

Case No. 17-0736

IN THE SUPREME COURT OF TEXAS

TEAL TRADING AND DEVELOPMENT, LP,
Petitioner,

v.

**CHAMPEE SPRINGS RANCHES PROPERTY
OWNERS ASSOCIATION,**
Respondent.

*On Appeal from the Court of Appeals for the Fourth
Judicial District at San Antonio
(Cause No. 04-16-00063-CV)*

**BRIEF OF AMICUS CURIAE
KERR COUNTY, TEXAS**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Founded in 1856, Kerr County, Texas, a local county governmental entity, is located approximately 100 miles northwest of San Antonio. As of the 2016 census, Kerr County's population exceeded 50,000 individuals. The "spite strip," or non-access easement, at issue in this case is located within Kerr County. Kerr County submits this *amicus curiae* brief because the use of spite strips unfairly ties the hands of the County and its property owners, as well as violates public policy. This Court should grant review of this case in order to clarify the law on spite strips and put an end to the use of these invalid and destructive devices. *Amicus* has paid all of the costs and fees incurred in the preparation of this brief.

SUMMARY OF ARGUMENT

The ability of Texas landowners to use their property for its highest and best use is vital to the growth and prosperity of Texas and its counties. Public policy favors the productive use of land. Spite strips, like the one at issue in this case, do one thing and one thing only: prevent property owners from putting their property to its highest and best use.

Kerr County's responsibilities include ensuring well-connected county infrastructure for the benefit of its citizens and the businesses located within its borders. The spite strip bisecting Petitioner Teal Trading and Development's property prevents Kerr County from fulfilling its responsibilities to its citizens, hampers growth and economic development, and cuts off Kerr County citizens from the facilities, infrastructure, and emergency services to which they are entitled.

Kerr County respectfully urges this Court to grant Petitioner's petition for review so that this Court can give guidance to the lower courts in Texas, and to Texas counties and property owners, on this vitally important legal issue.

ARGUMENT

I. SPITE STRIPS PREVENT THE HIGHEST AND BEST USE OF PROPERTY.

The ability of landowners to use their property for its highest and best use is vital to the growth and prosperity of Texas. Public policy favors the productive use

of land. John Locke first voiced this policy of developing land, rather than letting it lay unused:

[W]hatsoever he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed, and make use of, the cattle and product was also his. But if either the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering, and laying up, this part of the earth, notwithstanding his enclosure, was still to be looked on as waste, and might be the possession of any other.¹

This Court has found that “economic dynamism – and more fundamentally, freedom itself – also demand strong protections for individual property rights.” *Texas Rice Land Partners, Ltd v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 204 (Tex. 2012). One of those rights is the freedom to use property for its highest and best use. For Petitioner, the highest and best use may be for development of housing. For other landowners stymied by spite strips, that use may be oil and gas exploration, mineral extraction, conservation, or commercial development. In any event, the preservation of property rights is the “great and chief end” of government, according to Locke, and “one of the most important purposes of government,” according to this Court. *Texas Rice & Land Partners*, 363 S.W.3d at 204.

¹ John Locke, *Second Treatise of Government*, Section 38: available at <http://www.constitution.org/jl/2ndtr05.htm>.

Indeed, this Court has “repeatedly, recently, and unanimously recognized that strong judicial protection for individual property rights is essential to freedom itself.” *Harris Cty. Flood Control Dist. v. Kerr*, 499 S.W.3d 793, 804 (Tex. 2016), *reh’g denied* (Oct. 21, 2016). Spite strips like the one in this case prevent economic dynamism and curtail the use of property for its highest and best use. It is the duty of this Court to protect Texas landowners by carefully examining this issue and its place within Texas law.

