

**IN THE SUPREME COURT OF OHIO**

CHRISTOPHER WENDT, *et al.*,

Plaintiffs-Appellees,

v.

CONSTANCE CLARK, *et al.*,

Defendants-Appellants,

Ohio Supreme Court Case No. 2014-2051

On Appeal from the Tuscarawas  
County Court of Appeals, Seventh  
District Court of Appeals

Court of Appeals Case No. 2012 CV  
02 0135

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**MEMORANDUM IN RESPONSE OF APPELLEES, CHRISTOPHER AND VERONICA  
WENDT**

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**STATEMENT AS TO WHETHER THIS CASE IS OF PUBLIC OR GREAT  
GENERAL INTEREST**

Despite Appellants’ claims otherwise, this case does not involve the interpretation of a statute which takes property rights. Instead, it involves the interpretation of a statute which sets forth strict guidelines for determining whether a party abandoned his or her property rights. Such a statutory abandonment mechanism is appropriate and has been condoned by this Court. *See State ex rel. A.A.A. Investments v. City of Columbus*, 17 Ohio St.3d 151, 152, 478 N.E. 2d 773 (1985) (finding that Ohio’s adverse possession statute does not operate a taking). Appellants’ claim that this case presents significant constitutional questions also misses the mark. As the Fifth District Court of Appeals stated, Appellants failed to timely bring this issue and likely waived the issue of whether the statute at issue raises due process concerns. *See Wendt v. Dickerson*, 5th Dist. Tuscarawas Case No. 2014 AP 01 0003, 2014-Ohio-4615, ¶ 41 (Oct. 16, 2014). As a result, Appellants cannot raise the issue of constitutionality with this Court. At the same time, the statute does not violate federal or state due process protections, a conclusion supported by prior precedent of this Court and the United States Supreme Court.

In 1989, Ohio adopted the Ohio Dormant Mineral Act (R.C. 5301.56 (in effect prior to June 30, 2006)) (“1989 DMA”) as a statute of abandonment focusing on unused and neglected severed mineral interests. To retain an otherwise dormant mineral interest, one of the following must occur within the preceding twenty years:

1. The mineral interest must have been subject to a title transaction that has been filed or recorded with the county recorder’s office in the county in which the property is located;
2. The holder of the mineral interest obtained actual withdrawal or production of minerals from the mineral interest, i.e. from lands specifically associated with the mineral interest;
3. The mineral interest has been used in underground storage;

4. A drilling permit has been issued to the holder;
5. An appropriate claim to preserve has been filed with the county recorder's office; or
6. A separate tax identification number has been issued to the severed mineral interest.

R.C. 5301.56(B)(1)(c)(i)-(vi) (in effect prior to June 30, 2006). Appellants do not dispute that the mineral interest at issue was not subject to a preserving event under the 1989 DMA.

Appellants misstate that the Seventh District Court of Appeals is split on the issues presented in this appeal. The Seventh District Court of Appeals would decide these issues in favor of Appellees. *See e.g., Eisenbarth v. Reusser*, 7th Dist. Monroe No. Case No. 13 MO 10, 2014-Ohio-3792, (Aug. 28, 2014). The fact that one of the four judges offers a dissenting opinion on one issue, the analysis of which other judges have rejected, does not mean the Seventh District's jurisprudence is split. The precedent of that court is clear: if a mineral holder failed to subject his or her interest to a savings event under the 1989 DMA, the interest was abandoned and vested with the surface estate. *Id.*

Appellants also mischaracterize the 1989 DMA as a forfeiture statute. The 1989 DMA is not a forfeiture statute; instead, it is a statute of abandonment focusing on the inaction of property owners, akin to Ohio's adverse possession statute or Ohio law on the abandonment of personal property. Further, Appellants wrongly claim that this case will decide who is entitled to billions of dollars. While the economic benefit of mineral ownership will be an ancillary benefit of the decisions on the 1989 DMA, that benefit is just that--ancillary. Instead, the real issue is whether the lower court appropriately applied the plain language of the 1989 DMA when deciding that Appellants' inaction for over five decades resulted in their abandoning their property rights.

