

NO. 24-0881

In the Supreme Court of Texas

R.L.,

Petitioner,

v.

Texas Department of Family and Protective Services,

Respondent.

On Petition for Review from the
Seventh Court of Appeals, Amarillo, Texas
No. 07-24-00146-CV
and from the 223rd Judicial District Court, Gray County, Texas
Trial Court Cause No. 40,562

SUPPLEMENTAL BRIEF ON COURT-REQUESTED ISSUE

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INTRODUCTION

ARTICLE I, § 37 AND TERMINATION UNDER CHAPTER 161

I. Procedural Posture and Scope of Supplemental Brief

Oral argument was held on September 4, 2025. Following argument, the Court requested supplemental briefing addressing the relationship between Article I, § 37 of the Texas Constitution and the statutory framework governing termination of parental rights under Texas Family Code Chapter 161, including the clear-and-convincing evidentiary standard in Section 161.001(b). This supplemental brief responds only to that constitutional question. It does not re-argue the facts, revisit record disputes, or expand the issues presented. *See In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002); *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012).

II. Question Presented

"What is the relationship between Section 37 of Article 1 of the Texas Constitution and the existing statutory framework for termination of parental rights under Texas Family Code Chapter 161, including the clear-and-convincing standard referenced in Family Code Section 161.001(b)?"

III. Governing Legal Framework

A. Parental Rights as a Pre-Existing Constitutional Liberty Interest

The parent-child relationship is a fundamental constitutional liberty interest—“far more precious than any property right.” *In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003); *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000). Unlike ordinary civil interests, parental rights cannot be restored once severed. Termination is “complete, final, and irrevocable,” meaning constitutional safeguards must operate before the judgment is entered, not after. *In re K.M.L.*, 443 S.W.3d 101, 112 (Tex. 2014); *In re E.N.C.*, 384 S.W.3d 796, 802 (Tex. 2012).

Because the consequences are irreversible, a preponderance of the evidence is constitutionally insufficient. *In re G.M.*, 596 S.W.2d 846, 847 (Tex. 1980); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Evidence that merely shows parental shortcomings or raises concern may justify intervention, but it cannot justify permanent severance. Clear and convincing evidence is required because it reduces the risk that termination will rest on speculation, prediction, or disagreement with parenting choices. *In re J.F.C.*, 96 S.W.3d 256, 264 (Tex. 2002); Tex. Fam. Code § 101.007.

That heightened burden would be meaningless without heightened appellate review. Appellate courts must determine whether a rational factfinder could have formed a firm belief or conviction, not merely whether some evidence supports the judgment. *In re C.H.*, 89 S.W.3d 17, 25–26 (Tex. 2002); *In re J.O.A.*, 283 S.W.3d 336, 344–45 (Tex. 2009). This review enforces constitutional limits by preventing termination from being upheld on generalized risk, isolated concerns, or hindsight judgment. *In re E.N.C.*, 384 S.W.3d at 804.

B. Adoption of Article I, § 37

Adoption of Article I, § 37 in 2025, by Texas Proposition 15, the Parental Rights Amendment added language to the state constitution to provide that parents have the right " 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. "¹ to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing" and the responsibility 'to

¹ Texas State Legislature, "Senate Joint Resolution 34," accessed May 21, 2025

nurture and protect the parent's child.'"² “ The constitutional amendment affirming that parents are the primary decision makers for their children.

Article I, § 37, adopted in 2025, expressly recognizes parental rights as fundamental, but it did not create new rights or remedy a history of judicial under-protection. Instead, it constitutionalized principles that were already embedded in Texas termination jurisprudence. Long before § 37's adoption, this Court treated the parent-child relationship as a fundamental liberty interest protected by heightened procedural and substantive safeguards. *See In re M.S.*, 115 S.W.3d 534, 547–49 (Tex. 2003).

For example, even before § 37, Texas courts required clear and convincing evidence before parental rights could be terminated, recognizing that a mere showing of parental imperfection, instability, or disagreement with child-rearing choices was constitutionally insufficient. Courts also enforced heightened appellate review to ensure that termination did not rest on speculation, predictive harm, or generalized concerns. Those doctrines existed because parental rights were already understood to be constitutionally protected—not because the Legislature or courts had failed to recognize their importance.

