No. 20-881

In The

Supreme Court of the United States

HUONG L. TRAN and RICHARD W. HAZEN,

Petitioners,

v.

CITY OF HOLMES BEACH, FLORIDA;
CITY OFFICIALS in Official Capacity; FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION;
DEPARTMENT OFFICIALS in Official Capacity,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

" . . . Mindful of . . . *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936) ("The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.")" *Bickerstaff Clay Prod. v. Harris Cty.*, 89 F.3d 1481, 1487 n. 9 (11th Cir. 1996). See also *Magluta*, 256 F.3d 1282, 1284-85 (11th Cir. 2001) (refusing to address . . . serious constitutional issues on the basis of a . . . 'shotgun' pleading. . . .) *Gutierrez v. I.N.S.*, 745 F.2d 548, 550 (9th Cir. 1984).

The first broad question is whether strict shotgun pleading rules, a category of heightened standard, is permissible as used (excessively) in the Eleventh Circuit to dispose of complaints and deprive litigants equal access to federal courts to seek equal justice, relief and secure their constitutional rights on the merits under 42 U.S.C. §1983 and the Fourteenth Amendment?

Alternatively, the specific subsidiary questions are:

a) Whether this Court would reconsider the *Ashwander* rule and define the scope of "some other ground" language so that an Article III court could review a serious constitutional question or claim and not to dismiss and deny justice based solely on pleading technicality?

b) Whether the Courts should have reviewed and provided specific guidance for each claim in pro se Petitioners' complaint to help narrow the issues and correct the deficiencies with limited discovery and a hearing instead of dismissing with prejudice the entire pleading?

QUESTIONS PRESENTED—Continued

c) Whether it is required to identify and name all individuals involved when they act in a collective body such as the City Code Enforcement Board or the City Commission, and to separate the claim for each individual being sued in *official* capacity under 42 U.S.C. §1983, §1985 and §1986?

d) Whether each government official can be held liable in an individual or personal capacity when they act under custom policies or regulations with overlapping, conflicting, vague and confusing provisions that could be invalid or unconstitutional?

The second broad question is whether the Supreme Court would reconsider the "Finality requirement" in *Williamson Cty.*, 473 U.S. 172, and define the scope of the final decision, particularly when the final decision requires an exhaustion of administrative remedies that include quasi-judicial hearing, state trial, appellate courts, and involve more than one government agency and several intertwining regulations? Alternatively, whether the finality requirement and exhaustion of administrative remedies preclude all Petitioners' claims under 42 U.S.C. §§1983, 1985 & 1986?

LIST OF PARTIES & CORPORATE DISCLOSURE

The Petitioners, Huong L. Tran and Richard W. Hazen, married, hereafter referred to as "Tran-Hazen" were the Plaintiffs in the District Court and the Appellants in the Court of Appeals for the Eleventh Circuit. They are individuals. There is no disclosure statement under Supreme Court Rule 29.6.

For brevity, the Respondents are primarily the City of Holmes Beach, Florida, hereafter referred to as the "City" in this petition and the Florida Department of Environmental Protection, hereafter referred to as the "Department".

1/ Under the Florida Department of Environmental Protection are the Environmental Manager James Martinello[1], in official capacity and other unnamed state officials such as the Permit Manager in official capacity. There were other officials involved but unknown to Petitioners.

2/ Under the City of Holmes Beach, each person, in section (a) to (f) below, were initially listed as defendant in official capacity in the district court, then later substituted with position title under Fed.R.Civ.P. 17(d) and 25(d) and also under the Supreme Court Rule 35.3. For brevity, in the last third amended complaint, some positions were removed and only some

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[1] Mr. James Martinello has changed position and is currently not the Environmental Manager.

LIST OF PARTIES & CORPORATE DISCLOSURE—Continued

nominal named officials were listed as parties. See *Hafer v. Melo*, 502 U.S. 21 (1991); *Busby v. City of Orlando*, 931 F.2d 764[2].

a/ City Mayor: Carmel Monti (2012-2014), Bob Johson (2014 -2018), Judy Titsworth (2018-current).

b/ City Building Official: Thomas O'Brien (2012-2014), James McGuinness (2015-2019).

c/ Chair City Commissioner: Jean Peelen (2012-2016), Judy Titsworth (2016-2018).

d/ Commissioners[3]: Pat Morton (2012-2020), Marvin Grossman (2012-2016), Carol Soustek (2014-current).

e/ Code Enforcement Board ("CEB") (2012-2015)[4]

f/ Other anonymous, unknown, unnamed persons.

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[2] "[B]ecause suits against a municipal officer sued in his official capacity and direct suits against municipalities are functionally equivalent, there no longer exists a need to bring official-capacity actions against local government officials, because local government units can be sued directly." *Busby*, 931 F.2d 764, 776 (11th Cir. 1991).

[3] The City has five commissioners, elected or reelected every 2 years.

[4] Code Enforcement Board (CEB) of six persons was dissolved by the City in 2015 and replaced with a Special Magistrate.

LIST OF PARTIES & CORPORATE DISCLOSURE—Continued

3/ No named defendants are being sued in personal or individual capacity[5].

LIST OF ALL PROCEEDINGS

Proceedings directly related to this case in state trial, federal trial and appellate courts are as follows:

Tran-Hazen v. City of Holmes Beach, et. al., No. 19-13470, Tran-Hazen pro se, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered July 17, 2020. Rehearing en banc and panel rehearing denied September 24, 2020. Stay of the issuance of mandate denied October 22, 2020. Request for reconsideration stay of mandate pending.

Tran-Hazen v. City of Holmes Beach, et. al., No. 8:19-cv-534, Tran-Hazen pro se, U.S. District Court for the Middle District of Florida. Final order entered August 6, 2019. Reconsideration granted in part, denied in part August 23, 2019.

Hazen-Tran v. City of Holmes Beach, No. 2018-CA-5800, Tran-Hazen pro se, Circuit Court of the Twelfth Judicial Circuit In and For Manatee County, Florida. Order to dismiss without prejudice with leave to amend December 11, 2020.

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[5] Due to complexity and lack of resources, it is not possible for Tran-Hazen to pursue actions against each official or person involved in personal or individual capacity.

