Fourth Amendment — Search and Seizure — Community Caretaking Exception — Caniglia v. Strom

In September 2005, John Roberts was confirmed as Chief Justice of the Supreme Court.[1] The Chief Justice's ascendancy marked a concerted effort to promote consensus among the Justices and enhance the Court's institutional legitimacy.[2] The Chief Justice's strategy has sought to maximize the number of unanimous decisions reached by the Court no matter the narrowness of the holding,[3] an approach that has generated both praise[4] and criticism.[5] Last Term, in *Caniglia v. Strom*,[6] the Court continued this strategy in favor of narrow unanimous decisions when it declined to expand the scope of the community caretaking exception[7] it recognized decades ago in *Cady v. Dombrowski*.[8] An aligned Court held that *Cady*'s logic did not extend beyond the motor-vehicle context to permit the warrantless searches of homes,[9] an uncomplicated determination certain to be celebrated by privacy advocates and originalists alike. Although narrow unanimous decisions can fail to advance doctrine significantly, *Caniglia* embodies key virtues of unanimity: it provides lower courts with clear guidance while still allowing Justices to articulate judicial philosophies and policy preferences.

In August 2015, Edward Caniglia brought a handgun from the bedroom to the dining room and instructed his wife to "shoot [him] now and get it over with" during a marital dispute.[10] Caniglia's wife instead left their home to stay in a hotel for the night.[11] The next morning, Caniglia's wife called the police and requested a welfare check on

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[1] *Judicial Nominations – Chief Justice John G. Roberts, Jr.*, THE WHITE HOUSE, https://georgewbush-whitehouse.archives.gov/infocus/judicialnominees/roberts.html [https://perma.cc/J6YW-6UR6].

[2] *See* Jeffrey Rosen, *Roberts's Rules*, THE ATLANTIC, Jan./Feb. 2007, https://www.theatlantic.com/magazine/archive/2007/01/robertss-rules/305559 [https://perma.cc/RY7U-4JA9].

[3] *See id.*; Neal K. Katyal, Opinion, *The Supreme Court's Powerful New Consensus*, N.Y. TIMES (June 26, 2014), https://www.nytimes.com/2014/06/27/opinion/the-supreme-courts-powerful-new-consensus.html [https://perma.cc/38PL-Q78E].

[4] *See, e.g.*, Jeffrey Rosen, *John Roberts Is Just Who the Supreme Court Needed*, THE ATLANTIC (July 14, 2020, 12:56 PM), https://www.theatlantic.com/ideas/archive/2020/07/john-roberts-just-who-supreme-court-needed/614053 [https://perma.cc/X7VG-KZPA].

[5] *See, e.g.*, Adam Liptak, *Justices Are Long on Words but Short on Guidance*, N.Y. TIMES (Nov. 17, 2010), https://www.nytimes.com/2010/11/18/us/18rulings.html [https://perma.cc/Z5T9-9NXK].

[6] 141 S. Ct. 1596 (2021).

[7] *See id.* at 1598.

[8] 413 U.S. 433 (1973). The now-rebuked community caretaking exception recognized that officers have duties beyond investigating potential criminal law violations and reasoned that they may, under certain limited circumstances, conduct reasonable warrantless searches pursuant to officers' noncriminal functions. *See id.* at 441.

[9] *Caniglia*, 141 S. Ct. at 1600.

[10] Caniglia v. Strom, 953 F.3d 112, 119 (1st Cir. 2020).

[11] *Caniglia*, 141 S. Ct. at 1598.

