STATE OF WISCONSIN
SUPREME COURT
NO. 2015AP1523

Vincent Milewski and Morganne MacDonald,

Plaintiffs-Appellants-Petitioners,

v.

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
Honorable Phillip A. Koss Presiding
Case No. 14-CV-1482

DEFENDANT-RESPONDENT, GARDINER APPRAISAL SERVICE, LLC'S, RESPONSE BRIEF

Mitchell R. Olson, WI Bar No. 1030756
AXLEY BRYNELSON, LLP
2 E. Mifflin St., Ste. 200
Madison, WI 53703
Telephone: 608-257-5661
Facsimile: 608-257-5444
email: molson@axley.com
Attorneys for Defendant-Respondent,
Gardiner Appraisal Service, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND CONSTITUTIONS

OTHER AUTHORITIES

STATEMENT OF THE CASE

The Fourth Amendment does not forbid *all* searches, but rather those which are *unreasonable*. *State v. Tullberg*, 2014 WI 134, ¶ 29, 359 Wis. 2d 421, 857 N.W.2d 120. Wisconsin's assessment statutes provide strict limitations on how and when an assessor may enter one's home for the purpose of a property tax assessment. The process set forth by the statutes is reasonable, and does not violate the Fourth Amendment's prohibition against *unreasonable* searches.

At the heart of Petitioners Vincent Milewski and Morganne MacDonald's (hereinafter collectively referred to as "Claimants") claims is their belief that Wisconsin's requirement that the Town of Dover (the "Town") and Gardiner Appraisal Service, LLC ("Gardiner") base its appraisal on "actual view" of their home's interior violates their Fourth Amendment right to be free from unreasonable searches. Claimants' assertions rest on a mistaken understanding of the Fourth Amendment and seek to impose a

bright-line rule that, if adopted by this Court, would invalidate Wisconsin's long-standing property tax assessment statutes.

Gardiner contracted with the Town to perform a revaluation of all real property in the Town. Gardiner strictly abided by the procedures set forth in the Wisconsin Statutes and Wisconsin Property Assessment Manual, including notification of all property owners that an interior view of their property was required, and if access were not allowed, the property owner waived their right to contest the assessment for their property before the Board of Review.

Claimants refused to allow Gardiner to inspect the interior of their home. Without the information available from an interior view of Claimants' home, Gardiner made an estimated appraisal based on well-established principles in the appraisal field. As a result of Claimants' refusal to allow Gardiner to view the interior of their home, the Town followed state statute and prohibited them from challenging the assessment at the Board of Review. Claimants then commenced this action against the

Town and Gardiner claiming various violations of their constitutional rights and state law.

STATEMENT OF THE FACTS

I. THE ASSESSMENT PROCESS FOR THE CLAIMANTS' RESIDENTIAL PROPERTY.

Gardiner is a private entity engaged by numerous local governments across the State of Wisconsin to perform assessment services for purposes of property taxes. (R. 29: ¶ 6.) Gardiner for many years has provided such services to the Town located in Racine County. (R. 29: ¶ 7.)

In 2013, Gardiner was acting under a written contract with the Town to perform a revaluation of the entire Town. (R. 29: ¶ 8.) The "Revaluation Contract" between Gardiner and the Town specifies that:

- The Town "desires to obtain an appraisal of all specified real property parcels within the Town of Dover, Racine County…."
- "All work shall be accomplished in general accordance with the standard specifications set up for re-valuation or re-assessment of real and personal property pursuant to Chapter 70 of the Wisconsin Statutes."
- "The project would begin in 2012 and be completed for the 2013 Board of Review."

- "Assessors will view the exterior and interior of all structures unless denied access after mailing a request to owner by certified mail."

(R. 29: Exh. A.)

With respect to the Claimants' residence, an assessor for the Town last viewed the interior of the home in 2004. Claimants had granted permission for inspection at that time. (R. 29: ¶ 9)

The Claimants' assessment, consistent with other properties in the Town, had not changed from 2004 until the 2013 revaluation. (R. 29: ¶¶ 17-18.)

In 2013, Gardiner sent a written notice to Claimants stating that "We must view the interior of your property for the Town wide revaluation program which is in progress." It continued, "An assessor will stop by to view your property on Tues, Aug 20 at 6:10 PM." (R. 29: ¶ 10.)

On August 20, 2013, a representative of Gardiner appeared at the Claimants' residence, 1232 Linden Lane, and sought to inspect the interior of the residence. Claimants denied entry to the interior of the home. (R. 29: ¶ 11.)

Thereafter, Gardiner sent a letter to Claimants dated October 4, 2013, stating: "We have not yet viewed the interior of your building located in the Town of Dover on land identified as tax parcel number, 032022243000, located at 1232 Linden Ln, because you have refused us entry." (R. 29: ¶ 12, Exh. B.) The letter invited Claimants to schedule an appointment to view the property by a date certain. It noted that "[i]f you fail to schedule an appointment your property will then be assessed according to the Wisconsin State Statutes provided below." (*Id.* (quoting from Wis. Stat. §§ 70.32(1) and 70.47(7)(aa).) This letter was sent via Certified Mail by Gardiner. (R. 29: ¶ 12, Exh. B.)

Claimants responded to Gardiner's request with an undated letter admitting that: "Today I received a certified letter from Gardiner Appraisal Service that reiterates their incorrect interpretation of state statutes and threatens to refuse to allow us to appear before the Board of Review if we do not allow them entry into our residence." (R. 29: ¶ 13, Exh. C.) Said letter made

clear that no internal viewing of the residence would be allowed. (*Id.*)

At no time after the October 4th letter did Claimants contact Gardiner to arrange an internal viewing of their residence. No such inspection ever occurred as part of the 2013 revaluation. (R. 29: ¶ 14.)

Gardiner never demanded entry into Claimants' home. All communications respectfully asked for an appointment to enter and assess the home, and explained the consequences of denial under Wisconsin law. (R. 32: ¶ 4.)

