TCMP — Texas Catholic Marriage Project

Insupportability, Marital Purpose, and Children's Security

A Constitutional and Statutory Examination of Texas Family Code Section 6.001 and Its Implications for Parental Authority, Religious Liberty, and Child-Centered Jurisprudence

CONFIDENTIAL — INTERNAL TCMP | WORKING CONSOLIDATION

Sunday, October 11, 2026 | Formal scholarly legal analysis and constitutional advocacy

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Part I — Introduction, Questions Presented, and Executive Summary

Questions presented

Whether § 6.001 requires a meaningful determination of the legitimate ends served by the particular marriage; whether a finding of insupportability independently supplies justification for contested displacement of the nonmoving respondent's established parental authority; and what constitutional and statutory safeguards govern any resulting child-related orders.

Part II — Statutory Construction of Texas Family Code § 6.001

Part III — Constitutional Rights, Marital Purpose, and Religious Liberty

Constitutional scrutiny: proposed threshold inquiry

TCMP proposes a threshold examination identifying the precise parental, child, or religious right implicated, the nature and extent of state interference, and the governing standard of review. Strict scrutiny and a clear-and-convincing burden must not be assumed for every ordinary conservatorship

order. The proposed extension of heightened protections to substantial displacement of established parental authority is a jurisprudential argument, not a categorical statement of existing Texas law.

Part IV — Children's Security and the Non-Transfer Principle

Non-Transfer Principle — controlling formulation

Voluntary Dissolution Cannot Supply the Predicate for Displacement of the Nonmoving Fit Parent. This proposed principle does not bar a court from allocating parental rights under Chapter 153. It requires a separate statutory and evidentiary basis for the particular restriction and an inquiry into applicable constitutional protections.

Part V — Texas Precedent, Adverse Authority, and Constitutional Scrutiny

Authority hierarchy and precedential limitations

In re Marriage of Richards recognizes factual issues and treats erroneous denial of a jury as harmless on its record. In re Nicklas must be presented as adverse authority concerning the sufficiency of insupportability evidence; its disposition cannot be reduced to a disagreement about reconciliation alone. Troxel, Stanley, and Santosky recognize important parental or family interests but do not automatically impose strict scrutiny or termination-level evidentiary standards upon all divorce-related conservatorship decisions. Waite must be examined for its precise posture, plurality reasoning, and the issues actually decided. Case citations and subsequent history remain subject to source-level verification.

Part VI — The [redacted] Decree: As-Applied Analysis and Procedural Remedies

The as-applied constitutional question

The respondent contests whether the court had independently sufficient justification to reallocate or deny established parental authority to an innocent nonmoving respondent who had not forfeited or waived those rights, merely upon the petitioner's allegation that the marriage was insupportable. This is not adequately characterized as a generic dispute between two fit parents. The actual 2006 decree, historical law, and proof of particular restrictions must control the assessment.

Consent, jury, and the missing record

The respondent alleges that counsel signed "by permission" without actual authority to consent at rendition, that a jury was requested and its fee paid, and that no reporter's record survives. Burnaman v. Heaton provides a framework for analyzing effective consent at rendition. Counsel's authority to appear is analytically distinct from authority to settle or waive rights. A missing record does not by itself establish that no proof was presented; jury error does not automatically void a judgment.

Judgment finality and available vehicles

Under PNS Stores, Inc. v. Rivera, a void judgment must be distinguished from an erroneous but voidable judgment. General subject-matter jurisdiction over divorce and SAPCR matters weighs against treating ordinary procedural errors as jurisdictional voidness. Ordinary appeals and restricted appeals face expired deadlines; a traditional bill of review faces demanding equitable elements and generally a four-year limitations period, subject to narrow exceptions. Due-process exceptions involving lack of notice or

opportunity to be heard require a specific factual showing, particularly where counsel appeared. No current avenue of relief should be characterized as established without a complete procedural and evidentiary record.

Evidence and historical reconstruction

Required records include the certified decree, pleadings, jury demand and payment, docket entries, any agreements, proof of actual settlement authority, overseas employment records, and subsequent efforts to obtain relief. Assertions concerning the decree must be labeled as allegations unless established by authenticated evidence. The historical as-applied inquiry remains distinct from the manuscript's prospective reform agenda.

Part VII — Legislative Reform, Conclusions, and Recommendations

Proposed independent-determination safeguard

(a) A finding of insupportability under § 6.001 does not, standing alone, establish parental unfitness, forfeiture, waiver, or the factual necessity of restricting a parent's rights or duties concerning a child.

(b) In a contested SAPCR joined with dissolution, the court shall determine parental rights and duties under independently applicable Family Code provisions.

(c) Upon timely request concerning a substantial restriction of previously exercised parental decision-making authority, the court shall identify its statutory basis and material factual grounds.

(d) Nothing in this provision limits orders necessary to protect a child from abuse, neglect, family violence, or another legally established threat.

(e) Nothing in this provision diminishes either parent's constitutional rights or the independent legal interests of a child.

Consolidated conclusion

A finding of marital insupportability does not, standing alone, establish parental unfitness, forfeiture, waiver, or the factual necessity of restricting the nonmoving parent's established authority. TCMP proposes that contested substantial restrictions receive an independently supported statutory determination and appropriate constitutional examination. This conclusion distinguishes current law from TCMP's interpretive and legislative proposals.

Appendix A — Source References and Research Register

Appendix B — Editorial and Publication Controls

EDITORIAL STATUS: Integrated seven-part working draft; source-level citation verification, complete historical statutory audit, detailed cross-reference review, and external publication clearance remain pending. Original source manuscript remains unchanged.

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SOURCE-VERIFICATION SUPPLEMENT: HISTORICAL FILING DATE

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Verified primary-source and legislative facts

The 44-page file "DIvorce Decree.pdf" was retrieved from the user's Google Drive. PDF pages 1–4 concern clerk correspondence and record requests; the decree begins on PDF page 5. The decree bears a March 3, 2006 FILED stamp, which identifies a filing date for the decree—not the date the original petition or joined SAPCR was filed. The cause number, [redacted], does not independently establish a calendar filing date. The decree's sixty-day waiting-period recital also supplies no precise date of filing.

The enrolled text of H.B. 252, 79th Legislature, § 6, directs that its amendments to Family Code §§ 153.007, 153.133, and 153.134 govern suits affecting the parent-child relationship filed on or after September 1, 2005; earlier suits remain governed by prior law. Official enacted text: https://capitol.texas.gov/tlodocs/79R/billtext/html/HB00252F.HTM.

Results of targeted source discovery

A targeted search of connected Google Drive for the [redacted] original petition, case number [redacted], and the district-court docket located the scanned decree and derivative TCMP analyses, but did not identify a separately verifiable, file-stamped original [redacted] petition or complete clerk docket. The absence of a search result is not evidence that such a document does not exist.

Controlling unresolved question

The court record must establish the filing date of the original SAPCR and whether any later pleading initiated a distinct proceeding for transition purposes. Until that evidence is recovered, this manuscript must not claim conclusively that either the pre-September 2005 or post-September 2005 text of §§ 153.133–.134 governed the case.

Consent, authority, and parental-rights framework

The decree appoints both parties joint managing conservators yet awards substantial exclusive decision-making rights to the petitioner. The decree also contains altered appearance/consent language and a record-waiver recital. These features warrant scrutiny but are not conclusive proof of a defective judgment. The respondent disputes consent at rendition and counsel authority. The proper analysis separately tests (1) the governing statutory version; (2) whether there was an effective agreed parenting plan or an adjudicated order; (3) the legality and child-specific basis of the exclusive allocations; and (4) whether any constitutional or religious-liberty claim is established on a sufficient factual record. Exclusive allocation itself is authorized in appropriate cases; the Non-Transfer Principle is TCMP's proposed legal argument, not settled doctrine.

Priority documentary requisition

- Certified original petition and all amended petitions, including clerk file stamps.
- Certified case-history/docket sheet identifying filing, service, hearing, rendition, and signing dates.
- Any filed parenting plan, settlement agreement, Rule 11 agreement, and contemporaneous consent or revocation evidence.
- Jury request and fee receipt, notices, hearing/prove-up record or no-record certification.

Source integrity: original scanned decree (Google Drive file ID 1dY0pWVniinoHlk-GDRt3WZeywHGumcco); enacted H.B. 252 § 6. All other case-specific inferences remain subject to record verification.

