

# On Bringing Family Law Within the Constitutional Order

March 11, 2026

To the Members of the Idaho State Legislature:

My name is Dan Sturtevant. I hold a Ph.D. from MIT. My work has focused on the analysis and design of complex societal and technical systems, including systems within education, the Department of Defense, and the intelligence community. I am also the engineer and author behind *Troxel II*, a manuscript that helped inform the design of House Bill 824. I read House Bill 824 with great interest, as well as the March 6, 2026 letter submitted in opposition by 77 divorce lawyers. I hope that any small insights I may have, from a somewhat different vantage point, may be of some use to you as you consider how to proceed in this matter.

America was founded on the proposition that all are created equal and endowed with unalienable rights, including life, liberty, and the pursuit of happiness. Jefferson's words in 1776 signaled national aspiration, not perfection, and many were left outside the promise of universal dignity. But the American project had begun. In 1789, the framers recognized that government must be structured intentionally to preserve liberty by dividing power. Madison understood that human beings are flawed and that power must be checked, and he helped design a governing architecture that secured rights in practical ways. Later, Lincoln and the generations that followed pushed the Nation further toward its own first principles, and through Due Process and Equal Protection we extended those protections more broadly and more fairly. In the Warren era and beyond, those principles were applied with increasing seriousness to women, minorities, and others who had long been denied equal standing, bringing the law, at least formally, closer to the promise that all stand on the same footing.

And yet, over all that time, one major domain of fundamental liberty remained strangely underprotected: the right of fit parents to raise their own children, and the corresponding right of children to be raised by their parents. Rights of speech, religion, property, bodily liberty, criminal procedure, and equal citizenship were gradually brought more fully within constitutional structure. Family court was not. Although the Supreme Court repeatedly acknowledged parental rights as fundamental, that domain was never fully constitutionalized. The result was an anomaly: in the very place where the State acts most intimately and where the stakes are often highest, law remained unusually vague, discretionary, and resistant to ordinary constitutional discipline. That failure was not simply the product of bad will. Family rights are harder to order coherently than many other rights, and for a long time we simply had not yet learned how to do so well.

But rather than meet that difficulty directly, the system largely retreated into an undefined standard - "the best interests of the child" - that came into being in the 1970s and was never given a clear limiting definition. Over the half century that followed, practical authority in family matters was increasingly delegated and exercised not only by judges and lawyers, but by an expanding class of therapists, evaluators, guardians, and other outside professionals. Many of these actors no doubt act in good faith. The problem is not chiefly bad people. It is missing doctrine. Because we never designed a coherent constitutional system for family rights, practical

power over parents and children migrated outward into a wider professional apparatus, often with weak accountability and few of the checks that ordinarily attend judicial power. In such systems, the danger is not only error, but habituation: those entrusted with power may gradually come to see parents and children not as fellow citizens, but as subjects of management. That danger is greatest for those who are weakest, poorest, or least able to defend themselves. In the absence of clear doctrine, bias, speculation, and weakly grounded expert theory can acquire the appearance of lawful neutrality once filtered through institutional process. The result is not always truth or justice, but too often the appearance of them sufficient to authorize coercive state action. In the process, we borrowed pieces of criminal law and civil law inaptly, at times treating parents as though they were presumptive wrongdoers and children as though they were objects to be allocated, while subjecting families to procedural arms races, strategic allegations, escalating expense, and prolonged uncertainty.

As you read House Bill 824, I would ask you to see clearly what is before you. You are not looking at an ordinary bill. You are looking, so far as I am aware, at the first coherent legislative effort to design a body of law explicitly for the purpose of securing to parents and children their constitutional rights within family life. These liberties do not arise only when a family breaks down, nor do they belong only to those in litigation. They belong to parents and children as such. It is simply that in moments of conflict, poverty, institutional intervention, or family rupture, the law's failure to secure them becomes more visible and more severe. If Idaho enacts this bill, that fact may matter well beyond the State. What is especially striking to me, from a systems perspective, is that the bill is not merely rights-protective in the abstract. It is also stabilizing. It places fit parents on equal footing, narrows discretion, disciplines emergency power, and cabins the use of outside professionals. In doing so, it creates conditions under which family law can begin to function less as an ideological battleground and more as a lawful institution with intelligible performance characteristics. If such a system is built carefully and administered faithfully, one would expect over time not only better protection of liberty, but also more parent-child contact, fewer unnecessary escalations, lower levels of strategic allegation, and lower public and private cost. By one estimate in the supporting work, family courts and child-welfare systems together already consume more than \$100 billion each year in public and private cost. Even that large figure does not capture the whole loss. It does not measure diminished childhoods, weakened family bonds, despair, or the wider social burdens that follow when families are subjected to prolonged conflict and unnecessary separation. Those are the sorts of things that can be measured, modeled, and improved. They need not be left forever to fear, narrative, and speculative expert constructs. In that respect, the bill represents not simply a reform of family law, but an effort to bring family law more fully within the constitutional order.

As you read the March 6 letter signed by 77 Idaho divorce lawyers, I would ask you to consider two possibilities. It may be that some of those lawyers fear the unknown, fear what this change may do to their profession, or genuinely fear for the safety of children. Those are serious concerns, and they should be treated seriously. But one is also struck by an asymmetry. The letter speaks readily of protecting children from their own parents, yet says comparatively little about what prolonged process, escalating conflict, unnecessary state-mediated separation, and institutional error may do to children, or about the burdens such systems impose on ordinary families, especially those least able to bear them. Every dollar unnecessarily extracted from a family by prolonged conflict is a dollar not spent on music lessons, family trips, college savings,

or the ordinary goods of childhood. I would therefore respectfully ask the signatories to look again at the bill, to consider more carefully the intent behind it and the safeguards within it, and to ask whether their letter may have been too quick in defending a system that has too often failed the families it claims to serve. If they choose not to do so, that is of course their right. But I suspect history will judge more kindly those who helped bring family law within the constitutional order than those who stood in the way.

For my own part, I respectfully urge the Idaho Legislature to pass House Bill 824 and, in doing so, to set an example for the rest of the country. If Idaho acts here with clarity and courage, it may help secure for parents and children alike a measure of the liberty, equality, and lawful protection Americans have long been promised in other domains of life.

A friend from Massachusetts,

A handwritten signature in black ink, appearing to read "Daniel J. Sturtevant". The signature is fluid and cursive, with a large, stylized initial "D".

Daniel J. Sturtevant, PhD

Board Member, The Due Process Project