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MINNESOTA CHECKS IN TO THE JUDICIAL FEDERALISM DEBATE BY EXTENDING PRIVACY PROTECTIONS TO HOTEL GUEST REGISTRY INFORMATION UNDER THE STATE CONSTITUTION—*STATE V. LEONARD*, 943 N.W.2D 149 (MINN. 2020)

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I. INTRODUCTION

In *State v. Leonard*,[1] the Supreme Court of Minnesota reversed a decision of the Minnesota Court of Appeals affirming the district court conviction of John Thomas Leonard for check forgery.[2] Leonard challenged his conviction by arguing that the evidence of check forgery found in his hotel room should have been suppressed because it was the

* J.D., May 2022, Rutgers Law School—Camden. This Comment is dedicated to my mother Lisa and late father Michael, who together showed me how to work hard and never give up. Sincere thanks also to the hardworking editors of the *Rutgers University Law Review*, serving as the Editor-in-Chief of Volume 74 has been the highest honor of my academic career.

1. 943 N.W.2d 149 (Minn. 2020).
2. *Id.* at 152–53.

product of an unlawful search.[3] The Supreme Court of Minnesota held that law enforcement's examination of the guest registry at the hotel Leonard was patronizing at the time of his arrest was a "search" within the meaning of article I, section 10 of the Minnesota Constitution.[4] This is so because the inclusion of a hotel patron's name on a guest registry creates an expectation of privacy in their "sensitive location information" that Minnesota is prepared to recognize as reasonable.[5] Accordingly, in order to conduct a search of the sensitive location information contained in a hotel guest registry, law enforcement in Minnesota must have at least "reasonable, articulable suspicion" of wrongdoing.[6] In so holding, the Supreme Court of Minnesota reaffirmed its commitment to the proposition that article I, section 10 of the Minnesota Constitution provides to its citizens greater protection against suspicionless searches than does the Fourth Amendment of the United States Constitution.[7]

II. STATEMENT OF THE CASE

Since 1937, hotels in Minnesota have been statutorily required to collect certain personal information from guests in order to provide them accommodations—under threat of misdemeanor prosecution for failure to do so.[8] This information includes the name and home address of the guest, as well as that of any person with the guest, and if the guest is traveling by motor vehicle the make, registration number, and other identifying characteristics of the vehicle including license plate number and state of issue.[9] Collected guest information must be retained on file for at least one year and remain "always accessible" to be inspected by the "appropriate authorities."[10] Guests are also required by statute to

3. *Id.* at 152.

4. *Id.* at 159; *see also* MINN. CONST. art. I, § 10 ("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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.").

5. *Leonard*, 943 N.W.2d at 159.

6. *Id.* at 160.

7. *Id.* at 156; *see also* U.S. CONST. amend. IV.

8. *See* MINN. STAT. ANN. §§ 327.10–.13 (West 2020); Act of Apr. 12, 1937, ch. 186, 1937 Minn. Laws. 250–51, https://www.revisor.mn.gov/laws/1937/0/Session+Law/Chapter/186/pdf/.

9. MINN. STAT. ANN. § 327.10 (West 2020).

10. *Id.*; *see also id.* § 327.12 (West 2020) (specifying that such records "shall be open to the inspection of all law enforcement officers of the state and its subdivisions").

provide this information to the hotel or be denied accommodations as well as potentially face misdemeanor prosecution.[11]

These "guest registry" statutes[12] set the stage for the events of August 14, 2015, when police officers arrived at a Bloomington, Minnesota hotel to conduct a hotel interdiction.[13] The officers on that evening were not responding to a call from the hotel nor did they have any individualized suspicion of illegal activity occurring at the hotel at the time of their arrival.[14] Once on the scene, the officers instructed the hotel clerk to provide the guest registry list as well as the name of any guests on it who paid in cash.[15] Pursuant to his statutory duty under the guest registry statutes, the hotel clerk complied with this request and informed the officers that a man had checked into a room for six hours and paid with cash.[16] Using this information and the guest registry, the police identified that guest as John Thomas Leonard and proceeded to run a background check on him which turned up prior arrests for drugs, firearms, and fraud.[17] According to the officers, the combination of Leonard's criminal history, his short duration of stay at the hotel, and his payment in cash provided them with individualized suspicion that he was engaged in unlawful activity.[18] Based on this individualized suspicion, the officers decided to conduct a "knock and talk"[19] at the door of Leonard's hotel room.[20] Leonard answered the door and provided limited consent to search his hotel room, withholding access to his cell phone, laptop, and a file folder in which several checks were visible.[21] At

11. *See id.* § 327.11 (West 2020) (requiring guests to provide hotel operators with the aforementioned personal information); *id.* § 327.13 (West 2020) (stating that "[e]very person" who violates the information reporting requirements of the hotel guest registry statutes "shall be guilty of a misdemeanor").

12. Guest registry statutes are not unique to Minnesota. *See, e.g.*, IND. CODE ANN. §§ 16-41-29-1 to -5 (West 2020); MASS. GEN. LAWS ANN. ch. 140, § 27 (West 2020); N.J. STAT. ANN. §§ 29:4-1 to -2 (West 2020); WIS. ADMIN. CODE ATCP §§ 72.06 (1)(a)(5), 72.16 (2020).

13. State v. Leonard, 943 N.W.2d 149, 153. A hotel interdiction generally refers to strategic "coordination . . . [between law enforcement and] hotel operators to reduce [the rate of] criminal activity in hotels," often with a specific focus on preventing sex trafficking and the use or sale of drugs. *Id.* at 153 n.2.

14. *Id.* at 153.

15. *Id.*

16. *Id.*

17. *Id.* at 153–54.

18. *See id.* at 154.

19. *See generally* Craig M. Bradley, *"Knock and Talk" and the Fourth Amendment*, 84 IND. L.J. 1099, 1099 (2009) ("Under 'knock and talk,' police go to people's residences, with or without probable cause, and knock on the door to obtain plain views of the interior of the house, to question the residents, to seek consent to search, and/or to arrest without a warrant, often based on what they discover during the 'knock and talk.'").

20. *Leonard*, 943 N.W.2d at 154.

21. *Id.*

some point during this preliminary search, Leonard was physically subdued by officers after he tried to flee and the officers then proceeded to secure a warrant to expand the search.[22] Having thereafter secured a warrant, the officers discovered over $2,000 worth of suspicious checks paid to "Spencer Alan Hill," check-printing paper, and over $5,000 in cash.[23]

Based largely on the evidence discovered in Leonard's hotel room, the State charged him with two counts of check forgery.[24] Prior to trial Leonard argued that the evidence discovered in his hotel room should be suppressed on two grounds.[25] First, he argued that the officers' suspicionless examination of the hotel guest registry violated his rights under article I, section 10 of the Minnesota Constitution.[26] In making this argument, Leonard emphasized the Supreme Court of Minnesota's previous holding that law enforcement must have "more than generalized suspicion to justify intrusion into the private affairs of Minnesotans."[27] Moreover, according to Leonard, the Bloomington hotel he was patronizing was targeted for interdiction because of its frequent use for drug trafficking and prostitution and, as a result, the police were there—by definition—on the basis of generalized suspicion.[28] Second, Leonard argued that the evidence collected from his hotel room must be suppressed because it was the direct result of the unlawful search of the guest registry.[29]

The district court, while acknowledging that article I, section 10 of the Minnesota Constitution prohibits unreasonable searches, found that Leonard failed to meet his burden in proving that he had a reasonable expectation of privacy in his hotel registry information.[30] More specifically, that court applied the third-party doctrine[31] in finding that

22. *Id.*

23. *Id.* Notably, there is a discrepancy between the majority and dissenting opinions in their respective descriptions of the facts surrounding the knock and talk. *Compare id.* (noting Leonard's limited provision of consent to the preliminary search of the hotel room and that he was physically subdued by officers prior to their obtaining a warrant), *with id.* at 164 n.3 (Gildea, C.J., dissenting) (noting only that "Leonard answered the door, identified himself, and invited officers into his hotel room. One officer subsequently obtained a warrant to expand the search.").

