FILED
24-0881
1/5/2026 3:31 PM
tex-109666204
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

NO. 24-0881

IN THE SUPREME COURT OF TEXAS

In the Interest of K.N., K.L., K.L., and K.L., Children

On Petition for Review from the 7th Court of Appeals, Amarillo, Texas
Cause No. 07-24-00146-CV

PETITIONER'S SUPPLEMENTAL BRIEF

SHARPEE LAW FIRM
Michael J. Sharpee, SBN 00788401
P.O. Box 1819
Amarillo, TX 79105
Telephone: (806)367-9713
Facsimile: (806)367-9716
mike@sharpeelawfirm.com

Attorney for Petitioner

PETITIONER REQUESTS ORAL ARGUMENT

IDENTITY OF PARTIES AND COUNSEL

PARTIES	**COUNSEL**
Petitioner Cama Niccum ("C.N.")	Michael J. Sharpee, SBN 00788401 Sharpee Law Firm P.O. Box 1819 Amarillo, TX 79105 Tel: (806) 367-9713 Fax: (806) 367-9716 *mike@sharpeelawfirm.com*
Respondent The Dept. of Family and Protective Services ("The Department")	Cory A. Scanlon P.O. Box 12548 Austin, Texas 78711 Tel: (512) 936-1700 *Cory.scanlon@oag.texas.gov*
Petitioner Robby Lirille ("R.L.")	Jay Michelsen 112 West Main St. Canadian, Texas 79014 Tel: (806) 323-3261 *Jaymichelsen.esq@gmail.com*
Real Party in Interest The Children ("K.N., K.L., K.L., and K.L.")	Taylor Harris 314 N. Cuyler St. Borger, Texas 79066 Tel: (806) 665-3788 *taylor@rickjharrislaw.com*

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Rules

NO. 24-0881

IN THE SUPREME COURT OF TEXAS

In the Interest of K.N., K.L., K.L., and K.L., Children

PETITIONER'S SUPPLEMENTAL BRIEF

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

SUMMARY OF ARGUMENT

Texas Family Code Sections 161.001(2)(b)(D and E) do not survive a strict scrutiny analysis because the statute is not necessarily drawn to allow the State's interference with a parent's fundamental right to make decisions concerning the care and custody of their child(ren). To save the statute from being condemned as unconstitutional, there must be a predicate finding of actual harm to a child as opposed to the current construction which only requires a finding of potential harm to a child.

ARGUMENT PRESENTED

Constitutional Amendment

In November 2025 the voters in Texas approved Section 37 to article 1 of the Texas Constitution (the Texas Bill of Rights) to enshrine the primacy of parent's right to raise their children as they see fit.

> "To enshrine truths that are deeply rooted in this nation's history and traditions, the people of Texas hereby affirm that a parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing."

Commentary generally admits this has been the law as recognized by both the U.S. Supreme Court and the Texas Supreme Court. Case authority from both of these Courts has been cited extensively in previous briefing, but there is no question that parents have a fundamental constitutional right to exercise care, custody and control of their children. In fact, it appears that at least some of the language for the constitutional amendment came directly from *Troxel v. Granville* 350 U.S. 57 (2000). This is the seminal case in which the U. S. Supreme Court struck a grandparent access statute as unconstitutional in the face of the above fundamental right of parent. Justice O'Connor, writing for the majority stated "In light of this extensive precedent, it cannot now be doubted that 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" *Id* at 66. However, as Justice Souter pointed out

in his concurring opinion, because of the overbreadth of the statute at issue there was no need to decide whether harm is required before a state's infringement of the parent's fundamental right is justified, "This ends the case, and there is no need to decide whether harm is required or to consider the precise scope of a parents right or its necessary protections. *Id* at 75-77."

The current case puts this issue squarely in front the Honorable Court.

