No. 18-6162

In the
Supreme Court of the United States

LYANNE LEMEUNIER-FITZGERALD,
Petitioner
v.

STATE OF MAINE,
Respondent

On Petition for a Writ of Certiorari to the Maine Supreme Judicial Court sitting as the Law Court

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Maine motorists have a statutory duty to submit to a chemical test, breath or blood, if a law enforcement officer has probable cause to believe the motorist has operated under the influence. If a motorist refuses to submit to a test, Maine law requires the law enforcement officer to warn the motorist that the refusal will subject the motorist to mandatory license suspension; that the fact of refusal will be admissible at trial; and that, if the motorist is convicted of operating under the influence, the refusal will result in a mandatory minimum period of incarceration.

The question presented is whether a motorist's consent to a warrantless blood draw is rendered involuntary merely because she has first been warned that refusal to submit will result in a mandatory minimum period of incarceration upon conviction of operating under the influence.

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Respondent State of Maine respectfully requests that the Court deny the petition for a writ of certiorari seeking review of the decision and judgment of the Maine Supreme Judicial Court, sitting as the Law Court ("Maine Law Court").

STATEMENT OF THE CASE

1. On December 21, 2015, an Augusta police officer suspected that Petitioner Lyanne LeMeunier–Fitzgerald was operating under the influence of an intoxicant, after having observing her in a supermarket parking lot. Pet. App. 1. Her vehicle was partially pulled out of a parking space, her eyes were glassy, and she smelled of alcohol. *Id*. When the officer approached and questioned her, she grabbed a bottle of pills and poured them into her mouth. *Id*. The officer placed her in handcuffs and called for a rescue team. *Id*. When the rescue team arrived, the handcuffs were removed and LeMeunier–Fitzgerald was taken to the hospital. *Id*.

After hospital personnel had attended to LeMeunier–Fitzgerald and had placed her in a room, the officer met with her. Pet. App. 2. The officer informed her that he suspected that she had been attempting to operate a motor vehicle while under the influence of intoxicants, and he read Maine's "implied consent" warnings to her verbatim from a form

provided by the Secretary of State's Bureau of Motor Vehicles. Pet. App. 2; *see* Me. Rev. Stat. tit. 29–A § 2521 (2017). The warning included the following statutorily-mandated language: "If you are convicted of operating while under the influence of intoxicating liquor or drugs, your failure to submit to a chemical test will be considered an aggravating factor at sentencing which in addition to other penalties, will subject you to a mandatory minimum period of incarceration." Pet. App. 2. LeMeunier–Fitzgerald agreed to submit to the blood test; a blood sample was then taken from her without a warrant. *Id*.

2. LeMeunier–Fitzgerald was charged by complaint and was later indicted for operating under the influence in violation of Me. Stat. Rev. tit. 29–A § 2411(1–A)(B)(2), and operating beyond a license condition or restriction in violation of Me. Rev. Stat. tit. 29–A § 1251(1)(B). Pet. App. 2. She moved to suppress the blood test results as having been procured without a warrant and without voluntary consent, in violation of the Fourth Amendment to the United States Constitution. *Id*. Prior to the hearing on the motion to suppress, the parties stipulated that (1) the officer had probable cause to believe that LeMeunier–Fitzgerald was operating while under the influence of an intoxicant, (2) her blood was drawn without a search warrant, and (3) there were no exigent circumstances. *Id*. The court then heard brief testimony from the officer who had taken LeMeunier–Fitzgerald into custody. *Id*. For purposes of the motion, that testimony was not disputed by LeMeunier–Fitzgerald.

Id.

The court denied the motion to suppress, reasoning that, unlike the situation that this Court recently addressed in *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016), LeMeunier–Fitzgerald did not submit to the blood testing "on pain of committing a criminal offense." Pet. App. 2 (quoting *Birchfield*, 136 S.Ct. at 2186). The court concluded that the heightened minimum penalties, including a mandatory minimum period of incarceration, that may be imposed on a person who refuses to submit to testing if convicted of OUI were not equivalent to an independent criminal offense for refusal as described in *Birchfield*. *Id.*

LeMeunier–Fitzgerald entered a conditional guilty plea, preserving her right to appeal from the ruling on the motion to suppress. The court sentenced her to three years in prison, with all but forty-five days suspended, and two years of probation for the OUI conviction, and forty-five days in prison, to run concurrently, for the conviction of operating beyond a license condition or restriction. Pet. App. 2. The court also imposed fines and surcharges amounting to $1,405. *Id.*

3. The Maine Law Court, in a 4-3 decision, affirmed the judgment of conviction. Pet. App. 1-7. The court explained that the issue was whether LeMeunier–Fitzgerald's consent was voluntary or was instead coerced. *Id.* at 5 (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973)). It then distinguished Maine's statutory implied consent procedure from the North Dakota procedure invalidated by the

Birchfield Court: "Unlike the North Dakota statute reviewed in *Birchfield*, Maine's statute includes no threat of a separate, independent criminal charge for refusing to submit to testing. Nor does the refusal to submit expose the driver to any additional threat of immediate incarceration." Pet. App. 6 (citation omitted).

