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NO. 101385-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHIGNTON,
Respondent,

vs.

ULUI LAKEPA TEULILO,
Petitioner.

BRIEF OF WACDL AS AMICUS CURIAE

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A. IDENTITY AND INTEREST OF AMICUS

The Washington Association of Criminal Defense Lawyers (WACDL) seeks to appear in this case as *amicus curiae* on behalf of Petitioner Ului Teulilo. WACDL was formed to improve the quality and administration of justice. A professional bar association founded in 1987, WACDL has approximately 800 members, made up of private criminal defense lawyers, public defenders, and related professionals. It was formed to promote the fair and just administration of criminal justice and to ensure due process and defend the rights secured by law for all persons accused of crime. It files this brief in pursuit of that mission.

B. ISSUES OF CONCERN TO AMICUS

1. Does Washington's 'community caretaking' exception to the Fourth Amendment's warrant requirement survive after the U.S. Supreme Court's decision in *Caniglia v. Strom*, 593 U.S. __, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021), with respect to residential searches?

2. What legal avenues are available to address the underlying concerns and rationales justifying the community caretaking exception, after the exception has been found to be unconstitutional?

C. STATEMENT OF THE CASE

No party disputes the underlying facts of this case: Deputy Black was dispatched to Mr. Teulilo's residence for a welfare check regarding his wife, Ms. Teulilo. Ms. Teulilo had reported to police the prior evening that she was packing up and leaving her husband. After receiving no response from knocking on the door of the Teulilo home, Deputy Black spoke to Mr. Teulilo, who was at work. After this phone call, Deputy Black called his supervisor, Sergeant Caille, who instructed Deputy Black first to open the unlocked door, and, upon receiving no response, to enter the home and justify his entrance as 'community caretaking.' Upon entering the home, Deputy Black

found Ms. Teulilo inside, deceased.

During the pendency of this case, the United States Supreme Court rendered its unanimous decision in *Caniglia v. Strom*, 593 U.S. __, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021), ruling that law enforcement may not justify a warrantless entry into a home under a 'community caretaking' exception to the Fourth Amendment. After the parties briefed the effect of *Caniglia* on Washington's community caretaking exception, the Court of Appeals transferred the appeal to the Washington Supreme Court to address whether the community caretaking exception survives *Caniglia*.

This case presents a narrow issue: whether Washington's community caretaking exception, as applied to a home, violates the Fourth Amendment after *Caniglia*. In light of this narrow scope, WACDL highlights three areas that should assist this Court in

reaching its decision: first, amicus will address how the *Caniglia* decision has reshaped the contours of Fourth Amendment law governing warrantless residential searches. Second, amicus will provide this Court with information on how courts in other jurisdictions have responded to the *Caniglia* decision to uphold the sanctity of the home against warrantless intrusions by law enforcement. Third, amicus will discuss how the perceived burdens on law enforcement or other first responders and the privacy rights of citizens are best balanced by the Legislature through judicial authorizations.

D. ARGUMENT AND AUTHORITY

1. THE UNITED STATES SUPREME COURT COMPLETELY REJECTED THE COMMUNITY CARETAKING EXCEPTION TO THE FOURTH AMENDMENT BUT LEFT THE EXIGENT CIRCUMSTANCES EXCEPTION INTACT.

In 2021, the United States Supreme Court ("SCOTUS") unanimously rejected the so-called "community caretaking" exception to the Fourth Amendment's warrant requirement for residential searches and seizures. *Caniglia*, 593 U.S. __, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021). Noting that the "community caretaking" rule that had crept into the jurisprudence of the First Circuit and other lower courts went "beyond anything this Court has recognized," SCOTUS emphasized that the core of the Fourth Amendment's guarantee is "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Id.* at 1599 (quoting *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Cut. 1409, 185 L. Ed. 2d 495 (2013)).

