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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BIRCHFIELD *v.* NORTH DAKOTA

CERTIORARI TO THE SUPREME COURT OF NORTH DAKOTA

No. 14–1468. Argued April 20, 2016—Decided June 23, 2016*

To fight the serious harms inflicted by drunk drivers, all States have laws that prohibit motorists from driving with a blood alcohol concentration (BAC) exceeding a specified level. BAC is typically determined through a direct analysis of a blood sample or by using a machine to measure the amount of alcohol in a person's breath. To help secure drivers' cooperation with such testing, the States have also enacted "implied consent" laws that require drivers to submit to BAC tests. Originally, the penalty for refusing a test was suspension of the motorist's license. Over time, however, States have toughened their drunk-driving laws, imposing harsher penalties on recidivists and drivers with particularly high BAC levels. Because motorists who fear these increased punishments have strong incentives to reject testing, some States, including North Dakota and Minnesota, now make it a crime to refuse to undergo testing.

In these cases, all three petitioners were arrested on drunk-driving charges. The state trooper who arrested petitioner Danny Birchfield advised him of his obligation under North Dakota law to undergo BAC testing and told him, as state law requires, that refusing to submit to a blood test could lead to criminal punishment. Birchfield refused to let his blood be drawn and was charged with a misdemeanor violation of the refusal statute. He entered a conditional guilty plea but argued that the Fourth Amendment prohibited criminalizing his refusal to submit to the test. The State District Court re-

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*Together with No. 14–1470, *Bernard* v. *Minnesota*, on certiorari to the Supreme Court of Minnesota, and No. 14–1507, *Beylund* v. *Levi, Director, North Dakota Department of Transportation*, also on certiorari to the Supreme Court of North Dakota.

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jected his argument, and the State Supreme Court affirmed.

After arresting petitioner William Robert Bernard, Jr., Minnesota police transported him to the station. There, officers read him Minnesota's implied consent advisory, which like North Dakota's informs motorists that it is a crime to refuse to submit to a BAC test. Bernard refused to take a breath test and was charged with test refusal in the first degree. The Minnesota District Court dismissed the charges, concluding that the warrantless breath test was not permitted under the Fourth Amendment. The State Court of Appeals reversed, and the State Supreme Court affirmed.

The officer who arrested petitioner Steve Michael Beylund took him to a nearby hospital. The officer read him North Dakota's implied consent advisory, informing him that test refusal in these circumstances is itself a crime. Beylund agreed to have his blood drawn. The test revealed a BAC level more than three times the legal limit. Beylund's license was suspended for two years after an administrative hearing, and on appeal, the State District Court rejected his argument that his consent to the blood test was coerced by the officer's warning. The State Supreme Court affirmed.

Held:

1. The Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests. Pp. 13–36.

(a) Taking a blood sample or administering a breath test is a search governed by the Fourth Amendment. See *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602, 616–617; *Schmerber* v. *California*, 384 U. S. 757, 767–768. These searches may nevertheless be exempt from the warrant requirement if they fall within, as relevant here, the exception for searches conducted incident to a lawful arrest. This exception applies categorically, rather than on a case-by-case basis. *Missouri* v. *McNeely*, 569 U. S. ___, ___, n. 3. Pp. 14–16.

(b) The search-incident-to-arrest doctrine has an ancient pedigree that predates the Nation's founding, and no historical evidence suggests that the Fourth Amendment altered the permissible bounds of arrestee searches. The mere "fact of the lawful arrest" justifies "a full search of the person." *United States* v. *Robinson*, 414 U. S. 218, 235. The doctrine may also apply in situations that could not have been envisioned when the Fourth Amendment was adopted. In *Riley* v. *California*, 573 U. S. ___, the Court considered how to apply the doctrine to searches of an arrestee's cell phone. Because founding era guidance was lacking, the Court determined "whether to exempt [the] search from the warrant requirement 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legit-

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imate governmental interests.' " *Id.,* at ___. The same mode of analysis is proper here because the founding era provides no definitive guidance on whether blood and breath tests should be allowed incident to arrest. Pp. 16–20.

(c) The analysis begins by considering the impact of breath and blood tests on individual privacy interests. Pp. 20–23.

(1) Breath tests do not "implicat[e] significant privacy concerns." *Skinner*, 489 U. S., at 626. The physical intrusion is almost negligible. The tests "do not require piercing the skin" and entail "a minimum of inconvenience." *Id.,* at 625. Requiring an arrestee to insert the machine's mouthpiece into his or her mouth and to exhale "deep lung" air is no more intrusive than collecting a DNA sample by rubbing a swab on the inside of a person's cheek, *Maryland* v. *King*, 569 U. S. ___, ___, or scraping underneath a suspect's fingernails, *Cupp* v. *Murphy*, 412 U. S. 291. Breath tests, unlike DNA samples, also yield only a BAC reading and leave no biological sample in the government's possession. Finally, participation in a breath test is not likely to enhance the embarrassment inherent in any arrest. Pp. 20–22.

