

**FILED
12-10-2019
Walworth County
Clerk of Circuit Court
2019CV000759
Honorable Daniel S.
Johnson
Branch 2**

STATE OF WISCONSIN CIRCUIT COURT WALWORTH COUNTY

MARY BLACK
1719 Miller Ct.
Lake Geneva, WI 53147,

TAMMY BRODY
436 Elmwood Ave
Lake Geneva, WI 53147,

and

TODD HUEMANN
245 Elmwood Ave
Lake Geneva, WI 53147,

Plaintiffs,

v.

CITY OF LAKE GENEVA
626 Geneva Street
Lake Geneva, WI 53147,

Defendant.

Declaratory Judgment
Case Code: 30701
Case No. 19-CV-

SUMMONS

THE STATE OF WISCONSIN, to each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Clerk of Circuit Court, Walworth County**

Courthouse, 1800 County Trunk NN, Elkhorn, WI 53121, and to the Wisconsin Institute for Law & Liberty, Plaintiffs' attorneys, whose address is **330 E. Kilbourn Ave, Suite 725, Milwaukee, WI 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: December 10, 2019.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW &
LIBERTY

/s/ electronically signed by Donald A. Daugherty

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ATTORNEYS FOR PLAINTIFFS

Parties

2. Plaintiff Mary Black lives in Lake Geneva. Until early November 2019, Mary lived at 500 Fremont Avenue. She recently sold that property and has a contract pending to purchase a house at 1719 Miller Ct, where she will move once the sale is finalized. Mary lives in her home in Lake Geneva for seven months of the year and, during the summer months, rents her home for periods of less than 29 days to third-parties who wish to visit Lake Geneva. As a result, Mary has been, and will be, subject to the ordinance challenged in this lawsuit.

3. Plaintiff Tammy Brody owns a home in Lake Geneva, at 436 Elmwood Avenue. Tammy lives in her home at various times throughout the year, and, in the summer months, rents her home for periods of less than 29 days to third-parties who wish to visit Lake Geneva. As a result, Tammy is subject to the ordinance challenged in this lawsuit.

4. Plaintiff Todd Huemann owns a home in Lake Geneva, at 245 Elmwood Avenue. Todd lives in his home at various times throughout the year, and, in the summer months, rents his home for periods of less than 29 days to third-parties who wish to visit Lake Geneva. As a result, Todd is subject to the ordinance challenged in this lawsuit.

5. Defendant Lake Geneva is a municipality of the State of Wisconsin with its offices and principal place of business at 626 Geneva Street, Lake Geneva, WI 53147. Lake Geneva promulgated and enforces the ordinance that is the subject of this litigation.

Jurisdiction and Venue

6. This case is brought pursuant to 42 U.S.C. § 1983.

7. This Court has subject matter jurisdiction pursuant to Wis. Stat § 753.03 and Article VII, § 8 of the Wisconsin Constitution.

8. Venue in this Court is proper pursuant to Wis. Stat § 801.50(2)(a), (c).

Statement of Facts

9. Lake Geneva Ordinance § 98-206(8)(y) (“the Ordinance”) regulates Lake Geneva homeowners who choose to occasionally rent their homes to third parties. A true and accurate copy of the current version of the Ordinance is attached hereto as Exhibit 1.

10. The Ordinance applies to “all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists and transients.” Ordinance § 98-206(8)(y).

11. While the Ordinance contains a few exceptions (including for “bed and breakfast” establishments), it is broad enough to cover single family homes that are occasionally rented to visitors and tourists.

12. The Ordinance authorizes Lake Geneva, “at all reasonable times” (without any definition or restriction as to what that means) and “upon reasonable notice to the owner” (again without any further explanation) to “enter and examine any building, structure, or premises, for the purpose of ensuring compliance” with the Ordinance. Ordinance § 98-206(y)(1)(e)(i) (“Home Inspection Provision”).

13. The Home Inspection Provision does not require Lake Geneva to obtain a warrant before conducting an inspection, even if the homeowner declines to consent to a warrantless inspection, but instead provides that any homeowner “who refuses to permit, or prevents or interferes with any entry into or upon the premises by any such inspector shall be in violation of this section.” Ordinance § 98-206(y)(1)(e)(i).

14. The Ordinance also prohibits homeowners from renting their property for more than 180 days in a given year. A homeowner who applies for a license under the Ordinance must specify a rental period of up to 180 consecutive days and may not rent their property outside that window. *See* Ordinance § 98-206(y)(1)(c).

15. Although the Ordinance limits the maximum rental period to 180 consecutive days in a given year, the Home Inspection Provision is not limited to the rental period, but applies year-round.

16. Thus, for example, if a homeowner elects to rent out her home for four weeks during the summer, Lake Geneva has the right under the Ordinance to inspect her home without a warrant throughout the year and to fine her if she does not consent to the search.

17. The Ordinance also requires homeowners to maintain a “Guest Register” containing the “true names and addresses” of all guests, as well as records of “each rental” of the property, and to keep these records “intact and available” for one year “for inspection by representatives of the City.” Ordinance § 98-206(y)(1)(c)(x)–(xi) (“Guest Registry Provision”).

