No. 25-114

IN THE
Supreme Court of the United States

EVELYN-NATASHA LA ANYANE,

Petitioner,

v.

THE STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

REPLY BRIEF OF PETITIONER

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INTRODUCTION

This case presents the question whether a state may severely sanction a motorist who refuses to consent to a blood alcohol content ("BAC") test so long as it labels those sanctions "civil" rather than "criminal." Neither *Birchfield v. North Dakota,* 579 U.S. 438 (2016) nor any other decision of this Court has decided the Questions Presented. The Georgia Supreme Court decided those issues on the merits with no hint of a harmless error analysis, making this case an ideal vehicle.

A deep split has not developed because other courts routinely treat the *Birchfield* dicta as binding. Recently, for example, the Pennsylvania Supreme Court held that, "unless and until otherwise instructed by the Supreme Court of the United States," it was bound to "regard [this] Court's treatment of implied consent [in *Birchfield*] as *sui generis*, approving a limited exception to the general rule that consent to a search must be given free from the threat of penalty for refusal." *Commonwealth v. Hunte*, 337 A.3d 483, 505–511 (Pa. 2025).

On the merits, consent given under threat of severe penalties such as losing the right to drive for at least a year and having the refusal to consent admitted as evidence of guilt in a criminal trial is not freely and voluntarily given. "[T]he threat of penalties for refusal is the hallmark of implied consent laws, but it is the antithesis of actual consent." *Hunte,* 337 A.3d at 511. Moreover, under the unconstitutional conditions doctrine, a state may not condition the benefit of permission to drive on a waiver of Fourth Amendment rights.

Amici Georgia Association of Solicitors-General & District Attorneys Association of Georgia argue that warrantless blood draws should be permitted because they are useful to law enforcement. Br. of the Ga. Ass'n of Solics.-Gen. & Dist. Att'ys Ass'n of Ga. at 3. All agree driving under the influence is a serious public safety issue that demands effective law enforcement tools. But this Court has already approved robust tools for law enforcement in this context, including warrantless breathalyzer tests and, where there are exigent circumstances, warrantless blood tests. And, if a blood draw is necessary absent exigent circumstances, the state may seek a warrant. The *Birchfield* rationale applies with full force to the severe penalties Georgia imposes for failure to consent to a warrantless blood draw.

ARGUMENT

I. A deep split is unlikely to develop because state courts treat the *Birchfield* dicta as controlling.

Georgia argues that review is unwarranted because "[e]ither the [*Birchfield*] dicta is a holding and courts rightly follow it, it is correct dicta and courts rightly follow it, or it is incorrect dicta and courts—at least one or two—will reject it." Opp. at 7. Georgia's argument rests on a false trichotomy.

Birchfield did not hold that implied consent laws imposing civil and evidentiary consequences are constitutional. That issue was not before the *Birchfield* Court, and the parties did not "question the constitutionality of those laws." *Birchfield*, 579 U.S. at 477.

Birchfield's holding regarding criminal sanctions did not depend on whether similar statutes imposing civil or evidentiary penalties are constitutional. *See id.* at 466–67; *see also Hunte*, 337 A.3d at 511 ("[*Birchfield*] stressed that [implied consent] laws [imposing non-criminal penalties] were not challenged in the case before it . . . ."). Thus, *Birchfield*'s statements regarding implied consent laws imposing civil or evidentiary penalties are textbook dicta. Pet. at 18–23.

The absence of a deep split does not establish that *Birchfield*'s dicta are "correct." *See* Opp. at 9. Lower courts routinely accord this Court's dicta considerable deference, following it even when they question whether it is correct. *See Hunte*, 337 A.3d at 511; *Utah Republican Party v. Cox*, 892 F.3d 1066, 1079 (10th Cir. 2018) ("[Lower courts] are bound by Supreme Court dicta almost as firmly as by the Court's outright holdings." (internal quotation marks omitted) (citation omitted)). A deep split is unlikely to develop because state courts have reflexively treated the *Birchfield* dicta as binding.

