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In The  
**SUPREME COURT OF THE UNITED STATES**

Marianne E Burke,  
*Petitioner*

vs.  
Criterion General and  
Alaska USA Federal Credit Union,  
*Respondents*

On Petition for a Writ of Certiorari  
to the Alaska Supreme Court

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED FOR REVIEW:

1. Was Workers' Compensation law and the cases of *Schiel, Wedmore, and White* involving mostly injury, misapplied to this case; a case that is about gross, even criminally negligent death in the workplace, where funeral expenses paid for the victim were labeled as a "significant benefit" by the Alaska Supreme Court?
2. Are the US and Alaska Constitutional Rights of average working Americans being denied in the workplace, like *access to the Courts*—as if the Bill of Rights says "you have all these rights to life, liberty and property, except in the workplace"? (Of course, it doesn't say that.)
3. Why is all of the burden of a workplace death being put upon the victim's family, where legal representation is almost obsolete, where "no consequence" laws in the workplace cause more accidents", and where all of the cost, time, and energy spent in seeking justice is carried by the victim's family?

## PARTIES TO THE PROCEEDINGS

1. The Plaintiff, Marianne E Burke- the mother and personal representative of the estate of deceased eldest daughter Abigail Caudle, files this complaint and action for the wrongful death of Abigail, as authorized under A.S. 09.55.580. Marianne has been of Alaska since 1996. The decedent, Abigail Caudle, was killed on the job at respondent Alaska USA Federal Credit Union, in Anchorage, Alaska. Abigail was a resident of Anchorage, Alaska since 1996.
2. Respondent Criterion General Inc. is an Alaska corporation and construction contractor, with its principal office domiciled in Anchorage, Alaska.
3. Respondent Alaska is an unincorporated association and federally chartered financial service cooperative with a principal office in Anchorage, Alaska, and is a registered "financial institution" under A.S. 06.01.050 in the state of Alaska.
4. Intervenor, due to this case's constitutionality, State of Alaska, Assistant Attorney General, Laura Wolff,.

## RELATED PROCEEDINGS

1. *Marianne E Burke*, (Mother of Abigail E. Caudle, deceased), Appellant, Pro Se vs. *Criterion General and Alaska USA Federal Credit Union*, Appellees  
**Alaska Supreme Court No. S-17766.**  
Denied Petition of Rehearing on 12/20/21.
2. *Marianne E Burke*, (Mother of A.E.C. decd), Appellant, Pro Se vs. *Criterion General and Alaska USA Federal Credit Union*, Appellees  
**Alaska Superior Court No. 3AN-18-09109.**  
Summary Judgment against plaintiff on 12/12/19.
3. *Marianne Burke*, Petitioner (Mother of A.E.C. decd), Pro Se vs. *Raven Electric Inc and Liberty Mutual Inc.*, Respondents; **Certiorari Petition to the US Supreme Ct, #18A164.** Pet of Rehearing filed~11/1/19; Denied (date?)  
|
4. *Marianne E Burke*, (Mother of A.E.C. decd), Appellant, Pro Se vs *Raven Electric Inc. and Liberty Mutual Insurance Inc.*,  
**Alaska Supreme Court No. S-16137.** Denied appeal of Workers' Compensation Appeals Board on 5/11/18.
5. *Marianne E Burke* (Mother of A.E.C. decd), Pro Se vs *Raven Electric Inc. and Liberty Mutual Insurance Inc.*  
**Alaska Workers' Compensation Appeals Board, Case # 201108827.** Denied Appeal of WC Board Decisn 8/18/15.
6. *Marianne E Burke* (Mother of A.E.C. decd), Pro Se vs *Raven Electric Inc. and Liberty Mutual Insurance Inc.*  
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IN THE SUPREME COURT OF THE  
UNITED STATES.

PETITION FOR WRIT OF CERTIORARI

Your Honors, I have petitioned you for Certiorari because I received No justice whatsoever for eleven years now, for the loss of my eldest daughter, Abigail Elizabeth Caudle who died on June 21, 2011.

I could not get a lawyer for most of these years because many of them had tried Workers' Compensation death cases to no avail. Many of them had loss much time and money and would not do it again.

Therefore, I had to work on this case by myself in the middle of great emotional anguish, to try to get some justice and to help prevent more workplace accidents going forward; that would honor my daughter's life.

It has taken me many years to be able to r read these Opinions with a little understanding; not having an attorney to explain these things has been very difficult, though.

It seems like I have had to unravel oone "scheme" after another. (Besides, they call it a Workers' Compensation "Scheme").

For example, my case against the employer was partially dismissed because I was not the "estate" representative. Yet, Workers' Compensation laws do not even mention the word "estate" once; they do not have the concept of "estate" in their laws. All of the right to sue is for the parents and the next of kin of the employee victim. Yet, it took me years to figure that out.

(The "estate" did come into the picture until the

Superior Court level; previous attorney Kevin Dougherty had me file to become Abigail's estate- but that had been later, after the Workers' Comp hearings.)

The continued misapplication of precedent law to my daughter's cases has been unconscionable. Yet, the courts are upholding these erroneous laws, I believe, for the protection of "big business". Nothing is protecting human life in the workplace. Therefore, more lives will be injured and destroyed; families devastated.

Abigail was killed by a horrible electrocution, a gross negligence accident on the part of the employer and the Respondents at the AK USA Federal Credit Union bank remodel job. This gross negligent accident was evidenced by 5 Serious Citations issued by OSHA to the employer, yet it also had to do with the carelessness of the Respondents General Contractor, Criterion General, and the bank, Alaska USA Federal Credit Union.

However, her death brought no consequence whatsoever for those culpable, except that their insurance company, Liberty Mutual Inc. paid \$11,200 to OSHA for the OSHA fine and for her funeral costs.

Alaska Workers' Compensation has no benefit for the death of a single person with no dependents, but that the victim's funeral costs are paid.

Therefore, those culpable did not pay a dime, to my understanding. They pay their Workers' Compensation premium, of which they have said in their filings *was* their liability. But does that give them a right to kill through gross negligence, without any price?

The funeral costs that were paid were just them "cleaning up their mess" in our family's mind.

Conversely, the respondents say that the funeral costs that were paid are supposedly a "substantial remedy" to us. I emphatically disagree.

Does this make any sense at all, legally, Your Honors, that a human life is lost in the workplace *unnecessarily* and that there is *nothing* to compensate for that life?!

Her case has been compared mostly to injury cases, like that of Schiel who lost a finger. Mr. Schiel, however, got benefits for his finger from his employer, and yet we got absolutely nothing for Abigail's complete loss of body, soul, and life.

This lack of justice for a death in the workplace, of course, does not give us any closure, nor create a precedent which will protect human life in the workplace going forward. This makes me very, very sad for people like Abigail and their families in the future.

