

No. 21-

IN THE
Supreme Court of the United States

A.A.,

Petitioner,

v.

M.A.,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

It is of national importance for this Court to determine if the sincerity of people’s religious objection to vaccination should be tested and, if so, to define the level and manner of sincerity “testing” of a person’s religious beliefs asserted in their religious exemption to vaccination.

In the present case, the State Courts’ rulings involved an interpretation or application of the U.S. Constitution, which was either in error, or not sufficiently respected. This trial occurred during the beginning of the Covid-19 pandemic and prior to the development of the Covid-19 vaccine; however, the constitutional question of the sincerity of people’s religious exemptions has dramatically expanded into society’s employment sector, within families (between divorced and married parents), and anticipated to be within the public school system, imminently. Thus, Petitioner poses the following questions to this Court:

Whether Petitioner’s fundamental right to freedom of religion, and exemption from vaccination, was violated when the trial Court applied a “sincerity” test to Petitioner’s religious beliefs, and did so, after the close of testimony pursuant to New Jersey Rule of Evidence 512?

Whether the trial Court erred in ignoring Petitioner’s medical exemption, which was testified to and authored by her medical vaccine safety expert at trial?

**PARTIES TO THE PROCEEDING
AND RELATED CASES**

Albena Ammann, Defendant/Petitioner, a/k/a “A.A.”

Marc Ammann, Plaintiff/Respondent, a/k/a “M.A.”

Related cases to this proceeding are:

- ~ *Marc Ammann v. Albena Amman*, Docket No. FM-01-537-18, Superior Court of New Jersey, Family Part, Judgment entered January 21, 2021.
- ~ *M.A. v. A.A.*, Docket No. A-001493-20, Superior Court of New Jersey, Appellate Division, Judgment Entered June 30, 2021.
- ~ *M.A. v. A.A.*, Docket No. 086055, Supreme Court of New Jersey, Certification Denied September 27, 2021.

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Albena Ammann respectfully petitions for a writ of certiorari to review the judgment of the New Jersey Superior Court, Appellate Division in this case. The New Jersey Supreme Court denied Petitioner's Petition for Certification.

OPINIONS BELOW

The trial Court decision is unreported (App. 31a-81a) and entitled, *Marc Ammann v. Albena Amman*, Docket No. FM-01-537-18, Superior Court of New Jersey, Family Part (N.J. Super. Jan. 21, 2021).

The opinion affirming the designation of Respondent as sole decision-maker for vaccination purposes only (App. 3a-30a) is unreported. It is entitled, *M.A. v. A.A.*, Docket No. A-001493-20, Superior Court of New Jersey, Appellate Division (N.J. Super. June 30, 2021).

The New Jersey Supreme Court denied Petitioner's Petition for Certification under *M.A. v. A.A.*, Docket No. 086055, Supreme Court of New Jersey, Certification Denied September 27, 2021. (App 1a-2a)

None of the Decisions were reported.

JURISDICTION

On January 21, 2021, Judgment was entered by the Superior Court of New Jersey, Family Part. On June 30, 2021, the New Jersey Superior Court, Appellate Division affirmed the lower Court. On September 27, 2021, the New Jersey Supreme Court denied Petitioner's Petition for Certification.

Pursuant to 28 U.S.C. § 1257(a), this Court has jurisdiction to review, on a writ of certiorari, the judgment of the New Jersey Supreme Court. The notifications required by Rule 29.4(b) have been made.

THE CONSTITUTIONAL PROVISIONS, STATE RULES, AND STATUTES INVOLVED

United State Constitution - First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

N.J. Const., Article 1, Par. 3-5. see Appendix D 82a-89a

N.J. Rev Stat § 26:2N-9 (2018). see Appendix

NJ Rev Stat § 26:1A-9.1 (2013). see Appendix D 93a

N.J. Rev Stat § 9:2-4. see Appendix D 90a-92a

N.J. Admin. Code § 8:57-4.4. see Appendix D 95a-96a

N.J.R.E. 512, Religious Belief

Every person has a privilege to refuse to disclose his theological opinion or religious belief unless his adherence or nonadherence to such an opinion or belief is material to an issue in the action other than that of his credibility as a witness.

INTRODUCTION

This matter was a case of first impression in New Jersey. In its Decision, the trial Court explained, "... there is no case in New Jersey jurisprudence that sets out a standard for this court to follow in conducting its analysis in a dispute between co-equal parents disputing vaccinating a minor child where the child is not in the State's custody." (Trial Court Decision at 29.)

For this reason, the trial Court turned to Federal Court decisions that applied a "sincerity" test to determine the validity of a person's religious exemption relating to facts - other than vaccinations. However, Petitioner asserts that in doing so, the trial Court violated Petitioner's fundamental right to freedom of religion.

The Appellate Division erred when it affirmed the trial Court's decision to grant Respondent (father) sole custody for vaccination purposes by violating Petitioner's fundamental right of Freedom of Religion under the United States Constitution and the New Jersey State Constitution.

The Appellate Division's Decision is of national importance because it opens the floodgates to endless unconstitutional inquiry and probing of the sincerity of people's religious beliefs pertaining to vaccination. This inquiry may apply to feuding parents, employers and employees (public and private), gym owners and patrons, restaurant and store owners and their guests, the military, public schools, and all other venues open to the public; to the extent that eventually the freedom to exercise religion becomes diluted and potentially removed altogether.

Indeed, employers are currently conducting their own “sincerity tests” with make-shift internal committees set up for the sole purpose of determining if an employee who asserts a religious exemption request is sincere or lying when they claim they are opposed to the Covid-19 vaccine.

In the present case, the Court claimed it applied a sincerity test, but it did not actually conduct such a test. Instead, it applied a rule retroactively to fit testimony into a “test” that determined whether Petitioner’s religious beliefs are sincere. The Appellate Division’s decision to affirm this, was erroneous.

The violation of Petitioner’s constitutional rights was timely and properly raised during trial and on appeal in the Appellate Division, therefore this Court has jurisdiction to review the judgment on a Writ of Certiorari.

STATEMENT OF THE CASE

This matter arises from a medical-sole custody dispute, for vaccination purposes only. On July 6, 2005, the parties were married and subsequently divorced on February 28, 2018. (Petitioner’s Trial Exhibit, D-1). One child was born during the marriage, who is now eight years old (DOB: 7.7.13). Neither party is designated as the parent of primary residence. After approximately six years of not vaccinating their child, the Respondent (husband) changed his mind and wanted to vaccinate their daughter. Petitioner objected and the litigation ensued.

Prior to the current litigation, both parties prepared, signed and filed Religious Exemptions on behalf of their child for camp and school. (Petitioner’s Trial Exhibits,

D-11 and D-12). The religious exemptions were always accepted and the child was never vaccinated, until Respondent began vaccinating her, clandestinely on April 11, 2019. Respondent continued to vaccinate the child with two more vaccines without the consent, and over the objection of Petitioner, until the Court entered an order enjoining Respondent from further vaccinating the child, pending the outcome of the litigation at bar. (Petitioner's Trial Exhibit, D-8).

Additionally, at issue in trial was the child's medical condition of thrombocytopenia (a blood disorder). Testimony by Petitioner's medical expert, Dr. Arthur Brawer, explained the risks of vaccinating the child, in particular, due to her previous medical condition. (Petitioner's Trial Exhibits, D-3 and D-4). Indeed, Thrombocytopenia is a recognized and compensated vaccine injury in the Vaccine Court and set forth on the Vaccine Injury Table. (Petitioner's Trial Exhibit, D-6).

The child did not develop thrombocytopenia from vaccines, rather, she had this disorder naturally. However, since vaccines can cause the same disorder, Petitioner's medical expert opined that the child was at a higher risk for developing thrombocytopenia from vaccinations if she were to receive them, due to her medical predisposition. (Petitioner's Trial Exhibits, D-3 and D-4).

The Appellate Division affirmed a Trial Decision that violated Petitioner's First Amendment right to Freedom of Religion and her assertion of a valid Religious Exemption from vaccination, and ignored a legitimate medical exemption from vaccination by a doctor. (Appellate Decision).

I. The Trial Court Violated Petitioner’s Constitutional Rights When It Applied a Sincerity Test to Petitioner’s Religious Exemption, relying on N.J.R.E. 512; and Holding That the State Statute (N.J.S.A. 9:2-4) Overrides the U.S. Constitution. The Appellate Division Erred By Affirming the Trial Court.

After trial, the Court applied New Jersey Rule of Evidence 512 in its Decision, which states, “Every person has a privilege to refuse to disclose his theological opinion or religious belief unless his adherence or nonadherence to such an opinion or belief is material to an issue in the action other than that of his credibility as a witness.” However, during trial, in sustaining Petitioner’s objection to probing cross-examination questions on Petitioner’s religion, the trial Court did not allow questions of Petitioner, worthy of a “sincerity test.” Rather, the Court looked solely at Petitioner’s *credibility* and used that determination to support the finding that Petitioner lacked *sincerity*. This was in error.

The Appellate Division affirmed the lower Court’s decision to apply a rule retroactively, after the close of testimony and without giving Petitioner an opportunity to clarify her testimony. Since Petitioner’s objections to the probing of the sincerity of her religious beliefs were, to a great extent, sustained, she did not put forth particular testimony. The Appellate Division affirmed the trial Court’s use of credibility in lieu of a sincerity test.

The trial Court made its ruling on Petitioner’s objection during her cross examination pertaining to questioning Petitioner’s sincerity. It held,

"I think there is a way to determine whether or not her beliefs are sincere without getting into the specifics of her religion, her devotion to her religion, the tenets of her religion, or any -- any specific requirements of her religion. Like I said, it's -- she can get into the sincerity. He [Respondent's counsel] can get into how long she's been, you know, following this religion, without getting into specifics. He can do it. Absolutely. Because otherwise, people could just willy-nilly assert a religious exemption, and that would open the door to bad faith and baseless religious exemption claims. I'm going to allow it, but it's on a very tight line, Mr. Scheffler.

MR. SCHEFFLER: Judge, I'm not going to belabor the point, but if you look at Rule of Evidence 512, it specifically says, and I don't think anybody would argue with a straight face that Ms. Ammann's -- whether or not she has a sincere religious belief is not a material issue in this case. It's the biggest material issue in this case. What Rule 512 indicates, and it cites 2A, 84A 24, which says the same exact thing. "Religious belief. Person may refuse to disclose religion or belief unless material other than credibility. So we're not challenging her credibility. We're challenging the fact that she does not have a sincere belief, and that's a material issue in this case. So --

THE COURT: Just -- so based on that rule, which I thank you, I was not aware of that rule

Mr. Scheffler, but I do have my evidence book out. I'll read it into the record. 'Every person has the privilege to refuse to disclose his theological opinion or religious belief unless his adherence or non-adherence to such an opinion or belief is material to an issue in the action, other than that of the credibility as a witness.' But here's the thing. I don't know if she has to -- I don't think she has to identify a specific -- well no, she does have to disclose her religious belief. She does.

MS. WIDMAN: Well Your Honor, just so I understand, you mean she has to disclose the fact that she has a sincerely held religious belief? That I agree with.

THE COURT: That's all, that she has a sincerely held religious belief not to vaccinate her child. And that's -- that's under what we're looking at. That, and like I said, consistency as permitted by the Green versus White decision.

MS. WIDMAN: I understand, Your Honor.

THE COURT: So -- so it's tight. It's narrow. I understand that rule, as Mr. Scheffler just stated it. But I think if there's any ambiguity between the rule of evidence and the New Jersey statutes with regard -- and New Jersey State interpretation of the religious exemption, I have to defer to the religious exemption rather than the rule of evidence to set the parameters. But I think that this line of questioning is appropriate

as it relates to sincerity and consistency. So let's stay within those parameters." (T 8/21/20 at 174-177)

Thus, the Court ruled, "...if there is any ambiguity between the rule of evidence and....the New Jersey State interpretation of the religious exemption, I have to defer to the religious exemption..." (T 8/21/21 at 177). While the Court appeared to have the intention of respecting Petitioner's first amendment rights, it later fashioned a Decision that used *credibility* as a "sincerity test." The Appellate Division affirmed this. Both Courts' Decisions were in error.

Regarding the credibility issue, the Appellate Division held,

Although the trial court determined that defendant lacked "sincerity and consistency" in her claim about the religious basis of her objection to vaccinations, we believe this case can be resolved based on the court's credibility determination. Defendant was found not to be a credible witness. The trial court determined the child's best interest in reliance on testimony that it found to be credible. Arguably, there was no necessity to evaluate the sincerity of defendant's assertion of her religious beliefs when she simply was not a credible witness. (Appellate Division Decision at 27).

The Appellate Court erred when it affirmed the Decision to use credibility as sincerity. It also erred in disregarding Petitioner's testimony, which clearly showed

sincerity of her religious beliefs when she testified that did not believe in murder. Petitioner was referencing the aborted fetal cells used to manufacture vaccines and Petitioner's objection to the method by which the lung cell tissue is manually extracted from the fetuses who are aborted and born alive. Petitioner testified that this was in opposition to her religious beliefs. (8/21/20 at 162).¹

Further, part of the Appellate Court's rationale was a reluctance to disturb factual findings of a lower court. (Appendix B 20a). However, this appeal was not a typical case whereby an Appellant was complaining that the Court's factual findings were incorrect. Conversely, Petitioner's state Court Appeal was based on her assertion that the Court violated her fundamental rights by conducting a "sincerity test" and doing so in a manner that was procedurally defective.

Likewise, the Appellate Division failed to recognize that Defendant testified that her religious views are at times intertwined with her other views, and are not "purely" political, philosophical, or otherwise. For support, the Appellate Division relied on the Stevens case, which held that the belief must be "based upon what can be characterized as theological, rather than secular--e.g. Purely social, political or moral views." Stevens v. Berger, 428 F.Supp. 896, 899 (E.D.N.Y. 1977) (Appellate Division Decision at 28).

Defendant's religious beliefs are theological. She testified that she does not want to commit murder. She

1. In fact, this was the position of the Pope of the Catholic church for years, which has only recently changed.

testified that her religiosity increased over the years and it was not until she was pregnant, that she learned more about vaccines and how they conflict with her religious views. This was many years after her breast implants and immigration to the United States. The failure to consider Defendant's testimony was erroneous and trampled on Defendant's constitutional rights of Freedom of Religion.

Specifically, at trial, Petitioner testified on cross-examination that it was she and Respondent who decided together not to vaccinate. And that it was religion and other reasons mixed together. She testified, "I don't see how we can delineate the moral views and religious views. I think they overlap to the extent that I'm not able to delineate the two." (T 8/21/21 at 132). "They're intertwined. Yeah, they're intertwined." (T 8/21/21 at 132) "I'm not able to make a distinction between moral, religious, and philosophical. That's a philosophical question, and I'm not able to make that distinction." (T 8/21/21 at 132)

Q. Okay. Fair enough. So do you believe that your moral, philosophical, and religious objections to vaccination are all intertwined?

A. That's a philosophical question itself.

The Court: True.

Q. Does it go against your morals?

A. Yes. It goes against, I guess, my morals. And that is, you know, that is intertwined with my, you know, religious beliefs.

(T 8/21/21 at 132)

It is clear that while it may be true that Petitioner has additional philosophical and moral views regarding vaccinations, that does not discount her religious objection to vaccines.

Yet, the Trial Court held against Petitioner, despite this fact, holding, “....all other materials cited to by Defendant point to a philosophical objection to immunization, yet she uses religion to support them. This is certainly a moral and philosophical objection to vaccinations but can be considered in addition to the religious exemption.” (Trial Decision at 15).

The Court attempted to parse out Petitioner’s moral, philosophical and religious views, while simultaneously stating that these views are not mutually exclusive. It held, “As Federal Courts have acknowledged, there is a fine line between what is purely religious and what is purely philosophical. Certainly, an adherent can have both a religious and philosophical objection to immunization as they are not mutually exclusive.” (Trial Decision at 73a).

