

## **Question**

The complainant was denied the opportunity to be heard on an emergency matter affecting the safety and welfare of his child. The Due Process Clause of the Fourteenth Amendment and Texas law require that parties be afforded a meaningful opportunity to be heard, especially in matters involving fundamental rights such as parenting. (See *Troxel v. Granville*, 530 U.S. 57, 65 (2000); Tex. Fam. Code § 153.002). Judge Stone's refusal to hear the emergency TRO is intolerable because it deprived the complainant of due process and the opportunity to protect his child's welfare, violating both constitutional and statutory protections.

## **Answer (Texas)**

### **Short response**

Judge Stone's refusal to hear the complainant's emergency TRO concerning his child's safety and welfare violated both the Due Process Clause of the Fourteenth Amendment and Texas statutory law, which require that parents be afforded a meaningful opportunity to be heard in such matters. The denial of this opportunity constitutes a deprivation of fundamental rights and fails to meet the procedural and substantive protections mandated by both constitutional and Texas family law.

### **Summary**

The law is clear that both the United States Constitution and Texas statutes protect a parent's fundamental right to participate in proceedings affecting the care, custody, and welfare of their child. When a court refuses to hear an emergency request—such as a temporary restraining order (TRO) intended to protect a child's safety—it not only disregards statutory requirements for prompt and meaningful hearings but also infringes upon the parent's constitutional right to due process.

Texas Family Code provisions, supported by a robust body of case law, require courts to prioritize the best interest of the child and to provide parents with notice and an opportunity to be heard before issuing or denying orders that affect parental rights. The Due Process Clause of the Fourteenth Amendment, as interpreted by both the U.S. Supreme Court and Texas courts, further demands that parents be given a meaningful chance to present their case, especially in emergency situations where fundamental rights are at stake. Judge Stone's refusal to hear the emergency TRO thus represents a clear violation of both statutory and constitutional protections.

# **Background and Relevant Law**

## **Legislative and Regulatory Framework**

**Texas Family Code § 153.002** establishes that the best interest of the child is the primary consideration in all conservatorship and access determinations. This statutory mandate underscores the importance of judicial responsiveness to emergency matters affecting a child's welfare, as the court's primary duty is to safeguard the child's best interests, which necessarily includes considering urgent parental concerns, see [Tex. Fam. Code § 153.002](#) (2025).

**Texas Family Code § 105.001** authorizes courts to issue temporary orders—including TROs and temporary injunctions—for the safety and welfare of the child. Notably, the statute allows for such orders to be granted without the necessity of an affidavit or verified pleading in certain circumstances, reflecting the legislature's intent to ensure that urgent matters can be addressed swiftly and without procedural barriers that could endanger a child, see [Tex. Fam. Code § 105.001](#) (2025).

**Texas Family Code § 156.006** governs temporary orders in modification suits, requiring that if a parent alleges circumstances that would significantly impair the child's physical health or emotional development, and supports this with an adequate affidavit, the court must set a hearing. The statute explicitly states that the court shall deny relief and decline to schedule a hearing only if the affidavit is inadequate; otherwise, a hearing is mandatory, see [Tex. Fam. Code § 156.006](#) (2025).

**Texas Family Code § 152.311** (supplementary) further requires that, in cases involving imminent risk to a child, a hearing must be held on the next judicial day after a warrant is executed, or as soon as possible, reinforcing the statutory imperative for prompt judicial action in emergencies, see [Tex. Fam. Code § 152.311](#) (2025).

## **Case Law**

Texas courts have consistently held that due process requires notice and a meaningful opportunity to be heard before any order is entered that affects a parent's rights to custody or access.

In [In re Ramirez](#), the Texas Court of Appeals found that a trial court's failure to provide notice and an adversarial hearing before modifying custody constituted an abuse of discretion, affirming the necessity of procedural protections in such cases, see [In re Ramirez, 04-24-00361-CV \(Tex. App. Aug 14, 2024\)](#).

[In re Farmer](#) and [In re Chester](#) both reinforce that, under Texas Family Code § 105.001, parents are entitled to notice and an adversarial hearing before temporary orders affecting custody or access are entered. The courts have made clear that even temporary restrictions on parental rights require

strict adherence to due process, see [In re Farmer](#) (Tex. App. 2023); [In re Chester, 357 S.W.3d 103 \(Tex. App. 2011\)](#).

**In re C.M.D.** and **In re E.R.** further establish that, even when emergency action is taken without prior notice (such as an ex parte removal), a full adversarial hearing must follow within a statutorily prescribed period, and due process cannot be sacrificed for procedural expediency, see [In re C.M.D., NUMBER 13-20-00402-CV \(Tex. App. Feb 11, 2021\)](#); [In re E.R., 385 S.W.3d 552 \(Tex. 2012\)](#).