Claimants appeared at the Town of Dover Board of Review on November 25, 2013, seeking to object to the assessment on their property. The Board of Review rejected this request, finding that Claimants had refused a reasonable request by certified mail of the assessor to view the property, and therefore waived their appeal rights before the Board of Review. (R. 29: ¶ 15.)

II. THE ASSESSMENT WAS NEITHER RETALIATORY NOR DISCRIMINATORY WITH RESPECT TO CLAIMANTS.

First, Claimants have repeatedly contended that "they were punished for exercising their Fourth Amendment right to be free from unreasonable searches and deprived of any right or remedy to challenge their assessment" and that Gardiner's assessment was retaliatory. (*See e.g.* Pet'r Br. at 16-17.) The circuit court, however, correctly concluded that there was no evidence of any intent by Gardiner to assess based on retaliation or coercion. (Pet'r App. 116-17.) The Affidavit of Gregory Gardiner denied such motivation and fully explained the basis for the modified assessment. (R. 29: ¶ 16.) It is common sense that a contracted municipal assessor has no financial or personal reason to treat any property different than another – assessors are not compensated based on the total value of the property assessed, and the valuation does not change the overall tax levy.

Moreover, per the following undisputed excerpts from the Gregory Gardiner Affidavit, there was a legitimate factual and legal basis for the assessment under the specific circumstances:

> Because Gardiner was not permitted into the home in 2013, Gardiner could not accurately determine the effective physical, functional and economic obsolescence of the structure, curable or non-curable. Without the accurate information, it is not possible to do an accurate cost, market, or income approach to valuation. Gardiner could not verify whether any remodeling had been performed in the prior nine (9) years. A single remodel project, like a kitchen or bath, could have significantly increased the value of the home. On average, approximately 70 percent of a home's value is on the interior. Gardiner could not verify whether any such remodeling or improvements were made over those nine (9) years.

(R.29: ¶ 17.)

> The Plaintiff's *improvements* were assessed at $227,800 from 2004 through 2012. In 2013, Gardiner changed the assessment on improvements to $261,000. Gardiner reached this number after considering: (a) the possibility of remodeling over a nine (9) year period which was not disclosed and could not be verified; (b) an inability to determine if the effective age of the home increased or decreased; (c) reasonable assumption that homes in which no inspection is permitted will have less increase in effective age than average; (d) that it is not fair to assume that there have been no improvements for any home where access has been denied; (e) that assessed values did increase in 2013 for many homes in the Town of Dover and the overall assessed value of improvements increased in 2013 over the prior year; and (f) a thirteen percent increase in value from 2004 to 2013 is not uncommon.

(R.29: ¶ 18.)

Claimants' only "evidence" of retaliatory intent is self-created spread sheets of assessment data for the Lorimar Estates Subdivision that they submitted to the circuit court. (Pet'r App. 139-140.) However, Claimants' reference to "fair market value" estimations is irrelevant to the assessment. (R. 31: 2-3, 9-11.) With respect to Claimants' data on "assessed value," Gardiner consistently followed the practice outlined above when addressing the only four (4) properties (out of 41) which had not granted initial inspection access. (R. 32: ¶ 9.)

Claimants' property assessment increased 12.12 percent, while 1232 Lorimar, another property in the subdivision, increased 11.83 percent over the previous assessment. Two other properties experienced an initial increase, but were adjusted once a full inspection was permitted. (Pet'r App. 140; R. 32: ¶ 9.) For example, the assessment for 24219 Lotus was originally set at $232,900 prior to the revaluation. After a 10.65 percent increase to $257,700, the owners allowed Gardiner to view the interior of the property and the assessment was reduced to $200,400. (Pet'r

App. 140; R. 32: ¶ 9.) Similarly, the assessment for 1248 Larkspur was originally $242,100. After an initial 11.65 percent increase to $270,300, the owners allowed Gardiner to view the interior of the property and the assessment was reduced to $235,600. (Pet'r App. 140; R. 32: ¶ 9.)

The undisputed record shows that Gardiner looked at each property individually and adjusted its assessment in accordance with accepted professional protocol. Gardiner did not act excessively or punitively by assessing a property at 10-12 percent higher than the previous assessment. This is a reasonable increase in property value over nine years. Gardiner adjusted each such property differently, on a case-by-case basis. Likewise, the adjustments for the two properties, which elected to allow an inspection, were made on a case-by-case basis, just like the remainder of the 41 properties. (*See* Pet'r App. 140.)

It is pure speculation by Claimants to contend that the subject parcel would receive a decreased assessment in the event the interior had been inspected. Until a professional appraiser is

allowed to view the condition and any new improvements therein, the self-serving opinions of Claimants have no factual basis.

ARGUMENT

Claimants' allegations regarding the constitutionality of Wis. Stat. § 70.47(7)(aa) and § 74.37(4)(a) are not specifically addressed to Gardiner. Nonetheless, Claimants' civil rights claims against Gardiner necessarily depend on whether these statutes are constitutional. Thus, while Claimants have abandoned their 42 U.S.C. § 1983 claims against Gardiner in this Court, Gardiner will address Claimants' arguments regarding the constitutionality of Sections 70.47(7)(aa) and 74.37(4)(a).

I. CLAIMANTS MUST PROVE BEYOND A REASONABLE DOUBT THAT THE STATUTES ARE UNCONSTITUTIONAL.

There is some dispute among the parties as to whether Claimants' claims represent a facial or "as applied" challenge to Sections 70.47(7)(aa) and 74.37(4)(a). Claimants assert that these statutes "are unconstitutional as applied" to them. (Pet'r Br. at 16.) However, as the court of appeals explained,

Claimants' "argument is de facto facial as their reasoning suggests that under any circumstance where the statutes are applied together the result is a constitutional violation." *Milewski v. Town of Dover, et al.*, 2015AP1523, ¶ 12, unpublished slip op. (Wis. Ct. App. May 4, 2016). Gardiner agrees with the court of appeals' conclusion. Regardless of how Claimants may wish to style their constitutional challenge, the thrust of their argument amounts to a facial challenge to Sections 70.47(7)(aa) and 74.37(4)(a).