Caniglia.[12] Speaking with the responding officers, Caniglia corroborated his wife's account of their argument but rejected the suggestion that he was suicidal.[13] The officers reached a different conclusion: convinced Caniglia might be a risk to himself or others, officers called an ambulance to transport Caniglia to a local hospital for a psychiatric evaluation.[14] After Caniglia left for the hospital, officers went inside the home and, without a warrant, seized two of Caniglia's firearms.[15]

While his firearms were still under police custody, Caniglia filed suit against the City of Cranston, Rhode Island; its police chief; and the responding police officers in the District Court of Rhode Island.[16] Caniglia alleged a slew of state and federal law violations arising from his interaction with the officers, his transportation to the hospital for psychiatric observation, and the eventual seizure of the firearms inside his home.[17] Caniglia's claims included three brought under 42 U.S.C. § 1983, alleging violations of his Second, Fourth, and Fourteenth Amendment rights.[18] Both Caniglia and the City of Cranston filed cross-motions for summary judgment.[19]

The district court granted the City's motions for summary judgment on all counts except Caniglia's due process claim.[20] Addressing the Fourth Amendment challenge, Judge McConnell determined that Caniglia's rights were not violated because the officers' decision to send him to the hospital and remove his firearms was motivated by a reasonable belief that the Caniglias were in crisis.[21] Emphasizing that Caniglia's wife was "afraid and worried about her husband,"[22] Judge McConnell concluded that the officers did not need to leave the weapons in the Caniglia home because, generally, officers are not obligated to "select the least intrusive means of fulfilling community caretaking responsibilities."[23] The court did not consider whether the officers' conduct was permissible under exigent circumstances doctrine, which allows warrantless searches in certain time-sensitive circumstances, because the City, in its defense, instead raised qualified immunity and

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[12] *Id.*

[13] *Id.*

[14] *Id.* According to Caniglia, he consented to the psychiatric evaluation after being "falsely promis[ed]" that his guns would not be seized. *Caniglia*, 953 F.3d at 121.

[15] *See Caniglia*, 141 S. Ct. at 1598.

[16] *See Caniglia*, 953 F.3d at 118, 120.

[17] *See* Caniglia v. Strom, 396 F. Supp. 3d 227, 232, 237, 240 (D.R.I. 2019).

[18] Complaint ¶¶ 52, 56, *Caniglia*, 396 F. Supp. 3d 227 (C.A. No. 15-525); *see Caniglia*, 396 F. Supp. 3d at 232.

[19] *Caniglia*, 396 F. Supp. 3d at 230.

[20] *See id.* at 242.

[21] *Id.* at 235.

[22] *Id.*

[23] *Id.* (quoting Lockhart-Bembery v. Sauro, 498 F.3d 69, 76 (1st Cir. 2007)).

the community caretaking exception to the Fourth Amendment's general warrant requirement.[24]

The First Circuit affirmed.[25] Writing for a unanimous panel, Judge Selya[26] held that the community caretaking exception to the Fourth Amendment's warrant requirement encompassed officer conduct on private property.[27] Judge Selya drew on *Cady* — which recognized such an exception in the context of a warrantless search of an impounded motor vehicle[28] — to consider the reach of the community caretaking doctrine.[29] Though *Cady* explicitly stated that there was a "constitutional difference between searches of and seizures from houses and similar structures and from vehicles,"[30] Judge Selya determined that the doctrine — meant to provide officers, as "master[s] of all emergencies," the latitude to act when confronted with danger that necessitates prompt action — can apply in situations that do not involve motor vehicles.[31] He explained that although the community caretaking exception "is not a free pass,"[32] the officers involved in Caniglia's case could have reasonably determined that Caniglia's mental state presented an immediate threat of injury[33] and accordingly removed firearms from the home to prevent a potential future injury.[34]

The Supreme Court reversed and remanded.[35] Writing for a unanimous Court, Justice Thomas held that warrantless searches and seizures of homes exceed the authority of police officers pursuant to any so-called community caretaking duties.[36] Justice Thomas's reasoning began with precedent that established the constitutionality of warrantless searches that were permissible under common law or exigent circumstances.[37] Justice Thomas assessed *Cady*, which recognized that police officers who patrol public rights of way regularly assume "community caretaking functions" unrelated to criminal law.[38] Justice Thomas rebuked the First Circuit's interpretation of the community caretaking exception, explaining that while officers can conduct warrantless searches of private property under exigent conditions or if their conduct would have been

