

NO. 15-0098

IN THE SUPREME COURT

OF TEXAS

IN RE C.T. and T.T.,

Relators

From the Fifth Court of Appeals at Dallas, Texas

BRIEF OF AMICI CURIAE,

TEXAS HOME SCHOOL COALITION ASSOCIATION

AND

THE NATIONAL CENTER FOR LIFE AND LIBERTY, INC.

David C. Gibbs III

President,

The National Center for Life and Liberty, Inc.

Texas Bar # 24026685

P.O. Box 12827

Flower Mound, TX 76226

Telephone: (727) 362-3700

Facsimile: (727) 398-3907

ATTORNEY FOR AMICI CURIAE

TEXAS HOME SCHOOL COALITION

ASSOCIATION AND

THE NATIONAL CENTER FOR LIFE

AND LIBERTY, INC.

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**TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF
TEXAS:**

The Texas Home School Coalition Association and The National Center for Life and Liberty, Inc. respectfully submit this Brief as Amici Curiae, pursuant to Rule 11 of the Texas Rules of Appellate Procedure and in support thereof, show this Honorable Court, as follows:

IDENTIFICATION OF AMICI CURIAE

The Texas Home School Coalition Association (“THSC”) is a Texas nonprofit corporation, tax exempt pursuant to Section 501(c)(4) of the Internal Revenue Code. THSC exists to promote the legal rights of home school families in Texas and to serve the home school community in Texas by promoting the social welfare of home schooling families.

The National Center for Life and Liberty, Inc. (“NCLL”) is a Florida non profit corporation, with office in Bartonville, Texas, and is tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. The NCLL is a non profit legal ministry that serves to protect and defend the Bible-based values upon which our Nation was founded. The NCLL endeavors to protect and defend important foundational areas that support our freedoms, including: Life Values, Constitutional Values, Church Liberty, Christian Education, and Home School Education. The NCLL files the instant Brief

on behalf of itself and its client, THSC, in support of the Relators' PETITION FOR WRIT OF MANDAMUS. Although THSC is a ministry supporter of NCLL, THSC has not specifically paid the NCLL any fees for the preparation of this brief. Nor has NCLL received any payment from the Relators for the preparation of this Brief.

INTEREST OF AMICI CURIAE

THSC and NCLL are concerned with the impact of this case on the rights of Texas families, who exercise their constitutional and legal right to home school their children. Amici Curiae fear the chilling effect that the trial and the appellate court decisions in this matter will have on Texas families, who currently home school their children, or who might consider home schooling children in the future. Although the trial court never cited an actual basis for retaining I.C. in foster care, one of the three issues Judge Callahan discussed in her ruling was the fact that the children in question were home schooled.

ARGUMENT

In her Order for the continued removal of I.C. from the Relators' home, Judge Callahan never cited any specific issue as the basis for I.C.'s removal. In fact, she stated, on the record, that none of the issues she listed

were valid reasons for removal. (R.R. page 386, line 20, line 25; R.R. page 387, lines 5 – lines 7.) The three issues Judge Callahan discussed in her ruling were: 1. the children were home schooled (R.R. page 386, line 13 – line 19), 2. two other children (not the subject of the PETITION FOR WRIT OF MANDAMUS) were found some distance from the Relators’ home (R.R. page 386, line 21 – line 25.), and 3. one of the Relators had allegedly practiced law without a license (R.R. page 387, line 1 – line 7.).

The allegation that one of the Relators had allegedly practiced law without a license – even if true – is completely irrelevant to the placement of I.C. or any of the other children involved in this matter. The record is completely devoid of any proof that either Relator had ever been charged with such an offense or that any harm had ever come to any of the children as a result of such alleged conduct.

The Court’s finding that two of the children, N. (4 years-old at the time) and J. (8 years-old at the time), were found wandering some distance from the Relators’ home is also irrelevant to the placement of I.C., who was not involved in that incident. In fact J., who was found wandering, was returned to the Relators (R.R. page 387, line 13 – line 14.), but I.C. who was not involved with that incident, was not returned. Therefore, it would be

unreasonable to conclude that I.C. is being held in foster care due to the wandering incident.

Amici are concerned that Judge Callahan's imprecise findings, on which her ruling was based, might be used by other courts to determine that children should be removed from the home if they are home schooled. This concern is bolstered by the fact that Judge Callahan initially prohibited the Relators from home schooling the children who were returned. (R.R. page 389 line 1 – line 2).