Yet, the trial Court viewed Petitioner’s testimony as evidence of an illegitimate (albeit solely moral and/or philosophical) veil over a fraudulent assertion of religious beliefs. In doing so, both Courts erred by failing to apply a true test of Petitioner’s sincerity, and instead falling back on credibility findings, alone.

During summation, Petitioner’s counsel answered the Court’s question regarding who has authority to

question the sincerity of a person's religious exemption.² Petitioner's counsel responded with the following.

"So to begin with, Your Honor, I would like to address your first question that you posed to Mr. Scheffler and I, which was does an opposing litigant and/or the court have the authority under New Jersey or federal law to question the sincerity and/or the good faith of the person requesting a religious exemption?"

My answer is no, the court does not have the authority. And I'll set forth my reasons, obviously starting with the New Jersey State Constitution. It says right in the beginning on the first page, actually the first paragraph I believe, we the people of the state of New Jersey grateful to Almighty God for the civil and religious liberty which he has so long permitted us to enjoy and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired. The next portion is, no person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience." (Summation at 59-60).

In his closing argument, Respondent's counsel acknowledged that there was no testimony specifically regarding Petitioner's sincerity of her religious beliefs.

2. This question has since become a prevalent topic as a result of the Covid-19 vaccination employment mandates, which makes this issue one of national importance.

He stated, “Now where we’re left in this case, Judge, is we’re left with a very difficult process. And the process has us trying to make a determination of the sincerity without, again, addressing the religious claims head on. That is not an easy task and that, unfortunately, has us trying to figure out inconsistencies along the life of Ms. Ammann.” (Summation at 17).

It is clear that the Court decided sincerity by looking only at Petitioner’s “inconsistencies” in her testimony, which was a credibility assessment and not the application of a sincerity test.³ Petitioner has consistently argued, throughout the trial and the appeals, that it is close to impossible to sufficiently ascertain the sincerity of someone’s beliefs. Petitioner’s counsel argued during closing arguments, “...there’s pretty much no way to get into someone’s mind and assess their relationship and on what level their relationship exists with their religion, their God, or whoever or whatever they worship. And that’s why it’s a fundamental right.” (Summation at 99-100).

The trial Court’s holding that “...based on Defendant’s contradictory testimony, her overall lack of credibility and her failure to be truthful with the court, she lacks both the level of sincerity and consistency that support her claim of a First Amendment Religious right to not have Minor Child vaccinated.” (Appendix C 80a). This portion of the Trial Decision highlights the very heart of the basis of this Petition for Review by this Court. The

3. Petitioner maintains that there should not be a sincerity test; however, if there is such a test, then it is of national importance to provide guidance regarding the parameters of such a test.

trial Court admittedly did not test Petitioner's sincerity. It looked only to credibility. The Court did not conduct a religious "sincerity test" of any kind, thereby trampling on Petitioner's constitutional rights.

The Appellate Court held, "an assertion of a First Amendment religious freedom claim may be broken down into two thereshold requirements. 'A Court's task is to decide whether the beliefs avowed are (1) sincerely held, and (2) religious in nature, in the claimant's scheme of things.' Africa v. Pa, 662 F.2d 1025, 1034 (3rd Cir. 1981) (Appendix B 27a). The trial Court did not perform this test. Thus, the Appellate Court affirmed a decision based on nothing but credibility findings; devoid of religious sincerity determination. This was erroneous on the part of both Courts.

Again, the Appellate Court cited United States v. Seeger, which held, "the 'significant question' is whether a belief is 'truly held.' This is the threshold question of sincerity which must be resolved in every case." United States v. Seeger, 380 U.S. 163, 185, 85 S. Ct. 850, 13 L.Ed. 2d 733 (1965). This question was not resolved by the Court. Going a step further, to ascertain the sincerity of Petitioner's beliefs, the trial Court turned to what it called "inconsistencies" in Petitioner's testimony; however, there were no inconsistencies. Instead, Petitioner explained her reasons for not remembering her own childhood and young adult vaccination status. She testified credibly and truthfully. The Appellate Court erroneously affirmed the lower Court's findings.

Ultimately, the trial Court, with affirmance from the Appellate Division, applied the best interest of the child

statute, N.J.S.A. 9:2-4, to the within case, regardless of violating Petitioner's First Amendment rights. However, this should have been the opposite: Petitioner's constitutional rights must prevail over the state statute.

In the United States Supreme Court decision, Wisconsin v. Yoder, the Court held the requirement for compulsory education beyond eighth grade was not compelling in the case of Amish children, based on the parents' fundamental right to freedom of religion. It held that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." Wisconsin v. Yoder, 406 U.S. 205, 215 (1972).

The State's claim that it is empowered, as *parens patriae*, to extend the benefit of secondary education to children regardless of the wishes of their parents cannot be sustained against a free exercise claim of the nature revealed by this record, for the Amish have introduced convincing evidence that accommodating their religious objections by forgoing one or two additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society. Wisconsin at 229-234.

The State's interest in universal education is not totally free from a balancing process when it impinges on other fundamental rights, such

as those specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children. Wisconsin at 213-215.

The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests. E. g., Sherbert v. Verner, 374 U. S. 398 (1963); McGowan v. Maryland, 366 U. S. 420, 459 (1961) (separate opinion of Frankfurter, J.); Prince v. Massachusetts, 321 U. S. 158, 165 (1944). Wisconsin at 215.

Likewise, in Prince v. Massachusetts, 321 U. S. 158, 165 (1944), the Court held there must be a clear and present danger in order for state action to impinge upon a claimed religious freedom. While the present case does not involve state action, the principals are the same, and the state Best Interest of the Child statute must fall when up against Petitioner's fundamental rights.

Thus, Petitioner asserts that the Trial Court erred in its decision that the state statute trumps the fundamental right to freedom of religion, as well as the use of sincerity test, which if deemed appropriate, was faulty. The Appellate Court erred in not addressing this issue and in affirming the lower Court's Decision.

The Appellate Court held that, “the Judge did not err in applying the best interest standard considering their [the parties’] MSA.” (Appendix B 22a). Petitioner asserts that the best interest standard applies, but not above her fundamental rights.

II. The Trial Court Erred In Ignoring Petitioner’s Medical Exemption, Which Was Testified To And Authored By Her Medical Vaccine Safety Expert At Trial.

The Appellate Court erred when it affirmed the trial Court’s Decision to ignore Petitioner’s medical exemption. Defendant’s medical expert testified that the child should not be vaccinated, which in and of itself constitutes a Medical Exemption, in addition to the then-existing Religious Exemption. Therefore, Defendant had two valid vaccine exemptions allowed in the state of New Jersey; a medical exemption and a religious exemption. However, the trial Court disregarded the medical testimony and held in favor of the Plaintiff regarding the Religious Exemption, thus failing to recognize both exemptions.

The Appellate Division ignored the highlighted portions of the testimony of the two medical experts. Dr. Brawer testified how vaccines might affect this minor child in particular, as a result of her previous condition of ITP (Thrombocytopenic purpura/thrombocytopenia). Dr. Brawer explained that she is in the population at risk and that means, “you have to distinguish between patients who have spontaneous autoimmune problems from patients who have a diathesis or tendency to autoimmune problems for specific environmental triggers.” (T 8/19/21 at).

Dr. Brawer was able to clearly explain how future vaccines might affect this particular patient, the Minor Child in this case. In fact, ITP, the child's exact condition, is one of the no-fault injuries listed on the Vaccine Injury Table used in the Vaccine Court. (Petitioner's Trial Exhibit, D-6).

By contrast, Respondent's medical expert, Dr. Lopez's cross examination revealed that he severely lacked knowledge in most vaccine-related topics. He testified that "it is a fact" that vaccines do not cause deaths. However, I point this Court's attention to the Vaccine Court cases, which are some, not all, printouts of cases in the Vaccine Court where vaccines caused death. (Petitioner's Trial Exhibit, D-44).

The Appellate Division erred by violating Petitioner's Constitutional rights and by ignoring the trial Court's error in disregarding a valid medical exemption from vaccination for the minor child.

REASONS FOR GRANTING THE PETITION

As set forth within, Petitioner seeks review of the State Courts' Decisions because she asserts they are erroneous. However, with equal importance, Petitioner respectfully urges this Court to define the parameters of the sincerity of a person's Religious beliefs in opposition to vaccinations. This is of national importance.

Specifically, Petitioner seeks guidance for the nation on how to determine imminent religious exemption sincerity issues in various sectors of life, such as; between parents (divorced and married), within public schools,

between employers and employees in the public and private sector. Petitioner anticipates these issues will be forthcoming by way of state and federal complaints related to the Covid-19 vaccine.

It is a matter of national importance that people, such as Petitioner, do not have their rights ignored and superseded by state statutes. There is no greater right than the fundamental rights set forth in the United States Constitution. Preservation of our rights must be paramount.

Further, the New Jersey state constitution states the following.

We, the people of the State of New Jersey, grateful Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generation, do ordain and establish this Constitution.” [emphasis added].

No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience...[emphasis added]. N.J. Constitution, Article I. (Appendix D 82a).

A person’s “conscience” is defined as:

the inner sense of what is right or wrong in one's conduct or motives, impelling one toward right action:

to follow the dictates of conscience.

the complex of ethical and moral principles that controls or inhibits the actions or thoughts of an individual. [emphasis added] Dictionary.com.

“Religion” is defined as:

a set of beliefs concerning the cause, nature, and purpose of the universe, especially when considered as the creation of a superhuman agency or agencies, usually involving devotional and ritual observances, and often containing a moral code governing the conduct of human affairs. [emphasis added] Dictionary.com.

The laws applicable to mandated vaccinations for public schools and the allowable exemptions are as follows:

N.J.S.A. 26:1A-9.1, Exemption for pupils from mandatory immunization; interference with religious rights; suspension

Provisions in the State Sanitary code in implementation of this act shall provide for exemption for pupils from mandatory immunization if the parent or guardian of the pupil objects thereto in a written statement signed by the parent or guardian upon the ground that the proposed immunization interferes with the free exercise of the pupil’s religious rights... (Appendix D 93a)

N.J.A.C. 8:57-4.4

(a) Each school, preschool, or child care center shall exempt a child from mandatory immunization if the child's parent or guardian submits to the school, preschool, or child care center a written signed statement requesting an exemption, pursuant to the requirements for religious exemption established at 26:1A-9.1 on "the ground that the ... immunization interferes with the free exercise of the pupil's religious rights." established at 26:1A-9.1 (Appendix D 95a).

The New Jersey Department of Health Memo Explained
the Intent of the Religious Exemption Statute

When a parent or guardian submits a written, signed request for exemption from mandatory immunization(s) due to religious beliefs, the statement should be accepted and the religious exemption granted. The request does not need to identify membership in a recognized church or religious denomination or describe how the administration of immunizing agents conflicts with the student's religious beliefs in order for the request to be granted. [emphasis added] (Petitioner's Trial Exhibit, D-23).

In its decision, the Court erred in discounting the rationale of the laws and wholly departed from protecting Petitioner's constitutional rights. Petitioner argued in closing arguments that the Court is precluded from attempting to test Petitioner's sincerity because that

violates the Free Exercise Clause of the First Amendment and the New Jersey State legislature had more than one opportunity to put language in the laws allowing such probing. They did not.

Conversely, the New Jersey state legislature protected people's fundamental right by intentionally omitting any type of qualifier that one must show the sincerity of their religious beliefs. The Department of Health took it a step further to clarify this by writing, "the statement should be accepted and the religious exemption granted. The request does not need to identify membership in a recognized church or religious denomination or describe how the administration of immunizing agents conflicts with the student's religious beliefs in order for the request to be granted."

Further, the legislative history of the school exemption law shows that the restrictive language pertaining to clarification of sincerity was originally included in the law and thereafter removed in 2010. The law originally stated in relevant part, "explaining how the administration of immunizing agents conflicts with the pupil's exercise of bona fide religious tenets or practices." N.J.A.C. 8:57-4.4. The amendment in 2010, intentionally deleted that language. That law now reads, "on the ground that the ... immunization interferes with the free exercise of the pupil's religious rights." N.J.A.C. 8:57-4.4, as amended.

There is no other language in the statute pointing to any requirement of proof of sincerity, religious organization, tenets or credibility of same. This was not by mistake, rather the drafting of this law, and those ancillary, was by design. Despite this amendment and

the current controlling laws, the state Courts erred by applying a “sincerity test” and incorrectly based its findings of fact under this undefined framework.

Petitioner relies upon the aforementioned law as guidance for the Courts, since these are codified laws protecting parents’ religious freedom in the school setting. The trial Court held that these laws are not binding on the Court; however they show the legislative intent to protect people’s fundamental rights, which are automatically governed and protected by the the United States and New Jersey State Constitutions; the Supreme laws by which these Courts are most certainly bound.

CONCLUSION

Petitioner, Albena Ammann, respectfully requests that this Court issue a Writ of Certiorari in this matter.

Respectfully submitted,

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APPENDIX

**APPENDIX A — ORDER OF THE SUPREME
COURT OF NEW JERSEY, DATED
SEPTEMBER 27, 2021**

SUPREME COURT OF NEW JERSEY

C-99 September Term 2021
086055

M.A.,

Plaintiff-Respondent,

v.

A.A.,

Defendant-Petitioner.

ORDER

A petition for certification of the judgment in A-001493-20 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the notice of appeal is dismissed.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 27th day of September, 2021.

2a

Appendix A

/s/
CLERK OF THE SUPREME
COURT

**APPENDIX B — OPINION OF THE SUPERIOR
COURT OF NEW JERSEY, APPELLATE
DIVISION, DATED JUNE 30, 2021**

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-1493-20

M.A.,

Plaintiff-Respondent,

v.

A.A.,

Defendant-Appellant.

May 24, 2021, Argued
June 30, 2021, Decided

Before Judges Messano, Hoffman, and Suter.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Atlantic County,
Docket No. FM-01-0537-18.

PER CURIAM

Defendant A.A. appeals a January 21, 2021 Family Part order entered following a bench trial that appointed plaintiff M.A. as the limited medical guardian of

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vaccinations for their daughter. We affirm the order, finding substantial credible evidence in the record to support it.

I.

A.

Plaintiff and defendant were married in 2005. They have one child — A.A. (Adele)¹ who was born in July 2013. The parties divorced in February 2018. As part of their divorce, they entered into a Marital Settlement Agreement (MSA).

Under the MSA, the parties share joint legal and physical custody of Adele. Paragraph 5.1 of the MSA provides:

5.1. It is the parties' intention to share joint physical and legal custody of their daughter, [Adele], without the designation of a parent of primary residence. The parties considered their ability to communicate and share all the needs of [Adele], *and further agree that their daughter's best interest is paramount. . . .* [T]he parties shall immediately notify the other in the event of an emergency situation involving [Adele] and agree to provide the other with emergency telephone numbers.

[(emphasis added).]

1. We use initials and a pseudonym to maintain the confidentiality of the child. *R.* 1:38-3(d).

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Under paragraph 5.2, plaintiff and defendant both agree they “shall conduct themselves in a manner that shall be best for the interest, welfare, and happiness of [Adele].” The MSA did not address the procedure for resolving disputes between plaintiff and defendant in the event of a disagreement about how to address a medical emergency involving Adele. It did not mention either parent’s religious beliefs or how those might relate to Adele.

The MSA also did not mention vaccinations for Adele. This was even though on June 26, 2015 — before they were separated in September 2015 — they submitted a letter to Adele’s preschool that claimed a religious exemption from vaccination requirements. This letter provided:

To Whom It May Concern:

As parents, based on our personal religious beliefs, we object to the following vaccinations, including but not limited to, Dtap/DPT, HepB, Hib, Tetanus (TB), MMR, Polio, and Varicella (Chicken Pox), for our child, [Adele].