Appellants also attack the authority of the trial court and the Fifth District by creating a straw-man argument that they have not been appropriately advised as to why their position is erroneous. This could not be further from the truth. The trial court issued a twenty-three-page opinion telling Appellants why their positions are wrong. (P32-54 of the Appendix to Appellants' Memorandum in Support of Jurisdiction). The Fifth District Court of Appeals, citing to the Seventh District Court of Appeals' jurisprudence on these issues, presented a well-reasoned analysis of why Appellants are wrong. And since Appellants simply raised arguments which were raised in the cases before the Seventh District, a fact pointed out by the Fifth District, it was appropriate for the lower court to make reference to those decisions.

### **STATEMENT OF THE CASE AND FACTS**

This case involves a reservation of oil and gas rights ("Reservation"). The Reservation was created in 1952. From 1952 to 2011, Appellants took no action relating to that reservation. Thus, Appellants allowed the reservation to remain dormant for approximately 60 years. Appellants claim to be the heirs and/or successors of the original holders of the reservation. At no time between 1952 and the present, were Appellants conveyed any right in the reservation of record.

During that fifty-nine-year period (1952-2011), Appellants and/or their predecessors failed to take a single action to use the reservation. Subsequently, Appellants, for the first time in more than five decades, claimed ownership of the reservation, filing certain documents in February 2011. However, Appellants, and Appellants predecessors-in-title, had previously failed to take any action for in excess of 20 years under the 1989 DMA.

## ARGUMENTS AGAINST PROPOSITIONS OF LAW

I. **PROPOSITION OF LAW NO. I: The 2006 version of the Ohio Dormant Minerals Act controls the vesting of title in a surface owner who did not make a claim for the mineral interests before the 2006 enactment.**

Appellants' Proposition of Law Number I erroneously presumes that the 1989 DMA was not an automatic abandonment and reversion statute. As Appellants have not properly raised the issue of whether the 1989 DMA was self-executing (*See* Section III) the Court should not accept the issue of whether the 2006 amendments may be retroactively applied against Appellees. Even if the Court were to consider this issue, Appellants' position lacks merit.

A. **The 2006 amendments to the 1989 DMA could not undo the 1989 DMA's prior operation.**

It is precisely because the 1989 DMA is self-executing that the 2006 amendments to the statute can have no effect on Appellees' property rights. *Swartz v. Householder*, 7th Dist. Nos. 13 JE 24 and 13 JE 25, 2014-Ohio-2359, ¶34 (“[W]hen the 2006 version was enacted, any mineral interest that was abandoned under the 1989 version stayed abandoned and continued to be vested in the surface owner, and once the mineral interest vested in the surface owner, it reunited with the surface estate pursuant to statute regardless of whether the event has yet to be formalized.”); *Walker v. Shondrick-Nau*, 7th Dist. No. 13 No. 402, 2014-Ohio-1499 (Apr. 3, 2014). Despite this fact, Appellants ask that the 2006 amendments be applied retroactively against any surface owner who acquired rights under the 1989 DMA's prior operation. Appellants' desired result violates Ohio law and must be ignored.