In *Hunte*, the Pennsylvania Supreme Court expressed great skepticism about the *Birchfield* dicta, declaring that "a typical implied consent scenario plainly involves coercion—a lengthy driver's license suspension is a significant consequence to many." *Hunte*, 337 A.3d at 511. But the court concluded *Birchfield* obligated it to treat consent obtained by way of such coercion as free and voluntary. It also held that "until instructed otherwise, [it] must similarly regard *Birchfield* as approving a limited carveout from th[e] [unconstitutional conditions] doctrine, where it concerns the imposition of civil

penalties and evidentiary consequences upon the refusal to [consent] to a warrantless blood draw." *Id.* at 511 n.149.[1]

Other courts have similarly treated the *Birchfield* dicta as controlling. *E.g.*, *State v. Rajda*, 196 A.3d 1108, 1115–21 (Vt. 2018); *State v. Kilby*, 961 N.W.2d 374, 378–79 (Iowa 2021); *Commonwealth v. Bell*, 211 A.3d 761, 772, 775–76 (Pa. 2019); *Fitzgerald v. People*, 394 P.3d 671, 676 (Colo. 2017) (en banc); *People v. Maxwell*, 401 P.3d 518, 520 (Colo. 2017); *State v. Hood*, 917 N.W.2d 880, 892–93 (Neb. 2018); *State v. Storey*, 410 P.3d 256, 269 (N.M. Ct. App. 2017); *State v. Baird*, 386 P.3d 239, 247–48 (2016) (en banc); *State v. Mulally*, No. 119,673, 2020 WL 4032827, at *15–16 (Kan. Ct. App. July 17, 2020); *State v. Vital*, No. 2016NY041707, 2017 WL 350797, at *2 (N.Y. Crim. Ct. Jan. 20, 2017). Although some of those decisions independently analyzed the issues, Opp. at 10, *none* of the courts considered themselves free to reject the *Birchfield* dicta. *See, e.g.*, *Hunte*, 337 A.3d at 511; *Fitzgerald*, 394 P.3d at 676 (holding as it did because "the Supreme Court has all but said that anything short of criminalizing refusal does not impermissibly burden or penalize a defendant's Fourth Amendment right to be free from an unreasonable warrantless search"); *Rajda*, 196 A.3d at 1115–21; *Kilby*, 961 N.W.2d at 378–79.

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[1] The statute at issue in *Hunte* permitted a warrantless blood draw when there was probable cause to believe a driver taken to an emergency room following an accident was impaired while driving. The court held the statute to be facially unconstitutional primarily because it did not permit a driver to refuse the test. *Hunte*, 337 A.3d at 512.

The Arkansas Supreme Court's decision in *Dortch v. State*, 544 S.W.3d 518 (Ark. 2018), illustrates how the *Birchfield* dicta lead to irrational results by making labels, rather than substance, dispositive. *Dortch* involved an implied consent statute imposing a license suspension or revocation for failure to consent to a blood draw. Treating the *Birchfield* dicta as dispositive, *Dortch* conducted an extensive and nuanced analysis of Arkansas state law to determine whether the license suspension sanction should be classified as criminal or civil, ultimately upholding the statute because it should be called criminal. *Id.* at 527–28. The difference in label *Dortch* treated as dispositive is of little consequence to the person who is prohibited from driving—an activity that most citizens must engage in daily to get to work and run errands.

To be sure, Georgia *is* correct that state courts *should* decline to follow the *Birchfield* dicta because under proper application of this Court's precedents the government may not demand that a citizen submit to a warrantless blood test absent exigent circumstances. But the reality is that most state courts are treating the *Birchfield* dicta as a holding. Indeed, Georgia's own brief contradicts itself by treating *Birchfield* as controlling in discussing the merits of the Questions Presented. Opp. at 18.

The absence of a robust split thus heightens the need for review by signifying that state courts are treating dicta as law and assuming that warrantless blood draws based on implied consent statutes imposing non-criminal consequences are always constitutional. Regardless of how the Court ultimately rules on the merits, the Questions

Presented are far too important to be determined by mere dicta.

