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Protecting Individuals' Fourth Amendment Rights against Government Usurpation: Resolutions to the Problematic and Redundant Community Caretaking Doctrine

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I. INTRODUCTION.

Over 200 years ago, the founding fathers equipped our nation with a document affording all citizens some basic, constitutional

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protections. For centuries, these protections existed unchanged.[1] But as time passed, society's need to maintain order and safety began to threaten these protections. In the 1970s, an exception to the Fourth Amendment of the United States Constitution surfaced, giving police the ability to respond to emergency situations at the expense of individual Fourth Amendment protections.[2] The exception, called the community caretaking doctrine, allows police officers to forgo Fourth Amendment protection to engage in community caretaking functions for society's greater benefit.[3]

In the past forty years, courts have adopted this exception and interpreted it differently. Some courts have applied the exception liberally,[4] beyond what was intended by the United States Supreme Court in the decision that adopted the community caretaking doctrine.[5] Other courts have refused to extend the exception,[6] and some have simply decided not to engage in the debate altogether.[7] Some note that even the United States Supreme Court, which was the first to apply the doctrine, has spoken so little about it.[8]

The exception is terrorizing the basic Fourth Amendment protection that our founding fathers vehemently fought to protect. Applying the doctrine to circumstances beyond its original intent threatens the very core protections delineated in the Constitution. It is time to re-prioritize the interests in the Constitution over the interests of police departments across the nation in maintaining order and safety.

This article will examine the history of the community caretaking doctrine, and how it has chipped away at core constitutional protections. Part II will discuss a doctrine that one may or may not have ever heard of: the community caretaking doctrine. Oftentimes, people know that police officers can forgo the Fourth Amendment for

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1. *See* U.S. CONST. (The United States Constitution is still our nation's governing document in the twenty-first century, and the Bill of Rights, including the First Amendment, still govern our behavior.).

2. Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. CHI. LEGAL F. 261, 272 (1998) (discussing the community caretaking doctrine).

3. *See id.*

4. *See, e.g.*, Phillips v. Peddle, 7 F. App'x 175, 179-80 (4th Cir. 2001) (applying the community caretaking doctrine to the warrantless search and seizure of the home).

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

6. *See* Ray v. Twp. of Warren, 626 F.3d 170, 177 (3d Cir. 2010).

7. Ray v. Twp. of Warren, 626 F.3d 170, 177 (3d Cir. 2010) (applying the community caretaking doctrine to a warrantless search of a vehicle consistent with prior United States Supreme Court precedent).

8. David L. Hudson, *Courts in a Muddle Over 4th Amendment's Community Caretaking Exception*, ABA J. (Aug. 2013), http://www.abajournal.com/magazine/article/courts_in_a_muddle_over_4th_amendments_community_caretaking_exception/.

the sake of the community, but they do not know the name of this doctrine. This section will discuss where the doctrine originated, and what exactly it means for Fourth Amendment protections.

Part III will discuss the problems that many courts are having with the doctrine: where to apply it and when. There exists a circuit split as to the way that the doctrine should be used to protected individuals from overreaching police intrusions. Some courts apply the doctrine solely to the warrantless search of vehicles. Other courts apply the doctrine not only to the search of vehicles, but also to the warrantless search of homes.

Part IV will discuss why the leading case about the community caretaking doctrine, *Cady v. Dombrowski*, should be overturned. The inherent problems with the doctrine, coupled with the fact that the Court is still unclear about the standards for applying the doctrine, prove that the Court's creation of the doctrine was impulsive and in error. The Fourth Amendment protects against unreasonable searches and seizures, and using the doctrine to establish reasonableness for a warrantless search and seizure is, quite frankly, unreasonable.

Part V will discuss an alternative argument: even if the community caretaking doctrine continues to stand, it should be limited, because it was not the Court's intent to apply the doctrine outside the context of vehicles. Further, there are significant other reasons, beyond the Court's intent, as to why the doctrine should be limited. Any extension of the doctrine beyond the home is unreasonable.

Part VI will discuss the final alternative argument. If the community caretaking doctrine remains standing as-is, without any limitations, an exclusionary rule should be applied to restore faith in police officers and further protect Fourth Amendment principles. The fruits of the search and seizure, as a result of an officer's use of the doctrine, should be suppressed in a court of law. Indeed, if courts adopt this latter argument, then, at the very least, citizens will feel more confident in their local police departments and perhaps be more cooperative with them.

II. WHAT IS THE COMMUNITY CARETAKING DOCTRINE, AND WHERE DID IT COME FROM?

The framing document of the United States' government, the United States Constitution, was drafted to "combin[e] the requisite stability and energy in government, with the inviolable attention

due to liberty and to the republican form."[9] The Anti-Federalists, who vehemently sought to limit a strong, centralized government, refused to ratify the Constitution without a Bill of Rights.[10] They claimed the Constitution did not contain a specific declaration about what the government could *not* do to basic, individual rights.[11] Written to pacify these concerns, the founding fathers wrote the Bill of Rights to protect individual citizens' rights from government usurpation.[12]

It is the Fourth Amendment within the Bill of Rights that protects the right against unreasonable searches and seizures—a right that these original citizens believed to be naturally theirs.[13] It 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.[14]

The Fourth Amendment does not prohibit all searches or seizures—only those deemed unreasonable.[15] Reasonableness is set forth as the substantive command of the Fourth Amendment.[16] Although reasonableness has been set forth as the overarching norm, determining the meaning of reasonableness has been deemed an "elusive goal."[17]

It is undisputed that the "ultimate touchstone" of the Fourth Amendment is reasonableness.[18] Scholars observe that no other provision of the Constitution mandates such an "open-ended interpretation" that requires "'constructions that change with changing circumstances.'"[19] They note that reasonableness is not determined

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9. THE FEDERALIST NO. 37 (James Madison).
10. *The Bill of Rights: A Brief History*, AM. C.L. UNION, http://www.aclu.org/other/bill-rights-brief-history (last visited Jan. 13, 2018).
11. *Id.*
12. *Id.*
13. *Id.*
14. U.S. CONST. amend. IV.
15. *Id.*
16. *See id.*
17. Dana Raigrodski, *Reasonablness and Objectivity: A Feminist Discourse of the Fourth Amendment*, 17 TEX. J. WOMEN & L. 153, 158 (2008).
18. Brigham City v. Stuart, 547 U.S. 398, 403 (2006).
17.Raigrodski, *supra* note 17, at 158 (quoting Carol S. Steiker, *Second Thoughts About First Principles*, 107 HARV. L. REV. 820, 824 (1994)).

by any fixed formula.[20] In fact, the Constitution does not define what is an unreasonable search,[21] and consequently, there is "'no ready litmus paper test'" available.[22]

