

ORIGINAL

In The  
Supreme Court of the United States

ALLAN J. NOWICKI,

*Petitioner,*

v.

TINICUM TOWNSHIP, BUCKS COUNTY, PA.,  
NICHOLAS FORTE, TINICUM TOWNSHIP  
SUPERVISOR, NICHOLAS FORTE, LINDA M.  
McNEILL, TINICUM TOWNSHIP MANAGER,  
LINDA M. McNEILL, STEPHEN B. HARRIS, ESQUIRE,  
HARRIS AND HARRIS, TOWNSHIP SOLICITOR,  
TOM FOUNTAIN, P.E., KEYSTONE MUNICIPAL  
ENGINEERING, INC., TOWNSHIP ENGINEER  
SHAWN McGLYNN, KEYSTONE MUNICIPAL  
SERVICES, INC., LLC, BOYCE BUDD, GARY V.  
PEARSON, DELAWARE VALLEY LANDSCAPE  
STONE, INC., JOSEPH BUSIK, J. KEVAN BUSIK,  
KEITH KEEPING, BUNNIE KEEPING,  
EASTBURN AND GRAY, P.C., MICHAEL J. SAVONA,  
MICHAEL E. PETERS, ESQUIRE, MICHAEL T.  
PIDGEON, ESQUIRE, JAMES J. SABATH,  
JAMES J. SABATH, CHIEF OF POLICE,

*Respondents.*

On Petition For A Writ Of Certiorari  
To The Commonwealth Court Of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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*Pro-se Petitioner*

Supreme Court, U.S.  
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SUPREME COURT, U.S.

## QUESTIONS PRESENTED

(1) Is it unlawful to advance the Political agenda of a Pennsylvania Municipality by violating the Civil Rights of its resident?

(2) Is it unlawful for a Pennsylvania Municipality to conspire with others to commit fraud upon the Court in order to take away the property rights of a resident?

(3) Is it unlawful to deny a pro-se litigant his day in court before a jury of his peers based on technicalities of pleadings and not based on the merits of the case?

(4) Will the decision of the Court cause the public to lose confidence in our Judicial system and the Rule of Law?

## **PARTIES TO THE PROCEEDING**

Petitioner Allan J. Nowicki was the Plaintiff in the Bucks County Court of Common Pleas appearing at Case Number 2015-01776 and Appellant in the Commonwealth Court of Pennsylvania appearing at Case Number 1749 C.D. 2019.

Respondents Tinicum Township, Bucks County, Pa., Nicholas Forte, Tinicum Township Supervisor, Nicholas Forte, Linda M. McNeill, Tinicum Township Manager, Linda M. McNeill, Stephen B. Harris, Esquire, Harris and Harris, Township Solicitor, Tom Fountain, P.E., Keystone Municipal Engineering, LLC, Township Engineer, Shawn McGlynn, Keystone Municipal Services, Inc., Boyce Budd, Gary V. Pearson, Delaware Valley Landscape Stone, Inc., Joseph Busik, J. Kevan Busik, Keith Keeping, Bunnie Keeping, Eastburn and Gray, P.C., Michael J. Savona, Michael E. Peters, Esquire, Michael T. Pidgeon, Esquire, James J. Sabath, James J. Sabath, Chief of Police were the Defendants in the Bucks County Court of Common Pleas and the Appellees in the Commonwealth Court of Pennsylvania.

**RELATED CASES**

*Tinicum Township v. Allan J. Nowicki and River Road Quarry, LLC v. River Road Quarry, LLC and Pennswood Hauling, LLC* in the Commonwealth Court of Pennsylvania No. 2176 C.D. 2012.

*Tinicum Township v. Nowicki, et al.*, in the Commonwealth Court of Pennsylvania No. 2114 C.D. 2014.

*Tinicum Township v. Nowicki, et al.*, in the Commonwealth Court of Pennsylvania No. 734 C.D. 2015.

*Tinicum Township v. Allan J. Nowicki* in the Bucks County Court of Common Pleas No. 2018-06609.

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## PETITION FOR A WRIT OF CERTIORARI

Allan J. Nowicki petitions this Court to issue a writ of certiorari to review the judgment of the Commonwealth Court of Pennsylvania in the case titled *Allan J. Nowicki v. Tinicum Township, et al.*, No. 1749 C.D. 2019.

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## OPINIONS BELOW

The opinion of the Commonwealth Court of Pennsylvania is reproduced at App. 1-12. The Commonwealth Court of Pennsylvania denied Appellant's Application for Reargument and is reproduced at App. 15-16. The opinion of the Bucks County Court of Common Pleas is reproduced at App. 17-65. The Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal and is reproduced at App. 68-69. The Supreme Court of Pennsylvania denied the Allowance for Reconsideration and is reproduced at App. 70-71.