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1. Executive position

ESTABLISHED LAW AND PROPOSED INTERPRETATION. Texas Family Code § 6.001 requires proof of insupportability caused by discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation. TCMP proposes that "legitimate ends" be evaluated as the lawful purposes established by the spouses and served by their particular marriage. This purpose-specific construction is TCMP's position, not an express statutory definition or an existing holding of Texas appellate courts.

TCMP proposes an adjudication that identifies those purposes, examines their alleged destruction caused by discord or conflict of personalities, considers continuing fulfillment, and separately addresses the claimed absence of any reasonable expectation of reconciliation.

TCMP also maintains that dissolution does not independently justify displacement of parental authority. Each contested child-related order requires examination under its governing law, including applicable constitutional or religious-freedom protections.

This paper distinguishes three categories throughout: (1) governing statutory text and judicial holdings; (2) TCMP's proposed interpretation of existing law; and (3) legislative or constitutional reforms that would require adoption by a competent authority. The proposed destruction standard is a legislative recommendation, not prevailing law. The paper requests purpose-specific adjudication, meaningful consideration of contrary evidence, independent justification of child-related relief, and examination of implicated protected interests. Application to the 2006 [redacted] decree requires a separate historical and procedural analysis.

2. Statutory framework and judicial interpretation

Texas Family Code § 6.001 connects insupportability to discord or conflict of personalities that destroys legitimate marital ends and prevents any reasonable expectation of reconciliation. Section 6.406 requires a joined parent-child proceeding when its conditions apply. Joinder does not itself prove the justification for particular parental restrictions. [1]

Section 1.101 identifies stability and children's security as policy considerations. Its operative presumption addresses validity, including void and voidable marriages. Applying its strong-reason language as an additional divorce threshold requires an argument confronting this textual distinction. [2]

ESTABLISHED JUDICIAL PRACTICE. In re Marriage of Richards, 991 S.W.2d 32 (Tex. App.—Amarillo 1999), recognizes factual elements and an opportunity to respond, but holds that testimony reciting the statutory conditions can be sufficient even without identifying particular events. The court treated erroneous denial of a requested jury as harmless because no controverting evidence was introduced. Thus, the case supports a proof obligation and procedural contest, not TCMP's proposed purpose-by-purpose evidentiary requirement.

In In re Marriage of Richards, the court recognized factual elements and an opportunity to respond, while accepting testimony affirming those elements without specific underlying events. Because the respondent offered no contrary evidence, the jury-denial error was held harmless. Alvarez v. Alvarez reversed a divorce where statutory conditions were inadequately established. These authorities support a proof obligation, but do not establish TCMP's proposed purpose-specific inquiry. [3–4]

In re Nicklas presents a substantial obstacle. The court accepted the petitioner's declaration despite the respondent's contrary beliefs and denied mandamus relief concerning partial summary judgment. The respondent disputed destruction as well as reconciliation, and both parties had filed divorce petitions. The decision cannot fairly be distinguished as addressing reconciliation alone. [5] The Supreme Court denied

the subsequent mandamus petition on February 2, 2024; that order does not supply a reasoned endorsement of the appellate analysis. [20]

Response to Nicklas

TCMP distinguishes a spouse's belief about the marriage from the factual condition described by that belief. Whether the marriage retains the capacity to serve established purposes is analytically distinct from whether one spouse believes it does.

A refusal to cooperate can nevertheless produce substantial incapacity. The proposed inquiry must identify what cooperation is withheld, which purposes depend upon it, and how the refusal defeats their fulfillment. Concrete evidence of continuing functions is not represented as a guaranteed defense under existing law.

The counterpetition in Nicklas is relevant to distinguishing a respondent who consistently seeks continuation. That distinction alone does not answer the court's reasoning about unilateral beliefs. TCMP's challenge must address that reasoning directly.

3. Proposed interpretation and evidentiary safeguards

Mathews v. Eldridge supplies a procedural framework considering the private interest, risk of erroneous deprivation and value of additional safeguards, and governmental interests and burdens. TCMP proposes applying it to each requested safeguard after establishing the protected interest and deprivation. It does not itself select substantive strict scrutiny or automatically mandate a hearing format. [22]

TCMP proposes five inquiries:

1. Purpose: Identify lawful purposes established by the spouses through commitments and shared conduct.

2. Effect: Describe how the identified conflict affects the marriage's capacity to serve those purposes.

3. Causation: Explain how the conflict produces alleged destruction.

4. Contrary evidence: Examine purposes the continuing marriage still serves.

5. Reconciliation: Explain why the conflict prevents any reasonable expectation of reconciliation.

These are proposed safeguards, not established requirements for separate findings in every case. Insupportability is the resulting statutory condition; the proposed framework preserves its causal relationships.

Evidence of purposes may include vows, expressed commitments, shared decisions, and sustained practices. One spouse's later preference should not automatically redefine the undertaking both established. Conversely, the original existence of a purpose does not conclusively establish its continuing fulfillment.

Responsive evidence should identify concrete marital functions. Continuing mutual assistance, shared parenting, household responsibilities, or religious formation may matter under TCMP's interpretation. Obligations surviving divorce must be distinguished from purposes served by the continuing marital relationship.

Recommended position on destruction

TCMP PROPOSED INTERPRETATION. The statutory word "destroys" should not be collapsed into mere marital disagreement, dissatisfaction, or impairment. TCMP advocates a purpose-specific inquiry identifying established lawful purposes, demonstrated continuing capacity to fulfill them, and whether

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the alleged discord or conflict has actually destroyed the marital relationship's capacity to serve those purposes. This is an advocated reading; it is not a requirement expressly imposed by the cited cases.

EVIDENTIARY CONSEQUENCE SOUGHT. Concrete evidence of continuing fulfillment of an established marital purpose should be considered for its material bearing on destruction. Under existing Texas decisions, however, testimony affirming the statutory elements may suffice without a detailed recital of underlying events. TCMP therefore separately urges legislative rules making contrary purpose-specific evidence material and requiring a reasoned finding when it is rejected.

SCOPE OF REFORM. The more demanding rule that destruction requires incapacity to serve any established lawful marital purpose is advanced as a proposed legislative threshold. Section 6.001 does not expressly say "all" or "every"; the rule should not be characterized as compelled by the statute or controlling precedent. Safety, coercion, and protective orders require independent attention and cannot be dismissed through an asserted surviving purpose.

Materiality limitation

Connecticut Department of Public Safety v. Doe holds that procedural due process does not require an opportunity to prove facts immaterial to the statutory scheme. TCMP must therefore establish that continuing-purpose evidence is material under a proper construction of § 6.001, or challenge the substantive rule making it immaterial. A demand for a hearing alone does not resolve that issue. [6]

8. Completed decision rule: destruction, impairment, and proof

TCMP proposed construction—not current controlling Texas law. The most defensible reform position is that the court must distinguish impairment of a marital purpose from destruction of the marriage's capacity to serve it. A legitimate end is a lawful purpose established by the spouses through their commitments and sustained conduct and actually served by their particular marriage. The State does not prescribe that purpose, and neither party can invent a new purpose solely to defeat or secure a decree. Religious purposes may be considered as evidence of the spouses' commitments without adjudicating their theological truth.

TCMP adopts for legislative advocacy the following demanding but administrable threshold: Destruction is established only when the proved discord or conflict of personalities has rendered the continuing marriage incapable of serving any genuinely established lawful marital purpose. The court must evaluate actual continuing capacity, not speculative future cooperation or an abstract legal obligation that would survive divorce. Evidence that a genuine established purpose remains capable of being served through the existing marriage defeats this proposed destruction element. The statutory absence of a reasonable expectation of reconciliation must be separately proved; it cannot substitute for destruction.

This is a proposed amendment and alternative interpretive argument, not a statement of the prevailing judicial rule. Section 6.001 does not expressly say "all" or "every"; Texas decisions accepting brief testimony are serious adverse authority. Under current law, the ordinary civil burden generally governs the divorce ground absent an applicable exception. TCMP urges an express legislative evidentiary framework and particularized findings rather than asserting that clear-and-convincing proof is already universally required.

Proposed statutory text (legislative option): "For purposes of this section, 'legitimate ends of the marital relationship' means lawful purposes established by the spouses and actually served by their marriage. 'Destroys' means that, because of proven discord or conflict of personalities, the continuing marriage is no longer capable of serving any such established purpose. The court shall make distinct findings on the identified purposes, the causal effect of discord or conflict, any demonstrated continuing capacity, and the reasonable expectation of reconciliation. A spouse's unwillingness to reconcile, without proof of the other

statutory elements, does not alone establish insupportability." This language would materially change existing adjudication and must be debated as legislation, including protections for persons experiencing violence or coercion.