24. *Id.* at 154 (majority opinion).

25. *Id.*

26. *Id.*

27. *Id.* (citing Ascher v. Comm'r of Pub. Safety, 519 N.W.2d 183 (Minn. 1994)).

28. *Id.*

29. *Id.*

30. *Id.* at 154–55.

31. The third-party doctrine holds that an individual has no reasonable expectation of privacy under the Fourth Amendment in information voluntarily conveyed to a third party. *See* United States v. Miller, 425 U.S. 435, 443 (1976). For a more robust discussion of this

Leonard abandoned all reasonable expectation of privacy he may have had in his registration information when he provided it to the hotel clerk.[32] Analogizing Leonard to the defendant in *United States v. Miller*, the district court held that just as a customer has no reasonable expectation of privacy in their banking information, a hotel patron likewise has no constitutionally protected privacy interest in their guest registration information.[33] After the district court denied Leonard's motion to suppress the evidence found in his hotel room, Leonard was convicted in a bench trial and received a seventeen month presumptive prison sentence.[34] On appeal, Leonard argued that the district court erred in denying his motion to suppress, specifically taking exception with that court's analogy to *Miller* and claiming that hotel registry information is distinguishable from banking information, as well as reasserting his argument that such evidence was a product of the suspicionless search of the guest registry.[35] The Minnesota Court of Appeals rejected Leonard's arguments and upheld the district court's denial of his suppression motion, also relying primarily on the third-party doctrine in finding that Leonard forfeited any reasonable expectation of privacy he may have had in the registry information when he provided it to the hotel.[36] The Supreme Court of Minnesota granted review.

III. BACKGROUND

In many respects, the jurisprudential debate between the majority and dissent in *Leonard* is a microcosm of a larger debate that has raged in the courts and in academia for nearly half a century. That debate concerns the circumstances under which it is appropriate for state high courts to interpret their state constitutions to provide more expansive protection to its citizens than does the United States Constitution. This section first provides some history and context on that debate and then

doctrine, see generally Orin S. Kerr, *The Case for the Third-Party Doctrine*, 107 MICH. L. REV. 561 (2009) (explaining the origins of the third-party doctrine and defending it from various criticisms by Fourth Amendment scholars).

32. *Leonard*, 943 N.W.2d at 154.

33. *See id.*

34. *Id.* at 154–55.

35. *Id.* at 155. Leonard also added an argument on appeal attacking the state constitutionality of the guest registry statutes themselves, claiming that the phrase "shall be open to the inspection of all law enforcement officers" authorized law enforcement to conduct suspicionless searches. *Id.* (citing MINN. STAT. ANN. § 327.12 (West 2020)).

36. *Id.*

proceeds to examine how the relevant theories and methodologies were applied in Minnesota search and seizure cases prior to *Leonard*.

A. Expanded Rights Under State Constitutions and the "New Judicial Federalism"

The concept of state high courts interpreting their state constitutions to provide more expansive protections than those guaranteed by the Federal Constitution is widely referred to as the "New Judicial Federalism."[37] The New Judicial Federalism came into force during the 1970s, following the Supreme Court's selective incorporation of most of the Bill of Rights into the Fourteenth Amendment to make them binding against the states.[38] This, in combination with the advent of the Burger Court and its perceived shift away from the Warren Court's amenability to arguments centered on individual rights, caused advocates to begin seeking vindication of such rights in state constitutional theory.[39] Indeed, while this new frame of legal rights argumentation, reasoning, and adjudication burst onto the scene[40] and enjoyed the support of such prominent figures as Justice William J. Brennan, Jr.,[41] it was not without its detractors.[42]

From its inception, the New Judicial Federalism encountered judges and legal commentators who questioned the "legitimacy of independent state constitutional decisions."[43] Moreover, those state high court judges who did extend the legal rights of their citizens under state constitutions were often met with "[c]harges of unprincipled, result-oriented decision

37. ROBERT F. WILLIAMS, THE LAW OF AMERICAN STATE CONSTITUTIONS 114 (2009) ("The term describes the fact that state judges in numerous cases have interpreted their state constitutional rights provisions to provide *more* protection than the national minimum standard guaranteed by the [F]ederal Constitution.").

38. *Id.* at 113.

39. *Id.* at 115 (citing G. Alan Tarr, *The Past and Future of the New Judicial Federalism*, 24 PUBLIUS: J. FEDERALISM 63, 72–73 (1994)).

40. One study found that between 1977 and 1986, there were no less than 217 decisions affirming individual rights based upon state constitutional provisions, representing an increase of 131 percent in such decisions as compared to the period of 1950–1977. *See* Ronald K. L. Collins, Peter J. Galie & John Kincaid, *State High Courts, State Constitutions, and Individual Rights Litigation Since 1980: A Judicial Survey*, 13 HASTINGS CONST. L.Q. 599, 600 (1986).

41. *See* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977) ("State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.").

42. *See* WILLIAMS, *supra* note 37, at 127–30.

43. *Id.* at 138.

making."[44] This interplay between judges and commentators who view the New Judicial Federalism as a legitimate exercise of state judicial power and those who do not has caused the actual practice of state constitutional expansion of individual rights to take different forms in different states.[45] Professor Robert F. Williams, a leading scholar on state constitutional law and the New Judicial Federalism, has identified at least five methodologies state high courts have employed in approaching issues of judicial federalism.[46]

The first such methodology is known as the "primacy" approach.[47] This approach—contrary to what its name might suggest—calls for a court to first consider and resolve all "subconstitutional" state law claims before approaching any claims brought under the state constitution.[48] Once all subconstitutional claims are addressed, any residual state constitutional claims may be considered and only after that, should any issue or issues remain unresolved, may the court resort to the Federal Constitution for resolution.[49] Second is a "supplemental" or "interstitial" approach, which Professor Williams describes as the "exact opposite" of the primacy approach.[50] Courts employing a supplemental approach first evaluate any and all claims brought under the Federal Constitution and only if such federal claims fail does the court proceed to examine state constitutional claims to determine if it should extend those rights beyond the failed federal ones.[51] Third, many state high courts approach the question by seeking to establish "criteria or factors to *justify*" any extension of rights under the state constitution that would diverge from federal precedent.[52] Fourth, under a "dual sovereignty" approach a court examines both the federal and state constitutions together, even if the

44. *Id.*

45. *See id.* at 138–39. It should be noted, however, that this practice is today "an accepted, albeit still sometimes controversial, feature of our jurisprudence." *Id.* at 138. *Leonard* is a great example of the fact that despite the New Judicial Federalism's general acceptance in the twenty-first century, it is still hotly debated in some instances. *See* State v. Leonard, 943 N.W.2d 149, 155–56 (Minn. 2020).