When determining whether a repeal or amendment of a statute may be applied retroactively, Ohio courts follow a two-prong test. *State of Ohio v. Consilio*, 114 Ohio St.3d 295, 871 N.E.2d 1167 (2007). The first prong, created in accordance with R.C. 1.48, asks whether the statute was “expressly made” retroactive. R.C. 1.48; *Hyle v. Porter*, 117 Ohio St.3d 165, 882

N.E.2d 899 (2008). Only if the answer is “yes” can one then proceed to the second prong, which focuses upon whether the statute affects substantive rights or is remedial in nature. *Consilio*, 114 Ohio St.3d 295. The second prong asks whether the Legislature was “empowered to do so.” *Id.*

1. ***The 2006 amendments do not expressly provide for retroactive application.***

The default rule is that statutes are applied prospectively. *Id.* If the retroactivity of a statute is not expressly stated in plain terms, the presumption in favor of prospective application controls and ends the analysis. *Id.*, paragraph one of the syllabus (“A statute must clearly proclaim its own retroactivity to overcome the presumption of prospective application. Retroactivity is not to be inferred.”); R.C. 1.48. A court can never infer that a statute is to be applied retroactively. *Id.*; *Ackison v. Anchor Packing Co.*, 120 Ohio St.3d 228, 231, 897 N.E.2d 1118 (2008) (“The General Assembly’s failure to clearly enunciate retroactivity ends the analysis, and the relevant statute may be applied only prospectively.”)

In *Consilio*, this Court held the General Assembly is presumed to know that it must include express retroactive language to create that effect, and that it has done so in the past. 114 Ohio St.3d 295, n.3 citing *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100 (1988), and *State ex rel. Slaughter*, 132 Ohio St. 437, 9 N.E.2d 505 (1937). In *Van Fossen*, the statute at issue stated that it applied to “any action \* \* \* pending in any court on the effective date of this section.” 36 Ohio St.3d at 103. In *State ex rel. Slaughter*, the statute at issue stated, “The provisions of this act shall apply to all work-relief employees who are injured \* \* \* whether such injury or death occurs prior to the operative date of this act or subsequent thereto.” 132 Ohio St. at 539.

The 2006 amendments to the 1989 DMA do not include any statement that they were to be applied retroactively. *Swartz*, 2014-Ohio-2359, at ¶34 (“[T]he 2006 DMA contains no

language eliminating property rights that were previously expressly said to be vested, i.e. it contains no statement that its new requirements for surface owners and the new rights for mineral holders apply retrospectively.”); *Walker*, 2014-Ohio-1499, at ¶51. Therefore, the presumption in favor of prospective application controls and ends the analysis. *Hyle*, 117 Ohio St.3d 165; *Consilio*, 114 Ohio St.3d 295; *Walker*, 2014-Ohio-1499 (“[T]he 2006 version of R.C. 5301.56 does not specifically provide for retroactive application. Thus, the 1989 version, which was in effect at the relevant time to render the mineral interest vested in the surface owner, controls here.”); *Swartz*, 2014-Ohio-2359. Based on the plain language of the two versions of the statutes and the controlling precedent of this Court, the Court should deny review this matter.

Appellants’ argument that because the 2006 version could examine actions that predate its enactment it was intended to apply retroactively ignores the difference between a statute that reviews past conduct and the analysis of whether the legislature intended to retroactively subject accrued rights to new burdens. The Fifth District, in *Heifner v. Bradford*, distinguished a statute which examines past conduct, but applies prospectively (which is appropriate), with a statute which examines past conduct and operates based solely upon that inaction without the ability to preserve one’s rights (which is inappropriate without a grace period). *Heifner v. Bradford*, 5th Dist. Case No. CA-81-10, 1982 WL 2902, \*8 (Jan. 29, 1982). In *Heifner*, the appellate court was examining changes to the Marketable Title Act which brought mineral interests under its purview. *Id.* Those changes did not become self-executing (meaning they did not extinguish severed mineral interests) until the end of a grace period. *Id.* As such, it operated prospectively. Thus, the 2006 amendments, while examining actions which predate their enactment date, were not expressly intended to apply to rights vested under the 1989 DMA.