Parents in Texas have always had the constitutional and legal right to home school their children. The first Texas compulsory education statute came into effect in 1916. Prior to that time, parents were free to home school their children or to educate them in any way they deemed appropriate. *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 434 (1994). From the time the Texas compulsory education statute became effective in 1916 until 1981, parents who educated their children in bona fide home schools were not prosecuted for violating the compulsory attendance law. Home schooling was a valid option for Texas parents. *Id.* at 433. For a brief period, from 1981 – 1986, the Texas Education Agency pursued a policy that claimed, “no home school could be a private school within the meaning of § 21.033(a)(1).” *Id.* at 443. This policy was the central issue in

Leeper. Id. However, even before the conclusion of the case, the Texas Education Agency acknowledged that the position it held from 1981 – 1986 was wrong. The defendants in *Leeper*, including the Texas Education Agency, acknowledged “the right of parents to teach their children at home and the efficacy of that means of education when it is conducted in a bona fide manner.” *Id.* In its *Leeper* ruling, this Honorable Court upheld that position. *Id.* at 444. From the time of the *Leeper* decision in 1994 until now, there has been no change regarding the right of parents in Texas to home school their children. Thus, parents have always had the right to home school their children in Texas.

The Texas Supreme Court’s decision in *Leeper* is consistent with federal law. In 1925 the U.S. Supreme Court held in *Pierce v. Society of Sisters* that a compulsory education act requiring attendance at public schools rather than private schools was unconstitutional, as a violation of the Fourteenth Amendment. 268 U.S. 510, 535 (1925). As shown above, the Texas Supreme Court has held that a home school, conducted in a bona fide manner, is a valid form of private school. *Leeper*, 893 S.W.2d at 433. Thus, an order requiring children in Texas to attend a public school rather than a home school is a violation of both Texas and federal law. *Pierce*, 268 U.S. at 535; *Leeper*, 893 S.W.2d at 433. Further, in *Society of Sisters*, the U.S.

Supreme Court also held that a statute requiring children to attend a public school rather than a private school “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Pierce*, 268 U.S. at 534-35. The same is true of Judge Callahan’s Order in the instant case; her Order also “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Id.*

CONCLUSION

Judge Callahan’s implied use of home schooling as a basis for her ruling in the instant matter coupled with and based upon the fact that her ruling initially prohibited the Relators from continuing to home school their other children is concerning to the Amici as an unconstitutional action by a Texas court and contrary to existing Texas law.

PRAYER

FOR THE REASONS STATED, the Amici, THSC and the NCLL, respectfully pray that the Relators’ Petition for Writ of Mandamus be granted.

Respectfully Submitted,

THE NATIONAL CENTER FOR LIFE AND LIBERTY, INC.

/s/ David C. Gibbs III

David C. Gibbs III

President

Texas Bar # 24026685

dgibbs@gibbsfirm.com

P.O. Box 12827

Flower Mound, TX 76226

Telephone: (727) 362-3700

Facsimile: (727) 398-3907

**AMICUS CURIAE AND
ATTORNEY FOR AMICUS CURIAE
TEXAS HOME SCHOOL COALITION ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that on this the 27th day of February, 2015, a true and correct copy of the foregoing Brief of Amicus Curiae of the Texas Home School Coalition Association and the National Center for Life and Liberty, Inc. was served electronically or via U.S. mail as follows:

Cecilia M. Wood
Attorney for Relators
Capitol Center
919 Congress Avenue, Suite 830
Austin, Texas 78701

The Honorable Tena Callahan
302nd Judicial District Court
George L. Allen, Sr. Courts Building
600 Commerce Street, Suite 440
Dallas, Texas 75202

Ms. Sandre Streete-Moncriffe
Assistant District Attorney
Dallas County District Attorney's Office
2600 Lone Star, LB 22
Dallas, Texas 75212
Attorney for Texas Department of Family
and Protective Services

Mr. Charles Vaughn
Dallas County Public Defender's Office
George L. Allen Sr. Courts Building
600 Commerce Street 4th Floor, Room 465G
Dallas, Texas 75202

Ms. Delia Gonzales
Guardian Ad Litem for the Children
2213 Boll Street
Dallas, Texas 75204

Ms. LaDeitra D. Adkins
2704 Routh Street, Suite 1
Dallas, Texas 75201

/s/ David C. Gibbs III

David C. Gibbs III

Attorney at Law