No. 02-20-00002-CV

In the
Court of Appeals
Second Appellate District of Texas
Fort Worth, Texas

T.L., A MINOR AND MOTHER, T.L., ON HER BEHALF, Appellants

v.

COOK CHILDREN'S MEDICAL CENTER, Appellees

On Appeal from the 48th District Court
Tarrant County, Texas
Cause No. 048-112330-19

BRIEF OF TEXAS HOME SCHOOL COALITION, AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

Cecilia M. Wood,
Attorney and Counselor at Law, P.C.
State Bar No. 21885100
1122 Colorado Street, Suite 2310
Austin, Texas 78701
Tel: 512-708-8783
Fax: 512-708-8787
Cecilia@ceciliawood.com

ATTORNEY FOR AMICUS,
TEXAS HOME SCHOOL COALITION

TABLE OF CONTENTS

INDEX OF AUTHORITIES…… 4

STATEMENT OF INTEREST ……..... 8

ISSUES PRESENTED……...…10

STATEMENT OF FACTS……10

SUMMARY OF THE ARGUMENT……11

ARGUMENT AND AUTHORITIES……...17

I. MOTHER HAS A CONSTITUTIONALLY PROTECTED RIGHT TO MAKE MEDICAL DECISIONS FOR T.B.L……20

II. THE STATE CANNOT DELEGATE AUTHORITY TO A THIRD PARTY THAT IT DOES NOT POSSESS……..24

III. ANY STATUTE THAT BURDENS A PARENT'S FUNDAMENTAL RIGHT TO MAKE DECISIONS REGARDING HIS OR HER CHILD IS SUBJECT TO STRICT SCRUTINY REVIEW……26

A. There is no compelling state interest…….28

B. The statute is not narrowly tailored……..28

C. 166.046 Violates the Equal Protection Clause of the Fourteenth Amendment…….29

IV. AS APPLIED TO MOTHER 166.046 IS UNCONSTITUTIONAL…… 30

V. SECTION 166.046 OF THE TEXAS HEALTH AND SAFETY CODE FAILS TO PROVIDE ADQUEATE PROCEDURAL DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT…… 32

CONCLUSION……..…… 36

PRAYER…….. 38

CERTIFICATE OF COMPLIANCE ……...… 39

CERTIFICATE OF SERVICE ……..…….. 40

Appendix

A. Texas Tribune Article- January 2, 2020

B. Relevant Statutory Provisions

INDEX OF AUTHORITIES

Page(s)

Cases

Cantwell v. State of Connecticut,
310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940) 24
City of Cleburne, Tex. v. Cleburne Living Ctr.,
473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) 25, 26
City of San Antonio v. Summerglen Prop. Owners Ass'n Inc.,
185 S.W.3d 74 (Tex. App. 2005)..... 17
Cramer v. Sheppard,
140 Tex. 271, 167 S.W.2d 147 (1942) 24
DeShaney v. Winnebago Cty. Dep't of Soc. Servs.,
489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) 24
Eggemeyer v. Eggemeyer,
554 S.W.2d 137 (Tex. 1977) 21
Gillespie v. Gillespie,
644 S.W.2d 449 (Tex. 1982) 15
Griswold v. Connecticut,
381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965) 26
Gunn v. Cavanaugh,
391 S.W.2d 723 (Tex. 1965) 21
Herrera v. Herrera,
409 S.W.2d 395 (Tex. 1966) 21
Holick v. Smith,
685 S.W.2d 18 (Tex. 1985) 10, 21
In Interest of A. J.,
559 S.W.3d 713 (Tex. App.—Tyler 2018, no pet.)..... 17, 33
In Interest of J.W.T.,
872 S.W.2d 189 (Tex. 1994) 25, 26, 34
In re B.L.D.,
113 S.W.3d 340 (Tex. 2003) 32
In re Chambless,
257 S.W.3d 698 (Tex. 2008) 34
In re Derzapf,
219 S.W.3d 327 (Tex. 2007) 22

In re K.M.L.,
443 S.W.3d 101 (Tex. 2014) 21, 32
In re M.S.,
115 S.W.3d 534 (Tex. 2003) 20
In re Scheller,
325 S.W.3d 640 (Tex. 2010) 15, 22, 23
Lassiter v. Dep't of Soc. Servs. of Durham Cty., N. C.,
452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981) 20
M.L.B. v. S.L.J.,
519 U.S. 102, 117 S.Ct. 555 (1966)..... 32
Matter of Marriage of Mitchell,
585 S.W.3d 38 (Tex. App.—Texarkana 2019, no pet.)..... 30
Meyer v. Nebraska,
262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923) 19
Mumma v. Aguirre,
364 S.W.2d 220 (Tex. 1963) 21, 22
Pac. Terminal Co. v. Interstate Commerce Comm'n,
219 U.S. 498, 31 S. Ct. 279, 55 L. Ed. 310 (1911) 19
Parham v. J. R.,
442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979) ..... passim
Pennington v. Gibson,
57 U.S. 65, 14 L. Ed. 847 (1853)..... 29
Pierce v. Soc'y of the Sisters,
268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925) 20, 26
Prince v. Massachusetts,
321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944) 20, 21
Reno v. Flores,
507 U.S. 292, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) 26
Roe v. Wade,
410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) 25
Santosky v. Kramer,
455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) 17, 20, 32, 33
Smith v. Org. of Foster Families For Equal. & Reform,
431 U.S. 816, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977) 21, 32
Stanley v. Illinois,
405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972) 15, 20, 21, 34

State v. Deaton,
93 Tex. 243, 54 S.W. 901 (1900) 22
State v. Lodge,
608 S.W.2d 910 (Tex. 1980) 19
Texas Educ. Agency v. Leeper,
893 S.W.2d 432 (Tex. 1994) 7
The Interest of J.A.B.,
562 S.W.3d 726 (Tex. App.—San Antonio 2018, pet. denied)..... 17, 33
Troxel v. Granville,
530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) ..... passim
Washington v. Glucksberg,
521 U.S. 702 (1997)..... 15
Wiley v. Spratlan,
543 S.W.2d 349 (Tex. 1976) 10, 21, 25
Zablocki v. Redhail,
434 U.S. 374, 98 S. Ct. 673, 54 L. Ed. 2d 618 (1978) 28

