IN THE SUPREME COURT OF THE STATE OF ALASKA

LADY DONNA DUTCHESS Appellant, vs. JASON DUTCH Appellee.	))))))))	Supreme Court No. S-18109 Superior Court No. 3AN-15-08063CI

APPELLANT'S OPENING BRIEF

APPEAL FROM A FINAL JUDGMENT OF THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE JUDGE HERMAN G. WALKER, JR.

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CASES

Boddie v. Connecticut, 401 US 371 (Supreme Court 1971) provides:

At its core, the right to due process reflects a fundamental value in our American constitutional system. Our understanding of that value is the basis upon which we have resolved this case.

Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Without such a "legal system," social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts individuals are capable of interdependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society. Put more succinctly, it is this injection of the rule of law that allows society to reap the benefits of rejecting what political theorists call the "state of nature."

(375) American society, of course, bottoms its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on custom or the will of strategically placed individuals, but on the common-law model. It is to courts, or other quasi-judicial official bodies, that we ultimately look for the implementation of a regularized, orderly process of dispute settlement. Within this framework, those who wrote our original Constitution, in the Fifth Amendment, and later those who drafted the Fourteenth Amendment, recognized the centrality of the concept of due process in the operation of this system. Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law, the State's monopoly over techniques for binding conflict resolution could hardly be said to be acceptable under our scheme of things. Only by providing that the social enforcement mechanism must function strictly within these bounds can we hope to maintain an ordered society that is also just. It is upon this premise that this Court has through years of adjudication put flesh upon the due process principle. (375) Such litigation has, however, typically involved rights of defendants—not, as here, persons seeking access to the judicial process in the first instance. This is because our society has been so structured that resort to the courts is not usually the only available, legitimate means of resolving private disputes.

Indeed, private structuring of individual relationships and repair of their breach is largely encouraged in American life, subject only to the caveat that the formal judicial process, if resorted to, is paramount. Thus, this Court has seldom been asked to view access to the courts as an element of due process. The legitimacy of the State's monopoly over techniques of final dispute settlement, even where

(376) some are denied access to its use, stands unimpaired where recognized, effective alternatives for the adjustment of differences remain. But the successful invocation of this governmental power by plaintiffs has often created serious problems for defendants' rights. For at that point, the judicial proceeding becomes the only effective means of resolving the dispute at hand and denial of a defendant's full access to that process raises grave problems for its legitimacy.

(376) Recognition of this theoretical framework illuminates the precise issue presented in this case. As this Court on more than one occasion has recognized, marriage involves interests of basic importance in our society.

It is not surprising, then, that the States have seen fit to oversee many aspects of that institution. Without a prior judicial imprimatur, individuals may freely enter into and rescind commercial contracts, for example, but we are unaware of any jurisdiction where private citizens may covenant for or

dissolve marriages without state approval. Even where all substantive requirements are concededly met, we know of no instance where two consenting adults may divorce and mutually liberate themselves from the constraints of legal obligations that go with marriage, and more fundamentally the prohibition against remarriage, without invoking the State's judicial machinery. Thus, although they assert here due process rights as would-be plaintiffs, we think appellants' plight, because resort to the state courts is the only avenue to dissolution of their marriages, is akin to that of defendants faced with exclusion from the only forum effectively empowered to settle their disputes. Resort to the judicial process by these plaintiffs is no more voluntary in a realistic sense than that of the defendant called upon to

(377) defend his Interests in court. For both groups this process is not only the paramount dispute-settlement technique, but, in fact, the only available one. In this posture we think that this appeal is properly to be resolved in light of the principles enunciated in our due process decisions that delimit rights of defendants compelled to litigate their differences in the judicial forum.

(377) These due process decisions, representing over a hundred years of effort by this Court to give concrete embodiment to this concept, provide, we think, complete

vindication for appellants' contentions. In particular, precedent has firmly embedded in our due process jurisprudence two important principles upon whose application we rest our decision in the case before us.

Coffin v. United States, 156 US 432 (Supreme Court 1895) provides:

(457) It is well settled that there is no error in refusing to give a correct charge precisely as requested, provided the instruction actually given fairly covers and includes the instruction asked.

The contention here is that, inasmuch as the charge given by the court on the subject of reasonable doubt substantially embodied the statement of the presumption of innocence, therefore the court was justified in refusing in terms to mention the latter. This presents the question whether the charge that there cannot be a conviction unless the proof shows guilt beyond a reasonable doubt, so entirely embodies the statement of presumption of innocence as to justify the court in refusing, when requested, to inform the jury concerning the latter. The authorities upon this question are few and unsatisfactory. In Texas it has been held that it is the duty of the court to state the presumption of innocence along with the doctrine of reasonable doubt, even though no request be made to do so.