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## JURISDICTION

The Commonwealth Court of Pennsylvania issued its judgment on December 8, 2020, App. 13-14. The Supreme Court of Pennsylvania denied a timely Petition for Allowance for Reconsideration on September 7, 2021, App. 70-71. On December 16, 2021, Justice Alito extended the time for filing this petition to February 4,

2022, Application No. 21A226. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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**STATUTES AND CONSTITUTIONAL  
PROVISIONS INVOLVED**

The Civil Rights statutes involved are 42 U.S.C. § 1983, 18 U.S.C. § 241 and 18 U.S.C. § 242.

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**INTRODUCTION AND  
STATEMENT OF THE CASE**

This case is about a Bucks County, Pennsylvania Municipality located approximately 50 miles North of Philadelphia, Pa. and 70 miles West of New York City, N.Y. . . . Tincum Township and its' longtime resident, farmer and small business owner Allan J. Nowicki.

Plaintiff, Allan J. Nowicki has been a full time resident of Tincum Township for over 50 years. As a young man pursuing his college studies of Architecture, Engineering, Surveying and Land Use Planning he volunteered his time and effort to help draft Tincum Township's first Zoning Ordinance. Allan J. Nowicki served as Tincum Township's Deputy Zoning Officer, a member of the Tincum Township's Planning Commission and was appointed the Chairman at the age of 23. He donated a Conservation Easement on a 42 acre parcel of land in Tincum Township in the

1980s before most people even knew what a Conservation Easement was.

Allan J. Nowicki has owned in fee and had a financial interest in over eighty one (81) parcels of land in Tincum Township. He was a full time hay and grain farmer and farmed over three (3,000) thousand acres annually in Bucks County, Pennsylvania. Allan J. Nowicki has continuously been engaged in tree farming for over fifty (50) years and has planted or released more than ten (10,000) thousand trees in the Township of Tincum.

Allan J. Nowicki at one time owned over ninety (90) percent of the multi-family zoned land in Tincum Township which would have allowed him to construct over eleven (1,100) hundred housing units. Tincum Township re-zoned Nowicki's land so that the maximum number of housing units could be no more than thirty-five (35) while Nowicki was in and out of hospitals as he fought for his life from his many bodily injuries.

On April 16, 2007 Allan J. Nowicki purchased a three (3) acre parcel of land with improvements through River Road Quarry, LLC, a company owned by Nowicki. The property is **Zoned Extraction** with multiple pre-existing conditions prior to the enactment of Zoning by Tincum Township.

Allan J. Nowicki is the sole-member of Pennswood Oil and Gas, LLC, a Pennsylvania Limited Liability Company that had been granted an Operator's License from the Pa. DEP to drill natural gas wells in the

Commonwealth of Pennsylvania. Tinicum Township, Bucks County, Pennsylvania sits above the South Newark Basin, a geological formation that contains petroleum hydrocarbons.

Less than sixty four (64) days after Nowicki purchased the three acre parcel of land, without giving notice, Tinicum Township enacted Ordinance #179 which completely denies natural gas drilling. At the time of enactment of Ordinance Number 179 the Commonwealth of Pennsylvania solely had the legal authority to regulate the extraction of Oil and Gas and not the Township of Tinicum.

Even though the three (3) acre parcel of land was pre-existing and non-conforming and allowed agricultural and forestry uses Nowicki acted in good faith and applied for a Zoning Permit to produce natural garden mulch from storm damaged, diseased, and dead trees. He was denied. Nowicki filed an Appeal to the Tinicum Township Zoning Hearing Board, which also denied his request. It should be noted that at the Zoning Board Hearing there were no residents that objected. There were numerous residents that testified in support. Furthermore, Nowicki presented a Petition in support signed by all adjoining property owners and additional residents totaling over fifty (50) signatures.

The litigation now began in the Bucks County Court of Pleas and continued through the Commonwealth Court of Pennsylvania. Nowicki lost in the Commonwealth Court of Pennsylvania in an en banc

four to three decision. See the Dissenting Opinion by Judge Leavitt appearing at App. 72.

Subsequently after the purchase of the three (3) acre parcel, RRQ, LLC, a Nowicki owned Limited Liability Company purchased a fifty six (56) acre parcel of land that surrounded the original three (3) acre parcel which was also **Zoned Extraction** and contained a lake of approximately forty two (42) acres.