5. Religious commitments and religious-freedom protections

Mahmoud v. Taylor strengthens consideration of governmental interference with parents' religious formation of children. The Court held the parents entitled to preliminary injunctive relief concerning compulsory public-school instruction without religious opt-outs. Its majority rejected the suggestion that parents necessarily must accept the instruction and counteract it at home. This supports examining practical burdens on religious formation. It does not decide divorce or authorize one parent to override the other parent's rights; application to a particular family order requires additional argument. [23]

Canon 1136 recognizes parents' primary responsibility and right concerning their children's physical, social, cultural, moral, and religious education. This supports the Catholic significance of parental formation; it does not itself govern civil allocation of rights. [10]

TCMP proposes consideration of commitments and observable conduct while respecting ecclesiastical boundaries. Justice Kem Thompson Frost's separate opinion in Waite v. Waite identified the undefined-purpose problem and religious-conscience implications. Her analysis is persuasive support, not the controlling holding; the court affirmed denial of temporary injunctive relief, and the lead opinion was a plurality. [11]

The later Waite decision, 150 S.W.3d 797 (2004), rejected a challenge to subject-matter jurisdiction over a Christian marriage and reaffirmed civil authority over its legal aspects. The final divorce there rested on cruelty, but that factual distinction does not erase the jurisdictional holding. TCMP's proposed inquiry must therefore challenge a particular interpretation, procedure, or burden; the religious character of the marriage alone does not establish lack of civil jurisdiction. The decision does not resolve the developed, order-specific Chapter 110 defense proposed here. [27]

Her analysis also exposes a difficulty TCMP must confront: examining religious purposes may invite impermissible ecclesiastical adjudication. The paper distinguishes evidence of commitments and practices from civil judgment about theological truth, sacramental validity, or fulfillment of obligations before God.

Particularized religious burden

Civil Practice and Remedies Code Chapter 110 supplies a separate statutory framework. Where applicable governmental action substantially burdens sincere religious exercise, § 110.003 requires compelling-interest and least-restrictive-means justification. Section 110.004 permits a qualifying violation to be asserted as a defense in proceedings brought by another person. [12]

Barr v. City of Sinton directs attention to curtailment of religious conduct and its impact on religious expression from the claimant's perspective. The applicability and substantial burden must be established through evidence of the particular order and conduct. [13]

The inquiry should identify conduct affected, authority removed, duration, and practical burden. An opportunity to instruct during possession must be evaluated alongside loss of authority over the continuing formative environment. Some retained religious activity does not automatically settle whether the identified burden is substantial.

Potential accommodations might include shared consent for specified decisions, consultation requirements, or defined arrangements for religious education. Their feasibility, effects upon the child, and interaction with the other parent's rights require examination. Chapter 110 is not represented as automatically reopening an old judgment.

9. Constitutional and religious-liberty analysis: calibrated claims

The due-process inquiry must begin by identifying the particular government action and the particular interest it burdens. Troxel v. Granville, 530 U.S. 57 (2000), and Santosky v. Kramer, 455 U.S. 745 (1982), recognize important parental interests, but neither holds that every divorce judgment requires strict scrutiny or clear-and-convincing proof. Stanley v. Illinois, 405 U.S. 645 (1972), supplies a powerful analogy against automatic displacement of a fit parent without an individualized inquiry; it does not invalidate no-fault divorce statutes by itself. The irrebuttable-presumption argument must therefore identify a genuinely conclusive statutory or adjudicative inference, rather than equate unfavorable credibility determinations with a legal presumption.

A court should separately address any specifically pleaded federal or Texas constitutional claim concerning parental authority, procedural participation, religious exercise, and the children's interests, determine the applicable standard of review, and explain the factual predicate for relief. TCMP seeks heightened review when a challenged order actually burdens a protected fundamental interest; it does not claim that such review automatically governs the dissolution ground in every case.

Catholic teaching concerning the permanence of a valid ratified and consummated sacramental marriage informs the spouses' claimed purposes and religious obligations. Civil courts may recognize the sincerity and civil relevance of those commitments without deciding sacramental validity or interpreting canon law as controlling civil law. Ecclesiastical abstention limits adjudication of theological questions; it is not, standing alone, a categorical bar to civil divorce jurisdiction. Texas's Religious Freedom Restoration Act requires a separate, fact-specific statutory analysis of any substantial burden, applicable exceptions, and available relief; its application cannot be presumed from Catholic identity alone.

4. Children's security and the Non-Transfer Principle

The Threshold Constitutional Question: State Displacement of the Nonmoving Fit Parent's Established Parental Authority

Whether the State, acting through a divorce court, may deprive an innocent, nonmoving, presumptively fit parent of the effective exercise of established parental rights, reallocating those rights exclusively to the petitioner, solely because the petitioner alleges or establishes insupportability under Texas Family Code § 6.001, without an independent factual and constitutionally sufficient justification for that deprivation.

Correct point of departure

The analysis begins with the status quo ante: an intact marital family in which the respondent possessed and exercised parental authority, did not seek dissolution, and maintains that he neither waived nor forfeited that authority. Framing the case as an initial competition between two fit parents risks assuming that a legally cognizable parenting dispute already exists. The threshold issue is instead what authorizes state interference with rights previously exercised by the nonmoving parent.

Dissolution and parental authority are distinct

Section 6.001 concerns dissolution of the marital relationship. Section 6.406 requires a joined suit affecting the parent-child relationship in specified circumstances. Neither the assertion of insupportability nor statutory joinder, standing alone, establishes parental unfitness, waiver, forfeiture, or the factual necessity of an exclusive allocation. The authority to adjudicate a SAPCR must be distinguished from evidence supporting a particular child-related order. [1]

Constitutional interests and their limits

Parents have constitutionally protected interests in the care, custody, and upbringing of their children. Stanley v. Illinois addresses individualized procedures before treating a parent as unfit; Santosky v. Kramer establishes a heightened burden for termination; Troxel v. Granville and In re C.J.C. recognize special protection for fit-parent decisions in settings involving nonparent claims. These authorities do not, without further analysis, establish that strict scrutiny or clear-and-convincing proof applies to every allocation of authority between parents. TCMP advances a proposed extension requiring courts to identify the particular right affected and the applicable constitutional standard. [2–5]

The burden-of-justification inquiry

The court should identify (1) the particular authority previously exercised by the nonmoving parent that a proposed order would restrict or allocate exclusively; (2) the independently established facts and governing statutory basis for that particular order; and (3) the constitutional interests implicated and the standard of review that actually governs. Texas Family Code § 153.134 authorizes independent, joint, and exclusive allocations under its conditions. Accordingly, the absence of an unfitness finding or waiver does not automatically invalidate every unequal allocation; it does not make § 6.001 alone an evidentiary predicate for that allocation. [6]

Proposed Non-Transfer Principle

Voluntary Dissolution Cannot Supply the Predicate for Displacement of the Nonmoving Fit Parent. The unilateral initiation of divorce proceedings, and even proof of insupportability under § 6.001, do not themselves establish a legally sufficient factual predicate for depriving a nonmoving, presumptively fit parent of the effective exercise of established parental authority. A particular exclusive allocation must rest on the governing SAPCR provisions, sufficient evidence, and any applicable constitutional safeguards. This is TCMP's proposed constitutional position, not an existing holding of the cited courts.

Application to the 2006 [redacted] decree

The respondent maintains that he did not initiate dissolution, contested the petition, did not waive or forfeit parental rights, and was not adjudicated unfit. The decree allegedly vested the petitioner with exclusive authority over substantial matters previously within the respondent's parental authority, including education, residence, medical or psychological decisions, and other consequential aspects of upbringing. The appropriate inquiry is whether the record and law effective in 2006 supplied an independent justification for each challenged allocation. A missing recital of findings does not necessarily prove that no evidence supported the order or that the judgment is void; those are separate questions requiring examination of the original record, applicable preservation rules, and available procedural remedies.

Correct analytical sequence

Existing parental authority → unilateral dissolution petition → mandatory SAPCR joinder when applicable → proposed displacement of parental authority → independent statutory and factual justification → applicable constitutional review. The petitioner's assertion of marital insupportability does not answer the final three inquiries.

Authorities informing this section: Tex. Fam. Code §§ 6.001, 6.406, 153.131, 153.134; Stanley v. Illinois, 405 U.S. 645 (1972); Santosky v. Kramer, 455 U.S. 745 (1982); Troxel v. Granville, 530 U.S. 57 (2000); In re C.J.C., 603 S.W.3d 804 (Tex. 2020). These authorities do not themselves establish a universal heightened-scrutiny rule for allocations between parents.

