

No. 18-1373

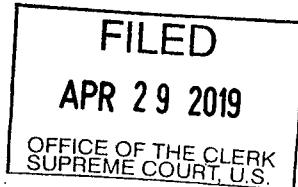
In The
Supreme Court of the United States

GENE RECHTZIGEL,

Petitioner,

v.

CITY OF APPLE VALLEY,

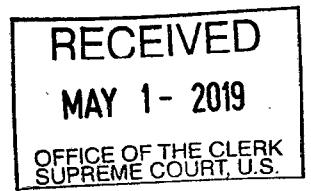


Respondent.

**On Petition For A Writ Of Certiorari
To The Minnesota Court Of Appeals**

PETITION FOR A WRIT OF CERTIORARI

GENE RECHTZIGEL
Pro Se
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Apple Valley, MN 55124
(612-618-0780)



QUESTIONS PRESENTED

- I. Did the Government deprive Petitioner of Liberty, without Due Process of Law?
- II. Did the Government deprive Petitioner of Property, without Due Process of Law?
- III. Did the Government deprive Petitioner of a Trial by Jury, without Due Process of Law?

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OPINIONS BELOW

The Decree of A18-0493, entered on January 29, 2019, by the State of Minnesota Supreme Court stated that Petition for Review of Decision of Court of Appeals for further review be, and the same is, denied.

The Decree of A18-0493, entered on Nov. 13, 2018, by the Minnesota Court of Appeals stated that the district court's order is affirmed and Petitioners appeal is a second appeal on the same case; which is a misrepresentation of law and facts, because this instant appeal is a new appeal of Minn. Statute 117.145 which never was appealed before. The truth of the matter proves this to be a new appeal concerning only the commissioners' award, and the only issue in trial de novo before the jury is the amount of damages, and the jury must measure the damages to the same land that the commissioners did. The appellate court should not be substituting its own judgment for that of the jury! The appellate court is stating that the law of the case, res judicata, or collateral estoppel bars an appeal concerning the constitutional right of having a trial by jury to grant "just compensation" concerning the amount of damages the condemnation "taking" caused. This issue of damages has never been up on appeal before and is a constitutional granted right to Petitioner (Rechtzigel) concerning a trial de novo trial by jury of amount of damages.

The Trial Court Order of 19HA-CV-14-1763 entered on Oct. 3, 2017 which stated that the City of Apple Valley's motion to dismiss is granted, the "notice of

appeal" is hereby dismissed for failure to properly serve all respondents as required by Minn. Stat. 117.145, claims are dismissed, motion for change of venue is moot, and motion to dismiss is denied. The trial court order misrepresents the law and facts as after the filing and mailing of the Notice of Appeal, Rechtzigel is the Plaintiff and the City of Apple Valley is the Defendant as is stated in "common law." It appears the court rubber stamped the City of Apple Valley motion to dismiss without requiring any burden of proof, without any testimony, without any evidence of proof from the City of Apple Valley a constitutional right to a trial de novo before a trial by jury concerning the amount of damages of "just compensation" was denied Petitioner, Plaintiff Rechtzigel.

The Trial Court Order of 19HA-CV-14-1763 entered on Jan. 19, 2018 stated that Respondent Rechtzigel's motions are hereby denied in their entirety.

Petitioner's Petition for Review of Decision of Court of Appeals in No. A18-0493, Dated December 13, 2018.

JURISDICTION

The judgment/order of the Minnesota Supreme Court was entered on January 29, 2019 (the entry date) from which a timely 90 days for petitioning a Review on Certiorari is by April 29, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech*, or of the press; or the right of the people peaceably to assemble, *and to petition the Government for a redress of grievances*.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and *seizures, shall not be violated*, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property. without due process*

of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved*, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Minnesota Constitution, Article I, Bill of Rights, Sec. 4 Trial by Jury says that, “*The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy.*” Also in Sec. 2 Rights and Privileges, “*No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. . . .*”

Minnesota Constitution, Article I, Sec. 8 Redress of Injuries or Wrongs says that, "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property, or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

Minnesota Constitution, Article I, Sec. 7, says that, "No person shall . . . be deprived of life, liberty, or property without due process of law."

Minnesota Statute 645.17 Presumptions In Ascertaining Legislative Intent says that, "(3) the legislature does not intend to violate the Constitution of the United States or of this state."

STATEMENT OF THE CASE

Notice of Appeal

Please take notice that the above-named Respondents, Gene Rechtzigel, individually and as trustee of Evelyn I. Rechtzigel Trust, as trustee of the Frank H. Rechtzigel trust, and as P.R. of the Estate of Frank H. Rechtzigel, **serves**, all who are shown in the petitioner's affidavit of mailing (as required of petitioner in Minn. Stat. 117.115), on all parties, and **files a Notice of Appeal, on July 5, 2017**, to the district court of Dakota County, Minnesota, within 40 days, pursuant to Minnesota Statutes 117.145 and 117.086 from the mailed notice of the report of the commissioners that was filed on May 26, 2017 with the court.

This Notice of Appeal specifies the particular award of \$47,000.00 as a **failure to award damages** to the owner of the property herein described as Gene Rechtzigel, individually and as trustee of Evelyn I. Rechtzigel Trust, as trustee of the Frank H. Rechtzigel trust, and as P.R. of the Estate of Frank H. Rechtzigel.

This Notice of Appeal specifies that the nature is for damages that occurred, such as "**to reimburse the owner for the land taken**," and including "**the amount of the award of damages**" "**to reimburse the owner for damages to the remainder tract not taken whether or not described in the petition**" under Minnesota Statutes 117.145, under Minnesota Statutes 117.086, and under Minnesota Statutes 117.175 and as granted under the United States and Minnesota Constitution and bill of rights.

