ORIGINAL

IN THE SUPREME COURT OF OHIO

CLYDE A. HUPP, et al.,	
Plaintiffs-Appellants,	Case No. 2014-1933
v.	On Appeal from the Monroe County Court of Appeals (Nos. 12 MO 6, 13 MO 2, 13 MO 3, and 13 MO 11)
BECK ENERGY CORPORATION,	
Defendant-Appellee.	

STATE OF OHIO ex rel. CLAUGUS FAMILY FARM, L.P.,	
Relator,	Case No. 2014-423
v.	Original Action in Prohibition and Mandamus
SEVENTH DISTRICT COURT OF APPEALS, et al.	
Respondents.	

BRIEF OF AMICI CURIAE OHIO OIL AND GAS ASSOCIATION, ENERVEST, LTD., ARTEX OIL COMPANY, ARTEX ENERGY GROUP LLC, SIERRA BUCKEYE LLC, ECLIPSE RESOURCES CORPORATION, AND HILCORP ENERGY COMPANY IN SUPPORT OF APPELLEE BECK ENERGY CORPORATION

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae Ohio Oil and Gas Association ("OOGA"), Enervest, Ltd., Artex Oil Company, Artex Energy Group LLC, Sierra Buckeye LLC, Eclipse Resources Corporation, and Hilcorp Energy Company are participating in this appeal because appellants are challenging the legal validity of a standard oil and gas lease that has been widely used in Ohio and other states for decades. The Court of Appeals properly held that appellants' leases do not grant the lessee, appellee Beck Energy Corporation ("Beck"), the right to delay drilling in perpetuity and thus do not violate Ohio's public policy of developing natural resources. Amici curiae support Beck and XTO Energy, Inc., in asking the Court to affirm that ruling.

Appellants' propositions of law incorrectly assume that Beck can hold their leases forever without drilling for oil and gas. In reality, the leases expressly require Beck to commence drilling a well on each property within one year, which can be delayed for no more than ten years if Beck makes annual delay rental payments to appellants. At the end of this ten-year period, the leases will expire unless Beck has drilled a well that produces (or is capable of producing) oil or gas in paying quantities. In other words, the leases do not allow Beck to delay drilling for more than one year unless it pays the agreed amount of delay rental, and they do not allow Beck to delay drilling for more than ten years under any circumstances, even if it pays the delay rental. They are not "perpetual" leases.

Appellants' propositions of law also incorrectly assume that so-called "perpetual" leases are invalid as a matter of law. This Court has repeatedly enforced such leases for over a century, as discussed below, but that legal issue is irrelevant to this appeal because appellants' leases require Beck to drill wells prior to a defined, ten-year deadline. No public policy issues are presented by this proceeding.

The Court of Appeals applied settled Ohio law to the plain language of appellants' leases. If its ruling is reversed, the validity of thousands of identical leases—and countless similarly worded Ohio leases—will be thrown into doubt, and this State's public policy of developing its natural resources will be impaired. This appeal is therefore important, not only to the immediate parties, but also to oil and gas producers and workers, landowners, consumers, and everyone who has benefited from oil and gas development in Ohio.

Amicus curiae OOGA is a state-wide trade association whose 3,300 members are engaged in all aspects of the exploration, development, and production of oil and gas in this State. Its membership includes small independent producers and major energy companies, as well as Ohio contractors, service and supply companies, manufacturers, utilities, accountants, insurers, engineers, and landowners. On behalf of its members, OOGA closely monitors Ohio litigation involving oil and gas law and occasionally participates as an amicus curiae in selected cases that address especially important issues.

Amici curiae Enervest, Ltd., Artex Oil Company, Artex Energy Group LLC, Sierra Buckeye LLC, Eclipse Resources Corporation, and Hilcorp Energy Company are individually engaged in exploring and developing oil and gas resources in eastern Ohio. Collectively, they have oil and gas rights for hundreds of thousands of acres of Ohio land, often under leases that are identical or nearly identical to appellants' leases. These amici curiae have invested billions of dollars to obtain leasehold rights, to explore for oil and gas, and to drill producing wells, and they plan to invest additional billions of dollars in Ohio in the future. Accordingly, they have a vital stake in maintaining the stability and predictability of Ohio oil and gas law.