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[24] *See id.* at 233; *see also* Caniglia v. Strom, 953 F.3d 112, 122 n.5, 131 n.9 (1st Cir. 2020).
[25] *Caniglia*, 953 F.3d at 118.
[26] Judge Selya was joined by Justice Souter (ret.), sitting by designation, and Judge Barron.
[27] *Caniglia*, 953 F.3d at 118.
[28] *See* Cady v. Dombrowski, 413 U.S. 433, 442–43 (1973).
[29] *See Caniglia*, 953 F.3d at 123.
[30] *Id.* (quoting *Cady*, 413 U.S. at 442).
[31] *Id.* at 124.
[32] *Id.* at 126.
[33] *See id.* at 127–30.
[34] *See id.* at 131–32.
[35] *See Caniglia*, 141 S. Ct. at 1600.
[36] *See id.* at 1598.
[37] *Id.* at 1599.
[38] *Id.* at 1598 (quoting Cady v. Dombrowski, 413 U.S. 433, 441 (1973)).

permissible for a private citizen under common law,[39] *Cady* underscored the "constitutional difference" between vehicles and homes.[40] The Court determined that such a "constitutional difference" made inappropriate the lower courts' application of *Cady*'s logic to warrantless searches of homes.[41] To support *Cady*'s distinction between vehicles and homes, Justice Thomas noted that *Cady* acknowledged police officers' community caretaking functions in the context of rendering aid to motorists on public highways.[42] *Cady*, then, recognized that police officers can perform functions unrelated to law enforcement, but the decision did not constitute "an open-ended license to perform [those functions] anywhere."[43]

Chief Justice Roberts concurred and was joined by Justice Breyer. The Chief Justice wrote to underscore that, to him, the Court's decision in *Caniglia* was consistent with its holding in *Brigham City v. Stuart*.[44] In *Brigham City*, the Court acknowledged that the role of officers extended beyond rendering first aid and encompassed preventing violence and reestablishing peace.[45] With *Brigham City* in mind, Chief Justice Roberts emphasized that *Caniglia* did not stand for the proposition that police officers need to obtain a warrant to enter a home to assist a person who is seriously injured or threatened with serious injury.[46]

Justice Alito wrote separately to explain his view of the Court's holding and "highlight some important questions that the [*Caniglia*] Court does not decide."[47] Justice Alito first agreed with the Court's rejection of a standalone community caretaking exception to the warrant requirement, insisting that the *Cady* Court "merely used the phrase 'community caretaking' in passing."[48] Discussing the questions left unanswered by *Caniglia*, Justice Alito noted that the Court had not decided whether Fourth Amendment case law grounded in the criminal context always applies to searches and seizures arising from non–law enforcement activities.[49] The Court also did not address the validity of state laws that

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[39] *Id.* at 1599. The Court specifically noted that officers can conduct warrantless searches of private property under exigent conditions, including when necessary to provide emergency aid to occupants or protect them from "imminent injury." *Id.* (quoting Kentucky v. King, 563 U.S. 452, 460 (2011)).

[40] *Id.* (quoting *Cady*, 413 U.S. at 439).

[41] *Id.*

[42] *Id.* at 1599–600.

[43] *Id.* at 1600.

[44] 547 U.S. 398 (2006); *see Caniglia*, 141 S. Ct. at 1600 (Roberts, C.J., concurring).

[45] 547 U.S. at 406.

[46] *Caniglia*, 141 S. Ct. at 1600 (Roberts, C.J., concurring).

[47] *Id.* (Alito, J., concurring).