1. This Notice of Appeal specify the "**nature**" and "**amount of the claim**" to be:

A. *To reimburse the owner for the land taken:*

- a. AREA: *46,888 Square Feet (1.08 Acres, Not a Retracement Survey of Historical Farm Property Line, as is required by Minn. Statutes 559.25, [legal irons of Retracement Survey of Historical Farm Property Line were pulled up illegally by Fischer according to the Minnesota Appeals Court Decision of A13-1661, *Peter Wells Fischer vs. Gene A. Rechtzigel*, Filed August 25, 2014, Reversed, Kirk, Judge, stated, "Because the HRO had expired and the **district court did not** find*

Rechtzigel in contempt for violating the HRO, it did not have authority in the HRO proceeding to allow Fischer to remove the iron monument from his property] but an illegal [in violation of Minn. Statutes 559.25] theoretical survey laid down on land that Rechtzigel owns both sides of, without Fischer or the City being in possession of for the Statutory 15 years), multiplied by \$400,000.00 Per Acres, equals an reimbursement of \$432,000.00 that the City of Apple Valley owes to the Rechtzigels, according to area by Bolton & Menk, Inc. hired by City of Apple Valley to do the fraudulent Survey.

- b. See B., a., for correct legal Sq. Feet and Acres according to "common law" and Minnesota Statutes 559.25, for real Retracement Survey.

- B. *To reimburse the owner for damages to the remainder tract not taken whether or not described in the petition. and giving herein additional notice required in Minn. Statutes 117.086:*

- a. **\$172,209.80 for:** AREA: 53,582 Sq. Feet = 1.23007 Acres, the legal amount of Acres that is in compliance with Minn. Statutes 559.25, *Amati vs. Haraden*, 280 Minn. 399, 159 N.W.2d 907 (1968) ("evidence of acts and conduct of parties and their predecessors in interest over a period of at least 38 years was sufficient to warrant establishment of boundary line by

*practical location by trial court"), **Mary Elizabeth Jackman vs. Samuel William Bownas, et al.**, No. E2004-01893-COA-R3-CV, Court of Appeals of Tennessee, at Knoxville, Filed June 21, 2005 ("the court found the boundary to be the fence line that had been in existence for 60 years. We affirm."), **Adam vs. Hoover**, Docket No. 114847, Michigan Court of Appeals, November 2, 1992, 10:05 A.M., ("The Daley Court held that long established occupational lines are not to be disturbed by recent surveys and that settled boundaries shall be allowed repose and shall not be disturbed . . ."), and the Minnesota Appeals Court Decision of A13-1661, *Peter Wells Fischer, vs. Gene A. Rechtzigel*, Filed August 25, 2014, Reversed, Kirk, Judge, stated, "Because the HRO had expired and the district court did not find Rechtzigel in contempt for violating the HRO, it did not have authority in the HRO proceeding to allow Fischer to remove the iron monument from his property"], multiplied by \$400,000.00 Per Acres, equals an reimbursement of \$172,209.80 for land strip of Rechtzigels. (This section of this notice [I., B., a.] serves both to fulfill the notice contents of both Minn. Statutes 117.145, and 117.086)*

- b. **\$1,530,305.79** (100% damage) to remainder 3.8257 Acres multiplied by \$400,000.00, equals \$1,530,305.79, for land under road that connects the farm

land strip (that city is condemning) to the farm land builds site that all together totals 10.11 acres in Apple Valley Rechtzigel Farm site, that qualifies the farm for “green acres” and for being a “farm” under Apple Valley City Code. The Condemnation of the Rechtzigel land Strip kills the need of the Rechtzigel road acres to connect to the condemned strip of land “taken” kills the land building site because the 10.11 acres that qualifies it as a farm and for purposes of future green acres is a part of City’s “taking,” due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.

- c. \$518,112.37 (25% damage to remainder 5.181 acres remaining of and around farm buildings property site) that City of Apple Valley created of injury, hardships, loss, and damages to Farm Property Classification, loss of land use, and damage to Farm Fence and much higher property taxes from the “taking” of past years, present years and future years, due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.
- d. \$135,420.87 for unjust enrichment of going to Court to stop fraudulent adverse possession by Fischer Market LLP in February 8,9, 2012 Hearing, Judgment Filed April 6, 2012, and June 25, 2012 Hearing for the Amended Judgment Filed on August 22, 2012, and subsequent hearings

and hours for an expense of 135,420.87 by Mohrman and Kaardal, P.A. on the Fisher Market LLP land case, due to the City's direct attendance at and due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley that the City was planning on doing.

- e. \$20,847.76 for the City of Apple Valley sponsored Fischer Market Harassment Proceedings that an Apple Valley Police Officer and Mr. Fischer told city residents (that Mr. Rechtzigel witnessed from 20 feet away) to file against Mr. Rechtzigel because Mr. Rechtzigel drove on his own strip of property to defend the Rechtzigel East Property Line from illegal take of property on or about April 7, 2012, which hearing the City of Apple Valley attended and were involved in due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley that the City was planning on doing.
- f. \$50,000 estimated for the hardship of the destruction of Mr. Rechtzigel's farm business as damage to his ability to run his farm business effectively as the land being reclassified as "residential" and having to fight numerous repeated legal battles with the City of Apple Valley's malicious prosecution, due to them claiming he was no longer a farm because of the land being less than 10 acres, with the unknown expense of the take causing 3 present alleged unjustified misdemeanor

charges currently pending and unresolved because of the malicious prosecution from the City of Apple Valley towards Mr. Rechtzigel, due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.

- g. \$8000 for the hiring of attorney Ronald B. Sieloff to defend Mr. Rechtzigel in this proceeding due to the malicious prosecution from the City of Apple Valley towards Mr. Rechtzigel, due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.
- h. \$100,000 for the hiring of attorney Mark Olson to defend Mr. Rechtzigel in these and other various proceedings related to this condemnation due to the malicious prosecution from the City of Apple Valley towards Mr. Rechtzigel, due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.
- i. \$7500 for the hiring of attorney Dirk Schwieger to defend Mr. Rechtzigel from an accusation of an alleged misdemeanor resulting from the malicious prosecution from the City of Apple Valley towards Mr. Rechtzigel, due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.
- j. \$5000 for the hiring of law firm Chandler and Brown to defend Mr. Rechtzigel from an accusation of 3 alleged misdemeanors resulting from the malicious prosecution

from the City of Apple Valley towards Mr. Rechtzigel, due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.

