

Cause No. 24-0881

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# In the Supreme Court of Texas

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

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

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**Supplemental 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.

## **ARGUMENT**

### **I. Article I, § 37 of the Texas Constitution enshrines boundaries to State power.**

Abuse and neglect do occur. Some of it can be described as horrific. Texas law has adapted over time to protect children from this very real threat. But there exists another, arguably equal, threat to children and families: state overreach.

Texas created DFPS to protect children from harm. At the same time, it gave the agency immense power to investigate, sue, and even dissolve families. But that power is restrained by the U.S. and Texas constitutions. The question that should be at the forefront of every decision made by Texas courts, at any level, is “what is the limit of that power?”

The case at bar does not come to this Court void of context. It sits on top of an ever-growing pile of broken families who were unable to effectively counter a heavy-handed government or to reach this court. Injustices done to them will forever remain unrectified.

The State comes to this Court with an intense focus on the specific facts as it sees them. The family comes to this Court with a clear-eyed understanding of how the State’s intervention violated their constitutional rights. FFP urges the court to look one level deeper.

To understand the true nature of this conflict, it is not necessary to view government agents as sinister villains who plot the destruction of innocent families. It is only necessary to recognize a fundamental truth: once

government acquires power, it never lets it go voluntarily. Thomas Jefferson stated:

The natural progress of things is for liberty to yield, and government to gain ground.<sup>1</sup>

Restraint is imposed only from the outside. For this reason, FFP focuses this supplemental brief on the balance of power between families and their government.

In oral arguments, Justice Sullivan asked the State how TEX. CONST. art. I, § 37 governs this case. In response, the DFPS attorney stated “I don’t think that it changes much.”<sup>2</sup> This answer is telling: the State appears to treat parental rights as an abstract idea with little practical limit on state power. As a consequence of this attitude, innocent parents in the crosshairs of DFPS must choose whether to comply with demands that far exceed any compelling state interest or risk the destruction of their family.

But this Court is not judging a game of Simon Says. It is judging the limits of the government’s power to engineer families to fit its subjective liking, or to destroy them at its pleasure. Therefore, the first question regarding an intervention by the State must always be “does it have the authority to make such a demand in the first place?”

In the case at bar, **one** parent inflicted allegedly excessive punishment on **one** child. *In re K.N.*, 07-24-00146-CV (Tex. App. Sep 19, 2024), 8. The

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<sup>1</sup> Thomas Jefferson to Edward Carrington, May 27, 1788, Founders Online, Nat’l Archives, <https://founders.archives.gov/documents/Jefferson/01-13-02-0120> (last visited 2026.10.02).

<sup>2</sup> Supreme Court of Texas, 24 0881 (YouTube Dec. 3, 2025), <https://www.youtube.com/watch?v=pN-siZAJCto&t=2233s> at 32:03.

State itself did not judge this behavior to be an emergency situation. It is beyond reason to think a narrowly tailored solution to this issue is the termination of the parental rights of **both** parents for (in the case of the non-offending father) **all** the children. The State has lost sight of its boundaries.

TEX. CONST. art. I, § 37 declares a clear boundary, beyond which government, without a compelling reason, may not cross. It was placed there by the People of Texas as a protection against their own government. It is the first time in the history of our nation that any People have so clearly and holistically enumerated the God-given rights of parents in the highest law of their land. But this boundary means nothing if it is not enforced.

The constitutional rights of parents are beyond dispute. Now, the People of Texas need this court to remind the State and lower courts of this fact.

## **II. This Court should provide much-needed clarity to the State and to lower courts as to the boundaries of State power over families.**

This case presents the Court with an opportunity to clarify the **manner** in which the State is permitted to wield its awesome power against families.

The question at hand is not “what state action broke what law?” Rather, it is this: what is the rule with which all state action must comply? The situation as it stands now cannot continue. The casual removal of children; the punitive withholding of visitation; the stacking of irrelevant tasks that the overwhelmed parent must complete to the satisfaction of a subjective

bureaucrat—all these and more are far too common occurrences before and during litigation in the trial courts.