18. As with the Home Inspection Provision, Lake Geneva’s Guest Registry Provision does not require city officials to obtain a warrant before inspecting the guest registry or rental records, even if a homeowner declines to consent to a warrantless inspection, nor does it provide any other form of pre-enforcement review by a neutral decision-maker.

19. Each “violation” of the Home Inspection Provision or Guest Registry Provision—which includes merely declining to consent to a warrantless inspection—subjects homeowners to a fine of up to \$1,000, and two or more “violations” allow Lake Geneva to revoke a short-term-rental license. Ordinance § 98-206(y)(1)(f); Lake Geneva Ordinances §§ 1-12; 98-936(2).

20. Finally, the Ordinance requires homeowners who occasionally rent their home for periods of less than 29 days to install a “Knox Box” (essentially a small safe) on the outside of their home to provide the City access to the homeowner’s house keys. Ordinance § 98-206(y)(1)(e)(i). The Ordinance states that the purpose of the Knox Box is “to allow access ... in emergency situations,” but the Ordinance does not define “emergency” or specify who decides

when there is a sufficient “emergency” to justify a warrantless entry using the Knox Box. Nor does the ordinance state that the Knox Box may *only* be used in emergencies, or that only emergency personnel may access the key. In fact, the ordinance says nothing whatsoever about which city officials will have access to the Knox Boxes, and, in turn, access to the keys to private homes.

21. In an October 28, 2019 letter to counsel for Lake Geneva, Plaintiffs’ counsel outlined in detail their objections to the Home Inspection Provision, Guest Registry Provision, and Knox Box Requirement, and provided a draft of this Complaint. In the letter, Plaintiffs asked that Lake Geneva indicate whether it was willing to commit to making mutually-agreeable modifications to its Ordinances to address Plaintiffs’ objections, in order to avoid litigation over them. In a few, subsequent email exchanges between counsel for the parties, Lake Geneva has not given adequate assurance that it is willing to make such modifications, forcing Plaintiffs to file the instant action.

CLAIMS FOR RELIEF

Claim One – Violation of the Fourth Amendment **(Challenge to Lake Geneva’s Home Inspection Provision)**

22. Plaintiffs reallege and incorporate by reference the preceding allegations of the Complaint.

23. The Fourth Amendment to the United States Constitution provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.

24. In *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523 (1967), the Supreme Court held that building inspections are subject to the Fourth Amendment and require either an administrative warrant or some other recognized exception to the Fourth Amendment, such as consent or exigency.

25. *Camara* also established some requirements for administrative inspection warrants. While such warrants do not require probable cause of a violation like a traditional warrant, they must be supported by evidence that “reasonable legislative or administrative standards for conducting an area inspection are satisfied.” 387 U.S. at 538–39.

26. Lake Geneva’s Home Inspection Provision violates Plaintiff’s Fourth Amendment rights, as interpreted in *Camara*, by authorizing warrantless home inspections and penalizing Plaintiffs if they decline to consent to a warrantless inspection.

27. Lake Geneva’s Home Inspection Provision further violates Plaintiff’s Fourth Amendment rights, as interpreted in *Camara*, by failing to include any “reasonable standards” for conducting inspections. For example, the Home Inspection Provision does not limit how frequently Lake Geneva can inspect homes or confine inspections to the period during which the home is available for rent.

28. Given that homeowners may only rent their homes under the Ordinance for up to 180 consecutive days in a given year, Lake Geneva’s inspection authority—even with a warrant—should also be limited to the portion of the year in which the home is available for rent.

29. Another “reasonable standard” would be to limit Lake Geneva to one inspection in a given year.

Claim Two: Violation of the Fourth Amendment
(Challenge to Lake Geneva's Guest Registry Provision)

30. Plaintiffs reallege and incorporate by reference the preceding allegations of the Complaint.

31. In *City of Los Angeles, Calif. v. Patel*, 135 S. Ct. 2443, 2447 (2015), the Supreme Court held that the Fourth Amendment prohibits state and local governments from “requir[ing] hotel operators to make their registries available to the police on demand ... without affording them any opportunity for precompliance review.”

32. Lake Geneva's Guest Registry Provision violates Plaintiffs' Fourth Amendment rights, as interpreted in *Patel*, by requiring Plaintiffs to make their guest registry and rental records available to city officials for inspection upon demand and penalizing Plaintiffs if they decline to consent to an inspection without a warrant or any opportunity for precompliance review.

Claim Three: Violation of the Fourth Amendment
(Challenge to Lake Geneva's Knox Box Requirement)

33. Plaintiffs reallege and incorporate by reference the preceding allegations of the Complaint.

34. The sanctity of the home is “‘the very core’ of the Fourth Amendment.” *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). Indeed, it has become “axiomatic” that “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *State v. Dumstrey*, 2016 WI 3, ¶ 22, 366 Wis. 2d 64, 873 N.W.2d 502; *United States v. U.S. Dist. Court for E. Dist. of Mich., S. Div.*, 407 U.S. 297, 313 (1972). And this “overriding respect for the sanctity of the home [] has been embedded in our traditions since the origins of the Republic.” *Payton v. New York*, 445 U.S. 573, 601 (1980).

