not under a system where assessors could force searches after obtaining a warrant, the assessor does not bring the police into the home to help execute the warrant. Under Wisconsin's regime, but not under searches based on warrants, the assessor cannot enter a home to perform a search when the homeowner is not present.

Taken together, a warrant-based system leads to the risk that the assessor and police enter a home, with a search warrant, at an inconvenient time and the police officer sees evidence of criminal violations in plain view, allowing him or her to then obtain a criminal warrant. *See, e.g., State v. Jackowski*, 2001 WI App. 187, 247 Wis.2d 430, 633 N.W.2d 649. In *Jackowski*, a building inspector obtained an administrative warrant under § 66.0119 issued by a municipal judge to search for code violations based on complaints. Two City of Franklin police officers accompanied the inspector to execute the special inspection warrant. *Id.* ¶3. Knocking and finding nobody home, the police and inspector entered the home and looked around to see if anybody was home. *Id.* ¶3. The police found nobody home, but did find illegal firearms lying

around, so they obtained a criminal search warrant and came back for the guns. *Id.* ¶4-5. Although the warrant was technically defective under the statute, but not the Constitution, because the homeowner had not previously refused to voluntarily allow the inspector inside, the court of appeals upheld the searches and refused to exclude the evidence of the guns, under the "good faith" doctrine. *Id.* ¶17. It is hard to imagine that Milewski, MacDonald, or other homeowners would really prefer this system to the current assessment system.

Given that a warrant would always be justified and would provide little, if any, protection to the homeowner, we should give pause before committing Wisconsin to a system in which the tax assessor searches by warrant.

C. Wisconsin's assessment procedures are also constitutional under the recognized exception for "special needs."

The conclusion that Wisconsin's tax assessment statutes comport with the Fourth Amendment's reasonableness test is supported by the line of cases that have found warrantless searches to be reasonable within the meaning of the first clause of the Fourth Amendment (reasonableness) even though the probable-cause requirement of the Warrant Clause cannot be satisfied. *See, e.g., Untied States v. Martinez-Fuerte*, 428 U.S. 543 (1976), *Terry v. Ohio*, 392 U.S. 1 (1968), *South Dakota v. Opperman*, 428 U.S. 364 (1976), *United States v. Biswell*, 406 U.S. 311 (1972). One such line of cases, as the Supreme Court in *Samson v. California* alluded to, holds that searches can be constitutional, even without a warrant or individualized suspicion, in the context of programmatic and "special needs" searches.

Statutes allowing searches without warrants may be reasonable where special needs make the warrant and probable-cause requirement impracticable and where the "primary purpose" of the searches is "[d]istinguishable from the general interest in crime control." *Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000). In "special needs" searches, the Fourth Amendment does not require probable cause or a warrant.

Wisconsin's assessment scheme fits comfortably within the "special needs" line of cases because the system is not aimed at all at criminal—or even civil code—enforcement and, as explained above, the assessment scheme is itself reasonable and contains limitations and protections that make a warrant unnecessary.

For example, in *Griffin v. Wisconsin*, 483 U.S. 868 (1987), the Court held that a warrantless search of a probationer's home "satisfied the demands of the Fourth Amendment because it was carried out pursuant to a regulation that itself satisfies the Fourth Amendment's reasonableness requirement under well-established criteria." *Id.* at 873. "We have also held, for similar reasons, that in certain circumstances government investigators conducting searches pursuant to a regulatory scheme need not adhere to the usual warrant or probable-cause requirements so long as their searches meet 'reasonable legislative or administrative standards.'" *Id.*, 483 U.S. at 873. The Court balanced the special needs of Wisconsin's probation system with the reduced expectation of privacy of parolees to conclude that warrantless searches of parolees, not based on probable cause, did not violate the Constitution. The Court concluded that the "special needs of Wisconsin's probation system make the warrant requirement impracticable . . ." *Id.* at 876.

III. There was no violation of due process.

There was also no violation of due process here because Milewski and MacDonald did not have a Fourth Amendment right to thwart the Town's efforts under Wisconsin's tax assessment scheme to comply with the Uniformity Clause by uniformly viewing the interior and exterior of all homes being assessed to obtain their assessed value. Because the Fourth Amendment was not implicated, let alone violated, the requirement of allowing a full view of the property being assessed is nothing more than a garden-variety procedural condition on the assessment review process.

Rather than force an interior view, perhaps under the authority of a warrant, Wisconsin law makes a concession and allows a trade-off. Homeowners are permitted to refuse an interior view. They are notified in

advance, however, that the result of this refusal is that they would be unable to challenge the assessment. Milewski and MacDonald do not argue that they were not aware of the consequence of their decision not to allow the assessor to view the inside of their house.

The consequence of refusing the assessor's reasonable request for an interior view is not retaliatory or punitive, but is the legal, logical, and natural result of the decision. Allowing homeowners to challenge an assessment to the board of review is inconsistent with well-established law on the property owner's burden of proof because the homeowner has the affirmative burden of proving that the fair market value is different than the assessor's determination being challenged. Without putting the interior of their home—which comprises about 70% of its value—into evidence, the homeowners logically, and equitably, cannot meet their burden of proving the fair market value is different from what the assessor determines. Homeowners cannot simply challenge bits and pieces of the assessment.