46. WILLIAMS, *supra* note 37, at 140–46, 190–232.

47. *Id.* at 140–41.

48. *Id.*

49. *Id.* (citing State v. Moylett, 836 P.2d 1329, 1332 (Or. 1992); State v. Thompkin, 143 P.3d 530, 534 (Or. 2006)).

50. *Id.* at 142.

51. *Id.* Should the federal claims succeed in the first instance, then the decision is considered based on federal law and thus subject to appellate review up to the Supreme Court level. *Id.*

52. *Id.* Minnesota generally employs such an approach, although *Leonard* seems to contain elements of both the primacy and criteria approaches. *See infra* Section III.B and note 71.

state constitution examined alone would provide the asserted right.[53] Finally, other state high courts engage in what has been referred to as "lockstepping," in which such courts consistently or uniformly adopt and apply federal constitutional doctrine in interpreting its state constitution.[54]

*B. State Constitutional Methodology in Minnesota Search and Seizure Cases pre-*Leonard

It has been remarked that issues of search and seizure "constitute[] probably the single most important area of state constitutional law," and as such have been at the center of the New Judicial Federalism.[55] The reasons for this are largely intuitive, but include the higher visibility of criminal practice due to liberty interests being at stake and the fact that adjudication of a search and seizure issue can often be dispositive of an entire criminal case.[56] Less intuitive are the special state interests in criminal law identified by the late Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court.[57] These include state high courts' interest in providing uniformity in the exercise of their supervisory power over trial courts and procedural rules, as well as the simple fact that criminal cases comprise a large proportion of state court dockets, providing state judges "special experience and expertise" in the area.[58] In any event, Minnesota has been no exception to this trend of the New Judicial Federalism appearing in search and seizure law, although it was late to the party.

Article I, section 10 of the Minnesota Constitution, with the exception of the elimination of a comma in 1974, has not been amended since

53. WILLIAMS, *supra* note 37, at 143. This approach, however, can make it difficult to determine whether a court's holding rested on federal or state law grounds. *Id.* at 143–44.

54. *Id.* at 196. Professor Williams has further identified various methodologies within lockstepping, including what he refers to as "unreflective adoptionism," "reflective, case-by-case adoptionism," and "prospective lockstepping," among others. *Id.* at 196–209. The differences between these methodologies-of-a-methodology are extremely nuanced and would be unhelpful to explore further here because, as will be discussed, Minnesota has never been in complete lockstep with its federal counterparts. *See infra* Section III-B.

55. *See* Robert F. Williams, *State Constitutional Methodology in Search and Seizure Cases*, 77 MISS. L.J. 225, 229 (2007).

56. *See id.* at 227–28.

57. *See id.* at 228 (citing Shirley S. Abrahamson, *Criminal Law and State Constitutions: The Emergence of State Constitutional Law*, 63 TEX. L. REV. 1141, 1150 (1985)).

58. *Id.*

1857.[59] Despite the provision's longevity, it remained largely ignored in Minnesota jurisprudence for half a century in favor of the Fourth Amendment, which shares identical wording with the exception of one comma.[60] Indeed, the only notable divergence from federal jurisprudence on search and seizure issues in Minnesota in the first half of the twentieth century included a pair of decisions in which the Supreme Court of Minnesota refused to exclude wrongfully seized evidence at trial.[61] This changed once the U.S. Supreme Court in *Mapp v. Ohio*[62] required state courts to exclude at trial evidence obtained in violation of the Fourth Amendment.[63] Following the *Mapp* decision in 1961, and continuing until roughly the end of the twentieth century, was a period in which Minnesota predominantly consulted federal jurisprudence to address issues of search, seizure, and related admissibility of evidence questions.[64]

Despite its steadfast application of federal doctrine to these issues, even during the advent of the New Judicial Federalism in the 1970s and 1980s, it would be a mistake to characterize the Minnesota Supreme Court as ever being in complete "lockstep" with its federal counterparts. Indeed, even in cases where the court refused to analyze a claim under the Minnesota Constitution or expand individual rights thereunder beyond the Federal Constitution, the court consistently and explicitly recognized its inherent power to do so. While not a search case, a good example of this is *State v. Fuller*,[65] a case in which the court ultimately declined to rest its decision on the Minnesota double jeopardy clause but stated unequivocally that "[i]t is axiomatic that a state supreme court may interpret its own state constitution to offer greater protection of individual rights than does the federal constitution."[66] Ironically, the case

59. Mary Jane Morrison, *The Minnesota Constitution: A Reference Guide*, *in* 34 REFERENCE GUIDES TO THE STATE CONSTITUTIONS OF THE UNITED STATES 1, 85 (G. Alan Tarr ed., 2002).

60. *Id.* at 85–86.

61. *Id.* at 86 (citing State v. Rogne, 132 N.W. 5 (Minn. 1911); State v. Pluth, 195 N.W. 789 (Minn. 1923)). These cases are interesting in that they seem to be more *restrictive* of individual rights interpreted under the Minnesota Constitution as compared to federal doctrine interpreting the Fourth Amendment at the time, the exact opposite of the later trend and holding in *Leonard*. *Compare id.*, *with* discussion *supra* note 45.

62. 367 U.S. 643 (1961).

63. Morrison, *supra* note 59, at 86.

64. *Id.*

65. 374 N.W.2d 722 (Minn. 1985).

66. *Id.* at 726–27. Even with this clear acknowledgment of the legitimacy of the New Judicial Federalism, however, the court in the same opinion included limiting language, the essence of which would later be taken up by the dissenters in *Leonard*. *See id.* ("This, of course, does not mean that we will or should cavalierly construe our constitution more expansively than the United States Supreme Court has construed the [F]ederal

that arguably first established Minnesota's commitment to the New Judicial Federalism in the area of searches was *State v. Carter*,[67] in which the court actually refused to extend broader protections under article I, section 10.[68] This is because the court in *Carter* did two important things. First, it recognized that *on the facts of the case* the defendant's rights under article I, section 10 were coextensive with those of the Fourth Amendment and that *on the facts of the case* it would not recognize broader protection against searches under the Minnesota Constitution, implying that on more appropriate facts it was prepared to recognize such broader rights.[69] Second, and more importantly, the court identified the factors it would consider in determining whether to recognize rights granted by article I, section 10 as broader than those granted by the Fourth Amendment, including its "role of protecting the rights of Minnesota's citizens," and whether application of federal doctrine would lead to a "radical" or "sharp" departure from existing precedent.[70] In doing so, the court in *Carter* established Minnesota as a "factor approach" jurisdiction on issues of judicial federalism[71] and drew the lines upon which the majority and dissent in *Leonard* would later do battle.

[C]onstitution."); State v. Leonard, 943 N.W.2d 149, 167 (Minn. 2020) (Gildea, C.J., dissenting) ("[W]e do not 'cavalierly construe the state constitution more expansively' than the [F]ederal [C]onstitution 'merely because we want to bring about a different end result.' But in this case, the majority does just that." (quoting City of Golden Valley v. Wiebesick, 899 N.W.2d 152, 157 (Minn. 2017) (internal citations omitted))).