(577) It is doubtful, however, whether the rulings in these cases were not based upon the terms of a Texas statute, and not on the general law. In Indiana it has been held error to refuse, upon request, to charge the presumption of innocence, even although it be clearly stated to the jury that conviction should not be had unless guilt be proven beyond reasonable doubt.
(172) But the law of Indiana contains a similar provision to that of Texas. In two Michigan cases, where the doctrine of reasonable doubt was fully and fairly stated, but no request to charge the presumption of innocence was made, it was held that the failure to mention the presumption of innocence could not be assigned for error, in the reviewing court. But in the same State, where are quest to charge the presumption of innocence was made and refused, the refusal was held erroneous, although the doctrine of reasonable doubt had been fully given to the jury. On the other hand, in Ohio it has been held not error to refuse to charge the presumption of innocence where the charge actually given was, "that the law required that the State should prove the material elements of the crime beyond doubt."
(458) the fact that the presumption of innocence is so elementary that instances of denial to charge it upon request have rarely occurred. Such is the view expressed in a careful article in the Criminal Law Magazine for January, 1889, vol. 11, p. 3: "The practice of stating this principle to juries is so

nearly universal that very few cases are found where error has been assigned upon the failure or refusal of the judge so to do."

(459) Now the presumption of innocence is a conclusion drawn by the law in favor of the citizen, by virtue whereof, when brought to trial upon a criminal charge, he must be acquitted, unless he is proven to be guilty. In other words, this presumption is an instrument of proof created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created.

(460) The fact that the presumption of innocence is recognized as a presumption of law and is characterized by the civilians as a presumption juris, demonstrates that it is evidence in favor of the accused. For in all systems of law legal presumptions are treated as evidence giving rise to resulting proof to the full extent of their legal efficacy.

Heacker v. Safeco Ins. Co. of America, 676 F. 3d 724 (Court of Appeals, 8th Circuit 2012) provides:

Id.at 525 ("Although assault and battery have varying definitions, these definitions only slightly deviate and regardless of the definition used, they all convey the same general meaning. In the case at hand, the definitions of assault and battery do not present various and distinct definitions."). A reasonably prudent insured would discern that mental abuse is

mental maltreatment, often resulting in mental or emotional injury. See Black's Law Dictionary10 (8th ed. 2004) (defining abuse as "[p]hysical or mental maltreatment, often resulting in mental, emotional, sexual, or physical injury.")962 P.2d at 524 (interpreting insurance policy exclusion using Black's Law definitions of "assault and battery").

MLB v. SLJ, 519 US 102 (Supreme Court 1996) provides:

Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as of basic importance in our society, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect.

(117) The Court has long required when a family association so undeniably important is at stake.

(759) "Few forms of state action," the Court said, "are both so severe and so irreversible." In Lassiter, the Court characterized the parent's interest as "commanding," indeed, *119 "far more precious than any property right." 455 U. S., at 758-759. Although both Lassiter and Santosky yielded divided opinions, the Court was unanimously of the view that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment."

Prince v. Massachusetts, 321 US 158 (Supreme Court 1944) provides:

Sections 80 and 81 form parts of Massachusetts' comprehensive child labor law.[3] They provide methods for enforcing the prohibitions of § 69, which is as follows:

"No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any *161 description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place."

161 "Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both." § 80. The rights of children to exercise their religion, and of parents to give them religious training and to encourage them in the practice of religious belief, as against preponderant sentiment and assertion of state power voicing it, have had recognition here, most recently in West

Virginia State Board of Education v. Barnette, 319 U.S. *166 624. Previously in Pierce v. Society of Sisters, 268 U.S. 510, this Court had sustained the parent's authority to provide religious with secular schooling, and the child's right to receive it, as against the state's requirement of attendance at public schools. And in Meyer v. Nebraska, 262 U.S. 390, children's rights to receive teaching in languages other than the nation's common tongue were guarded against the state's encroachment. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. Pierce v. Society of Sisters, supra. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter. But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. Reynolds v. United States, 98 U.S. 145; Davis v. Beason, 133 U.S. 333. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance,[9] regulating or prohibiting the child's labor[10] and in many other ways.[11] Its

authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds.[12] The right to practice religion freely does not include liberty to expose the community or the child *167 to communicable disease or the latter to ill health or death. People v. Pierson, 176 N.Y. 201, 68 N.E. 243.[13] The catalogue need not be lengthened. It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.