Oil and natural gas production is an integral part of Ohio's economy, and it has played a central role in Ohio's economic recovery. This industry directly provides more than 17,000 jobs, injecting three-quarters of a billion dollars in salaries and wages into this State each year, and the benefits of that financial investment flow through all sectors of our economy. Appellants' novel interpretation of the standard lease provisions at issue in this case would upset previously settled law and the long-standing expectations of thousands of Ohio landowners and oil and gas producers by invalidating thousands of current leases.

Appellants' motive for trying to change Ohio law is purely financial, not jurisprudential. The standardized lease at issue has been widely used for more than thirty years, and its legal validity was never questioned until market demand and advances in drilling technologies during the last decade increased the prevailing rates for Ohio oil and gas leasehold interests, prompting a few landowners to look for some way to void their existing leases and negotiate new leases at higher rates. But appellants were paid market rates at the time they signed their leases, and the possibility that those rates could someday move higher (which would benefit Beck) or move lower (which would benefit appellants) was an obvious market risk that everyone understood.

Appellants were not forced to sign their leases; they were free to wait if they wanted to gamble that market rates would move higher in the future. Instead, they voluntarily entered into the leases and accepted the certainty of the agreed compensation from Beck. It was only after market rates increased that appellants claimed, for the first time, that their leases are "perpetual" and should be voided on public policy grounds.

Advances in technology and fluctuations in energy markets—and the resulting shifts in appellants' self-interest—do not change the meaning of the language in their leases. If the ruling below were reversed by this Court, oil and gas developers would lose their leasehold property rights—and their investments—based on a unique "interpretation" of the lease language that no court has ever endorsed. If the ruling below is affirmed, appellants will have exactly what they agreed to in their leases: payments from Beck in exchange for Beck's right to drill wells during the ten-year term specified in the leases, and royalties from oil and gas that is produced from wells drilled before that deadline expires.

Amici curiae therefore respectfully ask the Court to affirm the decision by the Court of Appeals and uphold the validity of appellants' leases.

STATEMENT OF FACTS

The plain language of appellants' leases is dispositive of both propositions of law they assert in this appeal. First, each lease expressly provides that it has "a term of ten years" and will continue in effect thereafter only if oil and gas can be produced in paying quantities before the ten-year term expires:

> 2. This lease shall continue in force, and the rights granted hereunder be quietly enjoyed by [Beck] for a term of ten years and so much longer thereafter as oil and gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee. . . .

(Lease ¶ 2.) As discussed below, Ohio courts have always recognized that oil and gas is not "produced" or "capable of being produced" unless and until a well has been drilled on the property. Accordingly, appellants' leases will expire unless Beck drills a well that is capable of producing oil or gas within ten years from the date that the leases were signed.

Second, each lease also expressly provides that Beck must commence drilling an oil and gas well within the first twelve months of the ten-year lease term unless it extends that deadline by paying delay rental to the landowner:

> 3. This lease, however, shall become null and void and all rights of either party hereunder shall cease and terminate unless, within 12 months from the date hereof, a well shall be commenced on the premises, or unless [Beck] shall thereafter pay a delay rental of $_______ each year, payments to be made quarterly until the commencement of a well. . . .

(Lease ¶ 3.)[1] Since Paragraph 2 provides that the lease will expire after ten years unless Beck has drilled a well that is capable of producing oil or gas, Beck's payment of the delay rental cannot extend the deadline for drilling beyond that ten-year term. In other words, delay rental payments extend the twelve-month deadline to commence drilling, but even if Beck pays the delay rental, the lease will terminate after ten years unless Beck has drilled a well that is producing or capable of producing oil or gas.

ARGUMENT

Appellants' First Proposition of Law:

> An oil and gas lease which can be maintained indefinitely without development is a perpetual lease that is void as against public policy. That a lease purports to establish a fixed term is of no consequence if the duration of that term can be extended without development.

Response of Amici Curiae:

> The leases in this case cannot be maintained indefinitely without development. They require Beck to commence drilling a well within twelve months, or within ten years if Beck pays the specified delay rental, and they terminate after ten years unless a well is producing (or is capable of producing) oil or gas at that time.

1. Appellants' Proposition of Law misstates the issue before this Court.

Appellants' First Proposition of Law is misleading in two ways. First, they pretend that the Court must decide whether an oil and gas lease that can be held indefinitely by the lessee, without any development, violates Ohio public policy. But the Court of Appeals specifically found that <u>appellants' oil and gases leases cannot be maintained indefinitely without development</u>. (*See* Opinion at 26–27, 29.) Appellants' Proposition of Law improperly assumes that these leases are "perpetual" when that is the disputed issue this Court must resolve.

