NO. 21-_____

# In the Supreme Court of the United States

SALLY GAETJENS,

*Petitioner,*

v.

CITY OF LOVES PARK, ET AL.,

*Respondents.*

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

This case squarely presents two important federal questions regarding the scope of the exigent circumstances exception to the Fourth Amendment's warrant requirement.

THE QUESTIONS PRESENTED ARE:

1. Whether the exigent circumstances doctrine extends to situations where there is time to obtain a warrant or other judicial process?

2. Whether, under this Court's emergency aid precedents, there can there be an objectively reasonable basis for a warrantless home entry where there is no specific evidence of serious injury or threat of such injury and where the only evidence regarding the individual's location points elsewhere?

## PARTIES TO THE PETITION

**Petitioner**

- Sally Gaetjens

**Respondents**

- City of Loves Park
- Winnebago County
- Doug Allton
- Philip Foley
- Jennifer Stacy
- Dave Kaske
- Joshua Del Rio

## LIST OF PROCEEDINGS

District Court for the Northern District of Illinois

Case No. 16 C 50261

*Gaetjens v. City of Loves Park, et al.*

5/2/2019 – Order granting summary judgment for all Defendants

5/3/2019 – Order modifying 5/2/2019 summary judgment order, entering summary judgment only in favor of the City of Loves Park, Philip Foley, and Doug Allton.

1/21/2020 – Order granting summary judgment for Defendants Winnebago County, Jennifer Stacy, Dave Kaske, and Joshua Del Rio.

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United States Court of Appeals for the Seventh

Case No. 20-1295

*Sally Gaetjens v. Winnebago County, Illinois, et al.*

7/13/2021 – Final Judgment entered, affirming summary judgment for Defendants.

8/13/2021 – Entry of order denying Plaintiff-Appellant's petition for rehearing.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Sally Gaetjens respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

## OPINIONS BELOW

The original order of the United States District Court for the Northern District of Illinois granting summary judgment for all Defendants is unpublished and was filed on May 2, 2019, in Case No. 16-C-50261, and is reproduced at App.21a. The district court's order modifying the May 2 order and entering partial summary judgment was filed on May 3, 2019, and is reproduced at App.19a.

The order of the United States District Court for the Northern District of Illinois granting summary judgment for the remaining Defendants is unpublished and was filed on January 21, 2020, and is reproduced at App.14a.

The opinion of the United States Court of Appeals for the Seventh Circuit affirming the district court's decision was entered on July 13, 2021, in Case No. 20-1295, is published at 4 F.4th 487, and is reproduced at App.1a.

The order of the United States Court of Appeals for the Seventh Circuit denying Petitioner's petition

for rehearing was entered on August 13, 2021, and is reproduced at App.49a.

## JURISDICTION

The Seventh Circuit entered judgment on July 13, 2021, and entered its order denying Petitioner Sally Gaetjens's petition for rehearing on August 13, 2021. This petition is filed within 90 days of that date according to Rule 13 of the United States Supreme Court Rules. Accordingly, this Court has jurisdiction to review under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U.S. Const. amend. IV**

> 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.

**U.S. Const. amend. XIV**

> No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . .

**42 U.S.C. § 1983**

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

## STATEMENT OF THE CASE

### A. Substantive Facts[1]

Sally Gaetjens bred Siamese and Oriental Shorthair cats which she showed at competitions and sold to customers.[2] In 2014, she owned and operated out of two homes: one in Rockford, Illinois, and another in Loves Park, Illinois. App.2a. In the latter, she housed between thirty and forty cats. App.3a. On December 4, 2014, she visited her doctor and was advised to go to the hospital because of high blood pressure. App.2a. Her condition was not so severe that her doctor forced her to take an ambulance. App.23a. Instead, she first drove herself to her Rockford and Loves Park homes to feed her cats and arrange their care. App.23a, 55a-56a. Among other things, she enlisted

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[1] Citations to the record in district court proceedings are to "Dkt." Followed by the page number.

[2] Dkt. 81-2 at 6 (Deposition of Sally Gaetjens).

her friend, Joan Klarner, to care for her cats while she was gone. App.55a-56a.