At the constitutional level, **Troxel v. Granville** (as cited and applied in Texas cases such as [In re C.J.C.](#), [Marquez v. Cantu](#), and [Whitworth v. Whitworth](#)) recognizes the fundamental liberty interest of parents in the care, custody, and control of their children, protected by the Due Process Clause of the Fourteenth Amendment. Texas courts have repeatedly affirmed that this right cannot be infringed without strict adherence to procedural due process, see [In re C.J.C., 603 S.W.3d 804 \(Tex. 2020\)](#); [Marquez v. Cantu, NO. 03-17-00795-CV \(Tex. App. Jul 25, 2018\)](#); [Whitworth v. Whitworth, 222 S.W.3d 616 \(Tex. App. 2007\)](#).

[Schlittler v. State](#) and [In re Pensom](#) reiterate that the Due Process Clause provides both substantive and procedural protections, including heightened protection against governmental interference with fundamental rights such as parenting, see [Schlittler v. State, 488 S.W.3d 306 \(Tex. Crim. App. 2016\)](#); [In re Pensom, 126 S.W.3d 251 \(Tex. App. 2003\)](#).

[Young v. Martinez](#) and [Page v. Sherrill](#) are particularly instructive, as they address the egregiousness of denying a parent any opportunity to be heard in proceedings affecting their child, holding that such denials are fundamentally inconsistent with due process, see [Young v. Martinez, 685 S.W.2d 361 \(Tex. App. 1984\)](#); [Page v. Sherrill, 415 S.W.2d 642 \(Tex. 1967\)](#).

## **Secondary Materials**

Secondary sources reinforce these principles, emphasizing that parents have a substantive due process right to family integrity, and that procedural due process requires the right to be heard at a meaningful time and in a meaningful manner. These materials clarify that the extent of procedural protections may vary with the circumstances, but the core requirement of a meaningful opportunity to participate in proceedings is non-negotiable, see [CHAPTER 15 Representing Parents on Appeal](#).

## **Analysis**

### **Statutory Requirements for a Hearing**

Texas law is unequivocal in its requirement that courts provide parents with a meaningful opportunity to be heard in matters affecting the safety and welfare of their children. [\*\*Tex. Fam. Code § 153.002\*\*](#) mandates that the best interest of the child is the court's primary consideration, which cannot be

determined without affording parents the chance to present their concerns, especially in emergencies.

**Tex. Fam. Code § 105.001** and **§ 156.006** provide mechanisms for parents to seek immediate relief to protect their children. These statutes are designed to ensure that courts are accessible and responsive to urgent situations, and they require that, upon a sufficient showing of risk to the child, a hearing must be set. The statutory language leaves little room for judicial discretion to refuse a hearing when the statutory prerequisites are met.

**Tex. Fam. Code § 152.311** further underscores the legislative intent for prompt hearings in emergency situations, requiring that hearings on petitions involving imminent risk to a child be held at the earliest possible judicial opportunity.

## Constitutional Due Process

The Due Process Clause of the Fourteenth Amendment, as interpreted by the U.S. Supreme Court and Texas courts, protects the fundamental right of parents to direct the upbringing of their children. This right is not merely substantive but also procedural: parents must be given notice and a meaningful opportunity to be heard before the state can interfere with their parental rights.

**Troxel v. Granville** and its progeny in Texas law establish that the state cannot infringe on parental rights without due process. Texas courts have repeatedly held that even temporary orders affecting custody or access require notice and a hearing, and that any significant risk of erroneous deprivation of parental rights is constitutionally unacceptable.

The **Eldridge due process analysis**, as applied in **In re M.S.**, requires courts to balance the private interests at stake, the government's interest, and the risk of erroneous deprivation. In the context of emergency child welfare matters, the private interest (the parent's right to protect and care for their child) is at its zenith, and the risk of erroneous deprivation is high if the parent is denied a hearing.

## Application to the Scenario

Judge Stone's refusal to hear the complainant's emergency TRO is directly at odds with both statutory and constitutional requirements. The statutes cited above require that, upon a sufficient showing of risk to the child, a hearing must be set. The refusal to even consider the emergency request deprives the parent of the opportunity to present evidence, challenge opposing claims, and protect the child's welfare.

From a constitutional perspective, the denial of a hearing in this context is a clear violation of due process. The parent's right to be heard is not a mere formality; it is a fundamental protection against arbitrary or erroneous deprivation of parental rights. The courts have repeatedly emphasized that

the risk of erroneous deprivation is unacceptable, and that due process must prevail over procedural expediency or judicial convenience.

The case law is replete with examples where Texas appellate courts have found abuse of discretion or reversible error when trial courts failed to provide notice and a hearing before entering orders affecting parental rights. The refusal to hear an emergency TRO—especially one alleging imminent risk to a child—falls squarely within the category of actions that courts have condemned as violative of due process.

## **Judicial Discretion and Its Limits**

While courts have some discretion in managing their dockets and determining the sufficiency of pleadings, this discretion does not extend to refusing to hear emergency matters where statutory prerequisites are met. The statutes and case law make clear that, once a parent has made a sufficient showing of risk to the child, the court must set a hearing. Any refusal to do so is not a permissible exercise of judicial discretion but a violation of statutory and constitutional mandates.

## **The Role of Emergency Proceedings**

Texas law recognizes that, in certain emergencies, ex parte orders may be necessary to protect a child. However, even in such cases, the law requires that a full adversarial hearing follow promptly, ensuring that parents have the opportunity to contest the order and present their case. The refusal to hear an emergency TRO, therefore, cannot be justified on the grounds of judicial efficiency or procedural technicalities.