Statutes

SECTION 166.046 OF THE TEXAS HEALTH AND SAFETY CODE
..... passim
Tex. Const. art. I, § 6 12
Tex. Const. art. I, § 19 27
Tex. Fam. Code Ann. § 105.002..... 17, 33
Tex. Fam. Code Ann. § 107.013(a)(1)..... 17, 33
Tex. Fam. Code Ann. § 153.131..... 30
Tex. Fam. Code Ann. § 153.433..... 30
Tex. Fam. Code Ann. § 161.001..... 17, 33
Tex. Fam. Code Ann. § 262.001..... 33
Tex. Fam. Code Ann. § 263.401..... 33
Tex. Health and Safety Code Ann. § 166.046 (a)..... 31
Tex. Health and Safety Code Ann. § 166.046 (d) 31
Tex. Health and Safety Code Ann. § 166.051 29
Tex. Health and Safety Code §166.045-166.046..... 12, 15
U.S. Const. amend. I..... 12
U.S. Const. amend. X 22
U.S. Const. amend. XIV, § 1 ..... 15, 27

Rules

Tex. R. App. P. 9.4 (i) (1) 38

STATEMENT OF INTEREST

Amicus Curiae, Texas Home School Coalition, is a nonprofit organization committed to preserving the fundamental rights of parents to raise their children without unwarranted and unnecessary government interference. Recognizing the attendant and equally important rights and interests of children in maintaining a relationship with their natural parents, Texas Home School Coalition provides to its members, in addition to educational opportunities and resources, legislative advocacy and legal support. Texas Home School Coalition was instrumental in affirming the rights of parents to homeschool in *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432 (Tex. 1994). Since that time, Texas Home School Coalition has become increasing involved in the defense and protection of the fundamental liberty interests of parents as the primary means of protecting the rights and interests of their children.

Texas Home School Coalition has worked substantially to advance parental rights in other areas. Texas Home School Coalition was appointed by Governor Greg Abbott as a member of a CPS (Child Protective Services) policy workgroup during the 2017-2018 legislative interim and was

instrumental in aiding the development of the recommendations provided by that workgroup. In December 2018, Texas Home School Coalition filed a detailed brief with the Texas Attorney General's office, reciting the century long history of constitutional case law protecting parental rights. The AG's office subsequently issued opinion KP-0241, giving a comprehensive overview of the constitutional rights of parents.

Texas Home School Coalition's mission is to keep Texas families free by protecting the constitutional right of parents to raise their children, which explains their significant interest in defending against the constitutional claims that Plaintiffs assert here.

To accomplish that goal, Texas Home School Coalition has retained Cecilia M. Wood, Attorney and Counselor at Law, P.C. to file this Amicus Brief in Support of Appellants and all legal fees and costs have been provided exclusively to Texas Home School Coalition pro bono.

ISSUES PRESENTED

I. MOTHER HAS A CONSTITUTIONALLY PROTECTED RIGHT TO MAKE MEDICAL DECISIONS FOR T.B.L.

II. ANY STATUTE THAT BURDENS A PARENT'S FUNDAMENTAL RIGHT TO MAKE DECISIONS REGARDING HIS OR HER CHILD IS SUBJECT TO STRICT SCRUTINY REVIEW.

A. There is no compelling state interest.

B. The statute is not narrowly tailored.

C. 166.046 Violates the Equal Protection Clause of the Fourteenth Amendment.

III. THE STATE CANNOT DELEGATE AUTHORITY TO A THIRD PARTY THAT IT DOES NOT POSSESS.

IV. AS APPLIED TO MOTHER 166.046 IS UNCONSTITUTIONAL.

V. SECTION 166.046 OF THE TEXAS HEALTH AND SAFETY CODE FAILS TO PROVIDE ADQUEATE PROCEDURAL DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

STATEMENT OF FACTS

Texas Home School Coalition adopts Appellants' Statement of Facts for the purpose of this brief.

SUMMARY OF THE ARGUMENT

Normally a child with a big heart would be admired and praised. In T.B.L.'s case her "giant heart" has become a death sentence. (R.R. Vol. II at 107 - 108). Despite the fact that she has committed no crime, she has been denied any form of due process by those who have decided that she should die. (II R.R. 201-202). Most notably, she has been denied a protection afforded whole and healthy children, that of having her mother determine what is in her best interest. *See*, *Troxel v. Granville*, 530 U.S. 57, 69, 120 S. Ct. 2054, 2062, 147 L. Ed. 2d 49 (2000); *Parham v. J. R.*, 442 U.S. 584, 602, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979); *Wiley v. Spratlan*, 543 S.W.2d 349 (Tex. 1976). *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985).

Amicus curiae, Texas Home School Coalition, files this brief in support of Plaintiff requesting this Court declare that Section 166.046 of the Tex. Health and Safety Code (hereinafter "166.046") is unconstitutional, and specifically unconstitutional as applied to T.B.L. and her mother, T.L. (hereinafter "Mother"). Tex. Health & Safety Code Ann. § 166.046. Amicus further requests this Court to enjoin Cook's Children Medical Center (hereinafter "CCMC") from withdrawing life-sustaining treatment from the child until such time as she can be transferred to another facility or

one of the treating physicians is willing to discharge her from their hospital. In addition, Amicus requests the Court order that should Mother withdraw the child from CCMC against medical advice for the purposes of working with a home health care organization, CCMC be required to provide the same type of access as they would normally in a situation which the physicians deemed to be "medically safe or appropriate." (II R.R. at 182, 220).

Amicus curiae, Texas Home School Coalition, files this brief in support of Plaintiff requesting this Court declare that Section 166.046 of the Texas Health and Safety Code (hereinafter "166.046") is unconstitutional, and specifically unconstitutional as applied to T.B.L. and her mother, T.L. (hereinafter "Mother"). Tex. Health & Safety Code Ann. § 166.046. Amicus further requests this Court to enjoin Cook's Children Medical Center (hereinafter "CCMC") from withdrawing life-sustaining treatment from the child until such time as she can be transferred to another facility or one of the treating physicians is willing to discharge her from their hospital. In addition, Amicus requests the Court order that should Mother withdraw the child from CCMC against medical advice for the purposes of working with a home health care organization, CCMC be required to provide the

same type of access as they would normally in a situation which the physicians deemed to be "medically safe or appropriate." (II R.R. at 182, 220).