As far back as 1883, the Wisconsin Supreme Court declared that under the statutes then in effect, a person objecting to an assessment had to take the initiative and produce testimony showing that the assessment was too high. *See Shove v. City of Manitowoc*, 57 Wis. 5, 7, 8, 14 N.W. 829 (1883). The same rings true now. A board of review *must* presume that the assessor's valuation is correct, and this presumption may be rebutted only by sufficient showing upon sworn oral testimony by the objector that the valuation is incorrect. *Nankin v. Shorewood*, 2001 WI 92, ¶18, 245 Wis. 2d 86, 101, 630 N.W.2d 141, 148 *citing* Wis. Stat. § 70.47(8)(i). If there is credible evidence before the board that may in any reasonable view support the assessor's valuation, that valuation must be upheld by the board. *State ex rel. N. Shore Dev. Co. v. Axtell*, 216 Wis. 153, 157, 256 N.W. 622, 624 (1934). Notably, "an assessment needs no support by evidence in the first instance, but must stand, unless shown to be incorrect by reasonably direct and unambiguous evidence." *State ex rel. Giroux v. Lien*, 108 Wis. 316, 318, 84 N.W. 422, 423 (1900).

The rule conditioning review of an assessment on granting an assessor's reasonable request to view the property is but a specific application of the requirement that a taxpayer challenging an assessment must fully disclose the property subject to assessment or be estopped from challenging the assessment. *See, e.g., Hermann v. Town of Delevan*, 215 Wis.2d 370, 394, 572 N.W.2d 855 (1998) (noting that "[t] he tax appeal administrative procedures of chs. 70 and 74 of the Wisconsin Statutes are a highly evolved and carefully interwoven set of statutes providing a comprehensive remedy for individuals seeking redress of excessive assessments" and enforcing § 70.47(7)'s express condition precedent and estopping plaintiff from challenging the assessment)

The statutes even explicitly state that "[n]o person shall be allowed in any action or proceeding to question the amount or valuation of property unless ... such person in good faith present[s] evidence to [the board of review] in support of such objection[] **and [makes] full disclosure before said board, under oath of all of that person's property liable to assessment in such district and the value thereof.**" Wis. Stat. § 70.47(7)(a). (Emphasis added). Based on the statute, a property owner waives his or her right to appeal an assessment if the property owner does not make "full disclosure" of all property liable to assessment.

The requirement of full disclosure of taxable assets as a precondition to challenging an assessment is not unique. An almost identical estoppel provision has been consistently applied in tax assessments of personal property and income. *See, e.g., Westby v. Bekkedal*, 172 Wis. 114, 121-22, 178 N.W. 451, 454 (1920) (taxpayer who did not comply with statutory requirement to attend hearing and disclose all income subject to assessment was estopped from challenging the assessment); *see also State ex rel. Foster v. Williams*, 123 Wis. 73, 75, 100 N.W. 1052, 1052 (1904) (1903 Wis. Laws ch. 284, § 2, barred the taxpayer from questioning the board's valuation because she had not made full disclosure before the board, under oath, of all of her personal property liable to assessment and the value thereof.)

Justice Dodge explained, more eloquently than we have, the rationale behind this estoppel rule, which applies full-force to this case:

> Though one may doubt the wisdom of the inquisitorial methods necessary to even approximate equality in discovery and assessment of such class of property, we must recognize that the attempt at such result imposes work of utmost difficulty on the public officers charged therewith. Assuming, as we must, that they honestly attempt to perform their duty, they and the public are entitled that they shall not be successfully attacked in court without full and frank disclosure from the taxpayer of the superior knowledge which he necessarily has upon the subject. It is perhaps utopian to expect of human selfishness voluntary original information of the amount of such invisible and intangible assets upon which the law would burden the owner with taxation, but when one presents himself to give evidence against the amount which the assessor has fixed in the light, or obscurity, which necessarily surrounds him, it is but right that the taxpayer furnish all the enlightenment in his power without evasion or concealment. . . .

State ex rel. Foster v. Williams, 123 Wis. 73, 76-77, 100 N.W. 1052, 1053 (1904)

Consequently, even if Milewski and MacDonald were allowed to proceed to the board of review, the appeal should be dismissed based on Wis. Stat. § 70.47(7)(a).

IV. Remedy

If this Court strikes any portion of Wisconsin's real estate tax regime, or its implementation, as unconstitutional, the remedy should be an opportunity to challenge the assessment before the Town Board of Review, but without the ability to use any information that they have withheld, *i.e.*, regarding the interior of their home.

Milewski and MacDonald's challenge was never heard by the Board of Review, and allowing them to bypass the Board would be improper. The detailed and comprehensive objection and appeals procedures provided in chapters 70 and 74 were intended to be the exclusive means by which taxpayers may challenge the valuation of real property assessed for taxation.

Hermann v. Town of Delavan, 215 Wis. 2d 370, 381-83, 572 N.W.2d 855 (1998). Those procedures require the challenge to first be heard by the Board of Review before the plaintiffs can proceed in circuit court. *Clear Channel Outdoor, Inc. v. City of Milwaukee*, 2011 WI App 117, ¶ 9, 336 Wis. 2d 707, 805 N.W.2d 582 (stating taxpayers must first "take their beefs to the Board of Review" before the dispute can be brought into circuit court).

Allowing Milewski and MacDonald to now go back and have their hearing before the Board of Review would cure the alleged procedural due process violation, and the past deprivation, if any, will be moot.

Conclusion

The circuit court and court of appeals correctly concluded that Wisconsin's real estate tax regime, as applied here, and in every instance, is reasonable and necessary in service of the Uniformity Clause of the Wisconsin Constitution and does not violate either the Fourth Amendment or the Due Process clause. This Court should, therefore, affirm the court of appeal's decision in its entirety.

Dated this 30th day of November, 2016.

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Dated this 30th day of November, 2016.

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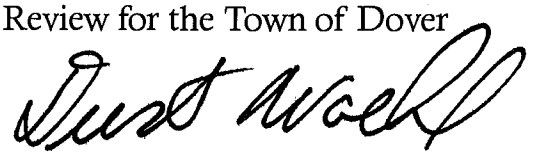

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