Child-centered assessment

TCMP proposes evaluating change against the child's actual family life before intervention, including each parent's functions. This is an evidentiary baseline, not a conclusive legal presumption favoring every

existing arrangement. If that environment is unsafe, the evidence must identify the danger and protective change required.

The assessment should identify how significant orders affect daily care, educational continuity, religious formation, access to each parent, and security of relationships. A parent's preference cannot automatically substitute for this inquiry. Nor does an asserted child interest automatically establish a constitutional entitlement to continuation of the parents' civil marriage.

TCMP regards children as persons with interests distinct from either parent's litigation objective. Whether an interest supports an independently enforceable constitutional claim, who may assert it, and what representation is required are separate legal questions. This paper does not establish automatic appointment of counsel in every joined proceeding or authority for a parent to assert every claim on a child's behalf.

TCMP proposes: Voluntary dissolution cannot, by itself, supply the predicate for displacement of the nonmoving fit parent's authority.

The examination should identify the precise right affected, the authority lost, the evidence supporting the allocation, the child's interests served, and the practical effects upon protected conduct.

Section 153.134 expressly provides for independent, joint, or exclusive allocation of parental rights. TCMP must address that authorization and examine the particular exercise of it under governing statutory and superior legal protections. [7]

In re C.J.C. protects a fit parent against a nonparent's claim to conservatorship or access. Its holding does not itself establish TCMP's proposed rule between two fit parents. Extension of its reasoning requires an argument accounting for both parents' rights. [8]

Current § 153.002(a) makes best interest the primary consideration for conservatorship and possession/access. Subsections (b)–(c) expressly address parent–nonparent suits: the nonparent must overcome the statutory presumption through clear and convincing evidence of significant impairment, and an order granting relief must state supporting facts and the extent the presumption was overcome. This is an existing specific protection, not a legislative proposal. Its express parent–nonparent scope does not resolve the two-parent extension. Historical application requires checking the version and effective provisions governing the proceeding. [21]

An exclusive educational or treatment right may continuously prevent the other parent from exercising previously held authority. Retained possession must be evaluated alongside the particular decision-making power removed. Neither exclusivity nor retained possession independently resolves the constitutional issue.

Current Texas constitutional text

Article I, § 37, ratified in 2025, expressly affirms parental responsibility to nurture and protect a child and the corresponding fundamental right of care, custody, control, and upbringing decisions. That text supplies a distinct basis for current constitutional analysis. [18]

In In the Interest of K.N., K.L., K.L., and K.L., No. 24-0881 (Tex. June 5, 2026), the Court discussed § 37 but declined to define its broader parameters, leaving fuller analysis for developed lower-court consideration. It did not announce that every conservatorship allocation requires strict scrutiny or clear and convincing proof. Its principal merits analysis concerned termination. Application between two fit parents therefore remains a question requiring development. [19]

Recent appellate decisions reinforce that limitation. In the Interest of R.G., III and In the Interest of T.R., R.R. found strict-scrutiny complaints unpreserved and, alternatively, declined a separate strict-scrutiny review of termination orders, reasoning that existing termination safeguards sufficiently protected

parental rights. These are adverse authorities for an automatic strict-scrutiny theory; they do not decide allocation between two fit parents. [24–25]

TCMP CONSTITUTIONAL POSITION. When dissolution-related orders burden parental authority, religious exercise, or a child's legally cognizable interests, the court should identify the precise right, governmental action, applicable precedent, and governing level of review before deciding the requested relief. TCMP advocates heightened review where the applicable constitutional doctrine warrants it; strict scrutiny is not automatically established for every divorce or allocation between fit parents.

The strongest objection is that both parents hold the protected right and may disagree in ways that require adjudication. Neither parent can claim the parent–nonparent presumption as an automatic priority over the other. TCMP therefore seeks a reasoned, evidence-supported resolution of the conflict, rather than an absolute parental veto or a categorical requirement to prove unfitness before every exclusive allocation. A claim for heightened scrutiny must identify the challenged governmental order and explain why ordinary statutory safeguards are insufficient in that setting. A spouse's private decision to seek dissolution does not itself answer those questions.

Section 37 affirms rights with roots predating its adoption. That continuity does not establish retroactive invalidation or procedural reopening of a 2006 decree. In Perez, the discussion of rights applying to earlier actions appears in Justice Lee's dissent; the majority denied mandamus without prejudice for an insufficient record and did not adopt that analysis. Historical application requires separate temporal and finality analysis. [26]

Distinct proof obligations

Santosky v. Kramer requires at least clear and convincing evidence for the parental-rights termination proceeding it addressed. It supports attention to threatened loss and error risk, but does not automatically establish that burden for every conservatorship allocation. [9]

BURDEN OF PROOF. Santosky's clear-and-convincing standard governs the parental-rights termination context it addressed; it does not automatically extend to ordinary conservatorship allocations. TCMP proposes heightened evidentiary safeguards where an order effectively displaces a fit parent's authority, but the particular constitutional standard and proof burden must be established by analysis of the challenged order and controlling law, rather than assumed from the termination cases.

10. Child-centered adjudication and independent justification

Section 6.406 requires joinder of a suit affecting the parent-child relationship under its stated conditions, but joinder does not itself supply evidence justifying a particular allocation of parental rights. TCMP's Non-Transfer Principle is proposed as follows: a spouse's decision to seek dissolution does not, without independent findings under the applicable child-related standards, establish a basis to displace the other fit parent's preexisting authority. The court should identify the specific decision-making rights being reassigned, the evidence bearing on each contested restriction, the applicable statutory standards, and the child-specific justification. A court must also assess family violence, coercion, neglect, and other safety evidence; preservation of parental involvement is not an excuse to disregard danger.

Children possess interests distinct from either parent, but a child is not automatically entitled to separate counsel or party status in every joined proceeding. TCMP proposes a conflict-sensitive review mechanism: on a supported showing that neither parent can adequately present a material child-specific interest, the court should decide whether an authorized representative is necessary, state reasons, define the representative's role, and preserve a reviewable record. A universal mandatory appointment rule would require legislative action and funding. Existing appointment statutes, standing rules, and appellate remedies must be separately examined before asserting that any particular omission makes an order void.

6. Substantial objections

Autonomy and statutory proof.

TCMP's proposed response is that requiring proof of the enacted ground is a question distinct from compelling affection, cohabitation, or religious observance. The proposed safeguards would test the ground without imposing those obligations. Nevertheless, denying dissolution can itself constrain civil status and personal liberty. That consequence requires direct justification; identifying the distinction does not eliminate it.

Lecuona v. Lecuona rejected an argument that Obergefell established an affirmative constitutional right to compel an unwilling spouse to remain married, and rejected the asserted insufficiency of insupportability proof. TCMP's purpose-specific statutory argument differs from that theory, but must confront the same autonomy objection. The decision does not establish a successful TRFRA defense or resolve TCMP's proposed purpose-specific inquiry. [15]

Judicial competence and limits of inquiry.

TCMP proposes establishing purposes through expressed commitments and observable practices, using focused evidence with defined limits on inquiry into intimate life. Civil evaluation should concern alleged functional effects; courts should not decide sacramental validity or theological fulfillment. TCMP's safeguards must specify those boundaries, including protection of privileged material.

Unilateral withdrawal and causation.

A spouse's refusal is neither ignored nor automatically disqualified because it caused breakdown. The inquiry should identify what was refused, which functions require cooperation, and what consequences followed. This preserves causation without recreating a fault defense. Any proposal making voluntary withdrawal legally insufficient despite its effects would be a separate substantive reform requiring justification.

Safety and protective relief.

Protective measures should not await completion of the proposed purpose analysis where applicable law permits immediate protection. Evidence of danger must be evaluated for its effects on marital functioning and child-related relief. TCMP does not propose compulsory counseling, mediation, contact, or reconciliation in unsafe circumstances. Other divorce grounds do not automatically solve every practical consequence of restricting insupportability.

Competing parental rights.

The proposed Non-Transfer Principle does not confer an absolute veto upon the nonmoving parent. It asks for independent justification of the particular authority displaced, considering both parents and the child. The evidence should explain why shared, independent, or exclusive authority addresses the dispute and identify protected conduct affected by the choice.

Administration and proportionality.

