

SPLITTING THE WIND: WHY STATE RECOGNITION OF THE WIND ESTATE SUPPORTS LANDOWNERS

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ABSTRACT

The rapid expansion of wind energy development across rural America has created new opportunities for landowners to generate additional income from agricultural properties. Yet the legal status of wind rights remains uncertain in

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many jurisdictions. This Note examines the emerging concept of the wind estate, a severable property interest in the right to capture and commercially exploit wind energy and argues that state recognition of the wind estate can provide realized economic benefits to landowners while supporting the continued growth of the renewable energy sector.

As wind development accelerates across agriculturally significant regions, courts and legislatures have increasingly been forced to address whether wind rights may be severed from the surface estate in a manner similar to mineral rights. This Note analyzes the developing legal framework surrounding wind rights, focusing on the recent Texas decision Ridge Renewables, LLC v. Hale County Wind Farm, LLC, which recognized wind rights as a severable real property interest. While this recognition provides greater certainty for developers and investors, the Note cautions that substituting oil and gas doctrines, particularly the dominant estate doctrine, into wind law could unintentionally subordinate surface owners and undermine their ability to participate in wind lease negotiations.

Some states have responded to this uncertainty by prohibiting the severance of wind rights altogether. This Note argues that such prohibitions unnecessarily restrict landowners' property rights and may discourage wind development. Instead, states should formally recognize and define the wind estate by statute while simultaneously extending surface owner protection laws to wind energy development. By clarifying property rights, priority rights, and ensuring fair compensation for surface impacts, statutory and judicial recognition of the wind estate can protect landowners' bargaining power, encourage renewable energy investment, and strengthen rural economies. Ultimately, a clearly defined wind estate coupled with surface owner protections offers a balanced legal framework for the future of wind development, and fosters a symbiotic relationship between farmers, landowners, and wind energy developers.

I. INTRODUCTION

Since Spindletop first rained black gold in 1901, American landowners have been separated into two groups: those paid for the fruits of their labor, and those paid for the fruits of their land, or more precisely for the fruits that lie deep below the surface.¹ According to the Agricultural Resource Management Survey (ARMS), farms which receive royalty payments from mineral right ownership on average have a greater acreage, increased farm income and net worth, and greater

1. Steven Rich, *How the Spindletop Oil Discovery Changed Texas and U.S. History*, DRILLERS.COM (July 1, 2018), <https://drillers.com/spindletop-oil-discovery/> [<https://perma.cc/B93V-UCL5>].

gross value of sale, when compared to farms without royalty payments for mineral rights.² Additionally, farmers that receive payments from mineral rights have a higher farm net worth, lower personal debt, and frequently have twice as many government payments received than those without mineral rights.³ For every dollar in mineral royalty payment received, the value of the acre on that farm increases \$2.60 for oil and gas activities.⁴

Although many farmers today may criticize the decision of their ancestors for failing to choose the land with minerals underneath, all hope is not lost. Those with ancestral pioneers who settled on land containing oil or gas underneath have a substantial advantage and financial safety net over those who were not as fortunate.⁵ But the rise of wind energy development and the severance of wind rights may level the playing field for landowners across the country looking for a safety net similar to that which oil and gas provide.⁶

Coke County, Texas, leads as a proficient example. As a county with roughly 3,000 residents in West Texas, its residents experienced the “biggest increase in economic output of any county in the country between 2019 and 2021,” entirely attributed to regional wind energy development.⁷ Before wind companies began leasing land and wind rights from landowners, the local economy was heavily dependent upon agriculture and a failing oil industry.⁸ However, shortly after wind companies began moving into the region and installing wind turbines, Coke County’s Gross Domestic Production (GDP) skyrocketed from “\$128 million to \$235 million,” about 83%.⁹ This economic impact has resulted in a per-capita GDP

2. ANNA STEHLE, DAMONA DOYE & JAMES WILLIAMSON, OKLA. COOP. EXTENSION SERV., *ENERGY DEVELOPMENT AND ITS IMPACT ON FARMS AND FARM HOUSEHOLDS*, 1060-4 (2017), <https://extension.okstate.edu/fact-sheets/print-publications/agec/energy-development-and-its-impact-on-farms-and-farm-households-agec-1060.pdf> [<https://perma.cc/3DYR-CMPZ>].

3. *Id.* at 1060-4, -6.

4. *Id.* at 1060-6.

5. *See id.* at 1060-3 to -4.

6. *See What Are the Economic Benefits of Wind Energy?*, U.S. DEP’T OF ENERGY: WINDEXCHANGE (Jan. 17, 2026, at 13:39 CT), <https://www.energy.gov/eere/wind/windexchange/local-economics> [<https://perma.cc/42QZ-2JFS>].

7. Tim Henderson, *Wind Farms Deliver Economic Jolt to Rural Middle America*, STATELINE (Jan. 18, 2023, at 00:00 CT), <https://stateline.org/2023/01/18/wind-farms-deliver-economic-jolt-to-rural-middle-america/> [<https://perma.cc/5FUL-XZQ3>].

8. Tonyia Cone, *A Tale of Two Counties’ Growth*, CNTY. MAG., Spring 2023, <https://www.county.org/county-magazine-articles/spring-2023/a-tale-of-two-counties-growth> [<https://perma.cc/G67M-BNKE>].

9. Henderson, *supra* note 7.

increase of about \$32,000 per person, with the average landowner royalty payment in the county at \$10,000.¹⁰ Although, the effect of the new industry is not solely being observed by the ranchers and landowners receiving wind royalty and lease payments.¹¹

Coke County is one of many to utilize the monetary gain from this new industry to fix their roads, build schools, and restore an aging infrastructure.¹² For example, in Hale County, Texas, the revenue generated from the Hale Wind Farm is currently being used to build a new school for the Petersburg Independent School District (ISD).¹³ The \$27 million school renovation project funded by wind energy revenues is awarding new opportunities for students in the rural community.¹⁴ In 2019, Petersburg ISD students earning at least a B-grade in their dual credit courses received \$10,000 back for tuition and books.¹⁵

While Texas leads the nation in wind energy production, this rural economic success story has been exhibited across the United States.¹⁶ Six out of the top ten counties with the highest GDP growth in the nation resulted from the development of wind energy.¹⁷ According to the Rocky Mountain Institute, “wind and solar power could generate \$60 billion in annual revenue by 2030,” with much of the benefits received by rural economies and agriculture.¹⁸ Of the \$60 billion, \$6 billion is attributed to the annual wages for local maintenance and construction jobs, \$2.7 billion stems from local tax revenue, and \$2.2 billion in yearly payments to landowners.¹⁹

The economic impact of wind production and development in rural America is transformative.²⁰ The developing industry of wind energy has been in areas known historically for resource dependence.²¹ Yet, wind energy companies are not

10. *Id.*

11. *Id.*

12. *Id.*; *Wind Farm in Petersburg to Fund \$27 Million School Renovation Project*, KCBD NEWSCHANNEL (July 25, 2019, at 14:57 CT), <https://www.kcbd.com/2019/07/25/wind-farm-petersburg-fund-million-school-renovation-project/> [https://perma.cc/D6BY-DFLF].