## **Harm and Prejudice**

The harm caused by denying a parent the opportunity to be heard in an emergency matter is not merely procedural; it is substantive. The parent is deprived of the ability to protect their child, and the child's welfare may be placed at risk. The courts have recognized that any significant risk of erroneous deprivation of parental rights is unacceptable, and that the denial of a meaningful hearing exacerbates the harm suffered by both parent and child.

## **Exceptions and Caveats**

There are limited circumstances in which a court may act without notice or a hearing, such as issuing an ex parte order in an emergency. However, even in these cases, Texas law requires that a prompt hearing follow, and that the parent be given the opportunity to contest the order. The statutes do not permit a court to simply refuse to hear an emergency request where the parent has made a sufficient showing of risk to the child.

If the parent's pleadings or affidavit are insufficient to establish a risk to the child's safety or welfare, the court may deny relief without a hearing. However, the facts as presented indicate that the complainant was denied

any opportunity to be heard, not that his pleadings were found insufficient. In the absence of a finding of insufficiency, the refusal to hear the emergency TRO is indefensible under both statutory and constitutional law.

## Conclusion

Judge Stone's refusal to hear the complainant's emergency TRO concerning his child's safety and welfare constitutes a clear violation of both Texas statutory law and the Due Process Clause of the Fourteenth Amendment. Texas statutes require that parents be afforded a meaningful opportunity to be heard in emergency matters affecting their children, and the constitutional protections of due process demand no less. The denial of this opportunity is not only procedurally improper but also a substantive infringement on the fundamental rights of both parent and child. The law is unequivocal: parents must be given notice and a meaningful opportunity to be heard before any order is entered that affects their rights, especially in emergencies where the welfare of a child is at stake.

## Legal Authorities

[In re Crystal Aubin, 29 S.W.3d 199 \(Tex. App. 2000\)](#)

### Texas Court of Appeals

#### Extract

The Texas Supreme Court has acknowledged that mandamus may issue where the legal process itself would violate the relator's constitutional rights. *Tilton v. Marshall*, 925 S.W.2d 672, 682 (Tex. 1996). Absent a finding, supported by evidence, that the safety and welfare of the children is significantly impaired by the denial of the Burks' visitation, Aubin's decision regarding whether the children will have any contact with the Burks is an exercise of her fundamental right as a parent. That right is shielded from judicial interference by the Due Process clause of the United States Constitution. ... Albeit, *Troxel v. Granville*, \_\_\_ U.S. \_\_\_, 120 S.Ct. 2054, 147 L.Ed.2d 49, 68 U.S.L.W. 4458, (2000), was not handed down by our United States Supreme Court until the year 2000, the fundamental rights of parents, to the exclusion of others, have long been recognized through the Due Process Clause of the Fourteenth Amendment.

#### Summary

The passage highlights the recognition of parental rights as fundamental rights protected by the Due Process Clause of the Fourteenth Amendment. It emphasizes that judicial interference with these rights requires a significant justification, such as evidence of impairment to the child's safety and welfare. The reference to *Troxel v. Granville* further underscores the heightened protection against government interference with parental rights. This supports the proposition that the complainant was denied due process

when not afforded a hearing on an emergency matter affecting his child's welfare.

[In re Pensom, 126 S.W.3d 251 \(Tex. App. 2003\)](#)

**Texas Court of Appeals**

**Extract**

The United States Supreme Court has recognized that the interest of parents in the care, custody, and control of their children 'is perhaps the oldest of the fundamental liberty interests.' Troxel, 530 U.S. at 65, 120 S.Ct. at 2060. Similarly, Texas has long recognized that the natural right existing between parents and their children is of constitutional dimensions. See Wiley v. Spratlan, 543 S.W.2d 349, 352 (Tex. 1976); Holick v. Smith, 685 S.W.2d 18, 20 (Tex. 1985); Tex. Hum. Res. Code Ann. § 40.002(b)(2) (Vernon 2001). These parental interests are a fundamental right protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Troxel, 530 U.S. at 65, 120 S.Ct. at 2060.

**Summary**

The passage highlights the recognition by both the United States Supreme Court and Texas law that parental rights in the care, custody, and control of their children are fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment. This supports the proposition that the complainant should have been afforded a meaningful opportunity to be heard, especially in an emergency matter affecting the welfare of his child. The refusal to hear the emergency TRO could be seen as a violation of these fundamental rights.

[In re E.L.T., 93 S.W.3d 372 \(Tex. App. 2002\)](#)

**Texas Court of Appeals**

**Extract**

Two years ago, the United States Supreme Court reaffirmed the liberty interest of parents to direct the upbringing of their children as 'perhaps the oldest of the fundamental liberties' recognized by the Court. Troxel v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). After briefly surveying 'extensive precedent,' the Court firmly pronounced that 'it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.' Id. at 66, 120 S.Ct. 2054. Accordingly, the Fourteenth Amendment governs a state's attempt to terminate the relationship between parent and child.

