

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Zachary Noah Somers

2. **Position:** State the position for which you have been nominated.

Judge, United States Court of Federal Claims

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

4. **Birthplace:** State year and place of birth.

1979; Washington, D.C.

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

2001 – 2004, Georgetown University Law Center; J.D., 2004

1998 – 2001, Georgetown University; A.B. (*cum laude*), 2001

1997, Villanova University; no degree

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2019 – present
Committee on the Judiciary

United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510
Chief Investigative Counsel

2007 – 2019
Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515
General Counsel and Parliamentarian (2015 – 2019)
Deputy Chief Counsel, Subcommittee on the Constitution (2012 – 2015)
Majority Counsel, Subcommittee on the Constitution (2011 – 2012)
Minority Counsel (2007 – 2011)

2005 – 2007
Marzulla & Marzulla (now Marzulla Law)
1150 Connecticut Avenue, Northwest, Number 1050
Washington, D.C. 20036
Associate

2004 – 2005
The Honorable Victor J. Wolski
United States Court of Federal Claims
717 Madison Place, Northwest
Washington, D.C. 20439
Law Clerk

Summer 2003
The Honorable Charles E. Grassley
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510
Law Clerk (uncompensated)

Summer 2002
Robert Branand International
4 E Street, Southeast
Washington, D.C. 20003
Intern (uncompensated)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military. I registered for the selective service upon turning 18.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Editor-in-Chief, Georgetown Journal of Law and Public Policy (2003 – 2004)

Advocate, Barristers' Council (Moot Court) (2002 – 2004)

Leahy Moot Court Competition, Finalist

Sutherland Cup Moot Court Competition

Degree from Georgetown University conferred *cum laude* (2001)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2017 – 2018)

Maryland State Bar Association (2004 – 2005)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Maryland, 2004

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Federal Claims, 2005

I was admitted *pro hac vice* in the United States District Court for the Central District of California in 2006.

I also submitted two amicus briefs in the United States District Court for the District of Columbia in 2008 pursuant to the government attorney provision while I was a counsel on the House Judiciary Committee.

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Loyalty Society, Georgetown University Alumni Association (2012 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, the organization listed above neither currently discriminates, nor formerly discriminated, on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Zachary N. Somers, *Mythical Wall of Separation: How the Supreme Court has Amended the Constitution*, 2 Geo. J.L. & Pub. Pol'y 265 (2004). Copy supplied.

Preface, 2 Geo. J.L. & Pub. Pol'y 1 (2004). Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I am not aware of any materials responsive to this request.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I am not aware of any materials responsive to this request.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

As a House Judiciary Committee counsel, I from time to time addressed staff for the Republican Conference on legislation reported by the Judiciary Committee that was pending on the House floor or other matters of importance within the committee's jurisdiction. I do not believe any records or materials exist; however, any records or materials I may have used would be maintained at the Committee on the Judiciary, 2141 Rayburn House Office Building, Washington, D.C. 20515.

July 11, 2011 (approximate): Speaker, *H.R. 5, the Help Efficient, Accessible, Low Cost, Timely Healthcare (HEALTH) Act*, Washington, D.C. I do not recall who sponsored this event; I spoke to a large group of doctors. Notes supplied.

May 16, 2006: Panelist, *Just Compensation: the Other Half of the Economic Development Debate*; 2006 Washington Appraisal Summit, Appraisal Institute, Washington, D.C. Press account supplied.

December 16, 2005: Panelist, *Abuses and Successes in Eminent Domain Cases*; Public-Private Partnership Forum, Virginia Crossings Resort, Glen Allen, Virginia. I have no notes, transcript, or recording. The organization that hosted the event no longer seems to be in operation.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

During my service on Capitol Hill, I often speak on background to journalists to explain legislation, oversight, or procedural matters. I do not maintain a list of

such interactions. I do not believe any records or materials exist; however, any records or materials I may have used would be maintained at the Committee on the Judiciary, 2141 Rayburn House Office Building, Washington, D.C. 20515.

Elizabeth Hancock, *New Journal Editors-in-Chief share top honors, high hopes*, Georgetown Law Weekly, Mar. 24, 2003. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:

jury trials:	_____%
bench trials:	_____% [total 100%]
civil proceedings:	_____%
criminal proceedings:	_____% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which

you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held judicial office.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and

responsibilities.

