

No. 19-1319

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID R. MORABITO and COLETTE M.G. MORABITO

Petitioners,

vs

NEW YORK, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2 of this Court, the Petitioners, hereby respectfully petitions for rehearing of this case before a full nine-Member Court for an order (1) granting rehearing, (2) vacating the Court's October 5, 2020, order denying certiorari, (3) redispensing of this case by granting the petition for a writ of certiorari, (4) vacating the Amended Summary Order entered on February 27, 2020 of the United States Court of Appeals-Second Circuit, (5) vacating the Decision and Orders entered on June 18, 2018 and August 7, 2018 of the United States District Court-Western District of New York, and (6) remanding to the Second Circuit or District Court for further consideration.

This case involves multiple challenges by Petitioners as to whether or not:

- (A) the New York State Law, adopted on or about April 3, 2020 permanently banning High Volume Hydraulic Fracturing (fracking) in the State of New York is an unconstitutional Taking of the United States Constitution under the Fifth and Fourteenth Amendments and a violation of Due Process of the United States Constitution under the Fourth and Fourteenth Amendments;
- (B) the United States Court of Appeals-Second Circuit improperly applied or ignored the dictates and reasoning of the Court in *Rosemary Knick, Petitioner v. Township of Scott, Pennsylvania, et al.*, 588 U.S. ____ (2019), docket No. 17-647, held on June 21, 2019;
- (C) permanently banning High Volume Hydraulic Fracturing in the State

of New York is a violation of interstate commerce;

- (D) the decision by the United States Court of Appeals-Second Circuit was a denial of the fundamental rights of justice in that Petitioners were not allowed to: amend their Complaint pursuant to Fed.R.Civ.P. Rule 15; the Fed.R.Civ.P. 12(b)(6) Motion should have been denied; that pursuant to the proposed simple amendments, the suit should not have been barred under the Eleventh Amendment of the United States constitution; and that Petitioners had standing to sue Respondents.

The Petition for a writ of certiorari was filed on May 19, 2020. On June 9, 2020, the case was distributed for conference for June 25, 2020. Thereafter, the Court ordered the Respondent to file a Brief in Opposition which was filed on August 18, 2020. Petitioners filed a Reply to Brief in Opposition on August 31, 2020. The case was again distributed to the Court for conference on September 29, 2020. The Petition for writ of certiorari was denied on October 5, 2020. The hereinstated Petition for Rehearing is timely filed.

Supreme Court Rule 44 permits an unsuccessful party to submit a petition for rehearing within 25 days of the entry of an adverse decision, judgment on the merits, or denial of certiorari. Petitioners acknowledge that the Court seldom grants a rehearing.

It is further acknowledged that the infrequency with which petitions are granted is due to the fact that the Court engages in a thorough consideration of each case prior to issuing its directive and will grant Petitioners application

only in exceptional circumstances.

The Marcellus and Utica shale represents arguably the largest natural gas play in the world. The greatest concentration of this natural gas deposit originates in the Southern Tier of New York State along the Pennsylvania border in Western New York. This particular area within Western New York is also arguably the poorest region in the United States though “sitting” on many billions of dollars of natural resources. The Court’s decision will directly impact the economic viability of many tens of thousands, if not hundreds of thousands of residents, citizens, and landowners in this region of New York State.

The issues raised in the writ of certiorari involving “fracking” is an issue of national importance and the Court denied the writ without a full Court addressing the issues raised herein. Under these “exceptional circumstances”, it is speculation and conjecture that the “ninth” justice would not be in favor of granting the writ and test the boundaries of the issues presented to the full Court. It is not unreasonable that the “ninth” member of the Court could influence the opinions of the remaining justices as to the particular facts and circumstances involving the above stated issues raised in Petitioners’ Writ of Certiorari.

Moreover, this legal proceeding is the only case in any state or federal courts addressing High Volume Hydraulic Fracturing of natural gas involving the State of New York. The Court re-addressing this matter will have a most profound impact upon the landowners of New York State.

CONCLUSION

For the foregoing reasons, Petitioners David R. Morabito, Sr. and Colette M. G. Morabito prays that this Court (1) grant rehearing of the Order denying their petition for writ of certiorari in this case, (2) vacate the Court's October 5, 2020, order denying certiorari, (3) grant the petition for a writ of certiorari, (4) vacate the Amended Summary Order entered on February 27, 2020 of the United States Court of Appeals-Second Circuit, (5) vacate the Decision and Orders entered on June 18, 2018 and August 7, 2018 of the United States District Court-Western District of New York and, (6) remand to the Second Circuit or District Court for further consideration.

Dated: October 26, 2020

Respectfully submitted,
/s/David R. Morabito, Sr.

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CERTIFICATE OF COUNSEL

As counsel for the petitioners (Pro Se), I certify that petition for rehearing is presented in good faith and not for delay.

Executed on October 26, 2020.

/s/David R. Morabito
David R. Morabito