## **Summary**

The passage from "In re E.L.T." highlights the fundamental liberty interest of parents in directing the upbringing of their children, as recognized by the U.S. Supreme Court in *Troxel v. Granville*. It emphasizes that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. This directly supports the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare, as such matters involve fundamental parental rights.

[Schlittler v. State, 488 S.W.3d 306 \(Tex. Crim. App. 2016\)](#)

## **Texas Court of Criminal Appeals**

### **Extract**

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall 'deprive any person of life, liberty, or property, without due process of law.' U.S. Const. amend. XIV. The Supreme Court has interpreted this language as encompassing both substantive and procedural components. *Washington v. Glucksberg*, 521 U.S. 702, 719-720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997). In *Glucksberg*, the Supreme Court explained that '[t]he Due Process Clause guarantees more than fair process, and the liberty it protects includes more than the absence of physical restraint. The Clause also provides heightened protection against governmental interference with certain fundamental rights and liberty interests.'

## **Summary**

The Due Process Clause of the Fourteenth Amendment provides both substantive and procedural protections. It guarantees more than just fair process; it also offers heightened protection against governmental interference with fundamental rights and liberty interests, such as parenting. This supports the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare.

[In re Interest of D.W.G.K., 558 S.W.3d 671 \(Tex. App. 2018\)](#)

## **Texas Court of Appeals**

### **Extract**

In a parental-rights termination case, however, the State must be concerned with both the child's best interest and with guaranteeing the parents' rights

to due process that 'exists to prevent potential governmental overreach in cases involving fundamental liberty interests.' Id. at 170 (citing *Troxel*, 530 U.S. at 65, 120 S.Ct. 2054 ).

## **Summary**

The passage highlights the importance of due process in parental-rights termination cases, citing *Troxel v. Granville*, which underscores the fundamental liberty interest of parents in the care, custody, and control of their children. This aligns with the proposition that due process is crucial in matters affecting the safety and welfare of a child, as it prevents governmental overreach and ensures parents have a meaningful opportunity to be heard.

[In re C.J.C., 603 S.W.3d 804 \(Tex. 2020\)](#)

## **Texas Supreme Court**

### **Extract**

A majority of the *Troxel* Court found protection for this fundamental right —'perhaps the oldest of the fundamental liberty interests recognized by this Court'—within the Fourteenth Amendment. The parties in this case do not disavow that protection. And the justices in *Troxel* who might not root this right in substantive-due-process jurisprudence nevertheless similarly recognized a 'fundamental right of parents to direct the upbringing of their children.' Texas jurisprudence underscores this fundamental right, and we too recognize that it gives rise to a 'legal presumption' that it is in a child's best interest to be raised by his or her parents. Although the best interest of the child is the paramount issue in a custody determination, '[t]he presumption is that the best interest of the children' is served 'by awarding them' to a parent. Thus, the fit-parent presumption is 'deeply embedded in Texas law' as part of the determination of a child's best interest.

## **Summary**

The passage highlights the fundamental right of parents to direct the upbringing of their children, a right protected by the Fourteenth Amendment as recognized in *Troxel v. Granville*. It also emphasizes that Texas law presumes it is in the best interest of the child to be raised by their parents, a presumption deeply embedded in Texas law. This supports the proposition that the complainant should have been afforded a meaningful opportunity to be heard, as the refusal to hear the emergency TRO potentially violates these fundamental rights.

[Whitworth v. Whitworth, 222 S.W.3d 616 \(Tex. App. 2007\)](#)

## **Texas Court of Appeals**

## **Extract**

It is now firmly established that the Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the fundamental rights of parents to make decisions concerning the care, custody, and control of their children. *Troxel*, 530 U.S. at 66, 120 S.Ct. at 2060; see also *Holick*, 685 S.W.2d at 20; *In re Mays-Hooper*, 189 S.W.3d at 778. As the Supreme Court opined in *Troxel*, '[T]he Due Process Clause does not permit States to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made.' *Troxel*, 530 U.S. at 72-73, 120 S.Ct. at 2064.

## **Summary**

The passage from "Whitworth v. Whitworth" emphasizes the fundamental rights of parents under the Due Process Clause to make decisions regarding the care, custody, and control of their children. This aligns with the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare. The passage supports the idea that such a denial infringes on the complainant's constitutional rights, as established in *Troxel v. Granville*.

[In re v., 349 S.W.3d 548 \(Tex. App. 2010\)](#)

## **Texas Court of Appeals**

### **Extract**

A parent's right to the companionship, care, custody, and management of his child is a constitutional interest. *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 2060, 147 L.Ed.2d 49 (2000). ... A parent's right to 'the companionship, care, custody, and management' of his children is a constitutional interest 'far more precious than any property right.' *Santosky v. Kramer*, 455 U.S. 745, 758-59, 102 S.Ct. 1388, 1397, 71 L.Ed.2d 599 (1982) (internal citation omitted). The United States Supreme Court has emphasized that 'the interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court.' *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054, 2060, 147 L.Ed.2d 49 (2000).

## **Summary**

The passage emphasizes the constitutional interest and fundamental liberty interest of parents in the care, custody, and management of their children, as recognized by the U.S. Supreme Court in *Troxel v. Granville*. This supports the proposition that due process requires a meaningful opportunity to be heard in matters affecting these rights. The passage underscores the importance of these rights, aligning with the argument that denying a

hearing on an emergency matter affecting a child's welfare violates due process.