- k. \$50,000 for the emotional, mental, and physical damage of being jailed for walking on his own land, the proof of ownership being found in Judge King's November 12, 2013 Filed Judgment stating, *"Despite all of the issues surrounding ownership of the gap, the Court is convinced that Rechtzigel owns the gap. The Court reaches this conclusion because Rechtzigel's predecessors farmed the gap for over 15 consecutive years up until the time of the sale to Pulte"*. The Apple Valley City Attorney and police officers under their control are directly connected to this damage due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.
- l. \$25,000 for the emotional, mental, and physical damage of being jailed a second time in relation to this case, because of the malicious prosecution by the City of Apple Valley against Mr. Rechtzigel, due to this case of Eminent Domain Condemnation Quick Take by the City of Apple Valley.

2. *This Notice of Appeal specify "the land to which it relates" is:*

The West one-half of the Southwest Quarter (W ½ of SW ¼) and the West 30 acres of the East

one-half of the Southwest Quarter (E $\frac{1}{2}$ of SW $\frac{1}{4}$), all in Section 35, Township 115, Range 20, Containing 110 acres, more or less, according to the Government Survey thereof. Except the plat of REGATTA, Dakota County, Minnesota; And except the plat of REGATTA 2ND ADDITION, Dakota County, Minnesota. Subject to all easements recorded and unrecorded. This land described above contains 10.11 acres. Said above described land is more particularly described as follows:

Beginning at the Southwest Corner of said Section 35; thence North 00 degrees 07 minutes 54 seconds East, assumed bearing, a distance of 90.00 feet along the west line of said Section 35; thence South 89 degrees 57 minutes 42 seconds East, a distance of 50.00 feet to a point on the north line of the Dakota County Right of Way Map No. 160; thence North 00 degrees 07 minutes 50 seconds East along the east line of Flagstaff Avenue as shown on said plat of REGATTA 2ND ADDITION; thence continuing along said east line of Flagstaff Avenue a distance of 172.73 feet, along a tangential curve concave to the west, radius of 1050.00 feet; thence continuing along said east line of Flagstaff Avenue a distance of 3.15 feet, along a tangential curve concave to the east, radius 950.00 feet; thence South 89 degrees 57 minutes 42 seconds East, a distance of 820.69 feet, along the south lines of said plats of REGATTA 2ND ADDITION and REGATTA; thence South 00 degrees 07 minutes 51 seconds West, a distance of 275.00 feet along the west line of said plat of REGATTA; thence South 89 degrees 57 minutes 42 seconds East, a distance of 968.36 feet along the south line of said plat of REGATTA, to the southeast corner

of REGATTA; thence North 00 degrees 02 minutes 18 seconds East, a distance of 2564.98 feet along the east line of said plat of REGATTA, to the northeast corner of REGATTA; thence North 89 degrees 57 minutes 33 seconds East along the north line of said Southwest Quarter of section 35, a distance of 15.95 feet; thence South 00 degrees 02 minutes 18 seconds West, a distance of 650.82 feet; thence South 00 degrees 16 minutes 56 seconds East, a distance of 2004.22 feet to the south line of said Southwest Quarter of Section 35; thence North 89 degrees 57 minutes 42 seconds West, along said south line of said Southwest Quarter of Section 35, a distance of 1851.67 feet, to the point of beginning.

3. *This Notice of Appeal specifies the “**grounds of the appeal**” to be:*
 - A. That the City of Apple Valley, the Condemning Authority, did not follow the Minnesota Statutes in fulfilling the legislature’s intent that the condemning authority act in “good faith” to secure all safeguards of the procedures of the condemnation proceedings which the City of Apple Valley has failed at doing as some examples of the City’s failure is:
 - (a) *The Report is false, because none of the undersigned commissioners “met at the time and place appointed by the Court thereof, to-wit, in the office of District Court, in the City of Hastings, State of Minnesota” and all the Commissioners failed to each to take the oath prescribed by law.*

- (b) *The Report is inadequate, incomplete without any foundation as who the owner is of the property, and to the size of the property?*
- (c) *The Report omits that Rechtzigel is sole ownership of the property in question as stated by the District Court (Point 39, Page 14, Nov. 12, 2013 Judgment by Judge Robert R. King Jr., Court File No. 19HA-CV-09-5476) "Despite all of the issues surrounding ownership of the gap, the Court is convinced that Rechtzigel owns the gap. The Court reaches this conclusion because Rechtzigel's predecessors farmed the gap for over 15 consecutive years up until the time of the sale to Pulte. The Court is convinced of that due to the testimony of Dorene Nepsund, who testified consistent with that claim and was credible . . . Thus, after the sale, Rechtzigel still owned the gap." that was submitted at the commissioner's hearing.*
- (d) *The Report is full of misrepresentations and in denial of the fact that the Judge Robert R. King Jr. Judgment of Nov 12, 2013 is controlling, quote, "To the extent there are any inconsistencies between these orders, the following Findings, Conclusions, and Order controls" ("Filed Dakota County, Carolyn M. Remm, Court Administrator NOV. 12, 2013 . . . FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT*

AND JUDGMENT . . . Court File No. 19HA-CV-09-5476"), which clearly states that Rechtzigel owns the entire property in this condemnation action and "*...Mr. Rechtzigel can still proceed with his separate registration action filed on February 22, 2012.*"