2. ***Even if the General Assembly intended the 2006 version of the 1989 DMA to apply retroactively, it cannot be applied against Appellees because they obtained a substantive vested property right to the Real Estate's oil and gas.***

The legal effect of conduct (or the lack thereof) should ordinarily be assessed under the law that existed when the conduct took place. Because the 2006 version of the 1989 DMA does not expressly indicate that it was intended to apply retroactively, there is no need to analyze the second prong of the retroactivity test. *Hyle*, 117 Ohio St.3d 165; *Consilio*, 114 Ohio St.3d 295. However, even if the Court were to analyze the second prong, it would find that Appellants' position is not supported.

Application of the 2006 law's requirements on surface owners who previously obtained vested title to severed minerals under the 1989 DMA's automatic operation would violate the second prong because to do so would undoubtedly impair substantive rights. The changes in the law, if applied retroactively, do not merely provide a new procedure to recognize abandoned interests, but would change and divest those interests already "abandoned and vested" under the express terms of the 1989 DMA and would recast them as inchoate claims with new burdens and obligations.

A statute is substantive, and thereby runs afoul of Ohio's constitutional ban on retroactive laws, if it "impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligation[s], or liabilities as to a past transaction or creates a new right." *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 224, 883 N.E.2d 377 (2008). The plain language of the 1989 DMA created vested property rights in surface owners. *Walker*, 2014-Ohio-1499, ¶40; *Swartz*, 2014-Ohio-2359, at ¶29 ("A vested interest can be a property right created by statute; it so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent.")

Based upon the precedent discussed above, the 2006 version of the 1989 DMA cannot be applied against Appellees because they obtained ownership of the Real Estate's oil and gas rights by automatic operation of the 1989 DMA. Applying the 2006 version of the 1989 DMA against the Appellees would defeat and divest their vested ownership right in the Real Estate's oil and gas rights. *Swartz*, 2014-Ohio-2359; *Walker*, 2014-Ohio-1499.

More so, if the General Assembly had intended the 2006 statute to affect property rights previously vested under the 1989 DMA, it would have been required to provide a reasonable grace period before Appellees lost their property rights (just as the original 1989 DMA had a three-year grace period from March 22, 1989 until March 22, 1992, for any "holder" to preserve their interest). See *Gregory v. Flowers*, 32 Ohio St.2d 48, 290 N.E.2d 181 (1972) citing *Smith v. New York Central Rd. Co.*, 122 Ohio St. 45, 170 N.E. 637 (1930).

Appellants, just as they did at all stages below, misstate the holding and effect of *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781 (1982). At no point in *Texaco* did the United States Supreme Court state or even suggest that a quiet title lawsuit is required before a self-executing statute actually self-executes. Such an argument, now raised by Appellants, is non-sensical and would eviscerate all self-executing statutes. It would mean that any party who acquires rights under a self-executing statute would need to initiate litigation to confirm that the statute had operated in his or her favor. This cannot have been the legislature's intent when designing the 1989 DMA as a self-executing statute, thus Appellants seek to turn self-executing statutes into statutes which require litigation to confirm their operation.

Appellants' discussion of the issue of what twenty-year period the 1989 DMA analyzes is presented to mislead the Court. That issue was not raised on appeal with the Fifth District and has thus been waived. Additionally, the issue has no bearing on this case as Appellants failed to

raise any claim that there exists a savings event during any twenty-year period under the 1989 DMA.

The plain language of the 1989 DMA provides for automatic abandonment of dormant mineral interests and their reversion to the surface estate. The 2006 amendments cannot affect those vested, substantive rights because those amendments were not expressly made retroactive and because they cannot affect substantive property rights. As a result, Proposition of Law Number I should undoubtedly be answered in the negative, and therefore, this Court should decline to entertain Appellants' arguments.