None.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to Judge Victor J. Wolski of the United States Court of Federal Claims from 2004 to 2005.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2005 – 2007

Marzulla & Marzulla (now Marzulla Law)

1150 Connecticut Avenue, Northwest, Number 1050

Washington, D.C. 20036

Associate

2007 – 2019

Committee on the Judiciary

United States House of Representatives

2138 Rayburn House Office Building

Washington, D.C. 20515

Minority Counsel (2007 – 2011)

Counsel, Subcommittee on the Constitution (2011 – 2012)

Deputy Chief Counsel, Subcommittee on the Constitution (2012 – 2015)

General Counsel and Parliamentarian (2015 – 2019)

2019 – present

Committee on the Judiciary

United States Senate

224 Dirksen Senate Office Building

Washington, D.C. 20510

Chief Investigative Counsel

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

In 2004, I began my legal career as a law clerk for Judge Victor J. Wolski on the United States Court of Federal Claims. During my time as a clerk, I drafted opinions, memoranda, and orders, and provided advice on all types of proceedings before the court, including status conferences, oral argument on dispositive motions, hearings, and trials.

After clerking for a year, I took a job at a boutique law firm, Marzulla & Marzulla, in 2005, that specializes in Fifth Amendment takings and complex commercial litigation before the Court of Federal Claims and other federal courts. While at Marzulla, I primarily worked on researching and writing briefs for motions and responses to motions in cases pending in the Court of Federal Claims. I also worked on pre- and post-trial briefing and trial preparation for two trials in the Court of Federal Claims. In addition to the firm's Federal Claims' practice, I worked on motions, briefs, and other aspects of litigation in the United States Supreme Court, the Federal, Fourth, and Eighth Circuits, and federal district courts for the Central District of California, Iowa, and South Carolina. Additionally, I assisted with three matters in arbitration, including two international arbitrations regarding breach of contract and investment disputes under Chapter 11 of NAFTA.

From 2007 to 2019, I served as a counsel on the House Judiciary Committee first for then-Ranking Member Lamar Smith and then under Chairman Bob Goodlatte for his tenure as Chairman. As a counsel on the committee (first as a counsel to the full committee, then as a counsel to the Subcommittee on the Constitution, and finally as the full committee's General Counsel and Parliamentarian), I worked on all manner of federal law and policy within the committee's jurisdiction. This work included providing counsel to members on legislative and oversight hearings, markups, and consideration of legislation on the House floor; drafting hearing and markup memos, committee reports, and statements; and taking staff depositions and transcribed interviews.

From 2019 to the present, I have served as Chief Investigative Counsel for Chairman Lindsey Graham on the Senate Judiciary Committee. In this

role, I have handled some legislation but have mainly focused on oversight and investigations, including hearings, document requests, negotiating with agency and other counsel for witness and document production, and taking transcribed staff interviews of witnesses.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 2005 through 2007, I primarily represented municipal water districts in breach of contract and Fifth Amendment takings litigation in the Court of Federal Claims and other property owners in Fifth Amendment takings litigation in the Court of Federal Claims and other federal courts.

From 2007 to the present as a counsel on the House and Senate Judiciary Committees, the elected officials I have served, the Congress, and the American people have been my clients. In this capacity, there is practically no area of the law within the jurisdiction of the Judiciary Committees that I have not had some involvement in, but much of my service particularly focused on the areas of constitutional law and legal reform.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 100%
- 2. state courts of record: ___%
- 3. other courts: ___%
- 4. administrative agencies: ___%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 100%
- 2. criminal proceedings: ___%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have not tried a case. While I was in private practice, my firm had one case go to trial; I did not participate in the trial, but did work on pre-trial briefing, pre-trial motions, trial preparation, and post-trial briefing. I also prepared for a second trial, including preparing witnesses for trial; however, the court issued a ruling granting the government's motion for summary judgment on the eve of trial.

- i. What percentage of these trials were:
 1. jury: _____%
 2. non-jury: _____%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As an associate attorney at Marzulla & Marzulla, I took part in the writing of briefs in the cases listed below. In addition, I took part in the mediation of a case before retired Justice Sandra Day O'Connor in litigation that was pending before the United States Court of Federal Claims.

Norman v. United States (05-1050) (petition for a writ of certiorari). Copy supplied.

Wilkie v. Robbins (06-219) (2007) (brief amici curiae of Brooks Realty and Burgett Geothermal Greenhouses, Inc.). Copy supplied.

