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SUPREME COURT OF THE STATE OF WASHINGTON

ON ISSUES SURROUNDING THE COMMUNITY CARETAKING EXCEPTION CERTIFIED FROM THE COURT OF APPEALS
COA NO. 38426-8-III

AMICUS CURIAE BRIEF

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On Behalf of the Washington Fire Chief's Association and Washington State Fire Commissioner's Association

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I. INTRODUCTION

The Petitioner in the matter argues that the recent decision by the U.S. Supreme Court in *Caniglia v. Strom*, 141 S. Ct. 1596, 209, L. ED. 2d 604 (2021) impacts the validity of Washington State's version of the community caretaking exception to the warrant requirement. The Petitioner's arguments, however, if followed by this Court, would negatively impact the provision of emergency medical services ("EMS") to the citizens of the State of Washington. Washington State currently applies an exigent circumstances test requiring an officer to have a subjective and reasonable belief that someone inside the home is either in need of emergency aid requiring immediate assistance or in need of health and safety assistance. *See State v. Boisselle*, 194 Wn. 2d 1 (2019); *State v. Weller*, 185 Wn. App 913 (2015). Petitioner's arguments that Washington's law is no longer valid as it relates to health and safety assistance by law enforcement and that a new test should be applied in instances of emergency situations are not correct. And, their

practical impact is potentially dangerous. The misapplication of *Caniglia* would impact fire and EMS agencies, having a chilling effect on the provision of EMS. Simply put, *Caniglia* does not and should not invalidate a warrantless entry into a residence in the case of an emergency or for health and safety purposes.

II. IDENTITY AND INTEREST OF AMICUS

The Washington Fire Chief's Association ("WFC") represents Fire Chiefs from across the State of Washington. The WFC is a member driven association formed in 1932 that represents over 350 fire agencies statewide. Agencies range from career, combination, and volunteer from large metropolitan departments to small rural districts. The WFC's motto is to "serve, educate, and lead," providing oversight and direction on subjects and issues that affect the greater Washington fire service and its mission to serve the public in providing fire suppression and emergency medical services (EMS).

The Washington Fire Commissioners Association

("WFCA") was established to provide an association of Fire Districts and Regional Fire Authorities that represents elected Commissioners for those agencies. The purpose of the WFCA is to provide education and research to elected commissioners across the State of Washington and to advocate for its represented agencies on matters related to fire districts and regional fire authorities.

The WFC and WFCA are both organized to represent the interests of fire agencies across the State of Washington. Each organization has a strong interest in matters that potentially impact the delivery of emergency medical services ("EMS") to the citizens of the State of Washington. The State of Washington has seen a significant increase in 911 calls related to calls for help in the home. Wellness checks, the availability of 911 service, an aging population, the opioid crisis, the mental health crisis, and the increase in suicidal individuals have combined to make home visits an essential service provided by first responders (both police and fire) across the State of Washington. This case

involves the review of Washington State's version of the community caretaking exception to the constitutional warrant requirement and whether that exception is now defunct based on the recent United State Supreme Court decision in *Caniglia*. The WFC and WFCA are both concerned about the potential impacts regarding the delivery of EMS to the citizens of the State of Washington should the Washington Supreme Court invalidate Washington's version of the community caretaking exception to the warrant requirement. Police and Fire in the State of Washington play a critical role in the delivery of EMS. Anything that may potentially dampen or negatively impact delivery of EMS in the State of Washington is of critical importance to the WFC and WFCA. The WFC and WFCA offer this brief to assist the Court in considering the potential impact on the delivery of EMS if Washington's version of the community caretaking exception to a warrant were to be invalidated, and argue that despite the broad language in *Caniglia*, Washington's version of the community caretaking exception to the warrant requirement

is still valid.

III. ISSUES ADDRESSED BY AMICUS

Whether Washington State's version of the community caretaking exception to the constitutional warrant requirement is now invalid in light of *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L. Ed. 2d 605 (2021) and the potential impacts to the delivery of EMS in Washington should this Court conclude *Caniglia* invalidates Washington's version of the community caretaking exception.

IV. STATEMENT OF THE CASE

The following is an abbreviated statement of the case. The circumstances and facts bringing this case before this Court are set forth the parties' filings, clerk's papers, and report of proceedings filed with this Court. The short version is as follows: A Douglas County deputy received a call for a welfare check at a residence. (RP 12:11-15). The deputy entered the residence without a warrant and found the body of a murdered woman. (RP 27-28). A motion to suppress was filed by the

defendant. (CP 1:1-26). The court denied the motion to suppress and entered findings of fact and conclusions of law that supported its decision. (CP 1:85-91).

V. ARGUMENT

B. Washington's exigent circumstances exceptions to the warrant requirement of rendering emergency aid and for health and safety checks are still valid and necessary.