"All legislative acts are presumed constitutional and [the Court] must indulge every presumption to sustain the law. Any doubt that exists regarding the constitutionality of the statute must be resolved in favor of its constitutionality." *Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶ 13, 358 Wis. 2d 1, 851 N.W.2d 337 (citations omitted). 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. This presumption is premised on the fundamental structure of our constitution and respect for the legislature as "a co-equal branch of government." *Dane Cty. Dep't of Human Servs. v. P.P.*, 2005 WI 32, ¶ 16, 279 Wis. 2d 169, 694 N.W.2d 344. Thus, Claimants must do more than cast doubt on the constitutionality of the statutes. *Id.* ¶ 18. Rather, they must establish that Sections 70.47(7)(aa) and 74.37(4)(a) are unconstitutional "beyond a reasonable doubt." *Madison Teachers*, 358 Wis. 2d 1, ¶ 13.

Despite their insistence on framing their challenge as an "as applied" one, Claimants are in effect challenging "the law itself as drafted by the legislature." When one considers the statutes at issue, it becomes clear that Claimants' argument would invalidate the statutes at issue. Section 70.47(7)(aa) states:

> No person shall be allowed to appear before the board of review, to testify to the board by telephone or to contest the amount of any assessment of real or personal property if the person has refused a reasonable written request by certified mail of the assessor to view such property.

Section 74.37(4)(a) is similar and sets forth the conditions precedent to bringing a claim for excessive assessment: "[n]o claim or action for an excessive assessment may be brought under this section unless the procedures for objecting to assessments under s. 70.47, except under s. 70.47 (13), have been complied with." Wis. Stat. § 74.37(4)(a).

The effect of these two statutes is to operate as a bar on any challenge to the assessment of property if the owner has refused a reasonable request to view the property, and is exactly what happened to Claimants here. Claimants do not claim that the statutes were incorrectly applied to them; *they are challenging the fact that the statutes applied at all*. Nor do Claimants cite to any example that would dispute the court of appeals' characterization of their challenge as a facial one. There is no dispute that Claimants' refused Gardiner entry, or that Sections 70.47(7)(aa) and 74.37(4)(a) apply to that refusal. The question for the Court is thus whether Sections 70.47(7)(aa) and 74.37(4)(a) violate the Fourth Amendment and Due Process. This

is undeniably a facial challenge, and Claimants must prove Sections 70.47(7)(aa) and 74.37(4)(a) are unconstitutional beyond a reasonable doubt.

Assuming for the sake of argument that Claimants are correct about their as applied challenge, they still face a similarly heavy burden. 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. While there is no presumption of constitutionality, Claimants must still prove "beyond a reasonable doubt" that the Town and Gardiner have applied Sections 70.47(7)(aa) and 74.37(4)(a) unconstitutionally. *Id.*

Claimants do not address their burden proof, yet it is essential to their claim. They cannot prove that Sections 70.47(7)(aa) and 74.37(4)(a) are unconstitutional beyond a reasonable doubt, nor can they prove beyond a reasonable doubt that the Town and Gardiner applied them in an unconstitutional

manner. At best, Claimants have raised an interesting *policy* question regarding how best to properly assess real property for tax purposes, but that is a question for the legislature to answer, not this Court.

II. A "SEARCH" PURSUANT TO SECTIONS 70.47(7)(aa) AND 74.37(4)(a) IS REASONABLE AND DOES NOT VIOLATE THE FOURTH AMENDMENT.

Claimants focus their Fourth Amendment argument on a mistaken reading of the Amendment's text and history, and conclude that Gardiner's attempt to view the interior of their home for assessment purposes constitutes a clear violation of their right to be free from unreasonable searches. What Claimants miss through all of their rhetoric is that the Fourth Amendment does not prohibit *all* searches by government officials, "it merely proscribes those which are *unreasonable*." *Tullberg*, 359 Wis. 2d 421, ¶ 29 (emphasis added). The procedures outlined by Wisconsin's property tax assessment statutes clearly establish that an interior view is reasonable and does not violate the Fourth Amendment. Thus, no "search"

within the meaning of the Fourth Amendment occurred, and Claimants' allegations must be dismissed.

A. The Focus of the Fourth Amendment is Reasonableness.

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures." U.S. Const. Amend. IV (emphasis added). "The touchstone of the Fourth Amendment is *reasonableness*." *State v. Purtell*, 2014 WI 101, ¶ 21, 358 Wis. 2d 212, 851 N.W.2d 417 (emphasis added); *see also State v. Sumner*, 2008 WI 94, ¶ 20, 312 Wis. 2d 292, 752 N.W.2d 783; *Tullberg*, 359 Wis. 2d 421, ¶ 29. By its plain terms, the "Fourth Amendment affords protection only against searches that are unreasonable." *Purtell*, 358 Wis. 2d 212, ¶ 22. When determining whether a particular search is reasonable, the inquiry is focused on the totality of the circumstances, not bright-line rules. *Sumner*, 312 Wis. 2d 292, ¶ 20.

Claimants ignore the principle of reasonableness, and instead focus solely on the location of the search. While it is true

that, "when it comes to the Fourth Amendment, the home is first among equals," this does not eliminate the reasonableness inquiry. *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013). Indeed, "reasonableness *is always* the touchstone of Fourth Amendment analysis." *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016) (emphasis added). Where the home is concerned, the Fourth Amendment protects "the right of a man to retreat into his own home and there be free from *unreasonable* governmental intrusion." *Jardines*, 133 S. Ct. at 1414 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)) (emphasis added). This is an important distinction which Claimants ignore. By focusing so narrowly on the fact that Gardiner requested to view the interior of their home, as required by state statute, Claimants would effectively read the reasonableness requirement out of the Fourth Amendment.

This Court has recently stated that "the reasonableness of any search is considered in the context of the individual's legitimate expectations of privacy." *Purtell*, 358 Wis. 2d 212,

¶ 21. The context of the search, and the corresponding governmental intrusion, is necessary to understanding whether the search is reasonable, and therefore permissible under the Fourth Amendment. This contextual, "totality of the circumstances" approach is evident by the carefully drawn exceptions to the warrant requirement which recognize that, in certain situations, the government may enter one's home, or even intrude upon one's person, without violating the Fourth Amendment. *See State v. Sobczak*, 2013 WI 52, ¶ 1 347 Wis. 2d 724, 833 N.W.2d 59; *Tullberg*, 359 Wis. 2d 421, ¶ 5.