13. *Wind Farm in Petersburg to Fund \$27 Million School Renovation Project*, *supra* note 12.

14. *Id.*

15. *Id.*

16. *See* Henderson, *supra* note 7.

17. *Id.*

18. *Id.*

19. *Id.*

20. *See id.*

21. *See id.*

only protecting farmers, ranchers, and landowners with supplemental income, but protecting rural populations who are often at the mercy of rain, commodity prices, or the passage of a new Farm Bill.²²

II. HISTORY OF WIND ENERGY

While wind energy production in the United States has only been generated for about 50 years, the concept of harvesting wind as an energy source has long been embraced across the globe.²³ Harvesting wind to facilitate the daily lives of humans began around 5,000 BC with the invention of the sailboat on the Nile River in Egypt.²⁴ The first windmill was developed as a simple wind-powered water pump in China, as early as 200 BC.²⁵ This reed-woven contraption was used to siphon water from the earth.²⁶ The device eventually moved west, to Europe from the Middle East.²⁷ The movement brought the technology later developed to grind grain, saw wood, and irrigate row-crop agriculture as we know it today.²⁸

The American colonies took the primitive windmill concept and utilized it to water livestock, further advancing the agricultural production during westward expansion.²⁹ By the 1850s, the windmill was sold in the nation by the United States Wind Engine Company to serve the agricultural needs of homesteaders.³⁰ This windmill was a remote semblance of the original wind-powered water pump, developed centuries before in China.³¹

From humble beginnings and nearly 2,000 years of technological advancements, the United States Wind Engine & Pump Company's Halladay Windmill was used to create the first commercially viable wind turbine to generate

22. *Id.* (explaining how supplemental income has traditionally only been enjoyed by oil and gas heirs).

23. *Wind Explained: History of Wind Power*, U.S. ENERGY INFO. ADMIN. (Apr. 20, 2023), <https://www.eia.gov/energyexplained/wind/history-of-wind-power.php> [<https://perma.cc/6QBS-YGRQ>].

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *History of U.S. Wind Energy*, U.S. DEP'T OF ENERGY (Jan. 17, 2026, at 13:07 CT), <https://www.energy.gov/eere/wind/history-us-wind-energy> [<https://perma.cc/CYW9-RP3T>].

31. See *Wind Explained: History of Wind Power*, *supra* note 23.

electricity, and was implemented by Josef Friedländer in 1883.³² Within 100 years of discovering the electrical generation from wind, oil shortages in the 1970s forced the United States to seriously consider wind energy as a legitimate solution to the energy crisis within the country.³³ By the 1980s, energy insecurity stemming from the United States' dependence on oil legitimized wind energy as an alternative source of electricity.³⁴ The nation's dependence on oil sparked the development of the wind energy industry as we know it today.³⁵

III. ADVANTAGES AND CHALLENGES OF WIND ENERGY DEVELOPMENT

There have been many advancements in the industry since the first wind turbine farm was installed in California in 1980.³⁶ These advancements include production tax credits, the creation of offshore wind farms, and the skyrocketing demand for “green energy,” but one immutable theme continues to remain.³⁷ Domestic wind energy development and production have macroeconomic impacts which hold benefits in improving the lives of landowners and rural Americans on a microeconomic scale.³⁸

Currently, there are approximately 150,000 individuals working in the wind industry throughout all 50 states.³⁹ “According to the [United States] Bureau of Labor Statistics, wind turbine service technicians are the fastest growing [United States] job of the decade.”⁴⁰ Additionally in 2022, “wind projects added \$20 billion to the [United States] economy” and accounted for more than 10% of the country's total net energy.⁴¹ The impact of domestic wind energy generation benefits the national economy, as well as the planet's environment.⁴²

According to the U.S. Department of Energy, wind energy in the United States helps avoid “336 million metric tons of carbon dioxide emissions . . . the

32. *The History of Wind Energy*, NAT'L GRID (Apr. 24, 2024), <https://www.nationalgrid.com/stories/energy-explained/history-wind-energy> [https://perma.cc/6NRP-HB4T].

33. *Wind Explained: History of Wind Power*, *supra* note 23.

34. *Id.*

35. *Id.*

36. *History of U.S. Wind Energy*, *supra* note 30.

37. *Id.*

38. *See Advantages and Challenges of Wind Energy*, U.S. DEP'T OF ENERGY (Jan. 17, 2026, at 13:00 CT), <https://www.energy.gov/eere/wind/advantages-and-challenges-wind-energy> [https://perma.cc/RN8S-LEBD].

39. *Id.*

40. *Id.*

41. *Id.*

42. *See id.*

equivalent of taking 73 million cars off the road.”⁴³ Wind turbines do not release carbon emissions and are built with minimal ecological impact, making them symbiotic to farming and ranching practices.⁴⁴ Setting aside the ecological benefits of fostering a resilient wind energy sector, energy generated from domestic wind turbines is currently more cost effective in production than energy derived from oil and gas.⁴⁵

In 2022, the International Renewable Energy Agency levelized cost of electricity (LCOE) global weighted average of new onshore wind energy projects, finding it “was 52% lower than the cheapest fossil fuel-fired solutions.”⁴⁶ Although fossil fuels continue to account for 84% of the energy generated in the United States, wind energy presents the opportunity to meet growing energy demands while simultaneously benefitting rural economies, landowners, and the global environment.⁴⁷

A. Politicization of Climate Policy

While wind energy shows a real promise to occupy a larger percentage of the United States’ energy portfolio, the entire industry faces grim challenges it must overcome to be the next “black gold.” For instance, the wind industry is inextricably tied to federal funding and subsidies, most commonly in the form of Production Tax Credits (PTC).⁴⁸ This makes success uniquely vulnerable and sensitive to administrative changes and congressional actions.⁴⁹ The PTC began with the enactment of the Energy Policy Act of 1992, signed by President George

43. Alex Thompson, *Renewable Energy Cleans Up the Environment*, CLEAN GRID ALL.: BLOG (Apr. 22, 2024), <https://cleangridalliance.org/blog/126/renewable-energy-cleans-up-the-environment> [https://perma.cc/6YWU-5N38].

