

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 453 MAL 2018
	:	
Respondent	:	Petition for Allowance of Appeal from
	:	the Order of the Superior Court
	:	
v.	:	
	:	
TAMEEKAH MATILDA BARRETT,	:	
	:	
Petitioner	:	
	:	
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	No. 454 MAL 2018
	:	
Respondent	:	Petition for Allowance of Appeal from
	:	the Order of the Superior Court
	:	
v.	:	
	:	
BRETT JASON WISE,	:	
	:	
Petitioner	:	
	:	
	:	
	:	
	:	

DISSENTING STATEMENT

JUSTICE WECHT

FILED: December 27, 2018

The instant Petition for Allowance of Appeal raises legal issues that implicate the decision that the Supreme Court of the United States issued in *Birchfield v. North Dakota*, ___ U.S. ___, 136 S.Ct. 2160 (2016). Because this Court has not yet addressed the impact

of *Birchfield* upon the law of this Commonwealth, we have no binding precedent against which to test the merits of these issues, or by which to evaluate lower courts' analyses of the legal questions that arise in the wake of *Birchfield*.

Currently pending before this Court are several cases that necessitate our consideration of *Birchfield*. The legal landscape following *Birchfield* remains substantively unsettled, nearly any claim that implicates that decision consequently remains at least potentially viable, and this Court has elected to consider several legal issues emanating from the *Birchfield* decision. Under these circumstances, I would not deny *allocatur* in this case or any other that depends in whole or in part upon an analysis of *Birchfield*. We are ill-advised conclusively to foreclose the possibility of further review until such time as this Court can provide a clear, definitive, and precedential articulation of what *Birchfield* means for Pennsylvania law.

I respectfully dissent from the Court's denial of *allocatur*, as I would hold this petition in abeyance pending further developments.

Justice Donohue joins this dissenting statement.