LIST OF ALL PROCEEDINGS—Continued

Hazen-Tran v. City of Holmes Beach, No. 2013-CA-4098, Tran-Hazen represented by counsel, Circuit Court of the Twelfth Judicial Circuit In and For Manatee County, Florida. Pending trial.

Exhaustion of administrative remedies with the City of Holmes Beach included code enforcement and an initiative petition. Tran-Hazen were represented by counsel in the cases listed below.

Cases related to the City of Holmes Beach code enforcement are as follows:

1. *City of Holmes Beach v. Hazen-Tran*, No. 2018-CA-0784, Circuit Court of the Twelfth Judicial Circuit In and For Manatee County, Florida. Stay pending resolution of Case No. 2013-CA-4098.

2. *Hazen-Tran v. City of Holmes Beach*, No. 2D14-4833, District Court of Appeal of Florida, Second District. Judgment entered June 12, 2015. Rehearing motion stricken October 28, 2015. Final denial order December 29, 2015.

3. *Hazen-Tran v. City of Holmes Beach*, No. 2013-AP-0297, Circuit Court of the Twelfth Judicial Circuit In and For Manatee County, Florida, as Appellate Court. Judgment entered September 16, 2014. Mandate issued October 2, 2014.

LIST OF ALL PROCEEDINGS—Continued

4. *Hazen-Tran v. City of Holmes Beach*, No. 2013-CA-6141, Circuit Court of the Twelfth Judicial Circuit In and For Manatee County, Florida. Judgment entered March 17, 2014. Mandate issued April 3, 2014.

5. *City of Holmes Beach v. Hazen-Tran*, CE-11-12-225. Final administrative order July 30, 2013. Order imposing fines September 12, 2013. Order imposing fines May 23, 2016.

Cases related to the initiative petition are as follows:

1. *Hazen, et. al., Petitioners v. City of Holmes Beach, Florida*, No. 17-603. Supreme Court of the United States. Petition for writ of certiorari denied January 8, 2018.

2. *Petitioners' Committee, Hazen-Tran v. City of Holmes Beach*, No. 2D16-4158, District Court of Appeal of Florida, Second District. Judgment per curiam, no opinion May 3, 2017. Rehearing denied July 17, 2017. Mandate issued October 6, 2017.

3. *City of Holmes Beach v. Petitioners' Committee, Hazen-Tran*, No. 2013-CA-5990, Circuit Court of the Twelfth Judicial Circuit In and For Manatee County, Florida. Final order August 15, 2016.

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OPINIONS BELOW

The Court of Appeals for the Eleventh Circuit's final order, July 17, 2020 is reprinted at Appendix A-App.1, order denying rehearing September 24, 2020 is at Appendix B-App.12, and order denied stay of the issuance of the mandate October 22, 2020 is at Appendix C-App.14.

The District Court (Middle District of Florida, Tampa) final order dismissing with prejudice August 6, 2019 is reprinted at Appendix D-App.16 and order August 23, 2019 is at Appendix E-App.19.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§1331 & 1343(3) & 1343(4). The appellate court for the 11th Circuit had jurisdiction under 28 U.S.C. §1291. This case arose under 42 U.S.C. §§1983 & 1985 & 1986, and the First, Fifth, Eighth & Fourteenth Amendments to the United States Constitution. This Court has jurisdiction under 28 U.S.C. §1254(1). 28 U.S.C. §2403(b) may apply and notification required by Supreme Court Rule 29.4(c) has been made.

CONSTITUTIONAL, STATUTORY, ORDINANCE, REGULATIONS INVOLVED

This case involved the First, Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. §§1983, 1985(2), 1985(3) and 1986; and Federal Rules of Civil Procedures.[6]

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[6] See Appendix F-App.21-27 for reprint of specific provisions.

It also involved Florida Statutes: Chapter 161-Beach and Shore Preservation, Chapter 162-County or Municipal Code Enforcement, Chapter 163-Intergovernmental Programs, Chapter 253-State Lands, Chapter 553-Building Construction Standards, Florida Building Codes; Florida Administrative Code; the City of Holmes Beach Charter Ord. No. 97-04, the City Land Development Code Ord. No. 07-04, and the City Code Enforcement Ord. No. 97-14B. The verbatim texts of specific applicable provisions of the above mentioned are reprinted at Appendix F-App.27-62.

STATEMENT OF THE CASE

A. Introduction

This case came after eight years of attempts to resolve a gulf-front treehouse-property dispute involving several officials working under two government entities and several intertwining regulations. Petitioners ("Tran-Hazen") were subjected under two code enforcements, first by the officials of the Florida Department of Environmental Protection ("Department"), and then by the officials of the City of Holmes Beach ("City") while they seek relief for their rights to property.

Tran-Hazen were ordered to remove their treehouse in December 2011, fined a daily fine since July 2015 and required to exhaust administrative remedies before they could proceed with claims for rights to property. The City also recorded a lien on their homestead property and sued them after they completed an initiative petition to allow their treehouse to remain.

Located on Tran-Hazen's property are their house, treehouse and four vacation rental dwelling units. After the District Court dismissed with prejudice their entire complaint and the Court of Appeals affirmed, the City has denied Tran-Hazen the use of their vacation rentals and demanded them to pay the accumulated fines. The vacation rentals are Tran-Hazen's primary source of income. They are now facing fines, fees, loss of property and income because they try to protect their land, tree and treehouse from unreasonable code enforcement and taking.

B. Factual Background

1. The Treehouse-Property

Tran-Hazen own four contiguous lots of land with 120 feet along the waterline of the Gulf of Mexico. Their coastal property is regulated by the Department under Florida Statute Chapter 161 as it is situated seaward of the coastal construction control line and also by the City under Ord. No. 07-04 as a multifamily residential dwelling resort housing district.

Traversing their property about *100-feet landward* from the mean high waterline is the Erosion Control Line ("ECL"), a line established under §§161.141-161.211 Fla. Stat. The ECL is a point of dispute because the City uses it to prohibit the treehouse and also a point of controversy concerning property's boundaries and land use when reading under

§§161.052-161.053 Fla. Stat. and other referenced statutory provisions.

Spring 2011, Tran-Hazen had authorization from Building Official Shaffer to build an exempt or unpermitted treehouse in their pine tree that is about 30 feet landward from the ECL. With smiles, the people and City watched them build the Robinson Crusoe treehouse until November 2011, an anonymous caller complained about building permit. The treehouse as built is a two-level viewing deck without any utilities.