- (e) *The Report misrepresents and omits the fact of the "Land Boundary Survey, Rechtzigel Farm Land" by State Engineering & Surveying Inc., Professional Land Surveyor James Bridell, (Minnesota License No. 23266) and that the size of damaged property from the taking is 10.11 acres, that was submitted at the commissioner's hearing.*
- (f) *The Report misrepresents and omits what was submitted at the Commissioner's Hearing by the Rechtzigel's, it was submitted that the area of the strip of land extending from the South line of SW 1/4 Section 35 to the North line of SW 1/4 Section 35 (full strip of land): 53,582 Sq. Feet, 1.23007 acres, as area was surveyed and a written report, that was submitted to the commissioner's Hearing, gave proof, of area, of strip of land, dated July 5, 2013 (State Engineering & Surveying Inc., Jim Bridell, RLS, Minnesota License No. 23266 Registered Land Surveyor. (Land Boundary Survey, Rechtzigel Farm Land, also submitted).*

- (g) *The Report misrepresents and omits the fact that adjacent properties are valued at \$400,000 according to the County Appraiser, from the many Appraisals submitted at the Commissioner's Hearings on May 16, 2017 at the Apple Valley City Hall.*
- (h) *The Report omits who the parties were at the Commissioner's Hearing.*
- (i) Rechtzigel & Zachary Stadem (P. of A.), made objections to your proposed report to the Court and to your Proposed Award of Commissioners Form in a letter dated May 24, 2017, stating that the Report of the Commissioners is inaccurate, incomplete, and biased, not impartial.
- (j) Mr. Rechtzigel fully objects and rejects the Commissioner's Report as partial, unfair, and the procedures and process unstatutory and Unconstitutional.

B. The grounds are Statutory, Constitutional, Factual and Common Law in seeking good faith in the Court to set aside the award and the commissioners because the commissioners were not guided by the rules of evidence and misapprehended the principles on which they were bound to make the assessment (*City of Minneapolis v. Wilkin*, 30 Minn. 140, 14 N.W. 581 (1883); *City of St. Paul v. Nickl*, 42 Minn. 262, 44 N.W. 59 (1890)) from the start of not taking the oath as stated as a shall in the court's order of when, where, and who.

- C. The grounds are factual and of law to justify the setting aside of the award of the commissioners as being grossly inadequate and disproportionate to the value of the land taken and to the damages to remainder tract not taken whether or not described in the petition (Minn. Stat. 117.175; 117.086; and Minn. 1929, *In re Improvement of Third Street, St. Paul*, 185 Minn. 170 (Minn. 1932)).
- D. The grounds that the commissioners were not guided by the rules of evidence and misapprehended the principles on which they were bound to make the assessment is incorporated in this Notice to Appeal and lays a foundation for the court to find the Commissioners inadequate, unfair, and the proceedings should be set aside and a new appraisement made before new commissioners (*State ex rel. Doerrler v. District Court*, 44 N.W. 59, 42 Minn. 262 (1890)).
- E. The grounds incorporate this entire Notice of Appeal and the evidence given and stated by Rechtzigel at the Commissioner's Hearing on May 16, 2017 at Apple Valley City Hall. This condemnation has done the Rechtzigels irreparable harm to both the land the City is taking under Minn. Statutes 117.115 by failing to pay Rechtzigel the full amount of damages that the Rechtzigels are entitled to. Rechtzigel is entitled under Minn. Statute 117.115 to full and just compensation for the land that was taken, and the damages incurred as a result of this taking. Under Minn. Statute 117.086 and Minn. Stat 117.175 sub 1 & 2 Rechtzigel

is also entitled to the full and just compensation from the damages to his remaining land; the value lost in reduction in size and appeal; the value and rights lost in reduction to less than 10 acres, thus not able to qualify for Green Acres farm rights and protections. Rechtzigel has the right under Minn. Statute 117.165 subd. 1 that *“when an appeal is taken from the commissioner’s award to the district court, the parties are entitled to a jury trial.”* Rechtzigel also has the right under Minn. Statute 117.145 that *“A party who is not satisfied with the commissioner’s award may appeal the award to the district court.”* Therefore he has the full right by law to appeal and ask that the award be set aside and given new commissioners, acting fair and impartial and willing to give a just and impartial compensation assessment.

- F. Since 2011, the City of Apple Valley has been indirectly and directly planning, preparing, and working on condemning the Rechtzigel strip of land through malicious prosecution, for the City of Apple Valley was involved in attending the Fisher Market Case Court File No. 19HA-CV-09-5476 trials by Court on February 8,9, 2012, *“MR. DONELY: Your Honor, Thomas Donely, D-o-n-e-l-y, on behalf of the City of Apple Valley.”*; June 25, 2012 Hearing, *“MR DONELY: Thomas Donely, Assistant Attorney for the City of Apple Valley.”*; July 2, 2013 Hearing, *“MR. WISDORF: Ryan Wisdorf, W-i-s-d-o-r-f, city of Apple Valley.”*; July 9th 2013, Hearing, *“Mr. Wisdorf, W-e-s-d-o-r-f, for the city of Apple Valley.”*; August 2, 2013

Hearing, "MR. WISDORF: *Brian Wisdorf, City of Apple Valley.*"

- The City was and is involved in bringing the strongest wall of prejudice against the Rechtzigel strip of land, that has been farmed for generations, included in the farm by possession with proof of historic fence line and plow line that never moved but honored the fence line always.
- This wall of prejudice against Rechtzigel unjustly calls the Rechtzigel strip on land the "Gap."
- The Commissioners decided to be partial and bias like the City of Apple Valley.
- The City of Apple Valley attended my Determination of Boundary hearing, and got the lawful action to be dismissed out of fear of having a jury trial that would honor the common law historic fence line.
- Thomas Ross Donely, Severson, Sheldon, Doughtery & Molenda, 7300 West 147th Street, Suite 600, Apple Valley, MN 55124 was on the court Notice of Filing of Order with Gerald S. Duffy, and Christopher Raymond Grote of an Court Order Filed February 7, 2012, Court File No. 19HA-CV-09-5476 known as "STIPULATION AND ORDER REGARDING ACKNOWLEDGEMENT OF AND CONSENT TO RIGHT OF WAY RIGHTS OF MAGELLAN PIPELINE COMPANY, L.P.", an order that brought strong prejudice against

the Rechtzigel Historic Farm Fence Property Line, wasted my valuable time and wasted my finances to an attorney who betrayed me and my family into the hands of the City of Apple Valley to destroy the farm's east property line and to create a Gap when there never was a gap. The malicious prosecution and illegal legal plunder of the Rechtzigel farm land strip by the City of Apple Valley is a disgraceful, wrongful act of a governmental crime being conducted even in this Condemnation Action which should be dismissed, because the City of Apple Valley has corrupted itself.

