TCMP — Texas Catholic Marriage Project

Constitutional Scrutiny and Appellate Review in a Contested Divorce

Confidential Legal Research Memorandum

Matter: The instant contested divorce and associated parental orders
Cause No. 2005-10618 • 257th District Court • Harris County, Texas

Prepared for: TCMP and reviewing counsel
Register: Formal, attorney-facing constitutional and appellate analysis in plain English
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Question presented

How should a reviewing court determine the applicable constitutional scrutiny and appellate standard for challenges to the dissolution, parental allocations, religious burdens, and procedures reported in the instant case?

Short answer

The court must identify the particular claim and challenged action before selecting the governing test. Rational-basis scrutiny of a legislative policy does not answer whether an individual received due process or whether a particular parental or religious restriction satisfies its governing doctrine. Constitutional legal questions ordinarily receive de novo review; supported factual findings and discretionary decisions may receive deference. [1–3, 5, 9]

On the available account, the most concrete issues for investigation are notice, actual consent at rendition, authority for waivers, the evidentiary record, and the basis for each exclusive parental allocation. Heightened scrutiny is an argument to establish claim by claim. A viable procedural vehicle is indispensable: this memorandum does not conclude that the March 2006 decree can now be reached by ordinary appeal.

I Factual basis and limits of this memorandum

This memorandum incorporates the preceding discussion of scrutiny and applies it to the respondent's reported circumstances. It draws on the October 28 consolidated TCMP memorandum and the September 7 TCMP analysis of exclusive parental rights. Those documents are research materials, not the certified trial record. The original decree, pleadings, service returns, docket, hearing notices, counsel file, and prior review proceedings were not independently inspected for this memorandum. Statements below are therefore attributed or conditional.

The supplied account identifies a decree signed March 23, 2006, in Cause No. 2005-10618. The two children were reportedly 13 and 9. The respondent reports that he was working for KBR in Iraq, opposed dissolution, requested a jury and paid the fee, received fewer than five days' notice, and did not authorize the consent reflected in the decree. These assertions require documentary and testimonial corroboration.

The earlier parental-rights analysis reports that both parents were designated joint managing conservators, while the petitioner received exclusive powers over primary residence without geographic restriction, education, invasive treatment, psychological care, and legal representation, among other matters. It also reports that each parent retained moral and religious training authority during possession. The exact text and actual operation of each provision must be verified.

Other reported features include a blank hearing-date line, a handwritten change concerning appearance or consent, the respondent's signature entered "by permission," approval by respondent's counsel as to form and substance, waiver of a reporter's record or testimony, and fax, filing, and signature dates that differ. These features raise questions; they do not independently prove lack of jurisdiction, lack of evidence, forgery, or absence of a hearing.

Historical law and present legal analysis

Counsel must identify the statutes and rules effective at the relevant 2005–2006 events, including transition provisions. Current provisions are used here to describe the analytical framework, not to apply later amendments retroactively. Later decisions such as In re C.J.C. and Mahmoud can inform research but do not automatically reopen a final judgment. The procedural availability and temporal effect of each authority require separate analysis.

Current interests and relief

Both children are now adults on the supplied birth dates. Historical custody and formation interests remain relevant to evaluating the 2006 proceedings, but prospective conservatorship relief ordinarily presents a different question after adulthood. Identify any presently enforceable obligation, concrete continuing injury, proper claimant, and available remedy. The respondent's interests and the adult children's potential claims should not be assumed interchangeable.

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II How to select the governing test

First identify the operative statute, order, or procedure. Then name the affected right holder, define the right precisely, identify the actual burden, and select the doctrine governing that burden. A facial challenge and an as-applied challenge differ in scope and proof; calling a claim as applied does not avoid adverse precedent. Glucksberg requires careful description of a claimed substantive liberty interest. [3]

Four questions that must remain distinct

The factual predicate asks what must be established before relief is authorized. The burden of proof asks how convincingly those facts must be established. Constitutional scrutiny asks whether government has adequately justified the interference. Appellate review asks how the reviewing court examines the legal ruling, factual findings, or exercise of discretion. None substitutes for the others.

