

Proposal for Legislation

A five-to-four split-decision ruling by the Supreme Court of Alabama in [Case 1130875](#) affirmed a judgment that use of an easement by necessity was adverse. This doctrine of real property law could constitute a serious problem for owners of real property in Alabama, and it could burden the Alabama judicial system with unnecessary litigation. This decision is in conflict with the American Law Institute (“ALI”) rule that:

“Uses made pursuant to licenses are not adverse, nor are uses made pursuant to servitudes created expressly, by implication, or by necessity.”

See [Restatement \(Third\) of Property \(Servitudes\) § 2.16 \(2000\)](#) at page 4, paragraph f. This ALI rule is law in other states and is intuitively rational and just. See [O’Dell v. Stegall, 703 SE.2d 561 \(WVa.2010\)](#).

A land owner is required by law to provide an “easement by necessity” across his land for a neighbor who has no other way to reach the neighbor’s land. If the neighbor later obtains another way to reach his land, then the easement by necessity is extinguished.

On the other hand, if a neighbor uses a roadway across someone’s land “adversely”, the neighbor could merit an “easement by prescription” (which lasts forever) to use the roadway. Whether a use is adverse or not is decided by a judge or jury (whichever is the fact finder in a case).

The ALI rule constitutes a limitation on the extent to which use of an easement can be deemed to be “adverse”. It says, in essence, that if someone is using a roadway with authority or with the permission of the property owner, then his use of the roadway cannot be the basis of a claim by him to a different, superior right by prescription.

Without such a rule, the limits are not clear on what a judge or a jury can conclude constitutes adverse use. The trial judge in Case 1130875 ruled that grading a road and clearing drainage ditches along the sides of the road on an easement by necessity constituted adverse use. Based on this conclusion, he ordered that the “adverse” user had earned an easement by prescription which he could continue to use even after his need for an easement by necessity no longer existed. The complete record of the appeal in case 1130875 is at www.AdverseUse.org. The application for rehearing found there clearly defines the issues regarding the ALI rule.

A statute is needed to limit such judicial decisions regarding “adverse” use in Alabama.

Without such a statute, the rights of landowners in Alabama can be severely abused as a result of the doctrine of law elucidated in Case 1130875.

[On May 7, 2015, House Bill 626 was introduced to address this need.](#)

<http://alisondb.legislature.state.al.us/acas/ACASLoginie.asp>