[48] *Id.* (quoting Cady v. Dombrowski, 413 U.S. 433, 441 (1973)). To Justice Alito, a standalone community caretaking doctrine would be particularly inappropriate because of the broad and diverse set of duties that could fall within an officer's community caretaking role. *Id.*

[49] *Id.*

permit emergency seizures to facilitate psychiatric care, nor did it address the constitutionality of state "red flag" laws, which allow officers to seize firearms to prevent suicide or harm to others.[50] The general constitutionality of warrantless searches of homes to determine if a person needs medical care was also unaddressed by *Caniglia*.[51] Because of the "important real-world problem" of elderly people who fall in their homes and are unable to seek aid, Justice Alito suggested that states should adopt procedures to issue warrants in such cases.[52]

Justice Kavanaugh also concurred. He argued that precedent allows warrantless entry into homes when officers are "reasonably trying to prevent a potential suicide or to help an elderly person who . . . may have fallen."[53] Justice Kavanaugh noted that the Fourth Amendment's core tenet is reasonableness and, accordingly, that precedent carves out various exceptions to the standard warrant requirement.[54] One such exception is recognized by exigent circumstances doctrine, which permits warrantless entries into homes when officers believe on "an objectively reasonable basis" that an occupant has been or is in danger of being seriously injured.[55] Though the officers in *Caniglia* did not rely on this doctrine to justify their conduct, Justice Kavanaugh outlined the doctrine's application to two emergency aid scenarios.[56] He suggested that officers can enter homes without a warrant if they are responding to a call from a person expressing suicidal thoughts or if they are conducting a wellness check on an elderly person.[57] Emphasizing the magnitude of annual deaths from suicide and falls,[58] Justice Kavanaugh argued that, under the Fourth Amendment, officers need not "stand idly outside" a home when they have an objectively reasonable basis to think an occupant is injured or threatened with injury.[59]

The Court's doctrinal answer to the community caretaking exception's scope was relatively unremarkable: it resolved a circuit split[60] in favor of precedent that acknowledges the special status of private homes

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[50] *Id.* at 1601.
[51] *See id.* at 1601–02.
[52] *Id.* at 1602.
[53] *Id.* at 1603 (Kavanaugh, J., concurring).
[54] *Id.*
[55] *Id.* at 1603–04 (quoting Brigham City v. Stuart, 547 U.S. 398, 406 (2006)).
[56] *See id.* at 1604–05.
[57] *Id.*
[58] *See id.* at 1604 n.1, 1605 n.2.
[59] *Id.* at 1604; *see id.* at 1605.
[60] *Compare* Sutterfield v. City of Milwaukee, 751 F.3d 542, 554 (7th Cir. 2014) (declining to extend the community caretaking exception to private homes), *with* United States v. Smith, 820 F.3d 356, 360–62 (8th Cir. 2016) (applying the community caretaking exception to permit warrantless entries into private homes).

in Fourth Amendment jurisprudence.[61] *Caniglia*, however, represents more than an example of the Court resisting its tendency to recognize new exceptions to the warrant requirement[62] — joined by every Justice, the Court's opinion in *Caniglia* achieved the Roberts Court's preferred unanimity. By speaking with one voice on an issue that implicates core privacy rights, the *Caniglia* Court furthered the Roberts Court's pursuit of increased legitimacy and authority through unanimity. The concurring Justices outlined doctrinal and pragmatic considerations that further enriched *Caniglia* without undermining the Court's clarity or collegiality. *Caniglia* thus reflects the ability of narrow unanimous decisions to appropriately balance the need for judicial legitimacy with the benefits of judicial transparency.

The transition between the Rehnquist Court and the Roberts Court marked a shift in Court politics and priorities, as Chief Justice Roberts sought to rehabilitate the Court's reputation as divisive and overly ideological.[63] With an eye toward enhancing the Court's legitimacy, the Chief Justice focused on fostering "unanimity and collegiality" by establishing consensus on narrow questions of less controversy.[64] The strategy was nominally successful, ushering in a wave of unanimous decisions[65]: over half of the decisions during Chief Justice Roberts's full first term were unanimous,[66] up from only twenty-one percent of the decisions issued during Chief Justice Rehnquist's last term.[67] The Roberts Court's preference for unanimous decisions has continued in the years

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[61] *See, e.g.*, Silverman v. United States, 365 U.S. 505, 511 (1961) (recognizing "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion"); *see also* Oliver v. United States, 466 U.S. 170, 180 (1984) (explaining that the Fourth Amendment also protects a home's curtilage from warrantless searches).