Our child’s body is the Temple of God. Our family’s religious beliefs prohibit the injection of foreign substances into our bodies. To inject into our child any substance which would alter the state into which she was born would be to criticize our Lord and question His divine omnipotence. Our faith will not allow us to question our Lord and God, nor challenge His divine power.

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The letter quoted from the Bible. It noted that their objection “is based on our lifelong deeply-held spiritual beliefs based on scripture.” The letter said that vaccination of Adele “violates laws put forth within us by a higher force . . .” The letter concluded with:

Our personal religious beliefs include our obedience to God’s law, the Holy Bible, and we believe that we are responsible before God for the life and safety of our child, created by God.

After their divorce, they provided a letter to their local Board of Education on August 3, 2018, that again requested a religious exemption for Adele to attend kindergarten without the State law required vaccinations. It contained much of the same language as the earlier letter.

B.

Plaintiff testified that on April 11, 2019, Adele stepped on a rusty nail that punctured her foot. He took her to the hospital where she received a diphtheria, tetanus, and pertussis (DTaP) vaccination. Plaintiff testified he advised defendant that Adele received these vaccinations. Adele did not have an adverse reaction.

A few weeks later, defendant and Adele were scheduled to go to Bulgaria. Plaintiff opposed this because Adele did not have all her vaccinations. On May 10, 2019, plaintiff filed an order to show cause and verified complaint in the Family Part seeking to enjoin defendant from taking

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Adele out of the country. Defendant objected because she previously vacationed with Adele in Bulgaria even though she was not vaccinated. On May 16, 2019, the Family Part judge denied plaintiff's OTSC and allowed defendant and Adele to go to Bulgaria because she previously travelled there without vaccinations.

After Adele returned, plaintiff took her for follow-up vaccinations. On May 29, 2019, she received a second tetanus shot and the "MMR" vaccine for measles, mumps, and rubella. Plaintiff authorized these shots without the knowledge or consent of defendant. Adele developed a rash in an area on her back sometime between one to four weeks later. Her pediatrician, Dr. Edwin Lopez-Bernard, examined the rash on June 26, 2019, and diagnosed it as contact dermatitis from something Adele had touched.

The day earlier — June 25, 2019 — defendant filed a motion in the Family Part seeking sole custody of Adele and to enjoin plaintiff from having any more vaccinations administered to Adele. Defendant claimed she and plaintiff agreed not to vaccinate Adele and that they submitted a "religious exemption" from vaccination for her attendance at school. She alleged plaintiff "deceptively went behind [her] back" to have Adele vaccinated.

Plaintiff filed a cross-motion requesting sole legal authority to make medical decisions for Adele, including decisions about vaccinations. In the alternative, plaintiff requested a plenary hearing. In plaintiff's supporting certification, he alleged vaccinations were needed to keep Adele "safe and healthy" for school. Plaintiff wanted age-

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appropriate vaccinations. Plaintiff alleged defendant was against all vaccinations based on “conspiracy theories” and not because of any religious objection; in fact, he alleged defendant was an atheist. On August 30, 2019, plaintiff consented to refrain from further vaccination pending further court order.

C.

The trial court conducted a three-day plenary hearing in August 2020. We summarize the trial evidence only as necessary to address the points raised on appeal.

Dr. Arthur Edward Brawer testified for defendant as an expert in rheumatology and immunology. He reviewed Adele’s records from the Children’s Hospital of Philadelphia (CHOP) when she was admitted in 2017. He met with defendant and discussed Adele’s growth and development. Dr. Brawer testified Adele had a “diathesis or a tendency to autoimmune problems.” He also examined Adele.

Dr. Brawer testified that in April 2019, Adele received the DTaP vaccination and later the MMR vaccine. In June 2019, she received another DTaP and MMR vaccine. She developed what he said was a diffuse skin rash on her trunk and extremities. From photographs of the rash, Dr. Brawer diagnosed this as a “systemic allergic reaction” to the vaccines given in June.

In August 2017, when she was four years old, Adele had idiopathic thrombocytopenia purpura (ITP) caused

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by a virus that attacked her body's platelets. After a discussion about vaccines and the autoimmune disorders that can occur from vaccines, Dr. Brawer testified that a person with a previous autoimmune condition is at risk. He testified that Adele is

at very high risk for a life-threatening autoimmune problem, which with the next vaccination doesn't have to necessarily be low platelets. It could be a severe vasculitis. It could be a stroke. It could be anything. It could be a life-threatening inflammatory and immunologic disorder and it doesn't necessarily have to involve platelets.

He testified this could happen because Adele already had ITP and a skin rash. Dr. Brawer opined it was "mandatory to minimize the risk benefit ratio in this patient and to minimize the risk." He concluded Adele is at "high risk for a li[fe]-threatening disorder if she's vaccinated." He expressed that it would be better to let "her go her merry way and just get a viral infection of any kind, mumps, measles, whatever."

Dr. Brawer testified that for the vast majority of people, contracting "natural viral infections" does not "pose any risk . . ." He also testified vaccines "prevent a whole host of infectious diseases, which has been a great achievement in medicine to have this type of protection from dreaded diseases that previously could have been fatal or could have reaped significant morbidity on people." Dr. Brawer offered that it is "a great thing that we can

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[vaccinate] hundreds of millions of people to prevent against dreaded diseases. That's a fact."

Dr. Brawer testified that his opinions were based on his knowledge, experience, research, examination of the child, review of CHOP records and a discussion with defendant. He did not speak with plaintiff or with Dr. Lopez-Bernard. He did not review any of Dr. Lopez-Bernard's records. Defendant told him about the results of blood tests taken after Adele had ITP, but he did not review them. He determined — based solely on photographs — that the rash was a systemic reaction and not prickly heat. He did not order any follow-up laboratory tests.

Dr. Lopez-Bernard testified that he has been Adele's pediatrician since 2017. He testified as an expert in pediatrics and in vaccines, but the court limited the scope of his testimony to his medical practice, his training and experience, and the manner in which he administers vaccines.

Dr. Lopez-Bernard testified vaccines are "highly effective." In his eighteen years as a pediatrician, he vaccinated approximately 63,000 patients. None of his patients experienced major effects from the vaccinations. In his opinion, the benefits of vaccinations are greater than the risks of possible side effects. Dr. Lopez-Bernard testified that death from vaccines was rare.

Dr. Lopez-Bernard first saw Adele in August 2017 because of a nosebleed that would not stop. He referred her to the hospital where she was diagnosed with idiopathic

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ITP. Defendant told him she was not happy that Adele needed to receive platelets and a blood transfusion for ITP. He saw Adele again on September 20, 2017, and by then she no longer had ITP. Dr. Lopez-Bernard suggested to defendant that Adele should receive vaccinations, but she would not agree. He has seen Adele a total of ten times. He discussed vaccinations with defendant on two or three occasions. She never raised a religious based objection to vaccinations.

Dr. Lopez-Bernard testified that in April 2019, Adele stepped on a rusty nail. Plaintiff took her to the hospital where she received the DTaP vaccination. She did not have any side effects. On May 29, 2019, Adele received the MMR and DTaP vaccinations.

On June 26, 2019, Dr. Lopez-Bernard treated Adele for a rash on her back that he diagnosed as simple contact dermatitis. He did not relate this to the vaccinations. Dr. Lopez described Adele as “very healthy.” She was “medically and physically clear to receive vaccinations.” She did not have chronic ITP. At his earlier deposition, Dr. Lopez-Bernard testified Adele has an increased risk of ITP of “[three] to [five percent] compared to the general population.”

Dr. Lopez-Bernard testified that in his experience, a specialist generally conducts additional analyses such as imaging, bloodwork, fluid tests, and a urinalysis. He said he will treat Adele even if she is not vaccinated and encourage her to become vaccinated.

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Defendant claimed the topic of vaccinations was not included in the MSA because plaintiff and she agreed not to vaccinate Adele. She claimed plaintiff prepared the religious exemption letters for Adele's preschool and kindergarten. She did not know the source of the language used in the letters.

Defendant testified she thought plaintiff did not act in Adele's best interest. He arranged for Adele to have the MMR vaccine without discussing this with a specialist or with her.

On cross-examination, defendant testified she did not recall if she was vaccinated before she came to the United States when she was twenty. Defendant opposed vaccinations based upon their safety and efficacy. She also opposed the manner that vaccines were produced, which was against her religious views. She asserted that her moral and religious views about vaccines are intertwined. Plaintiff acknowledged she said previously that vaccines will be declared a crime against humanity and a gross violation of human rights. Plaintiff testified she had religious beliefs against vaccinations from a very young age. Despite this, she did not think she asked for a religious exemption for herself when she immigrated to the United States. She did not apply for a religious exemption when she went to college, and she had breast implant surgery in 2011.

Plaintiff testified he married defendant in 2005. They never discussed vaccinations until defendant was pregnant with Adele. He was raised as a Catholic. He

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testified defendant is an atheist. Although they often discussed the topic of vaccinations, the issue of a religious objection never came up. He never heard defendant raise a religious based objection to vaccinations. Plaintiff testified he was never against vaccinating Adele. He simply was submissive to defendant's position on this.

Plaintiff testified that the subject of vaccination for Adele was raised during their divorce mediation. He agreed to delay vaccinations to keep the peace. The wording in the 2015 religious exemption letter came from a realtor they both knew who suggested using the letter because it was "bulletproof." Plaintiff testified the letters did not reflect the religious beliefs of plaintiff or defendant. Both letters were a "fraud" to get Adele in school.

Plaintiff testified he wants Adele to be vaccinated because vaccines are safe and effective. He believes it is in Adele's best interest to receive medically recommended vaccinations. In the fifteen years he was with defendant, she never raised a sincere religious concern about vaccinating the child. He testified she only raised religious concerns in court.

D.

On January 21, 2021, the trial court denied defendant's motion to prevent plaintiff from vaccinating Adele. It appointed plaintiff as limited medical guardian for immunization purposes only.

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In its written decision, the Family Part judge noted both parties supported their arguments with expert testimony. However, the court found “the two medical experts are in equipoise and did not aid the court in finding for or against [d]efendant’s application to enjoin [p]laintiff from immunizing [Adele]” With respect to defendant’s expert, the court found his methodology was “lacking” because he did not interview plaintiff about his family medical history, conduct additional testing of Adele, or review the records from her pediatrician. He did not identify the cause of any potential autoimmune problem or the risk posed to Adele “by identifying the percentage of people who have serious reactions to immunizations who are similarly situated to [Adele].” The court found Dr. Brawer’s testimony “fell far short in demonstrating . . . that there is a discernable risk to the minor child in having a serious adverse reaction to immunization.”

The trial court found that plaintiff’s medical expert was credible, but he did not have the knowledge about vaccine-related injuries that would permit the court to conclude there was no risk to the child from the immunization. The doctors agreed, however, that immunizations are “very important in preventing and defending against serious diseases,” most people “do not experience serious adverse effects,” Adele did not have a negative reaction to vaccines except for the disputed rash and she recovered from other illnesses without a reoccurrence of ITP, and that “in general, vaccines provide health benefits.”

The court considered the case under the best interests of the child standard in N.J.S.A. 9:2-4. It found

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that defendant “failed to demonstrate . . . there is a significant risk of [Adele] experiencing a recurrence of ITP if immunized.” The court also found there was only a “[three to five percent] chance of serious vaccine injury to the minor child.” Thus, “solely in a medical context,” the court found it was in Adele’s best interest to appoint one parent as the sole decision maker for immunizations. The court denied defendant’s application to enjoin Adele from being immunized for medical reasons because using a best interest of the child analysis, “the benefits of immunization outweigh the potential risks to [Adele].”

Defendant asserted a religious exemption under N.J.S.A. 26:1A-9.1. She admitted she did not assert any religious exemption against vaccination when she immigrated to the United States or when she was admitted to college, even though proof of vaccination was required for both. Defendant personally did not recall if she was vaccinated. She said the issue of vaccination did not occur to her prior to the child’s birth.

The trial court did not find defendant to be a credible witness. It explained that defendant was “combative,” contradicted herself, “changed her testimony when pressed” and delayed in answering. She “experienced convenient forgetfulness[,] . . . [and] lied on innocuous points.” The court found defendant “engaged in a revisionist history of her relationship with [p]laintiff, her belief and use of the religious exemption and lied about inconsequential facts Her level of inconsistency and lack of candor to this court demonstrate that she is not a believable witness.” The court concluded that its decision “results from [d]efendant’s shear [sic] lack of credibility.”

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The court found plaintiff's testimony was "very credible." He was not evasive in his answers nor exaggerated. The court required defendant to bear the burden of proof that it was in the child's best interest not to be immunized and that this was based on religious reasons.

The trial court found that N.J.S.A. 26:1A-9.1 and applicable regulations did not apply in this type of case, where the dispute is between former spouses with co-equal custodial rights who disagree about vaccination. It concluded the best interest of the child standard required it to make "full findings of fact" and to do so required inquiry into defendant's assertion of an exemption based on religion.

The trial court found it was appropriate, in accord with federal case law, to adopt a sincerity analysis. The court found defendant was inconsistent in her religious beliefs and her practices. It found defendant changed her story several times, had a selective memory and lacked candor. The court was "left with the impression that [defendant was] hiding behind a falsehood of religious doctrine in order to further a philosophical and moral stance." She "avoided questions, contradicted herself on several occasions, demonstrated selective memory and outright lied to this court during her testimony." Therefore, the trial court found her not to be "truthful with regard to her religious beliefs," which was the basis for her argument that she should decide whether the child should be vaccinated.

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The court considered the child's best interest. Neither expert demonstrated whether immunizing Adele exposed her to a serious risk, would injure her or cause ITP. The court found that the child should be immunized "for her protection and the protection of others." However, the trial court also was concerned with defendant's First Amendment rights to free exercise of her religion. The court resolved what it perceived as the conflict between the two by applying the federal sincerity test and then the best interest standard. The court found defendant lacked "sincerity and consistency" in her claim of religious freedom. The court also found the medical experts agreed there was a small chance of a reoccurrence of ITP and overall that vaccines were safe and effective. As such, it concluded it was appropriate for the child to be vaccinated and appointed plaintiff as sole guardian for immunization purposes. The court stayed its decision for ten days to permit an appeal.

E.

Defendant requested emergent relief, which we granted on February 11, 2021. We also stayed the Family Part orders pending appeal.

On appeal defendant raises these issues:

POINT I: THE TRIAL COURT ERRED IN ITS FACTUAL FINDINGS AND ABUSED ITS DISCRETION IN HOLDING THAT THE TWO MEDICAL EXPERTS WERE IN EQUIPOISE.

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POINT II: THE TRIAL COURT ERRED IN APPLYING THE INCORRECT STANDARD, OF A “SINCERITY TEST,” WHICH WAS A MISAPPLICATION OF THE NEW JERSEY RULES OF EVIDENCE, AND VIOLATIVE OF DEFENDANT’S FUNDAMENTAL CONSTITUTIONAL RIGHTS.

POINT III: IN THE ALTERNATIVE, IF A “SINCERITY TEST” APPLIES, THE TRIAL COURT ERRED IN ITS FACTUAL FINDINGS SINCE THERE WAS NOT SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT ITS DECISION THAT DEFENDANT’S ASSERTION OF THE RELIGIOUS EXEMPTION WAS NOT SINCERE.

POINT IV: THE TRIAL COURT ERRED BY HOLDING THAT THE BEST INTEREST OF THE CHILD STANDARD, SET FORTH IN N.J.S.A. 9:2-4, OUTWEIGHS DEFENDANT’S FUNDAMENTAL RIGHT TO FREEDOM OF RELIGION.

