

Statement of Kenneth S. White
Chairman of the Kansas Independent Oil and Gas Association (KIOGA)

Opponent of Senate Bill No. 55
Uniform Partition of Heirs Property Act

House Committee on Judiciary
February 5, 2019

Chairman Wilborn and Members of the Committee:

I am the current Chairman of the Kansas Independent Oil and Gas Association (KIOGA) and the President of White Exploration, Inc. in Wichita, Kansas. I would like to direct my testimony to Senate Bill No. 55 which is an attempt to re-write the procedures relating to Partition actions involving the title to real property in Kansas.

KIOGA has been in existence for over 81 years. The function of KIOGA is to act as an advocate for its members in Topeka and in Washington, and to provide information and services to benefit our members. Our membership consists of over 1,400 member companies with over 4,000 employees who are involved in the exploration and production of oil and natural gas in the State of Kansas. This includes both the producers who own and operate the over 100,000 producing oil and natural gas wells in the state, and the companies that provide services and equipment to keep those wells producing, providing income to thousands of royalty owners, and paying taxes that are a significant portion of the revenue stream for many counties.

I am not an attorney, but I have been involved in the exploration and production of oil and natural gas in Kansas for almost 39 years. I have personally purchased Oil and Gas leases on hundreds of thousands of acres of land in the state and have examined land titles to even a larger number of acres. I estimate that over the years I have had involvement with about a dozen Partition actions. That involvement includes initiating a Partition action, being part of a Partition action, or reviewing court records of Partition actions while examining title to lands where I may be buying oil and gas leases. Some Partition actions involve title to the land in its entirety or maybe just to the surface interests or mineral interests individually. Partition is also used as a means to solve title issues to oil and gas lease interests which are actually classified as Personal Property.

A Partition Action is a very useful tool when the title to a piece of land is split up in such a way that it has very little value. In my opinion, Senate Bill No. 55 would completely disrupt this process and render most Partition actions useless. It would tend to create more problems than it solves.

Most real property interests that end up being the subject of a Partition action have ended up there due to either poor estate planning or lack of knowledge that an ownership actually exists. Sometimes ownership interests end up in limbo because owners over generations are not even aware that the interest exists.

Yes the classic example is the person who owns some land and dies without a will. Then maybe their 8 kids end up with undivided interests in the land. Then those eight siblings start passing away and the interests end up with their multiple heirs. Once you get down several generations the interests may be small enough that they just get forgotten. I have contacted people to buy oil and gas leases who had no idea that they even owned an interest in a particular tract of land. A Partition action is a good way to clean up all of this and give the asset some value.

A Partition action is also relevant when multiple owners of real property, whether related by family or not, cannot agree on use or disposition of the real property. Another joint undivided interest owner can unwittingly end up with something of little to no value due to the actions of others. In this instance a Partition action is a normal and customary tool to solve these problems and maximize the value of the asset for all interest owners.

Creating two classes of ownership being "Heirs Property" and other "Co-Tenants" makes a Partition action useless. A similar bill to this was in this committee during the 2018 Legislative Session as Senate Bill No. 329. In the Supplemental Note on that bill, available as public information, Senator Hardy notes that "a tenant-in-common of an undivided interest may be able to sell his or her interest without the consent of the co-tenants, making it easy for non-family members to acquire an interest in the property." There are plenty of ways for the Patriarch or Matriarch of a family to control ownership of real property thru proper estate planning but at some point, they cannot exercise control from the grave. The bottom line is that Tenants in Common, are just that, Tenants in Common.

Giving all of the co-tenants that are deemed to be "Heirs" the right to buy their fractional share of the property thru the procedure does not resolve any of the issues that brought the property to Partition in the first place. Because it still ends the procedure with fractional ownership that may be damaging the value or usefulness of the property.

Partition is not something that is used every day, but it is a necessary and useful tool to enhance value to real property. In the same Supplemental Note, a private citizen who appeared as a proponent stated that the partition law needs to be more predictable. In my opinion, having been involved in numerous Partition actions, the current procedure is 100% predictable. Senate Bill No. 55 would take all of that away.

The record for the 2018 Senate Bill No. 329 also contains a letter to Chairman Wilborn dated February 6, 2018 from Larry L. Campbell, the Chief Budget Officer for the State of

Kansas, Division of the Budget. In this letter, Mr. Campbell states that “the enactment of SB329 could have a significant fiscal effect upon the Judicial Branch because it creates many new requirements for the district courts regarding partition of property cases”. I would go one step further and say that not only would this bill have a significant fiscal effect, it will cause chaos. If this bill is passed, a Partition action is no longer a Partition action. The value or usefulness of the real property is not enhanced.

I have never heard any complaints from the oil and gas community, the real estate community, or the legal community regarding the way a Partition action presently works. It is a very straightforward, time proven process that is easy to understand. Quite frankly, under the current open bidding format, in the event two or more owners are willing to pay the appraised value for the interest, a Partition action typically provides all interest owners a sales price that is significantly higher than what would have been achieved in a privately negotiated sale. Taking away the open bidding process with Senate Bill No. 55 will hurt the values received.

I am guessing that this may have made its way into your committee because of the experience of one person who feels that they had a bad experience with a Partition action. That could have been due to their misunderstanding of the procedure, or the receipt of bad legal advice. You need to remember that there are also real property interest owners in the State who think the current Partition process works just fine; they are happy with the results of a process that does not create two classes of bidders and places no upside restrictions on what the property can be sold for. This truly is a procedure that works to the benefit of all and it does not need fixing. KIOGA encourages this committee to oppose the passage of Senate Bill No. 55.