While Gaetjens was on her way to the hospital, her doctor's office called one of her listed contacts, Rosalie Eads, and informed her that they were attempting to reach Gaetjens and requested that Eads tell Gaetjens to call her doctor. App.51a. Eads lived down the street from Gaetjens's Loves Park house but did not know why Gaetjens would have listed her as a contact at the time. App.50a. Eads attempted to call Gaetjens and knock on her front door but received no response. App.51a. Eads testified that, because Gaetjens had not answered the door, she was sure Gaetjens was at her home in Rockford. App.51a.

The next day, around 11 a.m., Joan Klarner arrived at Gaetjens's Loves Park house with her husband to care for Gaetjens's cats. App.56a. For two hours, they fed the cats, cleaned out a Breeze box (a type of receptacle for cat feces), ran the dishwasher, and washed several dishes for the cats' food. App.56a. Klarner and her husband left the Loves Park house at about 1 p.m. App.56a.

Several hours later, in the late afternoon, Rosalie Eads called Gaetjens's doctor's office to see if they were still looking for her, but the office responded that their privacy policy prevented them from disclosing information regarding her health. App.51a. The clinic further explained that if Eads had concerns about Gaetjens's well-being, she could call the police. App.51a. Eads then called Loves Park Police to tell them what she knew at the time. App.2a.

Officer Doug Allton and another officer arrived on the scene and spoke with Eads outside her own

home. App.52a. Eads confirmed what she had said on the phone, and the police asked Eads whether she had a key to Gaetjens's home. App.52a. Before going to get the key, Eads said, "Can you take me to her other house? I don't think she's here [at her Loves Park house]. I think she's at her other house." App.52a. Allton responded with, "I need the key." App.52a. Eads obeyed Allton and retrieved a Walmart bag containing many keys, Gaetjens's key among them. App.52a. At the time, Eads did not know which key in the bag was the key to Gaetjens's home, so she handed Allton the plastic bag full of miscellaneous keys. App.52a-53a.

Eads testified that she did not believe that Gaetjens was in her Loves Park house and "begged" Officer Allton instead to take Eads to the Rockford house, where she believed Gaetjens to be. App.52a-53a.

Ignoring these pleas, Allton approached the home and noticed a package on Gaetjens's porch, mail in the mailbox, and that her garbage cans had not been taken out to the street. App.2a. The police opened the front door and walked several feet inside Gaetjens's home before leaving due to the odor inside. App.3a. Allton described the smell as a mix of urine, feces, and maybe a decomposing body. App.3a. As a result, Allton called on the Loves Park Fire Department to search the house. App.3a.

Fire Chief Philip Foley soon arrived on the scene sometime before 4:25 p.m., when he called his dispatcher and requested one engine company and firefighters. App.53a. At 4:35 p.m., less than ten minutes after he arrived on the scene and called dispatch, Foley condemned and placarded the house. App.53a. At 5:13 p.m., the engine company and firefighters arrived.

App.53a. After their arrival, the firefighters spent about 15 minutes suiting up and 20 minutes searching the residence. App.53a.

Foley testified that when he arrived, Allton told him to examine the house's front door, which at that point had been opened several inches. App.54a. Foley further testified that—without seeing into the house—he approached the door, opened it slightly, smelled the house, closed the door without looking through it into the house, and walked out the yard to call the engine company. App.54a. At no time before, during, or after that point did Foley enter Gaetjens's house or observe the conditions of the house's interior. App.54a. Foley testified that he condemned the house solely based on the smell and saw nothing else to indicate the home's condition before he did so. App.54a.