[1] The blank space in the form lease for the amount of delay rental was filled in for each of appellants' separate leases, in varying amounts, before the leases were executed.

Second, appellants ignore this Court's previous rulings that perpetual leases do not violate Ohio public policy. *See, e.g.*, *Myers v. East Ohio Gas*, 51 Ohio St.2d 121, 127 (1977) ("a lease which clearly and unequivocally grants the right of perpetual renewal will be enforced according to its terms"); *Hallock v. Kintzler*, 142 Ohio St. 287 (1943) (same); *Central Ohio Natural Gas and Fuel Co. v. Eckert*, 70 Ohio St. 127 (1904) (same). But that issue need not be addressed by this Court because the Court of Appeals was indisputably correct in finding that appellants' leases are not perpetual and that they will terminate after ten years unless Beck drills wells that produce, or are capable of producing, oil or gas prior to that time. Appellants' leases utilize a pre-printed, standard lease form that has been widely used for thousands of oil and gas leasehold transactions since the 1980s, and no court has ever found that it is a "perpetual" lease that allows the lessee to postpone drilling forever.

2. Appellants' leases clearly describe the primary term, during which Beck must commence drilling, and the secondary term, during which Beck must produce oil and gas in paying quantities.

The lease itself expressly states that it "shall continue in force . . . for a term of ten years" and that it will not continue "thereafter" unless "oil and gas . . . are produced or are capable of being produced on the premises in paying quantities." (Lease ¶ 2.) The parties thereby agreed that Beck would have up to ten years to explore for the presence of oil and gas under the land and complete a well that can produce paying quantities of oil or gas. This is commonly referred to as the "primary term" of an oil and gas lease. If Beck completes a well during that ten-year term, the lease will extend to a "secondary term" that lasts as long as paying quantities of oil or gas can be produced from the well.

Appellants claim that their leases are "perpetual" because they do not use the specific words "primary term" and "secondary term." (Appellants' Br. at 16.) But this Court and the Courts of Appeals have routinely enforced leases that do not use those words, without suggesting that they are perpetual or even ambiguous. *See, e.g.*, *Blausey v. Stein*, 61 Ohio St.2d 264, 264–65 (1980) (referring to the time period during which the habendum clause allowed drilling as the "primary term" although that phrase was not used in the lease); *Myers*, 51 Ohio St.2d at 122, 127 (same); *Nw. Ohio Natural Gas Co. v. City of Tiffin*, 59 Ohio St. 420, 424 (1899) (enforcing a lease that described a "term of five years . . . and as much longer as oil and gas is produced or found in paying quantities" without using the phrases "primary term" or "secondary term"); *Swallie v. Rousenberg*, 190 Ohio App.3d 473, 2010-Ohio-4573, ¶ 5 (7th Dist.) (same).

The phrases "primary term" and "secondary term" are merely shorthand labels that lawyers, courts, and academics use to describe the time periods that oil and gas leases allow the lessee to commence drilling a well (the primary term) and to produce oil or gas from a completed well (the secondary term). Appellants cite no cases in which oil and gas leases have been held unenforceable merely because they did not explicitly label these time periods as the "primary term" and the "secondary term." Appellants ultimately argue that the leases are ambiguous, but they are not, and in any event Ohio law "adhere[s] to the construction of the lease that avoids perpetual duration." *Phillips Exploration, Inc. v. Reitz*, S.D. Ohio No. 2:11-cv-920, 2012 U.S. Dist. Lexis 178644, *16.

3. Appellants' leases do not extend beyond the ten-year primary term unless Beck has drilled a well by that time that can produce oil or gas in paying quantities.

Appellants also argue that their leases are "perpetual" and allow Beck to defer drilling indefinitely because the leases continue in effect for as long as oil or gas "are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee. . . ." (Lease ¶ 2.) According to appellants, this provision allows Beck to hold the leases without any drilling for as long as Beck subjectively believes that oil or gas might someday be produced from the property. Appellants' argument ignores both the ordinary meaning of the words used in the leases and Ohio law construing those terms.