It is well settled in Washington that warrantless entry into a home or seizure of personal property by fire department personnel implicates the Fourth Amendment. "Seizure of personal property by a fire department implicates the Fourth Amendment because the fire department is acting under governmental authority and because the seizure may invade the owner's legitimate possessory interest in the property." *State v. Picard*, 90 Wn.App. 890, 895, 954 P.2d 336, 339 (1998), citing to *Horton v. California*, 496 U.S. 128, 133-34, 110 S. Ct. 2301, 2305-06, 110 L. Ed. 2d 112 (1990); *Michigan v. Clifford*, 464 U.S. 287, 291–92, 104 S. Ct. 641, 646, 78 L. Ed. 2d 477 (1984); *Michigan v. Tyler*, 436 U.S. 499, 504, 98 S. Ct. 1942, 1947, 56

L. Ed. 2d 486 (1978).

The Picard court also stated, citing to *Michigan v. Clifford*, 464 U.S. 287, 291-92, 104 S. Ct. 641, 646, 78 L. Ed. 2d 477 (1984) that "the warrantless entry of fire officials into a burning building is a lawful exception to the Fourth Amendment's warrant requirement." *Picard*, 90 Wn. App. 890 at 895 (1998). "A burning building of course creates an exigency that justifies a warrantless entry by fire officials to fight the blaze." *Clifford,* 464 U.S. at 293, 104 S. Ct. at 646. Logically then, the entry into a home by fire and EMS personnel for the provision of emergency medical services or to provide assistance for health or safety reasons without a warrant would be justified based on the exigencies of the situation.

In most instances, where 911 has been called, warrantless entry into the home is justified because fire and EMS personnel have been specifically called to residence to render aid. However, there are many times when fire and EMS personnel are called to a residence based on information provided by someone

other than the owner of a residence. In these situations, Fire and EMS may show up at a location and find that there is no-one to let them into a home. Either the person who called 911 is non-responsive for a variety of medical reasons, or the person who called 911 is unable to answer the door or isn't even at the location where fire and EMS have been called. Indeed, Justice Alito's concurrence in the *Caniglia* case anticipates these exact types of situations:

> "One additional category of cases should be noted: those involving warrantless, nonconsensual searches of a home for the purpose of ascertaining whether a resident is in urgent need of medical attention and cannot summon help. At oral argument, THE CHIEF JUSTICE posed a question that highlighted this problem. He imagined a situation in which neighbors of an elderly woman call the police and express concern because the woman had agreed to come over for dinner at 6 p.m., but by 8 p.m., had not appeared or called even though she was never late for anything. The woman had not been seen leaving her home, and she was not answering the phone. Nor could the neighbors reach her relatives by phone. If the police entered the home without a warrant to see if she needed help, would that violate the Fourth Amendment?
>
> Petitioner's answer was that it would. Indeed, he argued, even if 24 hours went by, the police still could not lawfully enter without a warrant. If the situation remained unchanged for several days, he suggested, the police might

be able to enter after obtaining 'a warrant for a missing person.'

THE CHIEF JUSTICE's question concerns an important real-world problem. Today, more than ever, many people, including many elderly persons, live alone. Many elderly men and women fall in their homes, or become incapacitated for other reasons, and unfortunately, there are many cases in which such persons cannot call for assistance. In those cases, the chances for a good recovery may fade with each passing hour. So in THE CHIEF JUSTICE's imaginary case, if the elderly woman was seriously hurt or sick and the police heeded petitioner's suggestion about what the Fourth Amendment demands, there is a fair chance she would not be found alive. This imaginary woman may have regarded her house as her castle, but it is doubtful that she would have wanted it to be the place where she died alone and in agony.

Our current precedents do not address situations like this. We have held that the police may enter a home without a warrant when there are 'exigent circumstances.' *Payton v. New York*, 445 U.S. 573, 590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). But circumstances are exigent only when there is not enough time to get a warrant, see *Missouri v. McNeely*, 569 U.S. 141, 149, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013); *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978), and warrants are not typically granted for the purpose of checking on a person's medical condition. Perhaps States should institute procedures for the issuance of such warrants, but in the meantime, courts may be required to grapple with the basic Fourth Amendment question of reasonableness.

The three categories of cases discussed above are simply illustrative. Searches and seizures conducted for other non-law-enforcement purposes may arise and may present

> their own Fourth Amendment issues. ***Today's decision does not settle those questions.***" *Caniglia,* 141 S. Ct. 1596, 1601–02 (2021) (***emphasis added***).

The *Caniglia* case's impact is not as broad as Petitioner would like this Court to believe. The concurring justices agree. Caniglia ended up in front of the Supreme Court because Mr. Caniglia "sued, claiming that the officers had entered his home and seized him and his firearms without a warrant in violation of the Fourth Amendment. The District Court granted summary judgment to the officers. The First Circuit affirmed, extrapolating from the Court's decision in *Cady v. Dombrowski*, 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706, a theory that the officers' removal of Caniglia and his firearms from his home was justified by a 'community caretaking exception' to the warrant requirement." *Caniglia v. Strom*, 209 L. Ed. 2d 604, 141 S. Ct. 1596, 1597 (2021).