As the Court explained, the "community caretaking" exception grew from the Court's prior

decision in *Cady v. Dombrowski*, 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973), which "observed that police officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions,' such as responding to disabled vehicles or investigating accidents." *Caniglia*, 141 S. Ct. at 1598 (citing *Cady*, 413 U.S. at 441). However, the Court emphasized that "this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere." *Caniglia*, 141 S. Ct. at 1600. The Court's unanimous opinion closed by emphasizing that it "has repeatedly 'declined to expand the scope of … exceptions to the warrant requirement to permit warrantless entry into the home.'" *Id.* (quoting *Collins v. Virginia*, 54 U.S. __, 138 S. Ct. 1663, 1670-71, 201 L. Ed. 2d 9 (2018)).

Justice Thomas's terse, categorical rejection of "community caretaking" is now controlling law. While four justices signed concurring opinions to offer their gloss on the lead opinion, a majority of the justices did not sign on to *any* concurring opinion. Chief Justice Roberts (joined by Justice Breyer) authored a one-paragraph concurrence to note that *Caniglia* did not disturb the exigent circumstances exception to the warrant requirement, as outlined in *Brigham City v. Stuart*, which allowed for warrantless entry into a home if there is a "need to assist persons who are seriously injured or threatened with such injury." *Caniglia*, 141 S. Ct. at 1600 (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006)).

Justice Kavanaugh's concurrence (which no other justice signed on to) reiterated Chief Justice Roberts'

sentiment that the exigent circumstances exception is still viable. He also expressed his view that the exigent circumstances exception should be expanded beyond its current form. Specifically, Justice Kavanaugh wrote that warrantless entry into a home is permissible "in circumstances where [law enforcement officers] are reasonably trying to prevent a potential suicide or to help an elderly person who has been out of contact and may have fallen and suffered a serious injury." *Caniglia*, 141 S. Ct. at 1603.

While Justice Kavanaugh's concurrence garnered only his support and is therefore not binding precedent, it is worth noting his opinion is not merely a restatement of existing, law, but an attempt to reshape the exigent circumstances rule to be less-demanding. Justice Kavanaugh notes the actual standard outlined in caselaw is that "officers have an 'objectively

reasonable basis' for believing that an occupant is 'seriously injured or threatened with such injury.'" *Caniglia*, 141 S. Ct. at 1604 (internal citations omitted). However, Justice Kavanaugh also argues that the exigent circumstances exception "permit[s] warrantless entries when police officers have an objectively reasonable basis to believe that there is a current, ongoing crisis for which it is reasonable to act now." *Id.* Justice Kavanaugh's re-framing of the standard for exigent circumstances waters down the requirement that an individual is "seriously injured or threatened with such injury," to an "ongoing crisis for which it is reasonable to act now." In any event, this opinion represents only the view of Justice Kavanaugh, and is not controlling in this or any other case.

Justice Alito's (also un-joined) concurrence reiterates the Court's reasoning for opposing a blanket

community caretaking exception; in particular, he emphasizes the ever-increasing non-law-enforcement tasks police engage in, and that the breadth of these tasks would provide little constraint on officers engaged in 'community caretaking' functions. *Id.* at 1600. Justice Alito then notes the possibility that "searches and seizures conducted for non-law-enforcement purposes" could be analyzed under a different Fourth Amendment analysis than that "developed in criminal cases," before noting that this issue was not decided upon by the Court. *Id.*

The rest of Alito's concurrence outlines several non-law-enforcement tasks that involve searches and seizures, for which legislatures have created processes to address. First, Alito calls attention to the involuntary commitment process every state has enacted for seizing mentally ill individuals and

committing them to a treatment facility. *Id.* at 1601. Next, Alito notes another body of law (particularly relevant to the facts of *Caniglia*), so-called 'red flag' laws, which permit law enforcement to obtain a court order to temporarily seize firearms from an individual. *Id.* Finally, Alito highlights another area of the law that currently lacks a similar type of legal process: welfare checks of a home, which the "current precedents do not address." *Id.* at 1601-02. Alito suggests that "States should institute procedures for the issuance of such warrants," much as states have for the other two areas Alito noted.