2. The Department's Enforcement & Permitting

Responding to the anonymous complaint, the Department's Engineer inspected the almost completed treehouse and issued a stop work order for a possible violation of building without a Department's permit. December 2011, the Environmental Manager issued the order to remove the treehouse because the Department could not issue an after-the-fact permit and the treehouse altered an existing dune system, but gave Tran-Hazen the option to submit a study to prove otherwise.

Tran-Hazen's counsel submitted a legal analysis and a coastal engineering study showing the treehouse qualified as an exempt minor structure under §§161.053(11)(c) & 161.54(6)(b) Fla. Stat. and §62B-33-004(2)(c) Fla. Admin. Code. The Department disagreed

that it is exempt from permit. Counsel requested evidence and engineering report contradicting his findings. No such evidence was available from the Department.

December 2012, the Department reconsidered and ordered to submit an "as built" permit application. The Department's permit application required a letter of no objection from the City, which the City refused to issue. Tran-Hazen requested a waiver of the letter, but the Department denied the waiver, denied exemption, denied the permit application in January 2014 and ordered complete removal of the treehouse or to file a petition for administrative hearing. The Department granted an extension of time to file pending the City's code enforcement and has remained silent since March 2014.

3. The City's Enforcement & Permitting

Responding to the complaint, the City's Code Enforcement Officer Forbes inspected the treehouse with the Department's Engineer and confirmed in his report that Building Official Shaffer authorized Tran-Hazen to build their treehouse without a permit. Officer Forbes requested documentation for a letter of no objection to the Department, but did not mention at the time that the City also required a City permit. The City remained silent on the permit issue until 2013 when Tran-Hazen requested the letter of no objection for the Department's permit application.

Building Official Green, replacing Shaffer, refused to issue such letter, alleged that the treehouse violated the setback from the ECL, ordered Tran-Hazen to submit a City permit application and required them to obtain a variance to have the treehouse within the setback.

April 2013, Building Supervisor O'Brien issued a notice of violation, denied variance and ordered removal of the treehouse in 30 days because it violates a whole incomprehensible "kitchen sink" of codes and alleged it's a large three-story structure; it encroaches the public beach; unsafe; on dead tree trunk; built with salvage components and so on without a proper onsite inspection of the structure. He alleged that he reached this decision after full consultation with the County building official. O'Brien circulated these false allegations to the press leading haters screaming "burn the treehouse, move it back to the Mekong Delta, get off the island, pack your wife and send her back to Vietnam."

Tran-Hazen appealed to Mayor Monti who sent Commissioner Grossman to inspect the treehouse. They ordered review by the Code Enforcement Board ("CEB") and by the Commissioners. O'Brien issued a second notice of violation in which he cited the prohibition of construction within the fifty-feet setback from the ECL. See City of Holmes Beach Part III Land Development Code, Art. VII Div. 2 §7.2 (Ord. No. 07-04). The treehouse is about 30 feet from the ECL.

Since the prohibition of building such as the treehouse within the fifty-feet setback from the ECL is the main issue, variance is impossible and Ord. No. 07-04 appears to be in violation of §§161.141 and 161.053 Fla. Stat. or otherwise unconstitutional under the Florida Constitution. Tran-Hazen's filed a declaratory action in state court on June 21, 2013 challenging the validity of such ordinance.

July 29, 2013, the City filed to dismiss the declaratory action and required exhaustion of administrative remedy and July 30, 2013 conducted the CEB's hearing. The City denied request to postpone code enforcement's hearing and effectively forced Tran-Hazen to spend their resources to defend themselves.

The constitutional issues concerning Ord. No. 07-04 including the setback from the ECL were not presented at the CEB's hearing due to lack of jurisdiction. The CEB denied delays of hearing until after resolution of the declaratory action and issued a final order for Tran-Hazen to apply for a City permit, to remove all codes in violation and to pay City's costs. Building Supervisor O'Brien refused to accept permit application and insisted that the only option was to remove the treehouse as it cannot be permitted within the fifty-feet setback. September 12, 2013, the CEB denied stay pending appeal and issued a penalty order of $100 per day.

Tran-Hazen appealed the CEB's final order and penalty order in the Circuit Court for Manatee County, Fla. under §162.11 Fla. Stat. The court reversed the

penalty order, but denied equitable estoppel, affirmed the CEB's final order and rendered an opinion that the fifty-feet setback prohibition from the ECL provision is not in conflict with Florida Statute on September 16, 2014. Tran-Hazen's counsel petitioned the District Court of Appeal, Florida, but was denied per curiam without an opinion. Rehearing also denied.

May 2016, Building Official McGuinness, replacing O'Brien, accepted Tran-Hazen's permit application but denied permit on January 18, 2017 because of the location in the setback. He also cited some different building codes then those cited by O'Brien. May 23, 2016, the City's Special Magistrate issued a daily penalty order of $50 retro from July 22, 2015 and recorded a lien on their homestead property. January 18, 2018, Mayor Johnson demanded a demolition application and declared that Tran-Hazen had exhausted administrative remedy with the City.

4. The Initiative Petition

During the same time as code enforcement, from late April to August 2013, Tran-Hazen conducted a petition under the City's Charter, Part I, Art. III §3.11 (Ord. No. 97-04) to show community support to grandfather or permit their treehouse. They gathered more than 4,700 supporters and met the requirement of obtaining signatures from 10% of the City's residents before taking their petition to the Commissioners who have the authority to grant permit with a vote even if the treehouse does not meet city codes.

The Commissioners refused to consider their petition and filed a declaratory complaint in state court, alleging that the petition was retroactively prohibited by §163.3167(8) Fla. Stat. The City submitted a proposed order to the court who adopted it verbatim. Tran-Hazen's counsel appealed but the Appellate Court affirmed per curiam. They then petitioned to the U.S. Supreme Court. Certiorari denied January 5, 2018.

5. The Validity of the Ordinance and Petition for Code Enforcement in State Court.

Because the City's Land Development Code, Part III, Art. V Div. 1 §5.2 & Art. VII Div. 2 §7.2 (Ord. No. 07-04), prohibiting construction within the fifty-feet setback landward of the ECL without any possible variance, Tran-Hazen filed in state court an action for declaratory relief (Case No. 2013-CA-4098)[7] alleging that such prohibition violated §161.053, Fla. Stat. and the Ordinance also violated the Florida Constitution on other grounds. After years of dormancy pending required exhaustion of code enforcement and administrative proceedings, this case reopened March 2018 and is pending trial.