67. 596 N.W.2d 654 (Minn. 1999). This is not to be confused with the unrelated 2005 case *State v. Carter* (*Carter II*), 697 N.W.2d 199 (Minn. 2005), which involved police dog sniff searches outside of self-storage units and was relied upon by the majority in *Leonard*. *See infra* Section IV.

68. *Carter*, 596 N.W.2d at 657–58.

69. *Id.* at 656. In addition to the *Carter* court's reiteration that its holding refraining from expanding rights under article I, section 10 was tied to the facts of the case, the court also repeated language from *Fuller* emphasizing its power to recognize such broader rights. *Id.* at 656–57 ("Indeed, as the highest court of this state, we are 'independently responsible for safeguarding the rights of [our] citizens.' State courts are, and should be, the first line of defense for individual liberties within the federalist system." (alteration in original) (quoting *Fuller*, 374 N.W.2d at 726)). Together, these arguably suggest the court was implying it was ready to move to recognize such broader rights on more appropriate facts. Its later decisions doing exactly this, in *Carter II* and *Leonard*, further support this reading. *See infra* Section IV.

70. *Id.* at 657.

71. *See* WILLIAMS, *supra* note 37, at 146–50. One could also argue that Minnesota is a "primacy" approach jurisdiction, as language suggestive of this appears in some opinions, including *Leonard*. *See, e.g.*, *Leonard*, 943 N.W.2d at 152 n.1 ("We do not reach Leonard's Fourth Amendment challenge under the United States Constitution because we hold that Leonard's rights were violated under the Minnesota Constitution.").

IV. THE COURT'S REASONING

In reaching its holding that law enforcement examination of a hotel guest registry constitutes a "search" within the meaning of article I, section 10 of the Minnesota Constitution, the Supreme Court of Minnesota revealed considerable division between its members on fundamental questions of constitutional and criminal law. Indeed, while the primary issue dividing the majority and dissent was ostensibly whether Leonard had a reasonable expectation of privacy (and in *what* exactly), lurking underneath was the larger jurisprudential question: what is the relationship between article I, section 10 of the Minnesota Constitution and the Fourth Amendment of the United States Constitution? On this question, Justice Hudson's majority opinion forcefully reasserted Minnesota's constitutional commitment to providing greater protection for its citizens against unreasonable searches under article I, section 10 than does the Fourth Amendment.[72] Chief Justice Gildea authored a dissenting opinion in which Justices Anderson and McKeig joined that just as forcefully rejected this result, as well as the reasoning used to reach it.[73]

A. The Majority Opinion

The majority began by establishing its standard of review for pretrial motions to suppress: factual findings are reviewed for clear error, and legal determinations are reviewed de novo.[74] Having done this, the majority then stated as an "undisputed" fact that the Bloomington police officers acted without individualized suspicion in conducting the hotel interdiction and search of the guest registry.[75] That the officers lacked individualized suspicion was evidenced by the fact that they did not arrive at the hotel on the evening of the arrest looking for Leonard (or anyone else), they had not been summoned to the hotel by any of its employees or guests, nor did they have any warrants to conduct a search.[76] This finding allowed the majority to proceed with an analysis of the existing protections within Minnesota law against suspicionless conduct of law enforcement.[77]

72. *Leonard*, 943 N.W.2d. at 156.

73. *Id.* at 166–69 (Gildea, C.J., dissenting).

74. *Id.* at 155 (majority opinion) (citing State v. Bourke, 718 N.W.2d 922, 927 (Minn. 2006)).

75. *Id.*

76. *Id.* Tellingly, the majority later described law enforcement's conduct in performing such hotel interdictions as "fishing expedition[s]." *Id.* at 157.

77. *Id.*

The majority first identified *State v. Carter* (*Carter II*)[78] as an illustrative example of a suspicionless police search that violated article I, section 10 but did not offend the Fourth Amendment.[79] In *Carter II*, the defendant had been arrested for possession of a firearm that was found inside a self-storage unit he rented.[80] The probable cause which served as the basis to conduct the search of the storage unit was largely obtained by a drug-detection dog sniff performed outside of the unit.[81] The *Carter II* defendant argued that the dog sniff was a search unsupported by probable cause and sought to have the evidence obtained as a result of that search suppressed as fruit of the poisonous tree.[82] In finding that the district court erred in denying the *Carter II* defendant's motion to suppress the evidence, the Supreme Court of Minnesota first acknowledged that a dog sniff performed outside of a self-storage unit was not a "search" within the meaning of the Fourth Amendment.[83] Despite this, the court in *Carter II* held that a person has a greater expectation of privacy in a self-storage unit under article I, section 10 and that, as such, the dog sniff was a "search" within the meaning of that provision.[84]

Next, the *Leonard* majority noted that Minnesota precedent critical of suspicionless law enforcement conduct is perhaps even more pronounced in the realm of seizures.[85] To support this, the majority cited

78. 697 N.W.2d 199 (Minn. 2005).

79. *Leonard*, 943 N.W.2d at 155–56.

80. *Carter II*, 697 N.W.2d at 202.

81. *Id.* at 203.

82. *Id.* at 204.

83. *Id.* at 209. This was so because an individual's expectation of privacy in the contents of and activities performed inside a storage unit were insufficient to trigger Fourth Amendment protection under federal precedent. *Id.* These expectations generally require the place sought to be protected from search to be one in which the claimant "seeks refuge or conducts frequent personal activities." *Id.* (describing the rationale laid down by the Supreme Court in Kyllo v. United States, 533 U.S. 27, 37–40 (2001), and Illinois v. Caballes, 543 U.S. 405, 408–09 (2005)).

84. *Carter II*, 697 N.W.2d at 210. The court noted specifically that its own Minnesota precedent, as well as relevant cases from Alaska and Pennsylvania, persuaded it that it was advisable to protect its citizens from the "random use" of drug-detection dogs immediately outside of self-storage units in the absence of suspicion of drug-related activity. *Id.* The court's reliance on out-of-state precedent to help it interpret the Minnesota Constitution in *Carter II* is notable, as this practice became a point of contention between the majority and dissent in *Leonard*. *Compare Leonard*, 943 N.W.2d at 156–57 (majority opinion) ("In such cases [of addressing questions of first impression], we can look to other jurisdictions for guidance."), *with id.* at 168–69 (Gildea, C.J., dissenting) ("Given the material differences in the language of our state constitutions, I would not look to Washington to help us decide what interests the Minnesota Constitution should protect.").

85. *See Leonard*, 943 N.W.2d at 156 (majority opinion).

Ascher v. Commissioner of Public Safety,[86] a case wherein the Minnesota Supreme Court found that sobriety traffic checkpoints violate article I, section 10 because under that provision police must have an "objective individualized articulable suspicion of criminal wrongdoing *before* subjecting a driver to an investigative stop."[87] To the *Leonard* majority, the holding in *Ascher* was especially expressive of the court's power to provide greater protection through article I, section 10 because the United States Supreme Court had upheld the constitutionality of sobriety traffic checkpoints under the Fourth Amendment only four years prior.[88]

Having established through *Carter II* and *Ascher* that article I, section 10 provides greater protection against suspicionless law enforcement conduct than does the Fourth Amendment, the majority in *Leonard* next sought to determine whether the Bloomington police officers' suspicionless examination of the hotel guest registry was a search under article I, section 10.[89] To be a search within the meaning of article I, section 10, law enforcement must intrude upon an individual's subjective expectation of privacy that "society is prepared to recognize as reasonable."[90] Moreover, whether an individual patronizing a hotel has such a reasonable expectation of privacy in the "highly sensitive location information"[91] found in the guest registry under article I, section 10 was,

86. 519 N.W.2d 183 (Minn. 1994).