[62] *See* California v. Acevedo, 500 U.S. 565, 582 (1991) (Scalia, J., concurring in the judgment) (remarking that the Court had introduced roughly twenty exceptions to the warrant requirement).

[63] *See* Rosen, *supra* note 2. *See generally* MARK TUSHNET, A COURT DIVIDED (2005) (discussing deep differences between Justices on the Rehnquist Court).

[64] Rosen, *supra* note 2; *see* Michael A. Zilis, *The Political Consequences of Supreme Court Consensus: Media Coverage, Public Opinion, and Unanimity as a Public-Facing Strategy*, 54 WASH. U. J.L. & POL'Y 229, 229 (2017); *Chief Justice Says His Goal Is More Consensus on Court*, N.Y. TIMES (May 22, 2006), https://www.nytimes.com/2006/05/22/washington/22justice.html [https://perma.cc/RRP8-4NJM].

[65] For the purposes of this Comment, Court decisions are considered "unanimous" if all Justices join the opinion or concur in the judgment.

[66] David A. Yalof et al., *Collegiality Among U.S. Supreme Court Justices? An Early Assessment of the Roberts Court*, JUDICATURE, July-Aug. 2011, at 12, 13.

[67] Memorandum from Goldstein & Howe, P.C. (June 30, 2005), https://www.scotusblog.com/archives/FinalOT04StatsMemo.pdf [https://perma.cc/9RV3-4ZUR].

since[68]: forty-three percent of 2020 Term decisions were unanimous.[69]

As the Roberts Court has pursued enhanced legitimacy and authority through unanimous decisions on narrower questions, the Court simultaneously has issued an increasing number of concurring opinions.[70] During the Court's most recent term, nearly sixty percent of the Court's unanimous decisions had at least one concurrence, elaborating on views not addressed in the main opinion.[71] A similar phenomenon appears in earlier Roberts Court decisions. For example, the concurring Justices in *NLRB v. Noel Canning*[72] ventilated pragmatic concerns that arose from the Court's opinion. The *Noel Canning* Court unanimously held that although President Obama could appoint officials during a Senate recess, he had not made the appointments at issue during a proper recess.[73] Concurring with the judgment, Justice Scalia outlined his concern that the Court had "swe[pt] away the key textual limitations on the recess-appointment power" in a manner that would turn it into a "weapon to be wielded by future Presidents against future Senates."[74] Though the Justices adopted divergent reasoning to assess the permissibility of the recess appointments in question, it was the Court's unanimity that dominated news coverage of the decision.[75] The media's focus on the Court's

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[68] *See* Adam Feldman, *Empirical SCOTUS: Amid Record-Breaking Consensus, the Justices' Divisions Still Run Deep*, SCOTUSBLOG (Feb. 25, 2019, 1:28 PM), https://www.scotusblog.com/2019/02/empirical-scotus-amid-record-breaking-consensus-the-justices-divisions-still-run-deep [https://perma.cc/8QXJ-RB8D]; Katyal, *supra* note 3; Adam Liptak, *Justices Agree to Agree, At Least for the Moment*, N.Y. TIMES (May 27, 2013), https://www.nytimes.com/2013/05/28/us/supreme-court-issuing-more-unanimous-rulings.html [https://perma.cc/5AJ7-5N66].

[69] SCOTUSBLOG, STAT PACK FOR THE SUPREME COURT'S 2020-21 TERM 3 (2021), https://www.scotusblog.com/wp-content/uploads/2021/07/Final-Stat-Pack-07.02.2021.pdf [https://perma.cc/6YW2-7QHD] [hereinafter STAT PACK].