The question, the court posited, "is whether the additional threat of a mandatory minimum sentence is unconstitutionally coercive and renders the consent involuntary." Pet. App. 6. The court answered that question in the negative. "In Maine, a driver's refusal to comply with the statutory duty to submit to a blood test upon probable cause will result in an enhanced penalty, one that is well within the statutory maximum for any person charged with OUI, only if the driver is ultimately convicted of OUI after that refusal." *Id.*

The court further elaborated that Maine's statutory framework does not increase either the class of offense or the maximum penalties to which the refusing motorist is exposed. Pet. App. 6-7. Indeed, "in an individual case, the refusal to submit might not, practically speaking, result in any demonstrable increase in punishment whatsoever because a court may impose a sentence at or above the statutory minimum for *any* conviction of the charged OUI offense." *Id.* at 7. Although *Birchfield* held there is a "limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads," the court concluded "that limit is not exceeded where the

consequence is only the risk of an increased *minimum* penalty if a driver, having received warnings of the consequences of a refusal, declines to submit to blood testing and is ultimately convicted of OUI[.]" *Id.*

4. Associate Justice Ellen Gorman, joined by Associate Justices Joseph Jabar and Jeffrey Hjelm, dissented. Pet. App. 7-10. Justice Gorman felt that a warning that refusal is a separate criminal offense and a warning that refusal is an aggravating factor at sentencing with a mandatory minimum period of incarceration are equally coercive. In both instances, she said, "the legal effect on a defendant is indistinguishable: the defendant who refuses to submit to a blood test and is convicted of that refusal as part of an OUI conviction is subjected to a minimum criminal penalty for the refusal that otherwise would not apply." *Id* at 9.

In a separate dissenting opinion, Justice Jabar expressed two additional concerns with the language of Maine's implied consent form. Pet. App. 10-12. First, "[i]n light of *Birchfield*, LeMeunier–Fitzgerald did not have a duty to take a blood test; she had an absolute right to *refuse to consent* to a blood test." Id. at 11. Second, "[b]ecause *Birchfield* gives a defendant the constitutional right to refuse to submit to a blood test, informing LeMeunier–Fitzgerald that if she refused, that refusal would be admissible against her at trial, was a misrepresentation of the law, and thus coercive." *Id.* at 12. And in another dissenting opinion,

Justice Hjelm stated that the language of the form's warning was but one factor to be evaluated in the totality of the circumstances. He would have remanded to the trial court to reconsider "whether LeMeunier–Fitzgerald's submission to the blood draw ultimately was voluntary." *Id*. at 12.

REASONS FOR DENYING THE WRIT

This Court's review of the Maine Law Court's decision is not warranted for four reasons. First, the conflict Lemeunier-Fitzgerald has identified is illusory and, at best, shallow. Second, few states have a statutory consequence similar to Maine. The issue is simply not important enough to merit this Court's attention. Third, the Maine Law Court's opinion is consistent with this Court's *Birchfield* decision. And fourth, this case is a poor vehicle through which to address the question presented because Lemeunier-Fitzgerald could not obtain relief even if this Court granted certiorari and reversed.

I. The purported conflict is shallow and concerns a statutory consequence that only a few states have.

1. Lemeunier-Fitzgerald asserts that decisions by courts in New Mexico, Wisconsin, and Pennsylvania conflict with the Maine Law Court's decision here. Pet. at 12-16 (citing *State v. Vargas,* 404 P.3d 416 (N.M. 2017); *State v. Dalton,* 914 N.W.2d 120 (Wisc. 2018); and *Commonwealth v. Evans,* 153 A.3d 323 (Pa. Super. 2016)). But *Evans* is

a decision from an intermediate appellate court; the Pennsylvania Supreme Court has not spoken to the issue. At best, then, only three state courts of last resort have addressed the issue, producing a shallow 2-1 conflict not worthy of this Court's attention.