POINT V: THE TRIAL COURT ERRED IN ITS FACTUAL FINDINGS IN CHOOSING PLAINTIFF AS THE PARENT FOR SOLE DECISION MAKING REGARDING VACCINATIONS.

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POINT VI: THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE PLAINTIFF'S EXHIBIT 21.

POINT VII: IN THE ALTERNATIVE, REQUEST THAT THE APPELLATE DIVISION MAKE A FACT FINDING AS TO DR. BRAWER'S MEDICAL EXEMPTION.

POINT VIII: AS A CASE OF FIRST IMPRESSION, DEFENDANT PROPOSES THAT THE STANDARD SHOULD BE IF ONE PARTY/PARENT ASSERTS THE EXEMPTION, THEN IT MUST BE ADHERED TO FOR THE CHILDREN AT ISSUE.

II.

We accord “great deference to discretionary decisions of Family Part judges,” *Milne v. Goldenberg*, 428 N.J. Super. 184, 197, 51 A.3d 161 (App. Div. 2012) (citations omitted), in recognition of the “family courts’ special jurisdiction and expertise in family matters.” *N.J. Div. of Youth & Fam. Servs. v. M.C. III*, 201 N.J. 328, 343 (2010), 990 A.2d 1097 (quoting *Cesare v. Cesare*, 154 N.J. 394, 413, 713 A.2d 390 (1998)). We are bound by the trial court’s factual findings so long as they are supported by sufficient credible evidence. *N.J. Div. of Youth & Fam. Servs. v. M.M.*, 189 N.J. 261, 279 (2007), 914 A.2d 1265 (citing *In re Guardianship of J.T.*, 269 N.J. Super. 172, 188, 634 A.2d 1361 (App. Div. 1993)). We afford a deferential

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standard of review to the factual findings of the trial court on appeal from a bench trial. *Rova Farms Resort, Inc. v. Inv'r's Ins. Co.*, 65 N.J. 474, 483-84, 323 A.2d 495 (1974). These findings will not be disturbed unless they are “so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice” *Id.* at 484 (quoting *Fagliarone v. Twp. of N. Bergen*, 78 N.J. Super. 154, 155, 188 A.2d 43 (App. Div. 1963)). However, “[a] trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” *Hitesman v. Bridgeway, Inc.*, 218 N.J. 8, 26, 93 A.3d 306 (2014) (quoting *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378, 658 A.2d 1230 (1995)).

We conclude there was substantial credible evidence in the record to support the court’s findings that it was in the child’s best interest to appoint plaintiff as sole decision maker regarding vaccinations. This matter was before the trial court on defendant’s motion to change custody and to enjoin plaintiff from having Adele further vaccinated based on medical and religious grounds. Plaintiff filed a cross-motion to award him sole legal authority to make these decisions.

In a child custody case, the best interests of the child are a paramount consideration. *Beck v. Beck*, 86 N.J. 480, 497, 432 A.2d 63 (1981). The court should seek to advance these interests when the parents “are unable to agree on the course to be followed.” *Asch v. Asch*, 164 N.J. Super. 499, 505, 397 A.2d 352 (App. Div. 1978). What is

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in the child's best interest may have the effect of limiting parental rights. *See Sacharow v. Sacharow*, 177 N.J. 62, 80, 826 A.2d 710 (2003). When the parties submit their disputes to the Family Part, the court may "impair to some extent one of the parties' parental rights," and in such cases "the sole benchmark is the best interests of the child." *Id.* at 79-80.

A court should consider several factors in determining custody arrangements. N.J.S.A. 9:2-4(c). "[U]nder a joint custody arrangement, legal custody — the legal authority and responsibility for making 'major' decisions regarding the child's welfare — is shared at all times by both parents." *Id.* at 81 (quoting *Beck*, 86 N.J. at 486-87). Although the rights of joint custodians are equal, a court can order sole custody to one parent or "[a]ny other custody arrangement as the court may determine to be in the best interests of the child." N.J.S.A. 9:2-4(c). We review the Family Part judge's determination to determine if there was substantial credible evidence in the record. *Cesare*, 154 N.J. at 411.

Defendant contends that because she asserted an objection to vaccinating Adele based on religious grounds, the best interest of the child standard does not apply. We reject that argument on multiple grounds starting — in this case — with the language of the parties' MSA, where they agreed in section 5.1 that "their daughter's best interest is paramount."

Settlement agreements in matrimonial cases are contracts that should be enforced as long as they are

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fair and just. *Petersen v. Petersen*, 85 N.J. 638, 642, 428 A.2d 1301 (1981); *see also Lepis v. Lepis*, 83 N.J. 139, 146, 416 A.2d 45 (1980) (matrimonial settlement agreements are enforceable “to the extent that they are just and equitable” (quoting *Schlemm v. Schlemm*, 31 N.J. 557, 581-82, 158 A.2d 508 (1960))). “A settlement agreement is governed by basic contract principles.” *Quinn v. Quinn*, 225 N.J. 34, 45, 137 A.3d 423 (2016) (citing *J.B. v. W.B.*, 215 N.J. 305, 326, 73 A.3d 405 (2013)). In interpreting and enforcing a settlement agreement, a court is to “discern and implement the intentions of the parties.” *Ibid.* (citation omitted).

The trial testimony revealed that plaintiff and defendant submitted a letter to Adele’s pre-school in 2015 claiming a religious exemption from vaccination. Then when they negotiated the MSA, the issue of vaccinations was disputed. The fact that the parties chose the best interest standard for their MSA and said it was paramount shows this is the standard they intended to apply in custodial decisions involving Adele. The judge did not err in applying the best interest standard considering their MSA.

Defendant contends that vaccination is not in the medical best interest of Adele. Defendant relied on Dr. Brawer’s testimony that Adele had a “diathesis” or tendency to autoimmune problems and she was at “high risk for a life-threatening auto immune problem” Dr. Lopez-Bernard testified that Adele was very healthy. She was no longer suffering from ITP. She had tolerated the vaccinations, and the skin rash was not related to vaccination.

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We do not find the trial court erred in evaluating the testimony of the expert witnesses. A finder of fact can accept or reject the testimony of any party's expert or accept only a portion of an expert's opinion. *Brown v. Brown*, 348 N.J. Super. 466, 478, 792 A.2d 463 (App. Div. 2002). “[T]he weight to be given to the evidence of experts is within the competence of the fact-finder.” *LaBracio Fam. P'ship v. 1239 Roosevelt Ave., Inc.*, 340 N.J. Super. 155, 165, 773 A.2d 1209 (App. Div. 2001). As a reviewing court, we should “defer to the trial court's assessment of expert evaluations.” *N.J. Div. of Youth & Family Servs. v. H.R.*, 431 N.J. Super. 212, 221, 67 A.3d 689 (App. Div. 2013).

The court found shortcomings with the medical history and methodology testified to by Dr. Brawer. He did not speak with plaintiff about his health but relied on what defendant told him. He did not review Dr. Lopez-Bernard's records or speak with him even though he was Adele's pediatrician. He did not conduct any independent medical testing of Adele to support his conclusions about her health. His diagnosis of Adele's rash was made based on a photograph rather than an actual examination, as Dr. Lopez-Bernard had done. He could not identify the cause of any potential autoimmune condition that applied in Adele's case or whether others like Adele had serious reactions from vaccinations.

Dr. Lopez-Bernard is Adele's pediatrician. Although he saw Adele's rash first-hand, it was clear from his testimony he did not have an expertise in vaccine related injuries. He testified from his own experiences in giving vaccinations. Both experts testified about the efficacy of vaccinations.

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We cannot say based on this record that the trial court erred by finding the experts in equipoise on the issue of defendant's application to enjoin plaintiff from having Adele receive additional vaccinations. The trial court found shortcomings with both experts. However, where they agreed, it relied on their opinions in assessing the child's best interest. Both experts testified about the importance of vaccines in preventing serious diseases.² Although the parties stipulated vaccines can cause death, the doctors testified that most people do not have serious adverse effects. No one testified that Adele's ITP was the result of vaccinations. The trial court found Dr. Brawer's testimony did not show there was a "discernible increased risk to [Adele] in having a serious adverse reaction to immunization" and that defendant had not met her burden. Taking all this into consideration, the court concluded that it was in the child's best interest for plaintiff to decide issues involving vaccinations for Adele. There was substantial credible evidence in the record to support that order.

Defendant contends she is opposed to vaccinations on religious grounds. She argues a court should not evaluate the sincerity by which she holds and asserts this right, and that once asserted, it requires that Adele shall not be

2. "We recognized almost sixty years ago that 'vaccination and immunization are effective health measures, reasonably related to and necessary for the public health, safety and welfare.'" *N.J. Div. of Child Prot. and Permanency v. J.B.*, 459 N.J. Super. 442, 455-56, 212 A.3d 444 (App. Div. 2019) (quoting *Bd. of Educ. of Mountain Lakes v. Maas*, 56 N.J. Super. 245, 258, 152 A.2d 394 (App. Div. 1959), *aff'd o.b.*, 31 N.J. 537, 158 A.2d 330 (1960)).

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vaccinated even if plaintiff's wishes are to the contrary. If a sincerity test were to apply, defendant argues the trial court misapplied it because there was not enough evidence to determine her sincerity. Defendant argues that a "sincerity" analysis of her religious-based objection to vaccination is precluded by N.J.S.A. 26:18-9.1.

We disagree with defendant's arguments. The religious exemption under N.J.S.A. 26:1A-9.1 does not apply.

The statute provides:

Provisions in the State Sanitary Code in implementation of this act *shall provide for exemption* for pupils from mandatory immunization if the parent or guardian of the pupil objects thereto in a written statement signed by the parent or guardian upon the ground that the proposed immunization interferes with the free exercise of the pupil's religious rights. This exemption may be suspended by the State Commissioner of Health during the existence of an emergency as determined by the State Commissioner of Health.

[N.J.S.A. 26:1A-9.1 (emphasis added).]

By its express language, the statute concerns the attendance of children at school who have not been vaccinated. It does not address the situation presented

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here, involving parents with equal custodial rights who do not agree about the medical treatment of their child. Defendant has not cited any legal authority that applies the statute in this context. Defendant's citation to a memorandum issued by the DOH — which suggests the requested exemption should not be questioned by the school district that receives it — is not controlling on the court. The memorandum is at best an expression of that agency's policy; it does not constitute a best interest analysis when one parent seeks sole custody to make decisions regarding immunizations.

Defendant argues her assertion of the religious exemption cannot be analyzed for sincerity because it is a fundamental right. This argument does not fully appreciate the basis for the court's order. The trial court's order, appointing plaintiff as the sole parent for vaccination decisions, was rooted in its determination that defendant's testimony lacked credibility. In its judgment, defendant simply was not a credible witness.

We defer to the court's credibility findings. We do not disturb them unless they are "manifestly unsupported by or inconsistent with" the competent evidence. *Pascale v. Pascale*, 113 N.J. 20, 33, 549 A.2d 782 (1988). "Because a trial court 'hears the case, sees and observes the witnesses, [and] hears them testify,' it has a better perspective than a reviewing court in evaluating the veracity of witnesses." *Cesare*, 154 N.J. at 412 (alterations in original) (other citations omitted) (quoting *Pascale*, 113 N.J. at 33).

The trial court did not abuse its discretion in determining credibility. It thoroughly supported its findings based on defendant's delay in answering

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questions, avoidance of other questions, and answers that showed a selective memory or that went beyond the scope of the question to support her position. The court noted defendant seemed flustered at times on questions she should have been able to answer and experienced “convenient forgetfulness” on questions about religious continuity and sincerity. The court also concluded she “lied on innocuous points.”

Although the trial court determined that defendant lacked “sincerity and consistency” in her claim about the religious basis of her objection to vaccinations, we believe this case can be resolved based on the court’s credibility determination. Defendant was found not to be a credible witness. The trial court determined the child’s best interest in reliance on testimony that it found to be credible. Arguably, there was no necessity to evaluate the sincerity of defendant’s assertion of her religious beliefs when she simply was not a credible witness.

That said, we do not agree with defendant’s argument that the trial court was without the ability to review her claim for sincerity because it is based on religion. The free exercise clause “does not protect all deeply held beliefs” *Africa v. Pa.*, 662 F.2d 1025, 1034 (3d Cir. 1981). “To fall within the purview of the Free Exercise Clause, a claimant must possess a sincere religious belief.” *DeMarco v. Davis*, 914 F.3d 383, 388 (5th Cir. 2019). An assertion of a First Amendment religious freedom claim may be broken down into two threshold requirements. “A court’s task is to decide whether the beliefs avowed are (1) sincerely held, and (2) religious in nature, in the claimant’s scheme of things.” *Africa*, 662 F.2d at 1030 (citation omitted). That is, the belief must be “based upon what can be characterized

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as theological, rather than secular -- e.g., purely social, political or moral views." *Stevens v. Berger*, 428 F. Supp. 896, 899 (E.D.N.Y. 1977).

As the Supreme Court observed in *United States v. Seeger*, 380 U.S. 163, 185, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965), the "significant question" is whether a belief is "truly held." "This is the threshold question of sincerity which must be resolved in every case." *Ibid.* It is not the task "for a reviewing court to attempt to assess the truth or falsity of an announced article of faith." *Africa*, 662 F.2d at 1030.

"[A]n adherent's belief would not be 'sincere' if he acts in a manner inconsistent with that belief." *Int'l Soc. for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 441 (2d Cir. 1981) (citing *Dobkin v. D. C.*, 194 A.2d 657 (D.C. 1963)). In *Wis. v. Yoder*, 406 U.S. 205, 215, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972), the Court made clear that the Constitution did not protect views which were "based on purely secular considerations," but only those which were "rooted in religious belief."

The trial court's determination that defendant lacked sincerity in her claim about the religious basis of her objection was supported by the record. The court highlighted inconsistencies in defendant's testimony. She could not remember if she was vaccinated or if she claimed a religious exemption when she immigrated or attended college. She had not asserted a religious exemption during the divorce or when she spoke with Dr. Lopez-Bernard. The language in the 2015 and 2018 letters was from another source and not from defendant. Her testimony about an aversion based on religion to injecting foreign

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substance into her body was inconsistent with her breast augmentation surgery. Defendant expressed moral and philosophical objection to vaccinations, likening them to violations of human rights.

The trial court's decision was not based on a misapplication of the Rules of Evidence. New Jersey Rule of Evidence 610 provides that “[e]vidence of a witness' religious beliefs or opinions is not admissible to attack or support the witness' credibility.” N.J.R.E. 610. This Rule “does not exclude proof of religious beliefs or opinions when offered for another purpose that is material to an issue in the action.” 1991 Supreme Court Committee Comment to N.J.R.E. 610 (citing *In re Conroy*, 98 N.J. 321, 361-62, 486 A.2d 1209 (1985)). Another Evidence Rule provides that a person has a privilege not “to disclose his theological opinion or religious belief unless his adherence or nonadherence to such an opinion or belief is material to an issue in the action other than that of his credibility as a witness.” N.J.R.E. 512.

Defendant sought appointment as Adele's sole medical guardian for vaccinations allegedly because of her religious beliefs regarding vaccinations. Her assertion of religious opinions or beliefs, therefore, was material to the issue to be decided by the court. Testimony about the sincerity of her religious objection was not elicited as a blanket attack on her credibility based on the truth of her religious beliefs. Rather, the testimony was elicited to examine the material issue of whether her religious views against vaccinations were sincere or whether they were pretextual. The trial court did not abuse its discretion under either evidence rule by allowing such testimony.

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Our careful review of the record shows there was substantial credible evidence for the court's findings. Defendant lacked credibility. She lacked sincerity and consistency in her assertion of her religious exemption. The experts agreed that overall vaccines are safe and effective and there was a small chance Adele's ITP would reoccur. Therefore, we affirm the order appointing plaintiff as limited medical guardian for immunization purposes. We also conclude that defendant's further arguments are without sufficient merit to warrant discussion in a written opinion. *R. 2:11-3(e)(1)(E)*.