[In re M.S., 115 S.W.3d 534, 2003 WL 21512654 \(Tex. 2003\)](#)

### **Texas Supreme Court**

#### **Extract**

In conducting an Eldridge due process analysis, we weigh three factors—the private interests at stake, the government's interest in the proceeding, and the risk of erroneous deprivation of parental rights—and balance the net result against the presumption that our procedural rule comports with constitutional due process requirements. ... The parent's, child's, and government's interest in a just and accurate decision dovetails with the third Eldridge factor—that of the risk of erroneous deprivation. Termination of parental rights is traumatic, permanent, and irrevocable. This fact has been pivotal for the United States Supreme Court. And it is to us. For this reason, any significant risk of erroneous deprivation is unacceptable.

#### **Summary**

Application of the Eldridge due process analysis, which considers the private interests at stake, the government's interest, and the risk of erroneous deprivation of rights. It emphasizes the importance of a just and accurate decision in parental rights cases, highlighting the traumatic and irrevocable nature of terminating parental rights. This aligns with the proposition that due process requires a meaningful opportunity to be heard, especially in matters involving fundamental rights such as parenting.

[In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)

### **Texas Supreme Court**

#### **Extract**

Most state courts that have considered the issue have reached a similar conclusion: due process prevails over a state law time limit, even one imposed on challenges to termination of parental rights or adoptions... We have twice held that Family Code provisions that expedite termination proceedings must yield to due process... We reach the same conclusion here: the statute's time limits cannot foreclose an attack by a parent who was deprived of constitutionally adequate notice.

#### **Summary**

The passage from "In re E.R." emphasizes that due process rights take precedence over procedural time limits in cases involving parental rights.

The Texas Supreme Court has consistently held that statutory provisions, even those designed to expedite proceedings, must yield to the constitutional demands of due process. This aligns with the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare.

[Young v. Martinez, 685 S.W.2d 361 \(Tex. App. 1984\)](#)

### **Texas Court of Appeals**

#### **Extract**

Even if we assume in the instant case the trial court had sufficient evidence upon which to issue a temporary order for the immediate protection of the children involved, this court is disturbed by the lack of a meaningful hearing. ... The very person who invoked the trial court's jurisdiction by filing the writ of habeas corpus, Young, was completely denied the opportunity to offer any evidence or even to make a bill of exceptions when the trial court denied relief, although she stood ready and willing to do so. Recently this court has expressed its unfaltering belief in the fundamental right of a litigant to be heard under the due process clause of the United States and Texas Constitutions. ... The denial of Young's right to be heard, together with the type of orders entered in this case by the trial court, serve to make the harm suffered more egregious.

#### **Summary**

The passage highlights the importance of a meaningful hearing in cases involving the welfare of children, as guaranteed by the due process clause of the United States and Texas Constitutions. It underscores the court's concern when a party is denied the opportunity to present evidence or make a bill of exceptions, which is a fundamental right. This aligns with the proposition that the complainant was denied due process when not afforded a hearing on an emergency matter affecting his child's welfare.

[Page v. Sherrill, 415 S.W.2d 642, 31 A.L.R.3d 1371 \(Tex. 1967\)](#)

### **Texas Supreme Court**

#### **Extract**

Relator contends further that the taking of her children without notice was a violation of due process, relying principally upon the authority of *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965). In that decision the United States Supreme Court held that failure to notify a divorced parent of the pendency of proceedings for the adoption of his child constituted a deprivation of due process of law. The Court stated that without doubt notice is required where 'the result of the judicial proceeding

was permanently to deprive a legitimate parent of all that parenthood implies.'

## **Summary**

Due process requirement of notifying parents in proceedings that could permanently affect their parental rights. It references the U.S. Supreme Court's decision in *Armstrong v. Manzo*, which emphasizes the necessity of notice in proceedings that could deprive a parent of their rights. This supports the proposition that due process requires a meaningful opportunity to be heard, especially in matters involving fundamental rights such as parenting.

### [In re Farmer](#)

#### **Texas Court of Appeals**

#### **Extract**

In a suit affecting the parent-child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order modifying a prior temporary order. TEX. FAM. CODE ANN. § 105.001(a)... Id. § 105.001(b), (h); see *In re L.A.-K.*, 596 S.W.3d 387, 396 (Tex. App.-El Paso 2020, no pet.) (concluding that Chapter 105, rather than Chapter 156, of the Texas Family Code applies to a challenge to temporary orders denying a Father access to and possession of the child without giving him notice and an opportunity to be heard); *In re Chester*, 357 S.W.3d 103, 107 (Tex. App.-San Antonio 2011, orig. proceeding) (noting that a parent is entitled to notice and an adversary hearing before entry of a temporary order modifying custody)...

## **Summary**

The passage from "In re Farmer" highlights that under Texas Family Code § 105.001, a trial court may issue temporary orders for the safety and welfare of a child, and that parties are entitled to notice and an adversary hearing before such orders are made. This supports the proposition that the complainant should have been afforded an opportunity to be heard, as the denial of such an opportunity would violate the procedural requirements outlined in the Texas Family Code and due process principles.