(2) The same cannot be said about blood tests. They "require piercing the skin" and extract a part of the subject's body, *Skinner*, *supra,* at 625, and thus are significantly more intrusive than blowing into a tube. A blood test also gives law enforcement a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. That prospect could cause anxiety for the person tested. Pp. 22–23.

(d) The analysis next turns to the States' asserted need to obtain BAC readings. Pp. 23–33.

(1) The States and the Federal Government have a "paramount interest . . . in preserving [public highway] safety," *Mackey* v. *Montrym*, 443 U. S. 1, 17; and States have a compelling interest in creating "deterrent[s] to drunken driving," a leading cause of traffic fatalities and injuries, *id.,* at 18. Sanctions for refusing to take a BAC test were increased because consequences like license suspension were no longer adequate to persuade the most dangerous offenders to agree to a test that could lead to severe criminal sanctions. By making it a crime to refuse to submit to a BAC test, the laws at issue provide an incentive to cooperate and thus serve a very important function. Pp. 23–25.

(2) As for other ways to combat drunk driving, this Court's decisions establish that an arresting officer is not obligated to obtain a warrant before conducting a search incident to arrest simply because there might be adequate time in the particular circumstances to obtain a warrant. The legality of a search incident to arrest must be

judged on the basis of categorical rules. See *e.g., Robinson*, *supra,* at 235. *McNeely, supra*, at ___, distinguished. Imposition of a warrant requirement for every BAC test would likely swamp courts, given the enormous number of drunk-driving arrests, with little corresponding benefit. And other alternatives—*e.g.,* sobriety checkpoints and ignition interlock systems—are poor substitutes. Pp. 25–30.

(3) Bernard argues that warrantless BAC testing cannot be justified as a search incident to arrest because that doctrine aims to prevent the arrestee from destroying evidence, while the loss of blood alcohol evidence results from the body's metabolism of alcohol, a natural process not controlled by the arrestee. In both instances, however, the State is justifiably concerned that evidence may be lost. The State's general interest in "evidence preservation" or avoiding "the loss of evidence," *Riley*, *supra*, at ___, readily encompasses the metabolization of alcohol in the blood. Bernard's view finds no support in *Chimel* v. *California,* 395 U. S. 752, 763, *Schmerber,* 384 U. S., at 769, or *McNeely, supra,* at ___. Pp. 30–33.

(e) Because the impact of breath tests on privacy is slight, and the need for BAC testing is great, the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. Blood tests, however, are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Respondents have offered no satisfactory justification for demanding the more intrusive alternative without a warrant. In instances where blood tests might be preferable—*e.g.,* where substances other than alcohol impair the driver's ability to operate a car safely, or where the subject is unconscious—nothing prevents the police from seeking a warrant or from relying on the exigent circumstances exception if it applies. Because breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. No warrant is needed in this situation. Pp. 33–35.

2. Motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them. It is one thing to approve implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply, but quite another for a State to insist upon an intrusive blood test and then to impose criminal penalties on refusal to submit. There 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. Pp. 36–37.

3. These legal conclusions resolve the three present cases. Birchfield was criminally prosecuted for refusing a warrantless blood

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draw, and therefore the search that he refused cannot be justified as a search incident to his arrest or on the basis of implied consent. Because there appears to be no other basis for a warrantless test of Birchfield's blood, he was threatened with an unlawful search and unlawfully convicted for refusing that search. Bernard was criminally prosecuted for refusing a warrantless breath test. Because that test was a permissible search incident to his arrest for drunk driving, the Fourth Amendment did not require officers to obtain a warrant prior to demanding the test, and Bernard had no right to refuse it. Beylund submitted to a blood test after police told him that the law required his submission. The North Dakota Supreme Court, which based its conclusion that Beylund's consent was voluntary on the erroneous assumption that the State could compel blood tests, should reevaluate Beylund's consent in light of the partial inaccuracy of the officer's advisory. Pp. 37–38.

No. 14–1468, 2015 ND 6, 858 N. W. 2d 302, reversed and remanded; No. 14–1470, 859 N. W. 2d 762, affirmed; No. 14–1507, 2015 ND 18, 859 N. W. 2d 403, vacated and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J, and KENNEDY, BREYER, and KAGAN, JJ., joined. SOTOMAYOR, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, J., joined. THOMAS, J., filed an opinion concurring in the judgment in part and dissenting in part.

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