Cause 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

Brief for the Family Freedom Project as Amicus Curiae

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IDENTITY OF PARTIES AND COUNSEL

Amicus Curiae adopts Petitioners' and Respondents' Identity of Parties and Counsel as accurate.

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INTEREST OF AMICUS CURIAE

Amicus Curiae, the Family Freedom Project (FFP), is a registered assumed name of the Texas Home School Coalition, a nonprofit organization committed to preserving the fundamental rights of parents to raise their children without unwarranted and unnecessary interference by the government or other nonparents.

FFP does extensive work in the courts and the Texas legislature to protect the constitutional rights of Texas parents to raise their children. FFP has been instrumental in the passage of numerous bills in the Texas legislature designed to ensure that the fundamental rights of Texas parents are protected against unlawful interference from Child Protective Services. Additionally, FFP routinely works on legislation that would protect the rights and responsibilities of parents to raise their children in the areas of family law, healthcare, education, and criminal law.

Similarly, FFP works to protect the rights of Texas parents from overreach in the courts. FFP regularly intervenes in cases dealing with complex questions of child welfare and parental rights. Many of these cases have been before this Court. FFP works to clarify jurisprudence on questions of parental rights so that the rights of parents are protected against unwarranted intrusion from the state and to ensure that families across Texas have equal access to justice through Texas courts regardless of their background or socioeconomic status.

FFP will continue advocating as a friend of the court in significant cases in which this Court is asked to explain, interpret, or protect the fundamental

liberty interests of parents. This case, which presents an important question regarding how to balance parents' constitutional right to raise their children with the State's interest in protecting children, is one of those cases.

FFP has retained Chris Branson, Attorney at Law, to file this Amicus Brief defending the constitutional interest of Texas parents and intends to exclusively pay any legal fees and costs associated with the provision of those services.

STATEMENT OF FACTS

FFP adopts Petitioner's statement that the opinion of the court of appeals correctly states the nature of the case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Medical doctors immerse themselves in highly specialized training and rigorous practice in order to conduct narrowly-tailored surgical interventions into the human body. Different causes for those interventions require different tools, always applied in a case-specific manner. This is, of course, as it should be. No one wants a surgeon who begins cutting with an operative plan based on a generic review of what the typical patient needs. Rather, that review must be highly specific to that individual patient.

Yet, there is a principle that doctors follow that is foundational to all patients: do no harm. This lifeblood of the Hippocratic Oath emphasized patient safety above all—including personal sensibilities and preferences that would overrule the needs and rights of their patients. All contemplated

medical interventions must be evaluated with this oath in mind and brought into compliance with this ethical mandate. This mandate, when properly observed, separates modern Western medicine from the atrocities committed in dark chapters of our past.

The field of law faces the same mandate. There is an overarching constitutional principle that guides the decision of judges when the invasion of parental rights is being considered. It forbids consideration of the subjective preferences and sensibilities of judges, prosecutors, caseworkers, and any other non-parent.

This court has an exemplary record of righting the wrongs of lower courts—but only for those parents who can afford the fight. Thousands of similarly situated families cannot. A clearly-articulated guiding constitutional ethic is desperately needed.

Petitioner C.N., in her Petition for Review, stated that "[a]t some point, this Court is going to have to provide guidance as to how to balance a parent's constitutional right to raise their [sic] children with the States [sic] interest in protecting children. Petitioner argues this case offers the opportunity to do so." FFP agrees, and respectfully submits this brief to argue that the correct balance, when considering parental rights against an invasion of those rights by third parties, is strict scrutiny.

FFP does not here attempt a detailed, fact-driven defense of the parents' position.[1] Rather, FFP seeks to correctly frame the parties'

[1] Although, upon review of the briefs on the merits, FFP agrees with Respondent's witness who "admitted that he was confused as to why this was even a case." *See* C.N.'s Petition for Review at 28.

arguments (and by extension, the conduct of trial courts and litigants in general) into what we contend is the proper framework—strict scrutiny. Based on that framework, the termination of C.N. and R.L.'s parental rights should be reversed.

ARGUMENT

I. Lower courts need direction from this court on how to balance the constitutional interests of parents with the interests of other parties.

In recent years, a procession of parents has come before this court seeking redress for a litany of constitutional rights violations. These cases have had diverse facts and parties and have implicated a wide range of laws in different contexts–but they have had one thread in common: lower courts, both district and appellate, that did not understand how to balance the constitutional interests of parents with the interests of non-parents.