44. See *Wind Energy Basics*, U.S. DEP’T OF ENERGY (Jan. 29, 2026, at 13:23 CT), <https://www.energy.gov/eere/wind/wind-energy-basics> [https://perma.cc/V4P5-3MND].

45. *Cost of Energy in Montana: Wind, Solar, and Hydroelectric vs. Fossil Fuels*, MONT. ENV’T INFO. CTR. (Jan. 17, 2026, at 13:02 CT), <https://meic.org/cost-of-wind-vs-fossil-fuels/> [https://perma.cc/M74P-DBUQ].

46. MICHAEL TAYLOR ET AL., INT’L RENEWABLE ENERGY AGENCY, RENEWABLE POWER GENERATION COSTS IN 2022, at 15 (2023), https://elettromagazine.it/wp-content/uploads/2023/09/IRENA_Renewable_power_generation_costs_in_2022_SUMMARY.pdf [https://perma.cc/2KTK-DNB].

47. *U.S. Energy Facts Explained*, U.S. ENERGY INFO. ADMIN. (July 15, 2024), <https://www.eia.gov/energyexplained/us-energy-facts/> [https://perma.cc/94JN-4HBS].

48. See Xi Lu et al., *The Impact of Production Tax Credits on the Profitable Production of Electricity from Wind in the U.S.*, 39 ENERGY POLICY 4207, 4208 (2011).

49. See *id.*

H.W. Bush.⁵⁰ It allows owners of wind energy projects “to claim a [substantial] tax credit on their corporate income tax returns.”⁵¹ This tax credit makes it economically feasible for wind energy companies to sell the generated electricity at a lower cost and is credited for the rapid development in the industry.⁵² In an effort to reduce inflation by making the renewable energy industry more competitive, Congress extended the PTC, along with other federal tax credits and subsidies for wind projects in the Inflation Reduction Act in 2022.⁵³ The inclusion of wind projects in the Inflation Reduction Act secured the industry’s success through 2024, but the wind industry is not relieved from the PTC being at the mercy of Congress.⁵⁴

B. Susceptibility of Legislative Action and Changing Political Landscape

Additionally, climate policy is often a highly politicized and partisan issue, making it uniquely susceptible to changes in administrations.⁵⁵ For example, President Donald Trump’s re-election victory in November 2024 led investors to offload thousands of shares of wind energy stock, and launched a steady increase in the purchase of large quantities of oil and gas stocks following the election.⁵⁶ This devastating blow to the wind industry came from the President-Elect stating that he “wants to repeal a 2022 Biden administration climate law that promised to channel several hundred billion dollars of tax incentives, loans and grants into the [renewable energy] sector.”⁵⁷ These tax incentives, loans, and grants that the 2025

50. Energy Policy Act of 1992, Pub. L. No. 102-486, § 1914, 106 Stat. 2776, 3020 (codified as amended at 26 U.S.C. § 45); Lisa Chavarria, *Wind Power: Prospective Issues*, 68 TEX. BAR J., 832, 834 (2005).

51. § 1914, 106 Stat. at 3020–23; Chavarria, *supra* note 50, at 834.

52. Chavarria, *supra* note 50, at 834.

53. See Inflation Reduction Act 2022, Pub. L. No. 117-169, §§ 13101–02, 136 Stat. 1818, 1906–21 (codified as amended at 26 U.S.C. §§ 45, 48); *Summary of Inflation Reduction Act Provisions Related to Renewable Energy*, U.S. ENV’T PROT. AGENCY (July 29, 2025), <https://www.epa.gov/green-power-markets/summary-inflation-reduction-act-provisions-related-renewable-energy> [<https://perma.cc/8DUM-6ULA>].

54. Dan McCue, *Reports Capture Inflation Reduction Act’s Impact on Wind Sector*, THE WELL NEWS (Aug. 26, 2024), <https://www.thewellnews.com/renewable-energy/reports-capture-inflation-reduction-acts-impact-on-wind-sector/> [<https://perma.cc/L6EZ-HVCB>]; see Inflation Reduction Act of 2022, §§ 13101–02, 136 Stat. at 1906–21. See generally *What Are the Economic Benefits of Wind Energy*, *supra* note 6.

55. See Amrith Ramkumar & Scott Patterson, *Trump’s Win Threatens U.S. Clean-Energy Boom*, WALL ST. J. (Nov. 9, 2024, at 10:00 ET), https://www.wsj.com/politics/policy/trumps-win-threatens-u-s-clean-energy-boom-04f16fa8?mod=saved_content.

56. *Id.*

57. *Id.*

Trump Administration has vowed to repeal include the PTC and the Inflation Reduction Act.⁵⁸ These programs have historically decided the success of the industry since the 1990s.⁵⁹ The industry also faces challenges in addition to the relative dependance on federal subsidies and production incentives.⁶⁰ The industry is also limited by state infrastructure, environmental permitting, a current lack of available power transmissions, and most notably, state grid capacities.⁶¹

C. Overproduction of Energy: Impact on Power Grids

Wind farms often produce more electricity than power grids are capable of handling and transmitting, resulting in a surplus of wind energy.⁶² These surpluses occur across the country as states lack the proper infrastructure to adequately process this energy.⁶³ Therefore, wind farms are often required to detach from the state grid in order to prevent a statewide electrical emergency.⁶⁴ For example, states will often pass Renewable Portfolio Standard legislation, which incentivizes renewable energy development in the state while establishing benchmark goals for renewable energy development.⁶⁵ In 1999, the Texas legislature established the Texas Renewable Portfolio Standard, which was signed into law by then-Governor George W. Bush, and incentivized wind energy production by establishing

58. *Id.*

59. *Wind Explained: History of Wind Power*, *supra* note 23; Brian Lips Sr., *The Past, Present, and Future of Federal Tax Credits for Renewable Energy*, NC CLEAN ENERGY TECH. CTR.: BLOG (Nov. 19, 2024), <https://nccleantech.ncsu.edu/2024/11/19/the-past-present-and-future-of-federal-tax-credits-for-renewable-energy/> [<https://perma.cc/AJ3Q-63BP>].