TCMP proposes focused contention questions, evidence tied to disputed purposes, and findings through existing procedures. The inquiry should be proportionate to the dispute and should avoid exhaustive personal histories or automatic expert testimony. Proposed automatic findings should be evaluated for their added burden and review benefits before legislative adoption. The paper does not claim demonstrated cost savings or improved outcomes without supporting research.

Precedent and proposed extensions.

Richards supports an evidentiary obligation but accepts brief proof; Nicklas and Wellington constrain the practical rebuttal argument. [3, 5, 14] Lecuona supplies an autonomy objection. C.J.C. and Santosky

establish protections in different procedural settings. TCMP relies on those actual holdings while identifying proposed extensions separately.

11. Adverse authority, preservation, and implementation

The paper must squarely acknowledge In re Marriage of Richards, In re Nicklas, and Wellington as obstacles to a rule demanding purpose-by-purpose evidence in every current-law case. Alvarez supports the proposition that the statutory ground still requires adequate proof, but does not establish TCMP's proposed substantive threshold. TCMP's reform is consequently both an argument about giving operative effect to every statutory phrase and, where precedent forecloses that reading, a request for legislative change.

Implementation should separate pleading from proof. Section 6.402 permits allegations tracking the statute and restricts pleading of evidentiary facts; therefore the proposed disclosure of relied-upon purposes and causal evidence should occur through appropriately designed discovery, pretrial exchange, or an express new statute—not by claiming current pleadings must contain such particulars. Requested findings should be aligned with Texas Rules of Civil Procedure 296–298 and preserved by timely request and objection. Jury entitlement and harmless-error review must be analyzed separately from the sufficiency of proof. Any challenge to a historical decree requires its own jurisdictional, finality, consent-at-rendition, record-preservation, and procedural-vehicle analysis; defects must not be labeled automatically void.

Immediate record-development method

In a procedurally available pending case, focused contention discovery can ask the petitioner to identify the purposes allegedly destroyed, describe generally the supporting facts, and explain the asserted causal relationship and reconciliation basis. Section 6.402's pleading permission is not itself a discovery prohibition. Objections require an appropriate ruling; they are not admissions of absent proof. [1, 3, 16]

Rules 296–298 provide a route to findings following an eligible nonjury trial: request within twenty days after signing, pursue the required past-due notice if necessary, and timely request appropriate additional findings. This route does not create a universal duty to explain every proposed question. [16]

TCMP's policy request should therefore separate use of existing tools from advocacy for stronger substantive or automatic procedural safeguards. These tools do not establish present availability of relief from the historical [redacted] decree.

7. Requested safeguards and reform

Reform objective

TCMP seeks an adjudication in which the asserted statutory ground for dissolution is tested against legally material evidence, rather than treated as established by a spouse's desire to dissolve the marriage. The procedure should permit meaningful contest of the alleged destruction of legitimate marital ends and the absence of any reasonable expectation of reconciliation. Contested child-related relief should receive independent justification, accounting for the child's interests, each parent's protected authority, and any properly raised religious-freedom claim. The court's explanation should disclose the governing standard, material evidence, and reasons supporting each determination.

Children's security is a central objective of this reform. A proceeding should examine the effects of proposed intervention upon the child's actual family relationships, care, continuity, and religious

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formation, while providing necessary protection against danger. Neither a parent's litigation preference nor dissolution itself should substitute for the justification of particular child-related relief.

These are TCMP's proposed objectives, not a statement that every component is already required by governing law. TCMP seeks four coordinated safeguards, through existing tools where available and legislative or rule reform where necessary. Written findings are one component; better explanations alone do not supply a missing substantive decision rule.

Request 1 — Purpose-specific adjudication of dissolution

TCMP recommends a requirement for explained determinations in contested § 6.001 proceedings. The reform should require identification of the spouse-established lawful purposes at issue, the demonstrated effects and causal role of the asserted discord or conflict, consideration of material continuing-purpose evidence, and a separate reconciliation determination.

Proposed procedural language for legislative development:

> In a contested proceeding under Section 6.001, the court shall separately determine whether the asserted discord or conflict of personalities destroys the legitimate ends of the marital relationship and whether it prevents any reasonable expectation of reconciliation. In written findings, the court shall identify the lawful marital purposes at issue, the evidence supporting their establishment, the demonstrated effects of the asserted discord or conflict, and the causal connection to the destruction found. The court shall address material evidence that the continuing marriage still serves those purposes and explain its effect on the destruction determination. A statement that a party desires dissolution shall not substitute for the determinations required by this subsection.

This is proposed legislation, not an existing requirement or a complete bill. Implementation must address jury findings, contested summary judgment, deadlines, and interaction with Rules 296–298. Judicial explanations must respect the jury's fact-finding role. Section 6.402's pleading rule requires separate treatment if amendment is sought. [1, 16]

The substantive standard remains unfinished. TCMP distinguishes destruction from dissatisfaction, disagreement, or impairment, but has not adopted a rule determining how much continuing fulfillment defeats the asserted ground. Requiring a court to discuss continuing-purpose evidence cannot ensure meaningful rebuttal unless that evidence is legally material to the decision. TCMP must establish that materiality through interpretation or propose a substantive amendment. [6] The all-purpose, foundational-purpose, and whole-undertaking alternatives remain in the research companion pending a substantive policy decision. This procedural proposal leaves the governing burden unchanged unless separately amended.

Proposed continuing-purpose evidence provision for legislative development:

> In determining whether discord or conflict of personalities destroys the legitimate ends of the marital relationship, evidence that the continuing marital relationship actually fulfills, or retains a specifically demonstrated capacity to fulfill, lawful purposes established by the spouses through their commitments and conduct is material and shall be considered. Where fulfillment has ceased, asserted capacity must rest on specific facts concerning existing circumstances, rather than hypothetical cooperation. The party seeking dissolution retains the burden of establishing the statutory ground. The responding party is not required to prove the absence of discord or conflict, guarantee reconciliation, or demonstrate cooperation that is unavailable.

> When such evidence is presented and destruction is nevertheless found, written findings shall identify the continuing purpose, address the contrary evidence, and explain how the demonstrated effects of discord or conflict satisfy the destruction requirement. The determination shall distinguish impaired or interrupted fulfillment from destroyed capacity. Neither a spouse's announcement of withdrawal nor

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stated willingness or unwillingness to continue conclusively determines capacity. A desire for dissolution or absence of a reasonable expectation of reconciliation shall not, standing alone, establish destruction. The reconciliation element shall be determined separately.

This proposed amendment expressly addresses materiality and preserves the petitioner's proof obligation. It requires a factual connection to the continuing marital relationship and an explanation addressing contrary evidence; it does not guarantee that surviving capacity defeats the ground. It must be developed together with the findings provision, jury determinations, and summary-judgment procedure.

Separate substantive legislative proposal: TCMP's purpose-centered legislative candidate would provide that demonstrated capacity to fulfill any established lawful marital purpose precludes destruction under Section 6.001. This stronger rule is retained for legislative evaluation, not adopted here as a completed operative standard or represented as existing law. Its constitutional justification remains unresolved, particularly where the surviving purpose is minor. A material-purpose alternative would narrow protection and introduce a separate significance determination; it is not selected by this revision. The research companion records the distinction and constitutional limits.

The immediate safeguard requires the court to answer continuing-purpose evidence; the stronger legislative candidate would make demonstrated surviving capacity decisive. Continued marital status does not by itself establish a functioning household, and parental duties surviving divorce do not establish that existing family arrangements remain intact. Independent justification of child-related orders remains required under the proposed reform.

A separate child-security condition for dissolution remains an unadopted research alternative. Preliminary testing exposed uncertainty in the proposed impracticability exception and the risk that unilateral withdrawal could satisfy it. TCMP does not incorporate that additional condition into the operative reform request. Its burden, substantive justification, and interaction with other divorce grounds require further evaluation.

Request 2 — Meaningful opportunity to contest material facts

TCMP seeks timely disclosure of the general factual basis for the asserted destruction and reconciliation claims, a reasonable opportunity to obtain and present material responsive evidence, and a ruling on material disputes through the procedure appropriate to the case. Identification of marital purposes, alleged effects, causation, and reconciliation should occur early enough to permit a meaningful response before adjudication, rather than appearing for the first time in postjudgment findings.

Legislative or rule development should specify the disclosure mechanism, deadlines, proportionate discovery, and treatment of contested summary judgment. An adverse interpretation making continuing-purpose evidence immaterial must be confronted directly; more discovery alone cannot cure it. The reform should preserve applicable jury rights, privileged communications, protection from abusive discovery, and civil limits on ecclesiastical inquiry. Immediate protective relief should remain available under its governing law.