87. *Id.* at 187. In the court's view, "the use of a temporary roadblock to stop a large number of drivers in the hope of discovering evidence of alcohol-impaired driving by some of them" did not meet this standard. *Id.*

88. *Leonard*, 943 N.W.2d at 156 (referring to Michigan Dep't of State Police v. Sitz, 496 U.S. 444 (1990)). *Ascher* was not the first time the Minnesota Supreme Court broke with the U.S. Supreme Court as it relates to issues of seizure under article I, section 10 and the Fourth Amendment. One year prior to *Ascher*, in *In re Welfare of E.D.J.*, the Minnesota Supreme Court rejected the two definitions of "seizure" the U.S. Supreme Court set forth as it relates to the Fourth Amendment in *California v. Hodari*, 499 U.S. 621 (1991), when it found that for purposes of article I, section 10 a person is "seized" in contact with the police once they no longer feel free to leave. *In re* Welfare of E.D.J., 502 N.W.2d 779, 780, 783 (Minn. 1993); *see also* John R. Tunheim, *Criminal Justice: Expanded Protections Under the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 465, 497–98 (1994).

89. *Leonard*, 943 N.W.2d at 156.

90. *Id.* (citing State v. Gail, 713 N.W.2d 851, 860 (Minn. 2006)).

91. *Id.* This phrase—and the protectable information it represents—is perhaps the centerpiece of the debate between the majority and dissent in *Leonard*. Indeed, to the majority the information sought to be protected by Leonard (and ipso facto Minnesotans generally) is an individual's very *presence* at a hotel (as represented by their name on the guest registry), in which there is a reasonable expectation of privacy that is intruded upon by law enforcement's suspicionless search of the registry. *Id.* at 156–59, 157 n.11. To the dissent, the information sought to be protected is merely the guest's literal name and address as contained on the registry, and expectations of privacy in this information are

according to the majority, an issue of first impression in Minnesota.[92] To adjudicate an issue of first impression, the Minnesota Supreme Court will sometimes look to the law of other jurisdictions as a guide.[93] The majority chose to do so in *Leonard* and identified *State v. Jorden*,[94] a case from the Supreme Court of Washington that addressed this issue, as persuasive.[95]

In *Jorden*, the Supreme Court of Washington found that hotel guests have a reasonable expectation of privacy in their registry information because the individual's presence at the hotel may be a matter of sensitivity in-and-of itself.[96] Indeed, an individual may patronize a hotel for a number of perfectly legal, but deeply sensitive, purposes including engaging in a consensual relationship or confidential business dealing, escaping public view as a celebrity, or evading an abuser as a victim of domestic violence.[97] The *Leonard* majority agreed with this reasoning, and added that regardless of what actually occurs in the hotel patron's room, their highly sensitive location information is revealed when the guest registry is inspected without suspicion and thus this information is entitled to privacy protection.[98] For these reasons, the majority held that Minnesotans have a reasonable expectation of privacy in their highly sensitive location information as contained on a hotel guest registry, and that as such a police examination thereof is a "search" within the meaning of article I, section 10.[99]

Following this is perhaps the most unusual part of the majority opinion, in which only two paragraphs are dedicated to addressing the theory the district court, court of appeals, and dissent all found dispositive: the third-party doctrine.[100] The majority found that the court

forfeited under the third-party doctrine once voluntarily given to the hotel. *Id.* at 164–66 (Gildea, C.J., dissenting).

92. *Id.* at 156–57 (majority opinion).

93. *Id.* (citing State v. Willis, 898 N.W.2d 642, 646 n.4 (Minn. 2017)).

94. 156 P.3d 893 (Wash. 2007).

95. *Leonard*, 943 N.W.2d at 157–58.

96. *Jorden*, 156 P.3d 893 at 897–98.

97. *Id.* at 897.

98. *Leonard*, 943 N.W.2d at 157–58 ("That such information would be accessible to the government through a fishing expedition, where the hotel guest was a stranger to law enforcement before the officers' random search, offends our core constitutional principles.").

99. *Id.* at 157–59. The majority also added that it believed Minnesotans would be surprised and concerned to learn that their sensitive location information as contained in a hotel guest registry is readily available to law enforcement even without individualized suspicion. *Id.* at 158–59. The dissent countered that the long history of the guest registry statutes suggest otherwise. *Id.* at 165 n.6 (Gildea, C.J., dissenting).

100. *Id.* at 154–55 (majority opinion); *id.* at 164 (Gildea, C.J., dissenting).

of appeals erred in applying this doctrine for two primary reasons.[101] First, the majority questioned whether Leonard's disclosure of his sensitive location information by adding his name to the guest registry was truly "voluntary" considering that his failure to do so would have deprived him of accommodations and potentially exposed him to misdemeanor prosecution under the guest registry statutes.[102] Second, the court of appeals failed to consider that Leonard's act of disclosing his information to the hotel clerk "transformed his otherwise public data into sensitive location information that society is prepared to recognize as a reasonable privacy interest."[103]

The majority's next task was to establish what level of suspicion law enforcement must have in order to conduct this newly recognized search under article I, section 10.[104] Once again the majority turned to *Carter II*, in this instance as an example of another case in which the Minnesota Supreme Court required a level of suspicion higher than the typical probable cause standard.[105] In *Carter II* the court raised the standard for a dog sniff search performed outside of a self-storage unit to "reasonable, articulable suspicion" because it considered that standard to more properly balance an individual's reasonable expectation of privacy in the area outside their unit with the government's interest in drug detection.[106] Following this reasoning, the court in *Leonard* found law enforcement's suspicionless search of the guest registry to be "at least as intrusive" as the dog sniff in *Carter II*.[107] Moreover, the standard of reasonable, articulable suspicion likewise appropriately balances a hotel guest's reasonable expectation of privacy in their sensitive location information with the government's interest in combating criminal activity in hotels.[108] Importantly, the majority noted that nothing in its holding establishing this standard of heightened suspicion prevents the government from vindicating its interest in combating criminal activity in hotels because partnering hotel operators and their employees may

101. *Id.* at 158–59 (majority opinion). The majority also noted in dicta that the Minnesota Supreme Court has not broadly applied the third-party doctrine to challenges brought under article I, section 10, although the role this observation played in its holding on the point is unclear. *See id.* at 158 n.14 ("In acknowledging that the third-party doctrine relies on well-established principles, we do not decide whether it should apply broadly under Minnesota law more generally.").

102. *Id.* at 158–59.

103. *Id.*

104. *Id.* at 159.

105. *Id.*

106. *Id.* (citing *Carter II*, 697 N.W.2d 199, 211–12 (Minn. 2005)).