The competing interests: Parents vs. State

As stated above and extensively briefed previously, parents have a fundamental right to the care custody and control of their children. This extends to decisions regarding education, religion, medical care and all the responsibilities that come with raising a child. This right encompasses the daily activities including a child's diet, forms of discipline and all the way to determining what child's bedtime will be. Justice O'Connor opined that "special weight" should be given to a parent's decisions on this broad spectrum of decisions. For example, a parent's decision that it is not in a child's best interest to visit grandparents should not be subject to a contrary finding by a judge. It is suggested in the *Troxel* opinion (as found by the Washington State Court) that the only time the State has a right to interfere with the parent's fundamental right is if the parent is "unfit". What constitutes and "unfit parent" has remained undefined. The Washington Court found that a finding of harm to the child

was required before the State has right to interfere with the parent's fundamental rights. *Id* at 96.

The U.S. Supreme Court has held that the States have an interest in preventing harm to children and has a right to intervene in the parent child relationship when these circumstances present themselves. *See Prince v. Massachusetts*, 321 U.S. 158 (1944), *Wisconsin v. Yoder,* 406 U.S. 205 (1972). Ostensibly, this is the States interest in terminating parental rights when Chapter 161.001 of the Texas Family Code is violated.

There is a third set of rights that is often ignored in this context and that is the child's liberty interest in his or her family. As Justice Stevens wrote in his dissent in *Troxel*:

> "While this Court has not yet had occasion to elucidate the nature of a child's liberty interest in preserving established familial or family-like bonds, 451 U.S. at 130 (reserving the question), it seems to me extremely likely that, to the extent parents and families have a fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so , too must their interests be balanced in the equation. *Troxel* at 88".

Let us not forget, we are talking about termination of parental rights. The oft cited death penalty of family law cases. Not only do the parents lose their fundamental right to raise their children but the children forever lose what had been their family

and parents. One would be hard pressed to explain how this in itself is not a traumatic and life changing event for the children.

Standard of review- strict scrutiny

Strict scrutiny is the highest level of judicial review in U.S. law, used to evaluate laws that infringe on fundamental rights or involve suspect classifications (like race, national origin). To survive strict scrutiny, the government must prove the law serves a compelling government interest, is narrowly tailored, and uses the least restrictive means to achieve that interest, placing a heavy burden on the government to justify the law as constitutional.

Although not explicitly stated in the *Troxel* opinion, counsel agrees with the concurring opinion written by Justice Thomas that strict scrutiny should be the standard of review when analyzing the States interference with the parent's fundamental right. *Id*. at 80.

Does the termination statute withstand a strict scrutiny review? It does not. If the State has in interest in protecting children from harm, the statute is not narrowly tailored so as to not interfere with the parent's fundamental rights unless this basis is served exclusively. Several bases for termination under 161.001 do not require a showing of any harm to a child. For example, 161.001(b)(1)(P) allows for the termination of a parent that is convicted of a crime and will be imprisoned for two

years. There is no showing required that the child has suffered any harm as a result of the parent's conviction. It is possible that such a parent is not unfit, the child suffered no harm, the child maintains some contact with the incarcerated parent, anxiously awaiting the parents return. The State has no interest in terminating such a parent under the cause of "protecting the child from harm." Other parts of the statute explicitly require a showing of harm for termination to be available. 161.001(b)(1)(L) provides a laundry list of crimes, that if a parent is convicted of such crimes, termination is available. However, the section specifically requires a showing of serious injury to the child before termination will lie. This portion of the statute does appear to serve the states interest, is narrowly tailored to only have effect when a parent has seriously injured a child, and there is arguably no less intrusive manner to protect the child then termination of offending parents' rights.

Because termination under 161.001(b)(2)(D) and (E) are the most common grounds for termination, and the basis for termination in the present case, Counsel will focus on these two bases for termination. The provisions of these particular statutes are well known to the Court. The statutes allow for termination when a parents conduct endangers a child or the parent allows a child to remain in conditions or surroundings that endanger a child. It is not the wording of the statute per se which

fails a strict scrutiny analysis, but rather the application and interpretation of the statute that results in its failure.