II. **PROPOSITION OF LAW NO. II: The 1989 version of the 1989 ODMA did not provide mineral owners with due process of law required under the state and federal constitutions.**

In order to properly raise the issue of whether a statute is constitutional, a litigant must meet a high burden of overcoming the strong presumption of constitutionality. *State v. Cowan*, 103 Ohio St.3d 144, 146, 814 N.E.2d 846 (2004) citing *State v. Hochhausler* 76 Ohio St.3d 455, 458, 668 N.E.2d 457 (1996). The party challenging a statute's constitutionality must establish "the unconstitutional nature of the statute beyond a reasonable doubt." *Id.* First, Appellants failed to timely present a substantive argument and analysis on the issue of the 1989 DMA's constitutionality with the trial court, confirmed by the fact that the trial court rendered no decision on the issue. *Wendt*, 2014-Ohio-4615, ¶ 40. Instead of presenting their claims during summary judgment or appropriate post-trial briefs, Appellants raised this issue for the first time in their post-trial rebuttal brief. *Id.* Equally compelling, Appellants have failed to meet their burden in establishing that the 1989 DMA violates due process because they have offered no reason why *Texaco* should not control.

At the outset, this Court has held that the Due Process Clause of the Ohio Constitution is modeled after the Due Process Clause of the United States Constitution. *Groch*, 117 Ohio St.3d

at 201 citing *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 880 N.E.2d 420 (2007). With that in mind, the United States Supreme Court has already held that a dormant mineral statute, which is substantially similar to the 1989 DMA, complies with federal due process. *Texaco*, 454 U.S. at 533-34, paragraph four of the syllabus. Appellants have offered no argument why that decision should not control here. In fact, Appellants have not cited any legal authority to support their claim that the 1989 DMA violates the Due Process Clause of either the United States Constitution or the Ohio Constitution.

The United States Supreme Court addressed Appellants' exact argument by holding:

The 2-year grace period provided by the statute forecloses any argument that the statute is invalid because mineral owners may not have had an opportunity to become familiar with its terms. Property owners are charged with knowledge of relevant statutory provisions affecting the control or disposition of their property. Moreover, the greatest deference must be accorded to the judgment of state legislatures as to whether a statutory grace period provides an adequate opportunity for citizens to become familiar with a new law.

*Id.*, paragraph four of the syllabus (internal citations omitted) (emphasis added). The United States Supreme Court further stated:

Given appellants' presumed knowledge that their unused mineral interests would lapse unless they filed a statement of claim, appellants had no constitutional right to be advised that the 20-year period of nonuse was about to expire. Since the State may impose on a mineral interest owner the burden of using that interest or filing a statement of claim, it follows that the State may impose on him the lesser burden of keeping informed of the use or nonuse of his own property.

*Id.* The 1989 DMA provided all severed mineral holders with a three-year advanced notice of impending abandonment. Those mineral holders had ample notice that they needed to preserve their interests between March 22, 1989 and March 22, 1992. As such, Appellants were given notice commensurate with due process.

In addition, Appellants erroneously claim, like they have throughout this case, that *Texaco* requires a surface owner to file a quiet title action in order to cause abandonment under the 1989 DMA. The United States Supreme Court in no way suggested that the surface owner would need to file a quiet title suit in order to cause abandonment under a self-executing dormant mineral statute. Instead, the United States Supreme Court made clear that before a party could have a court conclusively confirm that no preserving events had occurred during the relevant abandonment period, the mineral interest holder would need to be given proper notice of that litigation. *Texaco*, 454 U.S. at 536. The only notice that need be given to the severed mineral owner is the notice that the surface owner intends to have a court declare that the severed interest had previously been deemed abandoned under the 1989 DMA. *Swartz*, 2014-Ohio-2359 (“Finally, we note that *Dahlgren* expressed concern about the opportunity to contest abandonment without recognizing that the very suit before it was the opportunity to so contest (that there were savings events in the pertinent time period).”) Appellants had that opportunity in this case and have failed to identify any savings event.