G. The Plaintiff (Respondent) is asking that this Condemnation Action by the City of Apple Valley be Dismissed and/or moved to a different County of Venue (*Minneapolis St. PR & D Elec. Traction Co. v. Goodspeed*, 128 Minn. 66, 150 N.W. 222 (1914); *Curtis v. St. Paul S & T F RR*, 20 Minn. 28 (Gil. 19) (1873)). Plaintiff (State v. Pearson, 260 Minn. 477, 110 N.W.2d 206 (1961)) (Rechtzigel) is also demanding a Jury Trial, and incorporates all facts and law of this Notice of Petition and prays for Dismissal of this Condemnation Action to remove the strong prejudice and hate the City of Apple Valley has against the Rechtzigel.

REASONS FOR GRANTING THE PETITION

- I. Did the Government deprive Petitioner of Liberty, without Due Process of Law?**
 - A. *The Government deprived Petitioner of Liberty, and Due Process of Law* by denying Petitioner's legal right to invoke the Minnesota anti-SLAPP statutes. (Judge Robert R. King's Judgment of November 12, 2013 states "Rechtzigel owns the Gap." App. 29). The purpose of using the anti-SLAPP statutes in this case is to force Respondent (City of Apple Valley) to show there is no other parties to the proceedings having an interest in any parcel described in this instant appeal who are shown in the petitioner's (City of Apple Valley) affidavit of mailing except Respondent (City of Apple Valley) and Petitioner (Rechtzigel) individually and as trustee of Rechtzigel Trusts. Respondent (petitioner, City of Apple Valley) listed many non-parties to the proceedings that have no interest in any parcel described in this appeal. It appears that Respondent (City of Apple Valley, condemnor) by technical means has attempted to defeat the land-owner's right to his day in court. Condemnor has intentionally created this hardship, a deception of adding names of people who do not have an interest, and never had a interest in any parcel described in this instant appeal. (See State v. Jude, 258 Minn. 44, Supreme Court of Minnesota (April 22, 1960)).
 - B. In *Leiendecker v. Asian Women United of Minnesota*, A16-0360, Minnesota Supreme

Court, Filed May 24, 2017, it found “*the court of appeals determined that mere allegations in a complaint could satisfy the anti-SLAPP law’s requirement that the responding party show by clear and convincing evidence that the moving party’s acts are not immune*” but in this instant case the district court and the court of appeal fail to grant Petitioner Rechtzigel the same Equal Protection under the 14th Amendment of the United States Constitution.

- C. *The Government deprived Petitioner of Liberty, and Due Process of Law* by not being required to meet any burden of proof that Petitioner failed to comply with the procedural requirements of Minn. Stat. 117.145 (2016). The City presented no witnesses, no documental proof, but only empty conclusions without foundation.
- D. *The Government deprived Petitioner of Liberty, and Due Process of Law* by denying Petitioner (Rechtzigel), also a trustee (again the real party in interest, a non-attorney, sole trustee, sole beneficiary) the right to appear in propria persona in his own behalf, a privilege that is personal, a non-fiduciary trustee to petition the government. For Petitioner’s trusts are personal trusts, and his relationship with the trusts are non-fiduciary (No fiduciary duty), and that fact is in the record. Petitioner should have been allow to self-represent his personal trusts as the trial court has previously allowed when Petitioner was a defendant (See Minnesota First

Judicial District, Dakota County Court File No. 19HA-CV-13-4181 (*Mohrman & Kaardal, P.A., Plaintiff v. Gene Rechtzigel individually, Gene Rechtzigel as Personal Representative for Estate of Frank Rechtzigel and as Trustee of any Trust thereunder, Gene Rechtzigel as Trustee for the Evelyn I. Rechtzigel Trust; Gene Rechtzigel as Trustee of the Frank H. Rechtzigel Charitable Trust Remainder Unitrust and Rex Rentals-F.R.R., Defendants.*). As shown above, when Petitioner was a defendant, the trial court allow Petitioner as a trustee in a separate unrelated case to this instant case, to self-represent his personal trusts, but when Petitioner is a plaintiff, and Respondent is the defendant, as in this instant case, then an objection is made, which violates the Equal Protection Clause of the 14th Amendment of the United States Constitution and the Minnesota Constitution. The 14th Amendment of the United States Constitution states, “*No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*” It is a double standard and a violation of the equal protection clause, a violation of due process of law to deprive the rights of life, liberty, and property when the trial court only objects to my personal trusts when Petitioner is the Plaintiff, but allow Petitioner as a defendant in those cases to self-represent his personal trusts, which is a clear

double standard and a violation of the 14th Amendment of the United States Constitution. For Petitioner has a constitutional right under the Judiciary Act of 1789, Sec. 35, 1 Stat. 73, 92 (1789) which provides that "*in all the courts of the United States, the parties may plead and manage their own causes personally . . .*" Whereas 28 U.S.C. Sec. 1654 states, "*In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.*" As stated in *C.E. Pope Equity Trust v. United States L Stradley*, 818 F.2d 696, United States Court of Appeals, Ninth Circuit, Decided June 2, 1987.

