**[J-39-2015][M.O. – Stevens, J.]**
**IN THE SUPREME COURT OF PENNSYLVANIA**
**MIDDLE DISTRICT**

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| JOHN D. NARDONE, | : | No. 141 MAP 2014 |
| | : | |
| Appellant | : | Appeal from the Order of the Commonwealth Court at No. 2195 C.D. 2013 dated 8/4/14 reversing the order of the Court of Common Pleas of Luzerne County, Civil Division, at No. 2013-09557 dated 11/6/13 |
| v. | : | |
| | : | |
| | : | |
| COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING, | : | |
| | : | |
| | : | |
| Appellee | : | ARGUED: May 6, 2015 |

## CONCURRING OPINION

**MR. CHIEF JUSTICE SAYLOR** **DECIDED: December 29, 2015**

I join the majority opinion save to the extent it may be construed to suggest, in *dicta*, that, if a motorist were given a choice from a number of specified chemical tests, this would negate the concept of implied consent. *See* Majority Opinion, *slip op.* at 11 (indicating that allowing the motorist to select among reasonably practicable chemical tests would fail to effectuate the implied consent scheme and ultimately render it "meaningless").

As the majority notes, the statute does not reflect a preference or hierarchy concerning which test a motorist should be required to take. *See id.* at 10. Accordingly, while there may be good reasons to commit the selection process to the discretion of the police officer, I see no basis to conclude the statutory scheme would become ineffectual if such a choice were given to the motorist. In this respect, I note that at

least one jurisdiction has enacted such a framework for its implied consent law. *See* CAL. VEH. CODE §23612(a)(2)(A) ("If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice."). I do agree with the majority, however, that a similar ability to choose is not mandated by our own implied consent law.

Madame Justice Todd joins this concurring opinion.