Joan Klarner's testimony directly contradicted Foley's and Allton's regarding the condition of the Loves Park house that afternoon. Klarner observed the house's condition from about 11 a.m. to 1 p.m.—nearly fourteen hours after Gaetjens had left and about three hours before the initial search. App.56a. She and her husband visited every area of the house during that time, save the bedroom, where Gaetjens had sequestered a kitten for treatment with intravenous fluids. App.56a. She repeatedly testified that the conditions of the house at the time did not pose a danger to the health of either human beings or cats. App.56a. During the two hours that she and her husband spent there, they never felt the need to go outside to get fresh air, nor did she think the house needed ventilation. App.56a-57a. The house did not appear to be in disrepair: no plants had been knocked over; there was no kibble or pellets on the

floor; no long-term stains on the floor; no film of urine on the floor or baseboards of the house; no cat vomit or feces on the floor. App.56a[3] She was not concerned for her health at all based on the smell of the house, and neither her husband's nor her clothes smelled of cat urine after spending two hours inside the home. App.56a[4]

The testimony regarding what happened between Foley's smelling the house and condemning it was unclear. Joshua Del Rio, a Winnebago County Animal Services officer, testified that he arrived on the scene around this time and discussed the situation with Officer Allton and Chief Foley. App.54a. According to Del Rio, during this discussion, Foley asked Del Rio whether Animal Services could remove the cats from the house, to which Del Rio responded, "I don't believe we can just walk in and take them." App.54a. Del Rio further explained that, typically, Animal Services would leave a written notice for 24 hours of care and, if nobody contacted them, Animal Services would return to the house to determine whether someone had been to the house in the interim. App.54a-55a. Officer Allton added that they would need a warrant to go back inside the house and remove the cats. App.55a.

Chief Foley proposed a different solution: he inquired whether Animal Services would take the cats if he condemned the home. App.55a. Del Rio responded that Animal Services possibly could but added that he had never dealt with such a situation before. App.55a. Del Rio called his commander, Dave

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[3] *Compare* App.56a at ¶ 37 *with* Dkt. 81 at ¶¶ 59-61.

[4] *Compare* App.56a at ¶ 36 *with* Dkt. 81 at ¶¶ 59-61.

Kaske, and informed him of the situation. App.55a. With Kaske on the line, Del Rio asked Foley whether the owner would be able to reenter the home and care for the cats after it had been condemned. App.55a. Chief Foley responded, "No," and explained that the owner would be arrested if she were found in the home after it was condemned. App.55a. Foley further explained that only Winnebago County Animal Services could enter the home to remove the cats. App.55a. After the call, Kaske, Stacy, and other Animal Services officers began heading to the scene.[5]

Meanwhile, Foley condemned the home by placing a placard on the front door that read: "CONDEMNED[.] This Structure is Unsafe and Its use or occupancy has been prohibited by the code administrator. It shall be unlawful for any person to enter such structure except for the purpose of making the required repairs or removal." App.3a. After the condemnation, fire-fighters arrived, went into the home to look for Gaetjens, determined that she was not present, and discovered the house contained over thirty cats. App.3a. There is no evidence in the record that any city or county employee continued to look for Gaetjens after this. There is no evidence in the record that any officer attempted to telephone Gaetjens, contact her friends or family, or communicate with her doctor at any time that day. Nor is there any evidence that any officer checked her Rockford house or contacted law enforcement in that area to do so.

At about 5:23 p.m., Jennifer Stacy, Commander Kaske, and three additional Animal Services officers

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[5] Dkt.81-13 at 9 (Deposition of Jennifer Stacy, pp. 32-33).

arrived at the house to remove the cats.[6] Foley had already left by the time they came, and the remaining firefighters were leaving the scene.[7] The Animal Services Officers began removing the cats from the house and loading them into five vans.[8]

Before the officers finished filling the first van of cats for impoundment, Gaetjens arrived on the scene, having been discharged from the hospital earlier that afternoon.[9] After arriving, she was escorted inside her home to the kitchen, where she spoke with Stacy.[10] During that conversation, Gaetjens asked if Animal Services could leave now that she had arrived.[11] Stacy replied that Animal Services had a job to do and that they had to impound all of Gaetjens's cats.[12] While Gaetjens waited in the living room for the officers to finish removing the cats, she observed that her cats were "running and scattering and terribly frightened" by the officers' efforts to collect them. In the end, thirty-seven cats were seized and four cats died, including Calaio, Gaetjens's prized male stud. App.4a.