107. *Id.*

108. *Id.* at 160.

still report observations of suspect activity.[109] Should such observations provide law enforcement with the now-requisite reasonable, articulable suspicion, then the guest registry may be lawfully inspected.[110] Following this, the majority then quickly dispatched Leonard's challenge to the state constitutionality of the guest registry statutes[111] themselves by pointing out that the statutes address only the duties of hotel owners and guests to supply certain information; they are silent as to what standard law enforcement must meet to access such information.[112] Accordingly, the majority refused to go beyond the statutory language by assuming, as Leonard argued, that the statutes provide an unconstitutional level of police suspicion by removing article I, section 10's prohibition against suspicionless searches.[113]

With the police search of the hotel guest registry held to be a search within the meaning of article I, section 10, the requisite level of police suspicion to perform such a search decided, and the constitutionality of the guest registry statutes themselves upheld, the only practical issue left for resolution by the court was whether the court of appeals committed reversible error.[114] This required adjudication of three issues ubiquitous to criminal procedure: the good-faith exception to the exclusionary rule;[115] the fruit-of-the-poisonous-tree doctrine;[116] and the harmless error rule.[117] First, the court quickly dispatched the government's argument for a good-faith exception to the exclusionary rule because that exception, as applied to the Fourth Amendment, has not been recognized as applicable to article I, section 10 of the Minnesota Constitution.[118] Next, the court set about the more intricate task of

109. *Id.*

110. *Id.*

111. *Id.* Leonard argued for the first time on appeal that the guest registry statutes authorized suspicionless searches by providing law enforcement "unfettered access" to hotel guest registries. *Id.* at 160.

112. *Id.* at 160.

113. *Id.* at 160–61.

114. *Id.* at 159–61.

115. *See* United States v. Leon, 468 U.S. 897, 922–25 (1984).

116. *See* Wong Sun v. United States, 371 U.S. 471, 484–88 (1963).

117. *Leonard*, 943 N.W.2d at 161–63.

118. *See* Tunheim, *supra* note 88, at 496–97 ("[The] 'good faith' exception to the exclusionary rule has been held not to apply to article I, section 10 of the Minnesota Constitution. In Minnesota, evidence obtained in violation of article I, section 10 of the state constitution is suppressed from trial regardless [of] whether the police acted in good faith." (footnote omitted)). More specifically, the court distinguished the narrow exclusionary exception, relied on by the State, that it had previously recognized in *State v. Lindquist* for situations in which law enforcement bases the reasonableness of its actions on "binding appellate precedent." *Leonard*, 943 N.W.2d at 160–61 (citing State v. Lindquist, 869 N.W.2d 863, 876 (Minn. 2015)). The court's recognition of law enforcement searches of hotel guest

evaluating whether the evidence of check forgery obtained in Leonard's hotel room must be excluded as fruit of the poisonous tree—i.e., the unlawful suspicionless search of the guest registry.[119] After setting out the *Warndahl* factors,[120] the court held that this evidence was fruit of the poisonous tree primarily because the evidence could not have been obtained without the search, the entire ordeal occurred within a two-hour period and thus lacked sufficient attenuation, and there were no intervening circumstances, only "logical results" of the initial unlawful search of the guest registry.[121] Finally, the district court's error in admitting the evidence obtained from Leonard's hotel room was not harmless beyond a reasonable doubt because Leonard quite simply could not have been convicted of check forgery absent the forged checks discovered in his hotel room.[122] The court of appeals' decision upholding Leonard's conviction was reversed and the matter was remanded to the district court for further proceedings.[123]

B. The Dissent

Chief Justice Gildea's dissenting opinion immediately established that its primary point of contention was with the majority's holding that Leonard had a reasonable expectation of privacy in his information contained in the hotel guest registry.[124] Equally clear from the dissent's opening salvo was that its own conclusion on this issue—that Leonard did not have a reasonable expectation of privacy in this information—would be reached in a manner both procedurally and substantively different from the majority opinion.[125] To the dissent, this question required a simple two-step analysis: (1) did Leonard exhibit a subjective expectation of privacy in his information contained in the

registries as an issue of first impression, by definition, meant that no binding appellate precedent existed on the issue, making the government's reliance on *Lindquist* "misplaced." *Leonard*, 943 N.W.2d at 160–61.

119. *Leonard*, 943 N.W.2d at 161–62.

120. *Id.* at 161 ("[S]everal factors [] decide whether evidence is fruit of the poisonous tree [in Minnesota, including]: 1) the purpose and flagrancy of police misconduct, 2) intervening circumstances, 3) whether law enforcement would have obtained the evidence without the illegal conduct, and 4) the temporal proximity between the illegal conduct and allegedly resulting evidence." (citing State v. Warndahl, 436 N.W.2d 770, 776 (Minn. 1989))).

121. *Id.* at 162.

122. *Id.* at 162–63.

123. *Id.* at 163.

124. *Id.* (Gildea, C.J., dissenting).

125. *Id.*

guest registry; and (2) if so, was this expectation reasonable?[126] In the eyes of the dissent, Leonard's argument failed on both accounts.[127]

First, Leonard made a conscious, willing decision to provide his name and address to the hotel clerk upon his arrival in order to rent a hotel room.[128] This willing provision of information to a third party necessarily invoked the third-party doctrine, meaning that Leonard could not under law be viewed to have had a subjective expectation of privacy in the information.[129] Indeed, the dissent expressly disagreed with the majority's holding that the third-party doctrine did not apply to the case, although it did not squarely address the majority's reasoning on the issue.[130] More specifically, the dissent focused on the majority's alleged suggestion made in a footnote that the third-party doctrine, as formulated by the Supreme Court in *United States v. Miller*,[131] was limited to that case's facts.[132] Therefore, apart from the dissent's engagement with the majority on the voluntariness of Leonard's provision of his information to the hotel clerk, it did not address the majority's other explicit reasons for not applying *Miller*'s third-party doctrine.[133]

Second, even if Leonard did have a subjective expectation of privacy in his information contained on the hotel guest registry, he did not

126. *Id.* (citing State v. Gail, 713 N.W.2d 851, 860 (Minn. 2006)).

127. *Id.*

128. *Id.* at 164. In a footnote, the dissent countered the majority's contention that Leonard's "voluntary" provision of this information overlooks the legal requirements of the guest registry statutes by saying that its view of Leonard's provision of information as willing was "based on the facts, not on the law." *Id.* at n.1. Those facts included that Leonard chose to provide his real name and address rather than use an alias, and that he chose to conduct his criminal activity at the hotel rather than in the privacy of his home. *Id.*

129. *Id.* at 164.

130. *See id.* at 164–65.

131. 425 U.S. 435 (1976).

132. *Leonard*, 943 N.W.2d at 164–65 (Gildea, C.J., dissenting); *see also id.* at 158–59, 158 n.14 (majority opinion). Presumably, the dissent is referring to the majority's statement in footnote fourteen that "[w]e hold simply that the legal principles underlying *Miller*'s third-party doctrine do not apply to guest registries," although this is not made clear. *Id.* at 158 n.14.

