THE COMMUNITY CARETAKING EXCEPTION: HOW THE COURTS CAN ALLOW THE POLICE TO KEEP US SAFE WITHOUT OPENING THE FLOODGATES TO ABUSE

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I. INTRODUCTION

Imagine a situation where a police officer is on patrol in his neighborhood. The officer drives past the house of a homeowner whom the officer knows to be on vacation, and notices that the front door has been left wide open. The officer approaches the house and announces his presence, but receives no response. The officer enters the living room through the open front door to ensure that everything is in order. Finding nothing amiss in the living room, the officer makes his way through the rest of the house, and finds a marijuana grow operation in the kitchen. Should this evidence be admissible against the homeowner? Unfortunately, due to a lack of guidance from the Supreme Court, the answer could depend on what state the officer is in. This is an example of the police acting as a community caretaker, and his entry to the home is valid under the Fourth Amendment because of the "community caretaking exception." The community caretaking exception to the warrant requirement involves police activities undertaken to protect the public welfare that are completely divorced from any motive to investigate suspected criminal activity.[1] Unfortunately, the Supreme Court has never definitively held that this exception only applies to vehicles. This has led some states to use the doctrine to justify warrantless entries into people's homes.

This Note will argue that the Sixth Circuit should allow the police to enter a home under the community caretaking exception, so long as their actions are reasonable. However, when police enter a home under the community caretaking exception, the plain view exception should be suspended, and police should be required to obtain a warrant before they can seize evidence. This limitation will reduce the likelihood that police will use the exception to enter homes hoping to find evidence of wrongdoing. It will also add an additional check on the wide discretion given to police under the community caretaking exception. First, the Note will discuss the warrant requirement under the Fourth Amendment and its exceptions. It will also discuss how the community caretaking Exception came about and the different approaches taken by the Federal Circuit Courts in applying it to homes and vehicles.[2] The Note will then discuss the problems created by the circuits' differing approaches, assess the solutions offered by different Fourth Amendment scholars, and will further discuss the advantages of permitting warrantless entries into

1. Cady v. Dombrowski, 413 U.S. 433, 441 (1973).
2. *See infra* Part II.

homes under the community caretaking exception while suspending plain view.[3] The Note will then summarize these issues and assess what courts should do going forward.[4]

II. BACKGROUND

A. The Rights Protected by the Fourth Amendment's Warrant Clause and its Exceptions

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[5]

The Supreme Court has acknowledged that the right to be protected from unreasonable searches and seizures is a fundamental right, and has applied it to the states through the Fourteenth Amendment.[6] The Supreme Court has also held that warrantless searches are *per se* unreasonable under the Fourth Amendment, unless an exception to the warrant requirement applies.[7] However, before considering whether a search or seizure is unreasonable, a court will first inquire into whether a search or seizure occurred at all.[8] If there was no search, the concerns of the Fourth Amendment are not implicated and the government's actions will be deemed permissible.[9]

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3. *See infra* Part III.

4. *See infra* Part IV.

5. U.S. CONST. amend. IV.

6. U.S. CONST. amend. XIV; *see also* Mapp v. Ohio, 367 U.S. 643, 655 (1961) (holding that the Fourth Amendment's right of privacy is enforceable against the states through the Due Process Clause in the same manner as it is against the Federal Government).

7. Coolidge v. New Hampshire, 403 U.S. 443, 454–55 (1971) ("searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under Fourth Amendment—subject only to a few specifically established and well-delineated exceptions which are jealously and carefully drawn").

8. *See, e.g.*, Maryland v. King, 133 S. Ct. 1958, 1968–69 (2013) (establishing that using a buccal swab on the inner tissues of a person's cheek in order to obtain a DNA sample is a search before considering whether the search was reasonable).

9. *See id.*

1. What is a Search?

Originally, the Supreme Court implemented the "trespass doctrine" in determining whether a search occurred.[10] Under the trespass doctrine, a court would only find a search where the government physically intruded onto the property of a citizen.[11] However, this test was replaced by the modern "expectation of privacy test" in *Katz v. United States.*[12] The Court in *Katz* held that "the Fourth Amendment protects people,"[13] not places, and that what a person "seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."[14] Under *Katz's* expectation of privacy test, whether a search has occurred under the Fourth Amendment is determined by a two-part analysis. First, a person must exhibit a subjective expectation of privacy, and second, that expectation must "be one that society is prepared to recognize as reasonable."[15]

The Supreme Court has been consistent in holding that the home deserves special protection under the Fourth Amendment.[16] The Court has held that when the government enters a home, either to arrest a suspect or to search for incriminating evidence, a warrant supported by probable cause will be required in order for the government's actions to comply with the reasonableness requirement under the Fourth Amendment.[17] Absent exigent circumstances, a warrantless entry to

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10. *See* Olmstead v. United States, 277 U.S. 448, 457 (1928), *overruled by* Katz v. United States, 389 U.S. 347 (1967).

11. *Id.* at 457 (concluding that the government's actions did not amount to a search because the government did not physically intrude onto the defendant's property by tapping the defendant's phone wires).

12. Katz v. United States, 389 U.S. 347 (1967).

13. *Id.* at 353.

14. *Id.* at 352.

15. *Id.* at 361 (Harlan, J., concurring); *see also* California v. Greenwood, 486 U.S. 35, 41–42 (1988) (holding that police's searching of the defendant's garbage left at the curb did not amount to a search under the Fourth Amendment, as society would clearly not recognize the defendant's subjective expectation of privacy as reasonable).

16. *See, e.g.*, United States v. Karo, 468 U.S. 705, 714–15 (1984) ("at the risk of belaboring the obvious, private residences are places in which the individual normally expects privacy free of government intrusion not authorized by a warrant"); Payton v. New York, 445 U.S. 573, 589 (1980) ("The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . .").

17. *See* Kyllo v. United States, 533 U.S. 27, 31 (2001) ("At the very core of the Fourth Amendment stands the right of a person to retreat to his/her home and be free from governmental intrusion. . . . With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.") (internal citations and quotation marks omitted)); *see also Payton*, 445 U.S. at 585

search for weapons or contraband is unconstitutional, even when a felony has been committed, or where there is probable cause.[18]

2. *The Exceptions to the Warrant Requirement*

Subject to a few established and well-delineated exceptions, searches conducted without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment.[19] It is important to note that if a court determines that evidence was obtained through an unreasonable search, this evidence will not be admissible at trial due to the exclusionary rule, which the Court applied to states in *Mapp v. Ohio*.[20] Through the years, courts have developed several exceptions to the warrant requirement. Some of these exceptions have important implications for the constitutionality of community caretaking searches in the context of the home. Other exceptions are very similar to community caretaking, and courts often confuse them or use them interchangeably with the community caretaking exception.

a. Plain View

Under the "plain view exception" to the warrant requirement, if police are in a place where they have a lawful right to be, they may seize any evidence that is in plain view, provided that they have probable cause to believe that the evidence is illegal contraband.[21] The probable cause has to be apparent from the face of the object, which means the police may not move the object or investigate further in order to obtain the necessary level of probable cause.[22] The plain view exception presents potential for abuse under the community caretaking exception

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("The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.").

18. *Id.* at 588.

19. Coolidge v. New Hampshire, 403 U.S. 443, 455–56 (1971).

20. Mapp v. Ohio, 367 U.S. 643 (1961).

21. Arizona v. Hicks, 480 U.S. 321, 327 (1987) ("Dispensing with the need for a warrant is worlds apart from permitting a lesser standard of *cause* for the seizure than a warrant would require, i.e., the standard of probable cause.") (emphasis in original).