- E. Minnesota Stat. 117.145 is unconstitutional under Minn. Const. Art. I, & 4 and under the 5th and 14th Amendment of the U.S. Constitution because it violated Rechtzigel's constitutional right to a trial by jury.
- F. The non-parties on the City of Apple Valleys affidavit of service should have been locked out of having interest in the land by Res Judicata by the Final Judgment of judge Robert R. King Jr. dated November 12, 2013 on court file No. 19HA-CV-09-5476 on pages App. 22, App. 23, App. 24, and App. 40 in the Petition for a Writ of Certiorari, in the Supreme Court of the United States No. 15-247, received August 28, 2015, and App. 29 of this Petition, where it was found that the only parties of interest to the same identical land parcel was and is Rechtzigel and no one else as of November 12,

2013. For it would take at least 15 years from November 12, 2013 for all those non-parties the City of Apple Valley intentionally listed on its Affidavit of Service to become ripe to gain interest to make a claim on the theory of adverse possession or any other theory. Petitioner Rechtzigel is not required under 117.145 to serve them (but did anyway) on the same parcel of identical land as they are non-parties with no interest in the legal description in the notice of appeal of the report of the commissioners.

- G. The Government deprived Petitioner of Liberty, without Due Process of Law by denying Petitioner the right to possess, enjoy, protect, and dispose of his land in violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution, and Minnesota Constitution.

II. Did the Government deprive Petitioner of Property, without Due Process of Law?

- A. *Respondent, City of Apple Valley, deprive Petitioner the rights to enjoy, own and dispose of the property for “just compensation” at a fair market price*, which rights are protected by the Equal Protection Clause under the 14th Amendment of the United States Constitution as stated in *Mulkey v. Reitman*, 64 Cal. 2d 529, 50 Cal. Rptr. 881, 413 P.2d 825 (1966), judgment aff'd, 387 U.S. 369. 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967)
- B. *Respondent, City of Apple Valley, deprived Petitioner of property (just compensation) and*

due process of law by discriminatorily applying Minn. Statutes 117.145 in a unreasonable, unjust, arbitrary fashion that creates unauthorized actions of government officials which substantially impairs Petitioner's property interests which is prohibited under *Greene v. McElroy*, 360 U.S. 474, 79 S. Ct. 1400, 3 L. Ed. 2d 1377 (1959).

a. *Respondent, City of Apple Valley, as petitioner (condemnor) under Minn. Statutes 117.145 made an unauthorized (by the statutes of the Minnesota Legislature) list of parties (App. 10 and App. 15), that do not have any interest in any parcel described in this appeal of the commissioner's award*, as a way to railroad Petitioner (Rechtzigel) out of, from getting "just compensation" and denying Petitioner (Rechtzigel) the Due Process right of obtaining "just compensation" from having a Trial by Jury, under Minn. Statutes 117.145. Respondent (City of Apple Valley) is defrauding Petitioner of "just compensation" and the due process right of having a Trial by Jury to establish full and fair "just compensation" by one's peers in creating a unreasonable, unjust, arbitrary petitioner's (City of Apple Valley) affidavit of mailing where, except for Petitioner (Rechtzigel individually, and his trusts), all other parties (App. 10 and App. 15), listed never had, and do not have any interest in any parcel described in the appeal of the report of the commissioners award.

- b. Minn. Statutes 117.145 states, “*At any time within 40 days from the date that the report has been filed, any party to the proceedings may appeal to the district court from any award of damages embraced in the report, or from any omission to award damages, by: (1) filing with the court administrator a notice of such appeal, and (2) serving by mail a copy of such notice on all respondents and all other parties to the proceedings having an interest in any parcel described in the appeal who are shown in the petitioner’s affidavit of mailing, required by section 117.115, subdivision 2, as having been mailed a notice of the report of the commissioners...*” Petitioner (Rechtzigel) complied with Minn. Statutes 117.145, in fulfilling all of its requirements and going beyond the Statutory requirements by serving all people on the condemnor’s (City’s) affidavit of mailing who have no interest in any parcel described in the appeal and are not a party to the proceedings of this instant eminent domain case either before, during, or after this Minn. Statutes 117.145 appeal of the report of the commissioners.
- c. Minn. Statutes 117.145 states, that Petitioner, (Rechtzigel), as the party to the proceedings serve all respondents, and other parties to the proceedings “***having an interest in any parcel***” described in the appeal who are shown in the petitioner’s affidavit of mailing.

- i. As in baseball condemnor “City” never made it to second base.
- ii. As in baseball condemnor is first required that all people listed as a party have *“an interest in any parcel described in the appeal.”* Except for Petitioner (Rechtzigel) and Respondent (City of Apple Valley) all of the people on condemnor’s list fail to get past first base, because they all have no *“interest in any parcel described in the appeal”* in this instant case of the appeal of the report of the commissioners, and App. 29 this Petition, and App. 40 in Petition Supreme Court United States, No. 15-247, August 28, 2015.
- iii. As in baseball only condemnor “City” and Petitioner “Rechtzigel” made it to second base and are authorized by legislature of the Minnesota to be served the notice of appeal and affidavit of mailing which Petitioner “Rechtzigel” fully did and complied with Minnesota Statutes 117.145 completely.
- d. Petitioner (Rechtzigel) served the notice of appeal, including Petitioner’s (Rechtzigel’s) affidavit of mailing on respondent, on all parties and nonparties having *“interest in any parcel describe in the appeal who are shown in the petitioner’s affidavit of mailing.”*