Affirmed.

**APPENDIX C — MEMORANDUM AND DECISION
OF THE SUPERIOR COURT OF NEW JERSEY,
CHANCERY DIVISION, FAMILY PART,
ATLANTIC COUNTY, DATED JANUARY 20, 2021**

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION FAMILY PART
ATLANTIC COUNTY

Docket No. FM-01-537-18

MARC AMMANN,

Plaintiff,

v.

ALBENA AMMANN,

Defendant.

Civil Action

MEMORANDUM OF DECISION FROM TRIAL

This Memorandum of Decision provides the court's decision resulting from a three-day trial which was held on August 19, 2020 through August 21, 2020, with closing arguments being presented to the court on November 20, 2020.

This matter comes before the court via an application made by the mother, Albena Ammann (hereinafter referred to as "Defendant") for an order changing the

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parties' custodial arrangement regarding the Minor Child, (A.A.) date of birth July 7, 2013¹ (hereinafter referred to as "the Minor Child") and to enjoin the father, Marc Ammann (hereinafter referred to as "Plaintiff") from vaccinating the Minor Child based on medical and religious grounds. Prior to the commencement of the trial, the parties entered into a Consent Order regarding custody, Thus, the court only needs to address those issues related to vaccinating the Minor Child.

During the trial, Defendant entered into evidence the following exhibits:

D-1 Matrimonial Settlement Agreement.

D-3 Expert Report of Dr. Arthur Brawer with C.V.

D-4 Articles in support of Dr. Brawer's report

D-6 Vaccine Injury Table

D-8 Order To Show Cause

D-9 Statement of Consent dated December 7, 2017

D-11 Religious Exemption by both parties dated June 26, 2015

1. In consideration of privacy concerns, the court shall not specifically mention the name of the child.

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D-12 Religious Exemption by both parties
dated August 3, 2018

D-19 Text messages between the parties, dated
April 10, 2020

D-20 Text messages between the parties dated
April 11, 2020

D-23 Department of Health Memo regarding
exemptions

D-24 Text messages between the parties
regarding the religious exemption dated
Aust 18, 2018

D-25 Text messages between the parties
regarding religious exemption dated July
25, 2018

D-37 Vaccine Information Statement for MMR
Vaccine

D-38 Letter dated from Plaintiff permitting
the Minor Child to travel to Bulgaria from
April 20, 2018 to April 30, 2018

D-39 Text messages between the parties
regarding Mooney trip to Asia (with
Facebook pictures) previously submitted
with Defendant's Order to Show Cause.

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D-41 Varicella (Chickenpox) vaccine insert

D-42 Wikipedia WI-38 information (aborted fetal cells)

D-44 Vaccine Court Death Decisions

D-48 Deposition transcript of Dr. Lopez dated July 31, 2020

D-50 Deposition transcript of Plaintiff dated June 29, 2020.

During the trial, Plaintiff entered the following exhibits into evidence:

P-2 Expert Report of Dr. Lopez-Bernard, with C.V.

P-3 Text messages from Defendant

P-10 Email exchanges between Plaintiff and Defendant

P-21 Copies of email

The parties stipulated to the following facts:

- (1) There is a Federal Court of Claims for injuries cause by vaccines.

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- (2) In August 2017, the Minor Child suffered from an upper and lower respiratory viral infection complicated by the development of immune mediated thrombocytopenia (hereinafter referred to as “ITP”).
- (3) Vaccines have caused death.

THE MEDICAL EXEMPTION

Testimony of Dr. Arthur Brawer

Defendant opened her case in chief with the testimony of Dr. Arthur Brawer. After direct and cross examination regarding Dr. Brawer’s qualifications, the court found that he had the training and experience that qualified him to be an expert in autoimmune disorders, vaccination induced immune disorders and vaccination pursuant to NJRE 702. Dr. Brawer was paid for his report and appearance.

Dr. Brawer testified that he met with Defendant on September 25, 2019 and reviewed the Minor Child’s hospital records. On December 18, 2019, Dr. Brawer conducted an examination of the Minor Child. Dr. Brawer obtained a medical history of Defendant and her family directly from Defendant. Dr. Brawer obtained Plaintiff’s and his family’s medical history from Defendant. Dr. Brawer never interviewed Plaintiff.

Dr. Brawer testified that in August 2017, the Minor Child developed a one-week upper and lower respiratory viral infection complicated by the development of

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immune mediated thrombocytopenia which can be life-threatening. This condition can cause a severe reduction in platelet counts. The Minor Child was treated and “recovered completely from this hematologic illness.” Dr. Brawer testified that the Minor Child demonstrated normal development.

In the spring of 2019, the Minor Child received a DTaP immunization followed by a second DTaP vaccination and simultaneous MMR immunization in May 2019. Dr. Brawer testified that the Minor Child developed a “diffuse maculopapular rash that lasted for several days” after the second round of immunizations. Dr. Brawer concluded that the systemic skin irritation suffered by the Minor Child at this time was caused by the second round of immunizations. He reached this conclusion by viewing pictures of the Minor Child and without having reviewed the treating physician’s medical records. During trial, Plaintiff’s counsel moved to have this conclusion stricken as a net opinion. While the court acknowledged that Dr. Brawer did not personally examine the Minor Child while she suffered from the skin irritation, the court found that Dr. Brawer had the training and experience to form a conclusion after reviewing the photographs of the Minor Child. Thus, the court concluded this was not a net opinion and denied Plaintiff’s motion. See *N.J.R.E.* 702 and 703. However, when weighed against Plaintiff’s expert opinion, the court recognizes Dr. Brawer’s shortcomings in reaching this conclusion for which the court will discuss below.

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Dr. Brawer stated that most people do not have serious adverse reactions to vaccines; however, Dr. Brawer also stated that the Minor Child is at a very high risk of having an adverse reaction to vaccines because of an “autoimmune problem”. Dr. Brawer did not identify a cause of this “autoimmune problem,” nor did he quantify the risk of said problem by identifying the percentage of people who have serious reactions to immunizations who are similarly situated as the Minor Child. Dr. Brawer testified that the Minor Child should not have additional immunizations because such vaccines, to a reasonable degree of medical certainty, would create a risk of serious and/or life threatening autoimmune adverse reactions that outweigh the benefits that such additional vaccinations can provide her. Dr. Brawer bases his opinion on his experience and findings that antigens of infections agents can cross react with self-antigens present on a variety of blood cells, including immunocompetent cells which can lead to autoimmune disorders such as ITP. Dr. Brawer testified that the Minor Child’s skin lesion was evidence that she is hyper-sensitive to immunizations and that she is immunocompromised as demonstrated by her ITP. As a result, additional vaccines could cause her serious health problems including a recurrence of ITP. He concluded that the Minor Child “has demonstrated a diathesis for autoimmune reactions, making it medically necessary for her to avoid future vaccinations of any kind.”

On cross examination, Dr. Brawer admitted the following: he never spoke with Plaintiff; never reviewed the Minor Child’s treating physician’s records; he did not conduct any additional testing of the Minor Child; did not

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conduct any additional blood or urinalysis testing of the Minor Child; did not speak with the treating physician; that vaccines provide benefits to people; and that ITP can be caused by physical trauma, environmental conditions, continued severe emotional liability, periodontal disease and not just by vaccines which are only one potential trigger. Dr. Brawer also testified that he never spoke to Plaintiff about his medical history despite the fact that such information is important in arriving at a diagnosis. The importance of Plaintiff's medical history is indicated by Dr. Brawer's inclusion of same in his report.

Testimony of Dr. Edwin Lopez-Bernard

Plaintiff called Dr. Edwin Lopez-Bernard as his expert witness. After the court heard testimony regarding Dr. Lopez-Bernard's qualifications, the court found that he is an expert in Pediatric Medicine as he has been board certified since 2002. He was not paid for his appearance.

Dr. Lopez-Bernard testified that administering vaccines to children is a major part of his pediatric practice. He testified that he sees about 3,500 patients per year who come to him for immunizations. He estimated that over the course of his career, he has vaccinated over 63,000 patients and has never seen a major side effect experienced by one of those patients. Interestingly, Dr. Lopez-Bernard is the only doctor in Atlantic County who will see children who have not been immunized.

Dr. Lopez-Bernard testified that he is the pediatrician for the Minor Child. He testified that saw the Minor Child

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one day when she was having an uncontrollable nosebleed and that she was on the verge of being anemic. He sent her to the ER for blood work. He referred her to AtlantiCare Regional Medical Center (“ARMC”) but the Minor Child ended up going to The Children’s Hospital of Philadelphia (“CHOP”). The doctor’s at CHOP diagnosed the Minor Child as suffering from ITP. The Minor Child received a blood transfusion. The Minor Child made a full recovery.

In April 2019, while in the care and custody of Plaintiff, the Minor Child complained to him that she had stepped on a rusty nail. Plaintiff took the Minor Child to see Dr. Lopez-Bernard who administered a Tetanus immunization. Dr. Lopez-Bernard testified that he administered the Tetanus immunization to the Minor Child because he felt it was medically necessary. Dr. Lopez-Bernard testified that he was not aware of any side effects from this vaccine.

The Minor Child was also given the MMR immunization in the spring of 2019. There is a dispute between the parties about when the Minor Child began to experience a skin irritation of some sort after she was given the MMR vaccination. For the court’s purposes, the court finds that it appeared anywhere from one week to four weeks after the MMR vaccination. The Minor Child was presented to Dr. Lopez-Bernard on June 26, 2019, complaining of a skin rash. Dr. Lopez-Bernard conducted a physical examination of the Minor Child and concluded that she was suffering from contact dermatitis. Dr. Lopez-Bernard testified that this rash was not related to the MMR immunization or ITP and there was nothing to indicate

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as such. He further testified that the Minor Child had not displayed any negative reaction to either the Tetanus immunization or the MMR immunization.

Dr. Lopez-Bernard testified that he screens his patients for autoimmune diseases, he sees 2-3 ITP patients per year, and he is able to recognize ITP symptoms. When he has a patient suffering from ITP, he refers that patient to a rheumatologist. Dr. Lopez-Bernard unequivocally testified that the Minor Child does not suffer from chronic ITP and is therefore not in any danger of having a serious side effect from immunizations. He was also very forthright and secure in his opinion that the Minor Child's rash was nothing more than contact dermatitis and not a reaction to the MMR or Tetanus vaccine. He testified that the Minor Child is very healthy and experienced only one event where she showed symptoms of ITP for which she was treated and released. Dr. Lopez-Bernard has no concerns about immunizing the Minor Child.

It should be noted for clarity, that despite Defendant's objections to having the Minor Child immunized, she never once mentioned to Dr. Lopez-Bernard that she refused to immunize the Minor Child based on religious grounds.

On cross examination, it was evident that Dr. Lopez-Bernard is not an expert in vaccine-related injuries. He also demonstrated a certain lack of familiarity with the MMR Vaccine Information Sheet. Dr. Lopez-Bernard was also unable to testify whether he or an assistant gave the immunization to the Minor Child. He was unfamiliar with Post Marketing Experience information, specifically

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that the Chickenpox vaccine increases the risk of ITP. Dr. Lopez-Bernard held firm on his belief that the Minor Child is very healthy and that she should be immunized because, in his medical opinion, a recurrence of ITP is highly unlikely as there is nothing in her history indicating a likely recurrence of ITP, despite his testimony that there is a 3-5% chance of an adverse reaction to immunization. Interestingly, his report admits that the Minor Child is at an increased risk for ITP despite her being in remission. Dr. Lopez-Bernard testified that he believes that vaccines do not increase the risk of recurrence of ITP to such a degree that he would recommend against immunization.

**ANALYSIS AND FINDINGS REGARDING THE
MEDICAL EXPERTS AND THE PROFFERED
MEDICAL EXEMPTION FROM IMMUNIZATION**

Our Legislature established a medical exemption for children in an educational context. The New Jersey Administrative Code Section 8:57-4.3, Medical Exemptions, states:

- (a)** A child shall not be required to have any specific immunization(s) which are medically contraindicated.
- (b)** A written statement submitted to the school, preschool, or child care center from a physician licensed to practice medicine or osteopathy or an advanced practice nurse (certified registered nurse practitioner or clinical nurse specialist) in any jurisdiction of the United States

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indicating that an immunization is medically contraindicated for a specific period of time, and the reason(s) for the medical contraindication, based upon valid medical reasons as enumerated by the Advisory Committee on Immunization Practices (ACIP) of the United States Public Health Service or the American Academy of Pediatrics (AAP) guidelines, will exempt a pupil from the specific immunization requirement for the stated period of time. **1.** The guidelines identified in (b) above are available as follows:

i. Advisory Committee on Immunization Practices, U.S. Public Health Service, Centers for Disease Control and Prevention, Atlanta, GA 30333; and **ii.** American Academy of Pediatrics, Committee on Infectious Diseases, PO Box 927, Elk Grove, IL 60009-0927.

(c) The physician's or an advanced practice nurse's (certified registered nurse practitioner or clinical nurse specialist) statement shall be retained as part of the child's immunization record and shall be reviewed annually by the school, preschool, or childcare facility. When the child's medical condition permits immunization, this exemption shall thereupon terminate, and the child shall be required to obtain the immunization(s) from which he or she has been exempted.

(d) Those children with medical exemptions to receiving specific immunizations may

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be excluded from the school, preschool, or childcare facility during a vaccine-preventable disease outbreak or threatened outbreak as determined by the Commissioner, Department of Health and Senior Services or his or her designee.

(e) As provided by 26:4-6, "Anybody having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school." The Department of Health and Senior Services shall provide guidance to the school of the appropriateness of any such prohibition. All schools are required to comply with the provisions of 8:61-1.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

The court has the duty and obligation to make credibility findings regarding the witnesses. Dr. Brawer was generally a credible witness. He has a significant amount of experience testifying in court at the Federal level. This was the first instance where he was qualified as an expert in a New Jersey Court. Dr. Brawer made good eye contact, was secure in his answers, was not argumentative and did not avoid any of the questions posed to him by either party. He did display a certain amount of arrogance while being cross examined by Plaintiffs counsel.

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Dr. Brawer is certainly, and without question, an expert in his field. He has published numerous articles and has practiced medicine since his residency in 1974. He has an impressive C.V. Notwithstanding his impressive credentials and experience, the court is hard pressed to find that he had a full picture of the Minor Child's medical history. He admitted that he never spoke with Plaintiff, nor did he obtain Plaintiff's medical history from Plaintiff himself, and therefore Plaintiff's family medical history that Dr. Brawer was provided only came from Defendant. Dr. Brawer never confirmed nor conducted any additional research that would have either confirmed or refuted the one-sided medical history provided to him by Defendant. Dr. Brawer testified that he never reviewed the medical records from the treating physician, Dr. Lopez-Bernard. Dr. Brawer also testified that he concluded that the Minor Child's rash was caused by the MMR vaccine only by viewing a photograph of the rash. Dr. Brawer stated that merely viewing this photo was enough evidence to make the rather intricate and serious diagnosis/conclusion that the rash was caused by the MMR vaccine.

Dr. Brawer concluded that the Minor Child is at serious risk of a recurrence of ITP based on his interview and examination of the Minor Child. He comes to this conclusion despite the mere 3-5% chance that there will be a serious reaction. This was just short of a net opinion. However, based enough on his limited interviews, examination and deficient records review to defeat a motion to bar his report as a net opinion. When the court denied Plaintiff's motion to strike Defendant's report as a net opinion, the court stated as much and noted that it

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would give the testimony the appropriate weight in its final decision.