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[6] Dkt. 81-12 at 14-15 (Deposition of Dave Kaske, pp. 52-54).

[7] Dkt. 81-13 at 25 (Stacy Dep., pp. 95-96); Dkt. 81-12 at 15 (Kaske Dep., p. 54).

[8] Dkt. 81-12 at 15 (Kaske Dep., p. 54).

[9] *Id.* at 22 (Kaske Dep., pp. 83-84).

[10] Dkt. 81-8 at 3 (Deposition of Sally Gaetjens, Vol. II, p. 220).

[11] *Id.*

[12] *Id.*

### B. Procedural History

Gaetjens sued the City of Loves Park, Winnebago County, and several employees of each under 42 U.S.C. § 1983. App.4a. She alleged, in relevant part, that Foley, Kaske, and the Animal Services employees violated her Fourth Amendment rights by (1) entering her home, (2) condemning her home, and (3) seizing her cats.[13] Gaetjens also alleged that the City of Loves Park and Winnebago County are liable for these violations under *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978). The district court granted summary judgment to all defendants on qualified immunity grounds. App.22a. The district court held that the petitioner had failed to carry her burden as to whether the alleged violations were clearly established on the night her house was condemned. App.22a.

The court later modified this order, limiting the grant of summary judgment to respondents Allton, Foley, and Loves Park and ordering the petitioner to show cause why the Court should not grant summary judgment to the remaining parties. App.14a. Petitioner timely responded; the remaining defendants did not reply. *Id.* The district court then granted summary judgment *sua sponte* to the Animal Services employees and Winnebago County. App.15a.

The Seventh Circuit affirmed. In doing so, it reached the merits of the alleged constitutional violations and held that the warrantless entry of the

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[13] Gaetjens also brought a Fourteenth Amendment procedural due process claim for the seizure of her house and cats (Dkt. 1, Count II) and a section 1983 conspiracy claim (Dkt. 1, Count III). These claims do not pertain to the instant petition.

home, condemnation of the house, and seizure of the cats were justified by exigent circumstances. App.7a.

Regarding the warrantless home entry, the Seventh Circuit held that Allton had an objectively reasonable basis for believing that Gaetjens was experiencing a medical emergency. App.7a. In reaching this result, the Seventh Circuit relied almost exclusively on a hypothetical posed by Justice Kavanaugh's concurrence in *Caniglia v. Strom*, 141 S.Ct. 1596 (2021):

> Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night. A concerned relative calls the police and asks the officers to perform a wellness check. Two officers drive to the man's home. They knock but receive no response. May the officers enter the home? Of course.

App.8a (quoting *Caniglia v. Strom*, 141 S.Ct. 1596, 1605 (Kavanaugh, J., concurring)). The opinion found that the home entry in this case fit into the "heartland of emergency-aid situations." App.8a. In support, the court reasoned that Allton knew that "(1) Eads and Gaetjens's doctor were unable to get in touch with Gaetjens; (2) the doctor's office called Eads because she was Gaetjens's emergency contact; (3) Eads was concerned that Gaetjens was experiencing a medical emergency; and (4) Gaetjens's mail and garbage were piling up." App.8a. The court concluded that this "litany of concerning circumstances facing Allton more than provided" an objectively reasonable basis for believing that an occupant needs emergency assistance if Justice Kavanaugh would

reach the same conclusion for an individual "failing to come to church and answer a phone." App.8a.

One of petitioner's arguments on this point was that Allton had no reason to believe that Gaetjens was in her Loves Park house when Eads had told him numerous times that she believed Gaetjens was not there but in her Rockford home. App.8a-9a. The Seventh Circuit responded that this only gave Allton a reason to look for Eads in her Rockford house and in no way contradicted the above facts that supported a basis to enter the Loves Park home. App.9a.