At trial, Cook's Children's Medical Center (hereinafter "CCMC") presented evidence and argument to support their position that they should be allowed to keep the baby, T.B.L. in the hospital and cease treatment, which will surely result in her death. (II R.R. at 88, 185, 193). As a result, two questions of constitutional significance are implicated. The first is whether individuals, in this case medical health providers, can be forced to provide services in violation of their own personal religious or moral beliefs or their conscience, regardless of whether those convictions are bolstered by civil and criminal immunity. U.S. Const. amend. I; Tex. Const. art. I, § 6; Tex. Health and Safety Code §166.045-166.046; (II R.R. at 320). The second is whether a non-parent, including medical professionals, can substitute their own judgment for that of a fit parent's determination of what is in their child's best interest.

Amicus, Texas Home School Coalition, writes to answer the second question with a resounding "NO" and to defend the mother's position that continuing the life-sustaining treatment is in T.B.L.'s best interest as a

matter of law. [1,2]. To hold otherwise, will be to say to all parents: "Once you seek medical care or advice for your child, you waive your constitutionally protected right to make medical decisions to that health care provider."

CCMC voluntarily entered into an agreement to provide medical treatments to T.B.L. based on some small hope that she would one day leave the hospital. (II R.R. 91). They had no problem fulfilling that contract until they performed a surgery that did not alleviate T.B.L.'s reliance on a ventilator to breathe, causing them to lose hope in her recovery. (II R.R. at 87). At that point, the team of physicians decided that it was no longer in T.B.L.'s "best interest" to continue treatment. (II R.R. 88, 93, 142); *Appendix* A.

Mother, however, has not changed her position regarding the contract in wishing to receive medical care to keep T.B.L. alive. (II R.R. 24). She has not lost hope. (II R.R. 160-161).

Fn.1 Amicus concurs with Appellant that the statute is facially unconstitutional and unconscionable in that it provides zero due process protection to an individual facing a death sentence.

Fn. 2. Amicus emphatically agrees that an individual does not waive constitutional protections for religious beliefs and matters of conscience simply by entering the public square or commerce. Mother, however, does not waive her own constitutional protections by seeking medical care for her child.

The law presumes that the decisions of a fit parent, including medical decisions, are in the best interest of a child. *Troxel v. Granville*, 530 U.S. 57, 69, 120 S. Ct. 2054, 2062, 147 L. Ed. 2d 49 (2000); *Parham v. J. R.*, 442 U.S. 584, 602, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979). Accordingly, the decision of Mother to let her baby daughter live, is presumed to be in T.B.L.'s best interest and must prevail. *See*, *Id*.; (II R.R. at 92). CCMC points to no authority to support the proposition that Mother waived her constitutional right to make medical decisions for the child by entering into the contract. The fact that they tried for months to obtain her consent is evidence that she did not specifically delegate her decision-making power to CCMC. (II R.R. 91). Eventually became evident that they could not change Mother's mind and obtain her consent to remove life sustaining treatment from T.B.L. (II R.R. 92). At that point, CCMC, relied on the process contained in 166.046 to ignore Mother's determination of T.B.L.'s best interest and substitute their own judgment. (II R.R. 46).

Regardless of whether a doctor has a right to withhold treatment at any point, these treating physicians relied on the statutory authority, which the state itself does not possess, but which it granted to CCMC through the

legislature in Section 166.046 of the Texas Health and Safety Code and the attendant immunity provided in Section 166.045 of the Texas Health and Safety Code (hereinafter "166.045" and "166.046) to permit the CCMC ethics committee to substitute their decisions regarding T.B.L.'s best interest as superior to those of Mother. Tex. Health & Safety Code Ann. §166.045, 166.046. (II R.R. 81, 88, 142, 154, 201-202). Even trial courts, which are afforded a great deal of discretion in determining the best interest of a child, are prohibited from acting in such a manner. *In re Scheller*, 325 S.W.3d 640, 642 (Tex. 2010); *Gillespie v. Gillespie*, 644 S.W.2d 449 (Tex. 1982). In permitting an ethics committee to do so, the statute violates the substantive due process rights of Mother and potentially all parents seeking medical care for their children. Accordingly, as specifically applied to T.B.L. and Mother, the statue is unconstitutional.

The right to make decisions regarding the upbringing of one's child is protected by the Fourteenth Amendment, which guarantees both procedural and substantive due process. U.S. Const. amend. XIV, § 1; *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Troxel*, 530 U. S. at 66; *see*, *e.g., Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). In analyzing the constitutional challenges to the statute, this Court

must determine whether the statute burdens a constitutionally protected interest; which it does, and whether the statute is "narrowly tailored to serve a compelling government interest." *Troxel*, 530 U.S. at 80. Additionally, there is no evidence or even allegation that Mother is unfit. (II R.R.). Therefore, this Court must determine whether the proponent of the statute provided sufficient evidence to overcome the presumption that Mother's decision is in the best interest of T.B.L. before it can permit the application of the statute to defeat Mother's decision. This would require a finding that even though the treating physicians had little hope during the time they were performing numerous painful surgeries and treatments that T.B.L. would ever recover, the fact that the doctors have now lost that hope outweighs Mother's hope and decision that life T.B.L. does have justifies the suffering. (II R.R. 91, 149, 160). In this case, that question would require a finding that even if the doctor's medical opinion of the nature and extent of T.B.L.'s suffering were completely accurate, what she is currently experiencing is so much more harmful than being dead that Mother cannot possibly be making the correct choice. The quality of one's life is so personal that the decision must belong to the one living it or the person designated to make that decision. The doctors believe that pain and suffering without a medical

probability of recovery is immoral. (II R.R. 149, 164). Mother believes that God still has a plan. 160. The state cannot determine whose beliefs are superior.