### [In re C.M.D., NUMBER 13-20-00402-CV \(Tex. App. Feb 11, 2021\)](#)

#### **Texas Court of Appeals**

## **Extract**

Following the issuance of an emergency removal order without prior notice or hearing, a full adversarial hearing must be held 'not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension.' Id. § 262.201. The provision additionally mandates the child's return to the parent 'unless' the evidence adduced at a full adversary hearing suffices to 'satisfy a person of ordinary prudence and caution' that, among other things, 'the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal.' ... The adversary hearing affords the parents the opportunity to present evidence on their own behalf, hear and challenge the Department's evidence, and challenge the Department's right to retain the children it previously took into custody under an ex parte order.

## **Summary**

Texas law mandates a full adversarial hearing within a specific timeframe following an emergency removal of a child. This hearing is crucial as it provides parents the opportunity to be heard, present evidence, and challenge the removal. The requirement for such a hearing aligns with due process principles, ensuring that parents have a meaningful opportunity to contest actions affecting their fundamental rights, such as parenting. The passage underscores the importance of judicial oversight and the opportunity for parents to be heard, which directly supports the proposition that denying such an opportunity violates due process.

## [Stary v. Ethridge, 695 S.W.3d 417 \(Tex. App. 2022\)](#)

### **Texas Court of Appeals**

## **Extract**

The indefinite duration of this order prohibiting contact between a parent and her children effectively terminated Stary's parental rights and deprived her of the fundamental liberty interests in the care, custody, and control of her children. United States Supreme Court precedent holds that before such a deprivation may occur, due process requires the trial court to apply a heightened standard of proof: clear and convincing evidence. The trial court's implementation of a lifetime protective order against a parent based on facts found by a mere preponderance of the evidence violated Stary's right to due process.

## **Summary**

The passage highlights the importance of due process in cases where parental rights are at stake. It emphasizes that a heightened standard of

proof is required to protect fundamental liberty interests in the care, custody, and control of children. The dissenting opinion argues that the trial court's decision violated due process by not applying this heightened standard, which is relevant to the proposition that the complainant was denied due process in an emergency matter affecting his child's welfare.

[In re Ramirez, 04-24-00361-CV \(Tex. App. Aug 14, 2024\)](#)

### **Texas Court of Appeals**

#### **Extract**

In Herring, this court determined the trial court abused its discretion by failing to give notice and an adversary hearing before modifying custody of the child. Id. Similarly, here, the trial court failed to provide Ramirez notice of a hearing modifying her possessory rights to the children and a full adversarial hearing prior to granting Lopez the exclusive right to possession of the children.

#### **Summary**

The Texas Court of Appeals has previously determined that failing to provide notice and an adversarial hearing before modifying custody constitutes an abuse of discretion. This supports the proposition that due process requires a meaningful opportunity to be heard, especially in matters involving fundamental rights such as parenting.

[Rodriguez v. Vela, 488 S.W.2d 872 \(Tex. Ct. App. 1972\)](#)

### **Texas Civil Court of Appeals**

#### **Extract**

Page does no more than affirm the power of a district court to enter such temporary order without notice to the parent, in a case where the original jurisdiction of that court to control minors has been properly invoked by pleadings raising the issue of custody. There is nothing shocking about such a holding. The power of court to take necessary action, in order to avoid irreparable harm, without notice to the party affected, in a case in which its jurisdiction has been properly invoked, has long been recognized. For example, a court may issue a temporary restraining order without notice. But this can be done only where there are proper pleadings invoking the jurisdiction of the court in the first instance.

#### **Summary**

The passage from Rodriguez v. Vela discusses the power of Texas district courts to take immediate action in emergency situations involving minors,

even without notice to the affected party, provided that the court's jurisdiction has been properly invoked through appropriate pleadings. This supports the proposition that due process requires a meaningful opportunity to be heard, as it highlights the necessity of proper pleadings to invoke the court's jurisdiction and the court's ability to act swiftly to protect a child's welfare. The passage underscores the importance of procedural requirements to ensure that parties have the opportunity to be heard, aligning with the due process protections under the Fourteenth Amendment and Texas law.

[Marquez v. Cantu, NO. 03-17-00795-CV \(Tex. App. Jul 25, 2018\)](#)

### **Texas Court of Appeals**

#### **Extract**

We recognize that the Due Process Clause of the Fourteenth Amendment of the United States Constitution protects parents' fundamental rights to make decisions concerning the care, custody, and control of their children. See *Troxel v. Granville*, 530 U.S. 57, 65-66, 75 (2000) (discussing cases addressing due process rights concerning parent's care, custody, and control of children and holding that application of nonparental visitation statute violated parent's 'due process right to make decisions concerning the care, custody, and control of her daughters'); *In re M.S.*, 115 S.W.3d 534, 547-48 (Tex. 2003) (discussing right of parent to maintain custody and raise child in context of State's termination of parental rights).