In 2000, the United States Supreme Court issued its landmark opinion in *Troxel vs Granville,* 530 U.S. 57 (2000) (plurality op.). After summarizing a century of case law on the subject of parental rights, the court made this renowned statement: "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Id.*, 530 U.S. at 120.

One should expect, following this weighty declaration, that trial courts around the country would from that point forward give proper weight to parents' rights when balanced against countervailing interests from the state

or private parties. In some respects, they did. But there lingers in many courtrooms a disturbingly casual attitude toward this most precious right, one that parents immediately recognize when the integrity or survival of their family is at stake. In such cases, parents who can afford to reach this court are often vindicated. Yet untold thousands are not able to do so, the financial and relational toll of litigation being more than they can bear.

A brief review of select parental rights cases that have recently come before this court is instructive on this point:

1. In 2020, this court returned a daughter to her father's full custody after the trial and appellate courts had allowed an unrelated non-parent to obtain partial custody despite open acknowledgment by all parties that the father was a fit parent. Both the trial court and the appellate court had approved the decision. *See In re C.J.C.*, 603 S.W.3d 804 (Tex. 2020).

2. In 2023, this court reversed the Fourth Court of Appeals and a district court that had terminated a mother's parental rights after she complied with CPS's required service plan—just not in the manner CPS preferred. *See In re R.J.G.*, 681 S.W.3d 370 (Tex. 2023).

3. Earlier this year, this court issued another landmark decision for parental rights when it struck down a protective order against Christine Stary that blocked her from seeing her children—for life. The order had been issued by the trial court and approved by the court of appeals despite this de facto termination of parental rights having none of the traditional due process protections required for so grave a deprivation of constitutional liberty. *See Stary v. Ethridge,* No. 23-0067, slip op. (Tex. May 2, 2025).

This court is faced with yet another all-too-familiar story: a mother found herself on the wrong side of the state's police power and suffered the destruction of her family. She now respectfully seeks this court's assistance in righting this wrong.

In each of the stories mentioned above (and more thoroughly analyzed below), and in thousands of others that remain untold, the courts are tasked with the protection of the parents' constitutional rights and the balancing of that interest against the interests of third parties.

The fitness of these parents may be uncontested, as in *In re C.J.C.*, or they may come with troubling and messy family circumstances, as was the case in *Stary v Ethridge*. The most troubling issue is not how these families end up in court, but how they are treated when they arrive. The sacred realm of the family should never be intruded upon by the state except under the gravest of circumstances and with only the most careful of methods.

Yet it is hard to escape the belief, based on observation, that families are forced to fight not a narrow state intervention designed to protect a child from harm, but a sweeping attempt by the state to remake the family into something more to its subjective liking. Similar to patients filing grievances with medical boards, these families' stories set forth long lists of infractions where the state, upon making an incision into the family's metaphorical body to remedy a specific, identified disorder, decided to explore. In its reckless zeal to make a "better" family, it forgot the guiding mandate: do no harm.

Had the trial court in *In re C.J.C.* properly understood the limitations of its own power, it would not have allowed a non-parent to so easily invade

a constitutionally protected interest. In *In re R.J.G.*, the state had no interest in forcing a mother to complete therapy at its chosen therapist rather than one chosen by the parent—and certainly no reason, narrowly tailored or otherwise, to terminate her rights for failure to comply. A narrow intervention would not have required the intervention of this court. In *Stary v Ethridge*, the state had no interest in blocking a mother from seeing her children for life, without due process. It is self-evident that, had parents' constitutional rights been given their proper weight, the result would have been significantly different.

The problem we face now is that the lower courts have no rubric through which they can consistently view this right in order to properly conduct such a balancing. As in the days of the Judges of Israel, in the absence of a king, "everyone did what was right in his own eyes."[2] In a constitutional republic, the constitution is king.

Rather than be governed by any consistent constitutional norm, the state routinely approaches the parent-child relationship with the attitude of *The Six Million Dollar Man*: "We can rebuild [them]. We have the technology."[3]

So then, does the Constitution have anything to say about how to balance the interests of a mother who has materially complied with her CPS service plan, against the asserted interest of the state in terminating her parental rights? Does it offer guidance when considering the issuance of a

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[2] Judges 21:25 (English Standard Version)

[3] The Six Million Dollar Man, "Pilot," (ABC, Mar. 7, 1973, at 0:01:20).

protective order barring a mother's access to her children? Does it limit a medical institution that seeks life and death decision-making over a parent's child? Is any unifying constitutional principle available to guide the judge faced with overreach from a medical institution that can also guide the same judge again when faced with an attempt by the state to force the dissolution of a family? The answer, to all of the above, is unequivocably yes.