After Tincum Township illegally shut down the mulch and firewood operation on the three (3) acre parcel Nowicki contacted the Tincum Township Zoning Officer, Shawn McGlynn and proposed utilizing the fifty six (56) acre parcel for the mulch and firewood operation. Mr. McGlynn immediately gave his support and approval. Shortly after the approval by Mr. McGlynn Tincum Township overrode his decision.

The litigation commenced again in the Bucks County Court of Common Pleas and the Commonwealth Court of Pennsylvania.

Throughout this litigation Allan J. Nowicki filed multiple Right to Know requests with the Township of Tincum. Tincum Township has not acted in good faith and has refused to provide the documents and information as requested by Nowicki. Nowicki had filed an Appeal to the Pennsylvania Office of Open Records and the Office of Open Records Ordered Tincum Township to provide a portion of the requests to Nowicki within thirty (30) days. . . . the Township refused and filed a Petition for Judicial Review in the Bucks County Court of Common Pleas on November 13, 2018 appearing at

No. 2018-06609. The Honorable Robert J. Mellon affirmed Nowicki's Appeal on November 30, 2020. . . . **Tinicum Township still has not provided the documents and information to Nowicki.**

Ever since 1978 and continuing today, Tinicum Township and their agents have harassed Nowicki, made false statements, tortuously interfered with malice and intent to harm Nowicki.

Tinicum Township has disguised their efforts to put a farmer and small business owner out of business. Tinicum Township has prevented Allan J. Nowicki from earning a living. Tinicum Township has prevented Allan J. Nowicki from providing thirty (30) million gallons of water to the Penn East Pipe Line and to stop the development of Natural Gas by doing whatever was necessary including committing a Fraud Upon the Court, Conspiring to Commit Abuse of Process, Abuse of Process and violating Allan J. Nowicki's Civil Rights.

Tinicum Township has instituted the custom or policy: "*Whatever Tinicum Township and its agents can do to cause harm to Allan J. Nowicki they will do*".

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### REASONS FOR GRANTING THE PETITION

1. The Civil Rights of the Plaintiff have been most egregiously violated by a Pennsylvania Municipality, together with all actors, in a deliberate planned manner.

2. Review of this case is an issue of National Importance.

3. There are multiple disagreements among lower courts as to how Pro-se pleadings are to be decided.

4. Reversible legal error in the Commonwealth Court of Pennsylvania is stated as follows:

**A. The Honorable Anne E. Covey should have recused herself from participating on the panel in this Appeal**

Judge Covey's biography states that she is a resident of Bucks County Pennsylvania and a Member of the Bucks County Bar Association.

The Co-Defendants: The Law Firm of Eastburn and Gray, P.C. (comprised of approximately thirty (30) practicing attorneys), The Law Firm of Harris and Harris, Stephen B. Harris, Esquire, Michael E. Peters, Esquire, Michael T. Pidgeon, Esquire have offices located in Bucks County, Pennsylvania and are also Members of the Bucks County Bar Association.

Co-Defendant, Michael J. Savona a former partner and shareholder in the firm of Eastburn and Gray, P.C. is no longer a Member of the Bucks County Bar Association nor does he practice law in the Commonwealth of Pennsylvania. In March 2018 Michael J. Savona pled guilty to lying to the FBI about his knowledge of a \$10,000 bribe involving a former Bucks County Judge and Municipal Officer.

Both State and Federal law holds that Judges must recuse themselves if there are grounds to do so. Pursuant to Pennsylvania Chapter 33 Code of Judicial Conduct, Subchapter A Canons #1. "A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." 28 U.S. Code § 455 – Disqualification of justice, judge, or magistrate judge (a) Any, justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

**B. The panel departed from precedent by failing to utilize a relaxed standard for pro-se filings.**

The panel acknowledged that the Appellant, Allan J. Nowicki filed his Appeal *pro-se*. The Courts of this Commonwealth, contrary to this panel's result, have consistently held that the adequacy of pro-se filings are subjected to less stringent scrutiny than those filed by attorneys. See *Danysh v. Department of Corrections*, 845 A.2d 260, 262-263 (Pa. Cmwlth. 2004) ("The allegations of a pro-se complainant are held to a less stringent standard . . ."), *aff'd*, 584 Pa. 122 (2005); *Madden v. Jeffes*, 85 Pa. Cmwlth. 414, 418, 482 A.2d 1162, 1165 (1984) ("We do not hold pro-se complainants to the stringent standards expected of pleadings drafted by lawyers . . ."). See *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959) "Pro-se pleadings are to be considered without regard to technicality; pro-se litigants' pleadings



are not to be held to the same high standards of perfection as lawyers". See *Picking v. Pennsylvania Railway*, 151 F.2d 240, Third Circuit Court of Appeals (1945). "The plaintiff's civil rights pleading was 150 pages and described by a Federal Judge as "inept", nevertheless, it was held "where a plaintiff pleads pro-se in a suit for protection of civil rights, the court should endeavor to construe plaintiff's pleadings without regard to technicalities". See *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 230 (3d Cir. 2008) ("Few issues . . . are more significant than pleading standards, which are the key that opens access to courts.")