Test	Typical doctrinal trigger	Required justification
Rational basis	Ordinary regulation or classification without a heightened-scrutiny trigger	Rational relationship to a legitimate governmental interest
Intermediate scrutiny	Certain classifications, especially sex classifications	Substantial relationship to an important governmental interest
Strict scrutiny	A qualifying fundamental-right burden or suspect classification under the governing doctrine	Compelling governmental interest and narrow tailoring

These are general categories, with doctrine-specific qualifications. Intermediate scrutiny is not a compromise selected because a case seems moderately serious. Under ordinary rational-basis analysis, the challenger generally bears the burden of overcoming the law’s presumption of validity. Heightened scrutiny ordinarily places the relevant justification burden on government. [2]

Procedural due process and statutory religious-freedom claims use their own frameworks. A court can independently review a constitutional question and then apply a deferential substantive test. De novo review therefore does not itself mean strict scrutiny. [5, 9, 13]

III Dissolution under Section 6 001

Statutory proof and constitutional justification

Section 6.001 authorizes dissolution without fault on specified conditions involving discord or personality conflict, destruction of the legitimate ends of the marital relationship, and prevention of a reasonable expectation of reconciliation. Whether these conditions were established is distinct from whether the statute is constitutionally valid. Section 6.406 requires joinder of the qualifying parent-child suit; joinder does not itself prove the facts supporting each child-related order. [1]

For this case, determine whether the court received testimony, affidavits, stipulations, or other competent material, and what the decree's purported waivers actually covered. Absence of a transcript is not affirmative proof that no evidence existed. Section 6.701 addresses taking the divorce petition as confessed when unanswered; its precise operation and the applicable historical rules must be analyzed against the actual procedural posture. [1]

The Waite decisions are adverse authority that must be addressed

Waite v. Waite, 64 S.W.3d 217 (Tex. App.—Houston [14th Dist.] 2001, pet. denied), was an appeal from denial of temporary injunctive relief. The lead opinion used rational legislative-policy reasoning in rejecting the religious-entanglement theories presented. Its plurality status limits how individual rationales may be used. Justice Frost's separate opinion disputed the Texas constitutional rights-of-conscience analysis; that view did not become the court's governing disposition. [5]

Waite v. Waite, 150 S.W.3d 797 (Tex. App.—Houston [14th Dist.] 2004, pet. denied), rejected the claimed lack of subject-matter jurisdiction over a Christian marriage and dismissed the appeal under the acceptance-of-benefits doctrine. These decisions cannot be dismissed solely because the marriage in the instant case was Catholic. Counsel must explain why the particular burden, preserved claim, and requested relief differ. [6]

A fundamental right must be connected to the claimed protection

Zablocki recognizes heightened protection against significant interference with entering marriage. It does not decide whether one spouse has a constitutional right to prevent dissolution sought by the other. Extending its reasoning requires an argument addressing the specific asserted right, the other spouse's liberty, the State's regulatory authority, and contrary cases. The importance of marriage alone does not establish the claimed veto. [4]

TCMP's proposal that courts identify protected interests and their governing standards before imposing disputed relief is a framework to argue and preserve. This memorandum has not established a binding rule requiring a separate constitutional threshold hearing before every divorce, or strict scrutiny of every dissolution. The narrower position is that an adequately presented constitutional objection must be evaluated under the doctrine that actually governs it.

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IV Parental authority and religious formation

Exclusive allocations between two parents

Troxel protects parental decision-making in a nonparent visitation dispute; its plurality did not prescribe a universal scrutiny formula for all parent-child adjudications. In re C.J.C., 603 S.W.3d 804 (Tex. 2020), applies the fit-parent presumption to the nonparent modification setting before it. Neither holding automatically determines the proper allocation between two fit parents. [7–8]

Texas law authorizes orders specifying independently, jointly, and exclusively exercised rights, including in joint managing conservatorship. The absence of an unfitness finding does not, by itself, invalidate an unequal allocation between parents. The historical statutory requirements and evidence must be examined. The proposed argument is more specific: identify how the challenged allocation burdened the respondent's protected decision-making and why its justification was constitutionally inadequate. [18]

Apply that inquiry separately to residence, education, treatment, and legal decisions. The supplied account suggests substantial concentration of authority, but the joint-conservator label and the number of exclusive clauses alone do not decide constitutionality. Examine the parents' actual prior responsibilities, geographical circumstances, disputed decisions, children's needs, and alternatives. The respondent's Iraq employment is relevant context, not a finding of unfitness or a conclusive justification for exclusion.