Dr. Lopez-Bernard was a credible witness. He did not avoid questions; he was not combative; if he was unaware of a fact or information, he admitted it quickly and without contempt toward the questioner. He made good eye contact and gave thorough explanations of his opinions and findings.

Dr. Lopez-Bernard clearly does not have equal credentials regarding vaccine injuries when compared to Dr. Brawer. However, the court accepts his testimony that he has vaccinated over 63,000 patients during his medical career, has never seen a serious adverse reaction in a patient in response to an immunization and that he personally viewed and palpated the Minor Child's rash. This is in contrast to Dr. Brawer who simply saw a picture of the rash, did not palpate it and did not review the relevant medical records. Dr. Lopez-Bernard exhibited a deficiency in a familiarity with vaccine injuries and certain written material on the topic.

The court finds that the two medical experts are in equipoise and did not aid the court in finding for or against Defendant's application to enjoin Plaintiff from immunizing the Minor Child with the exception of one specific point noted below. The court finds that Dr. Brawer's methodology was lacking in that he did not interview Plaintiff to confirm family medical history; he did not conduct any additional testing of the Minor Child; he did not review the treating physician's relevant medical

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records; he concluded, without a sufficient examination, that the Minor Child's rash was caused by the MMR vaccine and was not contact dermatitis. Dr. Brower's testimony fell far short in demonstrating to this court that there is a discernable increased risk to the Minor Child in having a serious adverse reaction to immunization.

Although Dr. Lopez-Bernard was a credible witness, he lacked sufficient knowledge in the area of vaccine injury that would allow this court to conclude that there was no risk to the Minor Child in experiencing an adverse reaction to immunization.

Despite the expert's testimony being in equipoise, the court makes note of very important parts of both doctors' testimonies: they both agreed that vaccines are very important in preventing and defending against serious diseases; that most people who are immunized do not experience serious adverse effects; and the Minor Child has not shown any adverse reaction to immunization other than the disputed rash; the Minor Child has been treated for and recovered from other illnesses without a reoccurrence of ITP; and in general, vaccines provide health benefits.

The court views this matter under the purview of *N.J.S.A. 9:2-4* which states:

The Legislature finds and declares that it is in the public policy of this State to assure Minor Children of frequent and continuing contact with both parents after the parents have

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separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a Minor Child, the rights of both parents shall be equal, and the court shall enter an order which may include:

- a.** Joint custody of a Minor Child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;
- b.** Sole custody to one parent with appropriate parenting time for the noncustodial parent; or
- c.** Any other custody arrangement as the court may determine to be in the best interests of the child.

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree,

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communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the Minor Child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

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- d.** The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.
- e.** In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.
- f.** The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

The following is Taken from a Memorandum dated May 19, 2017 from the New Jersey Department of Health, Division of Epidemiology, Environmental and Occupational Health (hereinafter referred to as the “2017 Department of Health Memorandum”):

N.J.A.C. 8:57-4.3 and N.J.A.C. 8:57-4.4,
Immunization of Pupils in Schools, Medical and
Religious Exemptions

The Department remains committed to ensuring that our children and communities are protected against vaccine-preventable diseases. The dramatic decrease in the morbidity and mortality of vaccine-preventable diseases is attributed, in large part, to enforcement of school immunization requirements. The Department remains grateful for all the work

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expended locally to implement and enforce these important health regulations within the prescribed authority.

This court concludes that Defendant has failed to demonstrate to this court that there is a significant increased risk of the Minor Child experiencing a recurrence of ITP if immunized. Rather, to the contrary, the court finds that there is only a 3-5% chance of serious vaccine injury to the Minor Child. Further, and most importantly, both experts testified to the importance and efficacy of immunization and the well documented health benefits afforded to the general public. This court finds that the mandate from the 2017 Department of Health Memorandum quoted above should guide the court in its decision on this issue. The court finds that, solely in a medical context, it is in the best interest of the Minor Child's future health to appoint one parent to serve as the sole decision maker regarding immunizations. The court hereby denies Defendant's application to enjoin Plaintiff from having the Minor Child immunized for medical reasons. In a best interest of the child medical analysis, the benefits of immunization outweigh the potential risks to the Minor Child. However, the court's discussion does not end here.

THE RELIGIOUS EXCEPTION

This section of this opinion will address Defendant's application to enjoin Plaintiff from immunizing the Minor Child based on the Defendant's right to assert a religious exemption pursuant to *N.J.S.A. 26:1A-9.1*. While the court

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notes that the parties testified to the claim for a medical exemption, that part of this case was primarily dependent on the testimony of the expert witnesses. Although parties' testimony is addressed in greater detail below, their testimony was considered in this foregoing.

Testimony of Defendant Albena Ammann

Upon conclusion of the testimony of the medical experts which was taken out of order with the consent of counsel, Defendant began her testimony. Although her testimony shall be discussed below in detail, her testimony can be summed up by stating that she wished to assert the Religious Exemption for the Minor Child pursuant to *N.J.S.A. 26: 1A-9.1*.

The court makes the findings of fact after considering Defendant's testimony: Defendant immigrated to the United States from Bulgaria when she was twenty years old; she met Plaintiff in 2003 and they were married in July 2004; the Minor Child was born on July 7, 2013; the parties divorced in May 2018; as agreed in their Matrimonial Settlement Agreement ("MSA"), the parties were designated joint custodians but neither party was designated the parent of primary residence; and the MSA was silent on the issue of vaccinating the Minor Child.

Defendant entered into evidence exhibits D-11 and D-12 which were letters dated June 26, 2015 and August 3, 2018, respectively. These letters were used for the purpose of the Minor Child being exempted from the school district's vaccination requirements. These letters

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asserted the religious exemption and included religious scripture in support of the exemption. Defendant testified that Plaintiff was aware and in support of asserting the religious exemption.

Defendant testified that Plaintiff's position regarding vaccinating the Minor Child began to shift and that he became more hostile towards her on the issue. She testified as to the events that occurred when the Minor Child stepped on a rusty nail and Plaintiff had the child vaccinated upon the recommendation of Dr. Lopez-Bernard. Defendant also testified that she never agreed to have the child vaccinated during this instance or after, and Plaintiff took that action to vaccinate the Minor Child unilaterally. Plaintiff admitted during his testimony that he unilaterally took the action to vaccinate the Minor Child after she stepped on the rusty nail.

On cross examination, Defendant testified that she holds religious beliefs that prohibit vaccination. She testified that she has felt this way for as long as she can remember. This is where Defendant's testimony begins to become less credible. She testified that despite federal requirements that mandate a person immigrating to the United States be current in all vaccinations, she could not recall whether or not she stated she had been vaccinated. At first, Defendant testified that she could not recall if she asserted a religious exemption regarding vaccination when she immigrated to the United States, but later admitted that she did not assert the exemption. She further stated that when she applied and was accepted to Drexel University and Stockton University, she cannot remember if she asserted the religious exemption when

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required to provide vaccination records to the school. Defendant also testified that she does not recall having any discussion with her mother about Defendant being vaccinated at any point in her life despite the fact that her mother is often a caretaker for the Minor Child and is aware of this litigation. Incredibly, despite asserting the religious exemption to prohibit the Minor Child from being vaccinated, Defendant testified that prior to the child being born, the issue vaccinating her future children had never crossed her mind.

When cross examined on Exhibits D-11 and D-12, the letters regarding the Minor Child's non-vaccination due to religious exemption for schooling purposes, Defendant began to evade questions and engaged in long delays between answers as though she was trying to think of the "right" thing to say rather than simply responding to the question organically. At first, she testified that Plaintiff drafted the letters. She then testified that they drafted the letters together. She later testified that she did not know who came up with the language contained in the letters especially the religious scripture contained therein. When it was brought out on cross examination that it was clear neither party had authored the letters but rather Plaintiff forwarded them to the education entities in conjunction with Defendant, she changed her testimony and could not remember who authored the letters. This point will be discussed further in the court's assessment of Plaintiff's testimony.

It became evident during Defendant's testimony that despite the asserted religious exemption to vaccination,

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she also harbors philosophical and moral objections. Defendant admitted to the contents of Plaintiff's Exhibit 3 wherein she wrote in a test message that "Someday vaccines are going to be declared the greatest crime against humanity." Defendant also testified that she is morally against vaccines because she believes that some vaccines are created from cells from aborted fetuses. This could be both religious and moral objections. However, all other materials cited to by Defendant point to a philosophical objection to immunization, yet she uses religion to support them. This is certainly a moral and philosophical objection to vaccinations but can be considered in addition to the religious exemption.

Defendant also testified that there was no dispute about vaccinating the Minor Child as parties went through their divorce proceedings. This was an absolute misrepresentation as was shown by Plaintiff's Exhibit 21.

Defendant displayed many characteristics of a person not telling the truth and having selective memory when it advanced her cause. Questions posed to her were often met with delays in answering as though she was thinking of the right thing to say rather than giving genuine answers. She often tried to avoid questions and went beyond the scope of questions in order to support her position. She sometimes seemed flustered when pressed on points she should have been able to answer easily. When asked questions of religious continuity and sincerity, she experienced convenient forgetfulness. She simply lied on innocuous points. Defendant was not a credible witness.

*Appendix C***Testimony of Plaintiff Marc Ammann**

Upon the conclusion of Defendant's testimony, she rested her case and Plaintiff testified.

Plaintiff confirmed that the parties were married on July 6, 2005 and subsequently divorced. He testified that before the birth of the Minor Child, the parties never discussed immunization between them either within a religious context or otherwise. Plaintiff testified that Defendant had often told him she was an Atheist, but she allowed the Minor Child to be baptized in the Catholic Church per Plaintiff's wishes. They attended religious services together on one occasion.

Plaintiff testified there was no mention of vaccinations until Defendant became pregnant with the Minor Child. He further testified that during the course of their entire relationship, Defendant never mentioned, nor did they ever discuss, Defendant's being against vaccinations for any reason. He stated that the only reason he agreed to assert the religious exemption was because he was submissive to her.

Plaintiff described his relationship with Defendant as being in constant conflict, never on the same page, especially since they have been divorced. As an indication of this, Plaintiff offered Exhibit 10 which showed the conflict between the parties regarding vaccinating the Minor Child after the child was born. Despite Defendant testifying that Plaintiff was always in agreement with not vaccinating the child, including during the divorce

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negotiations, it is clear that Defendant's testimony was not accurate. Plaintiff offered Exhibit 21 which clearly shows a conflict between the parties regarding the issue of vaccinating the Minor Child. This again conflicts with Defendant's testimony that the parties always agreed that the child would not be vaccinated. Plaintiff simply agreed to assert the religious exemption to keep the uneasy peace between the parties.

Plaintiff testified credibly that the issue of a being opposed to immunization did not come up between the parties until Defendant became pregnant. He also testified credibly that Defendant was, in fact, an Atheist, and had never practiced any religion during the time that they were together. It must be noted that Defendant did not provide any testimony contesting this point. This is consistent with Dr. Lopez's testimony that Defendant never raised a religious objection to immunization while Dr. Lopez-Bernard was treating the Minor Child.

During direct examination, Plaintiff was questioned regarding the genesis of the letters asserting the religious exemption (Defendant's Exhibits 11 and 12). Plaintiff testified he was not the author of the letter. When asked who authored the letters, Plaintiff testified that Defendant obtained what was essentially a form letter drafted by a local real estate agent, Charles Costello, and sent a copy of the form letter to the Minor Child's schools. Mr. Costello told the parties that the letter was undisputable and had to be accepted by the local Jewish Community Center ("J.C.C.") which required vaccination for admission to their preschool program and could be used for other

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schools for the same purpose. This letter was also used to assert the religious exemption with the City of Northfield Board of Education. Mr. Costello said the letter was “bullet proof”. Plaintiff testified unequivocally that he was not the author of the letter but simply copied the form language. He also testified that the contents do not reflect his moral, philosophical or religious beliefs. He candidly admitted that the submission of the letters to the J.C.C. and the Northfield Board of Education was fraudulent because neither carried religious beliefs that prohibited vaccinations.

To be sure that vaccinating the Minor Child was the right decision for her, Plaintiff engaged in research. He spoke with medical professionals and read many publications on the topic. He ultimately concluded that vaccines are both safe and effective, not unlike the two medical experts concluded in their prior testimony.

Plaintiff testified to the events that led to the Minor Child being vaccinated against tetanus, after she stepped on a rusty nail. He candidly admitted that he should have made more efforts to contact Defendant before having the vaccine administered. He also admitted that he went behind Defendant’s back and had the Minor Child given the MMR vaccine. Interestingly, when the Minor Child was admitted to CHOP for several days when she suffered the ITP episode, there is no record of Defendant asserting a religious exemption regarding treatment. This is despite the fact that the Minor Child was given four platelet transfusions along with other treatments. One can easily conclude that Defendant made no requests to

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accommodate her alleged religious concerns during that hospital stay. Defendant's Exhibits 11 and 12 states "Our family's personal religious beliefs prohibit the injection of foreign substances into our bodies." This would also certainly include breast implants.

CREDIBILITY FINDINGS

This court must make findings as to the credibility of the witnesses. The trial court judge has the responsibility of adjudging credibility and assessing good faith. *Podkowicz v. Slowineski*, 44 N.J. Super. 149 (App. Div. 1957)

Plaintiff was a very credible witness. He was not evasive in his answers. He acknowledged past wrong doing as it related to submitting what he considered to be fraudulent letters to the J.C.C. and the Northfield Board of Education so that the Minor Child could be admitted to the preschool and school programs. Without the required vaccinations. Plaintiff was not combative during cross examination. He did not exaggerate nor waiver in his responses. When pressed on his answers, he neither waivered nor contradicted himself. His testimony was believable and consistent. Throughout is direct and cross examinations, Plaintiff exhibited an appropriate demeanor and frankness. He admitted past foibles in dealing with Defendant during their relationship. His explanation regarding the drafting of Defendant's Exhibits 11 and 12 was credible, logical, and sensical, especially when viewed in light of both parties' testimony. The court concludes and finds that Plaintiff was a credible witness.

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Contrary to Plaintiff, Defendant was not a credible witness. She was often combative during her testimony. She contradicted herself on several occasions. She changed her testimony when pressed on her responses and seemed to delay her responses to questions posed to her in order for her to formulate an answer, she felt would serve her best. When pressed on who drafted Defendant Exhibits 11 and 12, her testimony bounced around from Plaintiff drafted it, to the position that they drafted the letters together, to she did not know who drafted the letters. She feigned she did not know who the real estate agent, Mr. Costello, was. The court can draw no other conclusion than one that Defendant lied about her knowledge regarding the drafting of Exhibits 11 and 12.

Further, Defendant's testimony about her own personal history regarding vaccinations and whether she did or did not assert a religious exemption when she immigrated to the United States was contradictory. Her inability to recall whether or not she asserted the religious exemption when she matriculated to Drexel and Stockton Universities was not believable by any measure. This is not ancient history. The court will give her the benefit of the doubt regarding her inability to recall her vaccination history prior to coming to the United States and whether or not she needed to swear to or certify her vaccination history at that time. Certainly, one can change views regarding religion as they mature. Nonetheless, Defendant certainly demonstrated a selective memory and viewpoint when it came to such issues.

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The court concludes that Defendant is not a credible witness. She engaged in a revisionist history of her relationship with Plaintiff, her belief and use of the religious exemption and lied about inconsequential facts of this case such as not ever discussing vaccination during the divorce proceedings. Her level of inconsistency and lack of candor to this court demonstrate that she is not a believable witness. This decision results from Defendant's shear lack of credibility.

LEGAL ANALYSIS

Defendant has the burden of proof in this matter. Defendant must establish that deciding not to immunize the Minor Child is her fundamental right and it is in the best interest of the Minor Child to prohibit immunization.