Reasonableness is generally determined by a balancing of interests.[23] In *Terry v. Ohio*, the United States Supreme Court determined that reasonableness under the Fourth Amendment is calculated by balancing the government's interests in conducting searches or seizures with the personal privacy and liberty interests invaded by them.[24] In *Bell v. Wolfish*, the Court explained the reasonableness standard:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. *Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.*[25]

Only unreasonable searches violate Fourth Amendment protections.[26] In essence, the text of the Fourth Amendment imposes two requirements on law enforcement: (1) all searches and seizures must be reasonable, and (2) probable cause must be established before a warrant is issued and that warrant must state, with particularity, the scope of the search.[27]

For much of the twentieth century, the United States Supreme Court held that the validity of a search was contingent on the presence or absence of a search warrant.[28] With this view in mind, if an officer obtained advance judicial authorization for a search in the form of a search warrant, then the search was presumed reasonable.[29] A warrant required probable cause.[30] A search or seizure on private premises without a warrant is still considered unreasonable

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20. *Id.*
21. *Id.*
22. *Id.* (quoting United States v. Rabinowitz, 339 U.S. 56, 63 (1950)).
23. Whren v. United States, 517 U.S. 806, 817 (1996).
24. 392 U.S. 1, 21 (1968).
25. 441 U.S. 520, 559 (1979) (emphasis added).
26. *Id.* at 558.
27. Kentucky v. King, 563 U.S. 452, 459 (2011).
28. Cynthia Lee, *Reasonableness with Teeth: The Future of Fourth Amendment Reasonableness Analysis*, 81 MISS. L.J. 1133, 1134-35 (2012).
29. *Id.* at 1135.
30. *Id.*

under the Fourth Amendment unless it falls within a well-established exception to the Fourth Amendment warrant requirement.[31]

In the 1970s, one such exception emerged. The community caretaking doctrine was first recognized by the Court in *Cady v. Dombrowski*.[32] The case centered around Chester Dombrowski, a police officer in the city of Chicago.[33] On the night in question, Dombrowski had driven from Chicago to Wisconsin.[34] Dombrowski's car broke down on the side of the road in Wisconsin.[35] Dombrowski trekked to a local tavern, where he called the police.[36] After Dombrowski phoned the police, two Wisconsin officers picked Dombrowski up at the local tavern, and drove him to the scene of the accident.[37] The officers noticed that Dombrowski was very drunk.[38]

Because the Wisconsin officers believed that Chicago police officers were required by regulation to carry their service revolvers at all times, they attempted to locate Dombrowski's service revolver on his person.[39] Unable to find the service revolver, the officers took Dombrowski to the police station, where he was formally arrested for drunken driving.[40] Still concerned that Dombrowski did not have his service revolver on him, one of the officers went to look for the revolver in Dombrowski's vehicle that had since been towed.[41] Upon examination of the vehicle, the officer found incriminating evidence implicating Dombrowski in a murder.[42]

The lower courts concluded that the warrantless search of Dombrowski's vehicle was unconstitutional and that the seized items from the vehicle were inadmissible at his trial.[43] However, the United States Supreme Court concluded that the items were constitutionally seized.[44] It determined that "[l]ocal police officers . . . frequently investigate vehicle accidents in which there is no claim

31. Payton v. New York, 445 U.S. 573, 586-87 (1980) (noting that property may be seized in plain view because there is no invasion of privacy and is presumptively reasonable).
32. 413 U.S. 433 (1973).
33. *Id.* at 435.
34. *Id.*
35. *Id.*
36. *Id.* at 436.
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.* at 437.
42. *Id.*
43. *Id.* at 444.
44. *Id.* at 449.

of criminal liability and engage in . . . community caretaking functions, *totally divorced* from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[45]

The Court's use of the words "totally divorced" authorized a warrantless search and seizure when the officers' actions were *completely* separate from the officers' investigation or suspicion of criminal activity.[46] For example, imagine an officer who is responding to a neighborhood break-in. The officer walks through the neighborhood to question each neighbor about whether they have recently been victims of a burglary. The officer knocks on a neighbor's door, but there is no answer. The officer, confused because he sees a car with its engine running in the driveway, enters the neighbor's unlocked home. The officer cannot find anyone on the main floor, so he decides to check the basement to see if the neighbor is down there. When the officer enters the basement, he finds a meth lab. Now, the neighbor faces drug charges and a prison sentence. The evidence of the meth lab can be used against her at her trial. Clearly, the officer did not have a warrant to search the neighbor's home. However, because the officer was engaging in community caretaking functions by checking on the neighbor, a warrant was not required. The evidence the officer found is admissible because the officer's actions in entering the home were totally divorced from the acquisition of the evidence of the meth lab.

The Court decided that encounters like these, where police are simply responding as "community caretakers," are reasonable under the Fourth Amendment because they lack an investigatory purpose.[47] The officer in the above example neither entered the neighbor's home to investigate a drug crime nor to continue his investigation into home burglaries. Similarly, the officers in *Cady* lacked an investigatory purpose when they sought to find Dombrowski's service revolver.[48] Instead of finding the revolver, however, they found the fruits of a murder.[49] Moreover, the same doctrine outlined in *Cady* has been applied to warrantless automobile searches in circumstances unlike those found in *Cady*.[50] Rather than focusing on the facts in *Cady*, many state and federal courts distinguish

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45. *Id.* at 441 (emphasis added).

46. *Id.*

47. Mary Elisabeth Naumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 AM. J. CRIM. L. 325, 338 (1999).

48. *Cady*, 413 U.S. at 437 (stating the purpose of searching the vehicle was to locate the service revolver, consistent with the police department's standard procedure).

49. *Id.*

50. Naumann, *supra* note 47, at 351 (describing the Second and Sixth Circuit application of the doctrine outside of the *Cady* circumstances).

between investigatory and non-investigatory functions, extending the application of this doctrine far beyond the facts of *Cady*.[51] Many courts utilize this doctrine to justify initial encounters and subsequent intrusions in other circumstances where officers are acting as "community caretakers" generally.[52] Thus, *Cady* has sparked an endless debate about the situations in which the community caretaking exception applies.