II. This case is an ideal vehicle to decide the Questions Presented.

Georgia contends that this case is a poor vehicle for deciding the Questions Presented because "it's not clear the Supreme Court of Georgia actually addressed the questions presented and because, ultimately the use of La Anyane's blood test results was not necessary to sustain her conviction." Opp. at 13. Neither contention withstands scrutiny.

A. Contrary to Georgia's assertion, the Georgia court addressed and decided both Questions Presented.

First, the Georgia court addressed the unconstitutional conditions argument, noting that "La Anyane also seems to contend . . . that the State cannot 'condition[] your privilege to drive' on your submission to a chemical test." Pet. App. at 10a (second alteration in original). The court rejected that argument, reasoning that drivers are not "required" to submit to a blood test. Pet. App. at 8a; *see also id.* at 10a (reiterating that "implied consent . . . is not absolute or irrevocable").

Second, the Georgia court addressed the coerced consent argument, holding that the implied-consent warning was not "unconstitutionally coercive" because the consequences are not labeled "criminal." *Id.* at 9a–11a. It explained that the "warning notably omits any reference to a criminal penalty . . . because . . . drivers may incur civil penalties, as the implied-consent warning warns, but they will not be charged

with a separate offense if they do not consent to testing." *Id.* at 9a.

The Georgia court framed La Anyane's argument as "mislead[ing] drivers about their constitutional right not to agree" to a blood draw. *Id.* at 8a. But it recognized she argued the warning was misleading *because* it wrongly asserted that the state could penalize a motorist for not consenting. *Id.* at 8a. La Anyane's core argument was that the implied consent statute authorizes unconstitutional blood draws. The Georgia court's summary of the issues before it and rejection of her arguments show that it considered and decided both Questions Presented. Pet. App. at 1a–2a.

B. There is likewise nothing in the record to support Georgia's out-of-the blue assertion that "La Anyane's conviction would have been the same with or without the blood alcohol content evidence." Opp. at 15. The opinion below does not even mention harmless error.

To establish harmless error, the State must prove beyond a reasonable doubt that the blood BAC test results "did not contribute to the verdict obtained." *Chapman v. California*, 386 U.S. 18, 24 (1967). The state was required to prove not only that La Anyane was driving after consuming alcohol, but also that her alcohol consumption was sufficient to lead to impaired driving ability. *Kevinezz v. State,* 454 S.E.2d 441, 443 (Ga. 1995). Although the precise BAC result from the blood draw was not necessary to support a conviction, that result was compelling evidence to support La Anyane's conviction.

In any event, this Court routinely grants review to resolve important questions even if its decision may ultimately not affect the outcome of the case, remanding to state courts to determine whether the error was harmless. *Hurst v. Florida.*, 577 U.S. 92, 102 (2016) ("This Court normally leaves it to state courts to consider whether an error is harmless . . . .").

III. The Court should grant review to correct the Georgia Supreme Court's erroneous decision.

A. Georgia asserts that the implied consent statute does not violate the unconstitutional conditions doctrine, arguing that the "law does not actually demand the waiver of a constitutional right because it allows a person to refuse to consent to a blood test." Opp. at 17.

That argument misses the point. The unconstitutional conditions doctrine prohibits the government from withholding a benefit if an individual refuses to waive a constitutional right. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). That is precisely what the Georgia law does. It revokes a person's license to drive for at least a year if she refuses to waive her Fourth Amendment right to be free from a warrantless blood draw.

At its core, Georgia's argument that there is no constitutional violation because "Georgia's implied consent law does not actually demand the waiver of a constitutional right" confuses a direct constitutional violation with a violation of the unconstitutional conditions doctrine. Opp. at 17. Compelling a waiver directly violates the Fourth Amendment; conditioning

a benefit on the waiver violates the unconstitutional conditions doctrine.

B. Georgia argues that the civil and evidentiary consequences of refusing to submit to a blood draw demanded by law enforcement "are not coercive in the relevant sense." *Id.* at 18. That contention is wrong. As the Georgia Supreme Court itself has previously recognized, the very reason for imposing civil and evidentiary consequences is to coerce drivers into submitting to blood draws. Pet. at 15 (citing *Sauls v. State*, 744 S.E.2d 735, 737 (Ga. 2013)). No doubt, as Georgia claims, these civil and evidentiary consequences do not coerce everyone into consenting. But as *Birchfield* makes clear, securing consent from everyone is not required to establish coercion. Mr. Birchfield himself refused to consent notwithstanding the criminal penalties for doing so. 579 U.S. at 451.

