

THE STATE OF IDAHO
MEMORANDUM TO THE LEGISLATURE

March 9, 2026

To: Members of the Idaho Legislature

From: The Due Process Project

Re: Constitutional Analysis of the Idaho Family-Law Bar's Letter Opposing HB 824

I. EXECUTIVE SUMMARY

This memorandum provides a constitutional analysis of the Idaho family law bar's letter opposing Idaho HB 824. Several concerns raised in the opposition letter involve procedures that raise substantial due process risk when they operate to restrict a parent's fundamental liberty interest without adequate evidentiary support and process. The Supreme Court has repeatedly recognized the fundamental nature of the parent-child relationship and has emphasized the need for heightened procedural protections when the State seeks to intrude on that relationship. HB 824 codifies procedural guardrails designed to reduce the risk of error and to align Idaho practice with those constitutional principles.¹

These constitutional constraints are not matters of policy preference; they are well-established principles that shape how the states may structure custody proceedings. HB 824 does not create new constitutional rights. It reflects a legislative choice to structure Idaho's custody procedures in closer alignment with those protections. The opposition letter reflects the perspective of practitioners working within the current system, but the framework it defends raises serious constitutional tension where parental rights are restricted without defined evidentiary standards, written findings, or clear limits on temporary deprivations.²

This memorandum sets forth those constitutional guardrails with clarity so that the Legislature may confidently distinguish between what is debatable and what is legally foreclosed.

¹ The constitutional requirements governing state action in custody matters are well-settled. See *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 269–71 (1970).

² This point is offered as a structural observation, not a moral equivalence. After *Brown v. Board of Education*, respected legal and political actors produced formal statements urging lawmakers to preserve familiar institutional practices by characterizing the Supreme Court's constitutional rulings as discretionary, overreaching, or impractical. See, e.g., the 1955 Gray Commission Report on Public Education (issued as Virginia's early response to *Brown* and proceeding from the belief that the decision was "bad law" and "wrongheaded social policy"), and the 1956 "Declaration of Constitutional Principles" (the "Southern Manifesto"), introduced in Congress and urging resistance by "all lawful means."

II. INTRODUCTION

The Idaho family-law bar's letter opposing HB 824 raises concerns about the bill's impact on children, court administration, and judicial discretion, and those concerns warrant a respectful response.

Judges and practitioners carry significant responsibilities, and their experience is valuable. At the same time, Idaho's custody laws must operate within the constitutional limits established by the United States Supreme Court, which has long recognized that the parent-child relationship is a fundamental liberty interest; that fit parents are presumed to act in their children's best interests; and that the State may not substitute its judgment for that of a fit parent absent adequate justification. The Court has also emphasized the need for heightened procedural protections when the State seeks to intrude on that relationship, particularly where restrictions are severe or enduring.

These principles form the constitutional floor that every state custody framework must respect. HB 824 does not create new constitutional rights; rather, it reflects a legislative choice to structure Idaho's custody procedures in closer alignment with those constitutional protections.

III. CONTROLLING CONSTITUTIONAL DOCTRINE

Below is a concise restatement of the relevant governing law:

1. The parent-child relationship is a fundamental liberty interest. *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Stanley v. Illinois*, 405 U.S. 645 (1972).
2. Fit parents are presumed to act in their children's best interests. *Troxel v. Granville*, 530 U.S. 57 (2000).
3. The State may not substitute its judgment for that of a fit parent absent adequate justification. *Troxel v. Granville*, 530 U.S. 57 (2000); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925).
4. Severe or enduring intrusions on parental rights may warrant heightened proof; most clearly, before the State may terminate parental rights, due process requires proof by at least clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 769–70 (1982).
5. Heightened due process may require an evidentiary hearing, an opportunity to test adverse evidence, and articulated reasons identifying the evidence relied on, sufficient for review. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Goldberg v. Kelly*, 397 U.S. 254, 269–71 (1970).

Because parental rights are fundamental, state interference must be justified and procedurally fair; due process requires procedures proportionate to the deprivation. HB 824 reflects these constitutional principles through legislative design.

IV. POINT-BY-POINT ANALYSIS OF THE OPPOSITION LETTER

Below, each major concern raised by the family-law bar is addressed respectfully and directly.

1. “*HB 824 harms children by emphasizing parental rights over best interests.*”

The Supreme Court has explained that the “best interests” standard, standing alone, cannot override the constitutional rights of fit parents. *Troxel v. Granville*, 530 U.S. 57, 67–69 (2000). The presumption that fit parents act in their children’s best interests is binding precedent, not a policy choice. *Id.* at 68–69. HB 824 does not weaken child protection; it reflects the constitutional principle that state intervention must rest on evidence of harm or risk, not mere disagreement with a parent’s decisions.