22. *See id.* at 328. In *Hicks*, while the officer was lawfully in the defendant's home, the officer had reasonable suspicion to believe that stereo equipment which he saw in plain view was stolen. The officer then moved the stereo equipment to check its serial numbers. The Court held that, despite the need for probable cause to move the stereo equipment, the officer only had reasonable suspicion. Had the officer been able to view the serial numbers without moving the stereo equipment, he would have had probable cause and could have seized the stereo equipment under the plain view exception. *Id.* at 323–28.

because the police could use the community caretaking exception as a "pretext" to look for incriminating evidence in plain view.[23]

b. The Automobile Exception

Another instance where police do not need to obtain a warrant before conducting a search relates to automobiles.[24] This doctrine is referred to as the "automobile exception." There are two main justifications for dispensing with the warrant requirement in the context of automobiles: 1) the inherent mobility of automobiles creates circumstances of such exigency that, as a practical necessity, rigorous enforcement of the warrant requirement is impossible, and 2) the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office. [25] The Supreme Court has reasoned that "[a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements."[26] Thus, given the Court's clear assertion that the home deserves added protection under the Fourth Amendment, and its clear reasoning as to why automobiles are different, it is surprising that the Court has not acted to install greater protection for homeowners in the context of community caretaking cases.

c. Exigent Circumstances

The "exigent circumstances exception" to the warrant requirement involves situations in which the police are in "hot pursuit of a fleeing felon,"[27] are acting to prevent the "imminent destruction of evidence,"[28] or are trying to "prevent a suspect's escape."[29] Courts handle the exigent circumstances exception differently in relation to the community caretaking exception. In determining if a community caretaking search is reasonable, some courts "apply what appears to be a modified exigent circumstances test, with perhaps a lower threshold for exigency if the

23. *See infra* Part III.

24. *See* California v. Carney 471 U.S. 386, 392 (1985) (explaining that the expectation of privacy with respect to one's vehicle is less than that enjoyed in one's home or office).

25. Carroll v. United States, 267 U.S. 132 (1925).

26. South Dakota v. Opperman, 428 U.S. 364, 368 (1976).

27. Minnesota v. Olson, 495 U.S. 91, 99 (1990). Approving the Minnesota Supreme Court's application of "essentially the correct standard in determining whether exigent circumstances existed." *Id.*

28. *Id.* (citing Welsh v. Wisconsin, 466 U.S. 740, 750 (1984)).

29. *Id.*

officer is acting in a community caretaking role."[30] Other courts maintain that exigent circumstances and community caretaking are not congruent and should be applied separately.[31]

B. Cady v. Dombrowski*: What is Community Caretaking?*

Cady v. Dombrowski[32] is the seminal Supreme Court case involving community caretaking. In *Cady,* a Chicago police officer named Dombrowski was visiting Wisconsin, and reported to the police that he had been in a car accident.[33] Dombrowski appeared intoxicated to the officers, and offered conflicting versions of the accident.[34] After the police drove Dombrowski back to the scene of the accident, Dombrowski informed the officers that he was a Chicago police officer, and the Wisconsin officers reasonably believed that Chicago police officers were required to carry their revolvers on them at all times.[35] After finding no gun on Dombrowski's person, the officers checked the front seat and the glove compartment of the wrecked car, but no gun was found.[36] The police had the vehicle towed to a private garage, where the car was left outside unguarded.[37] After taking Dombrowski to a hospital, one of the Wisconsin officers returned to Dombrowski's car to again try to recover the revolver.[38] The officer was motivated by a desire to "protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands."[39] The officer did not find the revolver, but he did find bloody clothes in the trunk that were later used to convict Dombrowski of murder.[40]

The Supreme Court held that the search of the Dombrowski's car was reasonable, because the officer was acting under his "community caretaking function, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[41] The Wisconsin officer acted with "concern for the safety of the general public" when he searched Dombrowski's car for a dangerous weapon, and in doing so, he was ignorant of the fact that the bloody clothes had

30. Ray v. Twp. of Warren, 626 F.3d 170, 176 (3d Cir. 2010).
31. *See, e.g.,* Hunsberger v. Wood, 570 F.3d 546, 554 (4th Cir. 2009).
32. Cady v. Dombrowski, 413 U.S. 433 (1973).
33. *Id.* at 436.
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.* at 436–37.
39. *Id.* at 443.
40. *Id.* at 437–38.
41. *Id.* at 441.

anything to do with a murder.[42] Even though the Court in *Cady* extensively discussed why vehicles were different from homes, it never held that the community caretaking exception only applies to the context of vehicle searches.[43]

The Supreme Court has only mentioned the term "community caretaking" in two subsequent cases, both involved inventory searches of automobiles,[44] and both times it passed on the opportunity to restrict community caretaking searches to automobiles. During the time the community caretaking exception came about, the Supreme Court was also justifying other types of "special needs" searches, including immigration checkpoints,[45] sobriety checkpoints,[46] and school searches.[47]

C. The Three Community Caretaking Functions

There are three basic community caretaking functions that allow the police to bypass the warrant requirement.[48] The first involves what is often called the public servant function.[49] This encompasses police action such as checking on parked cars when a driver appears to be sick, lost, or

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42. *Id.* at 447.

43. *Id.* at 441.

> Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater then police-citizen contact in a home or office.

Id.

44. *See* South Dakota v. Opperman, 428 U.S. 364, 369 (1976). Justifying inventory searches "with three distinct needs: the protection of the owner's property while it remains in police custody, . . . the protection of the police against claims or disputes over lost or stolen property . . . and the protection of the police from potential danger." *Id.* (citations omitted); *see also* Colorado v. Bertine, 479 U.S. 367, 381 (1987) ("Inventory searches are not subject to the warrant requirement because they are conducted by the government as part of a 'community caretaking' function, 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'") (quoting *Cady*, 413 U.S. at 441).

45. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 563 (1976) (holding that the police could stop people at the border even absent reasonable suspicion, given the great need to make routine checkpoints and the limited intrusion on Fourth Amendment interests).

46. Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 455 (1990) (holding that Michigan's highway sobriety checkpoints did not violate the Fourth Amendment).

47. New Jersey v. T.L.O., 469 U.S. 325, 342–43 (1985) (holding that the Fourth Amendment allow for a teacher or school official to search students if the scope of the search was reasonable).

48. *See* THOMAS N. MCINNIS, THE EVOLUTION OF THE FOURTH AMENDMENT 103 (2009).

49. *Id.*

drunk.[50] It also would include situations such as the one described at the beginning of this Note,[51] where the police check on the homes of the elderly, infirm, or people who are on vacation.[52] The second community caretaking function involves performing inventory searches of impounded vehicles.[53] The Supreme Court has routinely upheld these kinds of community caretaking searches due to the weighty justifications offered for performing them, and the lower expectation of privacy implicated in the context of a vehicle.[54] A court will still always inquire into whether the inventory search was "reasonable" under the Fourth Amendment.[55] In assessing reasonableness in the context of routine inventory searches, courts will often look to whether the search was conducted according to standardized departmental procedures.[56] Courts do this to ensure that the inventory search does not become "a subterfuge for criminal investigations."[57]

Finally, the last community caretaking function involves the police providing emergency aid to the public.[58] This doctrine permits "police officers to enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance."[59] Michigan endorsed this function of law enforcement in *Michigan v. Tyler*,[60] where firefighters entered a burning building without a warrant or consent, and found evidence which pointed

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50. *Id.*

51. *See supra* note 1 and accompanying text.

52. *See* MCINNIS, *supra* note 48, at 103 (stating that the reasonableness standard is the appropriate standard in assessing these kinds of community caretaking searches and courts will weigh the needs for the search against the nature of the intrusion on the privacy rights of the person).

53. *See, e.g.*, Florida v. Wells, 495 U.S. 1 (1990); Colorado v. Bertine, 479 U.S. 367 (1987); South Dakota v. Opperman, 428 U.S. 364 (1976).

54. *See Opperman*, 428 U.S. at 367–69. Stating "the expectation of privacy with respect to one's vehicle is significantly less than that relating to one's home or office," and the justifications for performing these searches are great. *Id.*

55. *See id.* at 372–73 ("The Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only '*unreasonable* searches and seizures.' The relevant test is *not the reasonableness of the opportunity to procure a warrant*, but the reasonableness of the search or seizure under all of the circumstances." (emphasis in original)).