This court is not overrun with state violations of religious liberty, the freedom of speech, or the right to bear arms. This is because the state is acutely aware that it will receive no quarter in this court, the Texas Courts of Appeals, or in most district courts in this state if it were to engage in systematic violations of these rights at scale.

Parental rights have no such respect from the State. The reason is that there is no consistent rubric against which the limits of state power are tested.

A doctor whose patients routinely suffer extraneous injuries—or even death—on the operating table will not get a pass just because he has creative justifications for each new injury. Instead, he will be judged against a universal ethic: do no harm.

Under TEX. CONST. art. I, § 37, exploratory surgery on Texas families is prohibited. The state’s intervention must be a careful, surgically precise intervention that “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)).

It is up to this Court to determine whether the newly-placed constitutional bulwark against state power has any meaning. The boundary has been declared, but this Court must enforce it in terms the State will understand.

## **The Current Case**

The circumstances in this case demonstrate the problem as well as any could. In January 2021, the State investigated the mother, did not remove the children, negotiated a short-term temporary stay for the oldest child with the grandmother, and concluded it did not have sufficient evidence of abuse or neglect. It completely ruled out emotional abuse.<sup>3</sup> In March 2022, the State investigated allegations against only the mother and only as to the oldest child. It concluded there was no emergency, left the children in the home, and petitioned the court to force the mother to take various classes.<sup>4</sup>

By August 31, 2022, the State had been involved in the family for 20 months. During this time, the DFPS had repeatedly concluded that no emergency existed. It left the children in the home because, as evidenced by its own conduct and administrative findings, it believed they were safe there. The non-emergency allegations were against one parent only, and only as to one child.<sup>5</sup>

And then, the reversal.

On August 31, 2022, the State filed a petition for the emergency removal of all four children. In its brief, DFPS attempts to paint the picture of a household where chaos reigned, and where children—rather, one child—was dragged by her hair, beaten, deprived of food, and yelled at. DFPS cites

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<sup>3</sup> See C.N. Br. 38.

<sup>4</sup> See R.L. Br. 17-18.

<sup>5</sup> See. R.L. Br. 17-22.

at length allegations from both the original 2021 investigation and the subsequent 2022 investigation, both of which ended with the conclusion that no emergency existed. The State now claims it had to remove all the children in August 2022 in order to save them from dangerous, unloving parents who failed to bend the knee to the State. The description departs so far from the agency's own actions in the case that one must wonder whether the State believes its own argument.

The critical question, of constitutional import, is this: if the home was safe for the children for almost two years after DFPS intervention, what change required the immediate removal and subsequent termination of the parental rights of **both** parents and as to **all four** children? The answer: the parents failed to complete the tasks required of them to DFPS' satisfaction. This affront was also used as an excuse to deny visitation between the children and their parents prior to severing their relationship forever. This despite the fact that the State's original intervention was in order to resolve a non-emergency allegation regarding one parent as to one child.

During oral arguments, DFPS admitted the most damning evidence against the father was that he was once found with drugs in his pocket.<sup>6</sup> The State's solution to this fact? Deprive the children of their father, permanently. In a rationale that only the state could conceive, it concluded that it would be better for these children to **have no father** than for them

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<sup>6</sup> Supreme Court of Texas, 24 0881 (YouTube Dec. 3, 2025), <https://www.youtube.com/watch?v=pN-siZAJCto&t=2233s> at 36:12.

to have a father who—having no children in his care at the time—was found once with drugs in his pocket.

The State has vast expertise in identifying flawed parental conduct, but precious little or none at identifying the limits of its own power. And how could it be otherwise? The State has granted itself the terrible power to metaphorically administer lethal injection to a family, while at the same time is tasked with saving it. The roles are existentially at odds. And since the beginning of time, no state has voluntarily eschewed the aggregation of power.

And so, into the gap steps the Texas Constitution and its ultimate agent of enforcement—this court.