Religious exercise requires a specific burden

The proposed Catholic-formation claim should identify the respondent's sincere religious practice, the state-enforced provision affecting it, and the resulting impediment. Relevant evidence could include established parish and school arrangements, sacramental preparation, the possession schedule, relocation, and specific decisions the respondent could no longer make. Retained religious-training rights during possession must be assessed for their practical effect; neither automatic adequacy nor automatic inadequacy should be assumed.

Under Fulton, neutrality and general applicability are central to federal free-exercise analysis. Mahmoud v. Taylor, No. 24-297 (U.S. June 27, 2025), is additionally relevant because it applies strict scrutiny in its school religious-formation setting. It supports examining substantial interference with parents' religious upbringing of children, but does not adjudicate civil divorce or competing parental authority. Its application here would require a supported analogy and a viable present proceeding. Combining several rights under a "hybrid" label does not itself establish a universal strict-scrutiny rule. [14–15]

Texas RFRA separately prohibits qualifying substantial burdens unless government establishes a compelling interest and least restrictive means. Section 110.004 permits a qualifying defense even in litigation brought by a private person. Counsel must establish statutory applicability, the governmental act and substantial burden, distinguish relief from liability, and analyze historical law and procedural prerequisites. A spouse's private decision is not automatically attributable to government; the proposed challenge concerns identified judicial enforcement or orders. [13]

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V Notice consent and the children's legal interests

Notice and opportunity to participate

Mullane requires notice reasonably calculated under the circumstances to inform interested persons and allow objections. Peralta rejects conditioning relief from the no-notice judgment at issue on proof of a meritorious defense. These authorities concern meaningful process, rather than rational-basis justification of divorce policy. For the respondent, establish service, appearances, hearing settings, notice to counsel, actual communications, and opportunity to participate. A report of fewer than five days' notice does not alone identify the controlling deadline or establish a constitutional violation. [10–11]

Mathews generally examines the private interests affected, the risk of erroneous deprivation and value of additional safeguards, and governmental interests and burdens. Here the proposed application concerns adjudication of parental authority and marital status while the respondent was overseas and allegedly neither participating nor consenting. Counsel should evaluate feasible participation, reliable consent verification, a record of evidence, and representation of conflicting child interests, while also addressing the petitioner's interests and the children's need for timely decisions. [9]

Consent at rendition and authority for waivers

Kennedy explains that compliance with Rule 11 is generally necessary but not sufficient for an agreed judgment; consent must exist at rendition. The respondent's denial of authorization requires investigation of counsel's authority, written agreements, correspondence, powers of attorney, the purported "by permission" signature, and when the court actually rendered judgment. The signature date may differ from rendition. These factual questions cannot be resolved from disputed signature language alone. Withdrawal or absence of consent to an agreed judgment also differs from enforcement of an otherwise valid agreement through proper proceedings. [12]

Section 105.003(c) addresses making a record unless waived by the parties with the court's consent. Determine what was waived, by whom, with what authority, and under the governing 2006 law. Missing reporting can obstruct review, but is not proof of missing evidence or automatically a jurisdictional defect. A jury complaint likewise requires review of the demand, fee, timing, triable issues, objections, purported waiver, and harm. [17, 19]

The children's interests and representation

At rendition, the children's residence, relationships, education, treatment, and religious formation were materially affected. Their interests should not be treated as identical to either parent's litigation objectives. Yet section 107.021 generally makes appointments discretionary in ordinary private custody litigation, with different rules for specified termination proceedings. An attorney ad litem represents the child; an amicus serves a different statutory role. [20]

TCMP may argue that the combined circumstances required additional safeguards for the children under due process. That requires identifying the right, conflict, existing representation, missing safeguard, and probable value. The present materials do not establish a categorical constitutional right to appointed counsel in every private divorce, or that the absence of an appointment automatically rendered this decree void.