² [https://ballotpedia.org/Texas_Proposition_15,_Parental_Rights_Amendment_\(2025\)](https://ballotpedia.org/Texas_Proposition_15,_Parental_Rights_Amendment_(2025))

Article I, § 37 therefore did not recalibrate the balance between parents and the State. It did not expand the grounds for termination, alter the evidentiary burden, or displace Chapter 161. Rather, it fixed in constitutional text what Texas law already assumed in practice: that parents have the right “to exercise care, custody, and control of the parent’s child, including the right to make decisions concerning the child’s upbringing,” coupled with the responsibility “to nurture and protect the parent’s child.” Tex. Const. art. I, § 37; *In re M.S.*, 115 S.W.3d at 547–49.

By doing so, § 37 clarified the source and strength of parental rights without changing their substance. Practices that were constitutionally impermissible before 2025—such as terminating parental rights based on subjective disagreement with parenting style or speculative risk—remain impermissible. Likewise, conduct that justified termination before § 37—such as proven abuse or endangerment supported by clear and convincing evidence—continues to justify termination after its adoption. Section 37 thus confirms, rather than generates, the constitutional framework governing parental rights and termination proceedings.

IV. Analysis of the Court’s Question

A. Article I, § 37 Does Not Create New Parental Rights

Parental rights existed before Article I, § 37 and were protected through substantive and procedural due process. *In re M.S.*, 115 S.W.3d at 547–48; *In re K.M.L.*, 443 S.W.3d at 112. Article I, § 37 does not create parental rights for the first time. Long before its adoption, Texas courts consistently recognized the parent-child relationship as a fundamental liberty interest protected by both substantive and procedural due process. *See In re M.S.*, 115 S.W.3d 534, 547–48 (Tex. 2003) (recognizing parental rights as “far more precious than any property right” and subject to heightened constitutional protection); *In re K.M.L.*, 443 S.W.3d 101, 112 (Tex. 2014) (same). Those protections existed independent of statutory enactment and constrained the State’s authority to interfere with or extinguish parental rights. backdrop rather than an inferred one.

In this sense, § 37 functions as a codification of precedent rather than a departure from it. By embedding parental rights directly into the Bill of Rights, the amendment removes any residual ambiguity about their constitutional stature while preserving continuity in termination jurisprudence. The State’s burden to justify termination remains the same in form, but its constitutional justification is now express rather than implicit.

Accordingly, Article I, § 37 is confirmatory in function: it affirms and secures rights Texas parents already possessed, clarifies their constitutional source, and ensures that existing termination law continues to be applied as a narrow exception to a fundamental liberty interest—not as a discretionary policy judgment.

Section 37 therefore did not generate new rights, expand the scope of existing rights, or alter the substantive content of parental liberty. Instead, it constitutionalized an already-settled body of law. Prior to § 37, the fundamental nature of parental rights was derived through judicial interpretation of due-process guarantees; after § 37, that same understanding is expressly anchored in the constitutional text. The amendment fixes the source of the right, not its substance.

This distinction matters. Constitutional provisions that generate new rights typically require courts to define new doctrines, adjust existing statutory schemes, or recalibrate standards of review. Article I, § 37 does none of those things. It neither displaces Texas Family Code Chapter 161 nor modifies the evidentiary or procedural requirements governing termination proceedings. The statutory framework remains operative, but it now operates against an explicit constitutional in this sense, § 37 functions as a codification of precedent rather than a departure from it. By embedding parental rights directly into the Bill of Rights, the amendment removes any residual ambiguity about their constitutional stature while preserving continuity

in termination jurisprudence. The State’s burden to justify termination remains the same in form, but its constitutional justification is now express rather than implicit.

Accordingly, Article I, § 37 is confirmatory in function: it affirms and secures rights Texas parents already possessed, clarifies their constitutional source, and ensures that existing termination law continues to be applied as a narrow exception to a fundamental liberty interest—not as a discretionary policy judgment.

B. Article I, § 37 Does Not Displace Chapter 161

Chapter 161 remains the operative statutory framework. Tex. Fam. Code § 161.001(b); *In re J.F.C.*, 96 S.W.3d at 263–66. Statutory continuity does not mean constitutional neutrality. Statutes affecting fundamental rights must be applied consistent with their constitutional purpose. *In re E.R.*, 385 S.W.3d 552, 566 (Tex. 2012).

