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SUPREME COURT OF TEXAS
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NO. 19-0694

IN THE
TEXAS SUPREME COURT

IN RE: C.J.C., *Relator*

Original Proceeding Arising Out of
the 16th Judicial District Court, Denton County, Texas
Cause No. 16-07061-16
(Honorable Sherry Shipman, Judge Presiding)

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

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STATEMENT OF INTEREST

Amicus Curiae, Texas Home School Coalition (hereinafter "THSC"), is a nonprofit organization committed to preserving the fundamental rights of parents to raise their children without unwarranted and unnecessary government interference. Recognizing the attendant and equally important right and interest of children in maintaining relationship with their natural parents, THSC provides to its members, in addition to educational opportunities and resources, legislative advocacy and legal support. THSC was instrumental in affirming the rights of parents to homeschool in *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994). Since that time, THSC has become increasing involved in the defense of these precious fundamental rights.

As a part of that goal, THSC assists families in obtaining legal representation in cases threatening their fundamental liberty interests. THSC also filed an amicus brief in Case No. 19-0760, *In re Pardo*, currently pending before this Court.

THSC further pursues this mission by providing legislative education, insight, and advocacy regarding the preservation of family integrity.

THSC'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 herein.

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

The signatures of like-minded legislators and non-profit groups with similar concerns and values, who are not represented by amicus counsel, but who wish to indicate support, are contained in *Appendix* A.

ISSUES PRESENTED

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STATEMENT OF FACTS

THSC adopts Relator's Statement of Facts and abbreviations 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.

The fundamental liberty interest issuing from the bond between parent and child was not created by or endowed upon parents by either state or federal legislation. It is a natural, inalienable right that attaches at the moment of conception. Its recognition serves as a shield to protect parents and their children from intruders in the same manner as good locks on the doors and windows of the home.

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).

Increasingly, however, the inalienable, fundamental rights of parents to make decisions regarding the best interest of their children is being eroded by regular assaults from relatives, educators, live-in-lovers, medical professionals, and the government. This Court currently is reviewing at least one other case involving an infringement on the rights of parents to make medical decisions and retain possession of their child, when they wish to obtain a second opinion from another licensed physician. This prevalent trend to ignore the constitution and deny these citizens due process, disguised in the mantra of "best interest of the child" 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. *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.").

This suit is a perfect example of the ever-widening chasm between "historical precedent and the modern trends in family law". *In Interest of H.S.*, 550 S.W.3d at 166 (J. Blacklock dissenting, joined by J. Johnson, J. Guzman, J. Brown) (internal citations omitted). As in this case, litigants and judges rarely question whether courts have recognized the right of parents to make decisions regarding their own children. The dispute generally arises in determining under what circumstances and to what extent the government can infringe upon this right, either directly or through a delegation of authority to third parties. In making that determination, it must be remembered that all three governmental branches are responsible to protect parents' fundamental rights as they are any other fundamental right. This duty exists of whether the assault comes via Child Protective Services, a

live-in-lover, or Grandma. It does not disappear at the conclusion of the first litigation involving a child but survives through all subsequent litigation.

Every lawsuit begins with the presumption that the definition of the best interest for the child, the subject of the suit, is what that child's parent decides. *Troxel*, 530 U.S. at 68. Any party wishing to challenge or interfere with that parent's decision must either prove that the parent is unfit or overcome the presumption that the decisions of that fit parent are per se in the best interest of the child. *See Pennington v. Gibson*, 57 U.S. 65, 68, 14 L. Ed. 847 (1853); *In re Derzapf*, 219 S.W.3d 327, 333 (Tex. 2007). This must be the applicable test in determining standing, jurisdiction, and the outcome. It must be the test in the first suit and every suit affecting that child.

I. THE FUNDAMENTAL LIBERTY INTERESTS OF PARENTS IN THEIR CHILDREN ARE ENTITLED TO PROTECTIION UNDER THE FOURTEENTH AMENDMENT.

The Fourteenth Amendment, which guarantees due process, protects both procedural and substantive due process. U.S. Const. amend. XIV, § 1; *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). It protects the "right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up

children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 1042 (1923).

This protection includes "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. 57. 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). "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).

A child has a recognized and equally important interest in maintaining a relationship with the 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). "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 v. Org. of Foster Families For Equal. & Reform*, 431 U.S. 816, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977)) (*internal quotations omitted*).

II. 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).

Words do not become constitutional simply by virtue of being codified. "Rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535, 45 S. Ct. 571, 69 L. Ed. 1070 (1925).