60. *See State Renewable Energy Resources*, U.S. ENV'T PROT. AGENCY (Dec. 10, 2025), <https://www.epa.gov/statelocalenergy/state-renewable-energy-resources> [<https://perma.cc/4WEU-U7Z4>] (describing different barriers to expanding renewable energy); *see also* Cameron K. Rivers, *Change in the Wind: Severance of the Wind Estate in Texas*, 14 TEX. J. OIL, GAS & ENERGY L. 91, 93–94 (2019) (discussing challenges with wind energy production levels in Texas).

61. *See State Renewable Energy Resources*, *supra* note 60; Rivers, *supra* note 60, at 93–94.

62. Jayme Lozano, *Why the High Plains Turns Off Its Turbines to Limit Wind Production While the Texas Power Grid Is Stressed*, KCB D NEWSCHANNEL (Aug. 2, 2022, at 10:58 CT), <https://www.kcbd.com/2022/08/02/why-high-plains-turns-off-its-turbines-limit-wind-production-while-texas-power-grid-is-stressed/> [<https://perma.cc/KD6G-YW4B>]; Rivers, *supra* note 60, at 93–94.

63. *See* Lozano, *supra* note 62.

64. *Id.*

65. *State Renewable Portfolio Standards and Goals*, NAT'L CONF. OF STATE LEGISLATORS (Aug. 13, 2021), <https://www.ncsl.org/energy/state-renewable-portfolio-standards-and-goals> [<https://perma.cc/5VLN-DVH2>]; *see* Rivers, *supra* note 60, at 92–93.

benchmarks.⁶⁶ In 2005, the legislature raised the production benchmark goals to mandate 5,880 megawatts (MW) by 2015.⁶⁷ However, the Texas legislature in 2005 could not expect that within three years of establishing those goals, one farm in McCamey, Texas, would produce over one third of the target wattage for 2015 alone.⁶⁸ “The problem was that while the wind farm in McCamey could produce 760 MW of electricity, the local grid could only handle 400 MW.”⁶⁹ Issues such as these require state utility authorities to authorize inefficient curtailments of energy production.⁷⁰ In turn, this often results in a reduced sale of electricity, failure to perform contractual obligations, expensive litigation between wind farms and energy consumers, and expensive ad hoc legislation aimed at treating the symptoms and not the problem.⁷¹

While there are many challenges facing the wind energy sector, such as lagging infrastructure, political vulnerability, and regulatory limits, landowners in many states are being left out of the national conversation on this issue while feeling the effects of industrial insecurity.⁷²

IV. THE WIND ESTATE: DEFINING WIND RIGHTS IN A REGULATORY VOID

Many states are taking active roles in encouraging wind development by creating tax incentives and renewable portfolio standards.⁷³ Yet, states often fail to regulate wind development because the line is frequently blurred where federal regulation jurisdiction ends and a state’s authority to regulate begins.⁷⁴ States often do not regulate the emerging industry because environmental and production regulations may limit energy production.⁷⁵ In this regulatory void, most states have

66. Rivers, *supra* note 60, at 92.

67. *Id.* at 93.

68. *Id.*

69. *Id.*

70. See, e.g., FPL Energy, LLC v. TXU Portfolio Mgmt. Co., 426 S.W.3d 59, 62 (Tex. 2014) (showing an example of when the curtailment of energy production can cause issues for energy producers).

71. See generally *id.* (discussing the potential outcomes of the curtailment of energy production as shown by the previous example); Rivers, *supra* note 60, at 93–94.

72. See generally *State Renewable Energy Resources*, *supra* note 60 (laying out the most common barriers to renewable energy).

73. *Id.*; *State Renewable Portfolio Standards and Goals*, *supra* note 65.

74. Alexandra B. Klass, *Federalism “Collisions” in Energy Policy*, THE REGUL. REV. (Nov. 19, 2018), <https://www.theregreview.org/2018/11/19/klass-federalism-collisions-energy-policy/> [<https://perma.cc/JHQ6-6Y9R>].

75. See IOWA WORKFORCE DEV., WIND ENERGY AND WILDLIFE RESOURCE MANAGEMENT IN IOWA: AVOIDING POTENTIAL CONFLICTS (Apr. 4, 2018), https://publications.iowa.gov/39395/1/wind_wildliferecs.pdf [<https://perma.cc/8CBM-2HD9>].

failed to address or define exactly what rights landowners have to the wind in their leasing agreements, and how those rights relate to the surface estate.⁷⁶ The prevalence of wind energy development in the United States' national energy portfolio and the significant impact of the "wind boom" on landowners in rural America has forced many states' hands in addressing whether a landowner has the right to sever the wind estate from the surface estate, similar to mineral rights.⁷⁷

A. The Wind Estate

Although no court has yet defined "wind estate," the term generally refers to the alienable rights to develop land for a commercial wind farm.⁷⁸ In other words, the wind estate is a separate property interest in wind, rather than the surface and can be reserved, sold, leased, or devised.⁷⁹ The concept of a wind estate is analogous to mineral rights in that they give "the owner the right to exploit a natural resource for commercial purposes, in this instance either by erecting wind turbines or entering into a wind lease."⁸⁰

It is well established common law in many jurisdictions that the owner of land can sever the surface estate from the mineral estate, creating "a separate corporeal estate in the minerals."⁸¹ Analogously, severing the wind estate from the surface estate to create a stand-alone interest in wind typically occurs in one of three ways: (1) by "[a] deed in which wind rights are either granted or reserved;" (2) "[a] will that devises wind rights apart from other incidents of ownership [surface rights];" or (3) "[a]n easement."⁸² A severed right in wind is most similar to a mineral right; so much so that state courts have adopted oil and gas jurisprudence in the absence of a clear legislative scheme surrounding wind ownership when faced with questions of law.⁸³

B. Legality of the Wind Estate and Ridge Renewables

Although landowners across the country have been severing wind rights from surface estates for decades, the legality of the practice and property interest

76. 61 CAIL ANNUAL INSTITUTE ON ENERGY LAW § 15.04, LexisNexis (database updated 2025).