Request 3 — Independent justification of child-related relief

TCMP seeks separate, evidence-supported determinations for contested allocations or restrictions of parental authority. The inquiry should identify the authority affected, the practical change from the child's actual family life and each parent's prior functions, the child-related evidence supporting that change, and why the selected arrangement addresses the dispute. Where material alternatives are presented, the explanation should address their feasibility and effects upon the child and both parents.

The proposed Non-Transfer Principle is: Voluntary dissolution cannot, by itself, supply the predicate for displacement of the nonmoving fit parent's authority. This does not confer an absolute veto or eliminate

the need to resolve disagreements between two fit parents. It requires a justification directed to the particular child-related order, rather than an inference from the dissolution ground alone.

TCMP also seeks a procedure to identify children's interests distinct from either parent's litigation objective and assess whether a conflict requires independent representation under applicable law or a proposed amendment. The proposed necessity-based trigger and funding approach appear below; integration of roles, standing, payment administration, and review requires further development. TCMP does not present automatic appointment in every joined proceeding as settled law. Neither this request nor the proposed baseline makes continuation of the civil marriage a child's established constitutional entitlement. Sections 4 and 6 identify the governing-law limits and competing parental rights that the reform must address.

Proposed independent-representation safeguard for legislative development:

> Before adjudicating contested child-related relief, the court shall determine whether a concrete child-specific interest or plausible claim belonging to the child is inadequately represented by the parties. A party or the court may initiate the inquiry. The procedure shall provide notice and an opportunity to respond without delaying emergency protection.

> A request shall identify specific facts connecting the requested relief to the child-specific interest or plausible claim and explain the alleged deficiency in existing representation. Entitlement to relief need not be established at the appointment stage. The court shall determine whether independent legal representation is necessary to investigate or present the identified interest or claim. The appointment ruling shall distinguish insufficient grounds for appointment from a decision on the merits. Denial of appointment shall not, by itself, adjudicate the underlying claim or prevent renewed consideration upon additional facts establishing a material representation deficiency.

> The court shall appoint an attorney ad litem when the requested relief materially affects the identified interest or claim, a material conflict or other demonstrated deficiency prevents adequate representation by the parties, and independent legal representation is necessary to address the deficiency. The court shall state its reasons for granting or denying appointment. Parental disagreement or agreement, standing alone, shall not determine adequacy.

> The appointment order shall identify the child represented, scope of representation, access to relevant information, preparation time, compensation arrangements, and the procedure for addressing conflicts between represented children. It shall distinguish representation of the child from assistance to the court concerning best interests. Counsel shall receive notice and a meaningful opportunity to investigate, present evidence and argument, challenge adverse evidence, and preserve issues within the authorized representation. Appointment shall not predetermine a claim's merits or require support for either parent's requested outcome. The court shall reconsider representation when a material change reveals an unaddressed conflict or deficiency.

TCMP recommends that inability to form or communicate litigation objectives not itself defeat necessary representation. Implementing language should direct counsel to identify legally supportable claims, seek the child's views in a developmentally appropriate manner, explain their relevance, and seek clarification when expressed wishes, legal interests, and best-interest recommendations diverge. It must reconcile these duties with Chapter 107 rather than give counsel unrestricted power to substitute personal preferences.

TCMP proposes an express publicly funded payment mechanism when necessary representation exceeds the parties' ability to pay. Contributions should reflect financial capacity and confer no control over counsel. Reasonable fee limits, periodic review, and approval of justified additional work should govern compensation. Existing public payment authority is not assumed; statutory funding and administration must be supplied.

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Proposed review and access-to-counsel safeguard for legislative development:

> Request and determination. Either party may request independent legal representation for the child. The court may initiate the inquiry. A child's communication identifying a concern about representation shall be referred for appropriate consideration without requiring the child to prepare legal pleadings. The court shall provide notice and a meaningful opportunity to present relevant facts, while preserving necessary emergency protection. An order denying representation shall state reasons addressing the identified child-specific interest or plausible claim, the asserted deficiency in existing representation, and whether independent representation is necessary. Denial shall not itself adjudicate the underlying claim.

> Counsel for the appointment question. When a child seeks review of a denial, the court shall promptly appoint a qualified attorney solely to advise and represent the child concerning appointment and review. Inability to prepare a motion, fully instruct counsel, or pay shall not alone defeat access. Limited counsel shall investigate the representation question, identify legally supportable grounds, and exercise independent professional judgment. Counsel shall not represent either parent or serve as amicus attorney in the same matter. This appointment does not predetermine entitlement to broader representation or require advancement of frivolous contentions. The legislation shall provide public funding when payment is otherwise unavailable, reasonable compensation, and conflict safeguards. Funding shall not depend on either parent's agreement.

> Express authority to seek review. The requesting party and the child, acting through lawful legal representation, may seek expedited interlocutory appellate review of a denial. The legislation shall expressly authorize the appeal and define jurisdiction, deadlines, record requirements, and review standards. Authority to challenge appointment does not authorize a parent to practice law for the child, resolve standing to assert every underlying claim, or establish its substantive validity.

> Record and timely review. The record shall include the request, responses, evidence, relevant hearing record, and written reasons. A procedure shall permit a request to compel a timely determination when the trial court fails to act. Review shall occur on an expedited schedule, distinguishing legal questions from factual or discretionary determinations. Appeal from final judgment remains available as otherwise authorized; interlocutory review does not automatically waive unrelated claims.

> Interim protection. Review shall not automatically stay the entire proceeding. The trial or appellate court may temporarily defer the particular contested child-related determination when proceeding would materially impair effective representation or meaningful review. Necessary emergency and protective relief remains available.

> Corrective relief and renewed requests. Upon finding an erroneous denial, the reviewing court may direct appointment or require a renewed determination under the proper standard. Counsel shall receive a meaningful opportunity to investigate, present evidence and argument, and preserve claims before final adjudication of the affected contested relief. Additional facts or changed circumstances may support reconsideration. Erroneous denial does not automatically invalidate every order or reopen a final judgment; relief shall address the affected proceeding under governing review rules.

TCMP recommends an express statutory appeal rather than assuming existing Chapter 107 authority supplies interlocutory review. Existing general rules ordinarily require preservation and harmful error for civil reversal; mandamus ordinarily requires abuse of discretion and an inadequate appellate remedy. Rule 173 excludes statutory appointments and does not automatically supply this Family Code procedure. A nonlawyer next friend is not thereby authorized to act as the child's attorney. [28–31]

Implementation recommendations below address timing, review standards, access, and administration. Exact statutory jurisdiction, rules integration, appropriations, professional duties, and final-judgment treatment still require drafting and validation. The limited appointment is proposed legal assistance for the representation question, not proof of the underlying claim or an automatic full-case appointment.

This is a proposed necessity-based appointment requirement. It is not an assertion that current law mandates independent counsel in every joined proceeding. Integration with §§ 107.001–.004 and 107.021–.024, including distinct roles, children unable to direct counsel, compensation, and prohibited combined appointments, requires further drafting. The policy structure and initial implementation recommendations are developed; a complete statutory amendment, fiscal study, and constitutional justification are not supplied here.

Recommended implementation choices: TCMP recommends a hearing within 14 calendar days of filing and service, a written ruling within 7 days after hearing, and limited-counsel appointment within 3 business days after a child's review request or a court-identified need for evaluation. Party appeals would use a 20-day signing-based period; the child's proposed period would begin on service upon qualified limited counsel. The latter requires an express statutory and rule exception. A 10-day record deadline, 10/10/5-day briefing schedule, and 30-day post-briefing decision target would expedite review, with documented good-cause adjustments. These are recommendations, not current case deadlines. [29]

Legal issues should receive de novo review and necessity determinations abuse-of-discretion review with reviewable findings and applicable sufficiency analysis. Pre-final correction should turn on erroneous denial under the appointment trigger, not proof that the ultimate custody outcome would change. Final-judgment review remains subject to governing preservation, harmful-error, and finality requirements. No automatic full-case stay is proposed; the court must address meaningful access to counsel and necessary interim protection before the affected nonemergency determination proceeds.

TCMP recommends express state funding administered by the Office of Court Administration, paid upfront without waiting for parental deposits, with contributions based on documented ability to pay. Qualified counsel, conflict checks, regional backup rosters, published compensation rules, and protected records are essential. Chapter 107 duties must be integrated for children unable to instruct counsel. The companion details these choices and tests noncommunicative children, inability to pay, and urgent protection. Fiscal feasibility, exact statutory placement, rules integration, and drafting remain incomplete.