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VI Appellate review preservation and finality

Review the law independently and the facts under their proper standards

An appellate brief should identify the standard for each issue. Constitutional validity and interpretation ordinarily present legal questions reviewed de novo. Discretionary family-law rulings and underlying factual questions require the applicable abuse-of-discretion or sufficiency analysis. C.J.C. illustrates that deference to supported facts does not authorize incorrect application of law. A reviewing court may therefore address both legal error and evidentiary support in one proceeding. [5, 7]

Burden of proof remains separate. Santosky requires at least clear and convincing evidence for the complete and irrevocable parental termination at issue there. It does not impose that burden on every divorce or exclusive custody allocation. An argument for higher proof here must address the actual deprivation and allocation of error risk; calling functional exclusion “termination” does not make its legal consequences identical. Section 105.005 supplies a statutory proof rule for Title 5 findings, subject to its terms; it should not be automatically imported into the Title 1 divorce ground. [16, 19]

Preserve the actual claim and show reversible error

Rule 33.1 generally requires a timely and sufficiently specific complaint and a ruling, or an objection to refusal to rule. The constitutional provision, challenged act, proposed test, factual basis, and requested relief should be clear in the record. A general objection to divorce does not necessarily preserve a distinct religious-freedom or procedural claim. Applicable exceptions and situations in which the party had no meaningful opportunity to object require separate research. [17]

Rule 44.1 ordinarily requires that civil legal error probably caused an improper judgment or prevented proper presentation of the appeal. Do not import the criminal constitutional harmless-error rule in Rule 44.2 into this civil case. Determine the consequence prescribed for the particular defect and the appropriate remedy. A successful challenge to one child order does not necessarily invalidate dissolution or every remaining provision. [17]

The 2006 judgment requires an available route to review

Ordinary appeal deadlines cannot be assumed open roughly twenty years after the reported signature. Identify every prior appeal, bill of review, modification, enforcement action, and disposition, along with notice and discovery dates. A new constitutional theory does not itself restart deadlines or displace finality rules. No conclusion about an available present remedy can be made from the materials examined here.

PNS Stores distinguishes void judgments, which may be attacked collaterally, from voidable errors requiring timely direct attack. Its service discussion shows why a due-process label is insufficient: establish the jurisdictional defect and deprivation actually recognized by governing law. Blank dates, disputed consent, legal error, or incomplete findings do not each automatically make a judgment void. Bill-of-review limitations and any alleged extrinsic fraud require their own proof; the decision does not authorize indefinite delay. [21]

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VII Record development and proposed legal position

Materials needed before selecting an issue for litigation

1. Obtain the complete certified decree and docket, all operative pleadings, citation and service returns, appearances, hearing settings, notices, rendition materials, and judgment-notice records. Reconcile the fax, filing, rendition, and signature chronology without assuming that different dates are improper.

2. Obtain the jury demand and fee record; any stipulation, settlement, Rule 11 agreement, parenting plan, waiver, and consent instrument; and counsel's records concerning authority and communication with the respondent in Iraq. Identify what evidence exists outside a transcript.

3. Chart each challenged parental provision against its legal predicate, trial evidence, actual duration and effect, and proposed alternative. Identify concrete religious-formation restrictions and the proof connecting them to judicial action.

4. Collect all postjudgment proceedings and prior challenges. Identify current obligations, continuing injuries, the adult children's own positions if relevant, and any independent counsel. Determine standing, mootness, preclusion, limitations, and the proper procedural vehicle before drafting requested relief.

Proposed position for counsel to evaluate

The respondent does not contend that strict scrutiny automatically governs every no-fault divorce. He contends that the reviewing court must identify the particular right and governmental interference presented by each properly preserved claim, apply the corresponding constitutional or statutory test, and examine whether the record satisfies it. A rational justification for permitting civil dissolution does not independently establish consent, constitutionally adequate notice, or the justification for every associated parental restriction.

For the reported circumstances of the instant case, counsel should distinguish the challenge to dissolution from challenges to the allocations and procedures. The parental and religious arguments must address competing parental rights and the statutory authority for exclusive allocations. The due-process arguments must establish actual notice and participation failures, disputed authority, and the need for the particular safeguard sought. Any present challenge must first identify a legally available avenue of relief.

Conclusion

The available information supports a structured investigation and claim-specific analysis. It does not yet establish the constitutional tier governing each challenged provision or a present entitlement to vacatur. The next legal decision is which concrete claim can be supported by the certified record and presented through an available procedure. That determination will control both the scrutiny requested and the appellate remedy sought.

Research scope: This is a focused memorandum based on the authorities listed below and the identified TCMP materials. It is not a complete citator report or a verified reconstruction of the 2006 proceedings. Historical statutory text, subsequent treatment, and procedural availability must be checked before filing.

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Authorities and source materials

Bracketed numbers in the text refer to the authorities below. Texas intermediate appellate districts are identified expressly. Supreme Court authorities are identified by their court citations.