Our ruling does not extend beyond the facts the case presents. We neither lay the foundation "for any [that is, every] state intervention in the indoctrination and participation of children in religion" which may be done "in the name of their health and welfare" nor give warrant for "every limitation on their religious training and activities." The religious training and indoctrination of children may be accomplished in many ways, some of which, as we have noted, have received constitutional protection through decisions of this Court. These and all others

except the public proclaiming of religion on the streets, if this may be taken as either training or indoctrination of the proclaimer, remain unaffected by the decision.

STATUTES

Alaska Statute 4 AAC 06.005 (3) provides:

Section 4 AAC 06.055 - Immunizations required

(a) Before entry in a state public school district or nonpublic school offering pre-elementary education through the 12th grade, or any combination of these grades, a child shall be immunized against

(1) diphtheria, tetanus, polio, pertussis, measles, mumps, hepatitis A, hepatitis B, and rubella, except rubella is not required in children 12 years of age or older; and

(2) beginning July 1, 2009, varicella.

(b) This section does not apply if the child

(1) has a valid immunization certificate consisting of

(A) a statement by a physician listing the date that each required immunization was given; or

(B) a copy of a clinic or health center record listing the date that each required immunization was given;

(2) has a statement signed by a doctor of medicine (M.D.), doctor of osteopathy (D.O.), physician assistant, or advanced nurse practitioner licensed to practice in this state, stating that immunizations would, in that individual's professional

opinion, be injurious to the health of the child or members of the child's family or household; or

(3) has an affidavit signed by his parent or guardian affirming that immunization conflicts with the tenets and practices of the church or religious denomination of which the applicant is a member.

Alaska Statute 11.76.110 (3) provides:

Interference with constitutional rights

(a) A person commits the crime of interference with constitutional rights if

(1) the person injures, oppresses, threatens, or intimidates another person with intent to deprive that person of a right, privilege, or immunity in fact granted by the constitution or laws of this state;

(2) the person intentionally injures, oppresses, threatens, or intimidates another person because that person has exercised or enjoyed a right, privilege, or immunity in fact granted by the constitution or laws of this state; or

(3) under color of law, ordinance, or regulation of this state or a municipality or other political subdivision of this state, the person intentionally deprives another of a right, privilege, or immunity in fact granted by the constitution or laws of this state.

(b) In a prosecution under this section, whether the injury, oppression, threat, intimidation, or deprivation concerns a right, privilege, or immunity granted by the constitution or laws of this state is a question of law.

(c) Interference with constitutional rights is a class A misdemeanor.

ACTS

COVID-19 Act, HP 76 provides:

Extending the January 15, 2021, governor's declaration of a public health disaster emergency in response to the novel coronavirus disease (COVID-19) pandemic; approving and ratifying declarations of a public health disaster emergency; providing for a financing plan; making temporary changes to state law in response to the COVID-19 outbreak in the following areas: emergency powers of the governor; emergency powers of the commissioner of health and social services; occupational and professional licensing, practice, and billing; telehealth; charitable gaming and online ticket sales; access to federal stabilization funds; wills; unfair or deceptive trade practices; school operating funds; workers' compensation; program execution; civil liability; immunity from liability and disciplinary action for occupational licensees for

exposure of clients to COVID-19; immunity from liability for persons engaging in business and their employees for exposure of customers to COVID-19; abortion funding; and personal objections to the administration of COVID-19 vaccines; and providing for an effective date.

26 PERSONAL OBJECTIONS TO THE ADMINISTRATION OF COVID-19
27 VACCINES. An individual may object to the administration of a novel coronavirus disease
28 (COVID-19) vaccine based on religious, medical, or other grounds. A parent or guardian of a
29 minor child may object to the administration of a COVID-19 vaccine to the minor child based
30 on religious, medical, or other grounds. A person may not require an individual to provide
31 justification or documentation to support the individual's decision to decline a COVID-19 (1) vaccine or to decline a COVID-19 vaccine for a minor child.

CONSTITUTIONAL PROVISIONS

ALASKA CONSTITUTION

Article 1, Section 4 provides:

Freedom of Religion

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

Article 1, Section 7 provides:

Due Process

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

UNITED STATES CONSTITUTION

Title 18, Section 242 provides:

Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or

if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

JURISDICTIONAL STATEMENT

Appellant Lady Donna Dutchess appeals from the June 7, 2021, final judgment issued by Anchorage Superior Court Judge Herman G. Walker, Jr. [Exc. 234]

This Court has appellate jurisdiction under AS 22.05.010 and Alaska Appellate Rule 202(a).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Superior Court violate Alaska Statute 4 AAC 06.055(3) regarding Immunizations as the children were under Religious Exemptions with affidavits signed and notarized by their mother, affirming that immunizations conflicts with the tenets and practices of the church she is a member of?
2. Did the Superior Court violate the Alaska Constitution, Article 1, Section 4, regarding Freedom of Religion by preferential ruling for Humanity-based belief and against God-based belief?
3. Has Dutchess been intentionally deprived of her rights and privileges granted in Alaska Statute 11.76.110 (3)?
4. Has Dutchess been willfully deprived of her rights or privileges that is protected by the Constitution or laws of the United States?