Since Tran-Hazen did not voluntarily remove the treehouse, the City also filed in state court their petition to enforce demolition. The court has agreed to

[7] Amended complaint and certified copy of Ord. No. 07-04 are available upon request.

proceed with the declaratory action before considering the City's petition to enforce.

C. District Court (M.D. Fla.) Procedure

March 4, 2019, Tran-Hazen filed their first pro se federal complaint. March 19, 2019, under Fed.R.Civ.P. 17(d) & 25(d), they amended the parties due to difficulties and costs of service of process to multiple officials no longer working or residing in the City or State. They removed the officials' names and list only position titles in official capacity prior to serving the summons.

April 17, 2019, the City moved for more definite statement under Fed.R.Civ.P. 12(e) on shotgun complaint ground. Before Tran-Hazen could respond, April 24, 2019, the court sua sponte dismissed the First Amended Complaint and gave Tran-Hazen 14 days to file a second amended complaint (SAC).

The Court's reasons for dismissal: 1) it is unclear who the "City Official" Defendants are; 2) whether they are being sued in their individual or official capacities; 3) it is unclear what constitutional provision provides the basis for §1983 violation; 4) the complaint reincorporates all preceding counts into each successive count; 5) It refers to "Defendants" collectively without specifying the acts or omissions the Defendants are alleged to have committed individually.

May 9, 2019, Tran-Hazen filed their SAC. May 23, 2019, the City moved to dismiss under Fed.R.Civ.P. 12(b) &(c) citing untimely filing, shotgun pleading, etc.

June 10, 2019, the Department joined in the City's motion. Tran-Hazen opposed both motions as they were timely and had addressed the problems specified in the Court's order as they understood it.

June 19, 2019, the Court dismissed the SAC to file a third amended complaint (TAC); because it still refers to Defendants in the collective; it includes more causes of action and more alleged facts; and it remains unclear what constitutional provision is the basis for §1983 violations; the Court encouraged Tran-Hazen to seek legal advice.

Tran-Hazen sought legal review of their TAC and submitted July 12, 2019. The City moved to dismiss with prejudice under Fed.R.Civ.P. 12(b)(6), shotgun pleading, statute of limitations and claim preclusion. Tran-Hazen filed their opposition July 29, 2020.

July 27, 2019, the Department moved to dismiss the TAC under Fed.R.Civ.P. 12(b), generally joined in the City's motion and added qualified immunity. Before Tran-Hazen could file their opposition, August 6, 2019, the Court dismissed the TAC with prejudice[8] because the legal claims remain unclear and difficult to understand and for reasons related to claim preclusion without specific findings in facts and laws. August 8, 2019, Tran-Hazen filed for reconsideration with a memorandum in opposition to the Department's motion. August

[8] Appendix D-App.16.

23, 2019, the Court accepted the memorandum but maintained the dismissal with prejudice[9].

D. Court of Appeals (11th Cir.) Procedure

Tran-Hazen filed their first brief October 15, 2019. July 17, 2020, the Court issued the unpublished opinion[10] affirming dismissal with prejudice because the TAC falls into the *Weiland* category of shotgun complaint that asserts multiple claims against multiple defendants without specifying which of the defendants is responsible for which acts or omissions, or which of the defendants the claim is brought against. The Court did not provide findings for claim preclusion nor review any claims in facts and laws. Tran-Hazen petitioned for rehearing. The Court denied rehearing September 24, 2020[11] and denied motion to stay issuance of mandate on October 22, 2020[12]. On October 26, 2020, Tran-Hazen requested reconsideration of order denying stay of mandate. Reconsideration pending.

E. Claims Dismissed with Prejudice

Defendant City, 9 claims dismissed: (1) Equal protection, (2) Procedural due process, (3) Substantive due process, (4) Taking property without just compensation, (5) Vague intertwining regulations,

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[9] Appendix E-App.19.

[10] Appendix A-App.1.

[11] Appendix B-App.12.

[12] Appendix C-App14.

(6) Right to petition for redress, (7) Excessive Fines, (8) Conspiracy, and (9) Neglect to prevent the wrongs.

Defendant Department, 5 claims dismissed: (1) Equal protection, (2) Procedural due process, (3) Taking property without just compensation, (4) Vague intertwining regulations, (5) Neglect to prevent the wrongs.

1. Taking under the Fifth Amendment

Briefly, under §161.141, Fla. Stat. and per the Supreme Court in *Stop the Beach Renourishment*, 560 U.S. 702 (2010), the Erosion Control Line (ECL) is defined and set at or near the mean high waterline (MHWL). However, at Tran-Hazen's property, the ECL was set about *100-feet landward* of the MHWL and the area from the ECL to the waterline is for beach nourishment, public use and enjoyment. As applied, the ECL deprived them full economic use of the land *seaward* of the ECL. When they need to rebuild their old home and fourplex on the remaining area *landward* of the ECL, they would also lose one dwelling unit because they cannot use the land seaward of the ECL in the density calculation.

It is clear per their deed, Article X, §11, Fla. Const. and §253.141, Fla. Stat. that the State owns the land seaward of the MHWL. It is also clear that under §161.141, Fla. Stat. "there is *no intention* on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged landowner of the legitimate and constitutional use and enjoyment

of his or her property." If an authorized beach nourishment cannot be accomplished without the taking of private property, the taking must be made by eminent domain. There were no eminent domain proceedings but the ECL was set 100-feet landward from the MHWL at their property.

To compound the taking problem, the City failed to inform affected property owners of the rezoning under Ord. No. 07-04. The City selectively rezoned *only* the R-4 multifamily to preservation in the area *seaward* of the ECL, and prohibited building structures an *additional fifty-feet landward of the ECL*. The City effectively rezoned a large 120 feet by about 150 feet area of Tran-Hazen's property, an equivalent of two gulf front lots and render it unbuildable.