Courts in Ohio and around the country have unanimously agreed that oil and gas are not "produced" or "capable of being produced" until a functional well has been drilled on the property. *See, e.g.*, *Morrison v. Petro Evaluation Services, Inc.*, 5th Dist. No. 2004-CA-0004, 2005-Ohio-5640, ¶ 39 (holding that "a well is capable of production if it is capable of producing in paying quantities without additional repairs or equipment"), *quoting Anadarko Petroleum Corp. v. Thompson*, 94 S.W.3d 550, 558 (Tex. 2003); *Highland Drilling, Inc. v. McAlester Fuel Co.*, 4th Dist. No. 99-CA-08, 1999 Ohio App. Lexis 5565, *5 (Nov. 16, 1999) (holding that property was "not capable of production, even though a well had been drilled, because it had not yet been fractured to begin production"); *Blausey*, 61 Ohio St.2d at 265–66 (1980) (holding that an oil and gas lease that extends for five years and as long thereafter as oil or gas "is found in paying quantities" does not extend beyond the five-year primary term unless oil or gas "has, in fact, been produced [in paying quantities]").

Appellants can cite no legal authority to the contrary, so they attempt to distinguish these cases on the grounds that they involved leases that "had entered their secondary terms." (Appellants' Br. at 21.) In other words, the lessees in those cases had drilled producing wells during the primary terms of the leases, and the secondary terms later expired when the wells were no longer "producing or capable of producing" oil or gas in paying quantities. But that is precisely the point. In the present case, there can be no secondary term unless Beck drills a well during the ten-year primary term that is "producing or capable of producing" oil or gas in paying quantities. The leases are not "perpetual" leases that can be extended indefinitely without development.

Appellants point out that the determination as to whether a well is producing oil or gas "in paying quantities" is left to "the judgment of the Lessee," *i.e.*, Beck. But this does not create a perpetual lease, for several reasons. First, a well must be producing or capable of producing oil or gas in <u>some amount</u> when the ten-year primary term expires; Beck's judgment is limited to whether that amount constitutes "paying quantities." Courts in Ohio (and elsewhere) have uniformly held that a good-faith standard applies to that determination, so a lessee cannot claim that "paying quantities" are being produced when no well has been drilled on the property. *See, e.g.*, *Cotton v. Upham Gas Co.*, 5th Dist. No. 86CA2, 1987 Ohio App. Lexis 6152, *1 (Mar. 6, 1987); *Weisant v. Follett*, 17 Ohio App. 371 (7th Dist. 1922); *see also T.W. Phillips Gas & Oil Co. v. Jedlicka*, 42 A.3d 261 (Pa. 2012). Moreover, a lessee has no reason to preserve a lease unless wells drilled on the property can produce paying quantities of oil or gas. The Court of Appeals below observed that "[i]t would be contrary to the joint economic interest of both a landowner and the lessee to continue drilling if it was no longer economically feasible." (Opinion at ¶ 102.) Ohio's public policy of developing natural resources is inapplicable when the land has no natural resources that can be produced.

4. Appellants' leases do not permit Beck to extend the lease term indefinitely by merely paying delay rental.

Appellants also argue that their leases are "perpetual" because they purportedly allow Beck to delay drilling forever by simply paying the specified amounts of delay rental. Appellants again ignore the language of the leases, which provides that a well must be commenced within twelve months, or within ten years if Beck pays the delay rental. (Lease ¶ 3.) The leases further provide that they "shall continue in force . . . for a term of ten years and so much longer thereafter as oil and gas or their constituents are produced or are capable of being produced on the premises in paying quantities. . . ." (Lease ¶ 2.) These provisions prevent Beck from extending the leases beyond ten years unless it has drilled wells that can produce paying quantities of oil or gas.

More than a century ago, this Court rejected the same arguments that appellants now make in this appeal. In *Brown v. Fowler*, 65 Ohio St. 507, 522 (1902), the Court considered the effect of delay rental provisions in an oil and gas lease that provided a "term of two years . . . and as long thereafter as oil and gas is found in paying quantities," and further provided that a "well shall be drilled on the premises within twelve months . . . unless the lessee shall pay for the further delay at the rate of one dollar per acre . . . until a well shall be drilled." 65 Ohio St. at 521–22. The Court held that the payment of delay rental could not extend the time allowed for drilling beyond the two year primary term of the lease:

> This [delay rental] clause clearly means . . . that the lessee may prevent termination of the lease at the end of twelve months by paying for further delay at the rate of one dollar per acre. . . . [F]urther delay cannot be beyond the term of two years fixed as the lifetime of the lease. . . . So that this clause cannot have the effect in any event to extend the lease beyond the two years definitely and certainly fixed in the habendum clause.