Family Freedom Project agrees with the petitioner that now is the time for this court to provide this much-needed guidance, and longstanding constitutional jurisprudence is the answer.

In the absence of broad, constitutional guidance from this court on how to balance the rights of parents against the interests of other parties, lower courts will continue to play a disjointed game of constitutional whack-a-mole—a biased, rudderless exploration into the living body of a family in a vague quest to create something "better." It's a game the parents and children of this state cannot afford.

II. Parents' right to the care, custody and control of their children is fundamental in nature, protected under the Fourteenth Amendment of the U. S. Constitution, Article I § 19 of the Texas Constitution, and Texas Supreme Court precedent.

The right of a parent is, without question, one of the personal and fundamental rights protected by the Constitution. "This natural parental right has been characterized as 'essential,' 'a basic civil right of man,' and 'far more precious than property rights.'" *Holick v. Smith*, 685 S.W.2d 18, 20

(Tex. 1985) (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

"The natural right which exists between parents and their children is one of constitutional dimensions." *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976) (collecting cases). "It is cardinal . . . that the custody, care and nurture of the child reside first in the parents . . . ." *Troxel,* 530 U.S. at 65 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)). "Parents enjoy a fundamental right to make decisions concerning 'the care, custody, and control of their children.'" *In re Chambless*, 257 S.W.3d 698, 700 (Tex. 2008) (quoting *Troxel*, 530 U.S. at 65 (plurality opinion)).

The right of parents to raise their children free from government interference is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment. *See* U.S. CONST. amend. XIV § 1; *Troxel*, 530 U.S. at 66. This right is recognized by both the U.S. and Texas Supreme Courts. *Troxel*, 530 U.S. at 66; *In re Chambless* at 700. The right of a fit parent to determine the care, custody, and control of his or her child is subject to the protections of the Due Process Clause of the Fourteenth Amendment. *Troxel*, 530 U.S. at 66. "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests

recognized by this Court." *Id.* at 65; *see also Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *Yoder*, 406 U.S. at 214; *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

The Texas Constitution provides parents due process rights to the care, custody, and control of their children:

> No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land.

TEX. CONST. art. 1 § 19.

The Texas Supreme Court has made clear that these due process rights extend to parents:

> The United States Constitution and Texas Constitution provide parents due process rights as to the care, custody, and control of their children. The United States Constitution mandates that no state shall "deprive any person of life, liberty, or property, without due process of law." In Texas, "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." This Court has stated that there is no "meaningful distinction" between due process of the law under the United States Constitution and due course of law under the Texas Constitution. Texas courts have, therefore, traditionally followed federal due process precedent.
> . . . One of the most fundamental liberty interests recognized is the interest of parents in the care, custody, and control of their children.

In re N.G., 577 S.W.3d 230, 234–35 (Tex. 2019) (alteration in original) (citations omitted).

III. Strict Scrutiny is the constitutional principle that offers clear, broad, and flexible guidance to lower courts on how to balance the rights of parents against the interests of third parties. It assures the proper balance between advancing the state's compelling interest in protecting children and respecting fundamental liberties.

A. Strict Scrutiny is the proper constitutional test for state intervention into the parent-child relationship.

Any intervention by the state into the parent-child relationship is fraught with peril, for it is presumed that the interests of the child and the parent will normally align. ("At the factfinding stage, the State cannot presume that a child and his parents are adversaries.") *Santosky*, 455 U.S. at 760. Yet, it is sometimes necessary to protect children from significant harm at the hand of an abusive parent. A strict-scrutiny analysis provides the method by which courts can effectively analyze the validity of any such intervention and assures the proper balance between advancing a compelling interest and respecting fundamental liberties. Doing so provides the state with the latitude it needs to protect children when necessary, while at the same time protecting citizens from governmental overreach that tramples the fundamental liberties enshrined in our federal and state constitutions.

Courts generally apply strict scrutiny if a state statute infringes upon a fundamental liberty interest protected under the Due Process Clause of the Fourteenth Amendment. *See Reno v. Flores*, 507 U.S. 292, 302 (1993). Longstanding jurisprudence from the U.S. Supreme Court holds that the proper standard of review when parental rights are at issue is strict scrutiny. *See id.*; *see also Troxel*, 530 U.S. at 80 (Thomas, J., concurring) (noting that

strict scrutiny is the appropriate standard for reviewing the infringement of fundamental rights such as the parental right to direct a child's upbringing).