77. Rivers, *supra* note 60, at 94–95.

78. See 1 WIND AND SOLAR LAW § 5.01, LexisNexis (database updated 2025).

79. See *id.*

80. *Id.*

81. Bagby v. Bredthauer, 627 S.W.2d 190, 194 (Tex. App. 1981).

82. WIND AND SOLAR LAW, *supra* note 78.

83. Chavarria, *supra* note 50, at 835 (discussing the analogous treatment of wind rights to mineral rights); see discussion *infra* Section IV.B.

has been somewhat speculative.⁸⁴ The result has been a largely academic debate rather than an applicable body of law surrounding the very real market of buying, selling and leasing wind rights.⁸⁵ However, in August 2023, the District Court in Hale County, Texas formally recognized the legitimacy of one's severed property right in wind in the groundbreaking case *Ridge Renewables, LLC v. Hale County Wind Farm, LLC*.⁸⁶ In *Ridge Renewables*, the Court found the wind estate, "or the ability to capture wind energy for profitable sale, [is] severable from a surface estate."⁸⁷

Currently, this case is pending on appeal before the Texas Supreme Court after the Amarillo Court of Appeals reversed the lower court's decision for procedural issues.⁸⁸ However, the decision to recognize the legality of a severed interest in wind provides a breath of fresh air to many landowners who have conveyed or reserved their rights to receive wind energy royalties, and to the wind developers and energy companies who have invested significant capital into securing wind interests that have been largely speculative up until this point.⁸⁹

Prior to the decision in *Ridge Renewables*, there have only been a handful of cases which have indirectly recognized the legality of a severed wind estate by parity of reasoning: *Contra Costa Water District v. Vaquero Farms, Inc.* and *Romero v. Bernell*.⁹⁰ In *Contra Costa*, the court faced the issue of whether wind rights are severable in condemnation proceedings by a public entity after a water district sought to condemn land that was subject to wind lease agreements.⁹¹ The California court held in the affirmative and decided that condemnation proceedings could sever wind rights, creating a distinct wind estate separate from the surface estate.⁹² After condemning the surface and reserving the wind rights to the

84. Jacob R. Lederle, To Sever, or Not to Sever, That is the Question. Wind Rights in Texas., 1 J. OF THE ENERGY L. PRAC. 22 (2022).

85. Rivers, *supra* note 60, at 94.

86. Final Judgment at 1–3, *Ridge Renewables, LLC v. Hale County Wind Farm, LLC*, No. A43616-2012 (64th Dist. Ct., Hale Cnty., Tex. Aug. 17, 2023); JAMES N. JOHNSON, 3 TEXAS PRACTICE GUIDE: REAL ESTATE TRANSACTIONS § 17:109, Westlaw (database updated 2025).

87. JOHNSON, *supra* note 86.

88. *Id.*; Sw. Pub. Serv. Co. v. Ridge Renewables, LLC, No. 07-23-00421-CV, 2025 WL 2046136 (Tex. App. July 21, 2025); Petition for Review, Sw. Pub. Serv. Co. v. Ridge Renewables, LLC, No. 07-23-00421-CV (Tex. Nov. 17, 2025).

89. See Rivers, *supra* note 60, at 93–94, 102–03, 114.

90. *Id.* at 95; *Contra Costa Water Dist. v. Vaquero Farms, Inc.*, 58 Cal. App. 4th 883, 888 (1997); *Romero v. Bernell*, 603 F. Supp. 2d 1333, 1335 (D.N.M. 2009).

91. *Contra Costa Water Dist.*, 58 Cal. App. at 887–88.

92. *Id.* at 887–88, 892–95.

Appellant, the court reasoned that “[t]he right to generate electricity from windmills harnessing the wind, and the right to sell the power so generated, is no different, either in law or common sense, from the right to pump and sell subsurface oil, or subsurface natural gas by means of wells and pumps.”⁹³

Through alternative reasoning, the court in *Romero* indirectly recognized the validity of wind rights by analogizing the ownership of wind rights to that of water rights.⁹⁴ The court held that absent wind power generation, the separate rights have not vested, because they cannot be “possessed” without employing them for a useful purpose.⁹⁵ However, this case ultimately found that the issue was not ripe for decision considering the overarching issue was partition.⁹⁶

Although both *Costa Contra* and *Romero* recognize a qualified severance from the surface and propose treatment of a severed wind estate, neither case dispositively supports the legal validity of a severed wind estate like the decision in *Ridge Renewables*.⁹⁷ In *Ridge Renewables*, the court considered the validity of a reservation of wind rights (the King Reservation), after the surface had been leased for wind production and the holder of the wind estate sued for trespass.⁹⁸ In 2010, Glendale King reserved all the wind rights on a property he had leased to a wind farm, and sold the surface estate to the Smalley family.⁹⁹ In 2017, the Hale County Wind Farm (wind farm) leasing the surface estate then extended the lease agreement with the Smalley family absent Mr. King’s knowledge, consent, or approval.¹⁰⁰ The wind farm then erected two additional wind turbines on the Smalley family’s surface estate.¹⁰¹

In 2020, Mr. King conveyed the King Reservation to Ridge Renewables LLC, and upon discovering the wind farm’s wind energy generation, Ridge Renewables brought suit for trespass and other causes of action.¹⁰² The district court granted partial summary judgment in favor of Ridge Renewables, holding

93. *Id.* at 894.

94. *Romero*, 603 F. Supp. at 1335.

95. *Id.*

96. Rivers, *supra* note 60, at 95.

97. *Id.* at 96; see David Runnels, Peter Hays & Hannah Grayem, *Are Wind Rights a New Stick in the Bundle?*, LAW.COM: TEX. LAW. (Nov. 28, 2023, at 12:53 CT), <https://www.law.com/texaslawyer/2023/11/28/are-wind-rights-a-new-stick-in-the-bundle/?slreturn=20260221220021>.

98. Runnels, Hays & Grayem, *supra* note 97.

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

that, “[t]he King Reservation enabled King to retain the Property’s Wind Rights—a real property severable right reflecting ownership of the right to lease—and therefore develop—wind energy” and awarded Ridge Renewables over \$1,000,000 in damages.¹⁰³

The court’s decision in *Ridge Renewables* to outright recognize the validity of the wind estate as a separate property right provides a sense of security to those participating in the wind energy market holding severed wind rights.¹⁰⁴ However, absent the Supreme Court of Texas or the Seventh Court of Appeals providing clear limitations and framework surrounding these severed rights, *Ridge Renewables* raises more questions than it answers.¹⁰⁵ For landowners, the decision in *Ridge Renewables* raises dire issues founded in common law principles of property law which could threaten to exclude surface owners from wind lease agreements altogether.¹⁰⁶

V. CONSEQUENCES OF TREATING WIND RIGHTS LIKE MINERAL RIGHTS

A severed wind estate can provide farmers and landowners with financial security, additional streams of revenue, and more freedom in succession planning.¹⁰⁷ If courts and state legislatures are not careful when characterizing the wind estate, this new stick in the bundle of property rights could be devastating to surface owners.¹⁰⁸

For instance, the courts deciding *Ridge Renewables* and *Costa* align with other legal academics across the country who apply theories of mineral law when considering property issues surrounding the wind estate.¹⁰⁹ However, treating wind rights like mineral rights could exclude landowners from participating in wind lease agreements when considering how courts actually treat severed mineral estates.¹¹⁰

103. Brief of Appellee Ridge Renewables, LLC at 13, Sw. Pub. Serv. Co. v. Ridge Renewables, LLC, No. 07-23-00421-CV (Tex. App. July 21, 2025), 2024 WL 3496091 at *13.

