

No 20 - 100

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL S. BARTH,

PETITIONER,

v.

BERNARDS TOWNSHIP PLANNING  
BOARD, *ET AL.*,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE NEW JERSEY SUPREME COURT

PETITION FOR REHEARING

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## PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioner respectfully petitions the United States Supreme Court to rehear its March 2, 2020 Order denying a Petition for a Writ of Certiorari in Michael S. Barth v. Township of Bernards, New Jersey et. al., No. 19-806.

## GROUNDS FOR REHEARING

On October 13, 2020, this Court denied certiorari in Barth v. Bernards Township Planning Board, No. 20-100. In that Order the Court wrote, “Justice Alito took no part in the consideration or decision of this petition.”

While during the Amy Coney Barrett hearings, the public learned a lot of additional information on how the Supreme Court works (a lot of it appearing seemingly an attempt at a secretive process to only those in some “inner circles”); the Los Angeles Times once wrote that such a statement by the Court is the equivalent of a Supreme Court Justice recusal. (LA Times reference omitted.)

As stated in Page 2 of the petition in Barth v. Bernards Township Planning Board, No. 20-100, the New Jersey Supreme Court considered the Planning Board case (20-100) and Michael S. Barth v. Bernards Township, et al. No. 19-806 so much linked, (whether intrinsically or otherwise); that the New Jersey Supreme Court Chief Justice Stuart Rabner recused himself from both cases below. Id.

Even without Justice Alito stating his reasons for his apparent recusal, it would appear unequivocally that Justice Alito should have clearly recused himself in both No. 19-806, and No. 20-100, and not just the latter case No. 20-100.

This Court and nearly every other Court has stated that when a Justice should be recused - and does not recuse - that Justice taints the rest of the panel. (Multiple references omitted.)

By Justice Alito not recusing himself in No. 19-806, but rather a later case No. 20-100, the tainting basically has the effect so that the denial in No. 19-806 is the equivalent of a decision on the merits in No. 19-806, and also resulting in the bad precedent for No. 20-100.

Moreover, whether only 7 Justices in 20-100 when four are needed to grant certiorari, or a "tainted-panel" in 19-806; the unique nature of a new Supreme Court Justice Barrett, during the allotted time to file a petition for rehearing, further supports a petition for rehearing.

## CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner respectfully requests that this Court grant petitioner's request for rehearing and vacate the order denying writ of certiorari.

Respectfully submitted,

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October 29, 2020

## CERTIFICATION OF COUNSEL

The undersigned certifies that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

The undersigned further certifies that the grounds of this petition are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Michael S. Barth