[70] *See* Ryan M. Moore, Comment, *I Concur! Do I Matter?: Developing a Framework for Determining the Precedential Influence of Concurring Opinions*, 84 TEMP. L. REV. 743, 743 & n.1 (2012); *cf.* Laura Krugman Ray, *The Justices Write Separately: Uses of the Concurrence by the Rehnquist Court*, 23 U.C. DAVIS L. REV. 777, 817 (1990) ("On cases of lesser import . . . justices seem ready to concur . . . .").

[71] *See* STAT PACK, *supra* note 69 (finding that of twenty-nine total unanimous decisions, one-quarter had at least one concurrence); *see also* Lee Epstein et al., *Are Even Unanimous Decisions in the United States Supreme Court Ideological?*, 106 NW. U. L. REV. 699, 700 (2012) ("Concurring opinions are actually more common in unanimous decisions than in non-unanimous ones . . . .").

[72] 573 U.S. 513 (2014).

[73] *See id.* at 517, 550.

[74] *Id.* at 570 (Scalia, J., concurring in the judgment).

[75] *See, e.g.*, Robert Barnes, *Supreme Court Rebukes Obama on Recess Appointments*, WASH. POST (June 26, 2014), https://www.washingtonpost.com/politics/supreme-court-rebukes-obama-on-recess-appointments/2014/06/26/e5e4fefa-e831-11e3-a86b-362fd5443d19_story.html [https://perma.cc/X7VS-GDTG] (introducing *Noel Canning* by noting its unanimity); David A. Graham, *The Supreme Court Slaps Obama Down on Recess Appointments*, THE ATLANTIC (June 26, 2014), https://www.theatlantic.com/politics/archive/2014/06/heres-what-the-supreme-courts-recess-appointments-decision-means/373525 [https://perma.cc/3XB8-8CUR] (noting the Court's unanimity in the article's subheading); Amy Howe, *Court Strikes Down Recess Appointments: In Plain*

consensus furthered the Chief Justice's strategy to build institutional legitimacy through unanimity.[76] The different perspectives adopted by the *Noel Canning* opinion itself and by the concurring Justices embodied the type of ideological debate that enhances the judiciary and makes its decisions more transparent to the public. Other Roberts Court decisions follow the same pattern of unanimous decisions addressing relatively narrow questions, coupled with concurrences that build upon, qualify, or underscore the Court's holding.[77]

Given the Roberts Court's tendency to issue narrow unanimous decisions with concurrences, *Caniglia* was hardly an outlier. The entire bench endorsed Justice Thomas's brief, three-page opinion that soundly rejected the First Circuit's formulation of a "community caretaking" exception.[78] The certified question in *Caniglia* was decidedly narrow, addressing only "[w]hether the 'community caretaking' exception to the Fourth Amendment's warrant requirement extends to the home."[79] The Court declined to address whether it would have found the same officer conduct unconstitutional had the case been argued under a recognized exception to the warrant requirement, nor did the Court define the scope of conduct that falls within an officer's community caretaking role.[80]

The concurring Justices in *Caniglia* then outlined their own doctrinal positions and policy preferences beyond the narrow question decided by the Court. The concurrences of Chief Justice Roberts and Justices Alito and Kavanaugh each raised new propositions and pragmatic concerns.[81] Chief Justice Roberts's concurrence clarified that *Brigham City* still allows law enforcement officers to enter homes without a warrant in order to render aid to an injured occupant.[82] In response to perceived doctrinal ambiguity around the constitutionality of warrantless searches, Justice Alito suggested that states implement procedures to issue warrants to facilitate welfare checks.[83] Justice Kavanaugh adopted a more

English, SCOTUSBLOG (June 26, 2014, 3:13 PM), https://www.scotusblog.com/2014/06/court-strikes-down-recess-appointments-in-plain-english [https://perma.cc/VS3D-A4ET] (describing *Noel Canning* as "a *unanimous declaration* by the Supreme Court" (emphasis added)).