Further, since the result of the application of the statute to the circumstances of T.B.L. and Mother will be to terminate the parent-child relationship between them, they are both entitled to the same procedural protections required in a suit for termination brought under the Texas Family Code, including: 1) a clear and convincing evidentiary standard, Tex. Fam. Code Ann. § 161.001; *Santosky v. Kramer*, 455 U.S. 745, 748, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); 2) a right to effective counsel in certain instances, Tex. Fam. Code Ann. § 107.013(a)(1), *In Interest of A. J.*, 559 S.W.3d 713 (Tex. App.—Tyler 2018, no pet.); *The Interest of J.A.B.*, 562 S.W.3d 726, 730 (Tex. App.—San Antonio 2018, pet. denied); and 3) a right to trial by jury. Tex. Fam. Code Ann. § 105.002.

"An unconstitutional statute is void, and cannot provide a basis for any right or relief." *City of San Antonio v. Summerglen Prop. Owners Ass'n Inc.*, 185 S.W.3d 74, 88 (Tex. App. 2005). Therefore, in order for CCMC to defeat the claims of Mother and T.B.L., the statute on which they rely to substitute their medical decision for Mother's medical decision must be

constitutional. As the attorney for the State of Texas argues that the statute is unconstitutional, the burden to defeat Mother's constitutional challenge falls on the CCMC.

Amicus concedes that this case might easily be addressed by ordering T.B.L. be discharged to home health care or the discovery of another hospital willing to accept T.B.L. before this Court renders its opinion. Although Dr. Duncan is concerned that it may not be safe, there is no explanation as to how it can be more unsafe than remaining under the care of CCMC. (II R.R. at 182-183). Whether CCMC's plan to cease the life sustaining treatment results in T.B.L.'s death or some mistake on the part of a home health care provider results in T.B.L.'s death, she will be equally dead. Further, even though Dr. Duncan testified that T.B.L.'s needs can change as often as every twenty-four (24) hours, it would fully become the responsibility of the new physician to write all new orders going forward, relieving the doctors at CCMC of any future ethical dilemma. (II R.R. at 185). Dr. Duncan raised no ethical or safety concerns about the care from another hospital. , but of course, none had yet been willing to accept the transfer. (II R.R. 99). Even in one of those events, the assault on parental rights, which is capable of repetition, but evading review and the collateral

consequences to T.B.L. created by this statute, specifically the short time permitted for transfer, are recognized exceptions to finding the constitutional challenges to the statute moot. Tex. Health and Safety Code §166.046; *see*, *Pac. Terminal Co. v. Interstate Commerce Comm'n*, 219 U.S. 498, 515, 31 S. Ct. 279, 282, 55 L. Ed. 310 (1911) ("these considerations ought not to be, as they might be, defeated, by shortterms orders, capable of repetition, yet evading review"); *State v. Lodge*, 608 S.W.2d 910, 912 (Tex. 1980) (recognizing the "capable of repetition yet evading review" exception and the "collateral consequences" exception).

Accordingly, Amicus urges this Court to consider the unconstitutional burden placed on parents' liberty interests, and Mother's in particular, by 166.046.

I. MOTHER HAS A CONSTITUTIONALLY PROTECTED RIGHT TO MAKE MEDICAL DECISIONS FOR T.B.L.

Parents possess the fundamental right to make decisions concerning the care, custody, and control of their children. *Troxel*, 530 U.S. 57. In *Troxel*, the Supreme Court reaffirmed the "interest of parents in the care, custody, and control of their children" as "perhaps the oldest of the fundamental liberty interests." *Id.* at 65 (*citing*, *Meyer v. Nebraska*, 262 U.S.

390, 399, 401, 43 S. Ct. 625, 67 L. Ed. 1042 (1923) (includes the right of parents to "establish a home and bring up children" and "to control the education of their own."); *Pierce v. Soc'y of the Sisters*, 268 U.S. 510, 534–535, 45 S. Ct. 571, 69 L. Ed. 1070 (1925) ("liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control."...." and to recognize and prepare him for additional obligations."); *Prince v. Massachusetts*, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944) ("right of parents to direct the upbringing of their children"). This right is an extension of the freedom of personal choice in family matters. *Pierce v. Soc'y of Sisters,* 268 U.S. at 534–35. It specifically includes the right to make medical decisions for one's child. *Parham*, 442 U.S. at 602.

A parent's rights to "the companionship, care, custody, and management " of his children are constitutional interests "far more precious than any property right." *Santosky*, 455 U.S. at 758–59 (quoting *Lassiter v. Dep't of Soc. Servs. of Durham Cty., N. C.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981) (*internal quotation marks omitted*); *Stanley*, 405 U.S. 645; *In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003). "The protection of one's right to own property is said to be one of the most important purposes

of government." *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 140 (Tex. 1977). "That right has been described as fundamental, natural, inherent, inalienable, not derived from the legislature and as preexisting even constitutions." *Id*. Logically then, the same is true for the rights of parents. "On multiple occasions, the U.S. Supreme Court has afforded a high degree of constitutional respect to a parent's interest in maintaining the parent-child relationship." *Stanley*, 405 U.S. at 651; *Prince*, 321 U.S. at 165; *accord*, *In re K.M.L.*, 443 S.W.3d 101 (Tex. 2014) (Tex.2014) (Lehrman, J. concurring) (citing, *Smith v. Org. of Foster Families For Equal. & Reform*, 431 U.S. 816, 843–45, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977).

The recognition of this fundamental liberty interest is also deeply rooted in our state jurisprudence. *Wiley v. Spratlan*, 543 S.W.2d 349 (Tex. 1976); *Holick*, 685 S.W.2d at 20. In *Wiley*, the Court noted, "This court has always recognized the strong presumption that the best interest of a minor is usually served by keeping custody in the natural parents. *Wiley*, 543 S.W.2d at 352 (*citing*, *Herrera v. Herrera*, 409 S.W.2d 395 (Tex. 1966); *Gunn v. Cavanaugh*, 391 S.W.2d 723 (Tex. 1965); *Mumma v. Aguirre*, 364 S.W.2d 220 (Tex. 1963)). "The presumption is based upon a logical belief that the ties of the natural relationship of parent and child ordinarily furnish strong

assurance of genuine efforts on the part of the custodians to provide the child with the best care and opportunities possible, and, as well, the best atmosphere for the mental, moral and emotional development of the child." *Id.* (*citing*, *Mumma*, 364 S.W.2d 220). Therefore, the decisions of a fit parent must be afforded great deference. *In re Scheller*, 325 S.W.3d at 642; *In re Derzapf*, 219 S.W.3d 327, 334–35 (Tex. 2007).