The concurring opinions in *Caniglia* agree only on one thing: that the previously-established exigent circumstances exception to the Fourth Amendment is still good law. Notably, this point was already made in the Court's unanimous opinion. Beyond that, the

concurring opinions reflect speculation and opinions of individual justices. They offer no precedential value, and this Court need not attempt to reconcile the concurring opinions. Instead, this Court should focus on the unequivocal holding of *Caniglia* rejecting the idea that community caretaking is a valid exception to the Fourth Amendment's warrant requirement for residential searches.

Left with that limited holding, this Court must conclude that Washington's community caretaking exception allowing health and safety checks under a general community caretaking function is defunct. Washington's general community caretaking test, stemming from *Cady*, states that if "an encounter involves a routine check on health and safety, its reasonableness depends upon a balancing of a citizen's privacy interest in freedom from police intrusion

against the public's interest in having police perform a ‘community caretaking function.’ If the public's interest outweighs the citizen's privacy interest, the warrantless search was reasonable and was permissible under our state constitution. *State v. Boisselle*, 194 Wn.2d 1, 12, 448 P.3d 19 (2019) (internal citations omitted). After *Caniglia*, this general community caretaking exception—which does not require the existence of an emergency that necessitates an immediate response from law enforcement—does not survive.

The emergency aid prong of Washington’s community caretaking exception, however, largely tracks the exigent circumstances analysis from *Brigham City*. Specifically, the emergency aid exception requires there to be “a present emergency,” and that this emergency requires immediate assistance

"to protect or preserve life, or property, or to prevent serious injury." *Boisselle*, 194 Wn.2d at 14. As the *Caniglia* court made clear, whether framed as 'emergency aid' or 'exigent circumstance,' the underlying test—which requires a need for immediate action to prevent an imminent injury—satisfies the Fourth Amendment's requirements.

2. OTHER COURTS HAVE RECOGNIZED BOTH THE ABROGATION OF THE COMMUNITY CARETAKING EXCEPTION AND THE CONTINUED APPLICABILITY OF THE EXIGENT CIRCUMSTANCES EXCEPTION.

Other courts, both federal and state, which have addressed the continued viability of a community caretaking exception to warrantless residential searches have concluded that it is no longer exists. Instead, when presented with the question of whether officers' warrantless search activities violated the Fourth Amendment, these courts have focused their

analysis on whether the exigent circumstances exception applied. To be clear, the elimination of the community caretaking exception has not resulted in the disintegration of the criminal justice system; courts have largely found that officers who conducted warrantless searches on the basis of their concerns about a risk of harm were justified by the exigent circumstances exception applied and declined to suppress evidence or impose civil liability on officers. These cases clearly demonstrate that Fourth Amendment jurisprudence that exists separate and apart from the community caretaking exception is sufficient to address community safety needs.

State courts that have addressed the continued viability of the community caretaking exception to warrantless residential searches have concluded that it no longer applies after *Caniglia*. For example, the

Supreme Court of Connecticut addressed the continued viability of the community caretaking exception in *Connecticut v. Samuolis*, 278 A.3d 1027, 344 Con.. 200 (2022), and noted that *Caniglia* made clear that the community caretaking exception does not "excuse warrant requirements for entry into a home." *Id.* at 216. Instead, the court analyzed the warrantless entry into the home under the exigent circumstances test. *Id.* at 217. The court noted several important facts supporting an exigent circumstances exception: the missing person the police were looking for "had not been seen by any of his neighbors for at least one month," the family's only vehicle had not been moved since the missing person was last seen, the defendant did not respond to the officer's knocks on the door or shouts into the window (despite evidence that the defendant was present) on the officer's first visit to the

property, and the officers only made entry to the home on their second visit to the property several days later. *Id.* at 221. Despite those facts, the court clarified that "[n]one of this would have been sufficient, however, in the absence of the extraordinary infestation of flies amassing around the upper rear window." *Id.* The court concluded that the "extraordinary infestation of flies," combined with the other facts, presented enough evidence for the officers to conclude that there may be an individual in the home who required medical attention. *Id.* at 222.