EPA v. Defenders of Wildlife (06-549) (2007) (brief amici curiae of Kern County Water District, et al.). Copy supplied.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Stockton E. Water Dist. v. United States*, 70 Fed. Cl. 515 (2006); 72 Fed. Cl. 141 (2006); 75 Fed. Cl. 321 (2007); 76 Fed. Cl. 470 (2007), 76 Fed. Cl. 497 (2007)

From 2005 through 2007, I was part of a team of lawyers who represented two California water districts and a city and county in California in an action against the United States in the Court of Federal Claims, asserting claims for breach of contract and a Fifth Amendment taking based on the Bureau of Reclamation's failure to provide these water users with the quantities of water from a federal water resources project required by

contract. During my time working on this case, I participated in preparing briefing and argument on cross-motions for summary judgment, trial preparation, pre-trial briefing and motions, and a motion to alter or amend the judgment and for reconsideration of the final judgment in the case. After I left private practice, the case continued on for nine years and was appealed to the Federal Circuit three times and remanded back to the Court of Federal Claims for further proceedings each time. Ultimately, the plaintiffs prevailed on some of their claims and lost on others.

Judge: Hon. Christine O.D. Miller

Co-counsel

Nancie G. Marzulla
Roger J. Marzulla
Marzulla Law
1150 Connecticut Avenue, Northwest, Number 1050
Washington, D.C. 20036
(202) 822-6760

Jeanne M. Zolezzi
Herum Crabtree Suntag
5757 Pacific Avenue, Suite 222
Stockton, California 95207
(209) 472-7700

Jennifer L. Spaletta
Spaletta Law P.C.
Post Office Box 2660
Lodi, California 95241
Phone: (209) 224-5568

Opposing counsel

William J. Shapiro
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
501 I Street, Suite 9-700
Sacramento, California 95814
(916) 930-2207

Kristine S. Tardiff
United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
53 Pleasant Street, 4th Floor
Concord, New Hampshire 03301
(603) 230-2583

2. *Casitas Mun. Water Dist. v. United States*, 72 Fed. Cl. 746 (2006); 76 Fed. Cl. 100 (2007)

From 2006 through 2007, I took part in representing a water district in litigation against the United States in the Court of Federal Claims in which the water district claimed that the diversion of irrigation water from a water reclamation project and the additional costs imposed on the water district for the installation of a fish ladder to protect steelhead trout, under the Endangered Species Act, effected an uncompensated taking of the water district's property and breached district's repayment contract with Bureau of Reclamation. During the time I worked on the case, I assisted in drafting briefing in response to the government's motion for summary judgment, with pre-trial briefing, with trial and witness preparation, and with a motion to certify for interlocutory appeal, among other things. After I left private practice, in 2013 the Court of Federal Claims' dismissal of the case was affirmed by the Federal Circuit.

Judge: Hon. John P. Wiese

Co-counsel

Roger J. Marzulla
Nancie G. Marzulla
Marzulla Law
1150 Connecticut Avenue, Northwest, Number 1050
Washington, D.C. 20036
(202) 822-6760

Opposing counsel

Kathleen L. Doster
United States Environmental Protection Agency
1200 Pennsylvania Avenue, Northwest
Washington, D.C. 20004
(202) 564-2573

James D. Gette
United States Department of Justice
Environment and Natural Resources Division
150 M Street, Northeast, Room 3210
Washington, D.C. 20002
(202) 305-1461

3. *Klamath Irrigation Dist. v. United States*, 75 Fed. Cl. 677 (Fed. Cl. 2007)

From 2006 through 2007, I took part in representing fourteen water, drainage, and irrigation districts and 13 agricultural landowners that brought suit against the United States in the Court of Federal Claims alleging that their water rights had been taken without just compensation and that the United States was in breach of its contracts with

the districts and landowners by failing and refusing to deliver quantities of irrigation water. While I worked on the case, I assisted in writing briefing in response to the federal government's motion for summary judgment on the water users' contract claims, responding to a large number of amicus briefs filed in the case, and in helping prepare the lead partner for oral argument on the government's motion. After I left private practice, judgment was entered in favor of the federal government after several rulings in the Court of Federal Claims and appeals to the Federal Circuit.