The other cases as Wedmore and White in the Opinion (S-17766), are about the employer's liability. White says, "The duty of employers to compensate is absolute." Then, where is the compensation?

White also says: "complaint of a party belonging to one class may require an examination of the statute in both aspects," yet they the Court had applied the White case words that were meant for the employers to the case of my dead daughter.

"The compromise of the "whole" of the Workers' Compensation system should not be applied to the gross negligent death of an individual; otherwise, individual rights guaranteed by our Constitutions, are lost.

Yet, the respondents and the Alaska Supreme Court have applied these flawed conclusions to death in the workplace to devalue human life and to keep the Almighty Dollar in its highest position, I believe. Why? For Big Business, like the Oil Companies in Alaska where years ago, "bodies lined the pipeline", it was said in town.

The oil companies later came to the Alaska

legislature to get some immunity from liability and that's when SB 323 (2004) got passed. It extended "no liability" to the 3<sup>rd</sup> Parties, as well as to the employer. *No one is liable for a workplace accident, even a gross negligent one.*

I have tried to change the Workers' Compensation laws at the legislature, but there is ignorance and "the big boys" control there. (See APP 65)

I brought this case to you as a pro se' against the employer Raven Electric in 2018 (case #18-8191), although I was not granted certiorari.

I am asking for justice because I have been given No justice whatsoever, No due process, No access to the courts, No justifiable reason for my daughter's death.

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below:

## OPINIONS BELOW

ALASKA SUPREME COURT S-17766, Published November 5, 2021

ALASKA SUPREME COURT- S-16137 Published May 11, 2018

ALASKA SUPERIOR COURT 3AN-18-09109 Civ. Summary Judgement. Published Dec 12, 2019

## JURISDICTION

1. This civil action arises under A.S. 09.55.580, for the electrocution and wrongful death of Abigail Caudle. Marianne Burke is the mother of the decedent,

Abigail, and also serves as the personal representative of said estate.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. THE BILL OF RIGHTS of the *Right to Life*, Liberty, Property, the Pursuit of Happiness and Justice as depicted in Amendments V, VII, IX, X, XIV.

II. THE ALASKA CONSTITUTION—

- A. Article 1: The Inherent Rights, Civil Rights, Due Process Rights of Each Alaskan to Justice in Alaska Statutes.
- B. Employer's Liability for Negligence Sec. 23.25.010 in Chapter 25 of the Alaska Statutes.

III. CASE LAW-

- A. Arctic Structures, Inc. v. Wedmore
- B. Burke v. Raven Electric, Inc.,
- C. Bush v. Reid.
- D. Mullarkey v. Florida Feed Mills, Inc.,
- E. New York Central Railroad Co. v White
- F. Schiel v. Union Oil Co of CA;
- G. Taylor v. Southeast Harrison,
- H. Westphal v. City of St. Petersburg,

## STATEMENT OF THE CASE

### Background

1. At the time of her death, Abigail Caudle was a vibrant, loving, intelligent, and industrious twenty-six-year-old woman in full health. She was a first-year new apprentice, without journeyman electrician status or training.

2. At the time of her death, Abigail Caudle was working on the office renovation of Project Owner, Defendant Alaska USA Federal Credit Union at its offices situated at 4000 Credit Union Dr., Anchorage, Alaska on June 20, 2011. Defendant Criterion General Inc. served as the general contractor for said project, as described below. Abigail was employed by subcontractor, Raven Electric Inc.

3. Defendant, Alaska USA Federal Credit Union knew or should have known that its electrical panel schedules at the said office building at 4000 Credit Union Drive were *incomplete*, due to its prior renovations and its lack of compliance with the extant electrical code in 2011. Specifically, the panel that killed Abigail Caudle was not adequately marked by Alaska USA Federal Credit Union under its duty as an employer. (OSHA Citations, Exc 23-29)

4. Defendant Criterion General's supervisor David Peterson was recognized by Raven Electric employees as the on-site Quality Control person at the project site who would answer Raven (and other) employee questions. He also directed the scope of work to meet the Alaska USA Credit Union's owner demands for the project.

5. On the night of June 20, 2011 when Abigail Caudle was killed, Defendant Criterion General's supervisor David Peterson was present and gave work directives to the Raven crew. Criterion General had *not* provided Temporary Lights for the project, and Raven considered that said temporary lights were not in its scope of work, but rather were the responsibility of Criterion General. This lack of temporary lights led to use of the existing lights, which were not de-energized (*the circuit breaker was still on*), and were not locked out/tagged out, before apprentice Abigail was directed to work on these dangerous live-wire (energized) 277/480 volt light fixtures (OSHA Citations, Exc 23-29)

6. On the night of June 20, 2011, Raven Electric Supervisor J. Foster had not planned on the additional directives (above paragraph) that Defendant Criterion General's Supervisor requested to be performed by Raven's crew immediately at the said Alaska USA Federal Credit Union job site. Hence no plan, or time for a worksite plan for the immediate de-energizing of the dangerous lights, was made. Defendant Criterion's action and directives outlined in par 7 below, truncated the time for a responsible plan to de-energize said light fixtures.

7. Shortly after 7:00 pm on June 20, 2011, Criterion General's supervisor D. Peterson arrived on the job site and indicated to Raven's J. Foster that 'you need to demob lights in this other area so Criterion's crew can tear down sheetrock, and work over there so that you are not in the way'. Further, Raven's J. Foster indicated that Defendant Criterion had a big crew that were "gung-ho, to get going" to productively and cost-efficiently complete Criterion's work after 7 pm, under

the pressure of impending Over-time construction wage rates. [Foster Depo, Exc 30-36, esp pp. 34, 35].

8. Defendant Criterion had assumed the duty to assure that all electrical work on its projects on live-wire should be performed by

“qualified and licensed electricians. At no time shall any person except an authorized electrician work near live or potentially live power! All electrical work that is done by subcontractors for CGI shall at minimum follow OSHA ad NFPE 70E Safety Standards in accordance with the National Electric Code.” [Criterion Safety Manual Exc 41-50]

Defendant Criterion had assumed the duty to assure that all electrical work on its projects on live-wire should be performed under a pre-approved (by Criterion) work plan. To wit, Defendant Criterion General’s “Electrical Safety Program” expressly states,

*“When working with live power is unavoidable, electricians are to complete a work plan with PPE used, and provide to CGI (Criterion) safety for approval prior to completing work”. [Criterion General Inc. Safety Manual Exc 42].*

Yet no such work plan was made, given Criterion’s haste to get the crew working that night, in violation of its own Safety Manual and duty of care. [Criterion Safety Plan, Exc 42 and J. Foster re “pre-planning better”, Exc 32, line 21-22]