Here, the "search" in question is an intrusion into the home for the purposes of a tax assessment, which undoubtedly implicates "legitimate expectations of privacy." Claimants would have the Court end the analysis here, and declare that no warrantless entry into the home can be justified. However, the fact that the Fourth Amendment is implicated "is the beginning point, not the end of the analysis." *Maryland v. King*, 133 S. Ct. 1958, 1969 (2013). Even though searches "inside a home without

a warrant are presumptively unreasonable," the "ultimate touchstone of the Fourth Amendment" remains whether the search in question is *reasonable*. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

There is no one-size-fits-all approach to Fourth Amendment searches. Despite Claimants' best efforts, this fact does not change simply because the search at issue involves entry into their home. But simply acknowledging that the "touchstone of the Fourth Amendment is reasonableness" does not help answer whether a particular search is, in fact, reasonable. In *Camara v. Municipal Court of San Francisco*, the principal case on which Claimants rely, the Supreme Court held that "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 v. Municipal Court of San Francisco*, 387 U.S. 523, 536-37 (1967) (emphasis added).[1]

[1] Contrary to Claimants' attempt to cabin *Camara* as establishing a bright-line rule, the Court did not alter the reasonableness test for the Fourth Amendment. This is evident by the Court's decision in *Wyman v. James*, 400 U.S. 309 (1971), which was decided four years *after Camara*. In

Camara addressed the issue of administrative searches for the purpose of conducting "routine annual inspections for possible violations of [San Francisco's] Housing Code." *Id.* at 526. In assessing whether such searches were reasonable, the Court considered the government's purpose in enforcing the building codes and determined that "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." *Id.* at 537. However, the Court also noted that such inspections "jeopardize 'self-protection' interests" of the

---

Wyman, the Supreme Court considered a Fourth Amendment challenge to mandatory in-home visits from a caseworker as part of New York's welfare system. *Wyman*, 400 U.S. at 310. The Court explicitly discussed *Camara* to highlight the importance of the rights at stake:

> When a case involves a home and some type of official intrusion into that home, as this case appears to do, an immediate and natural reaction is one of concern about Fourth Amendment rights and the protection which that Amendment is intended to afford. Its emphasis indeed is upon one of the most precious aspects of personal security in the home.

Id. at 316. Nevertheless, the Court determined that *Camara*'s holding was not at issue because the in-home visits were not a search "in the Fourth Amendment meaning of that term." *Id.* at 317. An important factor for the Court was that "the visitation in itself is not forced or compelled, and that the beneficiary's denial of permission is not a criminal act." *Id.* The same is true for the present case and markedly different from the search in *Camara*.

homeowner because "fire, health, and housing codes are enforced by criminal processes." *Id.* at 531. A violation of such codes could lead to a fine or criminal complaint, and even the refusal to admit the inspection officer was itself a crime. *Id.*

Due to the level of intrusion in *Camara*, an intrusion that carried potential fines and criminal penalties, the Court determined that a warrant was necessary to gain entry if the homeowner refused to consent to a search. *Id.* at 538. Nevertheless, the Court stressed "the controlling standard of reasonableness" and did not draw a bright-line that foreclosed all warrantless entries into a home. *Id.* at 539. Thus, this Court must consider the government's need to conduct the "search" in question in light of the level of intrusion on the property owner's privacy. *See Purtell*, 358 Wis. 2d 212, ¶ 21 (holding that "the reasonableness of any search is considered in the context of the individual's legitimate expectations of privacy").

B. The Wisconsin Statutory Framework Creates a Reasonable System of Assessment and Furthers a Compelling Government Interest.

Gardiner's requested entry into Claimants' home was "neither personal in nature nor aimed at the discovery of evidence of crime" or enforcement of any regulatory scheme. *Camara*, 387 U.S. at 537. Rather, the request was based on the Town's "requirement to comply with the uniformity clause of the Wisconsin Constitution." *Milewski*, 2015AP1523, ¶ 19. As the court of appeals concluded below, "[t]he interior view of the home is one of the most important pieces of evidence that the tax assessor must consider when making an assessment. No other means are as effective to provide an accurate valuation." *Id.* Further, the "intrusion on the homeowner is relatively low as the homeowner is provided advanced notice and an opportunity to reschedule the viewing." *Id.* If one considers the history and purpose of tax assessment in Wisconsin, the court of appeals' conclusion is undoubtedly correct.

1. Actual view of property for assessment purposes has a long history in Wisconsin.

At least as early as 1868, Wisconsin statutes required assessors to value real and personal property on the basis of "actual view." *Marsh v. Bd. of Supervisors*, 42 Wis. 502, 514 (1877). In *Marsh*, the Court explained at length the importance of a uniform tax system, and that the manner in which assessments are conducted is essential to uniformity. *Id.* at 509-10. The Court held that "a tax, to be valid under the constitution, must proceed upon a regular, fair and equal assessment of the property to be taxed, made by the officers, in the manner and with the securities and solemnities provided by statute." *Id.* at 509. The *legislature* may modify the manner in which the assessment is made, "but no statute can dispense with assessment, or with its essential fairness and equality. For, without these, taxes cannot go upon a uniform rule." *Id.* at 509-510. The Court also concluded that requirements such as actual view of the property and enumeration of the factors the

assessor must consider help ensure "an equal and faithful assessment of all property subject to taxation." *Id.* at 514.

The basic principle of uniform assessment has not changed in the nearly 140 years since *Marsh*, and there is no doubt that "actual view" of the property—both inside and out—is necessary to a fair and uniform assessment of the value of the property.