Regarding the condemnation, the Seventh Circuit held that Foley had an objectively reasonable basis for believing that a safety threat required him to condemn the Loves Park home without a warrant. App.9a-10a. In support, the court relied primarily on two cases: *Wonsey v. City of Chicago*, 940 F.3d 394 (7th Cir. 2019), and *Flatford v. City of Monroe*, 17 F.3d 162 (6th Cir. 1994). App.9a. The court explained that, in *Wonsey*, police were not liable for entering a house to help with an evacuation ordered by building code inspectors because there was immediate safety concern posed by the "dangerous conditions" identified in thirty-two building code violations. *Id.* (quoting *Wonsey*, 940 F.3d at 398-401). Similarly, in *Flatford*, police evacuated an apartment building after inspectors determined that its dilapidated wooden structure and faulty electrical system posed a danger to the public. App.9a-10a (citing *Flatford*, 17 F.3d at 171). The court found it persuasive that, in *Flatford*, the Sixth Circuit held that the officers were entitled to qualified immunity for this warrantless evacuation because they reasonably believed that exigent circum-

stances justified the entry. App.9a-10a. (citing *Flatford*, 17 F.3d at 171).

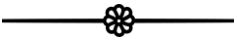
The Seventh Circuit held that these two precedents justified Foley's condemnation of the house based on smell alone. App.10a. The court found that Allton's statement to Foley that the smell was bad and Foley's determination that the odor could "gag a maggot" provided a reasonable basis on which to conclude that the home's conditions posed an immediate danger to its occupants and the public. App.10a. (citing *Flatford*, 17 F.3d at 171).

One of petitioner's arguments on appeal was that Joan Klarner's observation of the conditions of the home on that same afternoon put Foley's account in dispute. App.10a. The court addressed this by reasoning that Klarner's testimony did not directly dispute the state of the home as Foley found it several hours later. App.10a. The court reasoned that "even if the home was not as bad as Allton made it out to be, Foley was nonetheless entitled to rely on Allton's statements about the condition of the home"—*i.e.*, the smell—"because Allton had superior information after entering the home moments earlier." App.10a-11a.

Finally, regarding the impoundment of the cats, the Seventh Circuit held that the Animal Services employees who seized the cats reasonably determined that the cats were in imminent danger because they could not be cared for in the home. App.11a-12a. The court reasoned that "[t]he imminent danger to animals here was plain—Gaetjens's thirty-seven cats could not be cared for in the Loves Park home because the

condemnation placard prevented Gaetjens from entering the home for that purpose." App.11a.[14]

On August 13, 2021, the Seventh Circuit denied petitioner's petition for rehearing. App.49a.



## REASONS FOR GRANTING THE PETITION

This case presents an opportunity to address two questions regarding the scope of the exigent circumstances exception to the warrant requirement in the wake of this Court's decision in *Caniglia v. Strom*. The first question is whether the exigent circumstances doctrine extends to situations where, as here, there was adequate time to obtain a warrant or other judicial process before the seizure of petitioner's home and cats.

The second question involves this Court's exigency precedents for non-investigative searches or seizures where there is an objectively reasonable basis for believing that an occupant is seriously injured or threatened with such injury. In this "heartland of emergency aid cases," can there be an objectively reasonable basis for a home entry where there is no specific evidence of serious injury or threat of such injury and the only evidence regarding the individual's whereabouts point elsewhere?

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[14] The Seventh Circuit opinion addressed several of petitioner's arguments in response, none of which are at issue in the instant petition. *See* App.11a-12a. Nor is the court's dismissal of petitioner's *Monell* claims relevant to the questions presented in the instant petition. *See* App.13a.

This Court should grant certiorari to resolve these issues. Both concern a recurring federal issue of national importance which stands to become even more significant as courts, police, and other government employees look to this Court for guidance regarding the scope of protection that the exigent circumstances exception provides for actions that had previously fallen under the community caretaker exception. Further, this case offers a suitable vehicle through which the Court can explore the contours of the exigent circumstances doctrine.

## I. THE DECISION BELOW IS WRONG BECAUSE THE EXIGENT CIRCUMSTANCES EXCEPTION DOES NOT EXTEND TO SEIZURE OF PETITIONER'S HOUSE AND CATS WHEN THERE WAS TIME TO OBTAIN A WARRANT OR OTHER JUDICIAL PROCESS.

