

**Written Testimony to the
House Energy and Natural Resources Committee
Against S.B. 219**

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March 9, 2026

Dear Chairwoman Blasdel, Vice Chair Stoltzfus, Ranking Member Rogers, and members of the House Natural Resources Committee, thank you for the opportunity to submit written testimony in opposition to Senate Bill 219:

My name is Sean Jacobs and I am an attorney with Emens Wolper Jacobs & Jasin Law Firm (“EWJJ”). EWJJ is dedicated to representing Ohio landowners. Since the start of the Utica Shale Play, I and other members of my firm have represented thousands of Ohio landowners in oil and gas lease negotiations and numerous landowners in “force unitization” proceedings under R.C. 1509.28. I am testifying because I am concerned about the impact the amendments to R.C. 1509.28 and R.C. 2305.041 in Senate Bill 219 (“S.B. 219”) will have on Ohio landowners without substantial modifications.

Amendment to R.C. 1509.28: Contractual Negation via Unitization

As passed by the Senate, S.B. 219 would allow oil and gas companies to use unitization orders to unilaterally negate the contractual agreements they make with Ohio landowners even though leased landowners are not parties to the statutory unitization process and have no standing under R.C. 1509.28. Specifically, the language in S.B. 219 would allow companies to propose units they know violate the terms they contractually agreed to, then use the resulting ODNR order to avoid having to comply with those terms, amend those terms, or compensate the landowners for violations of those terms.

Under R.C. 1509.28 leased landowners have no right to object to proposed units on grounds that they violate their lease terms because ODNR maintains that those are private contractual matters for courts, not the administrative hearing. However, S.B. 219 would eliminate any claims leased landowners would have in court for breach of contract because it would allow the order to override the terms the companies agreed to in the lease. This creates a legal absurdity where the State is effectively assisting oil and gas companies with breaching their own contracts with Ohio landowners. A force unitization order should not grant companies the power to eliminate negotiated lease protections from landowners who have no standing or voice in the process being used against them.

If the amendment to R.C. 1509.28 is not revised or eliminated, the critical protections Ohio landowners negotiate in leases will be rendered meaningless. If oil and gas companies chose to propose units that conflict with terms in existing leases, Ohio landowners should be able to bring a breach of contract claim if the companies do not want to seek an amendment. The only defensible exception would be the exceptionally rare case where following a Chief's Order makes it physically impossible to comply with a lease term.

For these reasons, I strongly urge the Committee to remove the language in S.B. 219 amending R.C. 1509.28 or limit it strictly to situations in which an order makes compliance with a lease physically impossible.

Amendment to R.C. 2305.041: Slashing Statute of Limitations for Real Property Title Recovery

As passed by the Senate, S.B. 219 would also slash the statute of limitations for lease termination/expiration claims from 21 years to a mere 6 years. This transparent attempt to legislatively overrule the Ohio Supreme Court's holding in *Browne v. Artex* and fundamentally reclassify claims to recover vested property rights as temporary contract claims would have severe adverse consequences for Ohio landowners:

1. **Misclassifying Vested Property Rights:** The Ohio Supreme Court held that an oil and gas lease conveys a real property interest (a “fee simple determinable” in the mineral interest). This fee simple determinable automatically expires and the mineral interest reverts back to the landowner when the lessee fails to produce in paying quantities. Because oil and gas leases involve the transfer of real property, they are governed by the 21-year statute of limitations for the recovery of real estate (R.C. 2305.04). S.B. 219 creates a legal fiction by treating quiet title actions to recover vested property rights as simple breach of contract claims, facilitating oil and gas companies stripping Ohio landowners of their mineral rights without the 21-year protection enjoyed by every other property owner in the State of Ohio.
2. **Rewarding Non-Compliance and Creating Perpetual Clouds on Title:** R.C. 5301.09 requires a lessee to record a release of lease in the county records when an oil and gas lease expires. In practice, this rarely happens. S.B. 219 actively rewards this non-compliance with the law by preventing courts from recognizing lease termination and expiration claims after only six years. This will trap Ohio landowners who face a significant information deficit in determining whether a lease has expired, and often rely on companies to fulfill their legal obligation to file a release. If a company fails to record a release and six years pass from whatever date the lease is deemed to have expired, S.B. 219 deprives Ohio landowners of any legal remedy to recover their real property. This creates a permanent cloud on the landowner's title and effectively assists oil and gas companies in stripping Ohio citizens of their property rights without the 21 year protection they should have.

3. Accrual Issue: Another critical issue with shortening the statute of limitations for lease termination/expiration claims is the uncertainty regarding when these claims actually accrue. Under S.B. 219, a cause of action for lease expiration accrues the moment a lease first expires, starting the 6-year clock. As referenced above, the “fee simple determinable” interest conveyed in a lease automatically expires when a lessee fails to produce in paying quantities. However, Ohio courts have recognized that failing to produce in paying quantities must involve more than a mere temporary cessation of production. Crucially, Ohio courts have also avoided adopting a “bright-line” rule regarding when a temporary cessation becomes a permanent expiration, holding instead that this must be determined on a case-by-case basis. Consequently, Ohio landowners will not only have less than one-third of the time they currently have to recover property interests, but will also be forced to guess when this much shorter clock actually begins to run in most cases.
4. Statutory Curing of Defective Title: S.B. 219 further prejudices landowners by subjecting their claims for lease termination or expiration to a single accrual date even if a company takes no further actions under the lease. For example, if a company fails to produce for 10 straight years and a landowner brings a quiet title lawsuit, that lawsuit could be dismissed under S.B. 219 simply because the expiration claim may be deemed to have first accrued in year three even if there has been continual non production for all 10 years. The right to clear a title should remain available to Ohio landowners for so long as non-production continues. Claims for lease expiration should not be deemed to accrue unless and until the company attempts to resume production or takes overt actions indicating it believes the lease is in effect.
5. Extortionary Leverage and Loss of Marketable Title: By creating a narrow window for Ohio landowners to recover their real property interests, S.B. 219 will result in perpetual clouds on title that landowners cannot clear. This will prevent them from having marketable title of their minerals and forever prevent them from re-leasing or selling their land with clear title without the company. Oil and gas companies will use this leverage to extort Ohio landowners forcing them to sign a new, unfavorable lease to develop their minerals or demanding a “buy-out” fee to provide the release they were legally required to provide under R.C. 5301.09.

Treating an action to recover a real property interest as a simple contract claim is a legal fiction that violates the spirit of Ohio’s property law. It strips Ohio mineral owners of the 21-year protection enjoyed by every other property owner in Ohio. As the Ohio Supreme Court recognized, because expiration of an oil and gas lease is a title issue, the 21-year statute of limitations must apply. The amendment to R.C. 2305.041 should be removed from S.B. 219 to protect the property rights of Ohio citizens and ensure oil and gas companies cannot strip them of these rights after only 6 years.

In closing, I hope that you understand the detrimental impact the amendments to R.C. 1509.28 and R.C. 2305.041 will have on Ohio landowners. On behalf of all Ohio landowners, I hope that you will oppose this harmful legislation unless it is revised to: (1) remove the harmful amendments to R.C. 1509.28 and R.C. 2305.041, or (2) substantially modify those amendments to address the issues discussed in this testimony. Thank you for your time and thoughtful consideration.