104. *See id.*

105. Runnels, Hays & Grayem, *supra* note 97.

106. *See Rivers, supra* note 60, at 113.

107. *See id.* at 98.

108. *See id.* at 102.

109. *See id.* at 94–95; Lederle, *supra* note 84, at 22, 24.

110. *See Rivers, supra* note 60, at 113.

A. Applying the Dominant Estate Doctrine

When courts face issues of competing surface and mineral interests in a property, the mineral estate takes priority over the surface estate, known as the dominant estate doctrine.¹¹¹ This doctrine affirms that whoever holds the “severed mineral estate has the implied right to use as much of the surface estate as reasonably necessary to produce and remove minerals.”¹¹² Giving severed mineral estates priority over the surface estate is born out of the logic that the minerals beneath the surface are wholly worthless unless the holder of those mineral rights can “enter upon the land in order to explore for and extract the minerals” below.¹¹³ In practice, the mineral estate becomes the “dominant” estate, and the surface estate comes the “servient” estate because the holder of the mineral estate may reasonably access and use the surface estate without the consent of the landowner in order to extract minerals.¹¹⁴ If courts continue to adopt oil and gas law when addressing wind estate issues, and state legislatures fail to clearly define the metes and bounds of the wind estate, surface owners will likely become “servient” to the economic aspirations of the wind owners.

Applying the dominant estate doctrine to the wind estate means that wind development companies leasing severed wind rights would be entitled to make reasonable use of the surface to produce wind energy, even without signing a surface lease agreement.¹¹⁵ Accordingly, because wind rights would be worthless without the ability to erect wind turbines to generate energy, wind right owners have “the right to use as much of the land as . . . necessary or convenient to [their] business, [they] may, where it is necessary or convenient to do so, use and occupy the whole surface of the land, even to excluding the surface owner”¹¹⁶

B. Applying the Accommodation Doctrine

Although the wind estate would be given priority because it is the “dominant” estate, the right to enter upon someone else’s surface to access, extract,

111. *Id.* at 104–06; *Coyote Lake Ranch, LLC v. City of Lubbock*, 498 S.W.3d 53, 60 (Tex. 2016).

112. *Coyote Lake Ranch*, 498 S.W.3d at 60.

113. *Id.*

114. *Id.*

115. See Ryan Moore, *What Is Surface Use Agreement and How Does It Work*, PHEASANT ENERGY (Apr. 1, 2025), <https://www.pheasantenergy.com/surface-use-agreement/> [<https://perma.cc/2767-5ZDZ>] (describing that surface lease agreements are voluntary, and mineral rights owners may use all the surface estate for mineral production without compensating the surface rights owners).

116. *Jensen v. Sheker*, 1 N.W.2d 262, 268 (Iowa 1941) (describing the dominant estate doctrine).

and develop the resources is not without limits.¹¹⁷ The accommodation doctrine works to limit the scope of the dominant estates doctrine and states “the dominant estate’s use of the surface must reasonably accommodate existing surface uses.”¹¹⁸ In practice, the accommodation doctrine gives the surface owner the ability to limit the dominant estate’s right to access and develop the surface, if the surface owner can show “that there is an industry-acceptable alternative for the [dominant] estate to use” in extracting resources.¹¹⁹ Typically, surface owners have been able to limit the mineral owner’s use of the surface by showing that there are alternative drilling methods, such as horizontal drilling, which would be less harmful to the surface.¹²⁰

When applying the accommodations doctrine to cases where the surface owner is challenging the wind estate owner’s ability to erect wind turbines on their property, it is unlikely that a court would find any industry-acceptable alternative for generating wind power. Therefore, the dominant estate doctrine would dictate that, unless there is a less harmful alternative that can be used to generate wind power, wind companies leasing severed wind rights would be entitled to erect wind turbines absent the landowner’s approval or compensation.¹²¹

C. States Respond by Banning Wind Right Severance

The consequences of courts mistreating wind rights could easily disrupt the symbiotic relationship between landowners and wind companies if the interests of landowners are not considered when defining these severed rights in the future. In an effort to protect landowners’ interests in wind royalties and prevent competing land use litigation common with severed mineral estates, many states have passed anti-severance statutes, prohibiting landowners from severing the wind estate from the surface estate.¹²² States including South Dakota, North Dakota, Wyoming,

117. *Coyote Lake Ranch*, 498 S.W.3d at 60–61 (describing that the mineral and surface estates must exercise their respective rights with due regard for the other’s rights).

118. *Rivers*, *supra* note 60, at 106–07 (citing *Getty Oil Co. v. Jones*, 470 S.W.2d 618, 621–22 (Tex. 1971)).

119. *Id.* at 107–08 (citing *Haupt, Inc. v. Tarrant Cnty. Water Control & Improvement Dist. No. One*, 870 S.W.2d 350, 353 (Tex. App. 1994)).

120. *See Tarrant Cnty. Water Control & Improvement Dist. No. One v. Haupt, Inc.*, 854 S.W.2d 909, 911–13 (Tex. 1993).

121. *See Rivers*, *supra* note 60, at 106. *See generally Moore*, *supra* note 115 (describing that surface lease agreements are voluntary, and mineral rights owners (the dominant estate) may use all the surface estate for mineral production without compensating the surface rights owners).