[1] Texas Family Code §§ 6.001, 6.406, 6.701. Current text; confirm the applicable historical versions.
https://tcss.legis.texas.gov/resources/FA/htm/FA.6.htm

[2] City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 440–42 (1985). General equal-protection scrutiny.
https://supreme.justia.com/cases/federal/us/473/432/

[3] Washington v. Glucksberg, 521 U.S. 702, 720–28 (1997). Identification of a claimed substantive liberty interest.
https://supreme.justia.com/cases/federal/us/521/702/

[4] Zablocki v. Redhail, 434 U.S. 374, 386–91 (1978). Significant interference with entry into marriage.
https://supreme.justia.com/cases/federal/us/434/374/

[5] Waite v. Waite, 64 S.W.3d 217 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (plurality op.; Frost, J., separate opinion).
https://www.txcourts.gov/All_Archived_Documents/14thCOA/Case/Opinions/112101/001330f.pdf

[6] Waite v. Waite, 150 S.W.3d 797 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). Religious jurisdiction challenge and dismissal.
https://caselaw.findlaw.com/court/tx-court-of-appeals/1244068.html

[7] In re C.J.C., 603 S.W.3d 804 (Tex. 2020) (orig. proceeding). Texas Supreme Court; parent versus nonparent modification.
https://law.justia.com/cases/texas/supreme-court/2020/19-0694.html

[8] Troxel v. Granville, 530 U.S. 57, 65–73 (2000) (plurality op.). Parent versus nonparent visitation.
https://supreme.justia.com/cases/federal/us/530/57/

[9] Mathews v. Eldridge, 424 U.S. 319, 335 (1976). Procedural due-process balancing.
https://supreme.justia.com/cases/federal/us/424/319/

[10] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314–15 (1950). Adequacy of notice.
https://supreme.justia.com/cases/federal/us/339/306/

[11] Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84–87 (1988). Relief from the no-notice judgment at issue.
https://supreme.justia.com/cases/federal/us/485/80/

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Authorities continued

[12] Kennedy v. Hyde, 682 S.W.2d 525, 528–30 (Tex. 1984). Texas Supreme Court; Rule 11 and consent at rendition.
https://law.justia.com/cases/texas/supreme-court/1984/c-2930-0.html

[13] Texas Civil Practice and Remedies Code §§ 110.001–.004 and applicable procedural provisions of chapter 110.
https://tcss.legis.texas.gov/resources/CP/htm/CP.110.htm

[14] Fulton v. City of Philadelphia, 593 U.S. 522 (2021). Neutrality, general applicability, and strict scrutiny.
https://www.law.cornell.edu/supremecourt/text/19-123

[15] Mahmoud v. Taylor, No. 24-297 (U.S. June 27, 2025). Religious upbringing and school instruction; preliminary injunctive relief.
https://www.supremecourt.gov/opinions/24pdf/24-297_4f14.pdf

[16] Santosky v. Kramer, 455 U.S. 745, 747–48, 754–70 (1982). Proof required for parental-rights termination.
https://supreme.justia.com/cases/federal/us/455/745/

[17] Texas Rules of Appellate Procedure 26.1, 30, 33.1, 44.1–.2. Current compilation dated February 6, 2026.
https://www.txcourts.gov/media/1463134/texas-rules-of-appellate-procedure-02062026.pdf

[18] Texas Family Code §§ 153.071, 153.134. Allocation of parental rights; confirm the governing historical text.
https://tcss.legis.texas.gov/resources/FA/htm/FA.153.htm

[19] Texas Family Code §§ 105.003(c), 105.005. Recording and proof provisions.
https://tcss.legis.texas.gov/resources/FA/htm/FA.105.htm

[20] Texas Family Code §§ 107.001, 107.021. Representation roles and discretionary appointments.
https://tcss.legis.texas.gov/resources/FA/htm/FA.107.htm

[21] PNS Stores, Inc. v. Rivera, 379 S.W.3d 267, 271–75 (Tex. 2012). Texas Supreme Court; voidness, service, and review.
https://law.justia.com/cases/texas/supreme-court/2012/10-1028.html

Internal materials used for context

TCMP, Insupportability and Protection of Family Rights, Consolidated Legal Memorandum, version 1.2 (Oct. 28, 2026); and TCMP, Exclusive Parental Rights in the Final Decree, (Sept. 7, 2026). These were consulted as internal research sources. Their assertions about the decree were not independently verified against the original record for this memorandum.

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