[76] *See* Rosen, *supra* note 4 (discussing the Chief Justice's concern that "5–4 decisions would undermine public confidence in a nonpartisan judiciary").

[77] *See, e.g.*, NCAA v. Alston, 141 S. Ct. 2141, 2147 (2021); Chiafalo v. Washington, 140 S. Ct. 2316, 2319 (2019); McCullen v. Coakley, 573 U.S. 464, 467 (2014); Maryland v. Shatzer, 559 U.S. 98, 99 (2010).

[78] *Caniglia*, 141 S. Ct. at 1597, 1599.

[79] Petition for a Writ of Certiorari at i, *Caniglia*, 141 S. Ct. 1596 (No. 20-157).

[80] *See Caniglia*, 141 S. Ct. at 1600.

[81] *See* Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. CHI. L. REV. 1371, 1415 (1995) (explaining that concurrences allow "judges to present additional arguments rejected or ignored by the majority").

[82] *Caniglia*, 141 S. Ct. at 1600 (Roberts, C.J., concurring).

[83] *See id.* at 1601–02 (Alito, J., concurring).

doctrinal focus, writing separately to analyze emergency aid hypotheticals under Court precedent and to explain how certain scenarios might be assessed under Fourth Amendment doctrine.[84]

By proceeding in this manner, *Caniglia* captures the virtues of the Roberts Court's preference for unanimity, even when consensus is reached through narrow decisions and multiple supplemental concurrences. Unanimous decisions facilitate lower court compliance because consensus signals certainty and firmness.[85] Unanimity also generates popular support and increases the Court's institutional credibility.[86] Importantly, unanimity can signal civility between Justices and promote confidence in the Court's ability to neutrally interpret and apply law.[87] For their part, concurrences can allow Justices to outline their judicial philosophy and policy preferences without jeopardizing the clarity and authority derived from the Court's consensus.[88] While concurrences have been characterized as confusing[89] and harmful to the Court's authority,[90] they offer visibility into the views held by members of an institution that has been labeled "antidemocratic."[91] Indeed, when Justices pen concurrences that elaborate upon their views, the Roberts Court's preference for unanimity achieves an ideal balance between authority and judicial transparency.

Narrow opinions have been criticized as sometimes offering "almost

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[84] *See id.* at 1604–05 (Kavanaugh, J., concurring).

[85] *See* PAMELA C. CORLEY, CONCURRING OPINION WRITING ON THE U.S. SUPREME COURT 74 (2010) ("Lower courts may be more likely to follow the Supreme Court decision if they perceive the Court is strongly united . . . .").

[86] *See* Zilis, *supra* note 64, at 230–31.

[87] *See* Rosen, *supra* note 4.

[88] *See* CORLEY, *supra* note 85, at 14 ("[A] concurring opinion may clarify the outcome of the case and strengthen the result."); Ray, *supra* note 70, at 831 (describing concurrences as offering a "reasonable compromise" between "divergent views"). *But see, e.g.*, CORLEY, *supra* note 85, at 10 (explaining that concurrences can diminish the authority of unanimous decisions).

[89] *See* Berkolow, *Much Ado About Pluralities: Pride and Precedent Amidst the Cacophony of Concurrences, and Re-percolation After* Rapanos, 15 VA. J. SOC. POL'Y & L. 299, 313–14 (2008); Cass R. Sunstein, *Unanimity and Disagreement on the Supreme Court*, 100 CORNELL L. REV. 769, 812 (2015) ("We can easily imagine a 9–0 decision that leaves a great deal of uncertainty . . . because it is narrow and limited to the particular facts."). Concurring opinions can create confusion when Justices write separately to outline reasoning that differs from the Court's rationale or signals that doctrine may move in a different direction; at other times, however, concurrences can "smooth the process of change and thereby enhance the Court's credibility." Thomas B. Bennett et al., *Divide & Concur: Separate Opinions & Legal Change*, 103 CORNELL L. REV. 817, 869 (2018); *see also id.* at 838. Concerns are most acute when Justices pen concurrences that are "substantially similar." Andrew Lynch, *Dissent: The Rewards and Risks of Judicial Disagreement in the High Court of Australia*, 27 MELB. U. L. REV. 724, 750 (2003) (examining the roles of concurrences in the Australian context).