In November of 2017, the Pennsylvania Supreme Court decided for the first time whether Pennsylvania recognizes the community caretaking doctrine as an exception to the Fourth Amendment.[53] This decision illustrates the trends that courts are following: to subsequently bless the holding in *Cady* and recognize the doctrine within their own jurisdictions.[54] These courts have come to recognize that community caretaking functions include a vast array of everyday police activities, most of which are intended to aid community members in danger of physical harm, and to create a sense of security within their own community.[55] Typically, community caretaking functions include activities like checking on noise disputes, attending to stray animals, and welfare checks on the elderly.[56]

Initially, the doctrine appears to be very narrow: it protects law enforcement officers' intrusions when they are engaging in community caretaking functions.[57] However, some jurisdictions interpret the doctrine quite broadly.[58] These jurisdictions recognize that the doctrine encompasses multiple other Fourth Amendment exceptions, making it so broad. [59] One of these exceptions is the emergency aid doctrine, where an officer has an immediate, reasonable belief that a serious, dangerous event is occurring.[60] Another exception is the exigent circumstance exception, which applies when

51. *Id.*

52. *Id.* at 352.

53. Commonwealth v. Livingstone, 174 A.3d 609 (Pa. 2017).

54. Naumann, *supra* note 47, at 351-52 (noting that a myriad of federal and state courts have adopted the doctrine but have added further nuances to it, making the doctrine differ from jurisdiction to jurisdiction).

55. Livingston, *supra* note 2.

56. *Id.*

57. *See* Cady v. Dombrowski, 413 U.S. 433 (1973).

58. Naumann, *supra* note 47, at 330.

59. *See* State v. Blades, 626 A.2d 273, 278 (Conn. 1993) (acknowledging that the emergency aid doctrine is considered a part of the community caretaking function); *see also* Commonwealth v. Livingstone, 174 A.3d 609, 626-27 (Pa. 2017) ("The community caretaking doctrine has been characterized as encompassing three specific exceptions: the emergency aid exception; the automobile impoundment/inventory exception; and the public servant exception, also sometimes referred to as the public safety exception."); Naumann, *supra* note 47, at 330.

60. Naumann, *supra* note 47, at 331.

the police are acting in their "crime-fighting" role.[61] Despite the doctrine's intent to aid the community, however, courts are in discord regarding whether the community caretaking doctrine should be interpreted broadly or narrowly to encompass these other Fourth Amendment exceptions. Some courts have observed that, for example, the exigencies giving rise to the exigent circumstance exception speak more to a "residual group of factual situations that do not fit into other established exceptions,"[62] i.e., the community caretaking doctrine. It appears that courts cherry-pick which exception they want to implicate to ensure that evidence will be admissible and the bad guy will be punished.[63] Although courts are inconsistent regarding the scope of the doctrine to encompass other exceptions, including exigencies, these inconsistencies need not be resolved today. This inconsistency does demonstrate, however, yet another problem with the community caretaking doctrine.

III. THE COMMUNITY CARETAKING DOCTRINE AND THE CIRCUIT SPLIT: DOES ANYONE REALLY KNOW THE BEST INTERPRETATION?

The United States Supreme Court created an outline for how the community caretaking doctrine applies, but left many questions unanswered regarding its applicability. In *Cady*, the Court, arguably, limited its holding to automobile searches because the facts of the case pertained to an automobile search.[64] No language in the holding explicitly limits the applicability of community caretaker functions to incidents solely regarding automobiles; however, no language expands the applicability of community caretaker functions beyond automobiles.[65] Further, the Supreme Court has consistently remained silent on whether the doctrine can even be extended beyond the context of *Cady*.[66] Thus, a circuit split emerged regarding the applicability of the community caretaking doctrine outside the context of vehicles.

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61. *Id.* at 332.

62. Murdock v. Stout, 54 F.3d 1437, 1440 (9th Cir. 1995).

63. *See, e.g.*, State v. Comer, 51 P.3d 55, 63, 65 (Utah Ct. App. 2002) (rejecting the trial court's use of the emergency aid doctrine, but upholding a warrantless entry by police under the exigent circumstances exception to the Fourth Amendment).

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

65. Valerie Moss, *The Community Caretaking Doctrine: The Necessary Expansion of the New Fourth Amendment Exception*, 85 MISS. L.J. 9, 16 (2017).

66. Hudson, *supra* note 8.

The Third, Seventh, Ninth, and Tenth Circuits have erred on the side of caution and narrowly construed *Cady* to only apply to vehicles.[67] The Third Circuit has held that the community caretaking doctrine categorically does not extend to the warrantless searches of homes.[68] In *Ray v. Township of Warren*, the court refused to extend the doctrine to apply to homes because it determined that the Supreme Court's *Cady* ruling was expressly based on the distinction between automobiles and homes in the context of searches.[69] The Third Circuit further refused to cast aside the protection of the sanctity of the home, which was "embedded in our tradition since the origins of the Republic."[70] It also stated that the primary purpose of the Fourth Amendment was to guard against an unreasonable home entry.[71]

Similarly, the Seventh Circuit in *United States v. Pichany* refused to expand the community caretaking doctrine to the searches of homes or residences.[72] In this case, the officers discovered stolen property when they entered the defendant's warehouse while investigating the burglary of another nearby warehouse.[73] Warrantless searches are presumed unreasonable, and the court rejected the officers' argument that their warrantless search was justified under the community caretaking exception.[74] The Seventh Circuit reasoned that only specifically defined classes of cases are exempt from the presumption that a warrantless search is unreasonable, and the Supreme Court's holding in *Cady* did not mean that community caretaking searches of homes were a part of this defined class.[75]

The Ninth Circuit has also adopted a narrow construction of the community caretaking doctrine. In *United States v. Erickson*, a police officer was called to investigate a robbery at the defendant's home while the defendant was not there.[76] While inside the residence, the officer discovered marijuana plants.[77] The Ninth Circuit granted the defendant's motion to suppress the evidence and found

67. *See* Ray v. Twp. of Warren, 626 F.3d 170, 177 (3d Cir. 2010); United States v. Bute, 43 F.3d 531, 535 (10th Cir. 1994) (holding that, in a scenario where officers enter a suspicious-looking garage and find methamphetamine, the community caretaking doctrine applies only to cases involving automobiles); United States v. Erickson, 991 F.2d 529, 532 (9th Cir. 1993); United States v. Pichany, 687 F.2d 204, 208 (7th Cir. 1982).

68. *Ray*, 626 F.3d at 177.

69. *Id.*

70. *Id.* at 175 (quoting Payton v. New York, 445 U.S. 573, 601 (1980)).

71. *Id.*

72. 687 F.2d at 208-09.

73. *Id.* at 205-06.

74. *Id.* at 207-08.

75. *Id.* at 207-09.

76. 991 F.2d 529, 530 (9th Cir. 1993).