STATEMENT OF THE CASE

I. Facts

From January 2015 through August 2019, the children were enrolled in public school and notarized Religious Exemption forms, that the school provided, were on file with the Anchorage School District. [Exc.198 - 207] In 2019, Mr. Dutch changed his belief regarding vaccines and emailed me that he intended to vaccinate the children. [Exc.174] Mr. Dutch also emailed to inform me that during the timeframe the children were under Religious Exemptions for vaccines, he had been having the children vaccinated when he took them to the doctors. [Exc.175] As a result, I pulled the children's Immunization Records and discovered that Mr. Dutch had not been having the children vaccinated. [Exc.113, 114] A hearing on vaccinations was held on November 5th, 2020. [Tr.23] The court acknowledged at the hearing that I have a constitutional right to practice my religion and I have a history of filing religious exemptions on vaccinations. [Tr.29 & 30] During the hearing, the court asked Mr. Dutch why he did not have the children vaccinated. [Tr.36] Mr. Dutch responded that he had no contact with the children and that Mr. Dutch did not even know where the children were going to school. [Tr.36] I explained to the court that I had a witness to refute Mr. Dutch's testimony. [Tr.37] Furthermore, I queried with the court the logic of Mr. Dutch's testimony, as he stated to the

court he did not know where the children were, as the court gave him shared physical & legal custody [Exc.45 - 47] during this timeframe, and the court said, "Yeah, I know". [Tr.37] During direct examination, Ms. Carmen Munoz-Jackson testified via teleconference as a witness to refute Mr. Dutch's testimony. [Tr.38] Ms. Munoz-Jackson testified that it was her recollection that Mr. Dutch seemed to be on the same page pertaining to vaccinations and he did not think the kids needed vaccinations either. [Tr.40] Ms. Munoz-Jackson further testified that Mr. Dutch agreed with our belief that kids are being over-medicated, over-vaccinated for everything, and believing that there are other alternatives besides vaccinations for health. [Tr.40] While the nucleus of my faith is God-based, Mr. Dutch did historically engage me in conversations regarding his belief against vaccines by sending me emails pertaining to vaccines. [Exc.49] On April 14th, 2021, Kaela Watson, GAL, assigned to this case, motioned for a hearing pertaining to vaccines as it was discovered on April 9th, 2021, Mr. Dutch had taken the children to be vaccinated. [Exc.220] A hearing regarding Mr. Dutch vaccinating the children prior to a court order was held on April 28th, 2021. [Tr.1] The court took notice of Mr. Dutch getting the vaccinations without having the authority to do so. [Tr.3] The court took notice of Mr. Dutch acting without a court order [Tr.3} The court took notice of Mr. Dutch getting the

vaccinations without notifying me. {Tr.3] The court stated that it was going to think what should happen since Mr. Dutch vaccinating the girls was clearly in violation of my wishes, as well as no court order authorizing Mr. Dutch to do so. [Tr.12] On June 7th, 2021, the court issued its order allowing Mr. Dutch to make vaccination decisions. [Exc.234]

II. Procedural History

On July 28, 2015, the court held an informal divorce trial and ruled that there is an incompatibility of temperament such that a divorce should be granted, and Superior Court Judge John Suddock granted the divorce. [Exc.29] It was during the July 28th, 2015 trial, beginning at time stamp 12:23:32, where Judge Suddock makes the following remarks, "I am going to go back to the capability and desire to meet the needs of the children. I am struck by an event. It happens that a person a gentleman .... who feels out of control and powerless and wants to assert power and control, who decides that at some point that it would be a good idea to by force take a child away from her mother. Think about this. Donna has been the primary parent for these girls since birth. They have been living with her for the better part of a year. You come for a visit, and because you are frustrated, that you cannot come into her house, because you as an adult hold her responsible for the fact that you need to pee

and you were counting on manipulating her, getting into her house to pee, because of those pathetic reasons, because of your feelings of impotence and lack of control, you decide that the smart thing to do is to in effect, I'll use a very strong word, kidnap a child. Take that child from her mother and go somewhere with her. An act of thoughtless cruelty, calculated to induce shear panic in a mother. But think about Isabella. Is it really in Isabella's interest to go with an enraged father in a car somewhere away from her mother? How is that good for Isabella? Is that something that is calculated to be in Isabella's interest or is that more of a narcissistic immature acting out of an angry man who is feeling out of control. I suggest that it is the latter." [Exc.37, Exc.26] Judge Suddock granted primary physical custody and sole legal custody of the two children to me. [Exc.29] Furthermore, after Mr. Dutch's harassing behavior towards me, I asked a family friend, Sir John Boanerges, to move in with my children and I for safety reasons and to help mitigate Mr. Dutch's manipulating behavior. [Exc.1 - 13)