2. Vague laws violated due process.

The provisions of the erosion control line (ECL), the mean high waterline (MHWL) and the coastal construction control line (CCCL) under §§161.052, 161.053, 161.141, 161.191, 161.201 & 161.211, Fla. Stat., are unclear as to the property boundaries and allowed use, especially where the ECL is not at the MHWL and there is a CCCL, and when reading together with Fla. Admin. Code §62B-33.002(17) "Fifty (50)-foot Setback . . . , which construction is prohibited within 50 feet of the line of mean high water." But under F.A.C. §62B-33.005(1) "The CCCL and 50-foot setback call attention to the special hazards and impacts associated with the use of such property, but do not

preclude all development or alteration of coastal property seaward of such lines."

See also Fla. Building Code §3109.2 defined the fifty-feet setback as a line of jurisdiction under §161.052 and §553.72 Fla. Stat. provides for uniform state building code. But, where the CCCL is established under §161.053, per §161.053(10), it supersedes the ECL provisions under §161.052. It is unclear if §161.053 also supersedes §3109.2 that refers to §161.052.

Furthermore, City's Ord. No. 07-04 uses the ECL to prohibit construction and the procedures for permitting and code enforcement intertwine between the City and the Department with unclear final authority. These regulatory schemes fit the Courts' "shotgun" definitions, confuse Tran-Hazen and similarly situated property owners, and require uniform court's interpretation and guidance, not dismissed with prejudice and ignored.

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally*, 269 U.S. 385 (1926). See also *International Harvester*, 234 U.S. 216, 221 (1914).

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit decisions in this case raised two important issues. The first concerns "shotgun pleading" and equal access to justice on the merits for

the various classes of litigants, particularly the pro se litigants with civil rights §1983 and constitutional issues. The second concerns "taking" under the Fifth Amendment and "claim preclusion" due to the finality and exhaustion requirement under 42 U.S.C. §1983 and *Williamson Cty.*, 473 U.S. 172.

Tran-Hazen have serious claims, face irreparable loss and need relief. "[T]he very purpose of §1983 was . . . to protect the people from unconstitutional action under color of law, 'whether that action be executive, legislative, or judicial.'" *Patsy*, 457 U.S. 496, 503 (1982). "Moreover, §1983 was intended . . . to provide compensation to the victims . . . to serve as a deterrent against future constitutional deprivations." See *Wegmann*, 436 U.S. 584, 590-591 (1978); *Carey v. Piphus*, 435 U.S. 247, 256-257 (1978); *Owen*, 445 U.S. 622, 651-52 (1980).

But the Courts below discarded their claims on shotgun pleading ground and placed the need to save resources and protect government officials under the doctrine of immunity above justice. See *Arthur R. Miller, From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure*, 60 DUKE L.J. 1, 2 (2010) (*Twombly* and *Iqbal* give "too much attention to . . . expense and possible abuse and too little on citizen access, a level litigation playing field, and the other values of civil litigation"). *Santiago v. Warminster*, 629 F.3d 121, 134 n.10 (3d Cir. 2010)

A. Need for Clarity, Equal Access to Justice on the Merits and Uniformity.

The Eleventh Circuit has set itself apart from other Circuits in using shotgun pleading categories as ground to dismiss a complaint at an early stage to manage the docket. A query of "shotgun pleading" or "shotgun complaint" cases[13] from 2010 to Oct 31, 2020 provided about 2,200 cases; of which, 35% drafted by pro se or 65% by attorneys, 45% contained civil rights and constitutional causes, and 79% were in the Eleventh Circuit with the highest number of cases in the Middle District Florida. A review of over 500 cases (100 in the 11th Circuit and 420 in the remaining Circuits) showed various standards and conflicting opinions as to what constitute a shotgun pleading and its disposition.

1. "Shotgun" Pleading, Intra-Circuit Conflicts in the Eleventh Circuit

Generally, "When faced with an intra circuit conflict, we must follow our earliest precedent, *CSX Transp., Inc.*, 846 F.3d 1333, 1338 (11th Cir. 2017)." *Auto. Alignment v. State Farm*, No. 16-13596, at *21 (11th Cir. Mar. 6, 2020).

In early precedents, the Court explained "'"Shotgun" pleadings, calculated to confuse the "enemy," and the court, so that theories for relief not provided by law

[13] Appendix G-App.63-64.

and which can prejudice an opponent's case, . . . , are flatly forbidden by the letter, if not the spirit, of these rules." *T.D.S. v. Shelby Mut. Ins.*, 760 F.2d 1520, 1544 n.14 (11th Cir. 1985). "A plaintiff must not be permitted, through the use of . . . 'shotgun' pleading tactic, to strip government officials of the protection provided by the official immunity doctrine." *Marx v. Gumbinner*, 855 F.2d 783, 792 (11th Cir. 1988).

And "to eliminate nonmeritorious claims . . . and to protect public officials from protracted litigation . . . , we have tightened the application of Rule 8 to §1983 cases. *Arnold v. Board of Educ. of Escambia County*, 880 F.2d 305, 309 (11th Cir. 1989) . . . We . . . stress that this heightened Rule 8 requirement—as the law of the circuit—must be applied . . . " *Oladeinde*, 963 F.2d 1481, 1485 (11th Cir. 1992). See also *GJR Investments*, 132 F.3d 1359, 1368 (11th Cir. 1998), (. . . shotgun complaint; application of the heightened pleading standard is one way to deal . . . with pleadings of this kind.) See *Magluta*, 256 F.3d 1282, 1284 (11th Cir. 2001) (heightened specificity is required in civil rights actions against public officials. . . .)

"Because of crowded dockets; . . . courts have the power and the duty to define the issues at the earliest stages of litigation. See *Ebrahimi*, 114 F.3d 162, 165 (11th Cir. 1997). . . ." *Johnson Enterprises v. FPL*, 162 F.3d 1290, 1333 (11th Cir. 1998). To perform these tasks, the court "will . . . strike all of the allegations of the complaint . . . that are insufficient, immaterial . . . so that, when the tasks are finished, the complaint consists of a "short and plain statement of the claim(s),"

for relief . . . " *Byrne v. Nezhat*, 261 F.3d 1075, 1129-30 (11th Cir. 2001).