Proposed child-related determination provision for legislative development:

> In a contested proceeding joined under Section 6.406, before rendering a final order allocating exclusive parental decision-making authority or restricting a parent's authority, possession, or access, the court shall identify the particular contested relief and its governing legal standard and burden of proof. The court shall determine the justification for that relief independently of the ground for dissolution.

> The determination shall consider evidence of the child's actual care and relationships, each parent's functions, educational continuity, religious formation where relevant, and safety. It shall identify the changes the requested order would produce, the evidence supporting their expected benefits and adverse effects, and any material, feasible alternatives presented by the parties. Neither a preference for dissolution nor proof of insupportability shall substitute for evidence supporting the particular child-related relief.

> For each contested restriction or exclusive allocation, the court shall explain in written findings the authority affected, the material child-related facts, why the selected arrangement satisfies the governing standard, and why material alternatives presented would not adequately address the identified need. The determination shall account for both parents' rights and any properly raised constitutional or religious-freedom claim, without presuming that the same scrutiny or proof standard applies to every order.

> The required judicial findings shall respect binding jury determinations. Nothing in this provision delays emergency or protective relief otherwise authorized by law, compels unsafe contact, establishes a categorical priority for either parent, or requires proof of unfitness before every exclusive allocation. A temporary protective order does not, by itself, supply the final evidentiary justification for the contested relief.

This is proposed reform, not a statement of current universal findings requirements. The child's actual family arrangements provide an evidentiary baseline, not a conclusive presumption that every existing arrangement should continue. Separation, support, or cooperation alone does not establish what the continuing marriage contributes. Benefits and injuries should be connected to the particular change proposed; effects of dissolution and effects of parental restrictions should be distinguished where the evidence permits.

The provision does not impose a general least-restrictive-means test on every allocation. Any such requirement must arise from the applicable legal standard or a separately justified amendment. Nor does this child-order assessment create a child-security veto over dissolution. Implementation must specify timing and preservation of the record, treatment of contested temporary orders and summary judgment, and remedies for missing findings or insufficient proof. The representation proposal above remains subject to statutory and appellate integration.

Request 4 — Examination of implicated protected interests

TCMP proposes a threshold inquiry, before adjudication, identifying the constitutional interests implicated by the relief sought and determining the applicable standard of review and evidentiary burden. The court should address each properly raised claim in time for the parties to develop the relevant record, and explain its disposition before imposing the challenged restriction. This is a proposed safeguard; it does not presume that strict scrutiny or clear and convincing proof governs every divorce or parental allocation.

For a properly raised religious-freedom claim, the inquiry should identify the sincere religious conduct affected, the particular governmental action, and its practical burden. Where Chapter 110 applies and a substantial burden is established, the statutory justification must address compelling interest and least restrictive means. Possible accommodations require examination of child safety, feasibility, and the other parent's corresponding rights. Courts should evaluate commitments and conduct without deciding theological truth or sacramental validity. [12–13]

Implementation and accountability

The reform must specify when each determination occurs, who must request it or whether it is automatic, what record must be preserved, and how noncompliance is reviewed and remedied. Legislative development should address temporary and final orders separately, accommodate emergency protection, and preserve the distinction between jury findings and judicial legal conclusions. Missing findings, inadequate proof, and failure to address a protected-interest claim require distinct remedies; this paper does not classify each defect as automatically void or prescribe reopening final judgments.

The immediate legislative text above is a first component of this coordinated reform, not the complete program. The next substantive policy task is a determinate destruction standard. The next drafting task is implementing language for Requests 2–4, including completion of the drafted children's representation trigger and review mechanism. Those tasks must be resolved before the proposal is described as a complete bill or as accomplishing all of TCMP's substantive objectives.

Existing tools, proposed interpretation, and reform

Section 105.005 supplies the ordinary Title 5 evidentiary baseline: preponderance unless that title otherwise provides. Any claim for a higher standard must address that baseline and identify the specific statutory exception or superior constitutional basis. Section 105.003(c) separately addresses making a hearing record and waiver with court consent. [17]

| Safeguard or proposition | Classification | Practical limit |

|---|---|---|

| Require evidence establishing statutory conditions | Existing-law foundation: Richards and Alvarez [3–4] | Courts may accept testimony tracking the statute. |

| Seek general factual bases and legal contentions through discovery | Existing tool: Rules 192.3(j), 197.1 [16] | Subject to relevance, discovery limits, privilege, and protection; no demand to marshal all proof. |

| Require evidentiary detail in the petition | Legislative change, not a current pleading entitlement [1] | Section 6.402 permits statutory pleading. |

| Request findings after an eligible nonjury trial | Existing tool: Rules 296–298 [16] | Follow deadlines; findings are not universally available, including for summary judgment. |

| Preserve a parent-child hearing record | Existing statutory protection: § 105.003(c) [17] | Record required unless waived with court consent; application and waiver require examination. |

| Assert a qualifying religious-freedom defense | Existing statutory route: § 110.004 [12] | Prove applicability and substantial burden; preserve the issue. |

| Analyze requested parental allocations under Title 5 | Existing framework [7] | Exclusive allocation is expressly authorized; particular legal challenge remains necessary. |

| Require identification of spouse-established purposes and a destruction explanation | Proposed interpretation | Reviewed cases do not establish the complete proposed inquiry. |

| Apply fit-parent protections as a bar to particular displacement between two parents | Proposed constitutional extension [8] | C.J.C. addresses nonparent claims; both parents' rights must be accounted for. |

| Require strict scrutiny or clear and convincing proof for particular allocations | Claim-dependent argument [9, 12] | Neither standard follows automatically for all allocations. |

| Require automatic written findings in every contested insupportability case | Proposed legislation or rule reform | Broader than present general findings procedure. |

| Define a universal destruction threshold, including an all-purpose rule | Proposed substantive clarification | No completed TCMP standard is adopted. |

12. Conclusion and publication boundary

The policy question is not whether the State can compel spouses to reconcile. It is whether the law can meaningfully distinguish a marriage's proven loss of capacity to serve its established legitimate purposes from serious discord that has not destroyed those purposes, while independently protecting children and the authority of fit parents. TCMP proposes an explicit destruction standard, meaningful contest of its factual predicates, separate child-order justification, and individualized review of protected interests. These are recommendations for interpretation, litigation development, and legislative reform—not a representation that current Texas precedent has already adopted them.

Editorial clearance: This consolidated version resolves the prior substantive-threshold choice for advocacy purposes. It remains confidential and is not cleared for public posting until all case citations, quotations, subsequent history, religious-freedom authorities, and legislative wording receive source-by-source legal verification and authorized release review.

Source references

| Ref. | Authority | Use and limitation |

|---|---|---|

| 1 | Texas Family Code §§ 6.001, 6.406 | Ground and joinder; does not adopt spouse-centered definition. |

| 2 | Texas Family Code § 1.101 | Validity and policy; additional divorce threshold requires argument. |

| 3 | In re Marriage of Richards, 991 S.W.2d 32, 37–38 (Tex. App.—Amarillo 1999) | Factual elements and response; accepts brief proof. |

| 4 | Alvarez v. Alvarez, No. 04-13-00787-CV (Tex. App.—San Antonio Apr. 29, 2015), slip op. at 3–6 | Reversal for inadequate proof; also recognizes sufficiency of brief affirmations in other cases. |

| 5 | In re Nicklas, No. 12-23-00201-CV (Tex. App.—Tyler Sept. 20, 2023), slip op. at 3–5 | Adverse summary-judgment reasoning; mandamus context. |

| 6 | Connecticut Department of Public Safety v. Doe, 538 U.S. 1, 6–8 (2003) | Materiality limitation on procedural due process. |

| 7 | Texas Family Code § 153.134 | Express allocation authority; particular burden still requires analysis. |

| 8 | In re C.J.C., 603 S.W.3d 804, 817–18 (Tex. 2020) | Parent–nonparent protection; two-parent extension requires argument. |

| 9 | Santosky v. Kramer, 455 U.S. 745 (1982) | Termination proof standard; extension must be justified. |

| 10 | Code of Canon Law, canon 1136 | Catholic parental responsibilities; not controlling civil law. |

| 11 | Waite v. Waite, 64 S.W.3d 217 (Tex. App.—Houston [14th Dist.] 2001), separate opinions | Frost's persuasive analysis; distinguish disposition and plurality. |

