

# ML Marzulla Law Legal Report

When it's Inverse Condemnation, We Help Property Owners Get Paid



Marzulla Law, LLC is the nation's leading law firm for takings claims against the federal government. ML represents landowners, developers, water districts, Indian tribes, business, and corporate interests in litigation of property rights and contract claims. ML also represents clients in environmental enforcement actions, and litigation involving natural resources and permitting issues, in federal district courts and courts of appeal.



We hope that this Newsletter will serve as a resource for you.

Best regards,

Nancie and Roger Marzulla  
Marzulla Law, LLC  
Tel.: 202.822.6760  
[www.marzulla.com](http://www.marzulla.com)

Follow us on 



## Marzulla Law Asks U.S. Supreme Court to Decide Standing of Municipal Taxpayers

## Marzulla Law In The News:

60 Minutes Features The Three Antelope Issue.



## Testimonial

"Because of the



In February 2009, Highway J Citizens Group, U.A., an association in southeastern Wisconsin that promotes proper land use decisions, filed a lawsuit in a Wisconsin state court challenging the Village of Richfield's annexation of land from the neighboring town of Polk that is not contiguous to Richfield's established boundaries. Claiming that the annexation violated State law, Highway J argued that any tax payments made by Richfield to the town of Polk (to compensate Polk for lost property taxes) would be an illegal municipal expenditure of taxpayer funds.

Richfield filed a motion to dismiss Highway J's lawsuit, alleging that Highway J lacked standing. Although Highway J argued that it has members who live and pay taxes in both Richfield and Polk, the trial court dismissed the case, ruling that because Highway J's members would suffer no unique "pecuniary loss or injury" (i.e., "pocketbook injury") and no injury different from the injury suffered by any other member of the community, Highway J did not have standing. The Wisconsin Court of Appeals affirmed the trial court's ruling and held that a taxpayer "must have sustained, or will sustain, some pecuniary loss before he or she has standing" to challenge the illegal expenditure of municipal funds.

On November 30, 2011, Marzulla Law, counsel for Highway J, filed a Petition for Writ of Certiorari in the United States Supreme Court seeking review of the Wisconsin Court of Appeals ruling (which purports to follow federal law on municipal taxpayer standing but failed to do so). Therefore, and in order to resolve the split among the U.S. Circuit Courts of appeal, so as to provide judicial consistency and clarity with respect to municipal taxpayer standing, Marzulla Law agreed to represent Highway J in its quest to obtain Supreme Court review.

In its Cert. Petition, Marzulla Law pointed out that "the decision of the Wisconsin court flatly contravenes [the Supreme] Court's repeated endorsement of municipal taxpayer standing" in a number of past cases. Furthermore, "even as [the Supreme] Court has ruled against standing for federal taxpayers and state taxpayers, it has retained municipal taxpayer standing." From the Cert. Petition:

impressive, high-quality legal work of Nancie and Roger, our municipal taxpayer standing case has attracted significant national attention and amicus brief support.

As a steering committee member of an all-volunteer, citizens group, I really appreciate the expertise, personal attention and enthusiasm of the attorneys at Marzulla Law in fighting for the rights of our taxpayer members to have their day in court here."

**Jeff Gonyo**  
Steering Committee  
Highway J Citizens Group

## **Spotlight** **Jeffery M. Gonyo**



Jeffrey M. Gonyo is both client and co-counsel with Marzulla Law in the

According to this Court's decision in [*Frothingham v. Mellon*, 262 U.S. 447 (1923)], plaintiffs seeking to establish municipal taxpayer standing are required to meet a less rigorous injury standard than those seeking standing as federal and state taxpayers. Unlike federal or state taxpayers, municipal taxpayers may fulfill the injury requirement by pleading an alleged misuse of municipal funds. That is exactly what Highway J has done here for its Village of Richfield taxpaying members... in its amended complaint.

The National Tax Limitation Committee, Reason Foundation, and Libertarian Law Council filed an amicus brief, further arguing that the Supreme Court should agree to review this case:

[T]here is a split of opinions among the lower courts on several key points, including whether economic impact, or "pocketbook injury," must be shown before a municipal taxpayer has standing to challenge an expenditure of public funds, and if so, what kind of injury will satisfy that requirement.

In spite of these differences, the majority of federal courts appear to favor granting standing to municipal taxpayers, and, in some cases, have gone to great lengths to permit such suits, even where the alleged injury is non-economic in nature. Though this has resulted in more municipal taxpayers gaining access to federal courts, it has muddied the legal waters to such an extent that it is nearly impossible to distill a coherent doctrine on municipal taxpayer standing.