After the divorce, Judge Pamela Washington was assigned to this custody case without adequate notice, whereas I submitted a petition for review with the Alaska Supreme Court, whereas the petition was granted. [Exc.33 & Exc.34] Judge Herman Walker was assigned to this case March 22, 2016. [Exc.35]

A custody trial was held December 14th, 2016, and Judge Walker ordered shared custody of the children between Mr. Dutch and myself. [Exc.45 - 47] At the hearing, Judge Walker told me that I could communicate directly with Mr. Dutch's attorney at the time, Mr. White, regarding any issues as it pertained to Judge Walker's court order, and through 2017 to the end of 2018, I was able to mitigate Mr. Dutch's manipulating behavior, as described above by Judge Suddock, with Mr. White. [Exc.62]

On January 15th, 2019, Mr. Dutch filed an expedited motion for custody. [Exc.59] The court gave me 5 days to respond, which I did, categorically defending myself and advocating for my children, as permitted by law against such horrendous false accusations. [Exc.59-64] Mr. Dutch further emailed me informing me that he would clearly tell the children that I called them liars regarding the accusations. [Exc.58] Mr. Dutch violated my parental rights, violated the court order, took possession of my children and refused to share information with me about what was going on and where the children were being counseled and investigated. [Exc.65] On January 18th, 2019, Mr. Dutch filed for a protective order and had my children removed from my care. [Exc. 237] Mr. Dutch had me followed, photographed and let me know by sending me a photo of myself going to the clerk of court about the Protective Order. [Exc.159-164] Mr. Dutch kept the girls from school, during this period of time, so frequently

that the court ordered him to keep them in school unless they were sick. [Exc.66] During this time when the children were removed from my care, Mr. Dutch groomed them and chopped off their hair [Exc. 83, 85, 90].

The fact that I personally experienced the avenue of justice where the accusations are unfounded and false [Exc.145], my children were removed from my care [Exc.237], my parental rights violated, inspired me to rise an advocate via the Permeating Light Project that engages in data collection and investigations on behalf of the poor, uneducated, and minority. [Exc.167 & 168] It became clear to me that Mr. Dutch had a legal avenue to continue to violate my parental rights by making unfounded accusations against my person [Exc.145], thereby validating what Judge Suddock said about Mr. Dutch at the July 28th, 2015 trial [Exc.37, Exc.26]. As a result, on April 26th, 2019, I motioned for an appointment of a Guardian Ad Litem to further mitigate Mr. Dutch's behavior. [Exc.96] The Office of Children Services issued a letter on May 1st, 2019, stating that the accusations made by Mr. Dutch against myself and a family friend were not substantiated. [Exc.103]. On May 17th, 2019, a hearing was held and Mr. Dutch had to dissolve the short term and withdraw the long term protective order for lack of evidence. [Exc.104] At the May 17th, 2019, hearing, the court stated that the children said that they were not touched

sexually. [Exc.105] The family friend that was falsely accused by Mr. Dutch, filed a Defamation of Character lawsuit against Mr. Dutch. [Exc.154 - 158] The Motion I filed to enforce Joint Custody was granted at the May 17th, 2019, hearing. [Exc.104] In addition, what I am able to baseline for the Permeating Light Project [Exc.167], is the judicial process and extent that unfounded and false accusation with no evidence can go [Exc.145], resulting in the removal of children from a targeted parent [Exc. 237] & violation of constitutional rights that creates a source of job justification & funding for all state agencies connected in any custody case, that also includes my personal bill of $17,094.40 to an attorney merchant. [Exc.112]

On August 13th, 2019, Mr. Dutch filed a Motion for Custody again as he relocated from Anchorage, Alaska to Houston, Alaska, violating the May 17th, 2019, shared custody court order [Exc.104] by taking them from me again for 3 weeks [Exc.125] and enrolled the children to Big Lake Elementary School. [Exc.126-129} Mr. Dutch requested that the children live with him during the school period and visit with me when out of school. [Exc.121]. I responded to Mr. Dutch's motion for custody explaining that the children were already enrolled in Baxter Elementary, yet due to his move, I would agree to finding a middle ground regarding schooling. [Exc.130, Exc. 123 & Exc.124] A hearing was held on August 26th, 2019, and the court ruled that