122. K.K. DuVivier, *Rural Wind Windfalls*, 23 KAN. J.L. & PUB. POL’Y 401, 418 (2014).

Nebraska, Kansas, Oklahoma, Colorado and Montana have all prohibited the severance of the wind estate from the surface estate.¹²³

VI. THE SOLUTION IN RECOGNIZING THE WIND ESTATE AND ENACTING SURFACE OWNER PROTECTION LAWS

Although it is crucial for state legislatures to protect the interests of landowners, prohibiting wind severance restricts the landowners' freedom to do with their property as they wish, creating a chilling effect on wind development.¹²⁴ Wind severance stimulates wind development by making it easier for wind companies to lease and obtain wind rights, ultimately enriching property owners and rural communities while mitigating climate change.¹²⁵

A. State Legislatures Should Recognize and Define the Wind Estate

Instead of prohibiting the severance of wind, state legislatures should recognize and clearly define a wind estate by statute to place property owners, wind developers, and courts in the best possible position.¹²⁶ By recognizing severance by statute, courts would simply be able to analyze which rights belong to whom, and determine which interests have priority in order to avoid issues of conflicting dominant estates or competing surface uses altogether.¹²⁷

Aside from establishing priority and settling competing land use litigation, there is an urgency for states to recognize wind severance as land prices continue to skyrocket resulting from wind development in the Midwestern, Southern, and Western regions of the United States.¹²⁸ Landowners and farmers need to know

123. S.D. CODIFIED LAWS § 43-13-19 (2026); N.D. CENT. CODE ANN. § 17-04-04 (West 2026); WYO. STAT. ANN. § 34-27-103 (West 2026); NEB. REV. STAT. ANN. § 76-3004 (West 2025); KAN. STAT. ANN. § 58-2272 (West 2026); OKLA. STAT. ANN. tit. 60, § 820.1 (West 2026); COLO. REV. STAT. ANN. § 38-30.7-103 (West 2026); MONT. CODE ANN. § 70-17-404 (West 2026).

124. Rivers, *supra* note 60, at 102.

125. *See id.* at 102–03, 113.

126. *See id.* at 102.

127. *Id.*

128. Dean Graves, *Wind Rights and Title Coverage: Navigating the Current Landscape*, AMTRUST INS. (June 28, 2024, at 16:20 CT), <https://amtrustfinancial.com/blog/title/wind-rights-and-title-coverage-navigating-the-curr> [https://perma.cc/7FMH-HBFE]; Seth Baker, *How Wind Energy Projects Impact Farmland Values*, FARMPROGRESS (Feb. 13, 2018), <https://www.farmprogress.com/management/how-wind-energy-projects-impact-farmland-values> [https://perma.cc/4TR7-W3JE].

exactly what rights they have in order to adequately plan for their financial future.¹²⁹

Given the rapid growth of wind energy development, many landowners are looking for viable ways to “cash out” for ownership of the land, and “cash in” on the future ownership of wind rights which would result in long term royalty payments.¹³⁰ The necessity for states to recognize that wind rights are severable from the surface estate is dire when considering the United States lost 141,733 farm operations over five years, representing a 7% decline in agricultural production between 2017 and 2022.¹³¹

States recognizing wind rights as a separate and severable right from the surface estate could prove vital for farm economies like in California, where a wind severance could drive down excessive land prices.¹³² There is an agricultural crisis looming as the average age of a farmer in the United States continues to rise.¹³³ Young people with hopes of farming face high barriers of entry caused, in part, by these excessive land prices.¹³⁴ A state recognized wind estate severed from the surface could be part of the solution to decrease the price of land and in turn, the age of the average farmer.¹³⁵

B. Surface Owner Protection Laws

State courts’ and legislatures’ unwillingness to recognize a severed wind estate and define the associated rights often stem from fear that doing so would make the wind estate the dominant estate.¹³⁶ This, in turn, gives wind companies the ability to occupy the surface estate without a surface lease agreement, similar

129. Rivers, *supra* note 60, at 102.

130. Jeff Phelps, *Pitfalls of Severing Wind Rights*, LAND.COM: LAND MAGS. (Sept. 22, 2015), <https://network.land.com/selling/wind-rights-2/> [<https://perma.cc/T45X-FG2J>].

131. Daniel Munch, *Over 140,000 Farms Lost in 5 Years*, AM. FARM BUREAU FED’N: MKT. INTEL (Mar. 7, 2024), <https://www.fb.org/market-intel/over-140-000-farms-lost-in-5-years> [<https://perma.cc/ZL4C-B78M>].

132. See generally Phelps, *supra* note 130; Natalie Willis, *California Cropland Value Up 3%*, VALLEY AG VOICE (Aug. 7, 2023), <https://www.valleyagvoice.com/california-cropland-value-up-3/> [<https://perma.cc/4Q33-SZJM>] (describing how California cropland is valued at \$15,880 per acre).

133. Jodi Halvorson, *2022 Census of Agriculture Impacts the Next Generations of Farmers*, U.S. DEP’T OF AGRIC. (Feb. 22, 2023, at 11:18 CT), <https://www.usda.gov/media/blog/2023/02/22/2022-census-agriculture-impacts-next-generations-farmers> [<https://perma.cc/6JP3-3BK7>].

134. *Id.*

135. See *id.*

136. See Rivers, *supra* note 60, at 105.

to oil companies holding mineral rights.¹³⁷ However, state legislatures can look to laws protecting surface owners from dominant mineral estate owners for inspiration as a solution to potential conflicting interests.¹³⁸

Many energy producing states whose landowners face dominant estate issues have passed legislation to ensure surface owners are compensated, regardless of a severed mineral interest.¹³⁹ Existing legislation provides surface owners with compensation through at least one of two ways: first, by requiring drilling companies to negotiate written contracts with surface owners before drilling or exploration projects begin;¹⁴⁰ and secondly, by requiring drilling companies to post a bond to adequately compensate for surface damage before drilling begins.¹⁴¹

Take Oklahoma for example, who has enacted the State of Oklahoma's Surface Damages Act (OSDA).¹⁴² Oklahoma requires that before mineral companies enter onto the surface to conduct mineral related activities, companies must negotiate with the surface owner for the payment of any damages which may be caused by the drilling operation, as well as make a good faith attempt to sign a written surface usage agreement.¹⁴³ However, if the parties cannot reach an agreement or the landowner cannot be located, the company must petition the court to have the damages appraised before entering onto the property.¹⁴⁴ In the event that the parties cannot mutually agree on a fair price, an appraisal for surface damage and usage is required.¹⁴⁵ In that situation, both parties select an appraiser, and both appraisers will select a third appraiser in good standing with the Real Estate Appraisal Board.¹⁴⁶ These three appraisers will determine future surface damages sustained on the property and ultimately determine the amount of

137. *See generally id.* (discussing that the mineral estate holder is not required to obtain permission from the surface estate holder before occupying the property).