[90] CORLEY, *supra* note 85, at 14, 74; Ray, *supra* note 70, at 830.

[91] *See, e.g.*, Nikolas Bowie, Opinion, *How the Supreme Court Dominates Our Democracy*, WASH. POST (July 16, 2021, 6:00 AM), https://www.washingtonpost.com/outlook/2021/07/16/supreme-court-anti-democracy [https://perma.cc/C7CM-WUM3].

no precedential effect."[92] The limited precedential impact of certain narrow decisions stems from ideological diversity among Justices: the more numerous and diverse the group of Justices joining an opinion, the narrower the basis for consensus.[93] Therefore, when full consensus is reached, unanimity can come at the cost of thorough direction to guide lower courts.[94]

However, the doctrinal and philosophical differences often explored in concurring opinions can provide ample direction.[95] In *Caniglia*, Justice Alito's concurrence included a practical recommendation for states: enact new warrant procedures to avoid litigation over warrantless entries into homes pursuant to welfare checks.[96] Justice Kavanaugh's analysis of emergency aid scenarios[97] charted new doctrinal paths that may be followed by both litigants crafting arguments and lower courts seeking to apply *Caniglia* beyond its specific facts.[98] *Caniglia*, then, showcased the ability of narrow unanimous decisions to provide policy insights and refine doctrine when Justices write separately.

Caniglia put on full display many of the most commendable attributes of Court decisions. United on the narrow question presented to it, the Court spoke clearly: there is no standalone community caretaking exception to the Fourth Amendment's warrant requirement.[99] In *Caniglia* at least, achieving consensus did not deprive the judiciary of practical and doctrinal guidance, as the concurring Justices offered perspectives that will likely inform decisionmaking by lower courts and state legislators alike. Without depriving the judiciary and other interested parties of guidance, *Caniglia* projects the stability and collegiality necessary to improve the Court's reputation[100] — a particularly important image to maintain after a series of politically turbulent Senate confirmation hearings that have eroded the Court's legitimacy among the public.[101] Narrow unanimous decisions are no silver bullet to remedy the Court's institutional concerns, particularly when divided and controversial decisions still dominate its docket. Yet in the case of *Caniglia*, the Roberts Court proved its point: on the way to resolidifying its authority, one voice beats many.

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[92] Liptak, *supra* note 5; *see also* Lee Epstein et al., *On the Capacity of the Roberts Court to Generate Consequential Precedent*, 86 N.C. L. REV. 1299, 1327–28 (2008) (arguing that complete agreement among Justices is "highly unlikely to generate a consequential decision").

[93] *See* Epstein et al., *supra* note 92, at 1327–28.

[94] *See* Liptak, *supra* note 5.

[95] *See, e.g.*, cases cited *supra* note 77.

[96] *Caniglia*, 141 S. Ct. at 1602 (Alito, J., concurring).

[97] *Id.* at 1604–05 (Kavanaugh, J., concurring).

[98] *See* CORLEY, *supra* note 85, at 76.

[99] *Caniglia*, 141 S. Ct. at 1598.

[100] *See* Rosen, *supra* note 4.

[101] *See* Devin Dwyer, *Supreme Court Defies Critics with Wave of Unanimous Decisions*, ABC NEWS (June 29, 2021, 5:12 AM), https://abcnews.go.com/Politics/supreme-court-defies-critics-wave-unanimous-decisions/story?id=78463255 [https://perma.cc/UAP2-DVMP].