35. The City's Knox Box requirement violates Plaintiffs' Fourth Amendment rights "to be secure in their ... houses," U.S. Const. amend. IV, by creating an unreasonable risk that City officials will use the key in the Knox Box to conduct unconstitutional, warrantless searches and by creating an unreasonable security threat to the sanctity of Plaintiffs' homes.

36. This risk comes, in part, from ambiguity in the text of the Knox Box provision. While the Ordinance states that the Knox Box is for "emergency situations," the Ordinance does not define "emergency" or specify who in the City of Lake Geneva gets to decide when there is a sufficient "emergency" to justify a warrantless entry using the Knox Box.

37. Likewise, the ordinance does not explicitly state that the Knox Box may *only* be used in emergencies, or that *only* emergency personnel may access the key.

38. In fact, the ordinance says nothing whatsoever about which city officials will have access to the Knox Boxes, and, in turn, access to the keys to private homes.

39. Moreover, the Knox Box provision violates the Plaintiffs' Fourth Amendment rights merely by requiring the Plaintiffs to give the government a key to their home. While a warrantless entry would be authorized in an emergency, such as during a fire, *e.g.*, *Michigan v. Clifford*, 464 U.S. 287, 293 (1984), the government does not have the power to require homeowners to give the government keys to their homes just in case, at some point in the future, an emergency might arise.

40. No ordinance can guarantee that public officials will always respect constitutional limits, or that city officials will properly secure the keys to the Knox Boxes and prevent their unauthorized use, either by government officials or third parties.

41. Nor can the ordinance protect against the security risk inherent in installing a miniature vault—which might be compromised—on the exterior of a home.

42. Thus, the Ordinance creates an unreasonable risk to the security of Plaintiffs' homes.

43. The Knox Box requirement is also an unconstitutional seizure of Plaintiffs' property, namely, the keys to their homes.

44. The United States Supreme Court has held that, for purposes of the Fourth Amendment, "[a] 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

45. And "[o]ne of the main rights attaching to property is the right to exclude others." *Byrd v. United States*, 138 S. Ct. 1518, 1527 (2018).

46. The City's Knox Box requirement effectively seizes the keys to private homes by eliminating homeowners' right to exclude government access to those keys.

47. Given the Fourth Amendment's emphasis on the sanctity of the home, *e.g.*, *Kyllo*, 533 U.S. at 31; *Silverman*, 365 U.S. at 511; *Payton*, 445 U.S. at 601, seizing the keys to a home is both unreasonable and unconstitutional.

Prayer for Relief

Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor as follows:

- a. Declaring that Lake Geneva's Home Inspection Provision violates the Fourth Amendment to the extent it allows city officials to conduct a building inspection without an administrative warrant (or some other recognized exception to the Fourth Amendment, such as consent or exigency), and to the extent it allows Lake Geneva to penalize homeowners who decline to consent to a warrantless inspection.
- b. Declaring that Lake Geneva may not conduct home inspections, even with an administrative warrant, without some "reasonable standards" to limit the inspection program, such as restricting inspections to one per year and requiring any inspection to be conducted during the portion of the year in which the home is available for rent.

- c. Declaring that Lake Geneva's Guest Registry Provision violates the Fourth Amendment to the extent it allows city officials to inspect a property's guest registry or rental records without an administrative warrant or any opportunity for pre-compliance review (or some other recognized exception to the Fourth Amendment, such as consent or exigency), and to the extent it allows Lake Geneva to penalize homeowners who decline to consent to a warrantless inspection.
- d. Declaring that Lake Geneva's Knox Box provision violates Plaintiffs' Fourth Amendment rights "to be secure in their ... houses." U.S. Const. amend. IV.
- e. Permanently enjoining Lake Geneva from conducting home inspections without an administrative warrant (or some other recognized exception to the Fourth Amendment, like consent or exigency).
- f. Permanently enjoining Lake Geneva from taking enforcement action against a homeowner who declines to consent to a warrantless building inspection.
- g. Permanently enjoining Lake Geneva from conducting home inspections, even with an administrative warrant, without some "reasonable standards" to limit any inspection program.
- h. Permanently enjoining Lake Geneva from conducting an inspection of a homeowner's guest registry or rental records without an administrative warrant or an opportunity for pre-compliance review (or some other recognized exception to the Fourth Amendment, like consent or exigency).
- i. Permanently enjoining Lake Geneva from taking enforcement action against a homeowner who declines to consent to a warrantless inspection of the homeowner's guest registry and rental records.
- j. Permanently enjoining Lake Geneva from enforcing the Knox Box requirement.

k. Order such other relief as may be just and proper.

Dated: December 10, 2019.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW &
LIBERTY

/s/ electronically signed by Donald A. Daugherty, Jr.

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