

Restoring Constitutional Balance in Family Law

Executive Summary

Idaho’s legislators are uniquely positioned to restore constitutional balance to family law. While many are rightly focused on improving outcomes for families, a deeper opportunity lies in addressing the structural conditions that produce those outcomes. Family court dysfunction is not the root problem—it is the most visible consequence of a judiciary operating without clear limits, tasked with interpreting vague statutes in high-stakes cases without consistent training, enforceable standards, oversight or reviewability.

Washington State offers a cautionary example. There, well-intended domestic violence legislation was layered atop a judicial framework that had quietly centralized power. The judiciary polices itself, commissioners serve without public accountability, and quasi-judicial actors operate with absolute immunity. Washington’s HB 1620 broadly expanded judicial discretion without defining standards, leaving judges to interpret increasingly complex concepts like coercive control without the appropriate guidance. The result of a good idea implemented without the appropriate plan of administration: confusion, inconsistency, and a surge in protection orders lacking any evidentiary rigor.¹

¹ See InvestigateWest (March 2, 2025), and HB 1620 Bill Summary, Washington State Legislature. Legal experts and survivor advocates warned that HB 1620 expands judicial discretion without defining standards or requiring training, leaving terms like “coercive control” open to interpretation. Post-enactment, counties reported increased filings of domestic violence protection orders, often without evidentiary hearings or uniform thresholds. See also CitizenPortal.ai Legislative Hearing Report and testimony from the Washington State Coalition Against Domestic Violence.

For: Idaho Legislative Committee on *Constitutional Crisis of the Courts*

Idaho is already asking the right questions. Legislators have the tools to strengthen the Separation of Powers, affirm every citizen's right to meaningful due process and equal protection (including in family court), and bring clarity to areas where discretion has outpaced accountability. By codifying core protections, defining the boundaries of judicial authority, and establishing independent oversight, Idaho can ensure that public systems serve the public transparently and fairly. These aren't partisan reforms—they're constitutional guardrails. The care, custody, and control of one's children is a fundamental liberty interest under the Fourteenth Amendment. It deserves clarity, consistency, and protection at the highest level.

Coercive control is a real and serious danger, not to be overlooked—but judicial training on these concepts is essential to avoid unintended consequences. Without clear statutory guidance, well-meaning interventions can drift into overreach, undermining the very protections they aim to uphold.

Case Study: WA Constitutional Crisis of the Courts

In parallel to the well-intended legislative empowerment of the judiciary, through powerful much needed definitional statutory additions, such as coercive control, the Washington State family court system has misevolved into a self-reinforcing power structure, contrary to the doctrine of the Separation of Powers and constitutional limits on the American judiciary.

How: Internal Staffing, Internal Regulation, and Immunity from the Law.

A) Judicial Appointments: Most judges first take office through gubernatorial appointment, vetted by the WSBA Judicial Recommendation Committee—a body composed of practicing attorneys.²

² In Washington, over 83% of judges first take office through gubernatorial appointment, vetted by the WSBA Judicial Recommendation Committee—composed of practicing attorneys. Appointees typically

B) Commissioners: Appointed directly by superior court judges, commissioners serve at their pleasure with no public oversight.³

C) Guardian ad Litem (GALs): Selected by judges from internal registries, GALs are not licensed by the state and often ascend to judicial roles.⁴

D) Rulemaking Authority: Courts issue binding procedural rules (GR 9) without legislative review, bypassing Article II of the Washington Constitution.

E) Oversight Internalized: The Commission on Judicial Conduct lacks subpoena power and operates in secrecy. No other governing board or third-party oversight.

F) Immunity Doctrine Expanded: In *Taggart v. State*, the Washington Supreme Court extended absolute immunity to judges and quasi-judicial actors—even in cases of fraud or constitutional violations.⁵

Ongoing Legislative Support of Unconstitutional Judicial Overreach: HB 1620 and Judicial Discretion

run unopposed; more than 95% of judicial elections lack challengers. (RCW 2.04.070; Ballotpedia – Judicial Selection in Washington; Office of the Governor – Judicial Appointments).