9. Defendant Criterion's duty to assure that a safe work plan is pre-approved for its job site, is stated at page 4 [Exc 47] of its Safety Manual, which reads, "*The core element for managing for health and safety involves the management strategy of Plan, Do, Check, Act*". Further, the Criterion Safety Manual states, "*Criterion General has an ethical, moral, and legal obligation to provide a safe and healthful workplace for employees and subcontractors*". *Id. p.4.* [Criterion Safety Manual Exc 47]

10. Defendant Criterion's own Safety Manual at p.86 [Exc 44] outlines Criterion's knowledge of the foreseeable danger of electrocution as a risk to all employees and subcontractors on its job site, in express terms,

*"Back Feeding a Neutral; When electricians performing work on an existing building circuit, and turn a switch off, but do not perform lock out tag out on the circuit. If the neutral line of the circuit is powered up somewhere else in the building by another circuit, then it may have enough amps to injure or kill the electrician. Even if the electrician uses a voltage tester, the amps will not show."* [Criterion Safety Manual Exc 44]

11. Despite the duty of care outlined in paragraphs 8-10 above, Defendant Criterion gave directives to remove the energized light fixtures, as outlined in paragraphs 4-9, in reckless disregard for the safety of apprentice\* Abigail Caudle and the other electricians.

12. The Alaska Department of Labor, Division of

Occupation & Health's Fatalgram 11-07 Report on Abigail Caudle's death stated;

*"The victim was a 26-year-old, apprentice electrician on her first day at this job. ... (The circuit breaker was not off at the time of the accident). ... Alaska Occupational Safety and Health investigated the accident. Based on the investigation, the victim was electrocuted while working on a shared neutral that had voltage back feed even though the \*wall switch controlling the circuit breaker had been turned off. ....". \*light switch [Fatalgram, Exc 37, 38]*

13. The Autopsy Report issued by the State of Alaska Medical Examiner states in its Final Pathologic Diagnoses that Abigail Caudle was killed and suffered by "I. Low voltage electrocution.

A. Apparent entry (of electricity) on right hand.

II. Blunt force injury of head with occipital scalp laceration."; "cause of death in this 26-year old woman was due to a low voltage electrocution".

The Autopsy report also showed that she was Not intoxicated. [Autopsy Exc 39]

14. Co-worker J. Foster stated that the victim, Abigail Caudle, was initially breathing after the electrical accident, was going in and out of consciousness, and possibly having a seizure. CPR was administered with defibulator but failed to resuscitate her. Abigail was pronounced dead at Providence Hospital at about 12:15 am on June 21, 2011.

Occupational Safety professionals indicate that

while high-voltage shocks cause immediate cardiac arrest, victims of low-voltage shocks (as reported herein) experience ventricular fibrillation. In the industry, this is called a "slow death"; people take a longer time to die.

First Cause of Action:

1. Defendant Criterion's breach of its duty of care, as re-alleged and incorporated herein from paragraphs 1-14 above, proximately caused the death of Abigail Caudle through Criterion's reckless indifference to its responsible duty stated in its own Safety Manual and Defendant Criterion's gross and outrageous negligence, resulting in said Defendant's tortious liability.
2. Defendant Alaska USA Federal Credit Union, breach of its duty of care, as re-alleged and incorporated herein from paragraphs 1-14 above (and para. 4 specifically), proximately caused the death of Abigail Caudle through Alaska USA Federal Credit Union's negligence, resulting in said Defendant's tortious liability.
3. The above-named Defendants are jointly and severally liable for the wrongful death of Abigail Caudle, as this court justly and lawfully so apportions.

## REASONS FOR GRANTING THE PETITION

John Dickinson said,

“Kings or parliaments could not give the Rights essential to happiness...We claim them from a higher source...from the King of kings, and Lord of all the earth. They are not annexed to us by parchments and seals. *They are created in us by the decrees of Providence*, which establish the laws of our nature. They are born with us; exist with us; and cannot be taken from us by any human power without taking our lives. In short, they are founded on the immutable maxims of reason and justice.”

Why does the value of human life in the workplace not mean anything to the courts?

The only priority is that of money; human life does not matter anymore.

This is what I have found to be true so far in the Alaska court system.

When I was at Oral Argument against the employer in the Alaska Supreme Court (case S-16137), Justice Daniel Winfree (now Chief Justice Winfree), told me to file suit against the 3<sup>rd</sup> Parties in the Alaska Superior Court.

It turned out that I was denied any justice at that court against the employer, any access to the court, any kind of renumeration for our family from the loss of my daughter by a gross negligent death in the workplace because of Workers' Compensation “exclusive remedy” clause where they cannot be sued in civil court.

Yet, if Abigail had been injured, there would've

been a huge payout settlement for her; thereby being a consequence to the employers through their WC insurance monthly premium that would probably have gone up.

But what about death? **Should no liability be extended to the employers when there is a death?** And what about a gross negligent death on the part of the employers? And worse still, what about a single person with no dependents who is killed by a gross negligent death on the part of the employers and all that is done is that the funeral costs are paid. Where is justice for that person and for their (our) family in our current Workers' Compensation system?

So far, there has been no justice whatsoever.

**Death in the workplace is essentially, legally ignored.**

Along the way against the employer as a pro se', Eric Croft told me, "We lawyers can't win. Maybe you can win, but we can't win." That's sad.

I followed the Justice's advice with a lawyer friend, Kevin Dougherty who said that he would represent me against the Third Parties pro bono, but only at the Superior Court level- he wanted to retire after that.

However, the Superior Court Judge Guido gave me no justice, though he admitted at the initial hearing that "someone had to be responsible her death."

No liability existed against the employer because of WC "exclusive remedy" clause, and I found out that no liability existed against the 3<sup>rd</sup> Parties (Respondents Criterion General, the General Contractor and the Bank, Alaska USA Federal Credit Union, the Project Owner), as well, because of SB 323 (2004), "the Seekin's Amendment": the "exclusive remedy" clause has been extended to them, as well.

So, No One is liable whatsoever for a workplace death; for my daughter's death. The employer, General Contractor and Project Owner were all culpable in many actions and in-actions to cause my daughter's death, as evidenced by the OSHA report, the Safety Narrative (Exh 1 of Croft Amicus brief,) the testimony in the OSHA report, and the OSHA Citations issued the employer.

To my understanding, the employer and the 3<sup>rd</sup> parties all paid absolutely nothing for their gross negligence that precisely caused my innocent, electrical *apprentice* daughter's death. No jail time to those culpable, no compensation to the family, no penalty for them to pay to the state or to a Safety Board. (Liberty Mutual, the WC insurer paid the OSHA fine of \$11,200, the hospital costs for the night that Abigail died, and the funeral costs. After that, her death was "swept under the rug".)

Abigail had no contributing cause to her own death. She was a top student in her electrical apprentice school, was not intoxicated, and followed her teacher and supervisor's orders. As an electrical *apprentice*, she never should've been on live wire and should've been supervised far, far better.