As pointed out in the petition for certiorari, there currently are more than 87,000 local municipalities in the United States, and each of these local governmental units will continue to take formal actions on a regular basis that require the expenditure of public funds. Therefore, these local governmental actions violate the law (like the Village of Richfield's annexation of noncontiguous property in the case at hand), the resulting expenditure of public funds also becomes improper and will trigger scores of municipal taxpayer lawsuits like this one.

Therefore, given the recurring nature of these types of lawsuits, the Cert. Petition urges the Supreme Court to grant review: "[T]his Court now needs to provide judicial consistency and clarity on municipal taxpayer standing—an issue that is of great national importance and will continue to have widespread impact on local taxpaying citizens all across the United States of America." The Supreme Court is set to discuss the Highway J petition on February 17, 2012.

matter of *Highway J Citizens Group, U.A. v. Village of Richfield*, a case pertaining to municipal taxpayer standing, which is currently being considered by the United States Supreme Court. Mr. Gonyo is a Steering Committee Member for the Highway J Citizens Group, U.A. (HJCG), an all-volunteer, grassroots citizens' organization from Wisconsin. He is also an attorney licensed to practice in Wisconsin and before several federal district and appellate courts.

"When the Highway J Citizens Group, U.A. was seeking United States Supreme Court review of the Wisconsin state courts' improper denial of standing under federal law to challenge an illegal annexation, I knew exactly who to call for legal representation," said Mr. Gonyo. In 1999, the property rights and homes of many residents (including Mr. Gonyo) were being threatened when the U.S. Department of Transportation, Federal Highway Administration and Wisconsin Department of Transportation proposed expanding State Highway 164 (a two-lane residential roadway) into a major four-lane freeway through two counties in Wisconsin. To stop this unnecessary, fiscally-irresponsible and illegal road expansion plan, Mr.

Gonyo and other concerned residents organized the HJCG which then filed two federal lawsuits against these unresponsive federal and state government agencies and ultimately received two consecutive court victories in 2009 and 2010.

"The attorneys at Marzulla Law (Nancie and Roger Marzulla) immediately understood the crucial legal issues of our case," said Mr. Gonyo. "And then diligently worked to effectively present them in a certiorari petition to the U.S. Supreme Court."



### **Staff Spotlight:** **Hayley Easton Neal**

Hayley Neal is a recent graduate of Georgetown University Law Center, and is presently a law clerk at Marzulla Law. With her dedication to legal advocacy, and professionalism, Haley is an undeniable asset to our firm.

Hayley graduated *cum laude* from Cornell University, College of Agriculture and Life Sciences with a B.S. in Biology & Society in 2007. While attending Georgetown in pursuit of her J.D., she interned and clerked at a number of civil and government organizations which afforded her tremendous learning opportunities in the field of natural resource rights. She has interned at the Nature Conservancy in Tucson, AZ, and at the Environmental Law Institute in Washington, D.C., where she researched and drafted memoranda on water law and water rights. She has been a law clerk at the U.S. Department of the Interior, Office of the Solicitor, and at the U.S. Department of Justice's Environmental and Natural Resources Division and the Denver, CO, Environmental Enforcement and Defense Sections.

"I love the fast-paced environment at Marzulla Law, as well as the congenial atmosphere," says Hayley. "It's exciting to work on such challenging cases, especially in the area I want to practice—litigation with the federal government involving water law, environmental law, and takings."

Among Hayley's non-work interests include cooking, skiing, brewing beer, and visiting national



parks and other public lands.

Hayley is currently studying for the bar exam, which she will take late this month. After she passes the bar, she will be joining Marzulla Law as an associate attorney.



## About Marzulla Law

Marzulla Law, LLC is a Washington D.C.-based law firm. Nancie G. Marzulla and Roger J. Marzulla help property owners get paid just compensation when the Government takes their property through inverse condemnation.

ML lawyers practice in the federal courts, especially the U.S. Court of Federal Claims, the Federal Circuit Court of Appeals, and the U.S. District Court for District of Columbia, as well as other federal district courts, appellate courts, and the U.S. Supreme Court. ML also represents clients in administrative agencies, such as the District of Columbia Office of Administrative Hearings or the Interior Board of Indian Appeals.

Chambers has recognized Marzulla Law as one of the top ten water rights litigation firms in the country. Nancie Marzulla and Roger Marzulla have been selected by their peers to be included on the list of Best Lawyers in America, and their firm has the highest AV-rating from Martindale-Hubbe. Nancie and Roger Marzulla have been recognized by Best Lawyers as a Top Tier law firm by *U.S. News & World Report* for environmental law, and Marzulla Law is a proud member of the International Network of Boutique Law Firms.



Disclaimer: The information you obtain in this newsletter is not, nor is it intended to be, legal advice. Results are not guaranteed. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established



Try it FREE today.