³ Commissioners: Appointed directly by superior court judges, commissioners serve at their pleasure with no public oversight. RCW 2.24.010 states: “Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment.” Here’s a concise, citation-ready footnote for that statement:

² In Washington, court commissioners are appointed directly by superior court judges and serve at their pleasure, with no public election or external oversight. RCW 2.24.010 states: “*Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment.*” RCW 2.24.010 – Court Commissioners

⁴ In Washington, GALs are appointed by judges from internal court registries. They are not licensed by the state and operate under local rules. Many are attorneys or former commissioners, reinforcing insider pipelines and judicial influence. RCW 26.12.175; King County GAL Registry Guidelines; Washington Courts – GAL Program Overview

⁵ In *Taggart v. State*, 118 Wn.2d 195 (1992), the Washington Supreme Court held that judicial and quasi-judicial actors are immune from suit—even for constitutional violations or bad faith. This doctrine, combined with internal appointments and oversight, creates a closed loop: judges appoint commissioners and GALs, who influence outcomes and often ascend to the bench, all shielded from external accountability.

Washington’s recent HB 1620 exponentially expanded judicial discretion in high-conflict child-custody cases without defining standards or requiring training.⁶ Judges are now left to interpret and apply complex terms to vague and hard to understand civil fact patterns typically riddled with admitted hearsay and perjury, absent uniform guidance, unavoidably leading to inconsistent outcomes and unchecked bias. Despite best intentions, survivors and legal experts continue to warn that this bill solidifies judicial power while eroding protections for vulnerable families, and due process for all constituents.⁷

Idaho’s Legislative Opportunity

Idaho must not replicate Washington’s trajectory. Legislating domestic violence reform is a good; it must be done along with judicial structure or else it will backfire. Judges must be empowered with constitutional tools—not left to interpret evolving laws without guidance.

Recommended Actions:

- A. Codify due process protections: Evidence rules, jury rights, and appellate review in family law proceedings.
- B. Define and limit judicial discretion: No vague standards without procedural safeguards – *see* criminal procedure.
- C. Establish independent oversight: External review of judicial conduct and appointments.
- E. Disentangle insider pipelines (as applicable in Idaho): GALs and judges must be subject to public accountability.

⁶ HB 1620 removed proposed trauma-informed training for judges and introduced undefined terms like “coercive control,” expanding discretion in custody cases. DVPO filings rose sharply in several counties post-enactment, but statewide tracking remains limited. HB 1620 Bill Summary – WA Legislature; CitizenPortal.ai Legislative Hearing Report; Washington State Coalition Against Domestic Violence Testimony

⁷ The care, custody, and control of one’s children is a fundamental liberty interest protected by the Due Process Clause of the Fourteenth Amendment. The U.S. Supreme Court has repeatedly affirmed this right as “perhaps the oldest of the fundamental liberty interests recognized by this Court.”
Source: *Troxel v. Granville*, 530 U.S. 57, 65 (2000)

Conclusion

Unchecked power—even when granted under the best intentions—inevitably leads to inconsistency, corruption and harm. Idaho now faces a structural choice: not simply whether to improve family court, but whether to restore the constitutional boundaries that protect families, our judges, and the public from systemic imbalance, in the process. The fruits of the malformed family court have demonstrated the inadvertent mis-evolution of the judiciary outside its intended and legally mandated role.

This is not about controlling the judiciary—it’s about correcting its course. Idaho could see real improvement—not by chasing the nationwide crisis, but by restoring the constitutional boundaries our founders intended. The goal is structural: codify due process, define judicial discretion, establish independent oversight, and disentangle insider pipelines. Families deserve equal protection. Judges deserve clear standards. Legislators possess the structural tools to reverse constitutional erosion and reestablish the rights ceded to judicial overreach.

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