Appellants’ citation to *Dahlgren v. Brown Farms Properties L.L.C.*, Carroll C.P. No. 13CVH27445 (Nov. 5, 2013) to support their constitutionality arguments is flawed for several reasons. First, the decision was overruled by the Seventh District Court of Appeals. *Dahlgren v. Brown Farms Properties L.L.C.*, 7th Dist. Case No. 13 CA 896, 2014-Ohio-4001 (Sep. 9, 2014). Additionally, the issue of constitutionality was not addressed in the case. *Id.* at ¶ 39 (finding that trial court’s discussion of due process was “observational” and “dicta”).

Additionally, the Marketable Title Act, which operates in a manner substantially similar to the 1989 DMA, complies with the Due Process Clause of Ohio Constitution. *Heifner*, 1982 WL 2902 *overruled on other grounds by* 4 Ohio St. 3d 49, 446 N.E.2d 440 (1983). In *Heifner*,

the court reviewed changes to the Marketable Title Act, specifically, the inclusion of mineral rights as interests subject to extinguishment. *Id.* at 8. When deciding that those changes satisfied due process, the court stated: “The grace period after the Ohio act became applicable to mineral interests was three years and two weeks, which gave the plaintiffs-appellees ample time to file a notice.” *Id.* Said holding is equally determinative of the question whether the 1989 DMA provides mineral holders with due process. They were given three, full years after enactment to initially preserve their rights. Their inaction for more than three years resulted in abandonment after sufficient notice and the opportunity to preserve.

III. **PROPOSITION OF LAW NO. III: The Ohio Dormant Mineral Rights Act is not now and never was self-executing.**

The Court should decline to consider this Proposition of Law as Appellants present it on pages 17 through 20 of their jurisdictional memorandum, in violation of S.Ct.Prac.R. 7.02(B). A memorandum in support of jurisdiction shall not exceed fifteen pages, exclusive of any table of contents and certificate of service. S.Ct.Prac.R. 7.02(B). Proposition of Law Number III begins on page 17, two pages after the maximum page limit. As a result, the Court should decline to review Proposition of Law Number III.

Even if the Court agrees to consider this argument, it should still decline to accept this issue because Appellants failed to present to this Court and the lower court any reason to ignore the Seventh District precedent on this issue. Appellants’ sole argument was that the decisions of two trial courts, which are in direct conflict with the binding precedent of the Seventh District, should control. One of the decisions, *Dahlgren*, has been overruled by the Seventh District Court of Appeals and the other’s holding has been repudiated by the Seventh District Court of Appeals on numerous occasions. *Dahlgren*, 2014-Ohio-4001.

Appellants now present two arguments for why the 1989 DMA was not self-executing: it created inchoate rights and it did not use the terms “automatic” or “self-executing.” The plain and express language of the 1989 DMA provides that unused severed mineral interests were legally deemed abandoned, automatically, without the need for the surface owners to take any action. The 1989 DMA did not create inchoate rights. *Walker*, 2014-Ohio-1499, ¶12 (“Thus, the *Dahlgren* court’s characterization of the mineral rights under the 1989 version is contrary to the statute itself, which states that the mineral rights are vested.”).<sup>1</sup> See e.g., *Bauman v. Hogue*, 160 Ohio St. 296, 301, 116 N.E.2d 439 (1953); *Swartz*, 2014-Ohio-2359, at p. 12 (“We conclude that it is contrary to the plain language of the statute to hold that the surface owner’s right to the abandoned mineral interests are inchoate even though the statute expressly stated that the right vested upon the lack of a savings event within the pertinent time period.”)