These are the 5 Citations issued the employer (and to the 3<sup>rd</sup> Parties by extension-- SB 323, 2004):

OSHA's 5 Citations; 4 Citations of which "contributed to Abigail's death":

- 1) CFR: 1926.21(b)(2) regarding Safety training and education
- 2) CFR: 1926.403 regarding Identification of disconnecting means and circuits.
- 3) 29 CFR 1926.416(a) regarding the Protection of employees.

- 4) CFR 1926.416(a)(3) regarding Protection of employees.
- 5) CFR 1926.417(c) regarding Lock out and tagging of circuits.

However, the Alaska Supreme Court case did not give me any justice at all, either. They cited various elements in their Opinion that I will address in this following certiorari brief.

Please realize that No other attorneys were willing to help me (although a few of them gave me a little of their time out of compassion) because it just isn't worth it for them when WC pays them so little, and they say that they have tried many WC cases to no avail. Many of them are bitter over the time and money that they have lost in trying to help a death victim's family.

The WC attorneys know how wrong the WC system is, but they don't know how to change it. They see victims like me all the time, getting little or no justice for their injury or death in the family.

The Amicus Curiae for the case against the employer, attorney Eric Croft, tried to help me some. I have included parts of his Amicus here because it was already published from the last case.

This case *needs to be heard*. People are being injured and are dying unnecessarily when there is no consequence whatsoever to the employer and 3<sup>rd</sup> parties in these states where "no liability" has been extended to all of them. This unconscionable, unconstitutional concept of workers receiving no justice for their lives in the workplace HAS to change for the common American.

Workers don't expect to be killed when they go to work one day, but this is what is happening when money is more important to business owners than

human life. An attorney even told me recently that the saying is that “it’s better if they die than that they are injured”. (It’s less payout by the insurer and ultimately less premium to the employer and 3<sup>rd</sup> parties!)

The public is not aware of this until it happens to them. They hardly believe my story of “no consequence” whatsoever for wrongful death in the workplace. I had to show a few of them the OSHA Report and Court documents for them to believe me!

Now, I proceed to answer my 3 questions that I state to Your Honors at the beginning of this Petition:

1. **The Alaska Supreme Court misapplied Workers’ Compensation law and the cases of Schiel, Wedmore and White to my case (S-17766) against the 3<sup>rd</sup> Parties.**
  - A. **The “Estate” in Workers’ Compensation law and Opinion, as applied to the plaintiff, is *not* an issue. There is no “estate” in Workers’ Comp law!**

The Alaska Supreme Court case against the Third Parties, AK USA FCU and Criterion General (S-17766), connected their Opinion with the case against the employer at the Alaska Supreme Court (S-16137).

In that case S-16137, I, the plaintiff was not granted access to the courts or *any due process*. This later Decision had dismissed the case partially because the me, Mrs. Burke, was not the personal representative of the estate of her own daughter, Abigail Caudle. (APP 8, 63)

Yet Workers’ Compensation (hereafter WC) does not even mention the word “estate” in their WC laws! Only the “parent” is mentioned as having legal rights to sue

throughout WC laws, including in Alaska Statute "Employer's Liability for Negligence", Chap 25. Sec. 23.25.010. (See p. 24)

The Amicus Croft said in his Amicus Brief, p. 17 that—

"It is equally illogical to read a requirement into the Act that the claimant must be the representative of the decedent's estate. *The Act does not generally use this concept.* (emphasis added)

Instead, certain benefits survive death and claimants make direct claims under the provision of the Act dealing with death claims.

<sup>1</sup> Ms. Burke claimed benefits as the mother of the injured worker. She made good faith, meritorious claim that excluding her from death benefits under AS 23.30.215s unconstitutional."

**B. *Schiel* was misapplied; *is about a small injury.***

Also, "Inadequate benefits of zero compensation and a funeral expense" (for death) might violate an employee's due process rights, *still stands.*

The *Schiel v. Union Oil Co of CA* in the last Opinion (S-17766) should prove for the plaintiff: The Schiel footnote states that "inadequate benefits of zero compensation and a funeral expense" for death might violate an employee's due process rights, *still stands.* (APP 11, 15)

Under this principal of law so quoted in the Schiel decision above, plaintiff asserts that such Due Process rights preclude any bar or deprival of her access to the courts in a civil action, given the inadequate

benefits of zero compensation and of *just* funeral expenses paid for Abigail Caudle's death.

Schiel *did* receive compensation, whereas this plaintiff has not had any compensation for the injury and, then, death of her daughter.

Schiel was about a finger lost, not about death. The comparison of these cases throughout these eleven years is actually a contemptuous mockery of the value of Abigail's life; there is no comparison!!

C. Only funeral expenses were paid, being labeled as a "significant benefit" by the employer and the Third-Party Respondents (by extension of Workers' Compensation law and SB 323, 2004).

Is burying a person whom you killed, due process? Raven Electric and the two Respondents were responsible for the death of Abigail, per OSHA Citations stated in APP 7)

All that has been allowed through WC law for a workplace death of a single person without dependents is that the funeral costs are paid (APP 9). No value for a human life is given. No consequence but a measly \$11,200 was paid for Abigail's life by the WC insurer, Liberty Mutual, Inc.

If the funeral expenses are *not* a "substantial and efficient" remedy, then there has been no due process given the grieving family.

That is why the other side argues so adamantly that the funeral costs are a "substantial remedy".

Some states do have some kind of remedy for the actions of the Third parties in workplace death, like Florida.

Quoting amicus curie Eric Croft again, p.12 of his

brief:

"In *Mullarkey v. Florida Feed Mills, Inc.*,<sup>85</sup> the Florida Supreme Court upheld the constitutionality of an exclusive dependency death benefit. A key reason the Florida law was upheld was the availability of a tort remedy against non-employers. "Additionally, even when on the job, injury or death resulting from the negligence of a third-party tortfeasor gives the employee or his survivors and representatives full right to initiate a tort action. Recently, the Florida Supreme Court cited *Mullarkey* in its decision holding unconstitutional a blanket 104-week limit on TTD benefits. *Westphal v. City of St. Petersburg*. Like Alaska, Florida recognizes a right of access to courts. To withstand constitutional challenge, the workers' compensation system must provide a "reasonable alternative to tort litigation". (emphasis added)

The "reasonable alternative" test is then the linchpin and measuring stick, and this Court has undoubtedly upheld as constitutional many limitations on workers' compensation benefits as benefits have progressively been reduced over the years and the statutory scheme changed to the detriment of the injured worker.