It is a fundamental principle of Fourth Amendment law that warrantless searches and seizures inside a home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980). This protection against unreasonable searches and seizures applies to the seizure of residential property outside of the criminal context, even in the absence of a search. *Soldal v. Cook County*, 506 U.S. 56, 68 (1992). One exception to this requirement arises when "the exigencies of the situation make the needs of law enforcement so compelling that warrantless search [or seizure] is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 394 (1978) (internal citations and quotations omitted).

Here, both the condemnation of Gaetjens's house and the seizure of her cats raise this issue in separate ways. First, regarding the condemnation, the Seventh

Circuit incorrectly held that the smell of cat urine, standing alone, could indicate an emergency so compelling that the seizure of the house outside of any judicial process was objectively reasonable. This was a significant departure from the precedents of this Court, which consistently have held that circumstances are exigent only when there is not enough time to obtain a warrant or judicial process. *See Missouri v. McNeely*, 569 U.S. 141, 149 (2013); *Michigan v. Tyler*, 436 U.S. 499, 509 (1978).

In relying on *Wonsey* and *Flatford* to justify this departure, the Seventh Circuit stretched their holdings too far. Both *Wonsey* and *Flatford* held that police officers' reliance on building inspectors' condemnation of a building justified the officers' subsequent warrantless searches and evacuations of those buildings. *See Wonsey*, 940 F.3d at 399-401; *Flatford*, 17 F.3d at 167-68. However, neither decision held that the actions of the building inspectors in ordering the evacuation of the buildings justified their seizure by condemnation. While *Wonsey* and *Flatford* may have been relevant to the issue of law enforcement and animal control's subsequent entry into Gaetjens's house and seizure of her cats, neither supports the Seventh Circuit's result here.

In *Flatford*, the Sixth Circuit held that the building inspector was entitled to qualified immunity for any failure to provide pre-deprivation process to plaintiff where there was no dispute that the inspector observed numerous structural failures, extensive "wood-rot" to exposed electrical wiring, the presence of combustibles, and additional code deficiencies. *Flatford*, 17 F.3d at 167-68. The plaintiff did not challenge the existence of the fire hazards; instead,

she merely questioned the inspector's judgment concerning the degree of seriousness. *Id.* Here, unlike in *Flatford*, the only indication of any potential hazard is the strength of the odor Foley perceived. Moreover, in *Flatford*, the court specifically avoided ruling on whether the inspector's decision to evacuate was erroneous and instead found that he was entitled to qualified immunity on the pre-deprivation process afforded the plaintiff.

There is no indication in the record why the smell was so strong that Foley could not have followed the provisions of the International Property Maintenance Code, which he relied on to justify the condemnation here.[15] Under the International Property Maintenance Code, Foley could have provided Gaetjens with notice of a violation or nuisance and "[i]f the notice of violation is not complied with, [Foley could] institute the appropriate proceeding at law . . . to abate such violation, or to require the removal or termination of the unlawful occupancy of the structure." International Property Maintenance Code § 106.3 ("Prosecution of violation"). Without more, the odor of cat urine, however intense, cannot be enough to form an objectively reasonable belief that there is no time to initiate such proceedings.

In sum, had Foley smelled gasoline, smoke, or any other indication of an immediate and urgent threat to human safety, perhaps smell alone could have justified an emergency condemnation. But, without more, the smell of cat urine cannot be enough to form

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[15] In particular, Foley relied on Section 108.1.3 of the International Property Maintenance Code to condemn the house. Dkt. 80 at 5 (Defendants' Motion for Summary Judgment).

an objectively reasonable belief that there was not enough time for Foley to use judicial process here.

Similarly, regarding the seizure of the cats, the Seventh Circuit also incorrectly held that the condemnation preventing Gaetjens from entering her home to care for the cats created an emergency so compelling that there was not enough time to get a warrant for their seizure. There is no dispute that the number of cats in the house violated the Loves Park ordinance. Yet, nothing in the record indicates that there would not have been enough time for the cats to have remained in the house for however many hours it would have taken to obtain a warrant to seize them.