On amendment and dismissal, in *Wagner v. Daewoo*, 314 F.3d 541, 545 (11th Cir. 2002), the court ("note that the purpose of allowing amendments is to resolve litigation on the merits,. . . . See *Foman v. Davis*, 371 U.S. 178, 181-82, (1962).) But in *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), (a plaintiff must be given at least one chance to amend the complaint before . . . court dismisses the action with prejudice.) Bank was overruled "a district court is not required to grant . . . leave to amend . . . sua sponte when . . . counsel, never filed . . . leave to amend." And this court "decide and intimate nothing about a party proceeding pro se." *Daewoo Id.* at 542. But see *Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018), (the district court must sua sponte give one chance to replead before dismissing with prejudice.)

In *Weiland* "a dismissal with prejudice . . . is an extreme sanction that may be properly imposed *only* when: '(1) a party engages in a clear pattern of delay or willful contempt . . . ; and (2) the court specifically finds that lesser sanctions would not suffice.' " *Betty K Agencies*, 432 F.3d 1333, 1337-38 (11th Cir. 2005)." *Weiland*, 792 F.3d 1313, 1321 n.9 (11th Cir. 2015). Also "A dismissal under 8(a)(2) and 10(b) is appropriate where "*it is virtually impossible* to know which allegations of fact are intended to support which claim(s) for relief." *Anderson*, 77 F.3d 364, 366 (11th Cir. 1998) (emphasis added). No such virtual

impossibility exists in this case." *Id.* 1325. Nor in the Tran-Hazen's case.

a. The Intra-Circuit Contradiction.

But "Shotgun pleadings are a significant part of the contemporary litigation culture. They are fueled . . . by the lawyers' fear that if they do not include everything but the kitchen sink in their pleadings, they may be sued for malpractice." *Davis v. Coca-Cola Bottling*, 516 F.3d 955, 983 n.69 (11th Cir. 2008). It may also be fear of claim preclusion and other limitations applicable to all litigants.

Some courts refused to dismiss because " . . . a significant portion of complaints filed in federal court could, in whole or in part, meet the definition of "shotgun pleading." . . . where the meaning of the complaint is reasonably discernable, . . . courts tend to proceed to discovery. . . . It is unjust to turn a blind eye to this evidentiary record and dismiss the case on a technical pleading violation." *Corbitt v. Home Depot*, 573 F.3d 1223, 1262 (11th Cir. 2009)

"After *Iqbal*, it is clear that there is no "heightened pleading standard" as it relates to ... Rule 8(a)(2), ... all that remains is the Rule 9 heightened pleading standard." *Randall v. Scott*, 610 F.3d 701, 710 (11th Cir. 2010). But "complaints in §1983 cases must now contain either direct or inferential allegations respecting all the material elements necessary

to sustain a recovery under some viable legal theory." *Id.* at 708 n.2.

"Complaints that violate . . . Rule 8(a)(2) or Rule 10(b), or both, are often . . . referred to as "shotgun pleadings." *Weiland*, 792 F.3d 1313, 1320 (11th Cir. 2015). This court said "At times . . . "shotgun pleading" . . . means little more than "poorly drafted complaint" and "identified four rough categories of shotgun pleadings"; See *Id.* 1321-23. Tran-Hazen's complaint was dismissed with prejudice under *Weiland*'s category "multiple claims, multiple defendants."

"Shotgun pleadings, if tolerated, harm the court by impeding its ability to administer justice. . . . Wasting scarce judicial and parajudicial resources, . . . and, in a very real sense, amounts to obstruction of justice . . . *Jackson v. Bank of Am.*, 898 F.3d 1348, 1357 n.10 (11th Cir. 2018). However, "The District Court . . . elected to consider the merits of each claim despite the complaint's shotgun nature . . . " *Id.* 1359.

b. The District Court's Contradiction

Contrary to Fed.R.Civ.P. 8(d)(3) allowing a party to state as many separate claims as it has, this Court held "that counts containing multiple causes of action are shotgun pleadings." *Am. Coastal Ins. Co.*, No.: 2:19-cv-180-FtM-38MRM, at *8 (M.D. Fla. Oct. 9, 2019).

"Although the complaint is a shotgun pleading, the court declines to dismiss it or order repleading on that basis." *Baker v. Nucor Steel*, 2:17-cv-01863-KOB, at *11 (N.D. Ala. June 13, 2018)

"A complaint's incorporation by reference in each count of all preceding paragraphs is a . . . commonplace convention. . . . If the mere utilization of such an unwelcome-but-pervasive pleading device mandated that a complaint be jettisoned as a shotgun pleading, then precious few civil pleadings would survive. *Anderson*, 77 F.3d 364, 366 (11th Cir. 1996)." *Amin v. Mercedes-Benz*, 349 F. Supp. 3d 1338, 1354 (N.D. Ga. 2018).

2. The Eleventh Circuit Contradicts the Supreme Court Precedents.

Many civil rights complaints with multiple claims and multiple defendants fall into the "shotgun" pleading heightened standard category in the Eleventh Circuit. The Civil Rights Act provides " . . . causes of action arising out of rights and duties under the Constitution and federal statutes . . . exist independent of any other legal or administrative relief that may be available . . . do not limit the cause of action to a circumscribed set of facts . . . *The dominant characteristic of civil rights actions: they belong in court.*" *McDonald*, 466 U.S. 284, 290 (1984). *Burnett*, 468 U.S. 42, 50 (1984). (emphasis added)

"Under Rule 12(b)(6)'s . . . — . . . designed to streamline litigation by dispensing with needless

discovery and fact finding—a court may dismiss a claim based on a dispositive issue of law . . . " *Neitzke*, 490 U.S. 319 (1989). And "sua sponte dismissals . . . necessary though they may sometimes be to shield defendants from vexatious lawsuits, involve no . . . procedural protections." *Id.* 330 (1989).

"Given the wide variety of civil rights and "constitutional tort" claims that trial judges confront, broad discretion in the management of the fact finding process may be more useful and equitable to all the parties than [categorical rules imposed by the appellate courts]." *Crawford-El*, 523 U.S. 574, 600-01 (1998).

"Other provisions of the [Fed.R.Civ.P.] are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(e)(1) states that "[n]o technical forms of pleading or motions are required," and Rule 8(f) provides that "[a]ll pleadings shall be so construed as to do substantial justice." Given the . . . simplified standard for pleading, "[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King Spalding*, 467 U.S. 69, 73 (1984).

"Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56. The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim." *Swierkiewicz*, 534

U.S. 506, 513-14 (2002). See also *Twombly*, 550 U.S. 544, 585 (2007).