77. *Id.*

the officer's search to be unreasonable in violation of the Fourth Amendment.[78] However, the Ninth Circuit's reasoning differed from that of the Seventh Circuit. The Ninth Circuit reasoned that police interact with automobiles as a part of their community caretaking functions on a daily basis, and because of this frequent contact, people generally have a lower expectation of privacy with regards to their vehicles than they do with regards to their homes.[79]

In contrast to these circuits, three federal circuits—the Sixth Circuit, the Fourth Circuit, and the Eighth Circuit—have expanded the community caretaking doctrine to warrantless entries of homes.[80] In *United States v. Quezada*, the Eighth Circuit held that an officer can enter a home without a warrant when the officer has a reasonable belief of the existence of an emergency.[81] The officer in this case went to Quezada's apartment to serve a child protection order, but after shouting to announce himself several times with no answer, the officer went inside the apartment and found Quezada asleep on the floor with a shotgun underneath him.[82] Quezada was arrested for being a felon in possession of a firearm.[83] The Eighth Circuit noted that the shotgun was properly admitted into evidence because of the distinction between police officers' criminal investigatory functions and their community caretaking functions.[84]

In *United States v. Rohrig*, the Sixth Circuit also found that the community caretaking doctrine exception is a lawful extension of the doctrine in *Cady* because the officer's reason for entry into the defendant's home was unrelated to a criminal investigation, and thus, the warrant requirement was not directly implicated.[85] In *Rohrig*, officers responded to a noise complaint and entered the defendant's basement, thinking that the music was coming from inside.[86] Instead, they found a marijuana-growing operation and a shotgun.[87] The defendant moved to suppress the drugs and gun, on the grounds that the entry violated his Fourth Amendment rights.[88] The court disagreed, stating that "[h]aving found that an important

78. *Id.*
79. *Id.* at 532.
80. Naumann, *supra* note 47, at 350; *see* United States v. Quezada, 448 F.3d 1005, 1007 (8th Cir. 2006); Phillips v. Peddle, 7 F. App'x 175, 177 (4th Cir. 2001); United States v. Rohrig, 98 F.3d 1506, 1523 (6th Cir. 1996).
81. 448 F.3d 1005, 1007 (8th Cir. 2006).
82. *Id.* at 1006.
83. *Id.* at 1007.
84. *Id.*
85. 98 F.3d 1506, 1523 (6th Cir. 1996).
86. *Id.* at 1509.
87. *Id.* at 1510.
88. *Id.*

'community caretaking' interest motivated the officers' entry in this case, we conclude that their failure to obtain a warrant does not render that entry unlawful."[89]

The Fourth Circuit also adopted a reasoning similar to the Sixth Circuit in holding that the community caretaking doctrine extends to homes, focusing on the distinction between community caretaking functions and functions that are solely for investigating crimes.[90] In *Phillips v. Peddle*, the officers entered the defendant's home, without a warrant, to serve a subpoena on the defendant to testify in an ongoing federal criminal investigation.[91] The officers knocked on the defendant's door, but he did not answer.[92] Then, they saw an unidentified car in the driveway.[93] Concerned because the defendant had spoken to the officers earlier that day, the officers entered his home.[94] The defendant, provoked by the violation of his Fourth Amendment rights, filed a Section 1983[95] action against the officers.[96] In response, the court granted the officer in question qualified immunity.[97]

Notably, the First and Second Circuit Courts, by contrast, have not ruled definitively on whether the community caretaking doctrine can justify a warrantless search of a home when not performed in response to an emergency situation.[98] When the exception is discussed by these circuits, they seem to skirt around the issue, and offer no clarity as to whether the doctrine is a distinct exception to the warrant requirement or to what circumstances it applies.[99]

Outside of the federal context, an increasing number of state courts have expanded the doctrine to encompass the warrantless entry of homes. The state of Maryland expanded the doctrine to homes in 1997 in *State v. Alexander*.[100] The Commonwealth of Virginia expanded the doctrine to homes in 1995 in *Commonwealth v.*

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89. *Id.* at 1523.
90. Phillips v. Peddle, 7 F. App'x 175 (4th Cir. 2001).
91. *Id.* at 177.
92. *Id.*
93. *Id.*
94. *Id.*
95. 42 U.S.C. § 1983 (1996) (allowing citizens to bring private actions against the Government for a violation of a citizen's constitutional civil rights).
96. *Peddle*, 7 F. App'x at 177.
97. *Id.* at 177-78.
98. *See* MacDonald v. Town of Eastham, 745 F.3d 8, 13 (1st Cir. 2014) ("This court has not decided whether the community caretaking exception applies to police activities involving a person's home."); Gombert v. Lynch, 541 F. Supp. 2d 492, 504 n.6 (D. Conn. 2008) (acknowledging that the Second Circuit has not addressed the issue).
99. Mark Goreczny, *Taking Care While Doing Right by the Fourth Amendment*, 14 CARDOZO PUB. L. POL'Y & ETHICS J. 229, 244-46 (2015).
100. 721 A.2d 275 (Md. Ct. Spec. App. 1998).

Waters.[101] The states of California in 1999, South Dakota in 2009, and Wisconsin in 2013 expanded the doctrine to homes in *People v. Ray*,[102] *State v. Deneui*,[103] and *State v. Gracia*,[104] respectively.

Despite their well-thought out reasoning behind expanding the doctrine to cover homes and residences, the circuit courts of appeals and state courts that have expanded the community caretaking doctrines to the home have been met with intense criticism. Those who disagree with the discretion given to police to search homes under the doctrine have adopted Justice Brennan's warning in his dissent in *Cady*: "I can only conclude, therefore, that what the Court does today in the name of an investigative automobile search is in fact a serious departure from established Fourth Amendment principles."[105] Specifically, those that oppose the doctrine fear that their privacy rights will be infringed. Privacy expectations reach their zenith in the home, which is accorded the full range of Fourth Amendment protections.[106] As the Court described in *Kentucky v. King*, "[i]t is a 'basic principle of Fourth Amendment law' . . . 'that searches and seizures inside a home without a warrant are presumptively unreasonable.'"[107]

It is clear courts vary greatly in their interpretation of how the community caretaking doctrine applies. Additionally, it is not only how the doctrine applies that results in so much disparity. Disparity also results from different interpretations of what is considered reasonable under the doctrine. To illustrate, the foundation of the doctrine is that it is reasonable to allow officers to forgo the warrant requirement when officers are engaging as community caretakers.[108] However, courts have changed the reasonableness requirements of the doctrine.[109] This creates even more disparity and confusion. As a result, courts that are interpreting the doctrine have little to no guidance on how to do so. Essentially, the reasonableness of a warrantless search and seizure is what gives the doctrine life. If it is not reasonable to cast aside individual's basic constitutional rights, then the doctrine cannot be used to protect officers.

