

Tyson R. Eisenhauer
Attorney at Law
Johnston Eisenhauer Eisenhauer & Lynch, LLC

**To: Senator Rick Wilborn, Chairperson, and
Members of the Senate Judiciary Committee**
From: Tyson R. Eisenhauer
Date: February 5, 2019
**Re: SB 55; An Act concerning civil actions and civil procedure; relating to
partition; enacting the uniform partition of heirs property act.
(OPPOSITION)**

I am a citizen of Kansas and a second-generation Kansas oil and gas attorney. I currently serve on the executive committee for the Kansas Bar Association's Oil, Gas, & Mineral Law Section (OGM Section). This testimony is written on my own behalf and not on behalf of any other person or entity, including my law firm and the OGM Section. That being said, my concerns outlined below are influenced by experience representing numerous oil and gas producers in Kansas and by recent conversations with legal peers about the potential negative impact of SB 55 on development of oil and gas in Kansas. As more fully explained below, I oppose SB 55.

Without question, the oil and gas industry is a major contributor to the Kansas economy. Due to costs, individual mineral owners do not generally develop the mineral estate; rather, oil and gas companies pursue development by obtaining authorization (oil and gas leases) from the mineral owner(s). Although each co-tenant of the mineral estate has the right to authorize development, oil and gas companies do not often pursue development without obtaining authorization from all co-tenants. *See Brooks v. Mull*, 147 Kan. 740, 744, 78 P.2d 879, 881 (1938) (explaining why authorization from all co-tenants is a financial necessity). For various reasons, obtaining authorization from all co-tenants may be difficult or impossible. To that end, partition has long been used as a tool to promote the development of oil and gas in Kansas. *See e.g. Holland v. Shaffer*, 162 Kan. 474, 178 P.2d 235 (1947) (attempting partition to unite minerals so fractionalized that no company would develop them); *see generally* David E. Pierce, *Kansas Oil and Gas Handbook* § 8.13, 8-30 to 8-31 (Kansas Bar Association 1986) ("Partition has been used in Kansas to consolidate diverse mineral interests for development, protect land from drainage,

113 E. Third Street – P.O. Box 825, Pratt, KS 67124
(620) 672-5533
tysoneisenhauer@gmail.com

protect term mineral interest owners, and to facilitate unitization and secondary recovery.”). As explained by the Kansas Supreme Court,

We have long recognized that the right to partition is an incident of common ownership. It is based on the equitable doctrine that it is better to have control of property in one person than in several who may entertain divergent views with respect to its proper control and management. **The right to partition is much favored in law because it secures peace, promotes industry and enterprise and avoids compelling unwilling persons to use their property in common.**

Mulsow v. Gerber Energy Corp., 237 Kan. 58, 61-62, 697 P.2d 1269, 1273 (1985) (emphasis added). In fact, partition is sometimes the only tool to secure development of the mineral estate. *See e.g. Gillet v. Powell*, 174 Kan. 88, 95, 254 P.2d 258, 263 (1953) (“One fact is crystal clear. There will never be any development of the land unless partition be had.”); *See also* Pierce, *Kansas Oil and Gas Handbook* at § 4.19, 4-32 (“If the parties cannot agree on development of the mineral interest, partition is often the only viable remedy.”) (internal citation omitted). In summary, partition is a critical tool for development of oil and gas in Kansas.

Based on limited research and conversations with legal peers, it is my understanding that the uniform partition of heirs property act has been adopted by states who seek to curbe partition abuses by real estate developers in poor and minority communities. *See generally* Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs’ Property Owners Facing Partition in Equity*, 17 Temp. Pol. & Civ. Rts. L. Rev. 1 (2007). Although a legitimate and laudable goal, I am not aware of any data suggesting that those abuses exist in Kansas. And, I’m certainly not aware of any data suggesting abuses that specifically relate to partition of mineral estates in Kansas. SB 55 appears to be a solution in search of a problem.

SB 55 fails to expressly address whether the proposed uniform partition of heirs property act will apply to mineral estates. Presumably, it will apply. And, if that is the case, then development of oil and gas in Kansas will be significantly hindered. The proposed definition of “heirs property” encompasses a vast number of mineral estates in Kansas, thereby limiting the effectiveness of partition as a tool for development of oil and gas.

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tysoneisenhauer@gmail.com

Moreover, the act defeats the precise purpose of partition, i.e., to place ownership and control of the property in one person so as to promote peace, secure industry and enterprise, and avoid compelling unwilling persons to use their property in common. *Mulsow*, 237 Kan. at 61-62, 697 P.2d at 1273. Finally, the act will also unnecessarily increase legal costs by forcing oil and gas law practitioners to research/conform to the new provisions every time they seek to use partition as a tool for the development of oil and gas. I have read SB 55 several times, and I am still not sure I fully understand all of implications. Suffice it to say, SB 55 is legalese at its finest (worst).

I am of the strong opinion that those who seek to modify the law should contemplate the history behind the existing law and the practical implications of changing the law. Respectfully, SB 55 fails on both accounts; it neither understands the important history of partition as a tool for the development of oil and gas in Kansas, nor contemplates how the oil and gas industry will operate without partition as an effective tool. For these reasons, I oppose SB 55.