I can make decisions regarding education. [Exc.144] At the August 26th hearing, when discussing how one child was injured while in Mr. Dutch's custody with a pelvic straddle injury, because I took my child to be examined at the doctors, as any mother would, Mr. Dutch choose to tell the court I violated the child by taking her to the doctors and having a rape kit done on her, which was, of course, yet another unfounded false accusation. [Exc.134 & Exc.162]

Mr. Dutch let the court know he still wanted to proceed with modifying the shared custody at the August 26th, 2019, hearing. [Exc.145] At the August 26th hearing, a trial date was set for a December 10th, 2019, hearing. [Exc.133] Despite the fact the court stated at the May 17th hearing that the children were not touched sexually by the family friend, [Exc.105], and despite the fact the court stated that the accusations were unfounded [Exc.145] on September 10th, 2019, Mr. Dutch filed yet another expedited motion for custody, case motion #33, citing as justification the family friend Mr. Dutch falsely accused was residing with me and the children. [Exc.148-152] Mr. Dutch emailed me and let me know that he was prepared to attack retired Colonel, Gail McCain, who I was living with, as apparently anyone that resides with the children and I are potentially under threat and subject to legal unfounded & malicious attacks by Mr. Dutch. [Exc.153, Exc.57]

Proceeding forward from the hearing on August 26th, 2019, [Exc.144], and with a trial date set for December 10th, 2019, [Exc.144], and with another hearing on October 15th, 2019 [Exc.169], once again on November 5th, 2019, Mr. Dutch filed another motion for 70/30 Custody. [Exc.183, Exc.175] A pre-trail hearing was held on November 25th, 2019. [Exc.184]

The Office of Children Services issued a non-substantiated letter of the allegations on May 1st, 2019, [Exc.103] yet took until February 12, 2020, to release records. [R.932] As a result of OCS taking that length of time to release records and COVID-19, the December 10th 2019, hearing was vacated and a hearing was held on August 4th, 2020. [Exc.115] A decision on immunizations and apparently the children's contact with the family friend, who was falsely accused [Exc.105 & Exc.145], was still needing a court order. [Exc.115] The court scheduled a hearing on September 15th, 2020 to discuss OCS records. [Exc.207] A hearing was held with an OCS agent on September 15th, 2020, where the OCS agent admitted he had never heard of gaslighting prior to me explaining it. [Exc.210] It was agreed by all parties and placed into court order that no males over the age of 15 would be around the children unsupervised. [Exc.207, Exc.186] Of particular note, although the children stated they were not sexually abused [Exc. 105], Mr. Dutch had no evidence to support his accusations against my family friend [Exc.145],

it appears that Mr. Dutch, who had to take anger management classes [Exc.43], his false accusations hold more weight than actual evidence as the court stated that when I was to marry my family friend at a future date, a new court order would need to be issued to address my future marriage to an innocent man. [Exc. 213].

On November 5th 2020, a hearing was held specifically about the immunizations. [Exc.215]. The court acknowledged reading my trial brief. [Exc.215]. The court stated that he would not rule on the matter at the hearing as he would like to do some legal research. [Exc.216] As written above in Section I. Facts of Case – Vaccines, Mr. Dutch vaccinated the children without having the authority to do so. [Tr.12] After the April 28th, 2021, hearing, on June 7, 2021, Judge Walker entered final judgment and ordered regarding legal custody to make vaccination decision to Mr. Dutch. [Exc.234]

I stand by my statement for the court record where I state that, based on my firsthand observations and experiences during the course of this custody case, I have concluded that any advocacy I do on behalf of my children, is to no avail, as my advocacy is viewed by the Court as simply me looking for another reason to fight with Mr. Dutch, when I have not been the instigator nor the aggressor on this custody case. [Exc.229] It is not clear if this view about me is because I am not a man, or

not white enough, nor black enough, to be taken seriously as a parent. [Exc.229] As the State system has tied my hands, I have nothing left to say. My conscience is clear. [Exc.229]

On June 16th, 2021, I filed this appeal to the Alaska Supreme Court.

STANDARD OF REVIEW

The Court should review the Superior Court's order regarding legal custody to make vaccination decisions de novo, as this matter pertains to the law, that bases its foundation in Alaska Statutes, the Alaska Constitution and the US Constitution.