- e. Petitioner (Rechtzigel) filed the notice of appeal and Petitioner's (Rechtzigel) affidavit of mailing with the court administrator of Dakota Court First Judicial District within the 40 days that Minn. Stat. 117.145 requires.
- f. Petitioner (Rechtzigel) has in possession a few original returned, unopened, untouched notice of appeal and affidavit of service contained within, returned because of being undeliverable by the United States Post Office as proof that Petitioner (Rechtzigel) fully complied with Minn. Statute 117.145 and Petitioner (Rechtzigel) has photo copy of the original receipt from the U.S. Post Office of the payment made by Petitioner (Rechtzigel) and served on all the people on condemnor's (City's) affidavit of service.
- g. Again, let it be remembered, that Petitioner, (Rechtzigel), fully complied with the statutory requirement of Minn. Statutes 117.145 by serving not only the parties having an interest in any parcel described in the appeal (which is Petitioner Rechtzigel plus his trusts and the City of Apple Valley), but also serving all the people listed in condemnor's (City's) affidavit of mailing, which have no interest in any parcel described in the appeal of the report of the commissioners.
- h. Petitioner (Rechtzigel) is the only party to the proceedings under Minn. Statutes 117.145 who can appeal to the district court from any award of damages

embrace in the report, or from any omission to award damages.

C. The Trial Court erred in allowing the City to falsely claim service was insufficient without any evidence, without having an evidentiary hearing or requiring a positive showing of bad faith or error on behalf of Petitioner Rechtzigel. The City simply pointed out that the record, when scanned in at the Court by the court administrator, does not show the 2 pages that were attached to Petitioner Rechtzigel's Affidavit of Service, but somehow were not scanned in correctly by the court administrator and somehow was replaced by the "scheduling order". The City never actually stated at ANY point that they were not served with the full Affidavit of Service. To deprive Petitioner of his rights under the Minnesota and United States Constitution for a simple and unforeseeable mistake by the court administrator is clearly in error, and should be reversed. *State v. Jude*, states, "*The decisions in this state have never unduly restricted the owner's constitutional right to just compensation where there has been a taking of private property for public use under the powers of eminent domain. Attempts on the part of a condemnor by technical means to defeat the landowner's right to his day in court have never been viewed with favor. Every owner is constitutionally entitled to a just and equal application of the rule that what he owns shall not be taken from him or destroyed or damaged for public use without just compensation.*" ((*State v. Jude*, 258 Minn. 43 (1960) 102 N.W. (2d) 501)).

- D. The Trial Court erred in failing to ask the court administrator if the Affidavit of Service was, or could have been, scanned incorrectly, and failing to ask the signer of the document, and process server, Zachary Stadem, who was present at the motion to amend hearing and also submitted an Affidavit stating that all parties, and non-parties, were served under Minn. Stat. 117.145, for everyone was served.
- E. The Trial Court erred in failing to allow Petitioner Rechtzigel to correct the alleged defect (App. 16), at the motion to amend hearing, which is the correct course of action in this matter, as *State v. Jude* states, “*The proper course in this situation is to allow appellant to amend his notice of appeal to comply with the statute within a specified reasonable period of time unless the state can show substantial prejudice thereby*” ((*State v. Jude*, 258 Minn. 44 (1960) 102 N.W. (2d) 501)), and “*In this state it has long been said that amendment of pleadings should be allowed with much liberality in furtherance of justice.*” ((*State v. Jude*, 258 Minn. 45 (1960) 102 N.W. (2d) 501)).
- F. The Appellate Court erred in A18-0493 opinion filed November 13th, 2018 when stating “Appellant asserts that a notice of appeal with an attached list of respondent’s names satisfied the jurisdictional requirements of section 117.145” (App. 8 at 12.) as that is *not* what Appellant did, and is *not* even what the City alleged Appellant had done, and is in error and misrepresenting the record. The Trial Court record *clearly shows* that an affidavit of service

was filed, and signed under penalty of perjury stating all parties and non-parties were served, and that the list of names served was carefully attached to the back of the affidavit of service, deemed effective by first class mail, under Minn. Statutes 117.145, which Petitioner fully did.

- G. The Government deprived Petitioner of the property through misrepresenting the facts of ownership falsely, which thereby denied Petitioner Due Process of Law.
 - a. Respondent "City" intentionally misrepresented the facts by representing court order, filed April 6th, 2012, file number 19HA-CV-09-5476 as the final judgment; which is a misrepresentation, for the filed November 12th, 2013 judgment is the final judgment, which "the City" should be representing, but is not. The Court specifically states on page App. 40 in the Petition for a Writ of Certiorari in the Supreme Court of the United States, No. 15-247, received August 28th, 2015 that, *"Despite all of the issues surrounding ownership of the gap, the Court is convinced that Rechtzigel owns the gap. The Court reaches this conclusion because Rechtzigel's predecessors farmed the gap for over 15 consecutive years up until the time of the sale to Pulte. The Court is convinced of that due to the testimony of Dorene Nepsund, who testified consistent with that claim and was credible"* (App. 28, 29, 30), and on page App. 24 the court further stated *"Mr. Rechtzigel can still proceed with his*

separate registration action filed on February 22, 2012." These two factual findings of the Court that no other parties have any interest in the Remainder Strip (Gap Parcel) does in fact exclude all alleged parties listed on Respondent "City's" Affidavit of Service, of the report of the Commissioners, providing clear and convincing evidence that Respondent "City's" alleged parties are in fact non-parties, and have no interest in any parcel described in the notice of appeal.

- b. Petitioner "Rechtzigel" states that all of the alleged parties, on Respondent "City's" Affidavit of Service, were never a party and had no interest in the same identical parcel described in 19HA-CV-09-5476 of Judge King's final judgment dated November 12th, 2013 shown on App. 22 Petition for a Writ of Certiorari in the U.S. Supreme Court No. 15-247.
- c. There cannot be any parties claiming an interest with a theory of ownership for 15 years after Judge Robert R. King Jr's final judgment dated November 12, 2013, stating in his findings "The Court is convinced that Rechtzigel owns the gap" "Rechtzigel can still proceed with his separate registration action." (App. 22, 24, 40 of Petition for a Writ of Certiorari in the Supreme Court of the United States, No. 15-247, received August 28th, 2015). (App. 29).