The ruling of the *Caniglia* court was limited to only the First Circuit's application of a blanket community caretaking rule as applied to Caniglia's facts. "The First Circuit's

'community caretaking' rule, …, goes beyond anything this Court has recognized." *Caniglia*, 141 S. Ct. 1596, 1599 (2021).

In fact, the *Caniglia* court specifically pointed out "to be sure, the Fourth Amendment does not prohibit all unwelcome intrusions 'on private property,'— only 'unreasonable' ones." *Caniglia*, 141 S. Ct. at 1599 (2021). The *Caniglia* court then went on the discuss that warrantless entries into homes are permissible "when certain exigent circumstances exist". *Id*, at 1599. The *Caniglia* court referred to the need to render emergency assistance as found in *Kentucky v. King*, 563 U.S. 452, 460, 470, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011), and other examples of exigent circumstances as found in *Brigham City v. Stuart*, 547 U.S. 398, 403–404, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). It was the First Circuit's community caretaking rule as applied to the facts of the *Caniglia* case that was objectionable to SCOTUS.

The Petitioner's argument to expand *Caniglia* beyond

what SCOTUS intended would have significant, negative impacts on public safety by limiting the provision of EMS in the State of Washington. Should the Petitioner's argument that "*Caniglia v. Strom* eliminates Washington's health and safety community caretaking exception to the warrant requirement when applied to the home" (Petitioner's Supplemental Memorandum p. 9) be accepted by this Court there would be an instant chilling effect on the provision of EMS in the State of Washington. Fire and EMS and police agencies across the State would be left in limbo as to when it would be appropriate to enter a home to render aid.

Additionally, the Petitioner's proposed new rules for rendering emergency aid are equally troubling. In particular, requiring any agency, whether it be fire, EMS, or police, to determine that "the home at issue was the most likely location that emergency assistance or protection from imminent injury was needed after checking other reasonable locations as was possible under the totality of the circumstances" (Petitioner's

Supplemental Memorandum p. 18) would only cause delay in the possible treatment of anyone suffering from a medical condition. At this point in history it is ubiquitous in society that "minutes matter" as it relates to the treatment of many serious health emergencies. The Petitioner's argument would only add precious time before someone might receive life-saving treatment.

The Petitioner's argument that the legal premise upon with *Boiselle* has been "eviscerated" is without merit. In fact, the *Boiselle* case does exactly what *Caniglia* anticipates should be done when determining whether a warrantless entry into a home was justified, or more importantly, reasonable. And, *Boiselle* considers the more protective provisions of the Washington constitution *specifically as it relates to entry into a home.* Based on *Boiselle,* Washington DOES NOT have the type of blanket community caretaking exception that was problematic in *Caniglia*. First, in instances of routine checks on health and safety,

"courts must next determine whether the search was reasonable. 'Where ... 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, 11–12, 448 P.3d 19, 25 (2019), (quoting from *State v. Kinzy*, 141 Wn.2d 373, 387, 388-89, 394, 5 P.3d 668 (2000)).

Second, in cases of emergency aid, *Boiselle* established that "the emergency aid function of the community caretaking exception applies when (1) the officer subjectively believed that an emergency existed requiring that he or she provide immediate assistance to protect or preserve life or property, or to prevent serious injury, (2) a reasonable person in the same situation would similarly believe that there was a need for assistance, and (3) there was a reasonable basis to associate the need for assistance with the place searched." *State v. Boisselle*, 194 Wn. 2d at 14.

Boiselle and its decision regarding Washington's

community caretaking exception to the warrant requirement in the State of Washington is fundamentally different than the *Caniglia* decision. But, not in the way Petitioner argues. *Caniglia* acknowledged that there are many circumstances where warrantless entry into the home is justified and reasonable, including for emergencies and for health and safety checks. *See Kentucky v. King*, 563 U.S. 452, 460, 470, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011), *and Brigham City v. Stuart*, 547 U.S. 398, 403–404, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). "The ultimate touchstone of the Fourth Amendment is 'reasonableness'...". *Brigham*, 547 U.S. 398, at 403, citing *Flippo v. West Virginia,* 528 U.S. 11, 13, 120 S. Ct. 7, 145 L. Ed. 2d 16 (1999) *(per curiam).* The tests set forth in *Boiselle* protect against unreasonable warrantless entries into homes for emergencies and to check on the health and safety of individuals.

VI. CONCLUSION

The WFC and WFCA respectfully requests that the Court recognize that Washington's exigent circumstances exceptions

to the warrant requirement of rendering emergency aid and for health and safety checks are still valid as set forth in *Boiselle*.

RESPECTFULLY SUBMITTED this 16th day of December, 2022.

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