It is well establish under *N.J.S.A. 26:1-A-9.1* that an education institution cannot deny admission of an unvaccinated child into its program so long as the child's parent exercises their statutory right to claim a religious exemption from immunization on behalf of his or her child by providing a written statement to the educational institution. In the 2017 Department of Health Memorandum, it is stated that an educational institution may not require that the parent "identify membership in a recognized church or religious denomination or describe how the administration of immunizing agents conflicts with the student's religious beliefs in order for the request to be granted." However, this procedure is not binding upon this court. This court may delve into the sincerity of the request to assess Defendant's good faith in asserting

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the religious exemption and ensure that the request is not being made on philosophical, moral, secular or more general beliefs.

This is a case of first impression in the State of New Jersey. While the Appellate Division ordered that a child may be immunized over a parent's objection in *New Jersey Dr. of Child Protection and Permanency v. J.B.*, 459 N.J. Super 442 (App. Div. 2019), that case involved a child who was in the State's care and custody and the Division of Child Protection and Permanency was acting *in parens patriae*. The case at bar is a dispute between two parents with equal custodial rights.

The First Amendment to the United States Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." *U.S. Const. amend I*. The second paragraph of the New Jersey State Constitution states:

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generation, do ordain and establish this Constitution.

Article I, Rights and Privileges states:

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No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience . . . *N.J. Const. art 1 section 3.*

Thus, our Federal and State Constitutions establish freedom of religion and its practice as a fundamental right of every citizen.

Defendant would have this court apply the education standard beyond its intent and purpose. This suggestion is misplaced. This is not a case in which a person was denied a religious exemption by an educational body. Rather, it is a dispute between former spouses with co-equal custodial rights who disagree on whether or not to immunize their daughter. Although the court finds that this case does not involve an educational institution, Defendant argues, by analogy, that it should apply because there is a lack of guidance in New Jersey law. As such, for the purposes of completeness, the court will undertake that analysis.

New Jersey education institutions require that all students be up to date in their immunizations before matriculation. *N.J.A.C. 8:57-4.2* provides:

A principal, director or other person in charge of a school, preschool, or child care facility shall not knowingly admit or retain any child whose parent or guardian has not submitted acceptable evidence of the child's immunization, according to the schedules specified in this subchapter. Exemptions to this requirement are

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identified at *N.J.A.C. 8:57-4.3* and *4.4*.

As stated above, our legislature has provided a religious exemption from immunizations for students with written parental or guardianship permission. *N.J.S.A. 26:1A-9.1*, Exemption for pupils from mandatory immunization; interference with religious rights; suspension, provides an exemption from mandatory immunization:

Provisions in the State Sanitary Code in implementation of this act shall provide for exemption for pupils from mandatory immunization if the parent or guardian of the pupil objects thereto in a written statement signed by the parent or guardian upon the ground that the proposed immunization interferes with the free exercise of the pupil's religious rights. This exemption may be suspended by the State Commissioner of Health during the existence of an emergency as determined by the State Commissioner of Health. *N.J.S.A. 26:1A-9.1*

N.J.A.C. 8:57-4.4 provides the procedure by which a written parental or guardianship permission regarding a religious exemption from immunization for students is to be made. This Code section requires that if a parent or guardian seeking an exemption from mandatory immunization for a child in school, preschool, or child care center submits to the school, preschool, or child care center a written, signed statement requesting a religious exemption from the immunization, pursuant to *N.J.S.A. 26:1A-9.1*, the school, preschool or child care center must

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not deny admittance of that child into that program due to the child's lack of vaccination.

A review of the legislative history of *N.J.A.C. 8:57-4.4* reveals that this section was amended on July 19, 2010. The 2003 version of *N.J.A.C. 8:57-4.4* stated in pertinent part:

(a) A child shall be exempted from mandatory immunization if the parent or guardian objects thereto in a written statement submitted to the school, preschool, or child care center, signed by the parent or guardian, *explaining how the administration of immunizing agents conflicts with the pupil's exercise of bona fide religious tenets or practices*. General philosophical or moral objection to immunization shall not be sufficient for an exemption of religious grounds. [emphasis added]

At that time, the Commissioner for the State of New Jersey, Department of Health and Senior Services, issued a Memorandum dated December 1, 2008 (hereinafter referred to the "2008 Department of Health Memorandum") discussing this Code section. In that document, the Commissioner affirmed that a person seeking a religious exemption from immunization was required to include in their statement how a vaccine conflicts with the pupil's religion.

On July 19, 2010, *N.J.A.C. 8:57-4.4* was amended and the language requiring a parent or guardian to provide a written statement explaining how the administration of

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an immunizing agent conflicts with the pupil's religious beliefs was removed.

Section 8:57-4.4 -Religious exemptions

(a) Each school, preschool, or child care center shall exempt a child from mandatory immunization if the child's parent or guardian submits to the school, preschool, or child care center a written, signed statement requesting an exemption, pursuant to the requirements for religious exemption established at 26:1A-9.1, on "the ground that the . . . immunization interferes with the free exercise of the pupil's religious rights." 1. The school, preschool, or childcare center shall be prohibited from exempting a child from mandatory immunization on the sole basis of a moral or philosophical objection to immunization.

(b) Religious affiliated schools or childcare centers shall have the authority to withhold or grant a religious exemption from the required immunization for pupils entering or attending their institutions without challenge by any secular health authority.

(c) Each school, preschool, or childcare center shall retain a copy of the written statement set forth in (a) above in the child's immunization record.

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- (d)** A school, preschool, or child care center may exclude children with religious exemptions from receiving immunizing agents from the school, preschool, or child care center during a vaccine-preventable disease outbreak or threatened outbreak as determined by the Commissioner, Department of Health and Senior Services, or his or her designee.
- (e)** As provided by 26:4-6, "Anybody having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school. **1.** The Department of Health and Senior Services shall provide guidance to the school on the appropriateness of any such prohibition. **2.** All schools are required to comply with the provisions of 8:61-2.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).
- (f)** Those children enrolled in school, preschool, or child care centers before September 1, 1991, and who have previously been granted a religious exemption, shall not be required to reapply for a new religious exemption under 8:57-4.4(a).

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The 2017 Department Health Memorandum confirmed the change of the Code in that parent's or guardian's seeking a religious exemption were no longer required to explain how immunization conflicts with their religion.

When a parent or guardian submits a written, signed request for exemption from mandatory immunization(s) due to religious beliefs, the statement should be accepted, and the religious exemption granted. ***The request does not need to identify membership in a recognized church or religious denomination or describe how the administration of immunizing agents conflicts with the student's religious beliefs in order for the request to be granted.*** Religious affiliated schools or childcare centers shall have the authority to withhold or grant a religious exemption from the required immunization for pupils entering or attending their institutions without challenge by any secular health authority. [emphasis added] Memorandum dated May 19, 2017 from the New Jersey Department of Health, Division of Epidemiology, Environmental and Occupational Health

Defendant argued at trial that based on N.J.A.C. 8:57-4.4, along with the 2017 Department of Health Memorandum interpretation, that Plaintiff and the court are prohibited from engaging in any inquiry whatsoever regarding how immunizing the Minor Child conflicts with her religious beliefs. While the court agrees that

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an educational institution may not make such an inquiry, prohibiting an opposing party in litigation and/or the court from engaging in such an inquiry is misplaced. This is an overly expansive interpretation of *N.J.A.C. 8:57-4.4* and a misapplication of *N.J.R.E. 512*. The court must be able to make full findings of fact and the only way to do that is to allow some level of inquiry into areas related to Defendant's religious practice. The court recognizes that there are some limits to such an inquiry and that is addressed below.

Parenthetically, the court must address an evidence ruling made during the trial. Plaintiff argued that he should be able to question Defendant regarding her religious beliefs under *N.J.R.E. 512*. Defendant objected. The court incorrectly denied that application having viewed the issue in light of the educational vaccine exemption. During closing arguments, the court realized its error and offered Plaintiff the opportunity to reopen that part of the case and recall Defendant as a witness. Plaintiff rejected that offer.

Statutory interpretation of statutes and administrative code section begin with the "plain meaning of the provision at issue." *Burns v. Belafsky*, 166 N.J. 466, 473 (2001). Where the language of the statute "is clear and unambiguous, and susceptible to only one interpretation, courts should apply the statute [and code section] as written without resort to extrinsic interpretive aids." *In re Passaic Util. Auth.*, 164 N.J. 270, 299 (2000), citing *Bergen v. Commercial Bank v. Sisler*, 157 N.J. 188, 202 (1999).

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Applying the plain meaning rule, it is clear that a parent has a right to assert a written request for an exemption from a school's immunization requirement so long as the request be in writing grounded in the parent's religious beliefs and practices. *N.J.A.C. 8:57-4.4*. As cited above, *N.J.A.C. 8:57-4.4* states that the request may not be based on "a moral or philosophical objection to immunization". The 2017 Department of Health Memorandum interpreted this plain language to mean that a party seeking the religious exemption "need not identify membership in a recognized church or religious denomination or describe how the administration of immunizing agents conflicts with the student's religious beliefs in order for the request to be granted." This may be so for an educational institution, but that interpretation is not binding upon this court so long as a court's inquiry is reasonable and necessary. If challenged, the court may inquire into the basis of the request and not automatically accept the request as valid.

In order to properly conduct such an inquiry, the court is required to have a hearing or trial based on conflicting certifications. Here, the court conducted a three-day trial into the validity and enforceability of the medical and religious exemption request. The request for a medical exemption was addressed above. As stated above, there is no case in New Jersey jurisprudence that sets out a standard for this court to follow in conducting its analysis in a dispute between co-equal parents disputing vaccinating a minor child where the child is not in the State's custody. Therefore, this court looks to the Federal Courts for guidance, of which there is a plethora of cases.

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Justice Clark of the Supreme Court of the United States held that in a case when a religious exemption is offered, such as in a case involving a conscientious objector, “the “truth” of a belief is not open to questions, there remains the significant question whether [the belief]t is “truly held.” This is the threshold question of sincerity which must be resolved in every case where asserting a religious exemption is involved. It is, of course, a question of fact *United States v. Seeger*, 380 U.S. 163, 185 (1965). Therefore, it is incumbent upon this court to inquire into Defendant’s sincerity when she submitted the request for a religious exemption on behalf of the Minor Child as “neither the government nor the court has to accept the defendant’s mere say-so.” *United States v. Bauer*, 84 F.3d 1549, 1559 (9th Cir. 1995).

When asserting a religious exemption of a government-imposed obligation, the court must employ an analysis that gauges the sincerity of the party seeking the exemption. “. . . This analysis is most useful where extrinsic evidence is evaluated. For example, an adherent’s belief would not be “sincere” if he [or she] acts in a manner inconsistent with that belief” *International Soc. For Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 441 (2nd Cir. 1981), citing *Dobkin v. District of Columbia*, 194 A.2d 657 (D.C. 1963).

N.J.A.C. 8:57-4.4 requires that a request for a religious exemption not be based on philosophical or moral grounds. The balance in determining what is “religious” and what is “philosophical” is difficult.

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As the Supreme Court taught long ago, “a determination of what is a ‘religious’ belief or practice entitled to constitutional protection may present a most delicate question. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Although “[t]here is no doubt that only beliefs rooted in religion are protected by the *Free Exercise Clause*, *Frazee v. Ill. Dep’t of Employment Sec.*, 489 U.S. 829, 833 (1989) [citation omitted] . . . and that “[p]urely secular views do not suffice,” *Frazee*, 489 U.S. at 833, the task of distinguishing between the religious and the secular can pose seemingly insurmountable semantic obstacles, for what is “religious” may readily be characterized as an earnestly adopted way of life, an inherited cultural practice, an ardently held philosophical belief, or a personal choice reflecting deep and abiding convictions of conscience.” *United States v. Manneh*, 645 F.Supp. 2d 98, 108 (E.D.N.Y. 2008).

In order to conduct a proper analysis, the court is left with the dilemma of how to gauge sincerity while not violating Defendant’s Federal and State Constitutional rights. Because there is no New Jersey case setting forth a test or procedure for this court to follow, this court finds that it is appropriate to adopt the sincerity analysis as laid out in Federal case law. The Federal cases recognize the dilemma in trying to decide what is religious versus what is philosophical while still protecting the sanctity or religious practice and belief. However, the Federal

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Courts recognize that applying the sincerity test has its challenges as well:

While the question of “sincerity” in the religious exercise context is understood to be “exceedingly amorphous,” *Patrick v. LeFevre*, 745 F2d 153, 157 (2d Cir. 1984), and while it may understandably appear to overlap with the test for what is “religious” inasmuch as the test examines the private and subjective . . . sincerity remains a discrete element of RFRA and Free Exercise analyses. As distinguished from separating what . . . is religious from what is secular, “[s]incerity analysis seeks to determine an adherent’s good faith in the expression of his [or her] religious belief. *Patrick*, 745 F2d at 157. Sincerity analysis “provides a rational means of differentiating between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud,” and requires a factfinder to “delve into the claimant’s most veiled motivations.” **Id.** Thus, assessing sincerity “demands a full exposition of facts and the opportunity for the factfinder to observe the claimant’s demeanor during direct and cross examination.” **Id.** Outlining factors that indicate insincerity, the Second Circuit noted that “an adherent’s belief would not be ‘sincere’ if he acts in a manner inconsistent with that belief . . . or if there is evidence that the adherent materially gains by fraudulently hiding secular interest behind the

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veil of religious doctrine. *International Soc. for Krishna Consciousness*, 650 F.2d at 441. *United States v. Manneh*, 645 F.Supp. 2d at Ill.

The *Manneh* court further acknowledged that “while courts may be poorly equipped to determine what is religious, they are seasoned appraisers of the “motivations” of parties and have a duty to determine whether what is professed to be religion is being asserted in good faith.” *United States v. Manneh*, 645 F.Supp. 2d at 112. Thus, this court recognizes the limitations under which this court must determine Defendant’s sincerity of her beliefs. Nonetheless, the court finds that with the guidance of Federal case law, such an analysis is possible and the only reasonable means of resolving the dispute presented at bar.

As the Federal Courts have acknowledged, there is a fine line between what is purely religious and what is purely philosophical. Certainly, an adherent can have both a religious and philosophical objection to immunization as they are not mutually exclusive. The New Jersey Legislature enacted the section of *N.J.A.C. 8:57-4.4* that prohibits an educational institution from requiring that the adherent “describe how the administration of immunizing agents’ conflicts with the student’s religious beliefs in order for the request to be granted.” This Code section does not prohibit a court or adversary in litigation from exploring the sincerity or good faith of an adherent (See *N.J.R.E. 512*) If the court accepted Defendant’s expansive interpretation of this Code section to include parties involved in litigation or the court, such a prohibition would

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tie the hands of an attorney during cross examination from delving the sincerity of their religious beliefs which is a paramount finding of fact that this court must determine. This would effectively prevent any effective level of inquiry and leave the court with nothing but the uncontested testimony of the adherent. In light of the plain language of this Code section, there is no such prohibition. Thus, as cautioned in *United States v. Bauer* 84 F.3d 1549, 1559 (9th Cir. 1995), the court would be left with “the defendant’s mere say-so”, which would lead to absurd results. Such an interpretation would create an incontrovertible right that is shielded from any level of reasonable inquiry into sincerity, consistency or fraud. For all practical purposes, Defendant’s interpretation would create an irrebuttable presumption that Defendant’s election of the religious exemption was made sincerely and in good faith. This would be an anathema to our litigation procedures, New Jersey jurisprudence and to the practical practice of law as it would prevent the court from hearing relevant evidence needed to make paramount findings of fact. Furthermore, this would allow any person to claim the religious exemption with impunity as their sincerity and good faith could not be questioned when, in fact, the adherent could be acting insincerely, maliciously or fraudulently. This was not the intent of the Legislature when it amended N.J.A.C. 8:57-4.4 and is why N.J.R.E. 512 exists. If the legislature wanted to create an irrebuttable presumption, it could have done so as it has in many other areas.²

2. A conclusive *presumption* is *irrebuttable* and may not be overcome by countervailing evidence under any circumstances. For example, it is well settled that every person is conclusively presumed to know the law, statutory and otherwise. See *Nobel v. Director*,

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During cross examination of Defendant, Plaintiff's counsel suggested that Defendant was insincere and inconsistent in her religious beliefs and that she only has philosophical and moral objections to immunization. By way of example of inconsistency in her beliefs, Defendant admitted that she underwent breast augmentation surgery in 2011. Plaintiff's theory was that injecting into the Minor Child a foreign substance such as a vaccine is no different than Defendant inserting a foreign breast implant. Plaintiff went on to argue that this point proves Defendant's inconsistent religious practices and that her proclamation of her religious beliefs has not been made in good faith. The court agrees with this assertion. Defendant's Exhibits 11 and 12 demonstrate Defendant's inconsistency in belief and practice. Defendant countered that she is a person who has "sinned" in the past and this should not be held against her regarding her current beliefs. There appears to be a hypocrisy because Defendant testified her religious beliefs have remained unchanged for as long as she can remember. This hypocrisy calls into question her good faith in requesting the religious exemption for the Minor Child. See *Patrick*, 745 F2d at 157.