**C. The panel's decision concerning Waiver is not supported by Precedent and Pennsylvania Procedure(s).**

The panel's decision finding waiver of the appellant's claim by failing to adhere to Pennsylvania R.A.P. 2118 and 2119 are at odds with precedent. Appellant directed the Court to read two letters that showed bias to Nowicki. Appellant argued that "Plaintiff pled sufficient facts together with numerous exhibits and incorporated prior cases into the record as if fully set forth herein to prove his case and should not have been thrown out of court at the Preliminary Objection stage of proceedings". Appellant's Conclusion states: "The Lower Court erred when it sustained the Preliminary Objections of all Defendants. The Preliminary Objections of all of the Defendants should have been overruled because the Plaintiff's Final Amended Complaint alleged facts together with

exhibits sufficient to support his claims and contained inferences that were reasonably deducible". Meaningful review was certainly achievable by this Honorable Court in this matter. See *Union Twp. v. Ethan Michael, Inc.*, 979 A.2d 431, 436 (Pa. Cmwlth. 2009). Thus, **this Court may waive even 'egregious violations' of the appellate rules when the errors 'do not substantially interfere with our review of the appellate record.'** *Seltzer v. Dep't of Educ.*, 782 A.2d 48, 53 (Pa. Cmwlth. 2001). This Court has deemed meaningful review of the merits possible when it [can] discern a pro-se appellant's argument, or where the interest of justice requires it. See *Woods v. Office of Open Records*, 998 A.2d 665 (Pa. Cmwlth. 2010). . . . Moreover, we can limit our review to those cognizable arguments we can glean despite the brief's noncompliance. See *Woods*; *Commonwealth v. Adams*, 882 A.2d 496 (Pa. Super. 2005). Any violations of the Appellate Rules by Nowicki are far less than referenced in *Richardson v. Pa. Ins. Dep't*, 54 A.3d 420, 426 (Pa. Cmwlth. 2014).

**D. The panel's decision violated the judicial preference for deciding cases on the merits embodied in the Rules of Pennsylvania Courts.**

The panel's decision regarding waiver does not conform with the established principle that the law favors deciding cases on the merits, rather than on procedural deficiencies. See Pa. R.C.P. 126. *Liberal Construction and Application of Rules*, and Pa. R.A.P. 105(a). *Liberal construction and modification of rules.*

**E. Petitioner hereby incorporates as if fully set forth herein the publications of the following authors as further support as to Nowicki's pro-se pleadings.**

Lois Bloom & Helen Hershkoff,  
*Federal Courts, Magistrate Judges, and  
the Pro-Se Plaintiff,*  
16 Notre Dame J.L. Ethics & Pub. Pol'y 475  
(2002)

Rory K. Schneider,  
*Illiberal Construction of Pro-Se Pleadings,*  
159 U. Pa. L. Rev. 585 (2011)

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### CONCLUSION

For the foregoing reasons, Petitioner, Allan J. Nowicki prays and respectfully requests this Honorable Court to grant a writ of certiorari.

Respectfully submitted,  
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*Pro-se Petitioner*

Date: February 3, 2022

App. 1

IN THE COMMONWEALTH  
COURT OF PENNSYLVANIA

Allan J. Nowicki,	:
	:
Appellant	:
	:
v.	:
	:
Tinicum Township, Bucks	:
County, Pa., Nicholas Forte,	:
Tinicum Township Supervisor,	:
Nicholas Forte, Linda M.	:
McNeill, Tinicum Township	:
Manager, Linda M. McNeill,	:
Stephen B. Harris, Esquire,	:
Harris and Harris, Township	:
Solicitor Tom Fountain, P.E.,	:
Keystone Municipal	:
Engineering, Inc., Township	:
Engineer Shawn McGlynn,	:
Keystone, Municipal Services,	:
LLC, Boyce Budd, Gary V.	:
Pearson, Delaware Valley	:
Landscape Stone, Inc., Joseph	:
Busik, J. Kevan Busik, Keith	:
Keeping, Bunnie Keeping	:
	:
v.	:
	:
Eastburn and Gray, P.C.,	:
Michael J. Savona, Michael E.	:
Peters, Esquire, Michael T.	:
Pidgeon, Esquire, James J.	: No. 1749 C.D. 2019
Sabath, James J. Sabath,	: Submitted:
Chief of Police	: September 11, 2020