**The Court need only clearly define established constitutional boundaries.**

Today, DPFS often draws a bead on parental conduct that is not even beyond the pale in today’s society. As Justice Blacklock stated in oral arguments, it is possible under the current statutory scheme for rights to be terminated based on conduct where reasonable jurors disagree on whether it “crossed the line.”<sup>7</sup> Surely, if the constitutional rights of parents mean anything at all, they at the very least include the right to make decisions that are within the bounds of what reasonable people may disagree on. Indeed, “the Due Process Clause does not permit a State to infringe on the

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<sup>7</sup> Supreme Court of Texas, 24 0881 (YouTube Dec. 3, 2025), <https://www.youtube.com/watch?v=pN-siZAJCto&t=2233s> at 37:35.

fundamental right of parents to make childrearing decisions simply because a state judge believes a "better" decision could be made." *Troxel v. Granville*, 530 U.S. 57, 120 (2000) (plurality op.).

Here we reach the root of the issue: the statutory framework itself is not the problem—its obvious deficiencies notwithstanding. Rather, it is the spirit of impunity with which the state and many local courts routinely open the metaphorical bodies of Texas families to go exploring. As a consequence, this longstanding conflict between the People and their government cannot be resolved by narrowing this statute or eliminating that one. It can only be resolved by the unyielding enforcement of a universal ethic that defines the limits of State power.

In FFP's prior brief, we outlined the constitutional jurisprudence behind the adoption of strict scrutiny as an explicit constraint on the manner in which state power is exercised. It is impracticable to test each and every action of CPS in isolation against the prongs of strict scrutiny. But strict scrutiny provides a time-tested, essential mechanism with which the courts may evaluate rationale for and the manner of the state's intervention into a family, as well as specific actions that clearly depart from the State's legitimate use of power.

The first question is whether the state's intervention into the family is necessary to accomplish a compelling state interest, and whether the actions of the state, taken together, represent the most narrowly tailored approach that was available to resolve the issue. Evaluation of individual state actions against the strict scrutiny test may also be necessary when those actions

dramatically depart from the pattern of conduct that a narrowly tailored solution would require. For example, strict scrutiny should be applied to a state decision to eliminate visitation between a parent and their child.

This strict scrutiny inquiry, if explicitly adopted and regularly enforced by this Court, would dramatically constrain the manner of the State's exercise of power over Texas families. One can imagine a narrowly tailored intervention designed to protect a child from repeated and excessively harsh punishment by a parent. One cannot reasonably imagine a compelling interest or narrowly tailored intervention that would require removing four children from a home the State had treated as safe for nearly two years. Nor can one reasonably imagine the rationale for casually terminating the parental rights of a non-offending father who was never suspected of harm.

Every time the State acts, and every time a local judge reviews that action, it is a constitutional imperative that the action be measured against a universal ethic that will guide those who are operating in good faith, and constrain those who are not. The strict scrutiny test is that ethic, that mechanism that moves parental rights from the realm of philosophical ideal to real-world constraint on the awesome power of the state.

### **CONCLUSION AND PRAYER FOR RELIEF**

There is an understandable inclination, in the context of child abuse, to explain away the State's abuse of power with rationalizations that would never survive in any other area of law. But this court is the final line of

defense for families, tasked with ensuring that the central question of the legitimate exercise of state power is not forgotten.

The risk highlighted by this case is not that we may someday create a system that does not care about child abuse. The risk is that the system will always tend toward the aggregation of power, and that we forget to hold the line.

FFP urges this Court to defy the overwhelming tendency for state power to grow at the expense of Texas families by recognizing and enforcing the constraint enshrined in our constitution by the People of Texas. The necessary task of protecting children *must* be done according to a universal guiding ethic that operates as a real-world restriction on the raw exercise of state power. Strict scrutiny is that ethic.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that this document complies with TEX. R. APP. P. 9. It contains 2,396 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.

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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 January 2, 2026 via electronic service in accordance with TEX. R. APP. P. 9.5.

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## **APPENDIX**

### **Constitutional Provisions**

TEX. CONST. art. I, § 37

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.

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