Section 37 resolves the structural tension between constitutional principle and statutory application by fixing the analytical sequence: parental rights are the constitutional starting point; statutory termination grounds are narrow exceptions. *In re N.G.*, 577 S.W.3d 230, 235–36 (Tex. 2019); *In re J.F.-G.*, 627 S.W.3d 304, 312 (Tex. 2021); *In re R.R.A.*, 687 S.W.3d 269, 276 (Tex. 2024).

C. Section 37 as a Constitutional Lens on Chapter 161

Article I, § 37 reinforces that termination must rest on proof of actual danger, not speculation or generalized concerns. *In re E.N.C.*, 384 S.W.3d at 803. It does not rewrite Section 161.001(b); it constitutionalizes disciplined application of its elements. *In re N.G.*, 577 S.W.3d at 237.

V. Bright-Line Constitutional Application and Jury Guidance

This concern was squarely articulated by the Court during oral argument:

|| *So where is the line between permissible corporal punishment and child abuse?*
(Justice Hawkins Oral Arg. Tr. At 12:06)

The Court repeatedly returned to the constitutional necessity of identifying a principled boundary—one that protects parental autonomy without immunizing dangerous conduct:

|| *“A parent doesn’t have a constitutional right to decide that any discipline is okay. So where’s the line?”*
(Justice Lehrman Oral Arg. Tr. At 13:03–13:09)

A bright-line test and corresponding jury instruction is necessary to give practical effect to Article I, § 37 of the Texas Constitution while preserving the Legislature’s termination framework in Texas Family Code Chapter 161. Article I, § 37 confirms that parents possess a fundamental constitutional right to direct the

upbringing and discipline of their children. That right would be undermined if termination could rest on subjective disagreement with parenting choices, evolving social norms, or retrospective judgments about discipline. At the same time, the Constitution does not immunize conduct that causes, or clearly risks, serious harm to a child. The proposed instruction reconciles these principles by identifying the narrow circumstances in which discipline ceases to be constitutionally protected.

The instruction provides jurors with a clear, administrable boundary rather than an open-ended balancing test. It requires the Department to prove, by clear and convincing evidence, not only that a child was exposed to harm or a substantial risk of harm, but also that the conduct was objectively disproportionate to any legitimate disciplinary purpose and incompatible with a child's health or safety as understood by a reasonable parent. Requiring proof of all three elements ensures that termination is grounded in evidence of actual danger, not in disagreement over parenting style. This approach directly addresses the concern reflected in the Court's questioning. The Court correctly observed that some conduct—such as confining a child in a closet and withholding food for an extended period—plainly crosses the constitutional line. The instruction explains why such conduct is outside constitutional protection: it involves prolonged deprivation of basic human needs, creates a high risk of serious physical and psychological harm, and bears no

reasonable relationship to discipline. At the same time, the instruction makes clear that strict or traditional discipline, standing alone and absent serious harm or deprivation, remains protected by the Constitution.

A bright-line test also preserves the heightened evidentiary standard required in termination cases. By tying the constitutional boundary to the clear-and-convincing burden of proof, the instruction prevents the gradual erosion of parental rights through speculation, hindsight bias, or professional disagreement. Jurors are directed to focus on objective evidence of harm or substantial risk, not on whether they would have parented differently.

Finally, the instruction aligns constitutional doctrine with statutory application. It does not displace Chapter 161 or alter its elements; rather, it ensures that statutory grounds for termination are applied as narrow exceptions to a fundamental constitutional guarantee. In this way, the instruction gives effect to Article I, § 37, provides clear guidance to juries, and allows the State to intervene decisively when discipline becomes dangerous, while safeguarding parents from unconstitutional intrusion into the family sphere. A bright-line test and corresponding jury instruction are necessary to give practical effect to Article I, § 37 while preserving the Legislature's termination framework in Chapter 161.

Parents possess a fundamental constitutional right to direct the upbringing and discipline of their children. Tex. Const. art. I, § 37; *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000). That right would be undermined if termination could rest on subjective disagreement with parenting choices, evolving social norms, or retrospective judgments about discipline. *In re J.F.-G.*, 627 S.W.3d 304, 312 (Tex. 2021).