133. *Id.* at 164–65 (Gildea, C.J., dissenting). The dissent does get close to addressing the majority's holding that Leonard's disclosure of this information transformed his public data into "sensitive location information" in footnote three. *Id.* at 164 n.3. However, instead of addressing the majority's reasoning about why the nature of hotels makes this transformation so, the dissent in footnote three simply recounts its understanding of the factual record without explaining its significance. *Id.* Moreover, the dissent purports to directly address this in footnote nine, but again instead of addressing the reasoning pivots by saying the case "is not about Leonard's location or whether his location is 'sensitive.'" *Id.* at 167 n.9.

establish that such expectation was reasonable.[134] Leonard's expectation of privacy in this information was unreasonable for a few reasons, not the least of which to the dissent was that the guest registry statutes had been in force in some form since 1937.[135] This long history suggests that—contrary to the majority's holding—Minnesotans find these statutes reasonable and that law enforcement did nothing unusual in availing themselves of the information made available to them through the statutes.[136] In addition, the actual information contained on the guest registry, Leonard's name and address, is information "widely available in many public formats."[137] Indeed, on this point, the dissent even went so far as to say that because name and address information is so widely available in modern society, it would hold that there simply is no reasonable expectation of privacy in such information.[138]

The dissent then engages the larger jurisprudential issue: the majority's holding that Leonard has broader rights under article I, section 10 than under the Fourth Amendment. Here, the dissent begins by pointing out that, in its view, this issue should not have been raised because the two-step analysis that it applied under *Gail* is applicable to searches under both article I, section 10 and the Fourth Amendment.[139] Moreover, as a matter of construction, the dissent stated that the court "favor[s] uniformity" and should take a "restrained approach" in providing greater protection under the Minnesota Constitution, which in its estimation the majority failed to do in this case.[140] After first complaining that the majority improperly focused on Leonard's activities inside his hotel room rather than his name and address on the registry, the dissent approaches its main issue with the expansion of rights in this case: the majority's reliance on *Carter II* and *Ascher*.[141]

Most simply, the dissent's issue with the majority's reliance upon *Carter II* and *Ascher* as a basis to expand protection under the Minnesota Constitution in *Leonard* was that both cases were distinguishable, albeit for different reasons.[142] First, *Carter II* was distinguishable in that the dog sniff search performed by law enforcement outside of a self-storage

134. *Id.* at 165.
135. *Id.*
136. *Id.*
137. *Id.* Examples of such public formats include government records, phone books, the postal system, and internet databases and directories. *Id.* at 165–66.
138. *Id.* at 166.
139. *Id.* ("That we apply the same reasonable-expectation-of-privacy analysis makes sense because the language of the Fourth Amendment and [a]rticle I, [s]ection 10 of the Minnesota Constitution is identical.").
140. *Id.* at 166–67 (citing Kahn v. Griffin, 701 N.W.2d 815, 828 (Minn. 2005)).
141. *Id.*
142. *Id.* at 167–68.

unit in that case violated reasonable expectations of privacy because it effectively allowed officers to search, or at least detect, activity occurring within the unit without probable cause.[143] This simply was not "comparable in any respect" to Leonard's situation, in which law enforcement's search of the hotel guest registry retrieved only his name and address—information which provided law enforcement no ability in-and-of itself to search within Leonard's hotel room.[144] Next, *Ascher* was distinguishable because it was a seizure case, not a search case, which to the dissent was significant primarily because under that frame of legal analysis, the defendant's reasonable expectation of privacy is not relevant.[145] Moreover, *Ascher* dealt factually with when police may involuntarily stop citizens engaged in the lawful activity of driving for the purpose of "interrogating" them, which was distinct from Leonard's case in which police were acquiring information from a hotel guest registry that was provided voluntarily.[146]

A final tool used in the majority's reasoning that the dissent took exception to was its reliance on a Washington case, *State v. Jorden*,[147] to help it interpret the Minnesota Constitution.[148] To the dissent, the Washington Supreme Court in *Jorden* made the same mistake in finding that its citizens have a reasonable expectation of privacy in hotel registry information that the majority did in *Leonard*, namely focusing on the defendant's activities within the hotel room rather than their actual name and address contained in the registry.[149] Moreover, the Washington Constitution made for a poor example in this case in any event because its relevant language on searches and seizures differs from both article I, section 10 of the Minnesota Constitution and the Fourth Amendment.[150] Finally, the dissent pointed out that relevant precedent in Minnesota instructed that the proper course of action in this case was to refuse to extend broader protections to Leonard under article I, section 10.[151]

143. *Id.* at 167 (citing *Carter II*, 697 N.W.2d 199, 210–11 (Minn. 2005)).

144. *See id.* & n.10.

145. *Id.* at 168 (citing Ascher v. Comm'r of Pub. Safety, 519 N.W.2d 183, 184, 187 (Minn. 1994)).

146. *Id.*

147. 156 P.3d 893 (Wash. 2007).

148. *Leonard*, 943 N.W.2d at 168–69 (Gildea, C.J., dissenting); *see also supra* text accompanying note 84.

149. *Leonard*, 943 N.W.2d at 168.

150. *Id.* at 168–69; *see also* WASH. CONST. art. I, § 7 ("No person shall be disturbed in his private affairs, or his home invaded, without authority of law.").

151. *Leonard*, 943 N.W.2d at 169. The dissent cited numerous examples of instances in which the court declined to extend greater protection to Minnesota citizens under article I, section 10, including in the context of administrative search warrants, searches of garbage containers, collection of DNA samples from convicted felons, and probation conditions

V. ANALYSIS

In finding that law enforcement examination of a hotel guest registry is a search within the meaning of article I, section 10 and holding that such provision provides greater protection than the Fourth Amendment, the majority in *Leonard* engaged in a valid exercise of its inherent power to "interpret its own state constitution to offer greater protection of individual rights" and in doing so "safeguard the rights of [its] citizens."[152] Contrary to the assertions of the dissent, this exercise of state judicial power was adequately supported by Minnesota precedent. However, while the majority appropriately exercised its power to expand individual rights under the Minnesota Constitution, it missed a valuable opportunity to better define the court's approach to issues of judicial federalism. As a result, the future circumstances under which the Minnesota Supreme Court will find it similarly appropriate or necessary to interpret its state constitution as providing more expansive protection than its federal counterpart remain difficult to predict.

As a preliminary matter, the primary reason the dissent failed to recognize that the majority was acting within its power by recognizing law enforcement's inspection of the hotel guest registry as a search under article I, section 10 is due to its dogged refusal to acknowledge the proper scope of inquiry. More specifically, the dissent refused to accept or meaningfully engage with the majority's proposition that Leonard's name and address on the guest registry represent something more significant than simple biographical information that may be available elsewhere.[153] The majority's view is that an individual's presence at a hotel, *regardless of the actual activities performed there*, is sensitive location information worthy of protection because of the *possibility* that legal, but deeply private, activities may occur there and that people reasonably expect this location information to remain private—or at least not be available to law enforcement at will.[154] Numerous times in the dissenting opinion, Chief Justice Gildea attempts to maneuver around this idea that location information in the context of a hotel can have

which permit warrantless searches, among others. *See* City of Golden Valley v. Wiebesick, 899 N.W.2d 152, 167–68 (Minn. 2017) (administrative search warrants); State v. McMurray, 860 N.W.2d 686, 693 (Minn. 2015) (searches of garbage containers); State v. Bartylla, 755 N.W.2d 8, 18–19 (Minn. 2008) (collection of DNA samples from convicted felons); State v. Anderson, 733 N.W.2d 128, 140 (Minn. 2007) (probation conditions permitting warrantless searches).