Application of this standard prevents any infringement of fundamental rights "unless the infringement is narrowly tailored to serve a compelling state interest." *Reno*, 507 U.S. at 301–02; *see also Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (noting that the Fourteenth Amendment of the U.S. Constitution forbids the government from infringing on "'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest").

A law that is subject to strict scrutiny must be "narrowly tailored to serve a compelling state interest." *Reno*, 507 U.S. at 302. When a fundamental right is implicated, like the right of parents to raise their children, a statute will be upheld only if it is narrowly tailored to serve a compelling state interest. *In re Pensom*, 126 S.W.3d 251, 254 (Tex. App.—San Antonio 2003, no pet.) (citing *Troxel*, 530 U.S. at 80 (Thomas, J., concurring)). "A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (citing *City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 808–10 (1984)). "A complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil." *Id.*

B. Strict Scrutiny provides the practical, constitutional guidance that lower courts need.

Federal and state case law provide ample illustrations of how the application of strict scrutiny would help lower courts understand the constitutional balancing of interests that is required when weighing parental rights against competing interests.

In the case of *In re C.J.C.*, the issue before this court was whether the presumption that fit parents act in the best interest of their children applies when a nonparent seeks to modify an existing conservatorship order naming a parent as the managing conservator. The child's maternal grandparents had petitioned to intervene in the modification suit filed by their now-deceased daughter. They asked to be named joint managing conservators with the child's father. *Id.* at 808. A boyfriend of the deceased mother also petitioned to intervene, seeking similar relief. *Id.* at 809. The trial court denied the father's objection to court-ordered visitation for both. On mandamus, the appellate court concluded that the grandparents lacked standing, but the boyfriend had standing because he had exercised actual care, control, and possession of the child when she resided with her mother. The trial court then entered temporary orders naming the boyfriend a possessory conservator of the child. The father petitioned this court for relief, arguing that the trial court's orders violated his right to parent his child without government intervention. *Id.* at 810. This court, citing well-established U.S. and Texas Supreme Court case law, stated:

> When a nonparent requests conservatorship or possession of a child, the child's best interest is embedded with the presumption

> that it is the fit parent—not a court—who makes the determination whether to allow that request. No party alleges, no evidence demonstrates, and no court finding exists that [the child's] father is unfit to be her parent. Nor is there evidence or findings rebutting the resulting presumption that [the child's] father acts in her best interest. The trial court thus abused its discretion in ordering, over the objection of [the child's] father, that [the boyfriend] be named [the child's] possessory conservator with rights to possession of the child.

In re C.J.C. at 820.

Had strict scrutiny been the rubric for the trial court in this case, that court would likely not have abused its discretion because the decision to be made would have been obvious from the start: that the state has no compelling interest in taking custody away from a fit parent. The constitutionally-protected right of a father to parent his child far outweighs the right of the once-boyfriend of the other parent.

In the case of *In re R.J.G.*, "the Department sought termination based solely on (O) and conceded that, although she did not comply in the precise way the Department hoped she would, Mother complied with the plan's terms." *In re R.J.G.* at 374.

The thankfully now-dead "O" ground allowed for termination if the court found 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 ....

TEXAS FAMILY CODE ANN. § 161.001(b)(1)(O) (repealed 2025). The "provisions of a court order" came at least in part in the form of a "family service plan" which the Department asserted she failed to comply with because she failed

to complete individual counseling with the specific counselor detailed in the family service plan and sought termination despite the fact that "the evidence conclusively shows Mother did "undergo individual counseling in order to address her needs."" *In re R.J.G* . at 375.

The trial court agreed with the department, and terminated mother's parental rights because it "essentially concluded that strict compliance was required and that the Family Code did not allow it to "infer" that compliance with a plan's provisions, while not perfect, could be sufficient to avoid termination under (O)." *Id*. at 382. The court of appeals likewise rejected Mother's argument that she substantially complied with her plan's requirements, relying on a general rule that "substantial compliance with a family service plan is not the same as complete compliance." *Id*. (citing *Interest of R.J.G.*, 2022 WL 1158680, at 3).

This court held that the lower courts erred:

> In light of Mother's compliance with the material provisions of the service plan and the caseworker's concession that Mother complied with the plan—just not in the way that suited the Department—we hold that there is insufficient evidence to support termination by clear and convincing evidence under (O) … In evaluating whether termination is warranted, the trial court must ensure that any asserted noncompliance is of a requirement that is neither unwritten nor vague but rather "specifically established" in a court-ordered plan. Additionally, to justify termination, the noncompliance must not be trivial or immaterial in light of the nature and degree of the parent's compliance and the totality of the plan's requirements.