A. Article I, § 37 Forbids Open-Ended, After-the-Fact Moral Judgments of Parenting

Article I, § 37 cannot be given operative meaning through open-ended balancing tests that depend on hindsight, subjective moral judgment, or juror disagreement about parenting norms. During oral argument, the Court squarely identified the constitutional danger of allowing termination to turn on local preferences rather than law:

|| “*What if a jury in Austin thinks that spanking with a belt is child abuse and a jury in Nacogdoches thinks the facts of this case are just fine? Is that okay? Is that how we're going to do this?*”

(Justice Blacklock Oral Arg. Tr. At 39:37–39:43)

That concern is not hypothetical. It is precisely what occurred here. The Department never alleged—much less proved—that R.L. abused or neglected any of his three biological children. There was no medical evidence, no psychological

evidence, no outcry, no injuries, and no contemporaneous determination of danger. Instead, termination rested on the retrospective judgment that R.L.’s failure to intervene in, report, or leave a household after a single non-injurious disciplinary incident involving a child who was not his own was constitutionally insufficient parenting.

As the merits brief established, the Department itself initially determined there was no immediate danger, did not remove the children, and did not seek services for R.L. at all. Only after months of inaction—and only after the family relocated—did the State recharacterize the same facts as grounds for termination, without any intervening harm or escalation. That sequence demonstrates why Article I, § 37, cannot tolerate standards that allow lawful parenting decisions to be condemned after the fact based on shifting perceptions or institutional disagreement rather than objective proof of danger.

The Court further underscored the constitutional stakes of such a regime:

“If that’s not the case, then I just don’t see how there’s any right to raise your children as you see fit because it’s all just subject to later second-guessing by the Department or a jury. So you don’t actually have the ability. . . Do your best and hope the government doesn’t disagree with how you’re raising your children.”

(Justice Blacklock Oral Arg. Tr. At 53:04–53:10)

That is exactly what happened here. R.L.’s parental rights were extinguished not because he endangered his children, but because the Department later disagreed with how he exercised his parental autonomy—refusing services never ordered, declining warrantless home intrusion, and resisting agency control absent individualized findings. A constitutional right that survives only at the discretion of later governmental approval is no right at all.

B. Subjective Intent or “Malice” Cannot Serve as the Constitutional Boundary

The Court correctly rejected proposals that would hinge constitutional protection on subjective intent, such as malice, recognizing that such standards invite speculation rather than legal analysis:

|| *“I would be hesitant to use something like malice as a test because now we’re talking about the subjective intent of the parent. We have to read their mind.”*
(Sharpee, Oral Arg. Tr. 13:30).

That concern is borne out by this record. No witness testified that R.L. intended harm, condoned abuse, or desired injury to any child. To the contrary, the evidence showed no harm occurred to his children at all. Yet the termination finding necessarily rested on inferred culpability—what R.L. should have thought, should have done, or should have anticipated—rather than on objective danger.

As the Court observed:

|| “*That gets into the distinction between blameworthy conduct and conduct that some people might view in good faith as legitimate discipline.*”

(Justice Blacklock, Oral Arg. Tr. 13:50–13:55).

Texas law has long rejected termination based on moral condemnation or inferred intent untethered from proof of endangerment. The Constitution demands objective evidence of danger, not an inquiry into whether a parent’s decisions offend prevailing sensibilities. Here, the State substituted speculation about R.L.’s internal judgments for proof of actual or probable harm, collapsing constitutional protection into after-the-fact blame.

C. A Bright-Line, Objective Test Is Constitutionally Required—and Resolves This Case

The Court’s concerns converge on a single constitutional solution: a clear, objective line identifying when discipline or parental decision-making loses constitutional protection. The proposed bright-line instruction satisfies Article I, § 37 by requiring the Department to prove, by clear and convincing evidence:

- 1. Actual harm or a substantial risk of serious harm;**
- 2. Conduct objectively disproportionate to any legitimate disciplinary purpose; and**
- 3. Conduct incompatible with a child’s health or safety as understood by a reasonable parent.**

This standard aligns with this Court’s precedents and preserves the constitutionally mandated rigor of termination proceedings.