Similarly, the Virginia Court of Appeals also found that the community caretaking exception could not justify a warrantless residential search, before affirming the conviction (and validity of the search) under the exigent circumstances doctrine. *McCarthy v. Virginia*, 864 S.E.2d 577, 581-83, 73 Va. App. 630

(2021). *See also Boggs v. Pearson*, 963 N.W.2d 304, 2021 S.D. 44 (2021) (acknowledging that *Caniglia* rejected a freestanding community caretaking exception to warrantless residential searches, but finding the officers' actions were acting under clearly established law at the time and were entitled to qualified immunity); *Wisconsin v. Promer*, 970 N.W.2d 588, 588, 2022 WI App. 7 (Wis. Ct. App. 2021) (acknowledging *Caniglia's* rejection of community caretaking exception to warrantless residential searches, but declining to extend ruling to warrantless search of an automobile).

Federal courts which have grappled with this issue have reached the same conclusion. The Sixth Circuit addressed the viability of the community custody exception after *Caniglia*, and were explicit in their conclusion: "*Caniglia* makes clear that Couch

cannot justify his warrantless entry into Richard's home by calling on the community-caretaking exception. Without any other valid justification for his entry, we hold that Couch violated Richard's Fourth Amendment rights." *Clemons v. Couch*, 3 F.4th 897, 903 (6th Cir. 2021). The *Clemons* court went on to note that "any delay in Couch's entry into the residence—to obtain a warrant or court order permitting his entry—was not reasonably likely to result in injury or ongoing harm to the community at large," and therefore Officer Couch could be held liable for the unlawful entry. *Id.* at 904-05 (internal quotations omitted).

The Eighth Circuit has reached the same conclusion regarding the community caretaking exception. When it issued its opinion in *Caniglia*, SCOTUS also issued an order remanding *United States v. Sanders*, which was pending certification at

SCOTUS, back to the Eighth Circuit for additional proceedings in light of *Caniglia*. 141 S. Ct. 1646 (2021). Upon remand, the Eighth Circuit noted that "[i]n Caniglia, the Supreme Court held that there is no standalone community caretaker doctrine that justifies warrantless searches and seizures in the home." *United States v. Sanders*, 4 F.4th 672, 677 (8th Cir. 2022) (internal citations omitted). The court continued its analysis under the exigent circumstances exception, and concluded that the search was justified. *Id.* at 678.

Other courts have overwhelming concluded that *Caniglia* rejected any community caretaking exception to warrantless residential searches, and have instead analyzed the legality of the search using the exigent circumstances exception outlined in *Brigham City*. This Court should come to the same conclusion.

3. JUSTICE ALITO'S CONCURRENCE HIGHLIGHTS LEGISLATIVE ACTIONS THAT CAN ADDRESS THE UNDERLYING CONCERNS OF THE COMMUNITY CARETAKING EXCEPTION

It may be argued that the rejection of the community caretaking exception justifying warrantless residential searches potentially leaves a gap in the community-safety-oriented activities that law enforcement sometimes engage in. These concerns were noted by concurring opinions in *Caniglia*, and generally fall under situations where law enforcement may have concerns about the safety of an individual and desire to enter a home to check, but law enforcement cannot articulate specific facts to justify a warrantless home invasion under the exigent circumstances exception.

This concern, however, does not justify weakening the exigent circumstances exception or

abrogating the general rule that officers should obtain a warrant before entering a home. Where law enforcement have a concern for the safety of an individual, but lack evidence pointing to an *immediate* need to render aid or assistance such that a warrantless entry into a residence is justified, the legislature is in the best position to craft procedures to allow officers to enter homes for a welfare check, while still providing necessary safeguards and oversight.