In cases involving D and E, it is almost always stated that no actual harm must befall the child because of the conduct or the environment, instead it is enough to sustain termination if the child "could" have suffered harm:

> "We have said that to "endanger" means "to expose to loss or injury; to jeopardize." *Tex. Dep't of Human Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987). Although "'endanger' means more than a threat of metaphysical injury or the possible ill effects of a less-than-ideal family environment," it does not require that there be conduct "directed at the child" or that "the child actually suffer[ ] injury." *Id.*
> *Int. of J.W.,* 645 S.W.3d 726, 748 (Tex. 2022)

This standard, presented in most termination cases, has come to mean that even if a child is not harmed, the child must only be exposed to the possibility of harm to provide a basis for termination. Counsel understands that this precept of law is based on the definition of the word "endanger". However, this is where the statutes application fails a strict scrutiny test. If the States interest is preventing harm to children, then the statute is not narrowly drawn to solely protect this interest. If all that is necessary to secure a termination of a fundamental right to the care and control of your children is that there is a possibility that a child will be harmed then the statute is too broad to withstand strict scrutiny analysis.

Defining an "unfit" parent, such that the State has a right to interfere the parent's fundamental rights should require a finding of actual harm to the child, either physical or emotional, before termination is available. Defining "endanger" in the context of the termination statute should require the same finding. If not, the statue is unconstitutional in its application.

As Justice Blacklock pointed out in the dissent (in discussing O, since repealed) there is a problem inherent in terminating parents' rights based on what might happen in the future:

> The Court's principal error is using subsection (O) to smuggle in the Department's concern that Father would not, *in the future*, be sufficiently "protective" of his child. For the Court, this suspicion about Father's *future* actions and intentions means that Father did not "maintain a safe and stable home environment" for his son. *Ante* at 744. This approach to the service plan converts what should be an objectively verifiable box-checking exercise into a completely subjective, open-ended, forward-looking invitation to speculate about all the ways in which Father might not make good on his earnestly stated intention to take good care of the child he loves.
> *Int. of J.W.,* 645 S.W.3d 726, 761 (Tex. 2022)

Counsel asserts the same speculation on future harm is inherent in the current articulation of D and E. The child does not suffer any actual injury, physically or emotionally, but he could in the future.

This proposed solution is best illustrated by one of the main problems society

faces generally, and the problem faced by the courts in termination proceedings---drug use. As in the present case, father was found in possession of drugs. However, the children were about a thousand miles away, not in his care and control, and there was no evidence that this event had any impact on the children. Never the less under current case law, the use of drugs alone (or mere possession of drugs) can result in termination. Similarly, there are situation where a parent may use drugs but otherwise is able to maintain employment, provide for the children needs and be a loving parent. Termination can still be sought and upheld because we presume that if the parent is using drugs, then it is only a matter of time before disaster strikes. This is mere speculation and does not provide for a narrowly tailored basis for termination in the face of the fundamental right.

Contrast this with scenarios in which mothers drug use results in the child being born addicted to drugs. Here actual physical harm was suffered because of drug use. Termination is available.

This requirement of a finding of harm to the children as a predicate for the interference (much less the termination of the fundamental right) is not a unique solution. This was the Washington State Supreme Courts solution to the constitutionality of their visitation statute. Considering the *Troxel* opinion, the Texas legislature again raised the bar for third parties seeking access to a child by requiring

proof that failure to have access would significantly impair the child's physical or emotional health. This is only dealing with an interference with the parents right to decide with whom a child will associate with, not the capital sentence of termination. Counsel submits it is more difficult to have a court order visitation with grandparents then it is to terminate parental rights. The hurdle that must be cleared to terminate parental rights should be higher than the one for visitation over a parent's objection.