56. *See Bertine*, 479 U.S. at 374 ("[R]easonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.").

57. *Id.* at 371 (quoting *Opperman*, 428 U.S. at 370 n.5).

58. *See* MCINNIS, *supra* note 48, at 104.

59. People v. Ray, 981 P.2d 928, 933 (Cal. 1999) (citation omitted).

60. 250 N.W.2d 467 (Mich. 1977), *aff'd*, Michigan v. Tyler, 436 U.S. 499 (1978).

to arson.[61] The Michigan Supreme Court made clear that the nature of the emergency limits the government's actions, and that as soon as the emergency ends, the emergency aid exception no longer applies, at which time the responding officers need to obtain a warrant supported by probable cause.[62] Like the exigent circumstances exception, this function of the police is looked at differently by courts. While some insist that community caretaking and emergency aid are two separate exceptions,[63] other courts (and Fourth Amendment scholars) view emergency aid as a subcategory of the community caretaking exception.[64]

D. The Current Split in the Circuits

1. Circuits Applying Community Caretaking to Vehicles Only

Because the Supreme Court has only dealt with the community caretaking exception in the context of automobiles, some circuits have limited the doctrine to vehicle searches only. In *United States v. Erickson,*[65] the Ninth Circuit held that an officer acting as a community caretaker is not enough to justify a warrantless search of the home.[66] In that case, officers were called to investigate a suspected burglary and found no signs of forced entry upon arriving at the scene.[67] Continuing the investigation, the officers encountered an open basement window covered by a piece of black plastic.[68] The officers removed the piece of plastic to look inside, later testifying that they did this to determine whether the residence had been burglarized.[69] When the officers looked into the basement, they saw a marijuana grow operation, and used this evidence to obtain a search warrant.[70] The court held that investigating

61. *Tyler,* 250 N.W.2d at 477.
62. *See id.* at 584.
63. *See, e.g.,* Wisconsin v. Pinkard, 785 N.W.2d 592, 600–01 (Wis. 2010).
64. *See* California v. Ray, 981 P.2d 928, 933 (Cal. 1999); MCINNIS, *supra* note 48, at 104 (describing emergency aid as one of the community caretaking functions of the police).
65. 991 F.2d 529 (9th Cir. 1993) ("The fact that a police officer is performing a community caretaking function, however, cannot itself justify a warrantless search of a private residence.").
66. *Id.* at 531.
67. *Id.* at 530.
68. *Id.*
69. *Id.*
70. *Id.*

reports of burglaries certainly qualifies as a community caretaking function, but that this function is applicable to vehicles only.[71]

In *United States v. Pichany*,[72] the Seventh Circuit adopted a very restrictive view of community caretaking by holding that the exception did not apply to the search of a privately owned warehouse while the police were investigating a burglary.[73] Like the Ninth Circuit, the Seventh Circuit interpreted the express language in *Cady* and confined the community caretaking exception to automobiles only.[74] The Third Circuit agreed with this view in *Ray v Township of Warren*[75] and limited the community caretaking exception to vehicles only.[76]

2. *Circuits Extending Community Caretaking to Warrantless Searches of the Home*

In *United States v. Quezada*,[77] the Eighth Circuit held that "[a] police officer may enter a residence without a warrant as a community caretaker when the officer has a reasonable belief that an emergency exists requiring his or her attention."[78] In *Quezada*, the court concluded that the officer's actions in entering the home were reasonable.[79] The officer arrived at the house to serve a civil complaint, and found that the latch to the front door was undone.[80] Through a gap in the door, the deputy could see that the lights were on in the apartment and the television was on.[81] After the officer announced his presence several times and received no response, he opened the door and went inside.[82] Soon after entering the

71. *See id.* at 531–33 ("*Cady* clearly turned on the constitutional difference between searching a house and searching an automobile.") (quotation marks and citations omitted)). The court also noted that the exigent circumstances exception to the warrant requirement adequately accommodated the governmental interests in this case, and there was no need to turn to community caretaking. *Id.*

72. United States v. Pichany, 687 F.2d 204 (7th Cir. 1982).

73. *Id.* at 209.

74. *Id.* at 208–09 ("Accepting the government's argument would require us to ignore the express language in the *Cady* decision confining the 'community caretaker' exception to searches involving automobiles." "The [*Cady*] Court intended to confine the holding to the automobile exception and to foreclose an expansive construction of the decision allowing warrantless searches of private homes or businesses.").

75. Ray v. Township of Warren, 626 F.3d 170 (3d Cir. 2010).

76. *Id.* at 177 ("The community caretaking doctrine cannot be used to justify warrantless searches of a home.").

77. United States v. Quezada448 F.3d 1005 (8th Cir. 2006).

78. *Id.* at 1007 (citations omitted).

79. *Id.* at 1008.

80. *Id.* at 1006.

81. *Id.*

82. *Id.*

apartment, the officer looked down a hallway and saw a pair of legs on the ground sticking out from a bedroom with a shotgun lying next to them.[83] The court held that under these circumstances, a reasonable officer "could conclude that someone was inside but was unable to respond for some reason."[84]

In *United States v. Rohrig*,[85] the Sixth Circuit acknowledged that the government bears a "heavy burden when justifying any warrantless entry into the home."[86] In this case, the police entered the defendant's home without a warrant in the middle of the night to turn down loud music that was disturbing the neighbors.[87] The court held that this entry did not significantly implicate the warrant requirement of the Fourth Amendment as the police officers were acting as community caretakers, and not as law enforcers.[88] The court also noted that the exigent circumstances exception was not implicated in this case.[89] Some courts have interpreted *Rohrig* as not applying the community caretaking doctrine established in *Cady,* but instead applying what appears to be a modified exigent circumstances test, with perhaps a lower threshold for exigency if the officer is acting in a community caretaker role.[90] In *United States v. Williams*,[91] the Sixth Circuit seemed to question its own holding in *Rohrig*.[92] However, in a recent case the Sixth Circuit distinguished *Williams* and permitted a community caretaking home

83. *Id.*

84. *Id.* at 1008.

85. United States v. Rohrig, 98 F.3d 1506 (6th Cir. 1996).

86. *Id.* at 1522.

87. *Id.* at 1509.

88. *Id.* at 1523 ("[N]othing would have been gained if a disinterested magistrate had independently evaluated [the officer's claim], based on their observation . . . of loud noise.").

89. *Id.* at 1518. Noting that there are "three important considerations in a typical 'exigent circumstances inquiry: (1) whether immediate government action was required, (2) whether the governmental interest was sufficiently compelling to justify a warrantless intrusion, and (3) whether the citizen's expectation of privacy was diminished in some way" and concluding that "each of these consideration indicated that the warrantless entry into [the defendant's] home was justified by exigent circumstances." *Id.*

90. *See* Sutterfield v. City of Milwaukee, 751 F.3d 542, 561–62 (7th Cir. 2014); Ray v. Twp. of Warren, 626 F.3d 170, 176 ("The jurisdictions that apply the Community Caretaking Exception to homes] did not simply rely on the community caretaking doctrine established in *Cady.* They instead applied what appears to be a modified exigent circumstances test, with perhaps a lower threshold for exigency if the officer is acting in a community caretaking role.").

91. United States v. Williams, 354 F.3d 497 (6th Cir. 2003).

92. *Id.* at 508 ("[D]espite reference to the doctrine of *Rohrig,* we doubt that community caretaking will generally justify warrantless entries into private homes.").

entry.[93] It appears that the Sixth Circuit will continue to oscillate on this very important issue.