"We are not insensitive to the challenges faced by the lower federal courts in managing their dockets. . . . We . . . reiterate, however—as we did unanimously in *Leatherman*, *Swierkiewicz* and *Hill*—that adopting different and more onerous pleading rules to deal with particular categories of cases should be done through established rulemaking procedures, and not on a case-by-case basis by the courts." *Jones v. Bock*, 549 U.S. 199, 224 (2007).

"A federal court may not impose a "heightened pleading standard" in §1983 cases involving municipalities, see *Leatherman*, 507 U.S. 163, 167-68 (1993). Per the *Randall* court "Leatherman's holding is limited to §1983 actions against entities. . . . While a number of circuits relied upon the language in *Crawford-El* and *Swierkiewicz* to reject a heightened pleading standard in §1983 individual-official cases, our circuit did not." *Randall v. Scott*, 610 F.3d 701, 706-07 (11th Cir. 2010).

The Tenth Circuit also warned that "complaints in §1983 cases against individual government actors pose a greater likelihood of failures in notice and plausibility because they typically include complex claims against multiple defendants. The *Twombly* standard may have greater bite in such contexts." *Robbins*, 519 F.3d 1242, 1249 (10th Cir. 2008).

3. "Shotgun" Pleading, Inter-Circuit Variations

The number of "shotgun pleading" appeals in each of the other Circuits ranged from zero to two, while the 11th Circuit alone had 122 appeals. While some district courts in the other Circuits cited to the Eleventh Circuit for "shotgun pleading" rules, these circuits did not have nearly the 1,700 cases found in the district courts for the 11th Circuit[14].

In these Circuits, even when the complaint is "shotgun", the courts reviewed and discussed each claim with specific guidance. The few dismissed with prejudice were based in facts or laws for failure to state a claim or other grounds and not solely on "shotgun" pleading ground.

"*[N]early* all of the circuits have now disapproved any heightened pleading standard in cases other than those governed by Rule 9(b)." *Galbraith*, 307 F.3d 1119, 1125-26 (9th Cir. 2002). But, in the Third Circuit "plaintiffs in civil rights cases are required to plead facts with specificity" *Hynson*, 864 F.2d 1026, 1031 n.13 (3d Cir. 1988).

"The "shotgun" nature of the pleading on its own cannot serve as a basis for granting a motion to dismiss . . . *Kuehl v. FDIC*, 8 F.3d 905, 908 (1st Cir. 1993). See also *Ostrzenski*, 177 F.3d 245, 252-53 (4th Cir. 1999). *Brooks v. Ross*, 578 F.3d 574, 580 (7th Cir. 2009). *Cafasso*, 637 F.3d 1047, 1058-59 (9th Cir. 2011).

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[14] Appendix G-App.63-64.

While the First Circuit has not ruled on noncompliance with Rule 10(b), other Circuits have dismissed for "unduly long or unintelligible". See e.g., *Davis*, 718 Fed.Appx. 420, 423-24 (7th Cir. 2017); Court is reluctant to dismiss complaints at an early stage, unless the complaint is an "incomprehensible "labyrinthian prolixity of unrelated and vituperative charges" that Rule 8 was intended to curb. *Prezzi v. Schelter*, 469 F.2d 691, 692 (2d Cir. 1972)." *Harnage v. Lightner*, 916 F.3d 138, 141-142 (2d Cir. 2019). See also *Tillio v. Northland Grp., Inc.*, 456 F. App'x 78, 79 (3d Cir. 2012). "'"Plaintiffs are entitled to bring forward a lengthy complaint, particularly where it involves multiple plaintiffs, multiple defendants and multiple causes of action."'" *Nafziger v. McDermott*, 467 F.3d 514, 520 (6th Cir. 2006).

Poulis v. State Farm, 747 F.2d 863, 867 (3d Cir. 1984) (finding dismissal with prejudice extreme). "Shotgun pleadings are subject to dismissal under Rule 12(b)(6)" *McMullan*, 801 F.2d 783, 788 (5th Cir. 1986). "Granting a motion to dismiss "is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice." *Dias*, 567 F.3d 1169, 1178 (10th Cir. 2009)

"The Eleventh Circuit has "filled many pages of the Federal Reporter condemning shotgun pleadings. . . ." The Fifth Circuit has yet to explicitly join this crusade." See, e.g., *Alexander*, 2018 WL 3469180, at *4 (S.D. Miss. 2018); *Copeland*, 2016 WL 4250431, at

*4-5 (S.D. Miss. 2016); *Griffin*, 2015 WL 4041657, at *5 (N.D. Miss. 2015).

"Factually detailed pleading is not always a practice to be frowned upon. . . . it is probably more desirable to err on the side of too much detail because a complaint must contain "plausible claims" that are supported by sufficient factual allegations. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-50 (2009); *Moss v. United States Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009)." *Baker v. Merced*, 1:10-cv-2377 AWI SMS, (Doc. Nos. 8, 11), at *3 (E.D. Cal. Apr. 29, 2011)

"It is well-settled that a court should refrain from deciding a constitutional issue when a non-constitutional ground for decision is available. *Wolstont*, 443 U.S. 157, 161 n.2 (1979); *Ashwander*, 297 U.S. 288, 341 (1936) . . . ; This rule must bind not only the courts, but also the administrative agencies which they review. . . ." *Chi Jen v. INS*, 566 F.2d 1095, 1096 (9th Cir. 1977)." *Gutierrez v. I.N.S.*, 745 F.2d 548, 550 (9th Cir. 1984).

"Court must be cautious about dismissing a case *with prejudice* on Rule 8 grounds, because doing so forecloses the plaintiff's opportunity to file a cured complaint. . . . *See Burrell*, 63 Fed.Appx. 588, 589 (2d Cir. 2003) . . . ; *see* also *Kuehl*, 8 F.3d at 908 (. . . disposition of claims on the merits rather than on the basis of technicalities". . . .)" *Jiggetts*, 319 F.R.D. 408, 419 (D.D.C. 2017). See *Elmore v. Henderson*, 227 F.3d 1009, 1011 (7th Cir. 2000); *Bertucelli v. Carreras*, 467 F.2d 214, 215 (9th Cir. 1972) (noting that "ample

opportunity for amendment should be provided in all except the most unusual cases").