Although Claimants make a novel argument regarding the constitutionality of assessments based on actual view and Sections 70.47(7)(aa) and 74.37(4)(a), that does not mean that Wisconsin's property tax assessment statutes have escaped judicial scrutiny. Literally hundreds of cases by this Court and the court of appeals have interpreted and reviewed these statutes. Many of these cases addressed constitutional due process challenges. *See e.g. Nankin v. Vill. of Shorewood*, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141; *State ex rel. Kappa Sigma Bldg. Ass'n v. Bareis*, 226 Wis. 229, 276 N.W. 317 (1937); *Northbrook Wis., LLC v. City of Niagara*, 2014 WI App 22, 352 Wis. 2d 657, 843 N.W.2d 851. Yet, despite this volume of

case law over the past 148 years, no court has even hinted that Sections 70.47(7)(aa) and 74.37(4)(a) violate the Fourth Amendment or due process.

That no one has challenged the constitutionality of Sections 70.47(7)(aa) and 74.37(4)(a) as Claimants have is striking when one considers that literally hundreds of thousands of properties throughout Wisconsin have been assessed under Chapter 70 every year for at least the last 43 years. If Claimants are correct, then hundreds of thousands of Wisconsinites have been enduring unreasonable searches of their homes each and every year in silence. The lack of other cases raising similar challenges only reinforces the reasonableness of Wisconsin's system.

2. The current assessment statutes provide strict limitations on assessors' conduct.

Today, Wis. Stat. ch. 70 governs property taxation in Wisconsin. Chapter 70 sets out, in great detail, the categories of property subject to taxation, and establishes very specific procedures for the assessment, collection, and objection to

property taxes in Wisconsin. The general directive regarding valuation of real property states:

> Real property shall be valued by the assessor *in the manner specified in the Wisconsin Property Assessment Manual* provided under s. 73.03 (2a) from *actual view* or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

Wis. Stat. § 70.32(1) (emphasis added).

Real property is specifically defined in Chapter 70, and "include[s] not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto." Wis. Stat. § 70.03(1). Thus, when read in the context of Chapter 70, actual view of real property for purposes of assessment necessarily includes view of the interior of the home in order to assess the fair market value of the "buildings and improvements" and "fixtures" located on a particular property. This makes sense as a practical matter as well. If property is to be assessed at fair market value,

represented by "recent arm's length sales," then an interior view of the property is necessary. No one would purchase a home without ever setting foot inside because the value of a property necessarily depends on the condition and quality of the interior improvements.

The mere fact that an assessor is required to base her assessment on actual view of a home's interior and exterior, however, does not give her carte blanche to enter a home whenever she pleases. Rather, Wis. Stat. § 70.05(4m) strictly limits an assessor's ability to enter property for the purpose of conducting an assessment. Per statute, an assessor "*may not* enter upon a person's real property for purposes of conducting an assessment" more than once a year, unless the homeowner consents. Wis. Stat. § 70.05(4m) (emphasis added). A homeowner may also "deny entry to an assessor if the owner has given prior notice to the assessor that the assessor may not enter the property without the property owner's permission." *Id.* The effect of § 70.05(4m) is that assessors may not enter a home

without the owner's consent. There is no mechanism for the assessor to force her way into a home, enlist the aid of law enforcement officers, or otherwise penalize a homeowner for exercising his right to deny entry.

In addition to the restrictions in § 70.05(4m), an assessor may not simply show up at a homeowner's front door and demand to be granted entry. Any request to view the property must be *reasonable* and in writing. Wis. Stat. § 70.47(7)(aa). This requirement is a further check on the conduct of an assessor's actions and helps to ensure that the actual view of the property is conducted in a reasonable and minimally intrusive manner.

3. The requirements of the Wisconsin Property Assessment Manual ensure reasonable and uniform assessments.

The provisions of Chapter 70 ensure that assessments are reasonably performed. The Wisconsin Property Assessment Manual ("WPAM")[2], which is specifically mandated by § 70.32(1),

[2] The Affidavit of Gregory Gardiner, at Exhibit E, incorporates the excerpts of the Wisconsin Property Assessment Manual as referenced in this Brief. (R. 29.) Mr. Gardiner's Affidavit with accompanying exhibits is reproduced in Gardiner's Supplemental Appendix.

"serves as the guide for uniform assessment throughout the State." (R. 29: Exh. E: Intro.) The "WPAM is developed and maintained by the Department of Revenue, Office of Assessment Practices per sec. 73.03(2a), Wis. Stat., and is updated on an annual basis." (*Id.*) Per the WPAM, "[t]he statutes require that real … property be valued from actual view or the best information obtainable." (R. 29: Exh. E, p. 14-57); Wis. Stat. § 70.32(1). "In the case of real property, actual view requires a detailed viewing of *the interior and exterior* of all buildings and improvements and the recording of complete cost, age, use, and accounting treatments." (R. 29: Exh. E, p. 14-57 (emphasis added).)

The WPAM requires that the property record for each parcel contain information as to the basement, physical condition of the interior, fireplaces, plumbing fixtures, and the date of most recent interior viewing. (R. 29: Exh. E, p. 5-34.) "It is essential that the assessor perform a thorough, detailed, and objective viewing of each property" which is "field verified and accurate."

(*Id.* at 8-20 to 8-21.) All such data emphasize the need and import of an interior inspection. (*See* R. 29: Exh. E, p. 8-21 to 8-23.)

Appraisers also look to "The Appraisal of Real Estate"[3] to guide their assessment practices. (R. 29: ¶ 22.) "An important part of every appraisal is the description of the type, quality, and condition of the building or buildings on the site and the analysis of the structure's design." (R. 29: Exh. G, p. 219.) "The process of analyzing the building improvements encompasses three interrelated tasks: site visit, building description, [and] description and analysis of architectural style and functional utility." (*Id.*) "In the valuation process, the appraiser gathers much of the information needed to describe and analyze the improvements by personally visiting the site of the real estate:

> Careless or inadequate inspection of the physical characteristics and features of the subject and comparable properties can create difficulties for an appraiser in later phases of the appraisal. For example, if a structural problem is overlooked, the conclusions of all three approaches to value could be meaningless. The goal of the

[3] (R. 29: Exh. G, incorporates excerpts from "The Appraisal of Real Estate" published by the Appraisal Institute, as referenced in this Brief.)