III. ANALYSIS

It is clear that the circuits have taken differing approaches in applying the Supreme Court's holding in *Cady*. In at least some circuits, the community caretaking exception can still be used to justify warrantless searches of private homes. This means that the protections afforded by the Fourth Amendment in the context of the home could differ depending on what state a person is in. This presents problems both for citizens and for law enforcement, who are expected to engage in community caretaking functions almost every day,[94] and may not know what the doctrine permits them to do.

A. Community Caretaking, Exigent Circumstances, and Emergency Aid

Before a clear standard for evaluating the constitutionality of community caretaking searches can be established, courts must get a handle on how to treat the community caretaking exception in relation to the exigent circumstances exception and the emergency aid exception.[95] Exigent circumstances and community caretaking should be treated as two separate exceptions. "The [exigent circumstances exception] is based on the existence of an ongoing criminal investigation," and "allows evidence to be gathered prior to its destruction or allows an arrest to be made prior to flight."[96] In contrast, the community caretaking exception applies when the police are engaged in functions "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[97] Not only do exigent circumstances and

93. United States v. Lewis, 869 F.3d 460, 463 (6th Cir. 2017).

94. United States v. Rodriguez-Morales, 929 F.2d 780, 784–85 (1st Cir. 1991) (citation omitted). Saying that an officer is "expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety." *Id.*

95. *See* MacDonald v. Town of Eastham, 745 F.3d 8, 13 (1st Cir. 2014) ("The question [of when a community caretaking search is permissible outside automobile context] is complicated because courts do not always draw fine lines between the [community caretaking exception] and other exceptions to the warrant requirement."); State v. Deneui, 775 N.W.2d 221, 232 (S.D. 2009) (stating that the application of the community caretaking exception creates "contradictory and sometimes conflicting doctrines.").

96. *See* MCINNIS, *supra* note 48, at 104.

97. Cady v. Dombrowski, 413 U.S. 433, 441 (1973); California v. Ray, 981 P.2d 928, 933 (Cal. 1999) (explaining that while exigent circumstances apply in the crime-fighting

community caretaking come up in different situations, but different legal standards apply to both. Under exigent circumstances, the police must reasonably believe that criminal evidence will be destroyed or a suspect will avoid capture if they take the time to get a warrant, and they must have probable cause to believe that evidence of a crime will be found in the area to be searched.[98] When acting under the community caretaking exception, the police need only possess a reasonable basis for doing what they did.[99]

Courts should treat the emergency aid exception as a sub-category of the community caretaking exception. Emergency aid fits perfectly under the framework of community caretaking, as the police are taking action "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[100] The Michigan Supreme Court recently adopted this understanding of the community caretaking exception, and held that emergency aid should be treated as part of community caretaking.[101] The court noted that treating emergency aid and community caretaking as two separate exceptions to the warrant requirement is "needlessly complex."[102] The court also reasoned that handling emergency aid and community caretaking together makes sense, because both exceptions involve situations where the police are not acting pursuant to a criminal investigation.[103] This understanding of

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context, the community caretaking doctrine applies when police are not engaged in crime-solving activities); *see also* MCINNIS, *supra* note 48, at 104 ("[T]he community caretaking exception ends when the police start to engage in an investigation.").

98. *See* Kirk v. Louisiana, 536 U.S. 635, 637 (2002). Agreeing with the notion that "[t]he Fourth Amendment to the United States Constitution has drawn a firm line at the entrance to the home, and thus, the police need both probable cause to either arrest or search and exigent circumstances to justify a nonconsensual warrantless intrusion into private premises." *Id.* (quotation marks and citation omitted).

99. *See Ray*, 981 P.2d at 937 ("The appropriate standard under the community caretaking exception is one of reasonableness: Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?"); *Deneui*, 775 N.W.2d at 239. Holding that for the community caretaking exception to justify warrantless intrusion the home, "the purpose of community caretaking must be the objectively reasonable independent and substantial justification for the intrusion; the police action is apart from the detection, investigation, or acquisition of criminal evidence; and the officer is able to articulate specific facts that, taken with rational inferences, reasonably warrant the intrusion." *Id.*

100. *Cady*, 413 U.S. at 441.

101. Michigan v. Slaughter, 803 N.W.2d 171, 185 (Mich. 2011).

102. *Id.* at 185. Noting that the role of the court should be "to establish clear principles of law, consistent with the Constitution, that subsequent courts can apply as the facts of any particular case dictate." *Id.*

103. *See id.* at 185–86 ("[I]f there is anything clear from the United States Supreme Court's articulation of the community caretaking exception, it is that *actions pursuant to*

the law is easier to apply and should be adopted by the entire Sixth Circuit.

Some Fourth Amendment scholars have argued that emergency aid should be treated separately from community caretaking, and that community caretaking in homes is not necessary because we have the emergency aid exception.[104] However, this stance fails to note that there are some instances when police acting in their community caretaking function in a home would not constitute an emergency, but where it would be impractical for a police officer to get a warrant. A perfect example of this would be the situation described at the beginning of this Note, where a police officer is checking on the home of someone she knows to be on vacation,[105] or is checking on the home of an elderly person, or someone who is sick. These are all community caretaking functions that police officers perform every day,[106] and are necessary to help keep communities safe and to protect the welfare of citizens.[107] Many people rely on police officers to perform these functions,[108] and if the police are only allowed into homes for dire emergencies or when they possess a warrant, it would greatly curtail the ability of the police to perform these important tasks. As the Sixth Circuit noted in *United States v. Rohrig,* "nothing in the Fourth Amendment requires us to set aside our common sense," and "the Amendment's 'reasonableness' and warrant requirements [should not be read] as authorizing timely governmental responses only in cases involving life-threatening danger."[109] For this reason, courts should treat emergency aid as part of community caretaking, and permit both exceptions to justify warrantless entries into homes. However, extra safeguards should be implemented to ensure that the police do not use a community caretaking entry as a

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community caretaking functions qualitatively differ from actions pursuant to criminal investigations.") (emphasis in original)).

104. *See* Gregory T. Helding, *Stop Hammering Fourth Amendment Rights: Reshaping the Community Caretaking Exception ith a Physical Intrusion Standard*, 97 MARQ. L. REV. 122, 152–53 (2013). Arguing searches of a private residence should be evaluated using the emergency aid doctrine, not community caretaking, because "only a genuine emergency will justify entering and searching a home without a warrant and without consent or knowledge" and "anything less is not sufficient to guard that which stands at the core of people's Fourth Amendment rights-their homes." *Id.* (citation omitted).

105. *See supra* note 1.

106. See *supra* note 94.

107. *See* Oregon v. Bridewell, 759 P.2d 1054, 1068 (Or. 1988) ("Many of us do not know the names of our next-door neighbors. Because of this, tasks that neighbors, friends[,] or relatives may have performed in the past now fall to the police.").

108. *See id.*

109. United States v. Rohrig, 98 F.3d 1506, 1521 (6th Cir. 1996).

pretext to look for incriminating evidence, which could later be used against the homeowner at trial.

B. Balancing the Importance of Community Caretaking with the Sanctity of the Home: A New Community Caretaking Standard for Home Entries

Community caretaking searches implicate two very important interests: the interest of the police in performing their duties and keeping citizens safe,[110] and "the sanctity of the home" under the Fourth Amendment.[111] Since the Supreme Court's decision in *Cady v. Dombrowski*, circuits have chosen to protect either one interest or the other,[112] and not to implement a more pragmatic approach which would serve both interests much better than the standards currently being applied. One likely reason for this is that the Supreme Court has provided little guidance since *Cady*, leaving the circuits to decide for themselves whether community caretaking searches should extend into the home. This issue will be especially important in Michigan, because the scope of the community caretaking exception has been unsettled in the Sixth Circuit since the court stated in *United States v. Williams*[113] that it "doubted that community caretaking will generally justify warrantless entries into private homes," but did not definitively make this the law.[114] The Michigan Supreme Court recently held that community caretaking searches could extend into homes, but did not install any further protections to ensure that the exception does not become a subterfuge for criminal investigations.[115] The Ohio Supreme Court recently heard a case on community caretaking, and held that the community caretaking exception allows police officers to stop a person and render aid if they reasonably believe that there is an immediate need for their assistance.[116] The court noted that "stopping a person on the street is 'considerably less intrusive than police entry into the home itself,'"[117] but, like the Sixth Circuit, the Ohio court did not definitively hold that community caretaking searches should be confined to vehicles.[118]

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110. *See supra* note 94 and accompanying text.