#### **Summary**

The passage acknowledges the protection of parents' fundamental rights under the Due Process Clause of the Fourteenth Amendment, specifically in making decisions about the care, custody, and control of their children. This aligns with the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare. The reference to *Troxel v. Granville* further supports the argument by highlighting a precedent where parental rights were upheld under due process considerations.

[In re J.W.L., 291 S.W.3d 79 \(Tex. App. 2009\)](#)

### **Texas Court of Appeals**

#### **Extract**

While the temporary grant of custody to another or the limitation of a parent's access to a child is not tantamount to absolute termination of parental rights, trial courts must tread very carefully when they infringe upon a parent's ability to participate in child rearing. The Supreme Court of

Texas has recognized that custody determinations that restrict a parent's access to a child can risk a significant deprivation similar to termination of the relationship. '[A]ny significant risk of erroneous deprivation [of parental access to a child] is unacceptable.' ... In other words, trial court interference with the right of a fit parent to bring up his or her own child impacts a fundamental right and may violate the Due Process Clause.

## **Summary**

The passage emphasizes the importance of due process in cases where a parent's access to their child is restricted. It highlights that any significant risk of erroneous deprivation of parental access is unacceptable and that such interference impacts a fundamental right, potentially violating the Due Process Clause. This aligns with the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare.

[In re Chester, 357 S.W.3d 103 \(Tex. App. 2011\)](#)

### **Texas Court of Appeals**

#### **Extract**

In a suit affecting the parent-child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order modifying a prior temporary order. Tex. Fam.Code Ann. § 105.001(a) (West 2008). A temporary order for the conservatorship of the child may not be rendered without notice and a hearing. Tex. Fam.Code Ann. § 105.001(a), (b), (h); Herring, 221 S.W.3d at 730. ... In this case the legal system was not properly employed because the most basic of legal principles—due process notice—was not upheld. See *In re Houston Lighting & Power Co.*, 976 S.W.2d 671, 673 n. 17 (Tex.1998) (orig. proceeding) (listing notice as one of the basic elements of due process).

## **Summary**

The passage highlights the requirement under Texas law that temporary orders concerning the conservatorship of a child cannot be made without notice and a hearing, which are fundamental due process rights. This supports the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare.

[Tex. Fam. Code § 153.002 Tex. Fam. Code § 153.002 Best Interest of Child](#)

## **Extract**

The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.

## **Summary**

The passage emphasizes that the best interest of the child is the primary consideration in legal decisions regarding conservatorship and access. This aligns with the proposition that the complainant should have been given an opportunity to be heard, as the welfare of the child is a fundamental concern. The refusal to hear an emergency TRO could potentially neglect the child's best interest, which is a statutory requirement under Texas law.

### [Tex. Fam. Code § 105.001 Tex. Fam. Code § 105.001 Temporary Orders Before Final Order](#)

## **Extract**

In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child... Except as provided by Subsection (c), temporary restraining orders and temporary injunctions under this section shall be granted without the necessity of an affidavit or verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held.

## **Summary**

Texas law allows courts to issue temporary orders for the safety and welfare of a child without the necessity of an affidavit or verified pleading, indicating that the process is designed to be accessible and responsive to urgent situations. This supports the proposition that the complainant should have been afforded an opportunity to be heard on an emergency matter affecting his child's welfare, as the law provides mechanisms for such urgent hearings.

### [Tex. Fam. Code § 152.311 Tex. Fam. Code § 152.311 Warrant to Take Physical Custody of Child](#)

## **Extract**

The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

## **Summary**

Texas law mandates a prompt hearing on petitions related to the enforcement of child custody determinations when there is an imminent risk to the child. This requirement underscores the importance of providing a timely opportunity to be heard in matters affecting the safety and welfare of a child. The passage supports the proposition by highlighting the statutory obligation to hold a hearing at the earliest possible judicial opportunity, which aligns with the due process requirement for a meaningful opportunity to be heard.

### [Tex. Fam. Code § 156.006 Tex. Fam. Code § 156.006 Temporary Orders](#)

## **Extract**

While a suit for modification is pending, the court may not render a temporary order that has the effect of creating a designation, or changing the designation, of the person who has the exclusive right to designate the primary residence of the child, or the effect of creating a geographic area, or changing or eliminating the geographic area, within which a conservator must maintain the child's primary residence, under the final order unless the temporary order is in the best interest of the child and: the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development... A person who files a motion for a temporary order authorized by Subsection (b) shall execute and attach to the motion an affidavit... that contains facts that support the allegation that the child's present circumstances would significantly impair the child's physical health or emotional development. The court shall deny the relief sought and decline to schedule a hearing on the motion unless the court determines, on the basis of the affidavit, that facts adequate to support the allegation are stated in the affidavit. If the court determines that the facts stated are adequate to support the allegation, the court shall set a time and place for the hearing.

## **Summary**

Texas law provides a mechanism for obtaining temporary orders in suits for modification when a child's welfare is at risk. The law requires that if a child's present circumstances could significantly impair their physical health or emotional development, a hearing must be scheduled if the affidavit supporting the motion is adequate. This supports the proposition that the complainant should have been afforded a hearing to address the emergency matter affecting the child's safety and welfare.