III. THE TEMPORARY ORDERS ENTERED IN THIS CASE ARE VOID FOR LACK OF JURISDICTION BECAUSE THE STATUTES UNDER WHICH J.D. SOUGHT STANDING ARE UNCONSTITUTIONAL.

A suit filed by a litigant without proper standing, will not invoke the jurisdiction of the court to make any decisions. "Standing is a constitutional prerequisite to maintaining a lawsuit under both federal and Texas law..." *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). "Standing, as a component of subject matter jurisdiction, cannot be waived…." *Texas Ass'n of Bus v. Texas Air Control Bd.*, 445-446. It "may be raised for the first time on appeal by the parties or by the court." *Id.*

Sections 102.003(a)(9) and 102.003(a)(11) of the Texas Family Code (hereinafter "standing statutes") do not confer standing on litigants or jurisdiction on courts because they are unconstitutional. Tex. Fam. Code Ann. § 102.003(a)(9) and 102.003(a)(11). "An unconstitutional statute is void, and cannot provide a basis for any right or relief." *City of San Antonio v. Summerglen Prop. Owners Ass'n Inc.*, 185 S.W.3d 74, 88 (Tex. App. 2005).

A. The Standing Statutes Deprive Parents of Due Process.

Non-parents do not possess a fundamental liberty interest in a child. They do not have the same natural relationship, nor do they have the duties and responsibilities. Any interest a non-parent possesses in regard to a child, is a statutory creation and endowment of that interest by the legislature. In granting rights to a non-parent, the Due Process Clause of the Fourteenth Amendment requires that it do so in a manner that does not infringe upon the rights of parents to make child rearing decisions. *Troxel*, 530 U.S. at 72, 73.

The standing statutes burden the fundamental rights of parents. Tex. Fam. Code Ann. § 102.003(a)(9) and 102.003(a)(11). The inception of the liberty interests of the parent and child are natural, inalienable rights which

are not created or endowed by the government. The inception of those occurs at the moment at conception.

Therefore, a burden on those liberty interests begins with the commencement of a lawsuit, filed by any non-parent, which is always a request for a court to make a ruling that is contrary to the parent's existing decision on the matter. In reviewing Section 102.003(a)(9) of the Texas Family Code in light of *Troxel*, this Court noted that the standing statute did not affect the merits of the case. *In Interest of H.S.*, 550 S.W.3d at 162. In practice, this is not true especially when there is a disparity in finances between the parties, which forces a settlement the petitioner could not otherwise legally acquire. It does not account for the temporary orders that violate the rights of the parent may continue for years. Consequently, regardless of who prevails, "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*).

Therefore, these standing statutes are subject to strict scrutiny and fail to pass the test. Tex. Fam. Code Sections Tex. Fam. Code Ann. § 102.003(a)(9) and 102.003(a)(11).

1. **The standing statutes do not promote a compelling state interest.**

"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). The state depends on parents to fulfill certain responsibilities in regard to their children. *See*, *Prince*, 321 U.S. 158. Therefore, the state has a compelling interest in protecting the relationship between parent and child from attack.

"The purpose of section 102.003(a)(9) is to create standing for those who have developed and maintained a relationship with a child over time." *In re A.C.F.H.*, 373 S.W.3d 148, 150 (Tex. App. – San Antonio 2012, no petition). This purpose is in competition with the state's compelling state interest.

2. **Without the requirement of a *Troxel* analysis, the standing statutes are not narrowly tailored.**

Just because a statute is less broad than another unconstitutional statute does not automatically mean that it is sufficiently narrow to be constitutional. Unlike the statute in *Troxel*, not everybody can sue. *Troxel*, 530 U.S. 57. Still, many types of people can file suit and numerous people can do so at the same time.

Section 102.003(a)(9) does not limit the number of times the child can be made the subject of a suit and Section 102.003(a)(11) does so only as function of the parent's death. Tex. Fam. Code § 102.003(a)(9) and 102.003(a)(11). Potentially, a new non-parent could file a new suit every six to nine months, theoretically exposing the child to thirty or more lawsuits. Since care, custody, and control need not be exclusive, several individuals sharing those responsibilities with the parent could acquire standing simultaneously. *See*, *In Interest of H.S.*, 550 S.W.3d at 158. A parent could be forced to concurrently defend multiple lawsuits based solely on the unilateral actions of the other parent and a child could be forced to split her time among numerous adults, including not only with a parent's significant others, but a live-in nanny, boarding school houseparent, or caregiver where the child received residential medical or psychiatric care. Section 102.003

(a) (11) has no requirement of care or even interaction with the child, potentially creating rights for virtual strangers. Tex. Fam. Code Ann. § 102.003(a)(11).