A parent's fundamental rights are inalienable, "endowed by the Creator." *State v. Deaton*, 93 Tex. 243, 247–48, 54 S.W. 901, 903 (1900). "God, in his wisdom, has placed upon the father and mother the obligation to nurture, educate, protect, and guide their offspring, and has qualified them to discharge those important duties by writing in their hearts sentiments of affection, and establishing between them and their children ties which cannot exist between the children and any other persons." *Id.* Although modern day ideas of natural law and the Creator may differ, the constitutional provision which reserves to the people the rights not delegated to the government has not. U.S. Const. amend. X.

II. THE STATE CANNOT DELEGATE AUTHORITY TO A THIRD PARTY THAT IT DOES NOT POSSESS.

Non-parents, including well-meaning individuals such as doctors and teachers, do not possess a fundamental liberty interest in a child that is not their own child. They do not have the same natural relationship with that child as the child's parent, nor do they have the same duties and responsibilities towards that child. Accordingly, they do not have the same right to make decisions for that child. Therefore, any authority that a non-parent possesses to make any decision regarding someone else's child is either by consent of the child's parent or is a statutory creation and endowment of that authority by the legislature. Although the state does possess the authority to grant rights to her citizens beyond those protected by the federal constitution, the Due Process Clause of the Fourteenth Amendment prohibits it doing so in a manner that infringes upon the rights of parents to make child rearing decisions. *See*, *Troxel*, 530 U.S. at 72, 73.

"The due process clause of the Fourteenth Amendment does not permit a trial court "to infringe on the fundamental right of parents to make child rearing decisions simply because [it] believes a better decision could be made." *In re Scheller*, 325 S.W.3d 640, 642 (Tex. 2010). In the same

manner, the legislative branch is equally restricted in burdening a parent's liberty interest, including when delegating the authority to a third party to interfere with those rights. *Cantwell v. State of Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 903, 84 L. Ed. 1213 (1940) ("The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws."); *accord*, *Cramer v. Sheppard*, 140 Tex. 271, 286, 167 S.W.2d 147, 155 (1942) ("Certainly a statute cannot override the Constitution."). Generally, it would not be incumbent on the state to protect Mother against an invasion of her rights by the doctors, who are private actors. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) ("But nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors."). However, in the instance of 166.406, the State created the situation which permitted a group of non-parents to ignore her constitutionally protected decisions, thereby wrongfully depriving her of those rights by proxy. Tex. Health & Safety Code Ann. § 166.046. As the statute authorizes a non-parent to deny Mother the protection of her fundamental right to make decisions concerning the

care, custody, and control of her daughter to which she is entitled, it is, therefore, unconstitutional. *Troxel*, 530 U.S. 57.

III. ANY STATUTE THAT BURDENS A PARENT'S FUNDAMENTAL RIGHT TO MAKE DECISIONS REGARDING HIS OR HER CHILD IS SUBJECT TO STRICT SCRUTINY REVIEW.

As 166.046 directly burdens Mother's fundamental right, her constitutional challenge of the statute must be reviewed under a standard of strict scrutiny. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985). In order to defeat Mother's challenge, Appellee needed to demonstrate that the state has a compelling interest in permitting someone other than a parent to make medical decisions for a child and that the statute has been "narrowly tailored and necessary to achieve that compelling state interest. *In Interest of J.W.T.*, 872 S.W.2d 189, 211 (Tex. 1994) (*quoting Roe v. Wade,* 410 U.S. 113, 155–56, 93 S.Ct. 705, 727–28, 35 L.Ed.2d 147 (1973) (Blackmun, J., concurring) (*internal quotation marks omitted*).

"The legal system should generally defer" to the parent, "obliging the state to bear a serious burden." *Wiley*, 543 S.W.2d 349. "So long as a parent adequately cares for his or her children (*i.e.,* is fit), there will normally be no

reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel*, 530 U.S. at 68–69; *Reno v. Flores*, 507 U.S. 292, 304, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993).

A parent's right to make decisions for the child "may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State." *Pierce*, 268 U.S. at 535. "Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state. *Parham*, 442 U.S. at 603. It definitely cannot transfer the entire decision-making process from a fit parent to a group of individuals associated with the treating physician, based solely on the sensibilities of the doctors, as is the case with 166.046. Tex. Health and Safety Code §166.046.

Due to the magnitude of a parent's fundamental liberty interests, the government is forbidden from infringing on these rights, "unless the infringement is narrowly tailored to serve a compelling state interest." *Id.* at 301–302; *see also*, *Griswold v. Connecticut*, 381 U.S. 479, 485, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965); *City of Cleburne, Tex.*, 473 U.S. at 440; *In*

Interest of J.W.T., 872 S.W.2d at 211. Therefore, in order to survive the constitutional challenges to 166.046 and prevail on the merits, CCMC must demonstrate, in the same manner as the state, that the statute is constitutional by: 1) proving that the protection of doctors against malpractice claims is a state interest that is sufficiently compelling to burden the fundamental liberty interest of parents to make medical decisions for their own children; and 2) that the statute is drafted in the least restrictive way to accomplish that goal. This statute fails.

A. There is no compelling state interest.

How can the state possibly have a compelling state interest in ending the life of a child for no other reason than the doctor no longer wishes to provide care for her? Equally important, how can that interest be so compelling as to necessitate the removal of a constitutionally protected right from an entire class of people without due process or due course of the law? U.S. Const. amend. XIV § 1; Tex. Const. art. I, § 19.

B. The statute is not narrowly tailored.

Much like the visitation statute considered by the *Troxel* Court, this statute is "breathtakingly broad". *Troxel* 530 U.S. at 61. There are no limitations on the reason for the doctor refusing to honor the patient's

directive or the number of times the process can be invoked. Tex. Health and Safety Code Ann. § 166.046. This statute is so vague that a doctor could decide not to continue providing services for any reasons, such as the color of the patient's skin or the religious beliefs of the patient. It also exposes a parent repeatedly to attacks on his or her right to make medical decisions for his or her child by a large number of non-parents. It basically functions as a forfeiture of a parent's right to make medical decisions for his or her child simply by acting like a fit parent and seeking medical care for the child. The statutory scheme insures that doctors and not parents are always the decision makers. Tex. Health and Safety Code Ann. § 166.046.

