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June 15, 2026

Fifteenth Court of Appeals  
P.O. Box 12852  
Austin, Texas 78711

Re: No. 15-26-00119; *In re Dow Hydrocarbons and Resources, LLC and Union Carbide Corporation*

**To the Honorable Members of the Court:**

Pursuant to Rule 11, Texas Rules of Appellate Procedure, the Texas Civil Justice League (TCJL) respectfully submits this *amicus curiae* letter in support of Relators' Petition for Writ of Mandamus in the above-referenced case.

**Statement of Interest**

The Texas Civil Justice League ("TCJL") is a non-profit association of businesses, health care providers, trade and professional associations, and individuals dedicated to promoting and maintaining a stable and predictable civil justice system in Texas. Since its inception in 1986, TCJL has been heavily involved in legislative advocacy efforts to achieve this goal, as well as in supporting various initiatives to strengthen the independence, impartiality, and quality of our state's judiciary.

TCJL's members, especially those regulated entities that work closely with state agencies on permitting and compliance issues, are deeply concerned about the questions in this litigation. Many of our members conduct business nationally and internationally and have seen a marked increase in attempts by private entities who seek to intervene in regulatory matters over which

the Legislature has granted exclusive jurisdiction to state regulatory agencies. This case exemplifies this trend, and we are writing in support of Relators' petition for writ of mandamus.

TCJL has paid for this brief out of its ordinary operating fund. No other party has paid for any part of this brief.

### **Argument**

In his recent dissent in *In Re Novartis Pharmaceuticals Corporation* (No. 15-25-00207-CV; April 30, 2026), Chief Justice Brister questioned the constitutionality of allowing private speculators to bring penalty-only lawsuits without the participation of the state. In that case, Health Selection Group, LLC (HSG), a private litigation fund established for the purpose of bringing Medicaid fraud qui tam lawsuits against pharmaceutical manufacturers and other health care providers, sought hundreds of millions of dollars in penalties even after the state declined to participate in the suit. Chief Justice Brister pointed to HSG's lack of constitutional standing to pursue the litigation on its own, as well as the wisdom of "encourag[ing] privateers to perform this public duty instead by offering jackpots far beyond any amount the State could possibly have lost, and based only on the kind of legalistic 'fraud' alleged here . . . "

We recognize, of course, that the present litigation has a very different posture than a qui tam action. Here San Antonio Bay Estuarine Waterkeeper seeks to intervene in an enforcement action brought by the Office of the Attorney General alleging specific statutory and regulatory violations against Relators, who hold various permits granted by the Texas Commission on Environmental Quality in connection with their manufacturing activities. In this case, there is no question of state participation. But there is a question of a private entity piggybacking onto the state's claims and pursuing punitive relief on its own behalf.

We are baffled as to what possible basis exists for Waterkeeper’s intervention, other than of the kind of lawfare we alluded to above. We do not offer that term lightly, as one’s idea of lawfare depends on who is pitching and who is catching. It might be useful, however, to review precisely what “Waterkeeper” represents itself and its objectives to be. According to its website, [www.waterkeeper.org](http://www.waterkeeper.org), Waterkeeper purports to be “a global movement of community-based advocates united for clean, healthy, and abundant water for all people and the planet.” We certainly have no dispute with this laudable goal.

But we do dispute the way in which the organization tries to carry it out. “Waterkeeper Alliance,” the website goes on, “has spent years defending strong clean water protections under the [Clean Water] Act in the courts of justice and public opinion, filing lawsuits, and amicus brief, and challenging efforts by the U.S. Environmental Protection Agency and U.S. Corps of Engineers to narrow the definition of ‘waters of the United States.’” The objectionable method here is “filing lawsuits.” It’s one thing for Waterkeeper to sue the government or file an amicus brief, but it’s an entirely different thing to sue private entities engaged in lawful activities under permits issued by a state regulatory agency after a lengthy administrative process and, in some cases, judicial review. Whether an entity has violated a permit likewise involves an equally lengthy administrative process, which may, as it did here, end up in litigation. All of this is governed by a comprehensive statutory scheme carefully crafted by the Legislature to include ample opportunities for public input and severe penalties for violations proven by the state to have occurred. Nothing in the scheme says anything about an outside third party tagging along, as if the state is not itself capable of enforcing its own laws or protecting the public interest in environmental compliance.

According to its website, Waterkeeper operates through 295 affiliates in the U.S. and internationally. As far as we can tell, it coordinates activities and advocacy efforts of these local affiliates, up to and including the coordination of litigation efforts. But just how “local“ is the affiliate in question in this case? No doubt it has members in the general area of the San Antonio and Colorado River basins who care about clean water, a public concern we all share. It is nevertheless true that Waterkeeper Alliance, Inc.’s registration with the Texas Secretary of State, originally filed in 2005, lists an Irving, New York address as its domicile and CSC-Lawyers Incorporating Service Company as its registered agent in Texas. Its board of directors, last updated in April, 2025, identifies officers and directors from New York, California, and Georgia, but none in Texas. There is little doubt who is calling the shots in this litigation.

We come to our bone of contention. Like Waterkeeper, TCJL is an advocacy organization that communicates with the Legislature, the courts, and regulatory agencies on issues of interest to our members. But we do not file grievances or lawsuits against lawyers whom we believe to be unethical, make complaints against judges with whom we disagree, or seek party status in any litigation, regardless of how strongly we may feel about it. If Waterkeeper wants to play ball in Texas, it is more than welcome to do so. It can talk to the Legislature about environmental laws, TCEQ about rules and permitting standards, or the courts in amicus briefs in support or opposition to a particular decision. It can further participate in the rule-making process, make its opinions known to TCEQ Commissioners and the executive director, and mobilize its local supporters to do the same. Its local Texas members can likewise talk to their elected officials about their concerns. In fact, nothing prevents Waterkeeper from working directly with the regulated entities it is trying to sue in this case to address their concerns.

These are all the things non-profit advocacy organizations, like Waterkeeper and TCJL, can and should do to promote the interests of their members. That's the whole point of representative democracy. But where things go bad is when such organizations attempt to weaponize the courts in an effort to achieve objectives they could not achieve in the legislative and executive arenas. Courts resolve disputes between real parties with real concrete injuries. Going beyond that, as Chief Justice Brister indicated, threatens constitutional separation of powers and, in our view, the rule of law itself.

### **Prayer**

We respectfully request the Court to grant Relators' petition of writ of mandamus.

Sincerely,

*/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 1,399 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*