Moreover, upon closer inspection even the two high court cases Lemeunier-Fitzgerald relies on do not directly conflict with the Maine Law Court's decision. *Vargas* is distinguishable because under New Mexico law, a refusal to take a blood test subjects the motorist to an enhanced charge (that carries with it mandatory incarceration). 404 P.3d at 419 (discussing N.M. Stat. Ann. § 66-8-102(D)(3)). The defendant there was convicted of an offense as to which "refusing to submit to chemical testing" was an element. *Id*. In Maine, by contrast, refusal does not subject the suspect to a different charge. *See* Pet. App. 7 ("Under no circumstances . . . does the statute increase the level of the offense or otherwise increase the [sentencing] range . . . .").

The Wisconsin Supreme Court's decision in *Dalton* is distinguishable as well. There, the defendant did not consent to a blood test. 914 N.W.2d at 125. Rather, he refused to consent, which prompted the trial court to increase his sentence as a matter of judicial discretion. *Id*. at 126. Unlike here, therefore, the Wisconsin Supreme Court did not address *Schneckloth* and the issue of coerced consent. And while we do not deny that the Wisconsin Supreme Court's decision is in tension with the Maine Law Court's ruling, it did not involve a statute requiring an

officer to warn a motorist that a refusal could subject her to mandatory incarceration upon conviction, or that mandated such a consequence upon conviction.

2. Not only is the conflict small to non-existent, the issue lacks national importance. Only three other states besides Maine impose mandatory sentences on motorists convicted of driving under the influence who refused to take a blood test. National District Attorneys Association's National Traffic Law Center, *Compilation of State Implied Consent Laws and Refusal Penalties* (November 2017) (Calif. Veh. Code § 23577; Ky. Rev. Stat. § 189A.105; Wash. Rev. Code § 46.61.5055). The issue presented here is not worthy of this Court's attention.

II. The Maine Law Court's opinion is consistent with this Court's opinion in *Birchfield v. North Dakota*.

Lemeunier-Fitzgerald's primary argument is that the Maine Law Court's opinion is inconsistent with this Court's opinion in *Birchfield v. North Dakota.* Pet. at 12-18. Review of the two decisions reveals no such inconsistency.

In *Birchfield,* this Court held that a state statute that made a motorist's refusal to submit to a warrantless blood test a separate stand-alone crime violates the Fourth Amendment, stating, "we conclude that motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense." 136 S.Ct. at 2186. Here, the Maine Law Court explained that Maine's implied consent statute does not make a motorist's refusal to submit to a warrantless blood test a

separate stand-alone crime or even an enhanced crime. Pet. App. 6. Rather, the motorist must first be convicted — beyond a reasonable doubt — of the offense of operating under the influence. *Id*. Only then would the motorist be subjected to a mandatory minimum period of incarceration for refusing to submit to the statutorily mandated test. *Id*.

This means that the motorist would be exposed to an even longer period of incarceration — up to 364 days — by the fact of conviction alone. Pet. App. 6-7. The refusal is merely an aggravating factor that requires the sentencing court to impose some period of incarceration within that 364-day range. As the Maine Law Court correctly reasoned, "[a]lthough there is a 'limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads,' that limit is not exceeded where the consequence is only the risk of an increased minimum penalty if a driver, having received warnings of the consequences of a refusal, declines to submit to blood testing and is ultimately convicted of OUI[.]" Pet. App. 7 (quoting *Birchfield*, 136 S.Ct. at 2185) (citations omitted).

III. This case is a poor vehicle to address the question presented.

This case is a poor vehicle to determine whether a motorist validly consented to a blood test where she was warned that refusal to submit to the test would mean a mandatory minimum sentence upon conviction for operating under the influence. The State of Maine argued in the alternative that even if the state's implied consent statute contravened

Birchfield, the exclusionary rule should not be applied to prohibit introduction of Lemeunier-Fitzgerald's blood test result because the law enforcement officer was acting in good faith reliance on the law in existence at the time of the search, which pre-dated *Birchfield*. *See* Pet. App. 1 n.1. The state relied upon *Davis v. United States,* 564 U.S. 229 (2011), and other decisions by this Court establishing that evidence should not be suppressed when a police officer acted in reasonable reliance on court decisions and state statutes.

One state high court has already declined to apply the exclusionary rule to a pre-*Birchfield* warrantless blood draw based on an officer's good faith reliance on existing law. *State v. Hoerle,* 901 N.W.2d 327 (Neb. 2017). The Maine Law Court did not have to reach that question, as it ruled in the State's favor on the merits. Thus, even if Lemeunier-Fitzgerald were to prevail on her constitutional question, she would likely not be entitled to any remedy.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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