### [Tex. Fam. Code § 109.001 Tex. Fam. Code § 109.001 Temporary Orders During Pendency of Appeal](#)

## **Extract**

In a suit affecting the parent-child relationship, on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable.

## **Summary**

The passage from Tex. Fam. Code § 109.001 emphasizes the court's authority to make necessary orders to protect the safety and welfare of a child during the pendency of an appeal. This aligns with the proposition that parties should be afforded a meaningful opportunity to be heard, especially in matters involving the safety and welfare of a child. The passage supports the idea that the court has a duty to consider emergency matters affecting a child's welfare, which is consistent with the complainant's argument that Judge Stone's refusal to hear the emergency TRO was a denial of due process.

[Do no harm: an analysis of the legal and social consequences of child visitation determinations for incarcerated perpetrators of extreme acts of violence against women.](#)

**Columbia Journal of Gender and Law - Columbia University -- JGL - Conner, Dana Harrington - 2008-06-22**

## **Extract**

The Court, in addressing the issue of grandparent visitation, described the fundamental rights of parents: The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court.

## **Summary**

The passage references the U.S. Supreme Court's recognition of the fundamental liberty interest of parents in the care, custody, and control of their children, as established in *Troxel v. Granville*. This supports the proposition by highlighting the constitutional protection of parental rights under the Due Process Clause, which requires that parents be given a meaningful opportunity to be heard in matters affecting their children. The context of the passage, discussing fundamental parental rights, aligns with the complainant's argument that he was denied due process when not given the opportunity to be heard on an emergency matter concerning his child's welfare.

## [Chapter 15 Representing Parents on Appeal](#)

### **Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders (ABA) - American Bar Association**

#### **Extract**

Parents have a substantive due process right to family integrity protected by the Fourteenth Amendment to the Federal Constitution and many state constitutions. See *Troxel v. Granville*, 530 U.S. 57, 66 . ... Procedural due process is a flexible concept; the extent of procedural protections that must be afforded varies with the circumstances. *Goldberg v. Kelly*, 397 U.S. 254, 262-63 . But basic to due process is the right to be heard 'at a meaningful time'... Due process also guarantees the right to be heard at a meaningful time and in a meaningful manner. Was the parent allowed to participate meaningfully in the case?

#### **Summary**

Parents have a substantive due process right to family integrity, which is protected by the Fourteenth Amendment. This right includes the necessity for procedural due process, which is flexible but fundamentally requires that parents be heard at a meaningful time and in a meaningful manner. The passage emphasizes the importance of allowing parents to participate meaningfully in cases affecting their rights, which directly supports the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child.

## [CHAPTER 15 Representing Parents on Appeal](#)

### **Representing Parents in Child Welfare Cases: Advice and Guidance for Family Defenders (ABA) - American Bar Association**

#### **Extract**

Parents have a substantive due process right to family integrity protected by the Fourteenth Amendment to the Federal Constitution and many state constitutions. See *Troxel v. Granville*, 530 U.S. 57, 66. 'The rights to conceive and to raise one's children are 'essential... basic civil rights of man... far more precious... than property rights.' *Stanley v. Illinois*, 405 U.S. 645, 651. Before the state 'deprive[s] a legitimate [sic] parent of all that parenthood implies,' the requirements of due process must be met. *Armstrong v. Manzo*, 380 U.S. 545, 550. Procedural due process is a flexible concept; the extent of procedural protections that must be afforded varies with the circumstances. *Goldberg v. Kelly*, 397 U.S. 254, 262-63. But basic to due process is the right to be heard 'at a meaningful time.'

## **Summary**

Parents have a substantive due process right to family integrity, which is protected by the Fourteenth Amendment. This right is considered essential and more precious than property rights. The passage emphasizes that before the state can deprive a parent of their rights, due process requirements must be met, which includes the right to be heard at a meaningful time. This directly supports the proposition that the complainant was denied due process when not given the opportunity to be heard on an emergency matter affecting his child's welfare.

[Won't Somebody Please Think About the Children: "Don't Say Gay" and the Use of Moral Panic to Suppress Dignity.](#)

**Suffolk University Law Review - Suffolk University Law School - 2023-03-22**

## **Extract**

The United States Constitution does not expressly recognize a parent's right to direct their child's upbringing. Rather, this liberty is rooted in the Fourteenth Amendment's Due Process Clause. For decades, the Court has recognized that the Fourteenth Amendment protects individuals from more than the physical deprivation of their liberty. In a long line of cases, the Court has held that the Due Process Clause insulates certain substantive liberties from the state's reach. To be eligible for protection under the Court's substantive due process jurisprudence, the value at issue must be so precious to society that it is implicit in America's conception of ordered liberty. It is within this judicial framework that the parental right to make decisions about their child's upbringing finds its home.

## **Summary**

The Fourteenth Amendment's Due Process Clause protects substantive liberties, including parental rights, from state interference. This protection is rooted in the recognition that certain rights are fundamental to America's conception of ordered liberty. The passage supports the proposition by highlighting the constitutional basis for parental rights, which are implicated in the complainant's case.

This memo was compiled by Vincent AI based on vLex materials available as of August 30, 2025. [View full answer on vLex](#)