Under the 1989 DMA, a severed mineral interest was deemed abandoned and reunited with the surface estate unless it was preserved by one of the 1989 DMA’s enumerated “savings events.” *Swartz*, 2014-Ohio-2359; *Walker*, 2014-Ohio-1499; R.C. 5301.56 (B)(1)(c)(i)-(vi). The plain language of the 1989 DMA provides that a severed mineral interest which is not subject to a preserving event during a relevant twenty-year period “**shall be deemed abandoned and vested in the owner of the surface.**” R.C. 5301.56(B)(1). The 1989 DMA operates automatically, meaning the surface owner need not take any action to effectuate the abandonment and title vesting. *Walker*, 2014-Ohio-1499, p. 12 (“Noon did not have any mineral interest in the subject property after March 22, 1992, because on that date the interest automatically vested in the surface owner by operation of the statute. Further, once the mineral

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<sup>1</sup> An inchoate right is “[a] right that has **not** fully developed, matured, or **vested.**” Garner, *Black’s Law Dictionary* (9th Ed. 2009) (emphasis added). The 1989 DMA statutory language provides that the surface owner had a “vested” interest if the statutory requirements (mineral rights holder’s inactivity) were met. The term “inchoate” and “vested” are opposite terms.

interest vested in the surface owner, it ‘completely and definitely’ belonged to the surface owner.”); *Swartz*, 2014-Ohio-2359. Once abandoned, the mineral interest becomes one with the surface estate. *Id.* This is the only reasonable interpretation of the plain language of the 1989 DMA. As such, the Court is duty bound to apply the text, as written. *Sugarcreek Twp. v. Centerville*, 133 Ohio St.3d 467, 979 N.E.2d 261 (2012) (finding that a court must apply statutory language consistent with the plain language unless the statutory language is ambiguous); *In re T.R.*, 120 Ohio St.3d 136, 138, 896 N.E.2d 1003 (2008) (“When we engage in statutory interpretation, we must first examine the plain language of the statute.”)

Contrary to Appellants’ assertion, the 1989 DMA would not be the first Ohio law to vest rights in another without the need for a lawsuit. The Ohio Marketable Title Act does not require the party seeking extinguishment to take any action. *Evans v. Cormican*, 5th Dist. Licking No. 09 CA 76, 2010-Ohio-541, (Jan. 5, 2010) (finding that the Marketable Title Act operates, automatically, to remove clouds from title that pre-date the root of title); *see Heifner v. Bradford*, 4 Ohio St.3d 49, 446 N.E.2d 440 (1983); *see Collins v. Moran*, 7th Dist. Mahoning No. 02 CA 218, 2004-Ohio-1381 (March 17, 2004). An adverse possessor is not required to bring a quiet title lawsuit before title is vested in him or her; instead, the adverse possessor need only meet all elements of adverse possession for a continuous period of 21 years. *State ex rel. A.A.A. Investments v. City of Columbus*, 17 Ohio St.3d 151, 152, 478 N.E.2d 773 (1985) (“[O]nce the statutory period enunciated in R.C. 2305.04 has expired, the former titleholder has lost his claim of ownership and the adverse possessor is thereafter maintaining its possession, not taking property.”); *Heider v. Unknown Heirs, Devisees & Personal Representatives of Frances Brenot*, 6th Dist. Nos. WD-05-012, WD-05-020, 2006-Ohio-122, 2006 WL 75255 (Jan. 13, 2006). Thus, Appellants wrongly claim that the 1989 DMA stands alone as a statute automatically affecting

property rights. Based on the plain language of the 1989 DMA and precedent on self-executing statutes, Proposition of Law Number III must be answered in the negative.

### CONCLUSION

The 1989 DMA placed a minimal burden of action upon the owners of severed mineral owners. Their failure to use or preserve their severed mineral interest conclusively and irrevocably caused the severed mineral interests to be abandoned and reverted into the surface estate. As a result, any changes to the law, including those in 2006, could not divest Appellees of those vested rights. Based on these facts, Proposition of Law Number I must be answered in the negative. As to the question of constitutionality, Appellants failed to properly raise this issue below and have thus waived it. Even without waiver, the law clearly provided due process to severed mineral owners. Finally, the Court should decline to review Proposition of Law Number III because it was presented beyond the mandated page limits and even if the Court accepts it, it should undoubtedly be answered in the negative.

/s/David E. Butz

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent via regular U.S. Mail this

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