III. Did the Government deprive Petitioner of a Trial by Jury, without Due Process of Law?

- A. Petitioner did comply with Minn. Statutes 117.145 by filing with court administrator a notice of such appeal within 40 days, served it by mail (first class mail with postage prepaid) to all respondents on City's (petitioner's affidavit of mailing) as having been mailed a notice of the report of the commissioners, and included proof of service of notice of appeal on the court and to respondents listed on the city's affidavit of mailing; thus Petitioner (Rechtzigel) deserves restoration of Due Process and Trial by Jury under the 1st, 5th, 7th, and 14th Amendment of the United States Constitution; and Article I, Section 4 of the Minnesota Constitution.
- B. Respondent (petitioner [city of Apple Valley]) has failed to provide any evidence that Petitioner (Rechtzigel) did not comply with Minn. Statutes 117.145, in fact City of Apple Valley has never actually stated on the record whether or not they were indeed served, with a full Affidavit of Service containing the front page, plus the two back pages which listed all parties who were served with Petitioner Rechtzigel's Appeal of the Commissioner's award, and has never presented even one single piece of evidence that City of Apple Valley, nor any other party contained on the list, was not served. The fact remains that it is very clear that the only error that occurred in this

instant case is a simple clerical issue that was, and still is, easily remedied.

C. The Appellate Court erred in claiming that anyone besides Petitioner has interest in the subject property, on November 13th, 2018, “*Appellant’s argument that he did not need to serve respondents because he was the only remaining party also fails*” (App. 8), it is clear from the Trial Court record that at each and every hearing since the City of Apple Valley filed their petition to condemn the property in 2014, the only party participating is Petitioner Rechtzigel, and the City of Apple Valley, as Golden Spike states, “*Although all the other prior tenants and owners may have been ‘parties of record’ by virtue of the fact that they were named in the condemnation proceeding, none of them, except Golden Spike, have an interest in the land any longer.*” Again, as in *Minneapolis Community Development Agency, Respondent v. GOLDEN SPIKE, INC., Appellant*, 536 N.W. 2d 30 (1995) all other parties in this instant case have no property interest in this matter as has already been pronounced by Judge Robert R. King Jr.’s Final Judgment on the subject property sets up a bar of Res Judicata against all others, stating that Petitioner Rechtzigel is the owner of the strip. Since that order, all others cannot be parties of record, for they never had an interest, do not have an interest in the subject property, and never did, therefore, as nonparties they do not require notice being given to them under Minn. Statutes 117.145. As the Court of *Golden Spike* stated, “A ‘party’ under section

117.145 is ‘one who is a participant in a legal proceeding as opposed to a nonparty or person who is not’, which is exactly what all other “parties of record” have become non-parties the moment Judge Robert R. King Jr. declared that Rechtzigel is the owner of the same identical strip description in this instant appeal of the report of the commissioners.

- a. The Trial Court and Appellate Court erred in not applying the precedent set in “*Golden Spike*” that reaches this instant case of circumstances relating to service on parties who no longer have an interest in the subject property, as MCDA v. *Golden Spike* states, “*We see no reason to invalidate the district court’s subject matter jurisdiction in this case simply because the parties did not serve notice on those who no longer had any interest in the land, were no longer participating in the action, and could not have taken any action even if they had received notice of the appeal.*” Petitioner Rechtzigel did in fact serve all “parties of interest”, as was the case in *MCDA v. Golden Spike, Inc.*, 536 N.W.2d 30 (Court of Appeals of Minnesota, August 22, 1995).
- b. It does not matter whether or not they were served as they were no longer “participating in the action” and therefore could not take part in this matter.

- D. Petitioner (Rechtzigel) on appeal from the notice of the commissioners' award should be granted a trial de novo before a trial by jury for the amount of damages as stated in *City of Mankato v. Hilgers*, 313 N.W.2d 610 (Minn. 1981); *State v. McAndrews*, 286 Minn. 115, 175 N.W.2d 492 (1970).
- E. Petitioner (Rechtzigel) on appeal from the notice of the commissioners' award should be granted a trial de novo before a trial by jury for the amount of damages and "*an appellate court should not substitute its own judgment for that of the jury even though it may be of the view that the evidence submitted would justify a substantially larger verdict.*" (See *State v. Frisby*, 260 Minn. 70, 108 N.W.2d 769 (1961)).
- F. Petitioner (Rechtzigel) on appeal from the notice of the commissioners' award should be granted a trial de novo before a trial by jury for the amount of damages and "*the owner has the burden of proving and establishing his damages, thus occupying the position of plaintiff, with the petitioner occupying the position of defendant.*" (See *State v. Pearson*, 260 Minn. 477, 110 N.W.2d 206 (1961)).

CONCLUSION

No greater honor can the United States Supreme Court partake in than that of coming to the rescue of a Pro Se litigant where the government is stripping away one's Liberty and Property without Due Process of Law? Greatness at work is the greatest, when one helps the helpless in time of need, in being a servant of impartial justice to all, especially unto a Pro Se litigant walking among financial giants, big name law firm players, and big government with endless money to steam roll it's way over the rights, liberty, property, and due process of a Pro Se litigant farmer that seems forgotten in a world where government usurps have become acceptable behavior.

Petitioner's prayer of hope is that a sign will be given from the United States Supreme Court, that when state courts do fail at providing full and fair impartial justice, that the promised rights and protections of United States Constitution can still be relied upon to defend and relief one of a government that for the most part only goes where the big money flows.

Petitioner's prayer is:

1. United States Supreme Court Reversed and Remanded the Court of Appeals of Minnesota and trial court grant a trial by jury on providing "just compensation" concerning the amount of damages in trial de novo.

Accordingly, the United States Supreme Court should review the decision of the Minnesota Court of Appeals.

Respectfully submitted,
GENE RECHTZIGEL, Petitioner
Dated: April 29, 2019