2. “*Courts need flexibility to impose conditions without proving substantial harm.*”

The Constitution does not permit unbounded discretion when fundamental parental rights are burdened. Due process requires procedures calibrated to the stakes and the risk of error. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). HB 824 channels judicial discretion through defined evidentiary standards and findings; it does not eliminate discretion, but structures it.

3. “*Courts must respond to concerning behavior before it becomes substantial harm.*”

State action may not rest on generalized presumptions of unfitness; parental fitness must be established by individualized proof with appropriate process. *Stanley v. Illinois*, 405 U.S. 645, 649–58 (1972). HB 824 does not prevent courts from acting when evidence supports intervention; it ensures that intervention is grounded in demonstrable facts and fair process.

4. “*HB 824 removes continuity and stability from best-interest analysis.*”

In the version of HB 824 circulated to the Committee, ‘continuity and stability’ is shown as struck from the enumerated list in Idaho Code § 32-717. At the same time, the bill addresses continuity concerns through other mechanisms, including limits on temporary orders, restoration-plan requirements, and provisions designed to prevent temporary arrangements from becoming de facto permanent outcomes. The bill thereby avoids using “continuity” as an undefined proxy for judicial preference.

5. “*Domestic-violence perpetrators could regain parenting time too easily.*”

HB 824 strengthens procedural protections by requiring investigations, defined timelines, written findings, and consideration of both inculpatory and exculpatory evidence. It prohibits reliance on untested allegations, professional recommendations, or reports as the sole basis for enduring restrictions. Restoration occurs only after adjudication that allegations were unsubstantiated or insufficient under the bill’s evidentiary standard, and only through structured, reviewable restoration plans.

6. “*Clear and convincing evidence is too difficult for self-represented parents.*”

Clear and convincing evidence is constitutionally required for the most severe intrusions on parental rights, most clearly termination proceedings. *Santosky*, 455 U.S. at 769–70. HB 824 reflects a legislative judgment to apply that heightened standard to severe or enduring custody restrictions, consistent with the constitutional gravity of the interests at stake.

7. “*The bill will clog the courts.*”

Evidentiary hearings, articulated findings, and defined burdens of proof are constitutionally recognized safeguards in proceedings that affect fundamental liberty interests. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). HB 824 applies these safeguards in contested cases involving restrictions; it does not mandate them in stipulated or uncontested matters.

8. “*Requiring testimony instead of reports is impractical.*”

Due process may require an opportunity to test adverse evidence where credibility and disputed facts are central to the deprivation decision. *Goldberg v. Kelly*, 397 U.S. 254, 269–71 (1970). HB 824 reflects that principle by limiting reliance on reports as a sole basis for significant, enduring restrictions.

9. “*HB 824 restricts judicial speech.*”

HB 824 does not regulate judicial speech. It defines the legal standards and evidentiary bases for binding custody orders, which is a core legislative function. When judges decide cases, they act as agents of the State applying law to facts, not as private speakers expressing personal views.³ HB 824 preserves judicial discretion while ensuring that custody determinations rest on statutory criteria and an adequate evidentiary record.

V. CONTEXT: CONSTITUTIONALITY NOT TRUST

Idaho’s judges and family law practitioners serve with dedication, and HB 824 does not question their integrity. It simply recognizes that even well-intentioned systems must operate within constitutional limits. The Supreme Court has set constitutional parameters that custody procedures must respect, including the fit parent presumption and due process protections calibrated to the stakes and risk of error. See *Troxel v. Granville*, 530 U.S. 57 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 269–71 (1970); *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Legislature’s role is to ensure Idaho’s statutes reflect those requirements. HB 824 does exactly that.

VI. CONCLUSION

³ See *Garcetti v. Ceballos*, 547 U.S. 410, 421–22 (2006) (speech made pursuant to official duties is not protected by the First Amendment); *Nevada Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 126–27 (2011) (official acts taken in a governmental capacity are not personal speech protected by the First Amendment).

The opposition letter raises concerns that deserve respectful consideration. But the constitutional baseline is clear: when the State acts in a way that substantially burdens a parent's fundamental liberty interest, due process requires fair procedures calibrated to the stakes and the risk of error. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Supreme Court has emphasized that fit parents are entitled to meaningful deference and that courts may not simply substitute a generalized "best interests" preference for the judgment of a fit parent without adequate justification. *Troxel v. Granville*, 530 U.S. 57, 67–69 (2000).

HB 824 reflects these constitutional principles by requiring defined evidentiary showings and an articulated record, especially when restrictions on custody or parenting time are imposed, so that decisions are transparent, testable, and reviewable.

These safeguards are not an attack on judicial authority. They are a legislative choice to strengthen the reliability of custody determinations and to ensure that child-protective interventions rest on evidence and fair process. In short, HB 824 does not remove discretion; it structures it through clear standards and findings.

Respectfully submitted,



/s/ Shannon Draughon

The Due Process Project

Shannon M. Draughon, (WA) WSBA 35424

Executive Director, Sr. Counsel