> site visit is identifying the site and building characteristics that create value.

(*Id.*)

"The importance of a site visit should not be underestimated." (*Id.* at 221.) "Much of the primary data an appraiser collects comes from the process of visiting the site and observing the site and improvements." (*Id.*)

Further, the Residential Guidebook for Summary Appraisal Reports[4], emphasizes the need to inspect a premises to evaluate the "effective age," defined as "the age indicated by the condition and utility of the structure. Effective age can be more, less, or the same as actual age. The effective age estimate takes into consideration abuse, neglect, general maintenance, and all other influences on the physical condition of the improvements and is determined by an appraiser's judgment, not through market derivation." (R. 29: ¶ 24; Exh. I at p. 19.)

[4] (R. 29: Exh. I, incorporates excerpts from the "Residential Guidebook for Summary Appraisal Reports," as referenced in this Brief.)

Finally, the "Standard Specifications for Revaluation of General Property Pursuant to Chapter 70, Wisconsin Statutes[5]," provide in part: "The assessor shall inspect the interior of a minimum of 90% of the major buildings of each class of improvements, noting both the interior and exterior features on the proper report card to provide an accurate and complete listing for each improvement." (R. 29: ¶ 25; Exh. J at p. 3: No. 20(c).)

The emphasis on viewing both the interior and exterior of a given property is intended to ensure that the resulting valuation and assessment are uniform. Under Wisconsin's Constitution, "the exercise of the taxing power must be upon a uniform rule; and it is only upon an equal assessment, as the foundation of uniform apportionment, that the taxing power can be put in operation." *Marsh*, 42 Wis. at 509. In order to provide an equal assessment, it is necessary to view both the interior and exterior of a property. *Milewski*, 2015AP1523, ¶ 19. Without an interior view, it would be impossible to accurately and fairly assess the

[5] (R. 29: Exh. J, incorporates the "Standard Specifications for Revaluation of General Property Pursuant to Chapter 70, Wisconsin Statutes," as referenced in this Brief.)

value of a given property, or to ensure that assessments are consistent throughout a town or municipality. Only in this manner can an assessment satisfy the requirement that "all property within a class 'must be taxed on a basis of equality as far as practicable.'" *State ex rel. Hensel v. Wilson*, 55 Wis. 2d 101, 106, 197 N.W.2d 794 (1972).

The provisions of Chapter 70 and the WPAM establish a comprehensive procedure for the assessment of property taxes that is reasonable and fair to property owners, yet still accomplishes the legitimate State interest in collecting taxes. Given the limitations on an assessor's authority to enter a person's property and the strict guidelines she must follow in determining the value of the property, there can be no doubt that an interior view of a property, for the purpose of assessment is reasonable, and thus does not violate the Fourth Amendment.

4. Wisconsin is not alone in requiring actual view of the interior of a property.

Claimants look to other states and their property tax assessment systems as evidence that Wisconsin's system is

unreasonable. (Pet'r Br. at 43.) However, this argument does not show that Wisconsin's system is unreasonable, or unconstitutional. All that it shows is that the specific manner in which property is assessed, and the specific procedures for challenging those assessments are matters of legislative prerogative. It should hardly be surprising that different states have developed different statutory schemes to deal with the issue of property taxes. This merely highlights the policy-oriented nature of the issue before the Court.

For example, Minnesota has a very similar statutory scheme as Wisconsin. Minnesota statutes explicitly grant an assessor the right, "when necessary to the proper performance of duties, enter any dwelling-house, building, or structure, and view the same and the property therein." Minn. Stat. § 273.20. If a property owner wishes to challenge an assessment, then he may challenge the assessment before the Board of Appeal and Equalization, similar to Wisconsin's Board of Review process. *See* Minn. Stat. § 274.01. The Board of Appeal and Equalization,

"[o]n application of any person feeling aggrieved, . . . shall review the assessment or classification, or both, and correct it as appears just." Minn. Stat. § 274.01(b). However, the Board "*may not* make an individual market value adjustment or classification change that would benefit the property if the owner or other person having control over the property has refused the assessor access to inspect the property and the interior of any buildings or structures as provided in section 273.20." *Id.* (emphasis added).

The similarities between the Minnesota procedure and Wisconsin's are illustrative for two points. First, it highlights the reasonableness of the process contained in Chapter 70, and shows that Sections 70.47(7)(a) and 74.37(4)(a) are not outliers that violate the Fourth Amendment or due process. Second, the Minnesota statutes highlight the fact that property tax assessment and collection are legislative policy choices that each state adopts as it sees fit. There is no one-size-fits-all-approach, and the fact that Wisconsin and Minnesota's approach differs from New York or Iowa only reinforces the point made by this

Court in *Marsh*: "the legislature may make and alter at [its] pleasure" the "manner[,] . . . securities[,] and solemnities" by which property taxes are assessed. *Marsh*, 42 Wis. at 509.

C. Wisconsin Property Tax Assessments Are Not Remotely Equivalent to General Warrants.

Again, the guiding principle of the Fourth Amendment is reasonableness. To overcome this settled principle, Claimants make a novel argument regarding the original understanding of the Fourth Amendment, which is misplaced and ignores important distinctions between the colonial general warrants and the assessment process in Chapter 70.

Boiled down, Claimants' argument is that because the British practice of general warrants and writs of assistance were given to tax collectors, then the "chief evil" at which the Fourth Amendment was directed was the warrantless entry into the home *for tax purposes*. (Pet'r Br. at 21-22.) This argument grossly simplifies the issue of general warrants and writs of assistance, and ignores important pieces of our nation's history.

It is undeniable that "[t]he purpose of the Fourth Amendment to the United States Constitution and of Article I, Section 11 of the Wisconsin Constitution 'was to abolish searches by general warrants.'" *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶ 90, 363 Wis. 2d 1, 866 N.W.2d 165. General warrants and writs of assistance authorized British officials to "search wherever [they] chose with nearly absolute and *unlimited* discretion." *Id.* (emphasis added). As a result, the British officers were able "to enter homes, shops, and other places, and in the event the officers encountered resistance, *they could break down doors and forcibly search closed trunks and chests*." *Id.* (quoting *In re John Doe Proceeding*, 2004 WI 65, ¶ 36, 272 Wis. 2d 208, 680 N.W.2d 792) (emphasis added).