Nor is it clear that condemnation placard even created the emergency the Seventh Circuit imagines. Granted, the placard's language prohibited Gaetjens from entering the premises "except for the purpose of making the required repairs or removal." But what would stop her from entering the structure to remove her cats—whose presence caused the condemnation—to her Rockford house?

## II. THE DECISION BELOW IS WRONG BECAUSE THERE WAS NO BASIS UNDER THIS COURT'S EMERGENCY AID CASES FOR THE WARRANTLESS SEARCH OF PETITIONER'S HOUSE.

Here too, the Seventh Circuit incorrectly held that the exigent circumstances doctrine extended to a situation where, as far as Allton was concerned, there was no evidence of a specific injury or threat of injury to Gaetjens. Even if time were of the essence, the only reliable evidence indicated that Gaetjens was either at her Rockford house or the hospital. Allton searched for Gaetjens at neither location.

The Seventh Circuit stressed that the "litany of concerning circumstances in this case" provided even stronger justification for warrantless entry than the "failing to come to church and answer a phone" that Justice Kavanaugh described in his *Caniglia* concurrence. App.8a. Yet, the circumstances of Justice Cavanaugh's hypothetical were not so simple. There, the missing individual was "elderly" and "uncharacteristically absent from Sunday church services." *Caniglia*, 141 S.Ct. at 1605. Here, there is no indication that either Eads or Allton had any reason to believe that Gaetjens's health or age would cause anyone concern if she were somehow unreachable. Although Gaetjens's doctor had reached out to Eads to ask her to contact him, the doctor did not indicate whether Gaetjens's health was at risk. In the *Caniglia* hypothetical, the officers are called to an elderly man's home, the assumption being that there is nowhere else the man could have been. Here, Eads specifically stated that she thought Gaetjens was not in her Loves Park home.

There was no testimony suggesting that Eads or Allton had any specific knowledge indicating that Ms. Gaetjens's health was in danger, much less on the afternoon in question. Nor was there any testimony that Eads or Allton had any specific knowledge indicating that Ms. Gaetjens was inside her Loves Park home at the time of the search. Instead, Eads testified that she told Allton that she believed that Gaetjens was not in her Loves Park home. Eads further testified that she told Allton that she thought Gaetjens was in her Winnebago County residence and begged Allton to take her there.

Nor did Allton or any other officer make a reasonable effort to confirm whether there was an ongoing medical emergency involving Sally Gaetjens. At no point did Allton or any police officer attempt to reach Gaetjens on her phone. Nor did they attempt to contact the doctor to confirm whether there was an ongoing medical emergency. That same doctor told Eads that she could call the police if she was concerned about Gaetjens's health. It is telling that the doctor had not done so. Had Allton briefly called Gaetjens's doctor to determine if there was a medical emergency instead of immediately searching her house, he would likely have learned that no emergency existed.

## III. THESE ISSUES ARE IMPORTANT.

The questions presented concern a growing issue of national importance which stands to become even more significant after this Court's decision in *Caniglia*. Courts, police, and other government employees look to this Court for guidance regarding the scope of protection that the exigent circumstances exception provides for actions that had previously fallen under the community caretaker exception.

The real-world significance of these issues will only continue to grow. Justice Alito observed in his concurrence to *Caniglia*:

> Today, more than ever, many people, including many elderly persons, live alone. Many elderly men and women fall in their homes, or become incapacitated for other reasons, and unfortunately, there are many cases in which such persons cannot call for assistance. In those cases, the chances for a good recovery may fade with each passing hour.

*Caniglia*, 141 S.Ct. at 1602 (J. Alito, concurring) (footnotes omitted). Regardless of how this court rules on the merits, granting this petition will result in much-needed clarity for those who routinely wrestle with these issues.

## IV. THIS IS A SUITABLE VEHICLE.

This case presents an unusual opportunity for this court to address the exigent circumstances doctrine for searches and seizures of real and personal property conducted by law enforcement and non-law-enforcement personnel for various purposes. As the opinion below opined, "emergencies breed exceptions—and this case is littered with emergencies." App.1a. Thus, it presents an ideal vehicle to explore and define the bounds of the exigent circumstances doctrine.

## CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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