ARGUMENT

I. The Superior Court erred in the analysis of Prince v. Massachusetts.

The Superior Court erred in its analysis on Prince v. Massachusetts, 321 US 158 (Supreme Court 1944) as when doing my research on this matter, I can not find any United States Supreme Court opinion that violates a State Law or Statute verses upholding it, unless it was a law deemed unconstitutional. In Prince v. Massachusetts, 321 US 158 (Supreme Court 1944), the U.S. Supreme Court states that "Our ruling does not extend beyond the facts the case presents." The U.S. Supreme court goes on the say they neither lay the foundation for intervention in the participation of children in religious which may be done in the name of their health and welfare. In Prince v. Massachusetts, 321 US 158 (Supreme Court 1944), the U.S. Supreme Court upholds the State of Massachusetts position regarding child labor laws, where an individual cannot use a religious right to violate a state law or statute. In Prince v. Massachusetts, 321 US 158 (Supreme Court 1944), the U.S. Supreme Court does not say that individual state laws providing vaccine exemptions for medical, religious, or other reasons is unconstitutional. Alaska Statute 4 AAC 06.055 (3) states that a child can be exempt from the immunization requirement when "an affidavit signed by his parent or guardian

affirming that immunizations conflicts with the tenets and practices of the church or religious demonization of which the applicant is a member." The State of Alaska Religious Exemption forms are made available to every parent in every school in this state. [Exc.198-207] These Religious Exemption forms are affirmed and notarized. [Exc.198-207] I have been historically signing these Religious Exemption forms for years before a notary and submitting them to the school districts which set precedent for me in this case. [Exc.198-207] The school district accepted them and kept them on file while the children attended public school. I am not asking for my religious right to violate any Alaska Statute or law. I am clearly compliant with the Alaska Statute requirement that states I have the right, on behalf of my children, to Religious Exemptions per AS 4 AAC 06.055 (3). When Mr. Dutch was asked by the court why he did not vaccinate the children for years, [Tr.36] Mr. Dutch perjured himself and told the court he did not know where the children were or what school they were attending, despite the fact he had shared physical and legal custody as granted by the court. [Exc. 45-47] The court accepted this falsehood given by Mr. Dutch [Tr.37] and used Prince v. Massachusetts to violate Alaska Statue 4 AAC 06.055(3). Furthermore, the language in 4 AAC 06.055 regarding religious exemptions is further affirmed by the newly COVID-19 Act, HB 76, page 13, that the Alaska Legislature

passed and was signed into law May 1st, 2021, whereas it states, "A parent or guardian of a minor child may object to the administration of a COVID-19 vaccine to the minor child based on religious, medical or other grounds." This clearly shows that the law of the people supports religious exemptions. What is the point of the Alaska Legislature and Governor enacting 4 AAC 06.055 (3) and HP 76 into law regarding vaccines if the court can pull Prince v. Massachusetts, 321 US 158 – (Supreme Court 1944), as carte blanche overriding any state law or statue on immunizations? In Prince v. Massachusetts, 321 US 158 – (Supreme Court 1944, the U. S. Supreme Court does not state that every child in the United States must be immunized regardless of parental rights and religious freedoms. Prince v. Massachusetts, 321 US 158 – (Supreme Court 1944). The U. S. Supreme court does not give blanket authority to courts in the 50 states to mandate that the states act as *parens patriae* requiring that every child in the United States must be vaccinated regardless of religious freedoms of the parents. Prince v. Massachusetts, 321 US 158 – (Supreme Court 1944). The U.S. Supreme Court does not suggest that all lower courts use Prince v. Massachusetts, 321 US 158 – (Supreme Court 1944) to overrule each state vaccine exemption law that have been duly passed by state legislation and signed into law by each state governor. As I set precedent with the Religious Exemption forms given to me by the school districts,

that were signed, notarized, accepted and filed with the district in accordance with Alaska Statute 4 AAC 06.055 (3), the Supreme Court should reverse the Superior court finding.

II. The Superior Court erred in violating the Alaska Constitution regarding Freedom of Religion by respecting one belief doctrine and prohibiting another belief doctrine.

Religious freedom centers around the act of believing and faith. From faith and belief in God-based doctrines, with holy texts, to faith and belief in Humanity-based doctrines, with medical science journals. It is a violation of the Alaska constitution to respect one belief system and prohibit another belief system. Alaska Constitution, Article 1, Section 4. Is the court stating that belief in humanity-based doctrines triumphs over belief in God-based doctrine? Belief is belief regardless if it is Humanity based or God based. The Law is the Law. The court ignored Mr. Dutch's perjury [Tr.37] and respected Mr. Dutch's sudden new belief in vaccinations that appeared in 2019, and prohibited the exercise of my religious freedom as afforded to by AS 4 AAC 06.055 (3) and the Alaska Constitution, Article 1, Section 4. As a result, the Supreme Court should reverse the Superior court finding.