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101. 456 S.E.2d 527 (Va. Ct. App. 1995).
102. 981 P.2d 928 (Cal. 1999).
103. 775 N.W.2d 221 (S.D. 2009).
104. 826 N.W.2d 87 (Wis. 2013).
105. Cady v. Dombrowski, 413 U.S. 433, 454 (1973) (Brennan, J., dissenting).
106. Lewis v. United States, 385 U.S. 206, 211 (1966).
107. Kentucky v. King, 563 U.S. 452, 459 (2011) (quoting Brigham City v. Stuart, 547 U.S. 398, 403 (2006)).
108. Cady v. Dombrowski, 413 U.S. 433 (1973).
109. *See, e.g.*, People v. Mitchell, 347 N.E.2d 607, 610-11 (N.Y. 1976).

The most influential standard for assessing the reasonableness of a warrantless search and seizure—when there is a belief that an emergency is at hand—was coined in *People v. Mitchell*.[110] In *Mitchell*, the court authorized a warrantless search of hotel rooms to locate a missing housekeeper who was ultimately found murdered.[111] To determine the reasonableness of the entry, the court adopted a three-part test:

> (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property[;] (2) [t]he search must not be primarily motivated by intent to arrest and seize evidence[;] [and] (3) [t]here must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.[112]

Many cases from several jurisdictions apply the *Mitchell* test.[113]

Looking at this three-part test, it would make sense for other courts to adopt it because it is a bright-line test that officers could easily apply. But quite the opposite has happened. In fact, in *Brigham City v. Stuart*, the United States Supreme Court eliminated the motive requirement articulated in Mitchell.[114] In *Brigham*, the Court applied a rather distinct reasonableness test and concluded that a police entry into a home was justified by the need to prevent violence and restore order.[115] It held that a warrantless entry 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.'"[116] Essentially, the Supreme Court eliminated the requirement of subjective good faith as outlined in *Mitchell*.[117] This adaptation of the *Mitchell* test does not make sense, but it shows that courts vary in their interpretation of the community caretaking doctrine in terms of how to define reasonableness.

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110. *Id.*
111. *Id.* at 608-09.
112. *Id.* at 609.
113. *See, e.g.*, Guererri v. State, 922 A.2d 403, 407 n.7 (Del. 2007); Riggs v. State, 918 So.2d 274, 278-79 (Fla. 2005); People v. Hebert, 46 P.3d 473, 479 (Colo. 2002); State v. Fisher, 686 P.2d 750, 760-61 (Ariz. 1984).
114. 547 U.S. 398 (2006).
115. *Id.* at 406.
116. *Id.* at 404 (alteration in original) (first emphasis added) (quoting Scott v. United States, 436 U.S. 128, 138, (1978)).
117. *See id.*

Each court's decision to apply the community caretaking doctrine seems arbitrary, to say the least. Some courts are eager to expand the doctrine and give police more discretion.[118] As John Wesley Hall Jr. points out, the name "community caretaking exception" is "seductive" because it convinces the public that warrantless searches are justified and actually proper under the circumstances.[119] Others are eager to curb police discretion to afford greater protection to individuals' constitutional rights. They view it as a "monstrous leviathan that could devour" Fourth Amendment search and seizure protections.[120] No one knows the right way to interpret the doctrine. The problem is clear: the United States Supreme Court has written so little about the doctrine and has only referred to it sparingly.[121] Each case where it has referred to the doctrine has only involved the warrantless searches of automobiles.[122] As a result, courts are stuck with weighing the best options. What they fail to recognize, however, is that the best option is to eliminate the doctrine altogether.

IV. IT'S TIME TO OVERTURN *CADY* BECAUSE COURTS USE THE DOCTRINE TO CIRCUMVENT INDIVIDUALS' FOURTH AMENDMENT PROTECTIONS.

The United States Supreme Court should reverse the *Cady* decision because the community caretaking doctrine does not make a warrantless search, which is presumptively unreasonable, reasonable under the Fourth Amendment. Rather, the community caretaking doctrine, which is an exception to the Fourth Amendment, infringes on individuals' right to privacy. Only unreasonable searches violate Fourth Amendment protections,[123] and because the search exception under the doctrine is unreasonable, it unconstitutionally violates Fourth Amendment protections.

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118. *See* Hudson, *supra* note 8.
119. *Id.*
120. *Id.*
121. *See* Colorado v. Bertine, 479 U.S. 367 (1987); South Dakota v. Opperman, 428 U.S. 364 (1976); Cady v. Dombrowski, 413 U.S. 433 (1973).
122. *See Bertine*, 479 U.S. at 371 (holding that evidence discovered during inventory search of van was admissible); *Opperman*, 428 U.S. at 367 (holding that a routine inventory search of a locked automobile did not involve an unreasonable search in violation of Fourth Amendment); *Cady*, 413 U.S. at 433 (holding that warrantless search of a vehicle for a service revolver under the community caretaking doctrine was reasonable).
123. Bell v. Wolfish, 441 U.S. 520, 558 (1979).

Various exceptions, in addition to the community caretaking doctrine, to the Fourth Amendment have been established and recognized by many courts.[124] Consent, search incident to lawful arrest, plain view, the automobile exception, and hot pursuit are just five examples of exceptions to the warrant requirement.[125] The fact pattern must accommodate one of these exceptions in order for officers to forgo the warrant requirement,[126] and ultimately, many fact patterns do. For the purposes of this article, I do not argue that all exceptions, including the ones listed above, are unreasonable, and consequently unconstitutional. Rather, recognizing the viability of the community caretaking doctrine as an exception to Fourth Amendment protections, on top of the other already recognized ones, is unreasonable and unnecessary.

Restricting the number of exceptions and fact patterns eligible for using the exceptions to Fourth Amendment protections can allow courts to better protect individuals from illegal searches and seizures because it reduces the number of options that law enforcement officers can sporadically choose from to circumvent their legal duty to obtain a warrant.[127] Courts can, and should, restrict the use of the doctrine to advocate for the basic individual rights that our founding fathers thought so important to include in the Bill of Rights.

A. The Community Caretaking Doctrine Does Not Satisfy Strict Scrutiny.

Law enforcement officers implicate an individual's Fourth Amendment protection every time they enter an area where an individual has an objectively reasonable expectation of privacy.[128] Entering this area, without a warrant, under the justification that an officer is engaging in community caretaking functions is unreasonable. It is unreasonable because without an investigatory purpose, officers' search and seizure within a vehicle or home infringes

124. *Exceptions to the Warrant Requirement*, L. SHELF EDUC. MEDIA, http://lawshelf.com/courseware/entry/exceptions-to-the-warrant-requirement (last visited Feb. 5, 2018).

125. *Id.*

126. *Id.*

127. *See* Barry Friedman & Orin Kerr, *The Fourth Amendment*, NAT'L CONST. CTR., https://constitutioncenter.org/interactive-constitution/amendments/amendment-iv (last visited Dec. 2, 2018) ("[T]here are so many exceptions that in practice warrants rarely are obtained.").