65 Ohio St. at 522. Similarly, appellants' leases do not allow Beck to extend the primary term beyond ten years by paying delay rental.

The delay rental provision and the ten-year deadline for completing a well are independent requirements: (1) under Paragraph 2, the lease terminates after ten years unless a well has been drilled that is producing or capable of producing oil or gas in paying quantities; and (2) under Paragraph 3, Beck must commence preparations to drill a well within one year or pay the delay rental. Beck therefore has a maximum of ten years to <u>commence drilling a well</u>, and the lease will expire at the end of ten years unless Beck <u>completes drilling a well</u> that produces or is capable of producing oil or gas.

Accordingly, the leases are not "perpetual" and they do not allow Beck to delay development indefinitely. Even if Beck pays delay rental to defer the commencement of drilling beyond the first year, it must complete a well that is producing or capable of producing oil or gas within ten years or the leases will automatically expire. Beck cannot delay drilling for more than ten years by continuing to pay delay rental because the lease is expressly limited to "a term of ten years and so much longer thereafter as oil and gas . . . are produced or are capable of being produced on the premises in paying quantities." (Lease ¶ 2.)

Appellants argue at length that delay rental provisions in an oil and gas lease are not limited to the primary term of the lease. (Appellants' Br. at 22–27.) But regardless of labels, appellants' leases specifically provide that they will expire after ten years unless Beck has completed a well that produces or is capable of producing oil or gas. Delay rental is pointless after the ten-year primary term expires because the lease will end at that time unless Beck has completed a well that can produce oil and gas. Beck's payment of delay rental cannot delay drilling beyond the primary term as a matter of law and logic. *See, e.g.*, *Brown*, 65 Ohio St. at 522 ; *Nw. Ohio Natural Gas Co. v. City of Tiffin*, 59 Ohio St. 420, 442–43 (1899). It would be "contrary to the intentions of the parties" to hold that they "so word[ed] a habendum clause that the lease must terminate within a definite time in the absence of production, and then in the next clause destroy[ed] that provision by another permitting the lease to run indefinitely by the payment of a nominal delay rental." *Jacobs v. CNG Transmission Corp.*, 332 F. Supp.2d 759, 786 (W.D. Pa. 2004), *quoting* Summers, Law of Oil and Gas, § 290.

Accordingly, the Court of Appeals correctly held that appellants' leases do not allow Beck to delay development indefinitely, and their First Proposition of Law is therefore moot.

Appellants' Second Proposition of Law:

> Where the express terms of an oil and gas lease effectively allow the lessee to postpone development indefinitely, and any stated time limits can be unilaterally extended by the lessee in perpetuity without any development, the lease is subject to an implied covenant of reasonable development notwithstanding a general disclaimer of all implied covenants.

Response of Amici Curiae:

> The leases in this case do not allow the lessee to postpone development indefinitely. The parties expressly agreed that development must occur within ten years, which precludes judicial imposition of an implied covenant to develop under a different time table.

1. Appellants' Second Proposition of Law misstates the issue before this Court.

Appellants' Second Proposition of Law is also misleading. They ask this Court to decide whether an oil and gas lease that can be extended indefinitely by the lessee without drilling is subject to a judicially implied covenant of reasonable development. However, the Court of Appeals specifically found that appellants' oil and gas leases cannot be extended indefinitely by Beck without drilling. (*See* Opinion at 26–27, 29.) As explained above, Beck can defer the commencement of drilling beyond the first twelve months of the lease only if it pays the delay rental, and only for a total of ten years. Accordingly, this Proposition of Law rests on a flawed premise and is moot.

2. A covenant to reasonably develop cannot be judicially implied in an oil and gas lease when the parties have expressly adopted a reasonable time table for development in the provisions of the lease.

Appellants' Second Proposition of Law is also incorrect. Ohio courts have sometimes implied covenants in oil and gas leases in order to protect the parties' actual intentions, but only where the leases are silent as to those intentions. *Harris v. Ohio Oil Co.*, 57 Ohio St. 118 (1897), paragraph one of the syllabus. For example, appellants' primary authority, *Ionno v. Glen-Gery Corp.*, 2 Ohio St.3d 131, 133 (1983), held that a covenant to reasonably develop will not be implied by the courts unless "a lease fails to contain any specific reference to the timeliness of development." In the present case, the leases specifically require Beck to commence drilling within twelve months, or within ten years if it pays the delay rentals, and they further require Beck to complete a well that is producing or capable of producing oil or gas by the end of that ten-year period. The parties mutually agreed to this time table for development, and a covenant to develop the land under a different schedule therefore cannot be implied judicially.