138. *See generally Surface Owner Protection Legislation*, EARTHWORKS (Jan. 17, 2025, at 13:26 CT), <https://earthworks.org/issues/surface-owner-protection-legislation/> [<https://perma.cc/5DG2-3JDH>] (providing various examples of state legislation protecting the rights of surface owners).

139. *See generally id.* (discussing state laws with compensation protections for surface owners).

140. *See id.*

141. *See id.*

142. *Id.* (discussing how Oklahoma enacted the Oklahoma Surface Damage Act as part of their surface owner protection laws to guard surface against the dominant estate doctrine).

143. *See id.*

144. OKLA. STAT. ANN. tit. 52, § 318.5 (West 2026).

145. *Id.*

146. *Id.*

compensation for surface use and damage to be paid from the operator to the landowner.¹⁴⁷

However, out of the states that require more payment to surface owners than a posted bond for damages, Oklahoma is somewhat unique in their surface owner compensation laws by requiring drilling companies to make an attempt to sign a surface use agreement.¹⁴⁸ Most other states only require energy companies to pay for damages and loss of agricultural production or income.¹⁴⁹ For example, in North Dakota, the Oil and Gas Production Compensation Act (the Act) dictates that drilling companies must pay landowners a sum of money equal to the damages for “loss of agricultural production and income, lost land value, lost use of and access to the surface owner’s land, and lost value of improvements caused by drilling operations.”¹⁵⁰ The Act also requires drilling companies to pay for damages to livestock or irrigation water supplies that are impacted by drilling to anyone within a half mile of the drilling site.¹⁵¹ These laws level the scales for landowners which courts have historically weighed to favor energy companies given the dominant estates doctrine.¹⁵² State legislatures should adopt surface owner protection laws already in action in the oil and gas industry and make them applicable to the wind industry in order to protect the interests of the surface owner while also considering the success and benefits of wind energy.

Additionally, states like North Dakota, South Dakota, and Montana have equipped their landowners with a model of surface owner protections that generally require the amount of damages be determined by any formula mutually agreed upon between the energy developer and surface owner.¹⁵³ If the surface owner rejects the drilling company’s offer, these laws allow the surface owner to take the company to court.¹⁵⁴ If the court awards more than the drilling company’s offer, the drilling company is responsible for paying attorney’s fees, costs, and

147. *Id.*

148. *Id.*; see *Surface Owner Protection Legislation*, *supra* note 138.

149. See generally *id.* (demonstrating that these selected states only require that energy companies must pay for damages and loss of agricultural production or income, but do not require a surface use agreement).

150. N.D. CENT. CODE ANN. § 38-11.2-04 (West 2026).

151. *Id.* § 38-11.2-07.

152. See Paul Yagelski, *The Landowner vs. The Owner of the Oil and Gas*, PRIMERUS (Jan. 17, 2026, at 1:20 CT), <https://www.primerus.com/article/landowner-vs-owner-oil-and-gas> [<https://perma.cc/HM73-JVGM>].

153. N.D. CENT. CODE ANN. § 38-11.2-04; S.D. CODIFIED LAWS § 45-5A-4 (West 2026); MONT. CODE ANN. § 82-10-504(b) (West 2026).

154. N.D. CENT. CODE ANN. § 38-11.2-06; S.D. CODIFIED LAWS § 45-5A-9; MONT. CODE ANN. § 82-10-508; TENN. CODE ANN. § 60-1-607.

interest.¹⁵⁵ Additionally, in North Dakota, punitive damages are awarded to the surface owner if the drilling company fails to provide notice of operating on that property.¹⁵⁶

Subjecting wind companies to these laws would bring landowners back to the table for wind lease negotiations while giving landowners the necessary judicial tools to hold wind companies responsible for any damages. States have significant interests in both their agricultural and wind energy industries and should look to the North Dakota model for inspiration by focusing on awarding damages based on the loss of agricultural value of the surface estate.¹⁵⁷ By enacting surface protection laws and requiring wind companies make a good faith attempt to sign surface lease agreements, and adequately compensate landowners for damages and potential losses, legislatures can restore the mutually beneficial relationship between wind companies and landowners.

VII. CONCLUSION

Wind energy development has revitalized rural communities across the United States by providing supplemental income to landowners through lease agreements and royalty payments, creating thousands of new jobs, and invigorating local economies with an increased tax base.¹⁵⁸ Although the wind industry is heavily dependent on federal subsidies making it uniquely vulnerable to acts of Congress and administrative changes, the benefits that wind energy generation provides for the environment and economy substantially outweigh the risks from the national perspective.¹⁵⁹

However, before a wind turbine can be erected, electricity generated, and energy consumed, wind companies and landowners must first know exactly what rights they both hold. Although courts and legislatures have been hesitant to define wind rights and recognize a landowner's ability to sever the wind estate from the surface estate, the Hale County District Court in Texas took a stance, and for the first time affirmed that wind is a real, severable property right reflecting ownership of the right to lease and develop wind energy.¹⁶⁰ This groundbreaking case not only affirmed that an interest in wind, like an interest in minerals, can be severed from

155. N.D. CENT. CODE ANN. § 38-11.2-06; TENN. CODE ANN. § 60-1-607.

156. N.D. CENT. CODE ANN. § 38-11.2-03.

157. See *Surface Owner Protection Legislation*, *supra* note 138.

158. *What Are the Economic Benefits of Wind Energy?*, *supra* note 6.

159. See *id.*

160. *Ridge Renewables, LLC v. Hale County Wind Farm, LLC*, No. A43616-2012 (64th Dist. Ct., Hale Cnty., Tex. Aug. 17, 2023).

and sold away from the surface estate, but raised questions regarding priority, surface usage, and property rights.¹⁶¹

To address these issues, state legislatures must enact statutes formally recognizing and defining the wind estate tailored to the wind industry, so that courts may look to code instead of common law from oil and gas to interpret who has what rights in a property. Clearly recognizing and defining the wind estate would largely prevent expensive litigation for wind companies leasing severed wind rights and landowners no longer in possession of these rights.

Additionally, state legislatures should not prohibit wind severance, as the legal mechanism is an indispensable instrument in a landowner's financial toolbox, but should extend surface owner protection laws to the wind industry. Surface owner protection laws would ensure that even if the severed wind estate is treated like the severed mineral estate, landowners retain the necessary tools to protect their interest in land against the dominant estate holder. Recognizing the wind estate and enacting surface owner protection laws protects the landowners' seat at the wind lease negotiations table, while ensuring landowners the freedom to sever the wind from their land if necessary.

161. *Id.*