Again, we are dealing exclusively with termination. A required finding of actual harm to a child before termination can be sought does not hamstring the Department. The State is not required to sit idly by and await a child's arrival at the hospital after suffering some sort of horrendous abuse. The State still has all the resources provided by Chapter 262 of the Texas Family Code. They can initiated investigations. They can seek a court order requiring services, drug testing, interviewing the child, obtain managing conservatorship, place with a family member ect…. However, the State should not be allowed to seek termination with no actual harm suffered by the child. it certainly is not narrowly tailored to protect parents' rights from termination in marginal cases like the one before the Court. Termination is a bridge too far.

One can hear the Department argue that they tried to get the family to work family-based services that they didn't remove the children until their hand was forced by a failure to cooperate. This does not mean termination should have been available.

Like any other litigant, the parents in this case would face contempt, fines and possible incarceration for the failure to follow a court order. These remedies are a far cry from termination of parental rights and would not involve the termination of a fundamental constitutional right.

Let us not forget the children's liberty interest in termination of the parental rights, it should play some role in the strict scrutiny analysis. Father may drink too much and have a bad temper. He is still dad. Mom may sleep too much because of those pills she takes. She is still mom. Courts have talked about the biological, emotional, and societal connection between parents and their children. It is not only the parents' rights that are eliminated by termination but so too any relationship a child has with the parent. Keep in mind the Southern District of Texas federal court found that the foster care system in the State often put children in a much worse situation than the one they were removed from. *See M.D. v Abbott,* 152 F. Supp. 3d 684, (S.D. Tex. 2015). Termination that results in the placement of the children in foster care does not serve to prevent harm to the child, at least according to the federal court. In the present case, the children were removed by law enforcement, by force. The parents have argued this caused more trauma and harm to the children then any conduct of which they were accused. When this factor is included in the analysis, the State's interest is not served by termination and may in fact be counter to the very

interest the State seeks to protect, at least not until it is proven the child has suffered actual harm from the parent's conduct or environment.

The heighted evidentiary standard---it does not resolve a strict scrutiny problem

The Honorable Court recognized issues with termination and fundamental parental rights. The Court required a higher burden of proof to sustain a termination. The evidentiary burden is described as follows:

> This heightened burden of proof affects the standard of review in an evidentiary challenge on appeal. To that end, in reviewing a legal-sufficiency challenge, we must determine whether "a reasonable trier of fact could have formed a firm belief or conviction that its finding was true." *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). Bearing in mind the required appellate deference to the factfinder, we "look at all the evidence in the light most favorable to the finding," "assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so," and "disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id.* However, we may not disregard "statute undisputed facts that do not support the finding." *Id.* Under this standard, the factfinder remains "the sole arbiter of the witnesses' credibility and demeanor." *In re J.F.-G.*, 627 S.W.3d 304, 312 (Tex. 2021) (quoting *In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009)).
>
> *Int. of J.W.,* 645 S.W.3d 726, 741 (Tex. 2022)

Counsel asserts this was a valiant effort to stem the flow of termination cases the Court deals with on an annual basis. It stands to reason that increasing the burden of proof in a termination case would make such cases more difficult to prosecute and

win. Regardless of the efficacy of requiring a "firm conviction or belief" before terminating parental rights, increasing the burden of proof does not resolve the issues surrounding strict scrutiny and the balancing of parental rights and the States interest. This is so because raising the evidentiary standard did nothing to narrow the scope of when termination proceedings can be brought by the State. The same basis for termination still exists under the Family Code regardless of the evidentiary burden. As discussed above, to survive a strict scrutiny analysis the statute itself must be narrowly tailored to interfere with the parents' rights as little as possible but still allow the State to protect children from harm. Under the current regime, termination can be brought with no harm suffered by the child, regardless of the evidentiary burden imposed from bringing the case. If the States interest is in protecting children from harm, then how is a statute narrowly drawn if the parents' rights can be terminated without a showing of actual harm?