111. Payton v. New York, 445 U.S. 573, 601 (1980).

112. *See e.g.*, United States v. Quezada, 448 F.3d 1005, 1008 (8th Cir. 2006) (permitting a community caretaking search in the context of a home by simply applying the reasonableness approach); Ray v. Twp. of Warren, 626 F.3d 170, 177 (3d Cir. 2010) (holding that community caretaking searches could not extend into homes at all).

113. United States v. Williams354 F.3d 497 (6th Cir. 2003).

114. *Id.* at 508.

115. Michigan v. Slaughter, 803 N.W.2d 171, 185–86 (Mich. 2011).

116. Ohio v. Dunn, 964 N.E.2d 1037, 1042 (Ohio 2012).

117. *Id.* (quoting Illinois v. McArthur, 531 U.S. 326, 336 (2001)).

118. *Id.*

It would be ideal for the United States Supreme Court to hear a community caretaking case and provide a uniform answer to citizens and police officers across the country. This would resolve the circuit split,[119] and would provide equal protections to citizens under the Fourth Amendment.[120] There are actually two important protections implicated for citizens in the context of community caretaking searches: the right to be free from "unreasonable searches and seizures,"[121] and the interest in receiving adequate assistance from law enforcement.[122] There is no doubt that the privacy afforded to the home stands at the core of the Fourth Amendment.[123] However, the Court should not create a society where police officers have to tell citizens: "Sorry, we can't help you. We need a warrant and can't get one."[124] Therefore, the Court should adopt a standard which would allow police officers to effectuate home entries under the community caretaking exception, but would also add extra protection to ensure that the police really are motivated by a desire to help the public, and not to find incriminating evidence. Unfortunately, this is unlikely to happen, as many of the Fourth Amendment circuit splits "have endured for years."[125] The circuit split regarding the community caretaking exception has been around for nearly twenty years,[126] and the Supreme Court has not mentioned the doctrine since its decisions on inventory searches.[127]

If the United States Supreme Court will not act, the Sixth Circuit should adopt a uniform standard which will provide more protection for the sanctity of the home than the current reasonableness standard, while still allowing police officers to engage in important community

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119. *See* Wayne A. Logan, *Constitutional Cacophony: Federal Circuit Splits and the Fourth Amendment*, 65 VAND. L. REV. 1137, 1150 (2012) (acknowledging the circuits' split regarding the scope of the community caretaking exception).

120. *See id.* at 1138 ("That Fourth Amendment doctrine differs based on geographic happenstance would likely come as a surprise to most Americans, who believe—as John Jay put it in the Federalist Papers—that 'we have uniformly been one people; each individual citizen everywhere enjoying the same national rights, privileges, protections.'") (internal citation omitted)).

121. U.S. CONST. amend. IV.

122. *See* California v. Ray, 981 P.2d 928, 939 (Cal. 1999) (acknowledging the "assistance role of law enforcement").

123. *See* Payton v. New York, 445 U.S. 573, 585 (1980).

124. *Ray*, 981 P.2d at 939 (citation omitted).

125. *See* Logan, *supra* note 119, at 1155.

126. *See id.* at 1198 n.396 (recognizing that the circuit split arose without official recognition by the circuits after the Sixth Circuit's 1996 holding in *United States v. Rohrig*).

127. *See e.g.*, Colorado v. Bertine, 479 U.S. 367, 372 (1987).

caretaking functions.[128] The Sixth Circuit should definitively rule that community caretaking searches can extend into homes, so long as they are reasonable. However, the court should suspend plain view during such searches and require officers to obtain a warrant before they are able to seize an item which could be used against the homeowner at trial. This added layer of protection will ensure that police officers are able to perform essential community caretaking functions, while significantly reducing the likelihood that they will use community caretaking as a subterfuge to look for and seize evidence in plain view.

1. How Should Courts Assess Reasonableness After Cady*?*

The Court in *Cady* held that community caretaking searches must be completely divorced from any motive to investigate suspected criminal activity.[129] However, the Court did not explain how courts should evaluate this motive in future cases.[130] It is unclear whether this is a completely objective standard, or whether it turns on the subjective motivations of a police officer. Traditionally, the Court has avoided looking at the subjective motivations of a police officer in assessing whether a search or seizure is reasonable under the Fourth Amendment.[131] In *Whren v. United States,* the Court held that so long as an officer has probable cause to believe that a motorist has violated a traffic law, the temporary detention of that motorist will be deemed reasonable under the Fourth Amendment, even if a reasonable police officer would not have stopped the motorist.[132] However, the Court acknowledged language in previous cases involving inventory searches, where the Court evaluated the police officer's conduct to see if the officer acted in bad faith.[133] One such case was *Colorado v. Bertine,* where the Court found it significant that there was "no showing that the police, who were following standardized procedures, acted in bad faith or

128. Lower courts are always free to provide more protections to its citizens than the Constitution provides for. *See, e.g.,* Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 391 (1992) (evaluating a consent decree to ensure that it conformed to the constitutional floor provided to state citizens).

129. Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

130. *See id.*

131. *See* Whren v. United States, 517 U.S. 806, 813 (1996) ("Subjective intentions play no role in ordinary, probable cause Fourth Amendment analysis."); Brigham City v. Stuart, 547 U.S. 398, 404 (2006) ("An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed *objectively*, justify [the] action.") (emphasis in original)).

132. *Whren,* 517 U.S. at 808.

133. *Id.* at 811.

for the sole purpose of investigation."[134] Similarly, in *New York v. Burger*, the Court upheld a warrantless administrative inspection, noting that the search "did not appear to be a pretext for obtaining evidence of . . . . violation of . . . penal laws."[135] The Court distinguished these cases from the pretextual stop in *Whren* on the ground that the searches and seizures conducted in those cases were conducted in the absence of probable cause.[136]

Community caretaking searches are much closer to the administrative type searches in *Bertine* and *Burger,* where the Court assessed the subjective motivations of the officers in determining if the searches were reasonable.[137] Like administrative searches, community caretaking searches are conducted in the absence of probable cause.[138] Courts have consistently held that community caretaking searches only require police officers to demonstrate a reasonable basis for their actions.[139] Because community caretaking searches lack the added protection of a probable cause requirement, courts should inquire into the subjective motivations of police officers to ensure that their actions really are motivated by a desire to help the public, and not to find evidence of a crime. This is especially important when officers use the community caretaking exception to effectuate an entry into a home, where a person's privacy interests are the most sensitive.[140] The Supreme Court's efforts to smoke out pretext in the context of inventory searches should certainly apply to community caretaking home entries as well. Requiring police officers to be motivated by a desire to help the public would limit the broad discretion they would otherwise possess, while allowing them to help citizens in need.[141] When assessing reasonableness, courts should

134. *Id.* (quoting Colorado v. Bertine, 479 U.S. 367, 372 (1987)).

135. *Id.* (quoting New York v. Burger, 482 U.S. 691, 716–17 (1987)).

136. *Id.*

137. *See id.*

138. *See* United States v. Quezada, 448 F.3d 1005, 1007–08 (8th Cir. 2006) (holding that when the officer reasonably believes that an emergency exists, he may enter the home without a warrant to undertake community caretaker functions).