Spite strips function as development by extortion. In the instant case, a single developer, like a troll guarding a bridge, has ensured that anyone who wants access beyond his spite strip must pay dearly for the privilege. As Kerr County and the rest of Texas grows, these spite strips are a bottleneck to development for those who cannot or will not pay. Respondent neighborhood associations may not want new development in Kerr County blocking their scenic views or increasing traffic on their roads. However, the solution is the purchase of the adjacent parcels and a conservation easement, not a spite strip which renders the land it bifurcates virtually useless – all to satisfy a neighborhood association’s preferences. *See Lombardo v. City of Dallas*, 124 Tex. 1, 10 (1934) (“nor can the right of a person to use his property in a lawful manner be made to depend upon the unrestrained predilection of other property owners.”); *Spann v. City of Dallas*, 235 S.W. 513, 516 (1921) (“A lawful and ordinary use of property is not to be prohibited because repugnant to the

sentiments of a particular class.”); *Eubank v. City of Richmond*, 226 U.S. 137, 144 (1912) (neighbors may oppose a property use “solely for their own interest, or even capriciously...even so arbitrary a thing as taste may control.”).

Texas is a national leader in employment², economic performance³, and economic freedom.⁴ This success is due in large part to this state’s steadfast protection of property rights and common-sense approach to land use. Spite strips like the one at issue in Kerr County are antithetical to these values and contrary to public policy and the laws of Texas.

The spite strip threatens the accessibility of residential and commercial developments in the southeast corner of Kerr County. In his trial court testimony, Kerr County Judge Thomas Pollard confirmed that, for example, emergency services en route to the Privilege Creek subdivision in Kerr County, but blocked from accessing the southeast corner by the spite strip, would have to travel from Kerrville to Center Point to Comfort, down I-10 to Ranger Creek Road, up Turkey Knob Road, left and finally into the division. Transcript of Oral Argument, Reporter’s Record Vol. 4 at 27:11-19, *Champee Springs Ranges Property Owners Association v. BTEX*

² Texas Monthly Jobs Report: Nov. 2017, Dallas Morning News, *available at*: <http://apps.dallasnews.com/texas-jobs-report>.

³ Arthur B. Laffer, et al., Rich States, Poor States, 10th ed. at 2, *available at*: <https://www.alec.org/app/uploads/2017/04/2017-RSPS-INDEX-v5.pdf>.

⁴ Dean Stansel, et al., Economic Freedom of North America 2016 at 7, *available at*: <https://www.fraserinstitute.org/sites/default/files/economic-freedom-of-north-america-2016-us-edition.pdf>.

Ranch, L.P. and Teal Trading and Development, LTD, Cause No. 14-16-00063-CV, Fourth Judicial District at San Antonio. This drive takes at least 45 minutes, while without the spite strip, it would take about 10 minutes. *Id.* Those extra 35 minutes could be the difference between life and death for a heart attack victim waiting on emergency medical technicians or the difference between saving a house on fire and arriving after it has burned to the ground. The same delay would apply to calls for police protection, county maintenance, animal control, environmental protection, and all other services the Texas Constitution mandates counties provide to their citizens. *Id.* at 27:24-25; 28:4-7; 49:1-3. Lives and property are in danger because of the one-foot invisible wall in Kerr County.

Less dramatic but no less important, cordoning off neighborhoods from county services also decreases property values in Kerr County. The spite strip interferes with Kerr County's ability to plan for future roads and connectivity across the county. *Id.* at 30:4-8. Because of the spite strip, not only is part of the county inaccessible for residential purposes, but businesses are also discouraged from opening beyond the spite strip in Kerr County. Businesses that need efficient and accessible infrastructure will not choose to open in a location that requires a lengthy detour for its clientele. As a result, Kerr County loses opportunities to grow and develop its economy further. The spite strip harms relations between Kerr and

Kendall counties and leaves Kerr County subject to the whims of a single non-resident.

Each of these consequences is illogical, harmful, and in some instances life-threatening. Yet under the appellate court's ruling, it is permissible for a single individual to contort a one-foot easement into a weapon that flattens the property rights of his neighbors. Texas courts do not favor restrictions on the free use of land, and the plethora of problems caused by the one-foot spite strip in Kerr County provide excellent proof of the wisdom of this policy. *See Wilmoth v. Wilcox*, 734 S.W.2d 656, 657 (Tex. 1987).

CONCLUSION

For the foregoing reasons, Kerr County respectfully urges this Court to grant Petitioner's petition for review so that this Court can provide guidance to the lower courts in Texas, and to Texas property owners, on the legality of spite strips in Texas.


Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this document complies with the typeface requirements of Tex. R. App. P. 9.4(e), because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Tex. R. App. P. 9.4(i), because it contains 1467 words, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1).



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CERTIFICATE OF SERVICE

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