Marriage is not a bar to parents being sued based on the unilateral actions of one parent. A parent could be deployed or hospitalized and unaware that the other parent is sharing child rearing responsibilities with a lover or roommate.

Neither statute requires the petitioner to provide any demonstration of his own character or to demonstrate that he has not committed family violence or some other behavior that would preclude a natural parent from being named as a conservator. Tex. Fam. Code §§153.004; 161.001. If the Round Rock man that murdered his roommate, the mother of two girls, had lived with the mother and girls for six months, he would have had standing to bring suit for conservatorship and possession of and access to those girls. Tex. Fam. Code Ann. § 102.003(a)(11).

The effect of these statutes is the opposite of effecting "the child's need for stability." *In re V.L.K.*, 24 S.W.3d 338, 342–43 (Tex. 2000); *Taylor v. Meek*, 154 Tex. 305, 310, 276 S.W.2d 787, 790 (1955).

"The nonparent standing threshold in Texas is thus much higher and narrower than the one rejected in *Troxel*." *In Interest of H.S.*, 550 S.W.3d at 162. Nevertheless, as it does not require even a prima facie showing that the parent is unfit or that there is sufficient evidence in that particular situation to overcome the presumption that the fit parent is acting in the child's best interest, it is still too broad.

3. The facts in *H.S.* are significantly distinguishable.

In *H.S.* both parents exercised their decision-making authority to allow the grandparents to assume the care, custody, and control of the child in a manner and for a period of time that ultimately conferred standing on the grandparents. *In Interest of H.S.*, 550 S.W.3d at 153. In this case, as in many, Mother unilaterally made all of the decisions that ultimately conferred standing on J.D. interactions with the child.

B. The Standing Statutes Violate the Equal Protection Clause of the Fourteenth Amendment.

"When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Zablocki v. Redhail*, 434 U.S. 374, 388, 98 S. Ct. 673, 682,

54 L. Ed. 2d 618 (1978). When read in conjunction with 102.003 (b), these statutes created a class of parents, whose fundamental right to make decisions regarding their children can face interference from a stranger based solely on the actions of the other parent, while denying the members of the class a similar ability. *See*, *In Interest of H.S.*, 550 S.W.3d at 156; *see also*, *In re Brice*, No. 04-19-00334-CV, 2019 WL 3642646, at *2 (Tex. App. Aug. 7, 2019); Tex. Fam. Code Ann. § 102.003(b). A parent has to win big in the first round of litigation and one parent usually does. The statutory requirements and presumptions usually result in order that awards one of the parents the right to designate the primary residence and awards that parent possession of the child more than fifty percent (50%) of the time. Tex. Fam. Code §§153.131; 153.133(a)(1); 153.312-153.315. Clearly the classification created by the standing statutes implicates the fundamental right of parents and prevents or significantly interferes with the exercise of that right. *Estes v. State*, 546 S.W.3d 691, 717 (Tex. Crim. App. 2018) (relying on *Zablocki*, 434 U.S. 374).

Standing is not "one thing". *Relators Brief* at 11. It is the first thing and as important as any other thing. The standing statutes allow one parent to unilaterally create a pseudo parents or numerous pseudo parents. In just

six short months, a stranger can acquire all the legal rights to someone else's child without the "natural affection" of a real parent and without acquiring any of the legal responsibilities of a parent. Ironically, this same individual could not acquire standing to leave the relationship and take the parent's pet or other property regardless of the length of the relationship. Yet, despite the fact the parent's rights to " 'the companionship, care, custody, and management " of his children are constitutional interests "far more precious than any property right, " this non-parent is able to acquire an interest in the parent's child. *See*, *Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (quoting *Lassiter v. Dep't of Soc. Servs. of Durham Cty., N. C.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981); *In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003).

As statutes under which J.D. sought standing are unconstitutional, and specifically unconstitutional as applied to Father, the orders in this case are void for lack of jurisdiction.

IV. SECTION 156.101 OF THE TEXAS FAMILY CODE IS UNCONSTITUTIONAL.

Section 156.101 of the Texas Family Code (hereinafter "modification statute") does not preserve the parental presumption or provide limited

circumstances that would overcome the presumption. *Troxel*, 530 U.S. at 68; *In re Derzapf*, 219 S.W.3d at 333; Tex. Fam. Code Ann. § 156.101. On its face, it burdens the rights of all parents in all modification suits. Tex. Fam. Code Ann. § 156.101. Consequently, it fails to pass the strict scrutiny test.