139. *See, e.g.,* California v. Ray, 981 P.2d 928, 937 (Cal. 1999). Holding that an officer must show that "a prudent and reasonable officer [would have] perceived a need to act in the proper discharge of his or her community caretaking functions." *Id.*

140. *See* Payton v. New York, 445 U.S. 573, 589 (1980) ("[In no other settings] is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of the home."); United States v. Karo, 468 U.S. 705, 714 (1984) ("At the risk of belaboring the obvious, private residences are places in which the individual normally expects privacy free of government intrusion not authorized by a warrant.").

141. *See* Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness,* 66 WASH & LEE. L. REV. 1485, 1528 (2009) ("Allowing assistance searches only when the officer in question is actually, subjectively motivated by the desire to assist the public would serve [the]

also consider objective factors, such as the significance of the intrusion, the seriousness of the potential harm, and the likelihood that police intervention will help.[142]

Michigan adopted a similar approach in *People v. Slaughter*,[143] where the Michigan Supreme court considered the subjective motivations of a firefighter who entered a home under the community caretaking exception.[144] The firefighter was called to a home to investigate a water leak that was occurring in a wall between two adjoining houses.[145] The firefighter proceeded to the basement of the neighbor's home, and saw marijuana plants in plain view which were later used against the neighbor at trial.[146] In assessing whether the firefighter's actions were reasonable, the court assessed whether he acted in good faith in entering the home, the scope of the entry,[147] and whether the means and scope of the entry were reasonable.[148] The court ultimately held that the firefighter's actions were reasonable and therefore the seized marijuana plants could be used against the defendant at trial.[149] This case illustrates a very important point: that courts are fully capable of assessing the subjective motivations of police officers (and firefighters) to ensure that they do not abuse their roles as community caretakers. Therefore, it should not be necessary to hinder the ability of police officers and firefighters to carry out necessary community caretaking functions by limiting the community caretaking exception to automobiles only, as has been suggested by many courts and some Fourth Amendment

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discretion limiting function without stripping the officer of the flexibility to adapt to the needs of any given situation.").

142. *Id.* at 1541. Noting that courts should inquire into three assessments "in evaluating the reasonableness of a community-caretaking search or seizure: . . . First, how significant is the intrusion? Second, how serious is the potential harm? And third, what is the likelihood that the intrusion will prevent or lessen the harm?" *Id.*

143. 803 N.W.2d 171 (Mich. 2011).

144. *Id.* at 323 ("[G]ood faith alone is not sufficient to satisfy the requirements of the Fourth Amendment; firefighters must 'possess specific and articulable facts' leading them to the conclusion that their imminent action is necessary to abate the threat to persons or property inside the private residence.") (internal citations omitted).

145. *Id.* at 175.

146. *Id.*

147. *Id.* at 182, 184 (noting that the scope of the entry must be limited to the justification for making the initial entry and stating that because the firefighter only proceeded to the basement, where he reasonably believed the water was coming from, the scope of the entry did not exceed beyond the justifications for the initial entry).

148. *Id.* at 182. ("[F]irefighters are not constrained to follow the least intrusive means of abating the imminent threat of fire" and "firefighters could have abated the fire hazard 'by 'less intrusive' means does not, by itself, render the search unreasonable.") (citing Cady v. Dombrowski, 413 U.S. 433, 441 (1973)).

149. *Id.* at 185.

Scholars.[150] Courts should be fully capable of assessing the subjective motivations of police officers to ensure that their actions comply with the reasonableness requirement under the Fourth Amendment. However, as has been recognized by others, the community caretaking exception does have the potential to become a subterfuge for criminal investigations if left unchecked.[151] This could be especially true in harder cases, where it is not as obvious that police officers acted in good faith. However, this should not be used as a reason to limit the community caretaking exception to automobiles. The next section will explore some possible solutions courts could adopt to provide consistent protection for citizen's Fourth Amendment rights while still allowing police officers to do their jobs effectively.

2. *Preventing the Police from Using Community Caretaking Entries as a "Pretext" to Look for Incriminating Evidence in Plain View*

As previously mentioned, allowing the community caretaking exception to extend into homes creates the potential for abuse if police officers use the exception as a pretext to look for criminal activity or incriminating evidence.[152] A recently decided case from Wisconsin illustrates how police officers could claim to be entering a home under the community caretaking exception, when they are really motivated by the desire to find incriminating evidence.[153] In that case, officers received an anonymous tip in which the caller stated that she had just left a residence, and observed two people sleeping on the floor next to cocaine and some scales.[154] Officers entered the residence and proceeded to seize crack cocaine and scales in plain view.[155] The officers claimed that they entered the residence because they were concerned about the well-being

150. *See, e.g.*, United States v. Pichany, 687 F.2d 204, 209 (7th Cir. 1982); Helding, *supra* note 104, at 158–59.

151. *See id.* at 160. Recognizing pretext as "one of the most dangerous aspects of allowing the [community caretaking exception] to cover warrantless home searches." *Id.*

152. *See* Mark Goreczny, *Taking Care While Doing Right by the Fourth Amendment: A Pragmatic Approach to the Community Caretaker Exception*, 14 CARDOZO PUB. L. POL'Y & ETHICS J. 229, 237 (2015) ("Police may use a false community caretaking function as a pretextual reason for entry, when they are really motivated by the desire to investigate criminal activity or obtain evidence.").

153. Wisconsin v. Pinkard, 785 N.W.2d 592 (Wis. 2010); *see also* Helding, *supra* note 104, at 158–59 (describing *Pinkard* as an obvious example of officers using community caretaking justifications as a pretext to enter a home to search for evidence without a warrant).

154. *Pinkard*, 785 N.W.2d at 594–95.

155. *Id.* at 595.

of the two residents.[156] However, the officers never articulated any concern about a potential overdose, never dispatched any medical personnel to the home, and they left before they were able to locate one of the residents.[157] Although this type of pretextual search has been allowed in the context of vehicles,[158] courts should take extra steps to ensure that it does not extend into homes given the extra protection afforded to the home under the Fourth Amendment.[159] Given the sanctity of the home under the Fourth Amendment, one must wonder why the Supreme Court has not applied further protection in addition to the reasonableness requirement to ensure that community caretaking searches in the context of the home do not become a subterfuge for criminal investigations.

To provide further protection, the Sixth Circuit should adopt a standard which allows for community caretaking entries into private homes so long as they are reasonable, with the reasonableness analysis turning on the officer's intent at the time of entry.[160] This standard recognizes the need to allow police officers to render aid to those in need, while helping to curb the wide discretion afforded to officers under the community caretaking exception.[161] Additionally, to ensure that the community caretaking doctrine does not stray too far from its origins in *Cady v. Dombrowski*,[162] the plain view doctrine should be suspended during such an entry, and police officers should be required to obtain a warrant before seizing evidence which could be used against the homeowner. This standard allows police officers to carry out their

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156. *Id.*

157. *Id.* at 611–12 (Bradley, J., dissenting).

158. *See* Whren v. United States, 517 U.S. 806, 813–14 (1996) (holding that an officer does not unreasonably seize a motorist by temporarily detaining him upon probable cause to believe that he has violated the traffic laws, even though, under the circumstances, a reasonable officer would not have stopped the motorist absent additional police objectives, and noting that so long as there was probable cause to effectuate the traffic stop, the officer's subjective motivations for stopping the vehicle were irrelevant).

159. South Dakota v. Opperman, 428 U.S. 364, 367 (1976) ("[T]he expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.") (footnote omitted)).

160. *See* United States v. Rohrig, 98 F.3d 1506 (6th Cir. 1996); *see also supra* Part II.D.2.

161. *See* Matthew Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT. J. CRIM. L. 3, 35 (2005) ("[A]n inquiry into officer intent at the time of the search or seizure, using a reasonableness standard and requiring good faith, will serve as a check on abuse by law enforcement.").

162. *See* Cady v. Dombrowski, 413 U.S. 433, 441 (1973). Stating that community caretaking searches should be "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id.*

community caretaking functions in the context of homes so long as their entry was reasonable. However, if officers want to stray from the purpose of the community caretaking exception and seize evidence of wrong doing, an additional check should be placed on their actions by requiring them to obtain a warrant supported by separate probable cause.[163] The probable cause needed to seize such evidence must be separate from the community caretaking entry in order to ensure that the officers do not invade the home under the guise of a community caretaker in the hope of developing the requisite probable cause.