128. Michael T. Pettry, *The Emergency Aid Exception to the Fourth Amendment's Warrant Requirement*, L. ENFORCEMENT BULL. (Mar. 1, 2011), https://leb.fbi.gov/articles/legal-digest/legal-digest-the-emergency-aid-exception-to-the-fourth-amendments-warrant-requirement.

on an individual's constitutionally protected right of privacy. An individual's right of privacy should not be violated because of an arbitrary decision by officers that a person may be in danger or that an officer is simply acting as a community caretaker. Thus, the doctrine does not excuse officers for an unreasonable warrantless search and seizure.

The right to privacy includes the interest in independence in making certain kinds of important decisions without unjustified governmental interference.[129] The Restatement (Second) of Torts defines it as "the right to be let alone."[130] However the right of privacy is defined, it is of paramount importance to any society seeking to use the community caretaking doctrine as a shield from liability.

Further, the right of privacy is considered a fundamental right.[131] Although the Constitution does not mention the right of privacy in the Bill of Rights, the right of privacy has been recognized as an aspect of the liberty protected by the Due Process Clause of the Fourteenth Amendment.[132] It is "'a right of personal privacy, or a guarantee of certain areas or zones of privacy.'"[133] Despite the Court's interest in protecting one's rights to privacy demonstrated by some famous holdings,[134] many courts infringe on the fundamental right to privacy by permitting law enforcement officers to engage in the community caretaking doctrine. As such, a constitutional analysis will show that the community caretaking doctrine cannot make an unreasonable search and seizure reasonable because it does not survive strict scrutiny.

Like other fundamental rights, the right of privacy is protected by strict judicial scrutiny that offers no deference to legislative judgment.[135] "Though not absolute, fundamental rights may only be limited upon proof that there is an extremely strong justification for doing so."[136] Thus, "[a]ny law impinging on a fundamental right will be struck down unless the government can prove that the law in question is precisely tailored to achieve a compelling state interest."[137]

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129. Carey v. Population Servs. Int'l, 431 U.S. 678, 684-85 (1977).
130. RESTATEMENT (SECOND) OF TORTS § 652A cmt. a (AM. LAW INST. 1977).
131. Griswold v. Connecticut, 381 U.S. 479 (1965).
132. *Carey*, 431 U.S. at 684.
133. *Id.* (quoting Roe v. Wade, 410 U.S. 113, 152 (1973)).
134. *See* Gonzales v. Carhart, 550 U.S. 124, 168 (2007); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 901 (1992).
135. Jeffrey M. Shaman, *The Right of Privacy in State Constitutional Law*, 37 RUTGERS L.J. 971, 979-80 (2006).
136. *Id.* at 980.
137. *Id.*

First, it is clear that the community caretaking doctrine limits individuals' rights to privacy and Fourth Amendment protections because it allows courts to use evidence obtained through a warrantless search and seizure against a defendant in a trial. However, use of the doctrine may be justified if it serves a compelling state interest. Arguably, though, there is no compelling state interest that justifies use of the community caretaking doctrine when there are so many other exceptions to the Fourth Amendment that officers regularly use to engage in many of the same functions. Consent, search incident to lawful arrest, the plain view exception, the automobile exception, and the hot pursuit exception are just five examples of exceptions to the warrant requirement.[138] For example, under the plain view exception, law enforcement officers are permitted to seize incriminating evidence if it is in plain view and if the officers have legally entered the premises.[139] Under the community caretaking doctrine, law enforcement officers similarly can seize incriminating evidence.[140] Moreover, it is clear the state's interest in protecting citizens and attending to their needs is already accomplished by the many other exceptions the legislature has carved out for emergency situations.

In addition, another exception would serve as a burden on law enforcement officers. Officers would have to consider which exception would be the most appropriate to implicate in order to shield themselves from liability and ensure that the potentially illegally obtained evidence could still be used in a court of law. Imposing this additional burden would not be a compelling state interest because it would complicate matters for law enforcement officers, who are simply trying to take care of the community. Indeed, the community caretaking doctrine does not satisfy strict scrutiny.

B. The Community Caretaking Doctrine Cannot Make an Unreasonable Search Reasonable Because of its Chilling Effect.

In addition, taking away or infringing on an individual's right of privacy by recognizing the community caretaking doctrine has a severe chilling effect, especially on those who want to seek help, but do not for fear of being incriminated of a crime. One example is a domestic violence situation, wherein a woman who has been beaten or abused severely refuses to call the police because she has drugs

138. *Exceptions to the Warrant Requirement*, *supra* note 124.
139. *Id.*
140. *Id.*

in her home. Another example comes from a case in Pennsylvania.[141] The appellant in the case was pulled over onto the right shoulder of the road.[142] Her engine was running, but the hazard lights were not activated.[143] An officer, traveling northbound, saw the appellant's vehicle, activated his emergency lights, and pulled alongside her vehicle.[144] The appellant was "sitting in the driver's seat and appeared to be entering an address into her vehicle's navigation system."[145] The officer described the appellant as "glossy eye[d]" and "looking through [him]."[146] The officer then pulled his vehicle in front of appellant's and approached her on foot.[147] The officer, suspecting that appellant had been drinking, asked appellant to exit the vehicle and undergo a field sobriety test.[148] The test revealed that appellant had a blood alcohol content of .205%, and she was subsequently arrested and charged with driving under the influence of alcohol (DUI).[149] The appellant moved to suppress the evidence of the DUI on the ground that it was an illegal investigatory stop.[150] The Pennsylvania Supreme Court concluded that there was in fact an illegal investigatory stop.[151]

The Pennsylvania Supreme Court held that the Superior Court erred in upholding the appellant's charges because requiring the appellant to take a field sobriety test was not justified under the community caretaking doctrine.[152] Despite ultimately reaching the correct conclusion, the appellant was arrested in June of 2013, and the Pennsylvania Supreme Court's decision was not rendered until November of 2017.[153] For four years, the appellant's constitutional rights were cast aside on the grounds that the police had more important, community caretaking functions to attend to.

Despite reaching the correct conclusion with regards to the appellant's case in particular, the Pennsylvania Supreme Court took

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141. Commonwealth v. Livingstone, 174 A.3d 609 (Pa. 2017) (recognizing the public servant exception as a category within the community caretaking doctrine, which this article will not be addressing).
142. *Id.* at 614.
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.* (second alteration in original).
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.* at 615.
151. *Id.* at 614.
152. *Id.* at 614, 627.
153. *Id.* at 613.

the opportunity to recognize the community caretaking doctrine exception to the warrant requirement.[154] However, this was error. Again, this exception exists to provide yet another avenue that courts can take to admit incriminating evidence. Although the appellant's rights in this case were eventually recognized, the bigger problem is that the Pennsylvania Supreme Court effectively provided officers an avenue to circumvent the warrant requirement.