A. Section 156.101 of the Texas Family Code Violates the Due Process Rights of Parents in Modification Suits.

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). Yet, the modification statute ignores this constitutional mandate. Tex. Fam. Code Ann. § 156.101. Not only does the statute disregard this constitutional imperative it actually, in some instances, mandates such action. *See*, *In re Derzapf*, 219 S.W.3d at 333; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)("A trial court has no 'discretion' in determining what the law is or applying the law to the facts.").

Previously this Court held that the parental presumption does not apply in modification cases because it is not specifically mentioned in Chapter 156 as it is in Chapter 153. *In re V.L.K.*, 24 S.W.3d at 342–43;

Taylor, 154 Tex. at 310. Enacting Section 153.131 was not a creation of the parental presumption, but only a codification of the already existing and recognized presumption. Therefore, regardless of whether the omission of reference to the parental presumption was intentional or by oversight, the presumption cannot be legislated away.

This Court previously enunciated a policy concern regarding "the child's need for stability." *In re V.L.K.*, 24 S.W.3d at 342–43; *Taylor*, 154 Tex. at 310. Based on existing laws and policies that permit unilateral, no-fault divorce and restrict many entitlements to single parent homes, it is hard to imagine that the state could argue that concern is actually a compelling state interest. Nevertheless, even if that concern amounts to a compelling state interest, the modification statute is not sufficiently tailored to meet that specific interest. Tex. Fam. Code Ann. § 156.101. The lone fact that a fit parent was previously a party to a lawsuit, even involuntarily, cannot possibly be sufficient to overcome the presumption, in all future cases, that the same fit parent is acting in the best interest of their child in all future cases.

B. This Case is Distinguishable from Previous Holdings.

Both *V.L.K.* and *Taylor* are distinguishable because in both circumstances, the parent was not named as a managing conservator in the original suit. *In re V.L.K.*, 24 S.W.3d at 340; *Taylor*, 276 S.W.2d at 788. In *V.L.K.*, the mother actually exercised her parental rights and decided to enter into the agreed order. *In re V.L.K.*, 24 S.W.3d at 340. The modification statute does not differentiate between parents who were not named as managing conservators in the original suit and those that were. Tex. Fam. Code Ann. § 156.101.

Most notably, in this case, the modification statute created the exact opposite result than the stated need for stability. *In re V.L.K.*, 24 S.W.3d at 342–43; *Taylor*, 276 S.W.2d at 790. The child was less than two years old when the first order was entered on October 18, 2016. *Relator's Appendix* 1. Mother moved in with J.D. in August of 2017. Less than a year later, Mother was killed. (REC 45). By the time the temporary orders granting J.D. possession were rendered, the child had been in the sole care of Father for ten months. (REC 55). The resulting temporary orders and ongoing litigation in this are the epitome of instability.

V. MANDAMUS IS APPROPRIATE BECAUSE THE TEMPORARY ORDERS IN THIS CASE ARE VOID.

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 v. Packer*, 827 S.W.2d at 839. 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).

"A judgment is void only when it is apparent that the court rendering judgment had no jurisdiction of ….. the subject matter…" *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). As discussed above, the trial court had no jurisdiction because the statutes sought relief are unconstitutional. Additionally, the suit into which J.D. and the grandparents intervened did not survive Mother's death. *Zemke v. Stevens*, 494 S.W.2d 227, 228 (Tex. Civ. App. 1973). Even if they had been able to file an original petition, that " neither alters the character of

their intervention nor obviates the need to employ the proper procedural device." *Smelscer v. Smelscer*, 901 S.W.2d 708, 711 (Tex. App. 1995).

CONCLUSION

Two fit parents living together are the best chance a child has to thrive. Anything and everything that deprives a child of that opportunity must be avoided. Obviously, even this Court does not have the power to protect every child from the ills of world. Yet, the reality is the realm of family law is the only practice where it is acceptable to allow adults to create a fray, toss a kid in the middle of it, ask a judge to sort it out, and hope the child survives. The protections of the constitution are intended to provide protections to parents, who in turn protect their children. Vigorously defending those protections in legislation, enforcement, and review is the best way to protect these children, while they are minors and prospectively as adult parents.

Children do not enter this world as prizes to be awarded and they do not deserve to have their childhoods divided to accommodate the needs of everyone that enters their lives. Even J.D. recognized the significance of Father as the child's dad. (REC 38-39). The law can do no less.