As set forth above, Gardiner's authority to enter Claimants' home was severely limited, and it had no ability to enlist the aid of law enforcement to gain entry when it was refused. Gardiner had no authority to force its way inside the home, and once there it could not forcibly search for anything. Likewise,

Gardiner had no authority to arrest Claimants or to enforce any regulatory or criminal codes. The only thing Gardiner was authorized to do was to assess the value of Claimants' home.

To compare Gardiner's authority to that of a British officer armed with a general warrant is a gross mischaracterization. General warrants were not simply designed to collect taxes. They were an authorization for the officer to search wherever, whenever, and for whatever they chose. This virtually unchecked power is what led James Otis to describe general warrants as "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, [and placed] the liberty of every man in the hands of every petty officer." *Boyd v. United States*, 116 U.S. 616, 625 (1886). In stark contrast, Gardiner's authority and power is strictly limited and constrained by Chapter 70.

Claimants correctly point out the importance of *Paxton's Case* from February 1761, and the effect it had in shaping John Adams' attitudes and opinions regarding the proper scope of

government power. (Pet'r Br. at 19-20.) However, Claimants miss the point of what appalled young Mr. Adams and shaped the course of the Fourth Amendment.

As evident from Adams' own description of the general warrant at issue in *Paxton's Case*, a general warrant authorized the holder to enter *any* house, vessel, business, or warehouse with the *required* assistance of the local Sheriff or constable. The Adams Papers: Digital Edition, The Legal Papers of John Adams Vol. 2, 133-34 *available at* http://www.masshist.org/publications/apde2/view?mode=p&id=LJA02p133#133. The officials could then "search and see" whether any contraband or untaxed goods *might* be hidden in a home or business. *Id.* Further, the general warrants explicitly authorized officials "to open any Trunks, Chests, Boxes," or other similar area in order to find the contraband goods. *Id.* Colonial customs officials could also seize the contraband. *Id.* In addition, general warrants, once issued, were valid until six months *after* the King who issued the warrant originally had died. The Adams Papers: Digital Edition,

The Legal Papers of John Adams Vol. 2 at 108, *available at* http://www.masshist.org/publications/apde2/view?id=ADMS-05-02-02-0006-0002-0001#LJA02d034n4.

If Adams and his contemporaries were concerned only with the nature of the warrant issued, then they surely could have accomplished that goal by requiring particularized warrants, authorized by a magistrate, in all cases, as did several early state constitutions. Thomas K. Clancy, *The Framers Intent: John Adams, His Era and the Fourth Amendment,* 86 Ind. L.J. 979, 1027 n.323 (2011). Rather than simply abolish general warrants, Adams' draft of the Massachusetts Constitution defined "a broad right against unreasonable searches and seizures." *Id.* at 1028. James Madison, who drafted the Fourth Amendment, borrowed heavily from Adams' writing. Although Madison's intent was clearly to abolish general warrants, he also defined the right as to be free from only "unreasonable" searches and seizures. *Id.* at 1045.

When considering the history of the Fourth Amendment and the Framers' experience of general warrants, they were concerned not only with the physical intrusion into one's home, but the manner and purpose with which the government entered. General warrants were not simply a means of tax collection, but a violation of basic liberty that "placed the liberty of every man in the hands of every petty officer." *Boyd*, 116 U.S. at 625. The same simply cannot be said for Gardiner's request to view the interior of Claimants' home, or the process outlined in Chapter 70.

III. THE ASSESSMENT PERFORMED BY GARDINER OF CLAIMANTS' PROPERTY WAS REASONABLE.

While it should be clear that the statutory scheme created by Chapter 70 is reasonable, the assessor's actions in a given case must still be reasonable. *See King*, 133 S. Ct. at 1970 (noting that a warrantless search "must be reasonable in its scope and manner of execution"). Hence, a property owner is only prohibited from challenging an assessment if he has refused a

"*reasonable* written request by certified mail of the assessor to view such property." Wis. Stat. § 70.47(7)(aa) (emphasis added).

There is no dispute that Gardiner made a reasonable written request to view Claimants' property. Claimants nonetheless denied that request, and Gardiner was unable to base its assessment on actual view of the property. As a result, the assessment was based on reasonable assumptions regarding the interior improvements of the property. These assumptions are undisputed, and establish a legitimate factual and legal basis for the assessment of Claimants' property.

During the hearing on the parties' cross-motions for summary judgment, the circuit court determined that there was no evidence that Gardiner had based the assessment on any improper motives. (Pet'r App. pp. 116-17.) The circuit also specifically determined that Gardiner's assessment of the property was reasonable. (Pet'r App. p. 116:23.)

Here, Gardiner was denied entry into Claimants' home to conduct the assessment, and was thus forced to make reasonable

assumptions regarding the fair market value of the home using established procedures for the assessment and appraisal of residential property. By virtue of Claimants' refusal to allow Gardiner to view the interior of their home, they were barred from objecting to the assessment. Wis. Stat. § 74.37(4)(a). Gardiner thus did not violate Claimants' constitutional rights, but simply followed the procedures set forth in Chapter 70 as it was required to.

IV. WISCONSIN'S PROPERTY TAX SYSTEM DOES NOT DEPRIVE HOMEOWNERS OF ANY DUE PROCESS RIGHTS.

Claimants are seeking to circumvent a clear statutory limitation on the right to appeal a real property tax assessment. They deliberately rejected the statutorily-required interior inspection of their home, and must accept the consequences of their actions. The law in Wisconsin is clear:

> No person shall be allowed to appear before the board of review, to testify to the board by telephone or to contest the amount of any assessment of real or personal property if the person has refused a reasonable written request by certified mail of the assessor to view such property.

Wis. Stat. §70.47(7)(aa). Claimants lost the opportunity to contest their assessment at the Board of Review because of their refusal of such a request to view their property.