Admittedly, this standard is not perfect, as it does not completely eliminate pretext in the context of community caretaking home entries. It would be easy to imagine a situation similar to that in *Pinkard*, where the police received an anonymous tip from a caller stating that she observed two people sleeping next to some crack cocaine inside of a home.[164] Under this standard, the police could enter the home so long as their actions comply with the reasonableness requirement, but would not be able to seize the evidence unless they develop separate probable cause. This standard could still motivate police officers to effectuate such entries under the guise of a community caretaker, when they are really motivated by the chance to confirm their suspicions that there is drug paraphernalia inside of the home. The police would then be able to monitor the home to try to develop separate probable cause to support a warrant application.[165] Although this is a valid criticism, it is really one of the benefits of this standard. This standard strikes a compromise between the two important interests implicated by this issue: the interest of the police in carrying out community caretaking functions and fettering out crime,[166] and the interest of homeowners in being free from unreasonable searches and seizures inside of their homes.[167] This standard allows the police to carry out all of their community caretaking functions inside of homes, places an additional check on the police when they stray from their community caretaking functions, and still allows the police to seize illegal contraband that could be detrimental to society, so long as they develop separate probable cause.

Another potential criticism of this standard could be that it curtails the ability of police officers to do their jobs. This is certainly a valid concern, as the point of the proposed standard is to allow police officers

163. *See* Illinois v. Gates, 462 U.S. 213, 238 (1983) (stating that a magistrate must have a substantial basis to find that probable cause existed before issuing a warrant).

164. *See* Wisconsin v. Pinkard, 785 N.W.2d 592, 594–95 (Wis. 2010).

165. *See Gates*, 462 U.S. at 275 (stating that a magistrate must consider a warrant application and the findings that are necessary to support a finding of probable cause).

166. *See supra* note 94, and accompanying text.

167. *See* Payton v. New York, 445 U.S. 573, 585 (1980).

to do their jobs effectively while still providing adequate protection for the Fourth Amendment rights of citizens. It could be argued that requiring police officers to obtain a warrant supported by separate probable cause before seizing evidence would hamper their ability to remove potentially harmful contraband from society and allow potentially valuable evidence to be destroyed. While this is a valid concern, it would likely be overblown in practice. Most states now allow police officers to apply for warrants through electronic means, and also allow judges to consider information conveyed by telephone or other electronic means.[168] While this does not remove all delay from the warrant application process, it certainly makes the warrant application process much quicker and less burdensome for police officers.[169] Asking police officers to obtain a warrant supported by separate probable cause would not be a time-consuming requirement, and would serve as an additional check when police officers want to seize incriminating evidence observed during a community caretaking entry.

It is also important to remember that this standard is a compromise. It is meant to protect the privacy interests of citizens while still allowing police officers to do their jobs. If courts are still concerned that this standard tips the scales too far in the direction of protecting privacy, there are other options that they could consider. Courts could allow police officers to seize evidence first, and then require them to demonstrate the requisite level of probable cause before admitting the evidence at trial. They could also implement Michigan's approach, and simply hold a suppression hearing where a judge would examine the subjective motivations of the police officer, to ensure that the officer did not abuse her community caretaking role.[170] These approaches would allow police officers to effectively do their jobs, and would place a check on their discretion when acting under the community caretaking exception. The drawback to these approaches is the check comes later in the process, and they could open the door for police officers to enter a home in the hope that they will find incriminating evidence that will be admitted into evidence later at trial. All of these approaches are better than the hard stance taken by some courts, which is to limit the community caretaking exception to vehicles only.[171] This approach tips the scales too far in the direction of protecting privacy, needlessly

168. *See* Missouri v. McNeely, 569 U.S. 141, 154–55 (2013) (explaining that the Federal Rules of Criminal Procedure and the majority of states now allow prosecutors and police officers to apply for a warrant by various electronic means).

169. *See id.*

170. *See supra* Section II.D.2.

171. *See supra* Section II.D.1.

hampers the ability of police officers to do their jobs, and should be avoided by courts in the future.

3. *The Different Solutions that Have Been Offered by Fourth Amendment Scholars and Their Flaws*

Fourth Amendment scholars have proposed different solutions to prevent the police from using the community caretaking exception to search homes for incriminating evidence. One solution proposed is that taken by many courts, which is to limit the doctrine to the context of vehicles only.[172] This approach ignores the necessity of the many community caretaking functions that police officers perform every day, many of them in the context of the home.[173] Assessing the subjective motivations of police officers and suspending the plain view exception during community caretaking entries would allow police officers to perform these duties, while still protecting the sanctity of the home.[174] Under this approach, police officers cannot use any evidence of wrongdoing seen in plain view while carrying out their community caretaking functions in the home. This approach will ensure that the community caretaking exception does not stray from its origins in *Cady*, and truly is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[175]

Another potentially valid approach that has been offered is to require police officers to obtain an "administrative search warrant" before entering a home under the community caretaking exception.[176] Under this approach, when presented with a community caretaking situation in a home, a police officer will have two choices: 1) enter the home without a warrant, knowing that any evidence obtained will not be admissible at trial under *Mapp v. Ohio*,[177] or 2) go get the warrant before entering.[178]

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172. *See, e.g.*, Jennifer Fink, *People v. Ray: The Fourth Amendment and the Community Caretaking Exception*, 35 U.S.F. L. REV. 135, 158 ("This exception represents a major departure from the many cases decided in light of the [*New York v. Payton*] decision all but prohibiting warrantless searches of private homes.").

173. *See supra* note 94.

174. *See* Goreczny, *supra* note 152, at 247 ("[Applying a prophylactic exclusionary rule] appears to be a legitimate means of encouraging genuine police caretaking functions while deterring bogus or pretextual police activities.") (citing Provo City v. Warden, 844 P.2d 360, 365 (Utah Ct. App. 1992)).

175. Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

176. *See* Megan Pauline Marinos, *Breaking and Entering or Community Caretaking? A Solution to the Overbroad Expansion of the Inventory Search*, 22 GEO. MASON U. CIV. RTS. L.J. 249, 288–89 (2012).

177. Mapp v. Ohio, 367 U.S. 643 (1961).

178. Marinos, *supra* note 176, at 289.

This approach would arguably have the same effect as suspending the plain view exception during community caretaking entries. Under this approach, the police could still decide to enter the home knowing they cannot seize any evidence of wrongdoing. However, requiring the police to obtain an administrative warrant before effectuating a community caretaking entry would be impractical and contrary to the purpose of the community caretaking exception, which is to allow police officers to assist those in need.[179] The whole reason for the community caretaking exception is to encourage police officers to engage in necessary community caretaking functions.[180] If police officers have to decide whether they want to get a warrant before entering a home under the community caretaking exception, it will place one more formality in the mind of the officer before acting. This will likely only have a detrimental effect on the willingness of officers to engage in these functions. Simply suspending the plain view exception and not requiring any warrant leaves very little for the officer to decide before acting, but also ensures that they will not make the decision to enter a home simply to find evidence of wrongdoing. Police officers should only have to decide whether to apply for a warrant when they stray from their community caretaking functions, not before engaging in them.