Many modern oil and gas leases include a delay rental clause that allows the lessee to pay the landowner for the right to delay drilling for a specified period of time, and courts uniformly hold that these provisions foreclose any implied covenant to develop the land prior to that time. *See, e.g.*, *Jacobs v. CNG Transmission Corp.*, 772 A.2d 445 (Pa. 2001). Ohio has recognized this rule for a century. In *Kachelmacher v. Laird*, 92 Ohio St. 324, 332 (1915), the Court held that an implied covenant to develop the property would be inconsistent with the delay rental provisions of the lease: "[a]n implied covenant can arise only when there is no expression on the subject [in the lease]."

3. A covenant to reasonably develop cannot be judicially implied in an oil and gas lease when the parties have expressly disclaimed implied covenants in the provisions of the lease.

In addition, a covenant of reasonable development cannot be implied in an oil and gas lease when the lease expressly disclaims all implied covenants. For example, in *Holonko v. Collins*, 7th Dist. No. 87-CA-120, 1988 Ohio App. Lexis 2647, *6 (June 29, 1988), the Court held that the same language used in appellants' leases—"no implied covenant, agreement, or obligation shall be read into this agreement"—precluded any judicially implied covenant to develop. Appellants argue that this disclaimer of implied covenants should be ignored because it is "buried in boilerplate" (Appellants' Br. at 36), but there is no "boilerplate"; each lease plainly states that "no implied covenant, agreement or obligation shall be read into this agreement. . . ." (Lease ¶ 19.)

Appellants then argue that the lease provision disclaiming implied covenants is "ambiguous" because another lease provision states that the landowner must notify Beck in writing "[i]n the event [it] considers that [Beck] has not complied with any of its obligations hereunder, either express or implied." (Lease ¶ 17.) This provision does not state that the lease contains implied covenants; it states that appellants must provide written notice if they believe that the lease contains an implied covenant that Beck has breached. As the Court of Appeals pointed out, "the lessor's belief that the lessee has violated an express or implied obligation" does not "create implied obligations." (Opinion at ¶ 120.) There is no ambiguity. And even if there were, courts must construe ambiguities in a lease so as to avoid forfeiture when it is possible to do so. *See Phillips Exploration, supra* ("[t]o the extent that any arguable ambiguity exists [in an oil and gas lease] . . . leading to a right of perpetual renewal [of the lease]. . . . Ohio law directs this Court and the parties to adhere to the construction of the lease that avoids perpetual duration").

4. Appellants are bound by the plain language of their leases.

Appellants' desire to invalidate their leases and obtain more compensation under current market rates "does not override the fundamental concept in Ohio law that parties enjoy 'freedom of contract' and are bound to the contractual relationships that they create." *Bushman v. MFC Drilling*, 9th Dist. No. 2403-M, 1995 Ohio App. Lexis 3061, *8–9 (July 19, 1995). Appellants are legally bound by the plain terms of their leases, which affirmatively establish deadlines for development and expressly disclaim any implied covenants to develop the properties prior to those deadlines.

Accordingly, the Court of Appeals correctly held that it could not imply a covenant in appellants' leases to develop the property. The leases do not allow Beck to postpone development indefinitely, and appellants' Second Proposition of Law is therefore moot.

CONCLUSION

As set forth above, appellants' propositions of law misstate the issues before this Court. Appellants' leases require Beck to commence drilling within twelve months, or within ten years if Beck pays delay rental, and they further require Beck to drill a well that can produce oil and gas in paying quantities within ten years. The leases are not "perpetual" and therefore do not violate Ohio public policy. Accordingly, amici curiae support appellee's position in this appeal and urge the Court to affirm the ruling by the Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 23rd day of April 2015, a copy of the foregoing Brief of Amici Curiae Ohio Oil and Gas Association, Enervest, Ltd., Artex Oil Company, Artex Energy Group LLC, Sierra Buckeye LLC, Eclipse Resources Corporation, and Hilcorp Energy Company in Support of Appellee Beck Energy Corporation was served by U.S. Mail pursuant to App. R. 13(C)(3) on the following:

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