CONCLUSION AND PRAYER

Without regurgitating all the facts and arguments made in the previous briefing, the parents argue they did not abuse or neglect their children. The children were left in their care for the first six months of the case, indicating the Department did not determine the children were being harmed. It was not until the family moved outside the jurisdiction that termination was sought and obtained. The parents argued

termination was obtained because of their refusal to comply with the Department's demands. Perhaps legal sufficiency and the heightened evidentiary burden are enough to reverse the termination and managing conservatorship.

If the Honorable Court wished to address the question reserved by Justice Souter in the *Troxel* opinion about what protections are necessary to safeguard a parent's fundamental right to raise their children without the State interference, then this is opportunity to do so.

161.001(b)(2) (D) and (E) do not pass a strict scrutiny analysis in that they are not narrowly drawn so only when a child has suffered some actual harm at the hands of a parent (the State's only recognized interest in the family) termination of the parent's rights is available. Because the States allow termination where therein only a potential for harm, as opposed to actual harm, it is too broad. It exceeds what is necessary to protect children from harm at the cost of a fundamental constitutional right. The State has other less intrusive means to protect its interest short of termination via Chapter 262 of the Texas Family Code. It's use of the term "endanger" can be restricted to mean actual harm to a child caused by the parent, then perhaps the statute can be salvaged. If not, the statute is unconstitutional as written and applied. Particularly in this case.

For the reasons stated in this supplemental brief and previous briefing, the Petitioners ask the Supreme Court to reverse the termination of parental rights and the appointment of the Department as sole managing conservatorship of younger children and render judgment returning the children to the parents. If the Court is of the opinion that remand is appropriate, then it is requested.

SHARPEE LAW FIRM, INC.

Michael J. Sharpee, SBN 00788401
7450 Golden Pond Place, Suite 400
Amarillo, TX 79121
Telephone: (806) 367-9713
Facsimile: (806) 367-9716
Attorney for Petitioner

By: /s/ Michael J. Sharpee
Michael J. Sharpee

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this Petitioner's Supplemental Brief contains 3450 words. This is a computer-generated document and in making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ Michael J. Sharpee

Michael J. Sharpee
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on, January 5, 2026, as follows:

Via Email
Texas Department of Family and Protective Services
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711
Cory.scanlon@oag.texas.gov

Via Email
Jay Michelsen
112 W. Main St.
Canadian, Texas 79014
Jaymichelsen.esq@gmail.com

Via Email
Taylor Harris
314 N. Cuyler
Borger, Texas 79065
Rickjharris.law@gmail.com

/s/ Michael J. Sharpee
Michael J. Sharpee
Attorney for Petitioner

Automated Certificate of eService

This automated certificate of service was created by the efiling system.
The filer served this document via email generated by the efiling system
on the date and to the persons listed below:

Cortney Holdaway on behalf of Michael Sharpee
Bar No. 788401
cortney@sharpeelawfirm.com
Envelope ID: 109666204
Filing Code Description: Unlisted
Filing Description: Petitioner's Supplemental Brief
Status as of 1/5/2026 3:37 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Sharpee	788401	mike@sharpeelawfirm.com	1/5/2026 3:31:32 PM	SENT
Taylor Harris	24072143	rickjharris.law@gmail.com	1/5/2026 3:31:32 PM	SENT
Rebecca Leigh Safavi	24086491	rebecca.safavi@dfps.texas.gov	1/5/2026 3:31:32 PM	SENT
Jay Michelsen	24088057	jaymichelsen.esq@gmail.com	1/5/2026 3:31:32 PM	SENT
Nancy Villarreal		nancy.villarreal@oag.texas.gov	1/5/2026 3:31:32 PM	SENT
Cory Scanlon		cory.scanlon@oag.texas.gov	1/5/2026 3:31:32 PM	SENT
Meagan Corser	24142802	meagan.corser@txcourts.gov	1/5/2026 3:31:32 PM	SENT