Finally, it has also been suggested that courts should apply a "modified plain view [exception]" to community caretaking searches.[181] Under this test, there would be an exclusionary rule limiting admissible evidence found during a community caretaking search to evidence found in plain view, and related to the community caretaking reason for entry.[182] The rationale of these scholars is sensible, as it is an attempt to allow police officers to carry out important community caretaking functions in the context of the home, while ensuring that they do not use them as a pretext to find incriminating evidence that will be admissible at

179. *See Cady,* 413 U.S. at 441

180. People v. Ray, 981 P.2d 928, 939 (Cal. 1999) ("An officer less willing to discharge community caretaking functions implicates seriously undesirable consequences for society at large: In that event, we might reasonably anticipate "the assistance role of law enforcement . . . in this society will go downhill.") (internal citations omitted); *see also* Goreczny, *supra* note 152, at 246–47 ("The community caretaking function of police is a necessary one in our society. . . . Constitutional guarantees of privacy and sanctions against their transgressions do not exist in a vacuum but must yield to paramount concerns for human life and the legitimate need of society to protect and preserve life. . . .") (quoting Connecticut v. Demarco, 88 A.3d 491, 509–10 (Conn. 2014)).

181. *See* Goreczny, *supra* note 152, at 257–58; *see also supra* note 94.

182. *See* Goreczny, *supra* note 152, at 257–58 (arguing for a prophylactic exclusionary rule, which would limit evidence admissible at trial to that which is "related to the community caretaking reason for entry").

trial.[183] However, this approach does not provide enough guidance to police officers, and may not provide enough protection for citizens. It may be difficult for a police officer to know whether or not evidence is related to the community caretaking reason for entry. This approach could also encourage officers to seize contraband during a community caretaking entry, in the hopes of later being able to show that it was related to the officer's community caretaking reason for entry. For example, if officers receive a call that someone is having a heart attack inside of their home, they may be incentivized to look around the home for drugs, and then justify the seizure by claiming that the drugs were related to the homeowner's heart attack. This approach does not provide the same protection as simply suspending the plain view exception during an entry to provide community caretaking. By suspending the plain view exception, police officers will know exactly what they are able to do during a community caretaking entry and what is required of them to be able to seize contraband.

Another criticism of the modified plain view exception and the suspension of the exception during community caretaking entries is that it does away with the requirement that searches and seizures be reasonable under the Fourth Amendment.[184] The argument is that because community caretaking searches are reasonable under the Fourth Amendment,[185] suspending plain view during a reasonable search does not make sense.[186] However, this argument is flawed. Although it is "doctrinally true that 'searches are either reasonable or unreasonable'" under the Fourth Amendment, the community caretaking exception poses a special risk that police officers could use the exception to look for incriminating evidence inside of people's homes. [187] A standard should be adopted which allows police officers to render aid to the public, while ensuring that police officers do not take advantage of the community

183. *See id.* at 256–57.

184. *See* Marinos *supra* note 176, at 291–92. ("To hold that evidence uncovered as a result of this reasonable [community caretaking] search is inadmissible at trial would call into question the reasonableness standard.").

185. *See* Hunsberger v. Wood, 570 F.3d 546, 553 (4th Cir. 2009) (explaining that community caretaking searches are reasonable under the Fourth Amendment, even without a search warrant).

186. *See* Marinos, *supra* note 176, at 291–92 ("According to the Fourth Amendment, a search is either reasonable or unreasonable. Because reasonableness is the ultimate standard reasonable searches are constitutional, while unreasonable searches are unconstitutional and often result in the exclusion of evidence."); *see also* Dimino, *supra* note 141, at 1558 (noting that searches are either reasonable or unreasonable, and reasonable searches are constitutional and therefore do not require an exclusionary remedy).

187. *See* Goreczny, *supra* note 152, at 254 (citation omitted).

caretaking exception when searching for incriminating evidence. Permitting police officers to enter homes under the community caretaking exception so long as their actions are reasonable, while suspending plain view during such an entry, does just that. Additionally, by allowing police officers to develop separate probable cause to procure a warrant and seize contraband, this standard also recognizes the interest of police officers and society in fettering out crime, which is often ignored by those who argue that the community caretaking should simply be limited to automobiles.[188]

C. Another Reason for a Uniform Standard in the Sixth Circuit: Qualified Immunity

The uncertainty regarding the scope of the community caretaking exception creates another problem that has not been mentioned by others: many citizens are being prevented from suing for a violation of their Fourth Amendment rights due to qualified immunity.[189] The Sixth Circuit has stated that "despite . . . *Rohrig*, [it] doubt[s] that community caretaking will generally justify warrantless entries into private homes."[190] This was certainly not a clear holding, so the Sixth Circuit has potentially opened the door for police officers to claim qualified immunity because of the uncertain state of the law in the Sixth Circuit. The Sixth Circuit's latest decision distinguishing *Williams* will only increase the uncertainty.[191] By definitively holding that community caretaking searches can extend into homes, while suspending the plain view doctrine during such a search, the Sixth Circuit would establish a much clearer law. Police officers would then know what they are permitted to do under the community caretaking exception, and could not raise the defense of qualified immunity as easily as they have in other circuits.[192] Under this approach, not only can the police not seize any evidence seen in plain view during a community caretaking entry unless

188. *See, e.g.*, Fink, *supra* note 172.

189. *See e.g.*, MacDonald v. Town of Eastham, 745 F.3d 8, 15 (1st Cir. 2014). Without deciding "whether or not the community caretaking exception can be applied so as to render constitutional a warrantless and non-consensual police entry into a residence," holding that because there is no clearly established law that would deter reasonable police officers from effecting a community caretaking entry, the defendant police officers were entitled to qualified immunity. *Id.*; Ray v. Twp. of Warren, 626 F.3d 170, 177 (3d Cir. 2010). Holding that police officers were entitled to qualified immunity because "the question of whether the Community Caretaking Doctrine could justify a warrantless entry into a home was unanswered in [the Third] Circuit." *Id.*

190. United States v. Williams, 354 F.3d 497, 508 (6th Cir. 2003).

191. United States v. Lewis, 869 F.3d 460 (6th Cir. 2017).

192. *See Ray*, 626 F.3d at 177.

they develop separate probable cause and get a warrant, but a citizen would likely be able to sue for any violation of their constitutional rights stemming from such a seizure. This test provides the kind of protection that is meant to be afforded to the home under the Fourth Amendment, while still allowing police officers to carry out important community caretaking functions with few impediments.

IV. CONCLUSION

The community caretaking exception has significantly expanded since its origins in *Cady v. Dombrowski*.[193] What began as an exception confined to automobiles is now being used to allow the police to enter private homes, as it should be. Society expects law enforcement officers to perform community caretaking functions every day, and these functions do not come up just in the context of automobiles. However, a balance should be struck between allowing police officers to carry out these important tasks, and affording the home the protection that it deserves under the Fourth Amendment.

Unfortunately, because the Supreme Court has not considered the community caretaking exception in nearly thirty years, the scope of the doctrine varies across the different circuits. The situation in the Sixth Circuit has been unsettled since *United States v. Williams*, in which the court seemingly hinted that it would limit the doctrine to automobiles, but never definitively made this the law.[194] The Sixth Circuit's recent holding distinguishing *Williams* indicates that the situation in the Sixth Circuit will continue to evolve. This Note has offered several solutions that would allow police officers to carry out their community caretaking functions in the context of homes while still placing a check on their discretion. Courts could simply hold a suppression hearing to assess the subjective motivations of police officers. This approach places a check on the discretion of police officers, but may do so too late in the process. This Note offers a new standard, which would permit police officers to enter private homes under the community caretaking exception, so long as their actions comply with the reasonableness requirement. In assessing whether the officer's actions were reasonable, courts would inquire into the subjective motivations of the officer to ensure that they entered the home in good faith. Additionally, when officers do enter a home as a community caretaker, the plain view doctrine would be suspended, and the officer would be required to obtain a warrant before they are able to seize any evidence. This requirement will provide a check on the

193. Cady v. Dombrowski, 413 U.S. 433 (1973).
194. *Williams*, 354 F.3d at 508.

discretion of officers while still recognizing society's interest in stopping crime. One thing courts should not do is limit the community caretaking exception to vehicles, as this places too great of an obstacle in the way of police officers, who already have very difficult jobs. This approach is a good middle ground that recognizes the very important interests implicated on both sides of this issue.