The Court itself offered an example of conduct that plainly falls outside constitutional protection:

If a family had decided, a mother and father, that a discipline that they were going to use would be to put a child in a closet and not feed that child for 48 hours. That would probably cross the line. Do you agree with that? So, there's a line. It can't just be any discipline that a parent decides. A parent doesn't have a constitutional right to decide that any discipline is okay. So, where's the line?

(Justice Lehrman, Oral Arg. Tr. 12:46–12:58).

That example illustrates why the line must be objective: prolonged deprivation of basic human needs, a high probability of serious harm, and no reasonable disciplinary justification. None of those markers are present here. There was no deprivation, no injury, no pattern, and no evidence that R.L.’s children were exposed to danger at all. At the same time, the Court emphasized that constitutional protection cannot be eroded by hindsight critiques of parenting judgment:

“We can’t get into whether the parent lacked appropriate introspection, intelligence, or failed to weigh risks properly. That’s hindsight.”

(Sharpee, Oral Arg. Tr. 20:49–20:57).

Yet hindsight is exactly what drove termination in this case. The Department retroactively condemned R.L.’s decisions after months of inaction, converting lawful parental autonomy into endangerment only once compliance was no longer forthcoming.

D. Article I, § 37 Guards Against Cultural Drift and State-Mandated Parenting

The Court also recognized the systemic danger of allowing termination standards to evolve into unwritten, state-mandated parenting norms:

“Do we live in a world where the Department tells you what appropriate discipline is from birth to three, three to six, six to ten? Are we going to have state mandated guidelines and not get in trouble with the state?”

(Sharpee, Oral Arg. Tr. 52:09–52:16).

This case answers that question in the affirmative unless Article I, § 37 imposes a firm constitutional boundary. Here, the Department effectively punished R.L. for failing to conform to its preferred protocols—services, access, and oversight—without any individualized finding that his parenting endangered his children. That approach converts child-protection law into a mechanism for enforcing conformity rather than preventing harm.

Article I, § 37 forecloses that result. It requires courts to enforce a stable, objective line that protects parental autonomy unless and until the State proves real danger by clear and convincing evidence.

E. The Need for Clear Jury Instructions and Meaningful Appellate Review

Finally, the Court expressed concern that existing jury instructions fail to communicate where the constitutional line lies. That deficiency is evident here. The jury was never instructed on the constitutional boundary between protected discipline and endangerment. As a result, termination rested on an amorphous sense that R.L. should have acted differently, rather than on findings of actual or probable harm.

The proposed instruction corrects that defect. It preserves the clear-and-convincing standard, cabins discretion, and ensures that appellate courts can meaningfully review whether termination rests on evidence of danger rather than disagreement with parenting choices. Without such a boundary, appellate review collapses into deference to moral judgment—precisely what Article I, § 37 forbids.

VI. Doctrinal Implications for Appellate Review

Article I, § 37 confirms that appellate courts must conduct rigorous sufficiency review to ensure the clear-and-convincing standard is not diluted. *In re C.H.*, 89 S.W.3d at 26; *In re J.F.-G.*, 627 S.W.3d at 311. Excessive deference risks collapsing the burden into a de facto preponderance standard. *In re E.N.C.*, 384 S.W.3d at 808. Appellate courts serve as constitutional safeguards and must intervene where termination rests on conjecture or institutional inertia. *In re N.G.*, 577 S.W.3d at 237–38.

VII. CONCLUSION

Article I, § 37 does not displace Texas Family Code Chapter 161. It confirms the constitutional foundation upon which the statutory framework rests. By doing so, it requires courts—particularly appellate courts—to apply termination law with heightened constitutional rigor, ensuring that the clear-and-convincing standard remains meaningful and that termination judgments rest on actual proof of parental unfitness rather than conjecture, process failure, or institutional inertia.

PRAYER

Petitioner respectfully requests that the Court resolve the question presented as set forth above and reverse the order of the trial court and other

and further relief to which Petitioner may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with TEX. R. APP. P. 9. It contains 3,682 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 Equity Text A, 14 point.

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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 4, 2026, via electronic service in accordance with TEX. R. APP. P. 9.5.

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