Id. at 383.

This court, in other words, provided to the lower courts, *in that case*, guidance that the constitutionally-protected rights of parents must be

balanced against the mechanical wording of a court order that, when weighed against that parent's rights, turns out to be "trivial or immaterial." *Id.* Had strict scrutiny been the rubric for cases involving parental rights, *R.J.G.* would have concluded at the trial court level, the time of the appellate court and this court would have been spent on better pursuits, and the family involved would have been spared months of expense and heartache.

In the case of *Stary*, the trial court essentially terminated mother's right to her children by issuing a lifetime protective order. *Id.* at *2. The appellate court affirmed, holding that some scant rights and obligations remained. Thus, it was not equivalent to a termination of her parental rights and due process did not require a clear and convincing standard. *Id.* at *5.

This court, upon review, held that "the imposition of a protective order prohibiting all contact between a parent and her child for more than two years deprives the parent of a fundamental right to make decisions concerning the care, custody, and control of that child." *Id.* at *10. It further stated:

> Protective orders ordinarily provide short-term protection from family violence. Protective orders that ban all communication between a parent and her children for more than two years, however, present special consideration of the fundamental right to parent. Due process demands that clear and convincing evidence support such an order and an evaluation of whether prohibiting all contact between a parent and child for the duration of the order is in the child's best interest. In light of the standards announced today, we reverse the judgment of the court of appeals and remand the case to the trial court for a new hearing.

Id. at *21.

Again, had the trial court been held to the rubric of strict scrutiny, the entire appellate history of this case would likely not exist, because it would not have been necessary.

CONCLUSION AND PRAYER FOR RELIEF

FFP seeks to correctly frame the parties' arguments (and by extension, the conduct of all trial courts and litigants) into what we contend is the proper framework for any issue regarding the rights of a parent—strict scrutiny. Petitioner C.N., in her Petition for Review, stated that "[a]t some point, this Court is going to have to provide guidance as to how to balance a parent's constitutional right to raise their [sic] children with the States [sic] interest in protecting children. Petitioner argues this case offers the opportunity to do so." We agree.

A commitment by this Court to a strict scrutiny analysis does not make parental rights unlimited. Rather, such a commitment demonstrates the Court's (1) adherence to longstanding Texas and federal jurisprudence protecting these fundamental rights and (2) commitment to a rigorous process by which each case will be decided on its own merits according to the dictates of the strict scrutiny test. A continued adherence to the strict scrutiny test does not predetermine the outcome of this case or future cases. It does, however, give this and lower courts clear guidance for the test by which this and future cases must be decided.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with TEX. R. APP. P. 9. It contains 4,180 words, as determined by the computer software's word count function, excluding the sections of the brief exempted by TEX. R. APP. P. 9.4(i)(1) and is proportionally spaced using Georgia Pro, 14 point.

/s/ Chris L. Branson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was delivered to each party and/or their respective attorney of record on or before November 23, 2025 via electronic service in accordance with TEX. R. APP. P. 9.5.

/s/ Chris L. Branson
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APPENDIX

Constitutional Provisions

U. S. CONST. amend. XIV § 1

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEX. CONST. art. I, § 19

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Statutes

TEX. FAM. CODE ANN. § 161.001 (2023)

(a) In this section, "born addicted to alcohol or a controlled substance" means a child:
(1) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481,Chapter 481, Health and Safety Code a controlled substance legally obtained by prescription, or alcohol; and
(2) who, after birth as a result of the mother's use of the controlled substance or alcohol:(A) experiences observable withdrawal from the alcohol or controlled substance; (B) exhibits observable or harmful effects in the child's physical appearance or functioning; or (C) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.
(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:
(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
(J) been the major cause of:
(i) the failure of the child to be enrolled in school as required by the Education Code; or
(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Penal Code law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sPenal Coder adjudicated under Title 3 for Title 3 that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sPenal Code
(i) Section 19.02 (murder);
(ii) Section Section 19.03rder);
(iii) Section 19.0Section 19.04er);
(iv) Section 21.11 (indecency with a child);