Judge: Hon. Francis M. Allegra (deceased)

Co-counsel

Nancie G. Marzulla
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Marzulla Law
1150 Connecticut Avenue, Northwest, Number 1050
Washington, D.C. 20036
(202) 822-6760

Opposing counsel

Kristine S. Tardiff
United States Department of Justice
Environment and Natural Resources Division
53 Pleasant Street, 4th Floor
Concord, New Hampshire 03301
(603) 230-2583

4. *Land Grantors v. United States*, 71 Fed. Cl. 614 (2006); 74 Fed. Cl. 518 (2006); 75 Fed. Cl. 122 (2007); 75 Fed. Cl. 583 (2007)

From 2006 through 2007, I was part of a team of lawyers who represented a group of former property owners and their heirs in litigation involving two interrelated cases that we litigated essentially simultaneously in the Court of Federal Claims. One case was a congressional reference case brought pursuant to 28 U.S.C. § 1492 and the other was a class action brought pursuant to the court's general jurisdictional statute, the Tucker Act. The theory of both cases was that the federal government owed the plaintiffs restitution because plaintiffs were paid less than the reasonable value of land they owned that was taken by the federal government during World War II due to the failure of the United States to compensate the owners for coal, gas, oil, and other mineral rights. I worked on motions, oppositions to motions, and memoranda of law in support thereof, on various issues in the cases. In addition, I took part in a mediation before retired Justice Sandra Day O'Connor in an attempt to settle the cases. After I left private practice, the Court of Federal Claims review panel overturned Judge Braden's decision in favor of the plaintiffs on the congressional reference case, and a ruling by the Supreme Court in an unrelated case extinguished the Tucker Act case on statute of limitations grounds.

Judge: Hon. Susan G. Braden (retired)

Co-counsel

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Marzulla Law
1150 Connecticut Avenue, Northwest, Number 1050
Washington, D.C. 20036
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Merrill S. Schell
Jean W. Bird
Wyatt, Tarrant & Combs, LLP
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Opposing Counsel

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United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
501 I Street, Suite 9-700
Sacramento, California 95814
(916) 930-2207

5. *Greenbrier v. United States*, 75 Fed. Cl. 637 (2007)

From 2006 to 2007, I took part in representing 249 owners of low- and moderate-income housing who brought suit against the United States in the Court of Federal Claims for breach of contract and a temporary taking due to enactment of statutes that restricted their rights to prepay their HUD-insured mortgage loans. We filed a motion under Rule 60(b)(6) seeking relief from final judgment in these consolidated cases on the grounds that subsequent decisions, based upon identical facts and claims, in cases challenging the application of the same federal statute regarding prepayment of certain HUD-insured mortgage loans, demonstrated that these plaintiffs were being treated differently than other similarly situated property owners. I assisted in researching and writing the Rule 60(b)(6) motion and with some of the initial work on appeal of the Court of Federal Claims' decision to the Federal Circuit before I left private practice. The Court of Federal Claims ruled against the 60(b)(6) motion and, after I left private practice, the Federal Circuit affirmed.

Judge: Hon. James F. Merow (deceased)

Co-Counsel

Nancie G. Marzulla

Roger J. Marzulla
Marzulla Law
1150 Connecticut Avenue, Northwest, Number 1050
Washington, D.C. 20036
(202) 822-6760

Opposing Counsel

Brian M. Simkin (formerly with the Justice Department)
Foreign Claims Settlement Commission
441 G Street, Northwest, Room 6234
Washington, D.C. 20579
(202) 616-6975

6. *Pres. of Los Olivos v. United States DOI*, 06-cv-1502 (C.D. Cal.)

In 2006, I was co-lead on a team of lawyers who represented the Santa Ynez Band of Chumash Mission Indians in litigation in the United States District Court for the Central District of California brought by two local citizens groups challenging a decision of the Interior Board of Indian Appeals (IBIA) that held that the citizens groups lacked standing to challenge the decision of the Bureau of Indian Affairs (BIA) to approve an application to have land taken into federal trust. In the district court, the citizens groups sought a declaratory judgment that the IBIA erred in dismissing their administrative appeal. They also sought injunctive relief to preclude implementation of the BIA's order approving the application. I was part of a team that successfully moved to allow the Santa Ynez Band of Chumash Mission Indians to intervene in the litigation and to have the district court remand the case back to the IBIA. After I left private practice, the case came back to the district court and was once again remanded back to the IBIA.

Judge: Hon. A. Howard Matz (retired)

Co-Counsel

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Indian Resources Section
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Opposing Counsel

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4630 Windsor Boulevard
Cambria, California 93428

Scott A. Edelman
Gibson Dunn & Crutcher
2029 Century Park East, Suite 4000
Los Angeles, California 90067
(310) 557-8061

7. *Mildenberger v. United States*, No. 06-760 (Fed. Cl.)

