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November 7, 2025

Supreme Court of Texas
P.O. Box 12248
Austin, Texas. 78711

Re: No. 24-0213; *Boerschig v. Rio Grande Electric Cooperative, Inc.*

To the Honorable Members of the Texas Supreme Court:

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amicus curiae* Texas Civil Justice League files this letter in the above-referenced cause in support of Respondent Rio Grande Electric Cooperative, Inc.

Statement of Interest

The Texas Civil Justice League (“TCJL”) is a non-profit association of businesses, health care providers, professional and trade associations, and individuals dedicated to maintaining a fair and efficient civil justice system. TCJL participates as *amicus curiae* in mannters before this Court that have the potential for broad and substantial impacts on the business community and economic climate of this state. TCJL members have a vital interest in the maintenance and development of the state’s critical infrastructure to serve our growing economy and population. This case raises the specter of nullifying electric utility easements across the state and vastly increasing the costs of upgrading existing power lines to meet the

increasing demand for reliable electric power. Not only will these costs have to be borne by residential and industrial customers, but they may threaten the ability of the state to attract new capital investment, particularly technology companies that demand immense amounts of electricity to conduct their operations.

This letter has been prepared in the ordinary course of TCJL’s operations. No fee has been paid for the preparation or filing of this brief.

Argument

Amici Electric Utilities have thoroughly described the potential adverse consequences of a decision for Petitioner in this case. As they state, “[t]he jury’s findings and the ruling of the court of appeals are consistent with longstanding Texas law regarding easement by estoppel and background principles for utility easements. Utilities rely upon those longstanding legal principles to manage their easement rights in circumstances like those presented here.” Brief of *Amici* Electric Utilities at 14. They also rightly point out that an adverse decision “could negatively affect other critical infrastructure, such as municipal water or natural gas pipelines.” *Id.* at 34.

As we have noted in previous briefs submitted to this Court, during the last three legislative sessions TCJL has participated as coordinator of the Coalition for Critical Infrastructure (“CCI”), which was organized prior to the 2019 legislative session for the purpose of educating members of the Texas Legislature about the

need for uniform, consistent, and predictable rules for the acquisition, maintenance, and use of the utility easements crucial to continued economic and job expansion in our state. As part of CCI, TCJL has advocated for legislation that reasonably balances the interests of infrastructure builders and operators and the landowners across or under whose property such infrastructure must be located. This effort resulted in the enactment of important reforms to Chapter 21, Property Code during the 2023 session. In our view, those reforms have been successful for all parties and are helping to facilitate the vast expansion of energy, water, and electricity infrastructure necessary to keep pace with Texas' growth.

TCJL is writing in this case to emphasize that the decision will not just affect infrastructure providers, but the 31 million Texans for whom reliable electricity and water services are an absolutely necessity. We also represent all sectors of Texas business and industry, which employ millions of Texans and could not do business here without affordable access to these utilities. From our perspective, this case boils down to a single practical question: how much are we willing to make consumers pay for the services they cannot live without? Every dollar added to the cost of acquiring, maintaining, and upgrading rights-of-way for critical infrastructure projects must come from somewhere, and that somewhere is out of the pocket of the end consumer. Remember, too, that in this case the Respondent, an electric co-operative, is member-owned. A decision in favor of the Petitioner would in effect

impose a *direct tax* on thousands of residents and businesses in the Respondent's service area.

If we consider the Petitioner's argument at a statewide level, which *amici* Electric Utilities emphatically demonstrate that we should, the Petitioner would have it that an electric utility easement acquired in 1947, when the population of Texas was about 7.3 million, cannot now be upgraded to serve the current needs of a state more than four times that size without, in essence, going through the Petitioner first. This notion is untenable. There are thousands of easements across the state that were acquired in a different era and with varying levels of documentary precision. The land on which those easements are located has frequently changed hands over time, as it did in this case. At some point, the law must be clear that such an easement is what it is and that the owner thereof has a right to take the necessary steps to ensure that the easement serves its original purposes. While we understand that circumstances may exist that warrant different treatment, this case does not present any of them. The line in question (1) existed for well over half a century, (2) became an integral part of a distribution infrastructure in a 35,000 square mile service area (the largest in the state), (3) was in plain view of the Petitioner and everyone who owned the property between the 1940s and the present, and (4) could no longer serve its purpose without being upgraded. To declare "king's X" at this point and deprive the utility of its easement—or, more accurately the co-op's members, of *their*

easement—flips the law on its head and will do nothing but make power, water, and energy more expensive for everyone. That seems to be what the jury in this case thought, too.

There are good reasons that Texas leads the nation in attracting businesses to this state. We have a uniquely low-cost environment for the kinds of industries that are currently transforming our economy. These industries use huge amounts of electricity (and water) and come to Texas because they can get it at an affordable price. If we are now going to relitigate the validity of every easement acquired under circumstances similar to those in this case, we will not be able to sustain that growth. Instead of a uniform, consistent, and predictable legal environment for infrastructure development, we will substitute the roulette wheel of case-by-case adjudication. This will hold up projects, substantially increase their costs, and tax the people who need the services for the benefit of the very few.

Conclusion

TCJL prays that the Court affirm the court of appeals' decision in all respects.

Dated: November 7, 2025

Respectfully submitted,

/s/ George S. Christian

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the type-volume limitations of Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure because this brief contains 1,015 words, exclusive of those portions exempted by Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure, according to the word count feature of Microsoft Word.

/s/ George S. Christian

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served on all counsel of record via electronic service in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure and the Court's Local Rules on the date of filing.

/s/ George S. Christian