C. 166.046 Violates the Equal Protection Clause of the Fourteenth Amendment.

"When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Zablocki v. Redhail*, 434 U.S. 374, 388, 98 S. Ct. 673, 682, 54 L. Ed. 2d 618 (1978). This statute creates a class of parents, whose fundamental right to make medical decisions regarding their child can be violated by one or more doctors, whose interests may conflict with the

interest of the patient, without any misconduct on the part of the parent. Tex. Health and Safety Code Ann. § 166.046. On its face, it poses a burden to the rights of all parents who seek medical care for their children. Tex. Health and Safety Code Ann. § 166.046.

Simply saying that this Act is not intended to deprive a person of a constitutionally protected right is like saying, "Pay no attention to the man behind the curtain." Tex. Health and Safety Code Ann. § 166.051. Although the original intent may have been to protect doctors from malpractice claims, the statute does deprive parents of their rights to make medical decisions for their children.

IV. AS APPLIED TO MOTHER 166.046 IS UNCONSTITUTIONAL

Every dispute involving the best interest of a child begins with the presumption that the definition of the best interest of the child, the subject of the suit, is what that child's parent decides. *Troxel*, 530 U.S. at 68; *Parham*, 442 U.S. at 602; *Pennington v. Gibson*, 57 U.S. 65, 68, 14 L. Ed. 847 (1853). For the statute to be constitutional as applied to Mother CCMC must either prove Mother unfit or provide sufficient evidence to overcome that presumption.

No one has alleged that Mother is unfit and certainly the doctors who accepted her consent for all the treatment that they wanted to provide would be hard pressed to prove otherwise. Some examples of the type of "recent, deliberate past misconduct" that would permit a trier of fact to infer that a parent is unfit "include, but are not limit[ed] to, ... severe neglect, abandonment, drug or alcohol abuse, or immoral behavior by a parent." *Matter of Marriage of Mitchell*, 585 S.W.3d 38, 48 (Tex. App.—Texarkana 2019, no pet.). "Other considerations include "a history of mental disorders, ... bad judgment, ... and an unstable, disorganized, chaotic lifestyle that has and will continue to put the child at risk." *Id.* No allegations were made or evidence of this type of behavior presented at trial. (II R.R.).

In other contexts, a non-parent is able to overcome the presumption by demonstrating that continuing with a particular decision made by the parent "would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development,". Tex. Fam. Code Ann. § 153.131; Tex. Fam. Code Ann. § 153.433 (grandparent access statute). There is no provision for this type or similar legal review in the statute. Tex. Health and Safety Code Ann. § 166.046. Further, even if the review panel follows the decision of

the parent, the doctor can still refuse to honor that decision. Tex. Health and Safety Code Ann. § 166.046 (d). The statute basically contradicts the law and functions to arbitrarily presume that the doctors know what is in the best interest of a child. Tex. Health and Safety Code Ann. § 166.046 (a).

CCMC argues that "it is in her best interest to cease medical intervention and allow her to die naturally." (II R.R. at 75, 81,185). In order to prove that, they would have needed to prove that the pain they believe T.B.L. is suffering outweighs the benefit she experiences from being alive for whatever time remains. They failed to provide any actual evidence, only conclusory statements. That is a determination that can only be made by the person suffering. As minors are not considered sufficiently mature to make these decisions, parents make these decisions for them. *Parham*, 442 U.S. at 602.

V. SECTION 166.046 OF THE TEXAS HEALTH AND SAFETY CODE FAILS TO PROVIDE ADQUEATE PROCEDURAL DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

"[U]ntil the State proves parental unfitness; the child and his parents share a vital interest in preventing erroneous termination of their natural

relationship." *In re B.L.D.*, 113 S.W.3d 340, 353 (Tex. 2003) (*quoting Santosky,* 455 U.S. at 760). "Few forms of state action are both so severe and so irreversible. "Few forms of state action are both so severe and so irreversible." *M.L.B. v. S.L.J.*, 519 U.S. 102, 118, 117 S.Ct. 555, 565 (1966) (*quoting Santosky*, 455 U.S. at 759) (*internal quotation marks omitted*). "Termination of parental rights, the total and irrevocable dissolution of the parent-child relationship, constitutes the 'death penalty' of civil cases." *In re K.M.L.*, 443 S.W.3d 101, 112 (Tex. 2014). This case involves an actual death penalty. No argument can be made as to why Mother should be afforded less procedural due process than any other parent facing the permanent termination of the parent-child relationship.

"Where procedural due process must be afforded because a liberty or property interest is within the Fourteenth Amendment's protection, there must be a determination what process is due in the particular context. *Smith*, 431 U.S. at 847 (*internal quotation marks omitted*). Determining whether the process provided is adequate "cannot be divorced from the nature of the ultimate decision that is being made." *Parham*, 442 U.S. at 608.

The process provided by 166.046 is all but non-existent and woefully inadequate to protect anyone in any situation. It certainly comes nowhere

close to the process that is required in order to legally terminate the parent-child relationship. Certainly, the process to actually terminate it through the death of the child should demand at least an equivalent process.

Were the state directly trying to terminate Mother's rights, they would be required to file a lawsuit. Tex. Fam. Code Ann. § 262.001. She would have approximately one year to obtain counsel and prepare for this most important trial. Tex. Fam. Code Ann. § 263.401. If she could not afford to retain counsel, she would have the right to have effective counsel appointed to represent her. Tex. Fam. Code Ann. § 107.013(a)(1), *In Interest of A. J.*, 559 S.W.3d 713 (Tex. App.—Tyler 2018, no pet.); *The Interest of J.A.B.*, 562 S.W.3d 726, 730 (Tex. App.—San Antonio 2018, pet. denied). She would have the right to have the dispute decided by twelve (12) unbiased individuals, not a panel of the petitioner's colleagues. Tex. Fam. Code Ann. § 105.002. In order to prevail, the petitioner would have to prove both that Mother had committed some misconduct and that terminating the relationship would be in the child's best interest. Tex. Fam. Code Ann. § 161.001. The standard of proof would be clear and convincing evidence. Tex. Fam. Code Ann. § 161.001; *Santosky*, 455 U.S. at 748 ("Before a State may sever completely and irrevocably the rights of parents in their natural

child, due process requires that the State support its allegations by ***at least*** clear and convincing evidence.") (*emphasis added*). She would be entitled to notice and an opportunity to be heard. *Stanley*, 405 U.S. at 651; *In re Chambless*, 257 S.W.3d 698, 700 (Tex. 2008); *In Interest of J.W.T.*, 872 S.W.2d at 198 (Hecht, J., concurring) (noting "that in a free society the State cannot deny a [parent] all right to his child without due process").