Georgia is also wrong to assert that the "[Supreme] Court has, for over 40 years, squarely rejected" the argument that implied consent laws imposing civil and evidentiary consequences for refusing to submit to warrantless blood draws involuntarily coerce consent. Opp. at 18. This Court has *never* held that the Fourth Amendment permits implied consent statutes imposing those sorts of severe consequences on individuals who refuse to consent to *blood draws*.

Nor is there any merit to Georgia's argument that its implied consent law must be constitutional because "[i]f [La Anyane's] position were the law no drunk driver would ever submit to a blood test." Opp. at 16 (alterations in original) (quoting *Hood*, 917 N.W.2d at 892). That argument gets the law backwards. Drivers have a constitutional right to be free from warrantless blood draws, absent exigent

circumstances. The state does not have a right to coerce consent and can seek a warrant if needed. *See, e.g., McAllister v. State*, 754 S.E.2d 376 (Ga. 2014) (upholding blood test pursuant to a warrant where driver refused consent).

Ultimately, *Birchfield's* holding and rationale that the implied consent statutes at issue were unduly coercive applies with full force to implied consent laws imposing severe "civil" penalties and evidentiary consequences for refusal to submit to a blood test.

As *Birchfield* recognized, blood draws are highly intrusive invasions of a person's bodily integrity. *Birchfield*, 579 U.S. at 463–64; *Missouri v. McNeely*, 569 U.S. 141, 148 (2013). In addition, "a blood test, unlike a breath test, places in the hands of law enforcement authorities a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. Even if the law enforcement agency is precluded from testing the blood for any purpose other than to measure BAC, the potential remains and may result in anxiety for the person tested." *Birchfield*, 579 U.S. at 464. Noting that "[t]here must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads," *id.* at 477, the *Birchfield* Court declared criminal penalties for refusal to submit to a blood draw violate the Fourth Amendment.

Those same considerations apply to severe civil sanctions. A blood test is a highly intrusive invasion of a person's bodily integrity. *Id.* at 463–64. A blood sample can be preserved for years and will be available for purposes other than reading BAC levels. And deeming a motorist to have consented to a blood

draw or face the civil and evidentiary consequences is a bridge too far.

The civil consequence of refusing to consent to a blood draw in Georgia is severe—losing the right to drive for a minimum of one year is a devasting penalty for most. *See Bell v. Burson*, 402 U.S. 535, 539 (1971) ("Once [driver's] licenses are issued, . . . their continued possession may become essential in the pursuit of a livelihood."). Indeed, the penalty for refusing to consent can be harsher than the penalty following conviction for driving under the influence. Pet. at 14 n.2.

The critical question presented by this case is whether placing a "civil" label on such severe consequences is sufficient to render consent given under pain of the penalty coerced. As *Hunte* noted, consent given under such a threat "is the antithesis of actual consent." 337 A.3d at 511. Treating the "civil" label as dispositive, leads to indefensible results, with the same penalty (license suspension) being deemed to be unduly coercive if labeled "criminal" but not if labeled "civil." *See Dortch*, 544 S.W.3d at 527–28.

* * *

Driving under the influence is a serious problem; it is critically important to determine what tools law enforcement may constitutionally use to punish and prevent it. This Court summarized those tools well in *Mitchell v. Wisconsin*, 588 U.S. 840, 843–44 (2019), noting that police may require a warrantless breathalyzer test (but not a blood test) as a search incident to arrest and may require a warrantless blood test in exigent circumstances. An implied consent statute may not impose criminal penalties for

refusal to consent to a blood test. *Id*; *Birchfield*, 579 U.S. at 475, 477.

But the Court has not resolved whether a state may impose a lengthy license suspension and evidentiary sanctions on a motorist who refuses to consent to a blood test so long as it labels those severe sanctions "civil" rather than "criminal." That issue arises every day across the country. This Court should grant review to address that critically important issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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