(v) Section 22.01 (assault);
(vi) Section Section 22.011ault);
(vii) Section 22.02 (aggravated assault);
(viii) Section 22.0Section 22.021 sexual assault);
(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
(x) Section Section 22.041 or endangering a child, elderly individual, or disabled individual);
(xi) Section 25.02 (prohibited sexual conduct);
(xii) Section 43.25 (sexual performance by a child);
(xiii) Section 43.26 (possession or promotion of child pornography);
(xiv) Section 21.02 (continuous sexual abuse of young child or disabled individual);
(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
(xvi) Section 43.05(a)(2) (compelling prostitution);
(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (DParagraph (D)ubstantially equivalent provisions of the law of another state;
(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and: (i) the department has made reasonable efforts to return the child to the parent; (ii) the parent has not regularly visited or maintained significant contact with the child; and (iii) the parent has demonstrated an inability to provide the child with a safe environment;
(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 Chapter 262 abuse or neglect of the child;
(P) used a controlled substance, as defined by Chapter 481,Chapter 481, Health and Safety Code manner that endangered the health or safety of the child, and: (i) failed to complete a court-ordered substance abuse treatment program; or (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;
(Q) knowingly engaged in criminal conduct that has resulted in the parent's: (i) conviction of an offense; and (ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;
(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;
(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;

(T) been convicted of:
(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, Penal Codender a law of another state, federal law, the law of a foreign country, or the Uniform Code of MiliCode of Military Justicens elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
(ii) criminal attempt under Section 15.01, Penal Code, Penal Codender a law of another state, federal law, the law of a foreign country, or the Uniform Code of MiliCode of Military Justicens elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, Penal Codeommit the offense described by Subparagraph (i);
(iii) criminal solicitation under Section 15.03, Penal Code, Penal Codender a law of another state, federal law, the law of a foreign country, or the Uniform Code of MiliCode of Military Justicens elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, Penal Code offense described by Subparagraph (i); or
(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, Penal Codender a law of another state, federal law, or the Uniform Code of MiliCode of Military Justicens elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; Penal
(U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, Penal Codender a law of another state, federal law, or the Uniform Code of MiliCode of Military Justicens elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or
(V) been convicted of:
(i) criminal solicitation of a minor under Section 15.031, Penal Code, Penal Codender a law of another state, federal law, the law of a foreign country, or the Uniform Code of MiliCode of Military Justicens elements that are substantially similar to the elements of an offense under Section 15.031, Penal Code; or
(ii) online solicitation of a minor under Section 33.021, Penal Code, Penal Codender a law of another state, federal law, the law of a foreign country, or the Uniform Code of MiliCode of Military Justicens elements that are substantially similar to the elements of an offense under Section 33.021, Penal Code; Penal Code
(2) that termination is in the best interest of the child.
(c) Evidence of one or more of the following does not constitute clear and convincing evidence sufficient for a court to make a finding under Subsection (b) and order termination of the parent-child relationship:
(1) the parent homeschooled the child;
(2) the parent is economically disadvantaged;

(3) the parent has been charged with a nonviolent misdemeanor offense other than: (A) an offense under Title 5, Penal Code; (B) an oTitle 5, Penal Code6, Penal Code; or (C) an Title 6, Penal Codelves family violence, as defined by Section 71.004 of this code;
(4) the parent provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;
(5) the parent declined immunization for the child for reasons of conscience, including a religious belief;
(6) the parent sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to another health care facility; or
(7) the parent allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.
(d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:
(1) the parent was unable to comply with specific provisions of the court order; and
(2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.
(d-1) The court may not order termination under Subsection (b)(1)(M) unless the petition for the termination of the parent-child relationship is filed not later than the first anniversary of the date the department or an equivalent agency in another state was granted managing conservatorship of a child in the case that resulted in the termination of the parent-child relationship with respect to that child based on a finding that the parent's conduct violated Subsection (b)(1)(D) or (E) or substantially equivalent provisions of the law of another state.
(e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.
(f) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services, the court may not order termination of the parent-child relationship under Subsection (b)(1) unless the court finds by clear and convincing evidence and describes in writing with specificity in a separate section of the order that:
(1) the department made reasonable efforts to return the child to the parent before commencement of a trial on the merits and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent; or
(2) reasonable efforts to return the child to the parent, including the requirement for the department to provide a family service plan to the parent, have been waived under Section 262.2015.

(g) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services in which the department made reasonable efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, the court shall include in a separate section of its order written findings describing with specificity the reasonable efforts the department made to return the child to the child's home.

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Filing Description: Amicus Brief of Family Freedom Project
Status as of 11/24/2025 8:21 AM CST

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