None of those procedural safeguards are included in 166.046. Tex. Health & Safety Code Ann. § 166.046. She is only entitled to forty-eight (48) hours notice of the review hearing, a list of providers, and the opportunity to be present when a panel of doctors, none of whom are necessarily required to have even seen the child, pronounce her daughter's death sentence. Tex. Health & Safety Code Ann. § 166.046. She has no opportunity to be heard or present any contradicting point of view. No evidence is required and no standards for reaching a particular resolution are required. Tex. Health & Safety Code Ann. § 166.046. Nothing in the process even resembles due process.

CONCLUSION

T.B.L. is more than a patient, a medical experiment, or a case study. She is a helpless baby girl, who is precious to and loved by Mother. The ethics committee relied on an unconstitutional, and therefore, void statute, as the sole basis of substituting its judgment for that of Mother's a fit parent. They now ask this Court to do the same.

Parents are the natural protectors of their children. The intimate nature of the relationship between the parent and the child, developed through the conception, birth, and daily attention to the child's every need, creates a peculiar bond that enables the parent to make the best decisions for their own unique child. *Troxel*, 530 U.S. at 68; *Parham*, 442 U.S. at 602. This fundamental liberty interest issuing from the bond between parent and child was not created by or endowed upon parents by either state or federal legislation, nor can it be destroyed, diminished, or delegated to a third party by legislation. It is a natural, inalienable right that attaches at the moment of conception. Its recognition serves as a shield to protect parents and their children from intruders in the same manner as good locks on the doors and windows of the home.

CCMC'S argument that the child will not die from the removal of the ventilator, but from the underlying condition is like saying that a criminal will not die from the removal of the stool under his feet, but rather from the rope around his neck. T.B.L.'s doctors voluntarily agreed to provide medical services to T.B.L., including the surgery that resulted in her being placed on the ventilator in the first place.

All medical treatment only forestalls death, which happens to almost every person. It is up to the patient, and in the case of a minor child, the parent to determine how much of it they will suffer for additional time to live. Imagine how this suit might have looked for Mother if she had chosen to "end T.B.L.'s suffering" at birth and refuse all treatment. The hospital would have enlisted the help of Child Protective Services to substitute their judgment for Mother's and force her to allow them to perform the numerous surgeries, which they hoped would heal T.B.L.'s condition.

Sadly, parents are faced daily with excruciating decisions regarding their children's medical care involving life threatening and painful ailments and equally life threating and painful treatments. If they do not seek aggressive and painful treatment, they are reported to Child Protective Services for medical neglect. If they believe that their child's joy and

experience of living outweighs the pain, they are ignored by the doctors who have the ability to provide the care to keep their child alive. This Court must ensure protection from interference with a parent's fundamental right to struggle with and make those difficult decisions for children they love more deeply than can be explained. This Court should provide that protection for Mother from this unconstitutional statute.

PRAYER

Wherefore, Amicus prays this Court declare 166.0046 to be unconstitutional, or in the alternative, unconstitutional as applied to Mother. Amicus further requests the Court order CCMC continue their life-sustaining treatment of T.B.L. be continued until such time as she is can be transferred to another facility and that CCMC be ordered to work with any home health care professionals approved by Mother in the same fashion as they would home health care professionals approved by CCMC.

Amicus prays this Court grant all relief requested by Plaintiff.

Respectfully submitted,

/s/ *Cecilia M. Wood*
CECILIA M. WOOD
ATTORNEY AND COUNSELOR AT LAW, P.C.
1122 Colorado Street, Suite 2310
Austin, Texas 78701
Telephone No.: 512-708-8783
Facsimile No.: 512-708-8787
Cecilia@ceciliawood.com
State Bar No. 21885100
Attorney for Amicus,
Texas Home School Coalition

CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft Word 2013 and contains 6,354 words, as determined by the computer software's word count function, excluding the sections of the document listed in Tex. R. App. P. 9.4 (i) (1).

/s/ *Cecilia M. Wood*
CECILIA M. WOOD
ATTORNEY AND COUNSELOR AT LAW, P.C.
Attorney for Amicus,
Texas Home School Coalition

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was delivered via E-serve to the parties and/or attorneys as listed below, on January 27, 2020, in accordance with the Texas Rules of Civil Procedure.

/s/ *Cecilia M. Wood*
CECILIA M. WOOD
ATTORNEY AND COUNSELOR AT LAW, P.C.
Attorney for Amicus,
Texas Home School Coalition

Attorneys for Appellants:

Mr. Joseph M. Nixon
The Nixon Law Firm, P.C.
6363 Woodway, Suite 800
Houston, Texas 77056
Telephone: 713-550-7535
Email: joe@nixonlawtx.com

Ms. Emily Cook
The Law Office of Emily Kebodeaux Cook
4500 Bissonet, Suite 305
Bellaire, Texas 77401
Telephone: 281-622-7268
Email: emily@emilycook.org

Kassi Dee Patrick Marks
2101 Carnation Court
Garland, Texas 75040
Telephone: 214-668-2443
Email: kassi.marks@gmail.com

Attorneys for Cook Children's Medical Center:

Amy Warr
Alexander Dubose & Jefferson L.L.P.
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
Telephone: 512-482-9300
Email: awarr@adjtlaw.com

Thomas M. Melsheimer
Winston & Strawn L.L.P.
2121 N. Pearl Street, Suite 900
Dallas, Texas 75201
Telephone: 214-453-6500
Email: tmelscheimer@winston.com

Attorneys for the State of Texas:

David J. Hacker
Special Counsel to the First Assistant Attorney General
Office of the Attorney General
P. O. Box 12548, Mail Code 001
Austin, Texas 78711-2548
Telephone: 512-936-1414
David.hacker@oag.texas.gov

APPENDIX A
TEXAS TRIBUNE ARTICLE – January 2, 2020

Texas judge tells Fort Worth hospital it can remove baby from life support

Tinslee Lewis' family plans to appeal the judge's decision, according to Texas Right to Life.