| 12 | Texas Civil Practice and Remedies Code §§ 110.001–.004 | Religious-freedom framework; particular application required. |

| 13 | Barr v. City of Sinton, 295 S.W.3d 287 (Tex. 2009) | Particularized religious-burden analysis; not a divorce holding. |

| 14 | In re Marriage of Wellington, No. 10-07-00181-CV (Tex. App.—Waco Aug. 27, 2008) | Accepts brief affirmations despite contrary evidence; responsibility for breakdown does not bar proven ground. |

| 15 | Lecuona v. Lecuona, No. 03-17-00138-CV (Tex. App.—Austin June 15, 2018) | Rejects Obergefell-based compelled-continuation theory; substantial autonomy objection. |

| 16 | Texas Rules of Civil Procedure 192.3(j), 197.1, 296–298 | Contention discovery and eligible nonjury findings; limits and deadlines apply. |

| 17 | Texas Family Code §§ 105.003, 105.005 | Hearing record and waiver; ordinary preponderance baseline subject to exceptions. |

| 18 | Texas Constitution art. I, § 37 | Express parental-rights and responsibilities provision ratified in 2025; temporal application requires analysis. |

| 19 | In the Interest of K.N., K.L., K.L., and K.L., No. 24-0881 (Tex. June 5, 2026), slip op. at 16–18 | Discusses § 37 without defining broad parameters; termination context. |

| 20 | Supreme Court of Texas orders, Feb. 2, 2024, No. 23-0914 | Denial of Nicklas mandamus petition; not a reasoned merits endorsement. |

| 21 | Texas Family Code § 153.002(a)–(c), current text | Best-interest baseline and specific parent–nonparent presumption, proof, and order requirements; historical version must be checked. |

| 22 | Mathews v. Eldridge, 424 U.S. 319, 335 (1976) | Procedural balancing; no automatic substantive scrutiny or proof rule. |

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| 23 | Mahmoud v. Taylor, 606 U.S. 522 (2025), majority slip op. at 28–34, 41 | Religious formation and preliminary relief in school context; family-order extension requires argument. |

| 24 | In the Interest of R.G., III, No. 02-25-00703-CV (Tex. App.—Fort Worth May 21, 2026), slip op. at 15–17 | Preservation and alternative rejection of separate strict scrutiny in termination. |

| 25 | In the Interest of T.R., R.R., No. 01-25-00924-CV (Tex. App.—Houston [1st Dist.] Apr. 9, 2026), slip op. at 66–70 | Preservation, continuity of parental rights, and alternative rejection of separate strict scrutiny in termination. |

| 26 | In re Perez, No. 05-25-01484-CV (Tex. App.—Dallas May 11, 2026), majority at 4–6; Lee dissent at 3–4 | Majority record-based denial; historical-rights reasoning separately attributed to dissent. |

| 27 | Waite v. Waite, 150 S.W.3d 797, 800–02 (Tex. App.—Houston [14th Dist.] 2004) | Rejects religious-union jurisdictional challenge; distinct from particularized statutory religious-burden claim. |

| 28 | Texas Family Code §§ 107.001–.004, 107.021–.024 | Appointment roles and private-suit framework; proposed appeal and public funding require express legislation. |

| 29 | Texas Rules of Appellate Procedure 33.1, 44.1, 52 | Preservation, civil harmful-error rule, and original-proceeding procedure; not automatic review entitlement. |

| 30 | In re J.B. Hunt Transport, Inc., 492 S.W.3d 287 (Tex. 2016) | General mandamus prerequisites; dominant-jurisdiction holding does not establish appointment-denial relief. |

| 31 | Ellis v. Prince, No. 02-25-00162-CV (Tex. App.—Fort Worth Aug. 14, 2025); Texas Rules of Civil Procedure 44, 173.1 | Nonlawyer next-friend boundary in tort case; Rule 173 excludes statutory appointments. |

Sources reviewed

- [Family Code Chapter 6](https://tcss.legis.texas.gov/resources/FA/htm/FA.6.htm)

- [Family Code Chapter 1](https://tcss.legis.texas.gov/resources/FA/htm/FA.1.htm)

- [Richards opinion](https://caselaw.findlaw.com/court/tx-court-of-appeals/1342457.html)

- [Alvarez opinion](https://law.justia.com/cases/texas/fourth-court-of-appeals/2015/04-13-00787-cv.html)

- [Nicklas opinion](https://law.justia.com/cases/texas/twelfth-court-of-appeals/2023/12-23-00201-cv.html)

- [Doe opinion](https://supreme.justia.com/cases/federal/us/538/1/)

- [Family Code Chapter 153](https://tcss.legis.texas.gov/resources/FA/htm/FA.153.htm)

- [C.J.C. opinion](https://law.justia.com/cases/texas/supreme-court/2020/19-0694.html)

- [Santosky opinion](https://supreme.justia.com/cases/federal/us/455/745/)

- [Code of Canon Law](https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib4-cann998-1165_en.html)

- [Waite opinions, official court PDF](https://www.txcourts.gov/All_Archived_Documents/14thCOA/Case/Opinions/112101/001330f.pdf)

- [Chapter 110](https://tcss.legis.texas.gov/resources/CP/htm/CP.110.htm)

- [Barr opinion](https://law.justia.com/cases/texas/supreme-court/2009/2001406.html)

- [Wellington opinion](https://law.justia.com/cases/texas/tenth-court-of-appeals/2008/9095.html)

- [Lecuona opinion](https://law.justia.com/cases/texas/third-court-of-appeals/2018/03-17-00138-cv.html)

- [Texas Rules of Civil Procedure](https://www.txcourts.gov/media/1462349/texas-rules-of-civil-procedure.pdf)

- [Family Code Chapter 105](https://tcss.legis.texas.gov/resources/FA/htm/FA.105.htm)

- [Texas Constitution Article I](https://tcss.legis.texas.gov/resources/CN/htm/CN.1.htm)

- [K.N. official opinion](https://www.txcourts.gov/media/1462841/240881.pdf)

- [Nicklas subsequent Supreme Court order](https://www.txcourts.gov/supreme/orders-opinions/2024/february/february-2-2024/)

- [Mathews opinion](https://supreme.justia.com/cases/federal/us/424/319/)

- [Mahmoud official opinion](https://www.supremecourt.gov/opinions/24pdf/24-297_4f14.pdf)

- [R.G., III opinion](https://law.justia.com/cases/texas/second-court-of-appeals/2026/02-25-00703-cv.html)

- [T.R. and R.R. opinion](https://law.justia.com/cases/texas/first-court-of-appeals/2026/01-25-00924-cv.html)

- [Perez majority](https://law.justia.com/cases/texas/fifth-court-of-appeals/2026/05-25-01484-cv.html) and [Lee dissent](https://law.justia.com/cases/texas/fifth-court-of-appeals/2026/05-25-01484-cv-0.html)

- [Waite 2004 opinion](https://caselaw.findlaw.com/court/tx-court-of-appeals/1244068.html)

- [Family Code Chapter 107](https://tcss.legis.texas.gov/resources/FA/htm/FA.107.htm)

- [Current appellate rules](https://www.txcourts.gov/media/1463134/texas-rules-of-appellate-procedure-02062026.pdf)

- [J.B. Hunt opinion](https://law.justia.com/cases/texas/supreme-court/2016/15-0631.html)

- [Ellis opinion](https://law.justia.com/cases/texas/second-court-of-appeals/2025/02-25-00162-cv.html)

Review status

The internal working draft now states four coordinated reform requests and retains initial procedural language for dissolution findings. Initial child-order, independent-representation, and appointment-review provisions are drafted. Their statutory integration and other implementation language remain incomplete. The substantive destruction threshold and constitutional extensions remain unresolved. Selected authorities have been checked; comprehensive subsequent-treatment verification remains incomplete. The accompanying research audit preserves alternatives, completed checks, and remaining work. Editorial completion does not constitute adoption, publication authorization, or external legal clearance.

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EDITORIAL RECONCILIATION REGISTER

- Completed: located and preserved the October 11 integrated source manuscript, its citations, and adverse-authority discussions.

- Completed: inserted seven-part navigation architecture and the corrected Non-Transfer constitutional framing.
- Outstanding: incorporate the full text of the separately drafted Sections VIII–XIX with source-level comparison, remove duplication, and renumber all headings and cross-references.
- Outstanding: verify all authorities, historical statutes, and case-specific assertions against primary records.
- Not cleared for external publication or distribution. CONFIDENTIAL — INTERNAL TCMP.

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