But, there must eventually come a "tipping point," where the diminution of benefits becomes so significant as to constitute a denial of benefits -- thus creating a constitutional violation. *Id.* at 323. (emphasis added)

A concurring justice, advocating for declaring the entire Florida workers' compensation system unconstitutional put it simply: "the charade is over . . . Enough is enough, and Florida workers deserve better."<sup>88</sup> *Id.* at 329 (Lewis J., concurring) from 268 So.2d 363 (Fla 1972)

All employees and their families deserve better in our Great Nation.

D. *Schiel, and Wedmore, were about injury, not death. In White, the widow did receive compensation for her husband's death.*

In APP 18, the Opinion (S-17766) says "In Wedmore a subcontractor's **injured** employee sued companies..."

The Alaska Court continues, "The companies argued they had been deprived of access to the courts 'to raise the defense of the employer's negligence' because of the combination of several doctrines, including exclusive liability." In these APP pp (18-21) the Court continues to argue for the respondent's side yet Wedmore is about company liability and not that of liability of the injured man.

Wedmore states "that a substantial and efficient remedy remain [] available or that one be provided." (APP 19), yet the Court still fails to give us a "substantial and efficient" remedy. The hospital and funeral costs paid by the insurer was the *taking* of our beloved daughter. It was in no way a benefit or compensation for that life lost. Nor was the "substantial and efficient" "remedy" of funeral costs paid, *any kind of* a consequence for the gross negligence that caused

Abigail's death. This lack of remedy invites more accidents and death in the workplace.

With White, it says, according to <https://supreme.justia.com/cases/federal/us/243/188/>, "He who assails a statute as unconstitutional must show that his right is infringed by it;" I have stated the inequities many times about the 2004 Amendment and the "exclusive remedy" clause of WC.

That same sentence from White continues, "where, however, a statute so regulates the correlative rights of two classes -- as employers and employees -- that, if void as to one it must be void as to the other, complaint of a party belonging to one class may require an examination of the statute in both aspects." Yet the Court has not examined the effects of this case to that of gross negligent death; it is applying the concept of "whole" meant for the employer's side to that of the victim's side.

You cannot compromise the value of life, as the "whole" WC "borg" system. Otherwise, you end up taking body parts off of that person or you sacrifice the whole individual. This compromises our individual Constitutional rights and is therefore, unlawful.

White also says, "The duty of employers to compensate is absolute." Yet the Court has given us no compensation. Funeral costs are not compensation; they are that of the culpable "cleaning up their mess".

**E. This was *gross*, even *criminally negligent homicide* as evidenced by the OSHA Citations given to the employer, the wrong actions and inactions of the Third Parties; Criterion General and Alaska USA Federal Credit Union.**

Additionally, this needs to be addressed or

**more injuries and deaths will occur by these negligent companies and employers nationally.**

**WC has taken away the responsibility for literally all workplace accidents.**

In the beginning, when I had talked with some lawyers, one of them said, “Well, if the employers had came at Abigail with a baseball bat, then that would be *something (sue-able)*.”

Why are the Courts not making the connection with gross negligence in the workplace and drunk driving or texting while you’re driving?

And why, then are there so many “laws on the books” to help *prevent* gross negligent accidents from happening?!

Criminal Negligence is defined as:

“...the criminal negligence standard, described as “aggravated, culpable, gross, or reckless conduct that is such a departure from what would be the conduct of an ordinarily prudent or careful person under the same circumstances as to be incompatible with a proper regard for human life.” [www.Nolo.com](http://www.Nolo.com) (emphasis added)

“Gross negligence” is defined in Black’s Dictionary as “an intentional or willful failure to perform a clear duty, recklessly disregarding the consequences of injury to person or property that attend such failure.”

All of these definitions sure sound like the negligence listed in OSHA’s 5 Citations, as well as the negligence listed in Statement of the Case done by the General Contractor and the Bank.

**LARSON Workers' Compensation Principles-**

The Substantial certain rule: "liability of the \*employer *cannot*, under the almost unanimous rule, be stretched to include accidental injuries caused by the gross, *wanton*, willful, deliberate, intentional, *reckless*, or *culpable misconduct of the employer* short of a conscious and deliberate intent directed to the purpose of inflicting an injury."

The 3<sup>rd</sup> Parties are culpable with the \*employer (above), due to SB 323 (2004); their liability being under the same "umbrella" as the employer.

Additionally, Worker Comp payout is negligible; **it has not risen in Alaska in payment to the victims for over 22 years for injuries and some deaths.** This needs to be greatly raised for victims' families, especially considering inflation skyrocketing since over 22 yrs ago!

Also to Note: with less payment in benefits to victims and their families, there is, of course, less cost in WC insurance premiums to employers and therefore, less *deterrent* for careless employers.

They are, in essence, paying practically nothing for all of the injuries and deaths in the workplace.

There is, then, less penalty monetarily for them to want to be more careful, to buy the extra safety equipment, or to supervise better when there is so little consequence to do so.

**F. The Employer and Third Parties ARE LIABLE, according to Alaska Statutes Title 23. Labor and Workers' Compensation, Chap 25. "Employer's Liability for Negligence" and according to the public or a "reasonable person".**

The Alaska's "Defective Machinery Act", Chap

25. is titled “Employer’s Liability for Negligence”, and is quoted as the following Alaska law:

**“Sec. 23.25.010. Liability to employees for defects or insufficiency of machinery.**

“A person engaged in manufacturing, mining, constructing, building, or other business or occupation carried on by means of machinery or mechanical appliances is liable to an employee or, in the event of the employee’s death, to the employee’s personal representative for the benefit of the employee’s surviving spouse and children, if any, or if none, then for the employee’s parents, or if neither surviving spouse, nor children nor parents, then for the employee’s next of kin dependent upon the employee sufficiency, *for all damages that may result from the negligence of any of the employer’s officers, agents, or employees, or by reason of defects or in- due to the employer’s negligence in the machinery, appliances, and works.*” (§ 43-2-51 ACLA 1949; am § 85 ch 127 SLA 1974)

Liability of a dangerous death is spelled out in simple language with the employer, contractor and project owner being *liable*.

So why did this Alaska law not apply in Abigail’s case? It is a workplace statute-- and yet, it has been explained away legally, or is that really, politically?

To the public, Chapter 25 regarding employer liability (above) is the first main law that they see when they open up the Alaska Workers’ Compensation Laws

and Regulations Annotated LexisNexis 2012-2013 edition book on page 8.

Workers' Compensation *implies* liability on the part of the employer but it is *not substantiated* in real, live law!!

A "reasonable person" knows that an enormous injustice has been done and that this injustice needs a remedy!

Thomas Jefferson said that "Every government degenerates when trusted to the rules of the people alone. The people themselves are its only safe depositaries." (emphasis added)

The average, informed person is our judge, and they cannot believe that a workplace death is not given any justice whatsoever.