From 2006 through 2007, I took part in initiating this suit in the Court of Federal Claims against the United States for an uncompensated physical taking of property on behalf of a group of Florida land owners. The lawsuit alleged that the United States' discharge of polluted fresh water from Lake Okeechobee into the St. Lucie River between 2003 and 2005 destroyed the estuary's natural environment and effected an unconstitutional taking of the plaintiffs' riparian rights. I assisted in writing the litigation plan, the complaint initiating the litigation, and initial discovery requests and interrogatories. After I left private practice, the case was dismissed on statute of limitations grounds.

Judge: Hon. Lynn J. Bush

Co-counsel

Roger J. Marzulla
Nancie G. Marzulla
Marzulla Law
1150 Connecticut Avenue, Northwest, Number 1050
Washington, D.C. 20036
(202) 822-6760

Opposing counsel

Steven D. Bryant
United States Department of Justice
Environmental and Natural Resources Division
601 D Street, Northwest, Room 3205
Washington, D.C. 20004
(202) 305-0424

8. *Holliday Amusement Co. of Charleston, Inc. v. South Carolina*, 2006 WL 1285105 (D.S.C. 2006), *aff'd*, 493 F.3d 404 (4th Cir. 2007)

From 2006 through 2007, I worked with a team of attorneys on this action brought in federal district court claiming that a South Carolina law effected a taking of the plaintiffs' property for which they were entitled to just compensation under the Fifth and Fourteenth Amendments. Plaintiffs claimed that, as a result of the South Carolina law, plaintiffs' video poker machines (which had been modified to South Carolina specifications such that they could not be used elsewhere) lost all market value. I assisted on the briefing in opposition to South Carolina's motion to dismiss and on the cross-motions for summary judgment. Moreover, after summary judgment was entered in favor of South Carolina, I assisted with briefing in the Fourth Circuit. After I left private practice, the Fourth Circuit affirmed the district court's decision.

District Court Judge: Hon. C. Weston Houck (deceased)

Appeals Court Judges: Hon. Hiram E. Widener, Jr. (deceased), Hon. J. Harvie Wilkinson III, Hon. Robert B. King

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9. *Hawkeye Commodity Promotions, Inc. v. Miller*, 432 F.Supp.2d 822 (N.D. Iowa 2006), *aff'd*, 486 F.3d 430 (8th Cir. 2007)

From 2006 through 2007, I was part of a team of lawyers representing a video gaming operator in a suit in the Northern District of Iowa and in the Eighth Circuit in which the gaming operator sought declaratory and injunctive relief against the Iowa Attorney General and the Commissioner of the Iowa Department of Public Safety alleging that the state's amended gaming statutes, which would make it illegal for retailers to offer the gaming operator's machines to the public, were unconstitutional as applied to the gaming operator under the Contracts, Just Compensation, Equal Protection and Due Process clauses of the Constitution. I assisted with briefing and argument preparation in both the district court and the Eighth Circuit. The district court rejected the plaintiff's claims and the Eighth Circuit affirmed that decision.

Judge: Hon. Linda R. Reade

Appeals Court Judges: Hon. Kermit E. Bye, Hon. Steven M. Colloton, Hon. Duane Benton

Co-Counsel

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Opposing Counsel

Robert K. Porter

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Des Moines, Iowa 50309

(515) 244-2600

10. *Otay Mesa Prop., L.P. v. United States*, No. 06-167 (Fed. Cl.); *Int'l Indus. Park, Inc. v. United States*, No. 06-876 (Fed. Cl.); *D & D Landholdings, Ltd. P'ship v. United States*, No. 06-877 (Fed. Cl.)

From 2006 through 2007, I took part in initiating related lawsuits in the Court of Federal Claims brought by the owners of property adjacent to the Mexican border alleging that activities of Border Patrol agents on their properties in pursuit of illegal immigration expanded beyond the limits of a 20-foot-wide easement previously granted and thus

constituted a physical taking requiring just compensation under the Fifth Amendment. I assisted in writing the litigation plan, the complaint initiating the litigation, and initial discovery requests and interrogatories. After I left private practice, the Court of Federal Claims entered judgment in favor of the plaintiffs and the Federal Circuit affirmed that judgment in part.