Due process, as guaranteed by the Fourteenth Amendment, protects individuals from the arbitrary acts of government. *Daniels v. Williams*, 474 U.S. 327, 331 (1986); *State v. Smith*, 2010 WI 16, ¶ 14, 323 Wis. 2d 377, 780 N.W.2d 90 (noting that "[t]he touchstone of due process is protection of the individual against arbitrary action of government"). The Due Process Clause "promotes fairness" in government decisions by "requiring the government to follow appropriate procedures" when an individual is deprived of life, liberty or property. *Daniels*, 474 U.S. at 331. "The elements of procedural due process are notice and an opportunity to be heard . . . in an orderly proceeding, adapted to the nature of the case in accord with established rules." *State v. Thompson*, 2012 WI 90, ¶ 46, 342 Wis. 2d 674, 818 N.W.2d 904. This means that if the statutory procedures governing a particular matter provide an

opportunity to be heard "at a meaningful time and in a meaningful manner," then due process is satisfied. *George J. Capoun Revocable Tr. v. Ansari*, 2000 WI App 83, ¶ 17, 234 Wis. 2d 335, 610 N.W.2d 129.

Claimants were well aware of the consequences of their refusal to allow Gardiner to conduct an interior view of the property. That refusal was a clear choice by Claimants, and thus they cannot be said to have been deprived of due process. As the court of appeals concluded, Claimants "were well informed of the repercussions of refusing Gardiner's reasonable request to view the interior of their home, and [yet] chose to abandon their right to challenge the tax assessment." *Milewski*, 2015AP1523, ¶ 21. Claimants clearly had "the 'right' to refuse to allow Gardiner access to their home, but the consequence that flows from the refusal is cessation of the right to challenge the tax assessment and pay without recourse. *There is no due process violation*; the choice belongs entirely to [Claimants]." *Id.* (emphasis added).

The court of appeals' conclusion on this point is correct and consistent with prior case law from this Court. In *Hermann v. Town of Delavan*, the Court concluded:

> The 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. Under this exclusive statutory scheme, an objection before the board of review pursuant to Wis. Stat. 70.47(7) was an express condition precedent to filing the taxpayer's challenging the valuation at which their real property was assessed for taxation. Being a statutory condition precedent, it was necessary for the taxpayers to allege compliance therewith in their complaint. No such objection was alleged. As a result, *there are no conditions under which the taxpayers can recover*.…

Hermann v. Town of Delavan, 215 Wis. 2d 370, 394, 572 N.W.2d 855 (1998) (emphasis added).

Wisconsin courts have made clear that a taxpayer must exhaust his administrative remedies before the Board of Review prior to seeking judicial relief. It is also clear that failure to proceed before the Board of Review is an automatic failure to exhaust administrative remedies. *Clear Channel Outdoor, Inc. v. City of Milwaukee*, 2011 WI App 117, ¶¶ 7-9, 336 Wis. 2d 707, 805 N.W.2d 582.

Claimants knew the consequences of their refusal to allow the interior view of their home. Simply because they "failed to avail [themselves] of the opportunity to object before the Board of Review does not mean [their] right to due process was violated." *Northbrook*, 352 Wis. 2d 657, ¶ 25.

Finally, simply because Claimants were barred from challenging their assessment does not mean that Gardiner was free to assess their property at whatever number it chose. 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.

Claimants brought claims against Gardiner under Sections 70.501 and 70.503 in the circuit court and lost because there is no evidence that the assessment was improper.

Chapter 70 sets forth numerous limitations on the actions of assessors, and clearly lays out the procedure a property owner must follow to challenge an assessment. That procedure was available to Claimants, and they were well aware of the consequences of their refusal to allow an interior inspection of their property. That they chose not to avail themselves of that process is their choice, and it is not a denial of due process.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the court of appeals in all respects.

Dated this 30th day of November, 2016.

AXLEY BRYNELSON, LLP

/s/ MITCHELL R. OLSON
Mitchell R. Olson, SB #1030756
Micheal D. Hahn, SB #1096485
2 East Mifflin Street, Suite 200 (53703)
Post Office Box 1767
Madison, WI 53701-1767
Telephone: (608) 257-5661
Facsimile: (608) 257-5444
molson@axley.com
mhahn@axley.com
Attorneys for Defendant-Respondent,
Gardiner Appraisal Service, LLC

CERTIFICATIONS

I. Certification Of Form And Length

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 8,623 words.

Dated this 30th day of November, 2016.

AXLEY BRYNELSON, LLP

/s/ MITCHELL R. OLSON
Mitchell R. Olson, SB #1030756
2 East Mifflin Street, Suite 200 (53703)
Post Office Box 1767
Madison, WI 53701-1767
Telephone: (608) 257-5661
Facsimile: (608) 257-5444

II. Certification Of Compliance With Rule 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of 809.19(12). I further certify that the electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the Court and served on all opposing parties.

Dated this 30th day of November, 2016.

AXLEY BRYNELSON, LLP

/s/ MITCHELL R. OLSON
Mitchell R. Olson, SB #1030756
2 East Mifflin Street, Suite 200 (53703)
Post Office Box 1767
Madison, WI 53701-1767
Telephone: (608) 257-5661
Facsimile: (608) 257-5444

CERTIFICATE OF SERVICE

Mitchell R. Olson certifies that on November 30th, 2016, three (3) true and correct copies of the Defendant-Respondent, Gardiner Appraisal Services, LLC's Response Brief were placed in the U.S. mail to the following:

Attorney Michael J. Cieslewicz
Attorney Robert J. Lauer
Kasdorf, Lewis & Swietlik SC
One Park Plaza
11270 W. Park Place, 5th Floor
Milwaukee WI 53224

Attorney Thomas C. Kamenick
Attorney Brian W. McGrath
Wisconsin Institute for Law & Liberty
1139 E. Knapp Street
Milwaukee WI 53202-2828

Meagann A. Forbes
Lee U. McGrath
Institute for Justice
520 Nicollet Mall, Ste. 550
Minneapolis, MN 55402

Dated this 30th day of November, 2016.

/s/ MITCHELL R. OLSON
Mitchell R. Olson, SB #1030756