**G. Wedmore and White were from the perspective of the company, not the individual, and were, therefore, misapplied to this case involving gross negligent death.**

The Alaska Supreme Court argued in their Opinion regarding *New York Central Railroad Co. v. White* (APP 20) that "the US Supreme Court has long held the view that '[n]o person\*' has a vested interest in any rule of law, entitling him to insist that it shall remain unchanged for his benefit."

But that "person" was an employer arguing about liability and that of paying out or not paying out benefits for an employee's death! (see p. 16 above)

The Court says on p. APP 20:

"Considering the Act as whole, we hold that the 2004 amendments do not violate the Estate's

procedural due process rights because the remedy the Act provides, while small, is consistent with the purpose of worker's compensation and affords the Estate some remedy,"

Are you kidding me? Not only are they-

- misapplying a concept meant for the employer,
- taking away an individual's right to access the courts thru the 2004 amendment,
- insulting the purpose of WC where an individual is *not* protected nor taken care of,
- asking individuals to give up their bodies for the "whole system" of WC,
- but they're saying that we were given *some* remedy?!

How can the funeral costs be considered a remedy, in ANY respects?! This is adding insult to injury!!

If the statements above *did* apply to a person, like that of Abigail and her life, then they would negate Abigail's Constitutional rights of "life, liberty and property; the pursuit of happiness and her own career."

Additionally, the Alaska companies are already immune from lawsuits because of WC's "**exclusive liability**" clause **extended to ALL companies with the 2004 amendment**, so this ruling was just deciding about the "icing on the cake" of less liability (or not) for the un-sue-able employer.

I have stated many, many times in these cases all of the damage that has been done to us, Abigail losing her life, and the lack of prevention that a "no liability" system causes. This IS standing up to White's principle

of "He who assails a statute as unconstitutional must show that his right is infringed by it."

These cases are *not* looking at the side of the individual, the one who died or the family that the death affect; **they are twisting decisions made in Workers' Comp to the protection, again, of Big Business, and always to their benefit of "no liability".**

*Misapplying Wedmore and White* to an individual when it was about employer liability is unlawful, morally wrong and steps into no consequence for careless companies. Applying "apples to oranges"; when they are completely on opposite ends of the WC spectrum is not ethical legal reasoning.

Consider this: would employees as a "whole" feel safer knowing that employee victims like Abigail who were wrongfully killed and not given any justice in WC, somehow better protects them? Of course not.

Not looking at the individual who was harmed is also not looking at the consequence of an individual action that caused the death-- the companies' liability.  
There is, then, No Justice.

Workers' Comp really only protects the employer & 3<sup>rd</sup> Parties because they have NO CONSEQUENCE for their wrong doing.

The Alaska Justices have explained away justice and are not thinking in common sense.

And Abigail's case is about Death that is FINAL; it is not about injury!!

H. "No rational" exists, I believe, for the 2004 Amendments, where *no one*, then, is liable for workplace accidents, especially that of gross negligence accidents causing death.

The AK Supreme Court argues on APP 22 that "the party challenging the statue on substantive due process grounds must "demonstat[e] that no rational basis for the challenged legislation exists."

Well, of course no "rational basis for the challenged legislation exists when WC give No Value for Human Life killed wrongfully in the workplace!

I, the plaintiff with previous Attorney Kevin Dougherty, in my Alaska Supreme Court brief filed 8/31/21, p.22 "disproved" that Schiel, involving a finger injury, had *any* validity in this case involving death:

"the Alaska Supreme Court's Schiel decision recognizes the important constitutional distinction between Mr. Schiel's case, wherein he was provided a 'substantial' remedy under Worker Compensation, in contrast to "inadequate benefits that could violate a workers' due process rights."

I'm sure that Schiel *had* more payment for his lost finger than Abigail had in losing her whole body and her whole life!!

The plaintiff "disproved" absolutely in these cases the idea that funeral costs were in *any way* a "substantial remedy" for the loss of life of her daughter.

I. A "substantial and efficient remedy" has Not been given for Abigail's life, therefore there has been No Due Process.

The Alaska Supreme Court admits that "due process *does* require that a substantial and efficient

remedy remain(s) available or that one be provided when a pre-existing defense is statutorily limited.” (APP 18)

Yet, they offset this right in legal jargon and unrelated court cases, like in comparing this case to losing a fishing license (APP 17) and in comparing this case to that of companies arguing about liability that they don’t want with injury cases. They have misapplied statutory law to protect themselves and to demean the value of human life in the workplace.

**Paying the funeral costs of someone that your company killed is *not* a substantial and efficient remedy for that loss of life.**

Quoting the AK Supreme Court decision, again on APP 23, “The State contends that the Estate’s substantive due process claim is controlled by Schiel.”

**But Schiel was about the loss of a finger, not about Death!** There was No Substantive remedy for the loss of life in this death case. How can they compare the two cases: applying “loss of a finger” case to a gross negligent *death* case?

There is no comparison; it is Bad Law.

**J. The Sloppy workplace accident actions or inactions are the “factual information” that the AK Supreme Court references in their Opinion, I believe.**

More accidents will continue when there is no consequence to negligence in the workplace.

The AK Supreme Court argues (APP 24)-

“To succeed on its claim the Estate was required to provide factual information that generally disproved the justification for the [2004] amendments....We recognize

that work-safety violations contributed to her death, but Raven's failure to follow safety standards in this instance does not demonstrate that the legislature's expansion of the exclusive liability defense will not further workplace safety more generally."

Really? No liability by both the employer and the Third Parties *won't* cause more accidents to occur, when no one is liable? Are you kidding me?

Then, let us, hypothetically, get rid of all punitive law because it won't affect change in those who would be dangerous! Does that sound like Good Law? Of course not!

Laws protect us because they bring boundaries of consequence when we cross the line of the law, enabling society to stay relatively safe.

Additionally, "factual information" as stated many times in these cases, was that Criterion General-

- did *not* follow their own safety plans,
- did *not* supervise Abigail properly,
- *did not* check that the Journeyman had his temporary lights when they ordered him to "debob the lights", so that the circuit breaker would be turned off!

The bank had inaccurate electrical panels and a live neutral in the junction box coming in from a previous careless remodel job where Abigail was working. This is what she touched that caused her electrocution.

Abigail's gross negligent accident and others like

it *are* the “factual information” to prove the “legitimate” problem of “no liability in the workplace. NO COMPANY HAS TO BE SAFE with their employee’s lives when there is No Liability, as extended to them in the 2004 Amendments.

This, along with Workers’ Compensation “exclusive remedy” clause *causes* gross negligence in the workplace. Previous cases get no justice and zero or very little benefits, conditional upon “dependency”. Thus, there is no protection for life in the workplace; no precedent is set to warn off “would-be” careless employees!

Safety is touted in the workplace, but sloppy employers don’t care about safety when they don’t *have* to be held responsible! Safety just costs them extra money.

The Workers, then, bear the Risk in the workplace.

Sloppy workplace accidents *are* the “factual information” that the Court references, although I have not understood this, until more recently when I have gotten some distance in years from my daughter’s death and have been able to better understand these things legally.

K. WC protection for businesses in the concern for “double dipping” was misapplied to us. (APP 9, 23). *Truly, there is no chance of “double dipping” when all that was paid for my daughter’s life was that of funeral costs.*

That funeral amount is a mere drop in the bucket of what an ethical court of common-law-justice would grant for the loss of human life. There was no “significant remedy” to begin with, so there is no chance

of "double digging".

I believe that this is another "game" of the opponent- to get the Court's eyes on us possibly "double dipping" when the cases are really about the employers' sloppiness that caused the loss of Abigail's life; a life which has not been in anyway justified.

Companies don't have to be careful when there is no consequence for their gross negligence.

*Employers buying Workers' Compensation insurance should not be a license to kill an employee!*

**II. Our Constitutional Rights of average working Americans are being denied in the workplace, like *access to the Courts*.**

**A. There is no access to the Courts, which is Unconstitutional.**

The victim's family could not go to court against the employer or the Third Parties because of Workers' Compensation "exclusive remedy clause" at the Alaska Supreme Court case against the employer (S-16137) and again at the Alaska Supreme Court (S-17766) against the Third Parties because of legislature extension of the WC "exclusive liability"; AK SB323, 2004. This law reads as follows:

**ALASKA STATE LAWS and STATUTES**

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215.

If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to

employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

But then, now, NO ONE is liable for workplace deaths or injuries! No one is held accountable.

Quoting from previous attorney Kevin Dougherty in his "Memorandum of Law of Plaintiff Burke in Support of Her Motion for Summary Judgment Asserting Her Alaska Constitutional Procedural Due Process Protection in Her Wrongful Death", 3AN-18-09109 Civ, dated 5/28/19, p. 4:

*"In Bush v. Reid, we recognized that the due process clause of the Alaska Constitution contains within it a right of access to the courts. Although this right of access may not be a fundamental right ... [it] is an important one. Our case law has clarified that this important right is more expansive than that provided by the federal constitution and applies to suits for property, but is ordinarily implicated only when a legislative enactment or government action erects a direct and insurmountable barrier in front of the courthouse doors.".* (Citations Omitted.) (Alaska 2007) at 1130/

Attorney Dougherty continues on p. 7:

*"we hold that Schiel's right of access to the courts is not infringed by the 2004 amendment to the worker compensation act because he still had a*

*substantial and efficient remedy available.”*  
*Schiel v. UNICOL*, 219 P3d 1025 (Alaska 2009) p. 6436

Here we respectfully trust that the vivid distinction is clear. Schiels' receipt of substantial worker compensation benefits for a hand injury stands in stark contrast with zero compensation paid to the family of Abigail for her death. Thus the *Schiel* court's protective statement that “*at a certain level, inadequate benefits could violate a worker's due process rights*” is well triggered here for the protection of Caudle's estate.”

Attorney Dougherty filed a Reply to the above Memorandum on 6/30/19, p.4 stated:

“We held in *Bush v. Reid* that the Due Process Clause of the Alaska Constitution encompasses a right of access to the courts. Article 1, section 7 of the Alaska Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.” Quoting *Schiel v. UNOCAL*, *supra*

I was denied access to all civil courts, including the Alaska Superior Court, where I might've gotten a jury and trial by my peers!

I declare All of my United States of America and Alaska Constitutional Rights!

Amendment VII says that “*At suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,*

"Common Law is the Law of the Land. It has been the basis of all law since the dawn of time. It is the law decided on by the people, a community, or a nation that they decide on as a whole.

Common Law is also known as God's Law, Natural Law, and the People's Law."

Source: <https://commonlaw.earth/what-is-common-law>

**Abigail's life, human life, was certainly worth more than twenty dollars!**

I was not offered a trial in any of my cases, as the 7th Amendment guarantees. Why is *that*?

Amicus curie Eric Croft said that having no legal access to the courts against the employer OR the Third Parties leaves the victim's family with no legal remedy, No Due Process.

Quoting Attorney Eric Croft from his Amicus brief p.22 of S-16137 on 3/28/17:

#### **"LEGAL ANALYSIS**

**LEAVING ABIGAIL CAUDLE, NO REMEDY VIOLATES DUE PROCESS.**

This Court has recognized and reaffirmed that Alaskans have a due process right to access to the courts.<sup>1,2</sup> The facts of Abigail's death fall into the donut hole between two legal holdings by this

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<sup>1</sup> Schiel v. Union Oil co., 219 P.3d 1025 (Alaska 2009); Bush v. Reid, 516 P.2d 1215 (Alaska 1973)

<sup>2</sup> P.2d 1160 (Alaska 1985)

Court that attempt to balance various tradeoffs in workers' compensation. The combination of the 2004 amendments, denying her family a remedy against the potentially negligent non-employers, and the lack of any remedy under the Act combine to deprive Abigail's relatives any substantial remedy for their loss. Marianne, acting on Abigail's behalf, is denied her due process right of access to the courts."

Amicus Croft continues about Mrs. Burke having no due process on p. 24-25:

While *Taylor [v. Southeast-Harrison Western Corp]* stands for the proposition that even inadequate death benefits can be justifiable as part of the overall compensation plan, it was decided in the context of the right to pursue tort remedies against non-employers. Abigail's case asks us to confront the intersection of this inadequate remedy with the 2004 bar on suits against general contractors and project owners. **Taking away the right to seek recovery from entities outside the employment relationship can only be justified if the workers' compensation system provides an adequate remedy.** Schiel, 219 P.3d at n.63.

The facts of Abigail's death, while only partially developed, show that we are at the factual intersection of these two cases. Amicus submits that there is no substantial evidence of any fault on Abigail's part, clear evidence of fault by Raven, and the distinct possibility that the actions of Criterion and Alaska USA contributed to her death. Abigail had very little experience or

training, but appeared to use the equipment she was provided in the manner she was taught. There is no evidence of her misconduct or other fault. Raven was rightly cited for violations including providing an inadequate non-contact tester and other errors. Criterion and Alaska USA may well have contributed to the death by changing the work requirements without sufficient time to perform them safely and by failing to adequately maintain other electrical portions of the work site.

**Marianne, acting on behalf of Abigail, has no substantial remedy for these actions. She has no recovery against Raven because of the exclusive dependency limitation in the Act. She has no recovery against Criterion and Alaska USA because of the 2004 amendments. The combination violates her right to a substantial remedy under the Alaska Constitution.** (emphasis added)

**B. “The Act explicitly permits lawsuits against uninsured employers and any third party who may be liable...” is a false argument.**

Referencing respondent's argument on APP 14 of the Opinion (S-17766), **victims having the right to sue employers who do not have WC is a false argument** when all valid employers are required to carry Workers' Compensation Insurance.

Hypothetically again, should an employee, then, see out an employer who does not want to follow the state laws of paying Workers' Comp insurance? Of course not.

And a young employee wouldn't know to do that, unless maybe they had read and understood cases like this-- very highly unlikely!

**C. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Amendment X"**

Amendment V: "No person shall...be deprived of life, liberty, or property without due process of law;" I lost consortium- "relationship *ownership*" with my daughter.

James Madison said that "\*Property...embraces everything to which a man may attach a value and have a right.... He has a property very dear to him in the safety and liberty of his person.

I lost my property- my daughter, an entitlement that I possessed. This *right* lost, again, violated my rights to "life, liberty and property", as well, as of course, Abigail's right to the property of her life.

Amendment IX says that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

I received No Due Justice for my daughter's life.

Amendment XIV says that "No state shall make or enforce *any* law which shall abridge ("reduce or diminish"- Black's) the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to *any* person within its jurisdiction the equal protection of the laws."

**D. The Bill of Rights does *not* say that “you have all these rights except in the workplace”.**

Our USA and Alaska Constitution guarantee our rights to “life, liberty and property”, yet they are being nullified by Workers’ Compensation laws and connecting Alaska Court system laws.

I believe that the US and Alaska Constitution support my claim to “life, liberty and the pursuit of happiness” EVEN IN THE WORKPLACE! There is no exception given in our Constitutions that this *right* does not apply in the workplace!

**The ALASKA CONSTITUTION:**

**Article 1. Inherent Rights**

“This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.”

**Article 1·Declaration of Rights/ Civil Rights**

“No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.”

Should this say, “if they are employed or not employed”? Of course not. (See Amendment IX). Yet, Abigail’s life was discriminated against because she was employed and under Workers’ Comp.

I believe that Workers' Comp has become the new subject of discrimination.

Jay M. FEINMAN in his book, Law 101 says "Everything the government does is bounded by the Constitution." (p.9. par 2, line 1).

**III. All of the burden of a workplace death is being put upon the victim's family,**

**A. Our family needs *some* kind of justice for Abigail's life; *some* kind of change in the law to protect human life. That would make somewhat of a difference for what has happened in the last 11 years.**

Our Constitutions guarantee the protection of Life. Amendment V and XIV: No person...shall be deprived of life, liberty, or property, without due process of law."

**The Declaration of Independence:**

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

So, what has happened to our Constitutional Rights in the midst of Abigail's injustice?

**B. Legal representation for WC death cases is about obsolete when lawyers do not get any money from representing Workers' Comp-**

**sation death cases.**

After Abigail died, months later, I went to talk with lawyers and to try to find someone to represent me with this case. I talked with about 30 of them- the opposing side has seen this attorney list at the AK Superior Court level.

I could not get any representation, so I struggled as a pro se' most of these 11 years.

I had to figure out all of the Workers' Comp legal "schemes" to try to unravel why we were not getting any justice for Abigail's death. Not having a lawyer most of the time has been a huge deficiency to my case, not making this a very fair case through all of these years.

**C. All of the cost, time, and energy spent in seeking justice is carried by the victim's family.**

I have probably spent at least \$20,000 in going and coming from Juneau to try to affect change in the legislature when the courts weren't giving me any justice, professional and non-professional briefs, and in court fees since Abigail died.

There was no compensation for me not being able to have a job or outside work since the passing of my daughter and these correlating ongoing cases.

There was no compensation for the hundreds and hundreds of hours my time in research, typing and work for these last 11+ years.

There was no compensation for lost years, diminished health, or less zest in my life. My daughter's death has taken its toll.

**D. There has been *no emotional consideration* of the**

**value of Abigail's life.**

I will *never* have grandchildren from my daughter who is now deceased, my nieces and nephews will never meet their aunt in this lifetime, my children will never see their sibling again, the grandparents will never see their granddaughter again, I will not see my daughter again, Abigail's friends have not been able to see her again, her church cannot explain *morally* how Abigail lost her life, and Abigail will *never* be able to fulfil her purpose in life by becoming an electrician, a mother, an aunt, a grandmother, and an intracell part of her church and of society.

**E. Do you have any idea of how difficult it is to work on a case when it is about your own daughter's death, and the lack of value given to her life through your own state's legal system?**

Lawyers won't work on these WC cases when they get so little or nothing at all at the conclusion of their cases- many of them have told me this.

That left me to work on these cases all these years as a Pro Se, trying to figure out what these opposing lawyers were saying and what the Court Decisions were talking about. Yet, I couldn't even read the information or the Decisions sometimes for months because it talked about my own daughter's death and lack of value for her life.

Incidentally, the AK Supreme Court case S-16137, APP 36 was incorrect at the 9<sup>th</sup> line:

“ ‘BURKE: — not as a mother [sic].’ ”

That should have been, “**as the mother**”, *not* “*not*

as the mother! I could hardly read the Decision at the time, let alone know my rights that I could correct it.

Also, in the words above these, in the Opinion, I was flustered because **there was no estate; Abigail had no estate!** Her simple, few things had been sold and dispersed. I didn't know why they kept asking me this.

Over and over and over again, working on this case was like approaching a stove and getting burned while I tried to study and proceed through these cases. You have no idea of the trauma that this has brought me all of these years, but this case *had* to be fought for the value of Abigail's life and for others like hers going forward.

God has helped me many, many times throughout these years. At least I had Him, and some Dear family members to support me.

## CONCLUSION

Your Honors,

The Bible says, "Let Us make man in Our image, according to Our likeness." (Genesis 1:26)

But the value of human life has been lost in the workplace.

I believe that we have a de facto Workers' Compensation governmental system that is not according to the US Constitution. It does not uphold Life, Liberty, Property or the Pursuit of happiness.

I am asking for death benefits for my daughter's life and a change to the Workers' Compensation system to make employers and Third Parties liable for gross negligence deaths, OR to take Death completely out of Workers' Compensation and back into tort law where it

belongs. Otherwise, there simply is no justice for a life killed unnecessarily in the workplace.

Your Honors, If you do not pick up this case for Oral Argument, then I believe that many, many more lives will be lost to horrific deaths, like my daughter's.

We miss our daughter so very, very much and wish for justice of her dear life. Nothing could replace her life, but if there was change across the nation to make workplaces safer, that would mean an immense amount to us for justice of her life.

Thank you, Your Honors for listening to my plea.

Marianne E. Burke, pro se  
Mother (biological) of Abigail E. Caudle.

July 22, 2022

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I Certify that my word count, including footnotes, From the Statement of the Case to right before this sentence is 8994 words (July 24, 2022).

*Marianne E Burke* *(Signed online)*  
Marianne E. Burke,