Judge: Hon. Thomas C. Wheeler

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Opposing Counsel

Susan V. Cook
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Environment and Natural Resources Division
Post Office Box 663
Washington, D.C. 20044
(202) 305-0470

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

International arbitrations

As part of our property rights practice while I was at Marzulla & Marzulla, I assisted with two international arbitrations regarding breach of contract and investment disputes under Chapter 11 of NAFTA. One involved a claim by 17 Texas irrigation districts serving the Rio Grande Valley that claimed that the government of Mexico captured and seized irrigation water owned by the districts and diverted it for the use of farmers on the Mexican side of the Rio Grande. The second involved a claim that Mexico failed to build the required customs facilities needed for a Texas company to fully open a toll bridge it built over the Rio Grande connecting commercial traffic between the United States and Mexico. In these matters, I conducted research, assisted in the drafting of briefing, and helped prepare for argument before arbitrators.

Legislation, oversight, and policy matters

From 2007 to 2019, I served as a counsel on the House Judiciary Committee, first for then-Ranking Member Lamar Smith and then under Chairman Bob Goodlatte for his tenure as chairman. As a counsel on the committee (first as a counsel to the full committee, then as a counsel to the Subcommittee on the Constitution, and finally as the full committee's General Counsel and Parliamentarian), I worked on all manner of federal law and policy within the committee's jurisdiction. At different times while on the committee, I directly handled legislation and oversight related to bankruptcy, antitrust law, constitutional law, administrative law, legal reform and court rules, laws authorizing lawsuits against the federal government, victims compensation programs, and in addition, as General Counsel, supervised legislation and oversight related to federal criminal, immigration, and intellectual property law, among others.

While a counsel on the House Judiciary Committee, I drafted countless hearing and markup memos for members, dozens of committee reports, and was responsible for editing more than 85 committee reports drafted by other committee counsels. I also was the lead counsel on eight bi-partisan bills that were signed into law and led committee efforts on many smaller provisions in larger legislative packages that became law. Finally, as the committee's General Counsel, I advised on and interpreted the committee's rules, practices, and procedures, and the Rules of the House of Representatives regarding the conduct of all Judiciary Committee business.

With particular regard to the role of serving as a judge on the Court of Federal Claims, I worked on various legislative proposals to alter the jurisdiction of the Court of Federal Claims and to authorize several congressional reference cases to be heard in the court. In addition, with regard to general litigation and court rules, I worked on legislation to amend the Federal Rules of Civil Procedure, including those related to Rule 11, class actions, and discovery, to authorize litigation by the House of Representatives and enforce congressional subpoenas, and to amend the law with regard to various areas of litigation in the federal courts, including the False Claims Act, the Anti-Terrorism Act, the Equal Access to Justice Act, and the Foreign Sovereign Immunities Act. Moreover, I had responsibility for oversight and legislation regarding several statutes that waive sovereign immunity and allow litigation against the United States, including the Federal Tort Claims Act and the Tucker Act. I was also involved in the litigation of two cases regarding the enforcement of House Judiciary Committee subpoenas in the United States District Court for the District of Columbia, including writing two amicus briefs.

In addition, in my roles on the House Judiciary Committee and as Chief Investigative Counsel for Chairman Lindsey Graham on the Senate Judiciary Committee, I have been involved in all manner of congressional oversight. From preparing members of the committees for hearings, to making document requests and issuing subpoenas, to negotiating with agency and other counsel for witness and document production, to taking staff depositions and transcribed interviews, my congressional oversight experience is extensive.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution

at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

Other than my participation in the Federal Government's Thrift Savings Program and the Federal Employees Retirement System, I do not have any arrangements for deferred income or future benefits from previous business relationships.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I currently have no such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my mandated Financial Disclosure Report and supply a copy to this Committee.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Statement of Net Worth is attached.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I will evaluate any real or potential conflict, or relationship that could give rise to appearance of conflict, on case-by-case basis and determine

appropriate action with the advice of parties and their counsel, including recusal where necessary.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have spent most of my legal career in public service, as a law clerk on the Court of Federal Claims and a counsel on the House and Senate Judiciary Committees. During this time, I have been restricted from engaging in the practice of law on behalf of any entity other than the federal government. While in private practice, the firm I worked for maintained a non-profit, public interest legal firm: Defenders of Property Rights. I did legal research and analysis and provided other legal support to Defenders of Property Rights and recall working on some post-trial motions in at least one case, *Vaizburd v. Unites States*, 00-136 (Fed. Cl.).

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In January 2018, I expressed my interest in a judgeship on the Court of Federal Claims to the White House Counsel's Office. In February 2018, I interviewed with attorneys from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice in Washington, D.C. In July 2020, I was contacted by the White House Counsel's office and informed that I was being considered for a nomination. Since that time, I have been in contact with both the Department of Justice and the White House Counsel's Office regarding my nomination.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.