152. *See* State v. Fuller, 374 N.W.2d 722, 726 (Minn. 1985) (quoting O'Connor v. Johnson, 287 N.W.2d 400, 405 (Minn. 1979)).

153. *Leonard*, 943 N.W.2d at 166, 166 n.8.

154. *Id.* at 157–58 (majority opinion).

substantive privacy value worthy of protection at the societal level outside of the actual activities a particular individual may be committing there on a specific occasion.[155] Most typically, this was done by trying to draw a straight line between the majority's mention of sensitive location information and Leonard's activities in his hotel room, without acknowledging that the majority's reasoning was based on protecting the privacy rights of all Minnesotans in this information from suspicionless searches of this kind.[156] By failing to meet the majority head-on regarding the scope of this inquiry, the dissent missed its own opportunity to force the majority to be more specific about why exactly it was expanding rights under the Minnesota Constitution in this case.

Importantly, this scope of inquiry and the result it led to is entirely consistent with *Carter II* and *Ascher*, upon which the majority primarily relied, and is partly why the dissent's contention that those cases are distinguishable is unconvincing. Indeed, this is particularly so with *Carter II*, in which the court held suspicionless dog sniff searches outside a self-storage unit to violate article I, section 10 despite the fact that the owner of the unit was in fact engaged in illegal activity.[157] This result was possible because the *Carter II* court was basing its inquiry and decision not on the specific defendant's activities inside his storage unit, but by "considering the strength of the expectation of privacy in a self-storage unit and the degree of intrusiveness of a drug-detection dog sniff in the area immediately outside that unit."[158] Likewise, the *Leonard* majority's decision was based not on Leonard's activities inside his hotel room but by considering that "[a] guest's highly sensitive location information is revealed, regardless of what actually occurred in the hotel room."[159] Indeed, this same principle was at work in *Ascher*, wherein the court found that random sobriety traffic checkpoints violate article I, section 10.[160] That determination was not made by considering the actions of the particular defendant at hand who had refused to take a breathalyzer while under suspicion of intoxicated driving—instead the court, as it did in *Leonard*, considered the effect of *seizures of the sort at*

155. *See, e.g.*, *id.* at 164 n.3, 166, 168 n.8, 167 & n.9 (Gildea, C.J., dissenting).

156. *See, e.g.*, *id.* at 166 ("The majority does not address Leonard's expectation of privacy in his name and address and instead focuses on his *presence* at the hotel. Indeed, the majority . . . focuses on the fact that hotel guests sometimes engage in legal but 'deeply private activities' in a hotel room. But the question is not whether Leonard had a reasonable expectation of privacy in his activities inside the hotel room. The question is whether Leonard had a reasonable expectation of privacy in the information in the guest registry." (footnote omitted)).

157. State v. Carter (*Carter II*), 697 N.W.2d 199, 202–03 (Minn. 2005).

158. *Id.* at 210.

159. *Leonard*, 943 N.W.2d at 157 (majority opinion).

160. Ascher v. Comm'r of Pub. Safety, 519 N.W.2d 183, 183–84 (Minn. 1994).

hand on the privacy interests of Minnesota citizens and found it offensive under this scope of inquiry.[161] The *Leonard* court's near-identical holding in the context of searches, a practice governed by the same provision of the Minnesota Constitution, is certainly consistent.[162]

Finally, it must be observed that despite the *Leonard* court's holding being supported by precedent and properly within its inherent judicial powers to effectuate, it does little to help lower court judges, practitioners, and those who study the New Judicial Federalism predict under what circumstances the court may next extend rights under article I, section 10. This is because *Leonard*, much like the decision in *Carter II*, relied predominantly on the court's amorphous duty to "safeguard" the privacy rights of Minnesota citizens from a type of search that it deemed unduly invasive ex post.[163] While both of these decisions do engage in a balancing of the privacy rights of Minnesota citizens with the state government's interest in deterring certain illegal conduct, they do not provide a tremendous amount of insight into what particularly about the searches, outside of their lack of any individualized suspicion, causes them to fail. Certainly, requiring the government to have an individualized suspicion of wrongdoing before subjecting Minnesota citizens to searches does introduce some predictability that will be helpful to judges, law enforcement, and practitioners. However, in situations like those involved in *Leonard* and *Carter II*, where the searches were designed specifically to detect and deter behavior that is notoriously difficult to identify (sex trafficking, drug dealing, firearm possession, and fraud) and thus obtain individualized suspicion, it is easy to see how this standard becomes problematic. Had the *Leonard* court considered its duty to protect the privacy rights of its citizens *in combination with* a more nuanced, explicit analysis like it did in *Ascher*,[164] it would have provided more meaningful guidance and

161. *Id.* at 186–87 ("[W]e have engaged in a judicial determination of the reasonableness of the use of a temporary roadblock to stop a large number of drivers in the hope of discovering evidence of alcohol-impaired driving by some of them and have concluded that it violates Minn. Const. art. I, § 10[.]"). This holding in *Ascher* is especially supportive of the court's power to interpret the Minnesota Constitution in ways more protective of individual rights, as it was directly in tension with the Supreme Court's conclusion upholding sobriety traffic checkpoints under the Fourth Amendment only four years prior in *Michigan Department of State Police v. Sitz*, 496 U.S. 444 (1990).

162. *Leonard*, 943 N.W.2d at 156–58 ("That such information would be accessible to the government through a fishing expedition, where the hotel guest was a stranger to law enforcement before the officers' random search, offends our core constitutional principles.").

163. *See id.*; *see also Carter II*, 697 N.W.2d at 210.

164. In *Ascher*, the court determined that following relevant federal precedent (which it explored in detail) would have resulted in a "radical" departure from its own application of

predictability to judges and law enforcement who seek to deter illegal activity without violating individual privacy rights.[165]

VI. CONCLUSION

In *State v. Leonard*, the Minnesota Supreme Court held that law enforcement's suspicionless examination of a hotel guest registry constitutes a search under article I, section 10 of the Minnesota Constitution. In doing so, the court reaffirmed its commitment to providing its citizens greater privacy protections against unreasonable searches and seizures than does the Fourth Amendment of the United States Constitution. This commitment, moreover, signals that the New Judicial Federalism remains alive and well, and perhaps even growing as Americans become more sensitive to the way their private information is collected by businesses and potentially used by law enforcement. On the other hand, the robust dissent of Chief Justice Gildea suggests that despite the New Judicial Federalism's continued acceptance in the twenty-first century, debates about issues of judicial federalism persist. Ultimately, while advocates of individual privacy rights in Minnesota can and should rejoice over the decision in *Leonard*, it is difficult to predict where the next battle on these issues will be fought, much less what the outcome will be.

federal and state precedent, and for that reason found it more prudent to expand privacy rights under article I, section 10. *See Ascher*, 519 N.W.2d at 186.

165. Admittedly, this more nuanced analysis would have been more difficult in a case like *Leonard* that was one of first impression in Minnesota and has not been ruled on as frequently at the federal and state level as that involved in *Ascher*. *See Leonard*, 943 N.W.2d at 156. In any event, a more transparent analysis would have inured to the benefit of all those with a stake in the outcome.