III. The Superior Court erred in allowing the intentional violation of Alaska Statutes 11.76.110 (3) and the US Constitution, Section 242 of Title 18 as it pertains to color of any law.

The Superior Court erred in continuing to allow the intentional interference of my rights granted by the Alaska Statute 11.76.110 (3), Alaska Constitution, Article 1, Section 4, and United States Constitution, Section 242 of Title 18, that accumulates in the court's decision on immunizations. AS 11.76.110 (3) states that a person commits the crime of interference with constitutional rights if under color of law a person intentionally deprives another of a right granted by the constitution or laws of this state. This is about intentional behavior in a Superior courtroom setting that I can only show after the fact. Since the court stated in the final judgement that this has been a high conflict case from the beginning, [Exc.234}, an avenue is provided to me to show intentional courtroom behavior that deprives me of my rights under color of law. (AS 11.76.110; Sec 242 Title 18 U.S.C.) I have not been the instigator nor the aggressor on this custody case. [Exc.229] I have simply stood up for my rights as a parent each time I have been brought into court to address Mr. Dutch's latest legal attacks. I have the right to defend myself in a court of law against unfounded and malicious attacks as part of the core right to due process. Boddie v. Connecticut, 401 US 371 (Supreme Court 1971); Alaska Constitution, Article 1, Section 7. My actions defending myself, to advocate for my children, should not be marginalized as I have the right to be treated fairly and

justly. Alaska Constitution, Article 1, Section 7. Nor should I be disregarded or disrespected by the court based solely on Mr. Dutch's unfounded accusations. MLB v. SLJ, 519 US 102 (Supreme Court 1996) [Exc.145] The court made it seem at the September 15, 2020 hearing [Exc.211] as though I am more interested in fighting with Mr. Dutch, instead of acknowledging that I am advocating for my daughters and defending myself while under a barrage of legal attacks by Mr. Dutch. I have the right to the presumption of innocence, Coffin v. United States, 156 US 432 (Supreme Court 1895), where there is no evidence of wrongdoing, and I have not been afforded that right guaranteed by Alaska Statutes and the constitutions under color of law. (AS 11.76.110; Sec 242 Title 18 U.S.C.) I had my children removed from my care solely based on Mr. Dutch's unfounded accusations. [Ex.237] I cannot marry an innocent man without notifying the court [Exc.213], violating the legal principle of presumed innocence, Coffin v. United States, 156 US 432 (Supreme Court 1895), based solely on Mr. Dutch's unfounded accusations [Exc.145], thereby creating yet another intentionally set high conflict courtroom setting. Every single time Mr. Dutch legally attacks me via the courts, he is keeping the children in a high conflict situation, the very definition of maltreatment, Heacker v. Safeco Ins. Co. of America, 676 F. 3d 724 (Court of Appeals, 8th Circuit 2012), and I am marginalized, disregarded, and

disrespected by the court simply because I stand my ground and defend myself as afforded by law. MLB v. SLJ, 519 US 102 (Supreme Court 1996). The court enabling this type of intentional violation and usurpation of my rights, reflects a court that is purporting to or pretending to act in the performance of official duties as governed by the law. (Title 18, U.S.C., Section 242.) As a member of the Permeating Light Project, having experienced the judicial process firsthand in family court, I agree with the U.S. Supreme Court opinion in Boddie v. Connecticut, 401 US 371 (Supreme Court 1971), whereas when the rights of the people are violated, the result is that social cohesion is virtually impossible, enabling conflicts in the courtroom that achieves anxieties and contributes to a disorganized society. This is a courtroom anxiety and disorganized society that I am witnessing reveal itself across our nation currently, and in part, also experiencing. Boddie v. Connecticut, 401 US 374 (Supreme Court 1971). My children are part of this society, therefore, what I do with this appeal and with the Permeating Light Project, by standing my ground, against unfounded legal attacks, for my rights is for them and their future. This latest ruling by the court, as it pertains to vaccination decisions, the Supreme Court should reverse the Superior court findings.

CONCLUSION

For the reasons stated above, this Court should reverse the Superior Court's findings and allow me, Mother of the children, to be allowed legal custody to make decisions on whether or not to vaccinate the children.

Respectfully submitted at Anchorage, Alaska, on August 12, 2021.

Lady Donna Dutchess
pro se Appellant

CERTIFICATE OF SERVICE
I certify that on the following date: August 12th, 2021, I served a copy of: ☒ this brief and ☒ the excerpt of record on: Jason Dutch

By: