

CAUSE NO. 19-0760

IN THE
TEXAS SUPREME COURT

In Re Ashley P. and Daniel P., individually and
as next friends for KDP, a minor,

Relators

Original Proceeding from Cause No. 102,717-CC
in the 422nd Judicial District Court
Kaufman County, Texas

**BRIEF OF TEXAS HOME SCHOOL COALITION,
AS AMICUS CURIAE
IN SUPPORT OF RELATORS' PETITION FOR MANDAMUS**

Cecilia M. Wood,
Attorney and Counselor at Law, P.C.
State Bar No. 21885100
1122 Colorado Street, Suite 2310
Austin, Texas 78701
Tel: 512-708-8783
Fax: 512-708-8787
Cecilia@ceciliawood.com

ATTORNEY FOR AMICUS,
TEXAS HOME SCHOOL COALITION

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STATEMENT OF INTEREST

Amicus Curiae, Texas Home School Coalition, is a nonprofit organization committed to preserving the fundamental rights of parents to raise their children without unwarranted and unnecessary government interference.

As a part of that mission, Texas Home School Coalition works significantly in the Child Protective Services (CPS) arena. Texas Home School Coalition has drafted, and been instrumental in passing, major legislative reforms in the Texas CPS system. In response to numerous experiences of Texas Home School Coalition member families being contacted by CPS, Texas Home School Coalition assists those families in obtaining legal representation through various sources, including financial assistance and access to volunteer attorneys. This has resulted in the resolution of fifty-nine (59) cases since 2014, with 14 more currently in progress.

Texas Home School Coalition's mission is to keep Texas families free by protecting the constitutional right of parents to raise their children, which explains their significant interest in defending against the constitutional claims that Plaintiffs assert here.

To accomplish that goal, Texas Home School Coalition has retained Cecilia M. Wood, Attorney and Counselor at Law, P.C. to file this Amicus Brief in Support of Relators' Petition for Mandamus and exclusively paid all legal fees and costs associated with the provision of those services.

Texas Home School Coalition has invited a group of like-minded legislators and non-profit groups, with similar concerns and values, to support this action. Those signers, who are not represented by amicus counsel, but have provided their signatures contained in *Appendix A*, include a bipartisan group of twenty-two Texas state senators and representatives, along with four prominent, statewide advocacy organizations.

ISSUES PRESENTED

- I. FAILURE TO FOLLOW THE LAW DEPRIVED KDP AND HIS PARENTS OF DUE PROCESS.
 - A. The Rights of Parents and Children Are Aligned and Entitled to Due Process Protection.
 - B. The Due Process Clause of the Fourteenth Amendment Protects These Rights.
 - C. Any Intrusion into The Family Must Be Reviewed Under the Strict Scrutiny Test.
 - D. Courts Function as Referees to Balance Parents' Fundamental Liberty Interests and the Compelling State Interest Within the Parameters of the Law.

II. PENALIZING A SURVIVOR OF DOMESTIC VIOLENCE IS BAD POLICY AND CONTRADICTS OTHER GERMANE STATUTES.

III. THE NEED FOR MANDAMUS IS MAGNIFIED IN A TERMINATION CASE.

A. Parental Rights Can Be Terminated Without Any Evidence of Abuse and Neglect.

B. The Inclusion of a Gag Order in the Temporary Orders Was Unconstitutional.

C. The Temporary Orders Are Void for Lack of Jurisdiction.

STATEMENT OF FACTS

Texas Home School Coalition adopts Relators' Statement of Facts for the purpose of this brief.

SUMMARY OF THE ARGUMENT

Parents are the natural protectors of their children. The intimate nature of the relationship between the parent and the child, developed through the conception, birth, and daily attention to the child's every need, creates a peculiar bond that enables the parent to make the best decisions for their own unique child. This is a phenomenon that has existed since the beginning of time. Like all of nature, it is subject to flaws and may succumb from time to time to frailties in human nature. Yet, as designed, it is the best environment for the nurturing and development of children.

Our society is dependent on the preservation of strong families, where children are nurtured and prepared for future obligations. *See, Prince v. Massachusetts*, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944). The vital, mutual benefits to both the family and the state explains why protection of the fundamental liberty interest of parents in raising and making decisions for their children is so deeply rooted in both our federal and state jurisprudence. *See, Troxel v. Granville*, 530 U.S. 57, 68, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972); *Wiley v. Spratlan*, 543 S.W.2d 349 (Tex. 1976). *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Accordingly, the natural right existing between parents and their children has been and should continue to be recognized as “essential” and “a basic civil right of man.” *Holick*, 685 S.W.2d 18 (quoting, *Stanley*, 405 U.S. 645).

Increasingly, the inalienable, fundamental rights of parents to raise, guide, direct, educate, and make decisions regarding the best interest of their children is being eroded, diminished, and assaulted by relatives, educators, live-in-lovers, and, as in this case, medical professionals and the government. This prevalent trend to ignore the constitution and deny these citizens due process is disguised in the mantra of “best interest of the child”.

It has created a deluge of lawsuits that may be good for interlopers, bureaucracies, child abuse medical units, psychologists, social workers, and really good for lawyers. Tragically, these lawsuits are unnecessarily burdensome and distracting for families and devastating to childhoods. *See, In Interest of H.S.*, 550 S.W.3d 151, 164 (Tex. 2018) (Guzman, J. dissenting) (“One thing is certain, however: the instability, ill-will, and financial burdens of litigation are detrimental to the child's well-being and harmful to familial relationships.”). A person who would otherwise be considered a busy body or even a kidnapper is safe as long as that person clothes their actions in the magical words, “olly olly oxen free” a/k/a “best interest of the child.”

So, what does “the best interest of the child” really mean and can any definition that violates constitutional principles be legitimate? Does it mean that a court is permitted to provide less protection to an individual and deference to that individual’s constitutional rights simply because the individual is the parent of a child rather than a criminal defendant and stranger to a child? Does it mean that by merely seeking medical care for one’s child, a parent forfeits the right to make all future medical decisions for that child? Does it mean that CPS can be used as a weapon against a

parent by abortion providers, therapists and doctors insisting on irrevocable gender transition treatment and therapies for young children; cosmetic surgeons and orthodontists, who believe everyone should be enhanced, or special interest groups offended by a parent’s choice of religious education or worship for a child? Although “modern trends” in family law paint a bleak picture for the fate of this long recognized and revered fundamental liberty interest, precedent and, specifically in this case, statutory provisions, compel a more reasoned result. *See, In Interest of H.S.*, 550 S.W.3d 151 (Blacklock J. dissenting, joined by J. Johnson, J. Guzman, J. Brown). That is why it is incumbent on the state, whether through its enforcement agencies, which in this case was Child Protection Services (CPS), a division of the Texas Department of Protective and Family Services (DFPS), or the courts to ensure that this precious, fundamental right is protected in every single case, including this case.

I. FAILURE TO FOLLOW THE LAW DEPRIVED KDP AND HIS PARENTS OF DUE PROCESS.

Dispositive in this case is the lack of evidence to meet all the statutory requirements at the full adversary hearing. Tex. Fam. Code Ann. § 262.201 (g) (West). Although Relators, KDP’s parents, did not agree to the entry of

the Temporary Orders, they did, as admitted by CPS, agree that at the time of the hearing and going forward they were willing to subjugate their right to make medical decisions to the will of the doctors at Children’s Medical Center and would follow all recommendations of those doctors. (*Objection to Relators’ Emergency Order to Suspend Order Pending Ruling on Petition for Writ of Mandamus* at 4, 7; Case No. 05-19-00911-CV).

Tex. Fam. Code Ann. § 262.201(g) requires:

“the court *shall* order the return of the child to the parent....”

“... unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1)”

“*and*

(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.”

Tex. Fam. Code Ann. § 262.201 (g) (3) (*emphasis added*). CPS failed to meet their burden of proof on any of the three prongs. However, based on the undisputed testimony of KDP’s parents regarding their willingness to comply, there was not “a substantial risk of a continuing danger.”

Consequently, without sufficient evidence to sustain a finding of “a substantial risk of a continuing danger”, the trial court had no authority to

enter temporary orders and was obligated to return KDP to his parents. Tex. Fam. Code Ann. § 262.201 (h).

A. The Rights of Parents and Children Are Aligned and Entitled to Due Process Protection.

The law presumes that fit parents act in the best interest of their children because they naturally love them. *Troxel*, 530 U.S. at 68; *Parham v. J. R.*, 442 U.S. 584, 602, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979). A fit parent is one who adequately cares for his or her children. *Troxel*, 530 U.S. 57. “It is generally desirable for the child to remain with or be returned to the natural parent because the child's need for a normal family life will usually best be met in the natural home.” *Smith v. Org. of Foster Families For Equal. & Reform*, 431 U.S. 816, 823, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977).

A child has a recognized and equally important interest in maintaining a relationship with his or her parents. *Stanley*, 405 U.S. 645. “A child's right to family integrity is concomitant to that of a parent.” *Wooley v. City of Baton Rouge*, 211 F.3d 913, 923 (5th Cir. 2000). Therefore, “there is a strong presumption that the best interest of a child is served by keeping the child with a parent.” *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006); Tex. Fam. Code Ann. § 153.131(b) (West).

B. The Due Process Clause of the Fourteenth Amendment Protects These Rights.

The Fourteenth Amendment, which guarantees due process, protects not only procedural due process, but substantive due process as well. U.S. Const. amend. XIV, § 1; *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). “The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel*, 530 U.S. 57. “So long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.” *Id.* at 68–69; *Reno v. Flores*, 507 U.S. 292, 304, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

“ We have little doubt that the Due Process Clause would be offended [i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.” *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S. Ct.

549, 54 L. Ed. 2d 511 (1978) (quoting, *Smith*, 431 U.S. 816 (Stewart, J., concurring in judgment)).

C. Any Intrusion into the Family Must Be Reviewed Under the Strict Scrutiny Test.

“Parental rights are fundamental, but neither the Texas Family Code nor the Constitution treats them as plenary and unchecked.” *In Interest of H.S.*, 550 S.W.3d 151. Nevertheless, due to the magnitude of these fundamental liberty interests the government is forbidden from infringing on these rights, “unless the infringement is narrowly tailored to serve a compelling state interest.” *Reno*, 507 U.S. at 301–302; also, *Griswold v. Connecticut*, 381 U.S. 479, 485, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965); *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985); *In Interest of J.W.T.*, 872 S.W.2d 189, 211 (Tex. 1994).

To ensure conformity to these constitutional principles, the Texas Legislature has enacted legislation which guides courts in determining the best interest of the child in various situations. The Texas Legislature has codified many of a parent’s recognized rights, including, as pertains to this case, the right to possession of the child and to make medical decisions for

the child. Tex. Fam. Code Ann. § 151.001 (West). They have also enacted laws which prescribe the process to be followed to protect these rights, during the investigation, removal of a child, and litigation. Tex. Fam. Code Ann. §§ 262.201(a); 262.201. However, even well drafted laws fail to pass constitutional scrutiny if they are not followed by the government.

Although the CPS also failed to follow the law, the review before this Court involves the trial court's failure to do so.

D. Courts Function as Referees to Balance Parents' Fundamental Liberty Interests and the Compelling State Interest Within the Parameters of the Law.

“The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.” Tex. Fam. Code Ann. § 153.002 (West). However, the due process clause of the Fourteenth Amendment does not permit a trial court “to infringe on the fundamental right of parents to make child rearing decisions simply because [it] believes a better decision could be made.” *In re Scheller*, 325 S.W.3d 640, 642 (Tex. 2010) (relying on *Troxel*, 530 U.S. 57).

Trial courts are afforded broad discretion in matters of family law. *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982). However, that does

not mean unlimited or unchecked discretion. “A trial court has no ‘discretion’ in determining what the law is or applying the law to the facts”. *In re Derzapf*, 219 S.W.3d 327, 333 (Tex. 2007); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992).

Before the court can order the removal of a child, CPS must provide sufficient evidence to prove each part of a four-prong test. Tex. Fam. Code Ann. § 262.101 (West). In order to retain the child in state custody longer than fourteen (14) days and issue temporary orders, CPS must, at the full adversarial hearing, prove each part each part of a three- prong test. Tex. Fam. Code Ann. § 262.201 (g) (h). In each instance, CPS failed to meet their burden. Yet the judge ordered the removal of the child. (REC 32-37). Subsequently, the judge failed to return the child at the conclusion of the full adversarial hearing and erroneously issued Temporary Orders. (*Relators’ Petition for Mandamus, Appendix A*). These failures were abuses of discretion that violated the due process rights of KDP and his parents, causing suffering and trauma to the family.

II. PENALIZING A SURVIVOR OF DOMESTIC VIOLENCE IS BAD POLICY AND CONTRADICTS OTHER GERMANE STATUTES.

If the ruling in this case is permitted to stand, it will negatively affect every single parent, who has suffered abuse and their children. Abused parents already have many fears to overcome associated with calling for assistance from law enforcement and taking steps to escape their abusers. They face loss of income, homelessness, and dangerous retribution from their abuser. If a parent feels they will also lose their children, it is highly unlikely that they will make any attempt to leave, especially if the violence is not directed at the children. Parents involved in other types of family law litigation are protected, not punished. Tex. Fam. Code Ann. § 153.004(a) (West). The same should be true in all cases.

KDP's mother was abused by her previous husband. (REC 021-023). On several occasions, CPS investigated and found no reason to provide services or remove the children. (REC 021-023). One investigation, which was administratively closed, revealed that the ex-husband threatened to kill the older two children in order to hurt Ashley Pardo. (REC 023). Although KDP was not even alive at the time of these incidents, the caseworker included this information in her affidavit as a reason that KDP was in danger

and a basis to remove him. (REC 021-022). Clearly, she did not believe that any threat of danger still existed as evidenced by the fact she did not request removal for the two older children, who were previously the subject of the threats. (REC 002 – 024). At trial, she testified that KDP’s mother had a history of neglectful supervision due to the family violence, based solely on this information. (REC 198).

The ex-husband, who was the perpetrator of the violence, is not a party to this suit as it only involves KDP, who is the son of the current husband. There was no evidence that either of KDP’s parents were ever perpetrators of family violence. Yet, the judge made a finding of family violence based on these incidents, the last of which occurred in 2014. (REC 286). He named both parents as temporary possessory conservators and limited their visits with KDP, as if one or both had been the perpetrators of family violence.

Tex. Fam. Code Ann. § 153.004 requires the court to consider a history of family violence both in naming a parent as a managing conservator and determining what possession of and access to the child, if any, the perpetrator should be allowed. Tex. Fam. Code Ann. § 153.004(a). Currently, if the Court makes a finding that a parent committed family

violence against the other parent, the Court may not appoint the parents as joint managing conservators. Tex. Fam. Code Ann. § 153.004(b). If, however, the orders in this case are allowed to stand, setting a precedent for that finding to also become a finding of child neglect or abuse, then litigants will not provide that information to the courts or even their lawyers, who would be obligated to report that information to CPS. Such a result contradicts the goal of Tex. Fam. Code Ann. § 153.004 to protect innocent parents from abusive parents, protect children from dangerous conflict, and encourage parents to seek legal protection for themselves and their children.

III. THE NEED FOR MANDAMUS IS MAGNIFIED IN TERMINATION CASES.

Mandamus is appropriate in this case. Every day this case continues, KDP and his parents suffer due process violations.

A party is entitled to mandamus relief if a trial court violates a legal duty or abuses its discretion, and the party has no adequate remedy by appeal. *Walker*, 827 S.W.2d 833. It is well-settled that appeal is an inadequate remedy when the challenge is to temporary orders involving children, because temporary orders are not subject to appeal. *Little v. Daggett*, 858 S.W.2d 368, 369 (Tex. 1993); *See also, Dancy v. Daggett*, 815

S.W.2d 548 (Tex. 1991). “The burden of litigating a domestic relations proceeding can itself be so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child’s welfare becomes implicated.” *Troxel*, 530 U.S. at 74, (noting Justice Kennedy’s opinion at 101) (internal quotations omitted); *see also*, *In the Interest of H.S.*, at 164 (Guzman, J. dissenting) (“One thing is certain, however: the instability, ill-will, and financial burdens of litigation are detrimental to the child's well-being and harmful to familial relationships.”).

In a termination case, the need for mandamus is magnified. In addition to ongoing separation of the children from their parents, the existence of the temporary orders creates a potential for termination of parental rights even when no abuse or neglect is proven and often burdens other constitutional rights of the parents.

A. Parental Rights Can Be Terminated Without Any Evidence of Abuse and Neglect.

In a termination case, separation for a family can become permanent based on any violation of a temporary order. Tex. Fam. Code Ann. § 161.001(O) (West). Such a violation becomes an independent ground for

termination, relieving CPS from proving that any abuse or neglect ever occurred. *Id.* Often, these temporary orders prohibit the exercise of additional constitutional rights, such as the right of association, the right to marry, or, as in this case, the right to free speech. In termination cases, waiting for appeal will result in significantly more harm than merely additional cost and expense. *See, Walker*, 827 S.W.2d 833. It has and will continue to impair Relators' substantive and procedural rights. *See, In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding).

Obviously, trial courts legislating grounds for termination on a case-by-case basis implies violations of broader constitutional issues related to the separation of powers, by allowing each individual judge to design a unique set of actions and prohibitions, on a case-by-case basis, with which that particular parent must comply during the pendency of the litigation to avoid termination at the trial on the merits. Tex. Fam. Code Ann. § 161.001(O). This provision grants enormous, legislative power without specifying parameters, limitations, or instructions for a judge's decisions. *Id.* It also results in similarly situated parents, whose fundamental liberty interests are not equally burdened. The larger risk is that a parent could be

forced to make unconscionable decisions. They may be forced to choose between permanently losing their child or divorcing and abandoning a spouse, they know to be innocent; burdening their rights to marry and free association. They may, as in this case, be silenced regarding the atrocities their family is suffering at the hands of the state. In every case, there is the danger that the parents will be unable to complete services that are ordered because those services are not available or, as in this case, they cannot humanly accomplish them and adequately provide for other children in the family. Such circumstances switch the burden of proof to the parents to prove that their rights should not be terminated.

B. The Inclusion of a Gag Order in the Temporary Orders Was Unconstitutional.

“Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege....” *Davenport v. Garcia*, 834 S.W.2d 4, 7 (Tex. 1992); U.S. Const. amend. I. Yet, increasingly, courts are using “gag orders” to suppress the truth and prevent public scrutiny of their actions. It is an especially dangerous precedent to permit censorship in cases that involve the government’s infringement on the constitutional rights of any litigant.

The injunction included in the temporary orders in this case is a violation of the Pardos’ right to free speech guaranteed by the Texas Constitution for all Texans, including litigants. Tex. Const. art. I, § 8 guarantees free speech to the citizens of this state. Tex. Const. art. I, § 8. In fact, the rights secured in the Texas Constitution are broader than those protected by the First Amendment of the United States Constitution. *Davenport*, 834 S.W.2d at 8–9.

“A gag order in civil judicial proceedings will withstand constitutional scrutiny only where there are specific findings supported by evidence that (1) an imminent and irreparable harm to the judicial process will deprive litigants of a just resolution of their dispute, and (2) the judicial action represents the least restrictive means to prevent that harm.” *Davenport*, 834 S.W.2d at 10. Even in family law cases where trial courts have broad discretion, they do not have the authority to “invade constitutional guarantees.” *Grigsby v. Coker*, 904 S.W.2d 619, 621 (Tex. 1995).

Entering this gag order was an abuse of discretion. This gag order does not pass scrutiny. There was no notice or formal hearing on the issue. (REC 001-017). It was an afterthought of the attorney ad litem to protect, again, a speculative potential harm to her client. (REC 285). The video of

the caseworker removing KDP from his home was no different than videos of law enforcement activities that are posted daily on social media and major television networks, without the slightest censorship. (REC 218). She did not testify to any threats. (REC 219). Most telling, only the parents were enjoined. (*Relators' Petition for Mandamus, Appendix A*).

Judges cannot be permitted to use these orders to hide politically correct, but questionable decisions. Court rooms must remain open and information about legal proceedings must continue to be made available to the public if Texans and Americans in general are to remain informed and engaged. Information historically publicized in printed format is now disseminated by broader and more varied segments of the population and almost exclusively online. This access to the people and the ability for litigants and observers alike to discuss happenings among themselves and other members of their communities provides a safety net and a check on judges. It provides for more informed and educated voters in judicial elections. By safeguarding the rights of the few inside the courtroom, it safeguards the rights of the many outside.

No litigation that affects any constitutional right should take place in secret and darkness and all citizens should have the opportunity to be

advised regarding proceedings that have the potential to undermine or diminish their own constitutional rights. This is especially true in cases involving CPS. As any parent is subject to investigation of their family and removal of their children from their home based on even an anonymous report, any CPS case potentially affects all parents. In these cases, a gag order contained in a temporary order, if violated, carries more than the threat of jail time and fines, it can become the sole ground for terminating the speaker's relationship with his or her child forever.

C. The Temporary Orders Are Void for Lack of Jurisdiction.

“Subject matter jurisdiction is essential to the authority of a court to decide a case.” *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). “A judgment is void only when it is apparent that the court rendering judgment had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act.” *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005) (*internal quotations omitted*) (quoting, *Austin Indep. Sch. Dist. v. Sierra Club*, 495 S.W.2d 878, 881 (Tex. 1973)). Based on the lack of sufficient evidence to sustain a finding of “a substantial risk of a continuing danger”, the trial court had no authority to enter temporary orders. Tex.

Fam. Code Ann. § 262.201 (h). Therefore, the trial court lost jurisdiction to enter temporary orders at the conclusion of the hearing.

CONCLUSION

The plight of KPD and his family illustrates how easily a difference of opinion can lead to the traumatic invasion of any family. Private citizens cannot be allowed to use CPS as a weapon to settle their disputes. This trend not only violates the constitutional rights of parents but wastes limited resources to investigate and protect those children in truly abusive or neglectful situations. Further, CPS cannot ignore the law simply because they are offended by the attitude of parents and their attorneys. Trial judges cannot be permitted to allow their own personal opinions regarding the best interest of the child to supersede constitutional protections or specific statutory directions. The evident damage this suit has caused KDP and his family is clearly subject to repetition, which endangers the rights of every parent in this state.

The laws in question have been designed to protect this first and most important relationship in a child's life. If they are not enforced, then they are nothing more than great, but impotent ideas buried in dusty books in a law library.

To avoid the pervasive attitude that there is little risk in ignoring statutory requirements and violating parents' rights in these cases, mandamus must be granted swiftly to correct the erroneous rulings in this case.

PRAYER

Wherefore, amicus prays this Court immediately issue an opinion granting all relief requested by Relators and providing direction for future cases.

Respectfully submitted,

/s/ Cecilia M. Wood

CECILIA M. WOOD

ATTORNEY AND COUNSELOR AT LAW, P.C.

1122 Colorado Street, Suite 2310

Austin, Texas 78701

Telephone No.: 512-708-8783

Facsimile No.: 512-708-8787

Cecilia@ceciliawood.com

State Bar No. 21885100

Attorney for Amicus,

Texas Home School Coalition

CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft Word 2013 and contains 4,483 words, as determined by the computer software's word count function, excluding the sections of the document listed in Tex. R. App. P. 9.4 (i) (1).

/s/ Cecilia M. Wood
CECILIA M. WOOD
ATTORNEY AND COUNSELOR AT LAW, P.C.
Attorney for Amicus,
Texas Home School Coalition

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was delivered on August 30, 2019, via electronic service to the parties and/or attorneys as listed below, in accordance with the Texas Rules of Civil Procedure.

/s/ Cecilia M. Wood
CECILIA M. WOOD
ATTORNEY AND COUNSELOR AT LAW, P.C.
Attorney for Amicus,
Texas Home School Coalition

Scheef and Stone, LLP
Mr. James A. Pikel
2601 Network Blvd., Suite 102
Frisco, Texas 75034
Attorney for Relators

The Honorable Mike Chitty
422 Judicial District Court
100 W. Mulberry Street
Kaufman, Texas 75142
Respondent

Ms. Brenda Kinsler
Ridgepoint Drive, Bldg. H-2
MC: Y-956
Austin, Texas 78754
Appellate Attorney for Real Party in Interest

Ms. Courtney Wortham
114 North Adelaide Street
Terrell, Texas 75160
Attorney Ad Litem

Mr. Andrew C. Brown
Texas Public Policy Foundation
901 Congress
Austin, Texas 78701
Attorney for Amicus, Texas Public Policy Foundation

A handwritten signature in black ink, appearing to read "Donna Campbell". The signature is written in a cursive, flowing style.

Senator Donna Campbell, M.D.

Texas State Senate District 25

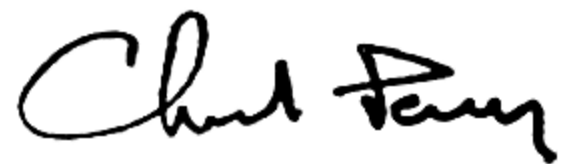
Chair, Senate Committee on Veteran Affairs & Border Security

A handwritten signature in black ink that reads "Brandon Creighton". The signature is written in a cursive style with a prominent dot over the 'i' in "Creighton".

Senator Brandon Creighton

Texas State Senate District 4

Chair, Senate Committee on Higher Education

A handwritten signature in black ink that reads "Chad Perry". The signature is written in a cursive, flowing style.

Senator Charles Perry

Texas State Senate District 28

Chair, Senate Committee on Water & Rural Affairs

A handwritten signature in black ink that reads "Bob Hall". The signature is written in a cursive style with a large, looped initial "B".

Senator Bob Hall

Texas State Senate District 2

Chair, Senate Committee on Agriculture



The Senate of The State of Texas
Senator José Menéndez
District 26

August 30, 2019

To whom it may concern,

Please list me on the amicus brief in support of the Pardo family.

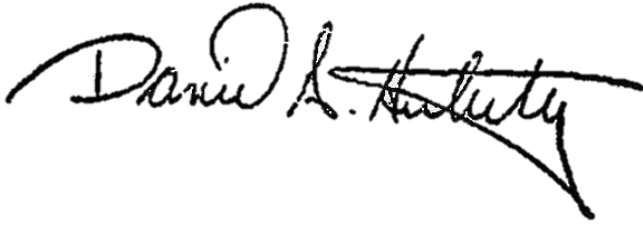
Sincerely,

A handwritten signature in cursive script that reads "José Menéndez".

José Menéndez
State Senator, District 26

A handwritten signature in black ink, appearing to be 'Pat Fallon', with a large loop at the top and a horizontal line extending to the right.

Senator Pat Fallon
Texas State Senate District 30

A handwritten signature in black ink that reads "Dan H. Huberty". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

State Representative Dan Huberty
Texas State House District 127
Chair, House Committee on Public Education

A handwritten signature in black ink, appearing to read "Harold V. Dutton Jr.", with a stylized flourish at the end.

State Representative Harold V. Dutton Jr.

Texas State House District 142

Chair, House Committee on Juvenile Justice & Family Issues

A handwritten signature in black ink, appearing to read 'J. White', with a long horizontal flourish extending to the right.

State Representative James White
Texas State House District 19
Chair, House Committee on Corrections

A handwritten signature in black ink, appearing to read "Jeff Leach". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

State Representative Jeff Leach

Texas State House District 67

Chair, House Committee on Judiciary & Civil Jurisprudence

I authorize the Texas Home School Coalition to represent me for the purpose of filing the attached brief as amicus curiae in support of Ashley and Daniel Pardo's petition for mandamus relief.

A handwritten signature in black ink that reads "Matt Krause". The signature is written in a cursive, slightly slanted style.

State Representative Matt Krause

Texas State House District 93

A handwritten signature in blue ink that reads "Briscoe Cain". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

State Representative Briscoe Cain

Texas State House District 128

A handwritten signature in black ink, appearing to read "Jonathan Stickland". The signature is fluid and cursive, with a large initial "J" and "S".

State Representative Jonathan Stickland

Texas State House District 92

A handwritten signature in black ink, appearing to read "Mayes Middleton". The signature is written in a cursive style with a long horizontal stroke at the end.

State Representative Mayes Middleton

Texas State House District 92

Valoree Swanson

State Representative Valoree Swanson

Texas State House District 150

Candy Noble

State Representative Candy Noble

Texas State House District 89

Mike Lang

State Representative Mike Lang

Texas State House District 60

A handwritten signature in black ink, appearing to read "William W. Zedler". The signature is written in a cursive style with a prominent loop at the end.

State Representative Bill Zedler

Texas State House District 96

Please list me as a signer on the amicus brief supporting the Pardo family.

A handwritten signature in black ink, appearing to read "Scott Sanford". The signature is written in a cursive style with a large initial "S" and a long, sweeping underline.

State Representative Scott Sanford

Texas State House District 70

M. Schaefer

State Representative Matt Schaefer

Texas State House District 6

Please add my signature to the amicus brief you are filing at the Texas Supreme Court on behalf and in support of the Pardo family.

A handwritten signature in blue ink that reads "Steve Toth". The signature is written in a cursive style with a large, stylized "S" and "T".

State Representative Steve Toth

Texas State House District 15

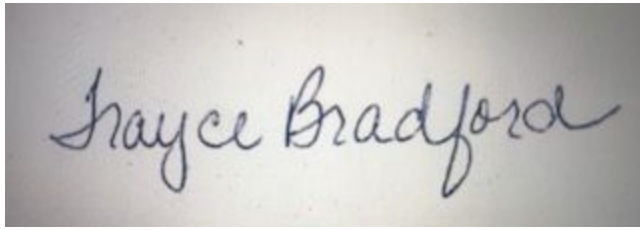
I would like to be listed on the amicus supporting the Pardo family. Thank you.

A handwritten signature in black ink that reads "Matt Shaheen". The signature is written in a cursive, flowing style.

State Representative Matt Shaheen
Texas House District 66

I, Trayce Bradford, do wish to sign onto the amicus supporting the Pardo family.

Thank you,

A photograph of a handwritten signature in black ink on a light-colored surface. The signature reads "Trayce Bradford" in a cursive script.

President, Texas Eagle Forum

I wish to be listed on the Amicus brief in support of the Pardo family filed by the Texas Home School Coalition and/or their legal representation as follows:

A handwritten signature in black ink that reads "Dave Welch". The signature is written in a cursive, flowing style.

Rev. Dave Welch

President, Texas Pastor Council

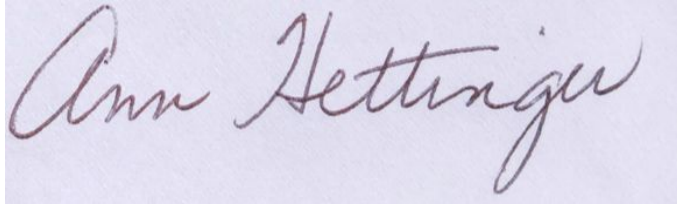
A handwritten signature in blue ink, appearing to read 'J. Saenz', with a stylized flourish extending to the right.

Jonathan M. Saenz Esq.
President, Texas Values

Please add JoAnn Fleming, Executive Director, representing Grassroots America - We the People to the brief.

A handwritten signature in black ink that reads "JoAnn Fleming". The signature is written in a cursive, flowing style with a large initial "J" and "F".

JoAnn Fleming
Executive Director, Grassroots America – We the People

A rectangular image showing a handwritten signature in cursive script. The signature reads "Ann Hettinger" in a dark ink on a light-colored background.

Ann Hettinger
State Director, Concerned Women for America of Texas

APPENDIX B

TEXT OF STATUTES

United States Constitutional Provisions

U.S. Const. amend. I

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.

U.S. Const. amend. XIV, § 1

... nor shall any State deprive any person of life, liberty, or property, without due process of law; ...

Texas Constitutional Provisions

Tex. Const. art. I, § 8

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

State Statutes

Tex. Fam. Code Ann. § 151.001

(a) A parent of a child has the following rights and duties:

- (1) the right to have physical possession, to direct the moral and religious training, and to designate the residence of the child;
- (2) the duty of care, control, protection, and reasonable discipline of the child;
- (3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education;

- (4) the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including the right as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;
- (5) except as provided by Section 264.0111, the right to the services and earnings of the child;
- (6) the right to consent to the child's marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment;
- (7) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- (8) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;
- (9) the right to inherit from and through the child;
- (10) the right to make decisions concerning the child's education; and
- (11) any other right or duty existing between a parent and child by virtue of law.

Tex. Fam. Code Ann. § 153.004

In determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit.

(b) The court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child, including a sexual assault in violation of Section 22.011 or 22.021, Penal Code, that results in the other parent becoming pregnant with the child. A history of sexual abuse includes a sexual assault that results in the other parent becoming pregnant with the child, regardless of the prior relationship of the parents. It is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who has the exclusive right to determine the primary residence of a child is not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

(c) The court shall consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator.

(d) The court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that:

(1) there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit; or

(2) the parent engaged in conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code, and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child.

(d-1) Notwithstanding Subsection (d), the court may allow a parent to have access to a child if the court:

(1) finds that awarding the parent access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child; and

(2) renders a possession order that is designed to protect the safety and well-being of the child and any other person who has been a victim of family violence committed by the parent and that may include a requirement that:

(A) the periods of access be continuously supervised by an entity or person chosen by the court;

(B) the exchange of possession of the child occur in a protective setting;

(C) the parent abstain from the consumption of alcohol or a controlled substance, as defined by Chapter 481, Health and Safety Code, within 12 hours prior to or during the period of access to the child; or

(D) the parent attend and complete a battering intervention and prevention program as provided by Article 42.141, Code of Criminal Procedure, or, if such a program is not available, complete a course of treatment under Section 153.010.

(e) It is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or abuse or family violence by:

(1) that parent; or

(2) any person who resides in that parent's household or who is permitted by that parent to have unsupervised access to the child during that parent's periods of possession of or access to the child.

(f) In determining under this section whether there is credible evidence of a history or pattern of past or present child neglect or abuse or family violence by a parent or other person, as applicable, the court shall consider whether a protective order was rendered under Chapter 85, Title 4,¹ against the parent or other person during the two-year period preceding the filing of the suit or during the pendency of the suit.

(g) In this section:

- (1) “Abuse” and “neglect” have the meanings assigned by Section 261.001.
- (2) “Family violence” has the meaning assigned by Section 71.004.

Tex. Fam. Code Ann. § 153.131(b)

(a) Subject to the prohibition in Section 153.004, unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child.

(b) It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child. A finding of a history of family violence involving the parents of a child removes the presumption under this subsection.

Tex. Fam. Code Ann. § 161.001(O)

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has: ...

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

Tex. Fam. Code Ann. § 262.101

“ An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

- (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
- (2) continuation in the home would be contrary to the child's welfare;

- (3) there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; and
- (4) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.”

Tex. Fam. Code Ann. § 262.201(a)

(a) Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find that:

- (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
- (2) continuation in the home would be contrary to the child's welfare;
- (3) there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing under Subchapter C;¹ and
- (4) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

Tex. Fam. Code § 262.201(g)

“(g) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- (1) there was a danger to the physical health or safety of the child which was caused by an act of failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;
- (2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child’s removal; and
- (3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

Tex. Fam. Code Ann. § 262.201 (h)

(h) In a suit filed under Section 262.101 or 262.105, if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a continuing danger to the physical health or safety of the child and for the child to remain in the home is contrary to the welfare of the child, the court shall issue an appropriate temporary order under Chapter 105.