PRAYER

Wherefore, Amicus prays this Court immediately issue an opinion granting all relief requested by Relator, addressing the constitutional principles raised herein, and providing direction for future cases.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft Word 2013 and contains 4,495 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).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was delivered on September 17, 2019, via electronic service to the parties and/or attorneys as listed below, in accordance with the Texas Rules of Civil Procedure.

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APPENDIX A

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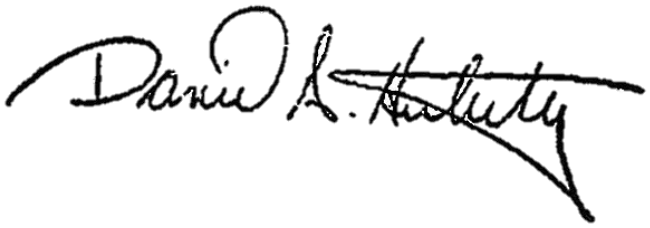
Chair, Senate Committee on Veteran Affairs & Border Security

Senator Bob Hall

Texas State Senate District 2

Chair, Senate Committee on Agriculture



State Representative Dan Huberty

Texas State House District 127

Chair, House Committee on Public Education

State Representative James White

Texas State House District 19

Chair, House Committee on Corrections

State Representative Jeff Leach

Texas State House District 67

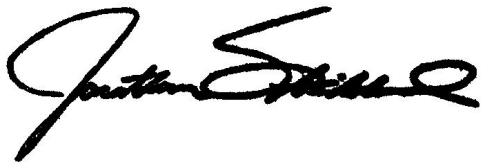
Chair, House Committee on Judiciary & Civil Jurisprudence

State Representative Matt Krause

Texas State House District 93

State Representative Briscoe Cain

Texas State House District 128

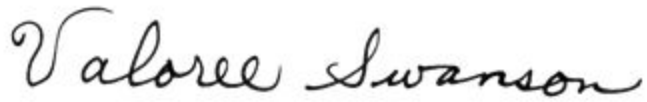


State Representative Jonathan Stickland

Texas State House District 92

State Representative Mayes Middleton

Texas State House District 92

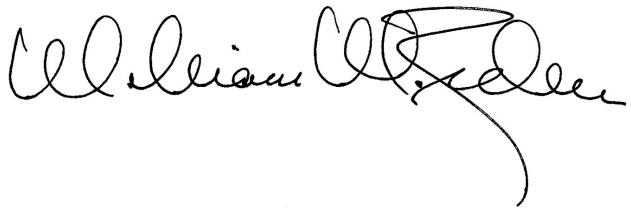


State Representative Valoree Swanson

Texas State House District 150

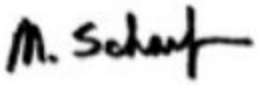
State Representative Mike Lang

Texas State House District 60



State Representative Bill Zedler

Texas State House District 96

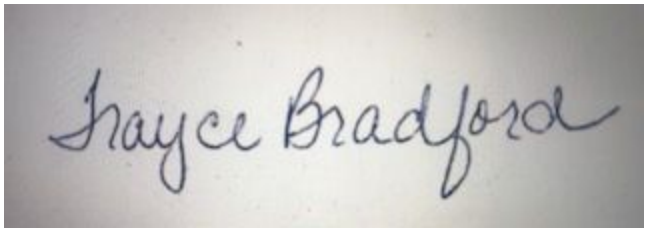


State Representative Matt Schaefer

Texas State House District 6

State Representative Steve Toth

Texas State House District 15



President, Texas Eagle Forum

JoAnn Fleming
Executive Director, Grassroots America – We the People

APPENDIX B

TEXT OF STATUTES

United States Constitutional Provisions

U.S. Const. amend. XIV, § 1

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

State Statutes

Tex. Fam. Code Ann. § 102.003

(a) An original suit may be filed at any time by:

…….
(9) a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition; ……..
(11) a person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition; ……

(b) In computing the time necessary for standing under Subsections (a)(9), (11), and (12), the court may not require that the time be continuous and uninterrupted but shall consider the child's principal residence during the relevant time preceding the date of commencement of the suit.

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. § 156.101

(a) The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and:
(1) the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of:
(A) the date of the rendition of the order; or
(B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based;
(2) the child is at least 12 years of age and has expressed to the court in chambers as provided by Section 153.009 the name of the person who is the child's

preference to have the exclusive right to designate the primary residence of the child; or
(3) the conservator who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months.
(b) Subsection (a)(3) does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

Tex. Fam. Code Ann. § 161.001
(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: …