DMV, 19 N.J. Tax 153 (2000) (taxpayer should have had knowledge of pertinent regulations); *Brandon Farms Prop. Owners Ass'n v. Brandon Farms Condo. Ass'n*, 180 N.J. 361, 368, 852 A.2d 132 (2004) (condominium owner, by accepting title, is conclusively presumed, under NJS 46:8B-17, to have agreed to pay proportionate share of common expenses); *Irrebuttable presumptions* are frequently the subject of a successful attack on the grounds that they deny due process of law. See, e.g., *Stanley v. Illinois*, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)

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The court will not accept Defendant's "mere say-so" that her request is solely religious and not philosophical. Plaintiff's Exhibit 3 wherein she wrote in a text message that "someday vaccines are going to be declared the greatest crime against humanity" reveals an overall philosophy and not a religious doctrine. Defendant also testified that she is morally against vaccines because some used cells from aborted fetuses. This objection can be interpreted as being both philosophical and religious per *N.J.A.C. 8:57-4.4*. This is an example of the type of tightrope the court must walk in analyzing this type of case.

Credibility is always a relevant consideration when assessing any witness. Defendant changed her story several times when asked about who wrote the two religious exemption letters and under what circumstances the letters were drafted. While this may seemingly be a minor point, it colors Defendant's credibility in a negative light as she would lie about such a minor issue. She simply was not believable on this issue. The court does not accept her testimony that she could not remember who drafted the exemption letter and under what type of circumstances it was obtained.

Defendant also had a very selective memory when it came to whether or not she claimed a religious exemption for herself when she immigrated to the United States and matriculated to Stockton University and Drexel University. This is not a mere instance where she cannot remember what happened because this is not ancient history. It is a relevant indication related to her consistency and sincerity

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in requesting the religious exemption for her daughter. Defendant is either lying that she cannot remember if she asserted the religious exemption when she matriculated to Stockton and Drexel or she did not make the request and misrepresented to the two universities that she had been vaccinated thereby allowing her to matriculate to each school. This is another instance of Defendant's lack of candor with this court and another strike against her sincerity and good faith in requesting the exemption on behalf of her daughter. It is also a clear demonstration and another example of her lack of consistency in her religious practice.

After hearing Defendant testify, this court is left with the impression that she is hiding behind a falsehood of religious doctrine in order to further a philosophical and moral stance. Defendant avoided questions, contradicted herself on several occasions, demonstrated selective memory and outright lied to this court during her testimony. Due to her lack of credibility, the court finds that she was not truthful with regard to her religious beliefs which are the foundation of her argument as to why she should be the parent to make the unilateral decision not have the Minor Child vaccinated

BEST INTERESTS vs. RELIGIOUS FREEDOM

Under a best interest of the child analysis under *N.J.S.A. 9:2-4*, the court looks to subsection (a) which states:

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- a. Joint custody of a Minor Child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;**

Plaintiff and Defendant share joint custody of the Minor Child without a designation of a Parent of Primary Residence. Thus, they have co-equal custodial rights. Their Matrimonial Settlement Agreement does not include a provision regarding vaccination. As noted above, the court found that both medical experts failed to demonstrate whether or not immunizing the Minor Child exposed her to serious increased risk of vaccine injury and a recurrence of ITP. Given these failures and viewed solely within the medical context of this matter, the court finds that the Minor Child should be immunized for her protection and the protection of others. However, this court must determine whether or not the best interest standard can be applied over the objection of one of the parents when there is no medical emergency and if enforcing the best interest standard is violative is violative of Defendant's exercise of her First Amendment Right to fundamental religious freedoms.

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Defendant's counsel argues that this conflict between a best interest analysis and that of the free exercise of religion right can be resolved by application of statutory construction rules: "In general, when there is a conflict between general and specific provisions of a statute [i.e. N.J.S.A. 26:1A-9.1, N.J.A.C 8:57-4.4 versus N.J.S.A. 9:2-4] the specific provisions will control." *Simon v. Cronecker*, 189 N.J. 304, 339 (2007). Accordingly, the specific religious exemption statute and related administrative code sections, and the more all-encompassing fundamental right of freedom of religion, supersede the more general "best interest" statutory requirement except in situations where the child's health is in immediate danger. See also *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 167 (1944) where the United States Supreme Court held there must be a clear and present danger in order for state action to impinge of upon a claimed religious freedom. There are thousands of children in the United States who live unvaccinated and there has been no emergency declaration that would have this court conclude that there is currently a clear and present danger.³

3. The court does not in any way minimize the current COVID 19 pandemic under which our country is suffering. Rather, the court recognizes that in the event this public emergency continues, this very well may be considered a clear and present danger to public health requiring mandatory vaccinations over religious exemption requests. This scenario is envision is the Memorandum from the New Jersey Department of Health dated May 19, 2017, in which the Department recognized that according to N.J.A.C. 8:57-4.3(d) and 4.4(d) a school may exclude children with religious exemptions during a vaccine-preventable disease outbreak or threatened outbreak as determined by the Commissioner, Department of Health, his or her designee.

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The court is left with the following quandary: if the court orders vaccination there is a possibility that doing so will impinge on Defendant's First Amendment right to religious freedom. Plaintiff does not have the same concern because there is no religious practice of which the court is aware, that mandates vaccination. Therefore, the court must resolve the dispute by applying the Federal sincerity test and then, if appropriate, look towards the best interest standard.

The court concludes that based on Defendant's contradictory testimony, her overall lack of credibility and her failure to be truthful with the court, she lacks both the level of sincerity and consistency that support her claim of a First Amendment Religious right to not have Minor Child vaccinated. The court also concludes that because the medical experts agreed that there is a small chance of a recurrence of ITP and that vaccinations are overall safe and effective. Thus, the court concludes that it is appropriate to allow the Minor Child to be vaccinated per Plaintiff's wishes. Accordingly, the court hereby appoints Plaintiff as the sole legal guardian of the Minor Child for immunization purposes.

Due to the lack of controlling authority, the invasive nature of immunization in general, and the important issues raised during this trial, the imposition of this Judgment shall not go into effect for a period of 10 days to allow Defendant the opportunity to consult with counsel regarding a request to stay this order pending appeal.

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CONCLUSION

The court finds that after weighing the evidence and assessing the parties' credibility, Defendant has failed to establish by a preponderance of the evidence that she holds a sincere religious belief restricting immunization and that it is not in the best interest of the Minor Child to immunize the Minor Child per Plaintiff's wishes. To the contrary, the court finds that it is in the Minor Child's best interest to be immunized. As such, Defendant's request to enjoin Plaintiff from immunizing the Minor Child is denied and Plaintiff is appointed the Minor Child's sole legal guardian for immunization purposes. An Order reflecting same is attached hereto.

/s/
BENJAMIN PODOLNICK, J.S.C.

January 20, 2021

**APPENDIX D — RELEVANT STATUTORY
PROVISIONS**

**NEW JERSEY STATE CONSTITUTION 1947
(UPDATED THROUGH AMENDMENTS
ADOPTED IN NOVEMBER, 2020)**

A Constitution agreed upon by the delegates of the people of New Jersey, in Convention, begun at Rutgers University, the State University of New Jersey, in New Brunswick, on the twelfth day of June, and continued to the tenth day of September, in the year of our Lord one thousand nine hundred and forty-seven.

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

**ARTICLE I
RIGHTS AND PRIVILEGES**

1. All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

2. a. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

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b. The people reserve unto themselves the power to recall, after at least one year of service, any elected official in this State or representing this State in the United States Congress. The Legislature shall enact laws to provide for such recall elections. Any such laws shall include a provision that a recall election shall be held upon petition of at least 25% of the registered voters in the electoral district of the official sought to be recalled. If legislation to implement this constitutional amendment is not enacted within one year of the adoption of the amendment, the Secretary of State shall, by regulation, implement the constitutional amendment, except that regulations adopted by the Secretary of State shall be superseded by any subsequent legislation consistent with this constitutional amendment governing recall elections. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

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5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

6. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

7. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

8. No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases now prosecuted without indictment, or arising in the army or navy or in the militia, when in actual service in time of war or public danger.

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9. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury.

10. In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel in his defense.

11. No person shall, after acquittal, be tried for the same offenses. All persons shall, before conviction, be eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the legislature to establish by law procedures, terms, and conditions, applicable to pretrial release and the denial thereof authorized under this provision.

12. Excessive bail shall not be required, excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted. It shall not be cruel

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and unusual punishment to impose the death penalty on a person convicted of purposely or knowingly causing death or purposely or knowingly causing serious bodily injury resulting in death who committed the homicidal act by his own conduct or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value.

13. No person shall be imprisoned for debt in any action, or on any judgment founded upon contract, unless in cases of fraud; nor shall any person be imprisoned for a militia fine in time of peace.

14. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

15. The military shall be in strict subordination to the civil power.

16. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in a manner prescribed by law.

17. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

18. The people have the right freely to assemble together, to consult for the common good, to make known

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their opinions to their representatives, and to petition for redress of grievances.

19. Persons in private employment shall have the right to organize and bargain collectively. Persons in public employment shall have the right to organize, present to and make known to the State, or any of its political subdivisions or agencies, their grievances and proposals through representatives of their own choosing.

20. Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

21. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

22. A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature. For the purposes of this paragraph, “victim of a crime” means: a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as

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a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide.

23. Every employer shall, beginning the January 1 next following the date of the approval of this amendment by the people pursuant to Article IX of the Constitution, pay each employee subject to the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), or a successor State statute, a wage rate of not less than the rate required by that act, or \$8.25 per hour, whichever is more. On the September 30 next following the date of the approval of this amendment, and on September 30 of each subsequent year, the State minimum wage rate shall be increased, effective the following January 1, by any increase during the one year prior to that September 30 in the consumer price index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government. If, at any time, the federal minimum hourly wage rate set by section 6 of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206), or a successor federal law, is raised to a level higher than the State minimum wage rate, then the State minimum wage rate shall be increased to the level of the federal minimum wage rate and all subsequent increases based on increases in the CPI-W pursuant to this paragraph shall be applied to the State minimum wage rate as increased to match the federal minimum wage rate. This paragraph shall not be construed as altering or amending any provision of the "New Jersey State Wage and Hour Law," P.L.1966, c.113

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(C.34: 11-56a et seq.) or a successor State statute, other than the hourly rate set by that act, or prohibiting the Legislature from amending that act.

Article I, paragraph 2 amended effective January 1, 1994; paragraph 9 amended effective December 4, 1973; paragraph 11 amended effective January 1, 2017; paragraph 12 amended effective December 3, 1992; paragraph 22 added effective December 5, 1991; paragraph 23 added effective December 5, 2013.

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**N.J.S.A. 9:2-4 CUSTODY OF CHILD; RIGHTS OF
BOTH PARENTS CONSIDERED.**

9:2-4. The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

- a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;
- b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or
- c. Any other custody arrangement as the court may determine to be in the best interests of the child.

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In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

d.The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.

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- e.In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.
- f.The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

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2013 NEW JERSEY REVISED STATUTES
TITLE 26 – HEALTH AND VITAL STATISTICS
SECTION 26:1A-9.1 – EXEMPTION FOR
PUPILS FROM MANDATORY IMMUNIZATION;
INTERFERENCE WITH RELIGIOUS
RIGHTS; SUSPENSION

Universal Citation: NJ Rev. Stat. § 26:1A-9.1 (2013)

26:1A-9.1. Exemption for pupils from mandatory immunization; interference with religious rights; suspension

Provisions in the State Sanitary Code in implementation of this act shall provide for exemption for pupils from mandatory immunization if the parent or guardian of the pupil objects thereto in a written statement signed by the parent or guardian upon the ground that the proposed immunization interferes with the free exercise of the pupil's religious rights. This exemption may be suspended by the State Commissioner of Health during the existence of an emergency as determined by the State Commissioner of Health

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2014 NEW JERSEY REVISED STATUTES
TITLE 26 – HEALTH AND VITAL STATISTICS
SECTION 26:2N-9- ADMINISTRATION OF
ANTIBODY TITER PRIOR TO SECOND
DOSE OF MMR VACCINE.

Universal Citation: NJ Rev Stat § 26:2N-9 (2014)

26:2N-9 Administration of antibody titer prior to second dose of MMR vaccine.

2. a. Prior to administering a second dose of the measles-mumps-rubella (MMR) vaccine to a child, a health care provider may give the child's parent or guardian the option of consenting to the administration of an antibody titer to determine whether or not the child has already developed immunity to MMR in response to a previously administered dose of the vaccine and would not require the second dose.
- b. Documented laboratory evidence of immunity from MMR shall exempt a child from further vaccination for MMR, as may be required pursuant to Department of Health regulations.

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N.J. ADMIN. CODE§ 8:57-4.4

Current through Register Vol. 52, No. 14, July 20, 2020

Section 8:57-4.4 - Religious exemptions

(a) Each school, preschool, or child care center shall exempt a child from mandatory immunization if the child's parent or guardian submits to the school, preschool, or child care center a written, signed statement requesting an exemption, pursuant to the requirements for religious exemption established at 26:1A-9.1, on "the ground that the . . . immunization interferes with the free exercise of the pupil's religious rights."

1. The school, preschool, or child care center shall be prohibited from exempting a child from mandatory immunization on the sole bases of a moral or philosophical objection to immunization.

(b) Religious affiliated schools or child care centers shall have the authority to withhold or grant a religious exemption from the required immunization for pupils entering or attending their institutions without challenge by any secular health authority.

(c) Each school, preschool, or child care center shall retain a copy of the written statement set forth in (a) above in the child's immunization record.

(d) A school, preschool, or child care center may exclude children with religious exemptions from receiving

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immunizing agents from the school, preschool, or child care center during a vaccine-preventable disease outbreak or threatened outbreak as determined by the commissioner, Department of Health and Senior Services, or his or her designee.

(e) As provided by 26:4-6, "Any body having control of a school may, on account of the prevalence of any communicable disease, or to prevent the spread of communicable diseases, prohibit the attendance of any teacher or pupil of any school under their control and specify the time during which the teacher or scholar shall remain away from school."

1. The Department of Health and Senior Services shall provide guidance to the school on the appropriateness of any such prohibition.

2. All schools are required to comply with the provisions of 8:61-2.1 regarding attendance at school by pupils or adults infected by Human Immunodeficiency Virus (HIV).

(f) Those children enrolled in school, preschool, or child care centers before September 1, 1991, and who have previously been granted a religious exemption, shall not be required to reapply for a new religious exemption under 8:57-4.4(a).