V. IF WE KEEP THE *CADY* HOLDING, LET'S LIMIT THE *CADY* DECISION TO THE *CADY* CIRCUMSTANCES.

At the same time as saying the community caretaking doctrine is a viable exception to the Fourth Amendment, the Pennsylvania Supreme Court was very clear to restrict application of the community caretaking doctrine to vehicles, refusing to address the question of whether it is a violation of individual rights to recognize the exception with regard to homes.[155] It is clear that case law unanimously recognizes the doctrine to apply to vehicles.[156] Because many courts refuse to engage in the debate regarding homes altogether, courts should take the guesswork out by refusing to construe the doctrine to include the warrantless searches of homes.

Although the Supreme Court has ruled that law enforcement officers can search a vehicle without a warrant as a result of their community caretaking function, it has not ruled on whether community caretaking can justify a warrantless search in a home. In fact, the Supreme Court has referred to the doctrine sparingly.[157] The doctrine has only been referenced by the Court in *Cady*, *Opperman*, and *Bertine*.[158] Each of these decisions carefully invoked the doctrine only in the context of automobiles.[159] Moreover, in each case, the Court was clear to recognize the distinction between the home and the automobile.[160] For example, in *Opperman*, the Court stated that it "has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment."[161] Further, many circuits have interpreted this language to

154. *Id.* at 638.
155. *Id.* at 618 (describing the issue on review as whether a reasonable motorist would feel free to leave prior to the approaching officer stopping to interact with her).
156. *See, e.g.*, Colorado v. Bertine, 479 U.S. 367 (1987); South Dakota v. Opperman, 428 U.S. 364 (1976); Cady v. Dombrowski, 413 U.S. 433 (1973).
157. *See* Hudson, *supra* note 8.
158. *Id.*
159. *Id.*
160. Colorado v. Bertine, 479 U.S. 367 (1987); South Dakota v. Opperman, 428 U.S. 364 (1976); Cady v. Dombrowski, 413 U.S. 433 (1973).
161. *Opperman*, 428 U.S. at 367.

restrict expansion of the doctrine. For example, the Seventh and Ninth Circuits restricted the doctrine on the grounds that protecting the sanctity of the home has been a staple motivation since the beginning of our nation.[162] Scaling back the doctrine to exclude warrantless searches of homes, then, is consistent with Supreme Court precedent. Using the doctrine to conduct a warrantless search of a vehicle is the only constitutionally protected interpretation.

The United States Supreme Court did not intend the doctrine to be used to authorize a warrantless search and seizure within the home. For the purposes of the Fourth Amendment, the Court stated that there is a constitutional difference between houses and cars.[163] Officers come into contact with vehicles more frequently.[164] States require vehicles to be registered and licensed.[165] States have enacted codes to regulate the condition and manner in which vehicles are kept.[166] "[T]he extent of police-citizen contact involving" vehicles is "substantially greater than police-citizen contact" involving homes.[167] Following the extensive discussion about the difference between homes and vehicles, the Court confined the doctrine to the vehicle, making it clear that the Court's intent was to restrict use of the doctrine to the vehicle.[168]

If Congress' intent is not persuasive, then, at the very least, the right of privacy should be. The doctrine should not be extended to the home because the right of privacy is at its height within the home, and conducting searches and seizures within the home without a warrant is a severe violation of both an individual's Fourth Amendment protection and right of privacy.[169] The home was first deemed a sanctuary in 1966,[170] and is still considered a sanctuary almost fifty years later.[171] Further, courts have already recognized that a person's home in particular receives a heightened level of

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162. *See* United States v. Erickson, 532 (9th Cir. 1993); United States v. Pichany, 687 F.2d 204, 208 (7th Cir. 1982).
163. *Cady*, 413 U.S. at 442.
164. *Id.* at 441.
165. *Id.*
166. *Id.*
167. *Id.*
168. *Id.* at 441-42.
169. Groh v. Ramirez, 540 U.S. 551, 559 (2004).
170. *See* Osborn v. United States, 385 U.S. 323 (1966).
171. *See* McDonald v. City of Chi., 561 U.S. 742 (2010) (recognizing the home provides a kind of special sanctuary in modern life).

protection from unreasonable searches and seizures.[172] In *Silverman v. United States*, the United States Supreme Court determined that the actions of police officers in attaching an electronic device to a heating duct in the defendant's home constituted a violation of the defendant's Fourth Amendment rights.[173] As a result, the conversations that the officers heard as a result were inadmissible in court.[174] More recently, in *Groh v. Ramirez*, the Supreme Court stated that the warrantless search of a person's home is presumptively unreasonable.[175] In *Groh*, the defendant's Fourth Amendment rights were violated because the search warrant was facially invalid because it failed to describe the persons or things to be seized in particular.[176]

The doctrine should also be scaled back because the Supreme Court contradicts itself in its own case law, making it extremely unclear what interests the lower courts should be seeking to protect.[177] Lower courts are left with determining whether an individual's Fourth Amendment rights should be protected, whether the perpetrator should be caught at the expense of those Fourth Amendment rights, whether an individual's safety is paramount to his or her own Fourth Amendment rights, or whether one's expectation of privacy is more important.[178] Indeed, to eliminate confusion and restore confidence in police officers, the community caretaking doctrine, affording officers the ability to enter homes without a warrant, should not be accepted by courts. Officers, in using this exception, can hide from liability by cherry-picking which right they thought to be most important, and use that to justify their decision.

If courts continue to give credence to the community caretaking doctrine's applicability within the home, which has not been expressly allowed by the Supreme Court, courts will effectively be creating a slippery slope wherein officers can use the doctrine to say

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172. Silverman v. United States, 365 U.S. 505, 511 (1961) ("At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.").

173. *Id.* at 511-12.

174. *Id.* at 512.

175. 540 U.S. 551, 552 (2004).

176. *Id.*

177. *Compare* Cady v. Dombrowski, 413 U.S. 433, 441 (1973) (distinguishing a search from the home from the search of a vehicle, and holding that the community caretaking doctrine is limited to the search of vehicles), *with* Michigan v. Tyler, 436 U.S. 499, 500 (1978) (holding that the police and firefighters had searched the home in accordance with the Fourth Amendment, but did not diminish any reasonable person's expectation of privacy nor the Fourth Amendment protection because the "purpose [was] to ascertain the cause of [the] fire rather than to look for evidence of a crime . . . .").

178. *See Michigan*, 436 U.S. at 499.

they are engaging in community caretaking functions, but are actually investigating crimes. I fear that as technology advances, so too will the exceptions that allow officers to invade the privacy of those devices.[179] As the Court in *Carpenter v. United States* stated, the Fourth Amendment was drafted to be tied to common-law trespass and intrusions by the government on physical property, not the new "phenonemenon" of cell phone signals.[180] Arguably, officers can use the community caretaking doctrine in particular to ignore Fourth Amendment protections when citizens are in trouble and when officers would not otherwise have access to cell phone records. The fact that there are already so many other exceptions shows courts' willingness to continue to create exceptions to accommodate for technology advances and lifestyle changes. This needs to stop, right here, right now, with the community caretaking doctrine.

VI. ALTERNATIVELY, THE DOCTRINE CAN STAND, BUT THE FRUITS OF THE SEARCH MUST BE SUPPRESSED UNDER AN EXCLUSIONARY RULE.

Proponents of the community caretaking doctrine argue that the doctrine was designed in good faith, by "a desire to aid victims rather than investigate criminals."[181] The Supreme Court of Delaware describes the basis for the community caretaking doctrine as follows:

> The modern police officer is a 'jack-of-all-emergencies,' with 'complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses'; by default or design he is also expected 'to aid individuals who are in danger of physical harm,' 'assist those who cannot care for themselves,' and 'provide other services on an emergency basis.' To require reasonable suspicion of criminal activity before police can investigate and render assistance in these situations would severely hamstring their ability to protect and serve the public.[182]

There is no doubt this is true. If the community caretaking doctrine is to stand, as is, it would undoubtedly allow law enforcement

179. *But see* Carpenter v. United States, 138 S. Ct. 2206, 2214 (2018) (holding that in light of the immense storage capacity of modern cell phones, "police officers must generally obtain a warrant before searching the contents of a phone").

180. *Id.* at 2213, 2216.

181. Commonwealth v. Livingstone, 174 A.3d 609, 627 (Pa. 2017) (quoting State v. Ryon, 108 P.3d 1032, 1043 (N.M. 2005)).

182. Williams v. State, 962 A.2d 210, 216-17 (Del. 2008) (footnote omitted).

to provide services and aid individuals who need help. Further, it is unlikely that courts will refuse to acknowledge the doctrine altogether. There is Supreme Court precedent, albeit very little, that plainly recognizes the validity of the doctrine.

Thus, as an alternative to getting rid of the doctrine altogether, or even scaling the doctrine back, courts should continue to allow law enforcement officers to use the doctrine as an exception to getting a warrant on only one condition: any incriminating evidence that officers find should be suppressed at later hearings.

Since *Mapp v. Ohio*,[183] exclusion of incriminating evidence obtained unlawfully has been the norm, and awarding damages for the unlawful behavior has been the exception.[184] Some commentators, including Wayne R. LaFave, have argued for an exclusionary rule for evidence found during community caretaking searches.[185] An exclusionary rule would, in effect, deter police from entering premises without a warrant under the community caretaking justification, when actually motivated by law-enforcement concerns.[186] Moreover, it would achieve a practical solution to the problem of law enforcement officers using a community caretaking search.[187]

Opponents of an exclusionary rule argue that the Supreme Court has never required exclusion where police action has been reasonable; rather, an exclusionary rule has only ever applied where constitutional rights have been infringed.[188] Unless the officers have acted blamefully, courts refuse to invoke the exclusionary remedy.[189] Other critics of the exclusionary rule argue that the rule, in effect, really only benefits those that are actually guilty of a crime.[190] The rule is typically invoked in criminal cases where the only reason to suppress the evidence is if it leads to the conclusion that the defendant is guilty.[191] In fact, some critics argue that the injury suffered by the person seeking suppression is severely mitigated when, although an officer may not have had probable cause

183. 367 U.S. 643 (1961).

184. William J. Stuntz, *Warrants and Fourth Amendment Remedies*, 77 VA. L. REV. 881, 910 (1991).

185. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.6(a) (5th ed. 2018).

186. Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking Assistance Searches, and Fourth Amendment Reasonableness*, 66 WASH. & LEE L. REV. 1485, 1558 (2009).

187. *See* Provo City v. Warden, 844 P.2d 360, 365 (Utah Ct. App. 1992) ("This [exclusionary rule] appears to be a legitimate means of encouraging genuine police caretaking functions while deterring bogus or pretextual police activities.").

188. Dimino, *supra* note 186, at 1559.

189. *Id.* at 1559-60.

190. Stuntz, *supra* note 184, at 911.

191. *Id.*

to believe, for example, that there was cocaine in the trunk of a defendant's car, there was in fact cocaine in the trunk, and in hindsight, the officer had probable cause.[192]

Nonetheless, an exclusionary rule would be most appropriate. First, courts have difficulties "valuing" the harm caused by illegal searches and seizures in order to assess damages.[193] Under an exclusionary rule, courts do not have to deal with the valuing problem.[194] They do not have to price anything; all they have to do is suppress evidence.[195] Second, an exclusionary rule deters police misconduct because many searches are motivated by a desire to catch and punish criminals, at the expense of violating basic constitutional rights.[196] The exclusionary rule takes away this "gain" that officers receive when they discover fruits in a search that were unlawfully obtained.[197] Third, it mitigates police perjury.[198] Officers may tend to distort the evidence that was available at the time of the search to qualify themselves for protection under a warrant.[199] One example of police perjury includes an officer concocting a "fictitious 'tip' that provides a series of incriminating details, corresponding exactly to facts the officer observed" when conducting the search.[200]

VII. CONCLUSION: IT'S TIME FOR SOME CHANGE.

If one thing is clear after reading this article, it should be this: the community caretaking doctrine is just another superfluous exception to the Fourth Amendment that needs to go. First, the doctrine is confusing to courts who are trying to interpret and apply it. This is demonstrated by the inconsistencies between courts' interpretations. Second, the doctrine does not satisfy strict scrutiny, especially because it invades the sanctity of the home.

I recognize the difficulties of overturning Supreme Court precedent. Thus, at a minimum, if law enforcement officers gain incriminating evidence after engaging in community caretaking functions, an exclusionary rule should apply because it is unfair to allow incriminating evidence to be used against a defendant at trial when all the defendant wanted was help. Nevertheless, an exclusionary

192. *Id.* at 912.
193. *Id.* at 910.
194. *Id.*
195. *Id.*
196. *Id.* at 910-11.
197. *Id.*
198. *Id.* at 914.
199. *Id.*
200. *Id.*

rule would not be necessary if courts simply recognized what *Cady* actually said about the applicability of the doctrine—that the doctrine applies solely in the context of vehicles.