This approach is hinted at by Justice Alito in his concurring opinion. Justice Alito first acknowledges the prevalence of "so-called 'red flag' laws" that allow officers to obtain court orders to seize firearms from individuals to prevent suicide and harm to others. *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring); *see e.g.*, RCW 7.105.330. Justice Alito acknowledges that a 'welfare check' would generally not fall under the

exigent circumstances exception to the Fourth Amendment's warrant requirement, which applies to situations in which there is not sufficient time to obtain a warrant, before noting that "[p]erhaps States should institute procedures for the issuance" of welfare check warrants. *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

The Washington legislature has demonstrated its capacity and willingness to expand the traditional categories of warrants and judicial processes to address public health situations that are divorced from the crime investigative actions typically associated with warrants, as we see with the extreme risk protection orders establishing a procedure for a court order for a limited seizure. *See, e.g.*, RCW 71.05.153 (permitting peace officers to take into custody and deliver to a treatment facility an individual meeting criteria for

involuntary treatment); RCW 71.05.160 (requiring a facility to file a petition for initial detention upon receiving an individual detained under RCW 71.05.153); RCW 7.105.330 (providing for court process to temporarily seize firearms from individual suspected of posing significant danger to themselves or others in the near future). Similarly, the legislature is in the best position to balance competing interests here and create a procedure for a 'welfare check' court order. Courts have readily acknowledged the speed with which telephonic warrants can be granted in our modern technological era. *See., e.g.*, *Missouri v. McNeely*, 569 U.S. 141, 154-55, 133 S. Ct. 1552, 185 L. Ed. 2d. 696 (2013) (noting the advances in technology that have streamlined the warrant application process and allow officers to "secure warrants more quickly…without undermining the neutral magistrate

judge's essential role as a check on police discretion"). The legislature is capable of creating procedures so that officers may "secure warrants more quickly" while still ensuring "the neutral magistrate judge's essential role" in checking police behavior.

The legislature is also in the best position to ensure adequate safeguards against police abuse in such a procedure. There is a real concern that police may secure 'welfare check' warrants based upon a feigned interest in the safety of the individual because they lack sufficient information to obtain a warrant based upon probable cause of criminal activity. To prevent such abuses, the legislature can specify that **all** evidence obtained through a 'welfare check' warrant is inadmissible in any criminal proceeding. Or, the legislature can further refine the balancing of these interests by barring evidence obtained through a

‘welfare check’ warrant from being used against the *subject* of the ‘welfare check’ warrant.

Finally, the legislature is in the best position to determine *who* should be responding to these types of calls. Police officers lack the medical training of a firefighter or a paramedic, and lack the mental health training and crisis intervention capabilities of a social worker. The legislature may logically conclude that ‘welfare checks’ are best administered by government officials who are capable of providing the kind of help required in a welfare check, instead of law enforcement whose training emphasizes the use of force. This is especially salient with respect to individuals with mental health issues: as one law review article notes, officers responding to a mental health crisis often end up shooting (and killing) the mentally-ill person they claim to be ‘caretaking;’ tellingly, almost a quarter of

police killings in the last five years were of people with mental illness. *See* Christopher Slobogin, *Police as Community Caretakers: Caniglia v. Strom*, 2020-2021 Cato Sup. Ct. Rev. (2021), at 194-96.

In sum, the exigent circumstances exception may not be the only tool that police officers and related personnel may have when they decide whether to enter a home in response to a non-emergency call. The legislature is in the best position to define and outline *how* and *which* government actors may render aid when it requires a warrantless entrance into a home, and establish procedures that require judicial oversight over the process and potential protections against police abuse of such a system.

C. CONCLUSION

Amicus urges the Court to find that *Caniglia* has abrogated the community caretaking exception to the

Fourth Amendment's warrant requirement with respect to residential searches, that the search here does not meet the requirements of the exigent circumstances exception, and hold that the trial court erred in denying Mr. Teulilo's motion to suppress evidence.

Respectfully submitted this 16th day of December, 2022

This document contains 3,581 words, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images.

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CERTIFICATE OF SERVICE

I, James Herr, hereby declare under penalty of perjury under the laws of the State of Washington that on this date, I caused a true and correct copy of the foregoing document to be served on the following in the manner(s) indicated:

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