BY **ABBY LIVINGSTON** JAN. 2, 2020 12 PM

Tinslee Lewis was born prematurely at Cook Children's Medical Center, where she has spent her entire life. 📷 via Texas Right to Life

Editor's note: This story has been updated to reflect recent court intervention by Gov. Greg Abbott and Attorney General Ken Paxton.

A judge ruled in favor Thursday of allowing a Fort Worth hospital to remove an infant from life support, according to the *Fort Worth Star-Telegram*. The move is at odds with the wishes of the 11-month-old baby's family, which has spent recent months fighting Cook Children's Medical Center over ending care for Tinslee Lewis.

The hospital will not take action for at least seven days. Tinslee's family intends to appeal the decision, according to the *Star-Telegram*.

The issue has roiled the Fort Worth community and drawn the attention of conservative groups and elected officials, including Attorney General Ken Paxton and Gov. Greg Abbott who are casting the issue as "pro-life."

Tinslee was born prematurely at Cook Children's Medical Center, where she has spent her entire life. Since birth, Tinslee has been plagued with medical problems and has undergone three open-heart surgeries. She's been treated for a severe heart defect, lung disease and high blood pressure. She was put on life support in July.

The hospital began talks in September with the Lewis family about transferring Tinslee to another hospital or ending care. Hospital staff previously argued that the baby is in pain and that "further medical intervention is not in Tinslee's best interest."

Judge Sandee B. Marion issued the ruling Thursday to deny the request for an injunction filed by the family, which would have prevented the hospital from removing Tinslee from life support.

Texas Right to Life, an anti-abortion group, issued a statement on behalf of Lewis' mother, Trinity Lewis.

"I am heartbroken over today's decision because the judge basically said Tinslee's life is NOT worth living," she said in the statement. "I feel frustrated because anyone in that courtroom would want more time just like I do if Tinslee were their baby. I hope that we can keep fighting through an appeal to protect Tinslee. She deserves the right to live."

Kim Brown, a spokeswoman for Cook Children's Medical Center, said in a statement that the hospital would continue to search over the next seven days for another medical center to take in Tinslee.

"The Cook Children's clinical team tried everything they could to help Tinslee improve, including reaching out to more than 20, well-respected healthcare facilities and specialists over the course of several months, but even the highest level of medical expertise cannot correct conditions as severe as Tinslee's," she stated.

Brown also said the hospital anticipated the family would appeal, and in the meantime, staff would continue "the same level of intensive care as we have her entire life."

"The decision to end life-sustaining care will be decided upon by Tinslee's care team in close communication with the family, and in accordance with Texas law," she added. "While the Texas Right to Life group believes this case is about the constitutionality of a statute, we are only focused on what's best for Tinslee. We ask that outside groups, even those who disagree with Cook Children's approach, consider what is best for Tinslee now and give the family space to consider what truly is best for this baby, and allow our medical professionals space to care for her."

Texas Alliance for Patient Access, a coalition of doctors, hospitals, clinics and insurance providers, said in a statement that the group offered its condolences to the family but supported Marion's decision.

Brian Jackson, an attorney for the alliance, said the law is on the side of the doctors

and hospital staff.

"The statute exists to spur doctors and patients to have the difficult, but critical, dialogues that end-of-life requires. Also, it rightfully protects physicians from being forced to perform medically and ethically inappropriate and harmful interventions on a dying patient," he said. "Withdrawal of requested treatment only occurs after all avenues are exhausted, and no other medical facility is willing to provide the requested medical intervention."

Texas Gov. Greg Abbott and Paxton on Friday filed a letter with the Second Court of Appeals siding with the Lewis family and asking the court to prevent the hospital from taking any action until the family's appeal is resolved.

"This case presents a life-or-death decision," Paxton said. "The right-to-life and the guarantee of due process are of the utmost importance not only to baby Tinslee and her family, but to all Texans."

[illegible]

[illegible]

APPENDIX B
RELEVANT STATUTES

Tex. Health & Safety Code Ann. § 166.045

(a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.
(b) A physician, or a health professional acting under the direction of a physician, is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate a qualified patient's directive in violation of this subchapter or other laws of this state. This subsection does not limit remedies available under other laws of this state.
(c) If an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.
(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures outlined in Section 166.046.

Tex. Health & Safety Code Ann. § 166.046

(a) If an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.
(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:
(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;
(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;
(3) at the time of being so informed, shall be provided:
(A) a copy of the appropriate statement set forth in Section 166.052; and
(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the department under Section 166.053; and
(4) is entitled to:
(A) attend the meeting;
(B) receive a written explanation of the decision reached during the review process;
(C) receive a copy of the portion of the patient's medical record related to the treatment received by the patient in the facility for the lesser of:
(i) the period of the patient's current admission to the facility; or
(ii) the preceding 30 calendar days; and
(D) receive a copy of all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (C).
(c) The written explanation required by Subsection (b)(4)(B) must be included in the patient's medical record.
(d) If the attending physician, the patient, or the person responsible for the health care decisions of the individual does not agree with the decision reached during the review process under Subsection (b), the physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. If the patient is a patient in a health care facility, the facility's personnel shall assist the physician in arranging the patient's transfer to:
(1) another physician;

(2) an alternative care setting within that facility; or
(3) another facility.
(e) If the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical procedures necessary to provide comfort, or any other health care provided to alleviate a patient's pain. The patient is responsible for any costs incurred in transferring the patient to another facility. The attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after both the written decision and the patient's medical record required under Subsection (b) are provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:
(1) hasten the patient's death;
(2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment;
(3) result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment;
(4) be medically ineffective in prolonging life; or
(5) be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.
(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.
(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the patient or the person responsible for the health care decisions of the patient, the appropriate district or county court shall extend the time period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.
(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

Tex. Health & Safety Code Ann. § 166.051

This subchapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment in a lawful manner, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.