"Rule 8 does not require a "short and plain complaint," but rather a "short and plain statement of the claim." (emphasis added). Indeed, Rule 8(e)(2) provides that: "A party may set forth two or more statements of a claim or defense alternatively. . . . A party may also state as many separate claims or defenses as the party has regardless of consistency . . . " Moreover, it is *"each averment of a pleading" that Rule 8(e)(1) states "shall be simple, concise, and direct"—not each pleading itself." Ciralsky*, 355 F.3d 661, 670 (D.C. Cir. 2004)

4. Need Clarity for Naming Defendants Collectively or Individually in Official Capacity

Civil rights complaints usually involved multiple claims and multiple defendants acting alone or together directly or indirectly. Tran-Hazen's complaint came after 8 years of exhaustion of administrative remedies involving different officials working under two government entities with overlapping regulations and jurisdictions. The Court below dismissed the entire pleading with prejudice because it contains multiple claims, multiple defendants and did not state each claim separately to each individual and tie the individual acts to each claim, even though no named official was sued in personal capacity.

It is unclear as to why the Court would need to have separate claims and facts tied to each named

officer being sued in official capacity. Per "*Graham*, 473 U.S. 159 (1985), . . . official-capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." . . . the real party in interest in an official-capacity suit is the governmental entity, and not the named official" *Hafer v. Melo*, 502 U.S. 21, 25 (1991). See *Owens v. Fulton Cnty*, 877 F.2d 947, 951 n.5 (11th Cir. 1989) ("a suit against a public official in his official capacity is considered a suit against the local government entity he represents."). See also *Davis v. Davis*, No. 13-10903, at *11 (11th Cir. 2014).

But under Fed.R.Civ.P. 17(d) and 25(d) "the court may order that the officer's name be added," it is unclear for what reasons plaintiffs must name each individual in a claim when an official capacity suit is to be treated as a suit against the entity and the officer can be listed by position title.

If the court is unclear, "in determining whether a suit involves a personal or official-capacity claim, we should be guided by the complaint or, if not clearly specified in the complaint, by "[t]he course of proceedings." *Graham*, 473 U.S. 159, 167 n.14 (1985). *Asociacion v. Flores Galarza*, 484 F.3d 1, 26 (1st Cir. 2007). See also *Fitzgerald v. McDaniel*, 833 F.2d 1516, 1520 (11th Cir. 1987). And "where a plaintiff brings claims against both a public official, . . . , in his official capacity and the public entity for which he works, the claims "essentially merge." *Turner v. Houma*, 229 F.3d 478, 485 (5th Cir. 2000). See *Ctr. for Bio-Ethical Reform*, 533 F.3d 780, 799 (9th Cir. 2008)

"Rule 8(a) is not so rigid that it requires a plaintiff, without the benefit of discovery, to connect every single alleged instance of misconduct in the complaint to every single specific officer. Such a pleading standard would effectively allow . . . officers to violate constitutional rights with abandon as long as they ensured they could not be individually identified, even if liability for acting in concert (or for aiding and abetting each other) would otherwise apply." *Wilson v. City of Chicago*, No. 09-C-2477, 2009 WL 3242300, at *2 (N.D. Ill. Oct. 7, 2009). *Koh v. Graf*, No. 11-cv-02605, at *8 (N.D. Ill. Sep. 24, 2013).

5. Complaints with Multiple Claims, Multiple Defendants Collectively or Individually.

Some courts condemn multiple claims, multiple defendants and lumping defendants and claims. But "see *Kyle K. v. Chapman*, 208 F.3d 940, 944 (11th Cir. 2000) ("The fact that defendants are accused collectively does not render the complaint deficient. The complaint can be fairly read to aver that all defendants are responsible for the alleged conduct.")." *Weiland*, 792 F.3d 1313, 1324 n.14 (11th Cir. 2015). "It is not improper . . . to group defendants together where there is an obvious explanation for doing so based on their concerted activities." *Cook v. Miss. Farm Bureau*, No. 1:18-cv-0076, 2018 WL 5929629, at *3 (N.D. Miss. Nov. 13, 2018)

Other courts allow such pleading. "Rule 20 permits joinder of multiple defendants if "arising out of the same transaction, occurrence, or series of transactions and occurrences" and "any questions of law or fact common to all defendants will arise in the action." Fed.R.Civ.P. 20(a)(2)." *Harnage v. Lightner*, 916 F.3d 138, 142 (2d Cir. 2019). "See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) Fed.R.Civ.P. 18, 20; (A district judge should . . . solve the problem by severance (creating multiple suits . . .) or dismissing the excess defendants under Fed.R.Civ.P. 21. See *Lee v. Cook County*, 635 F.3d 969 (7th Cir. 2011)." *Wheeler v. Wexford Health*, 689 F.3d 680, 683 (7th Cir. 2012).

" "When the . . . complaint uses blanket terms covering all the defendants, by lumping them together or calling them collectively ["Defendants"] these allegations are properly disregarded unless the reference to [particular defendants] can be clearly inferred." *Hinojosa v. Livingston*, 807 F.3d 657, 684 (5th Cir. 2015)." *Staten v. City of Dall.*, No. 3:19-cv-843-L-BN, at *23 (N.D. Tex. Jan. 17, 2020). See also *Greer v. Highland Park*, 884 F.3d 310, 315-16 (6th Cir. 2018).

"Although it is often helpful to the Court for each claim to be asserted in a separate count, it is not required . . . According to Rule 8(d)(2), "[a] party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones." " *Knox v. Mayor Balt. City*, No. JKB-17-1384, at *9-10 (D. Md. Nov. 29, 2017).

6. Pro Se Litigants' Need for Simple Pleading Rules to Access Courts on the Merits.

It is unfair that some courts apply heightened "shotgun" pleading rules for attorneys to non-indigent pro se litigants who cannot afford rising attorneys' fees over a long period of time and worked all day with little time to study hundreds pages of rules and laws to plead correctly, and other courts are lenient. If 65% of the shotgun pleadings were written by attorneys, how do the courts expect a working person with an average education level to follow all the variations of the pleading rules buried in thousands of cases, let alone the legal theories and exact elements of a claim?

"A document filed pro se is "to be liberally construed," *Estelle*, 429 U.S. 97, 106 (1976), and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and *can only be dismissed for failure to state a claim*," *ibid* . . . "All pleadings shall be so construed as to do substantial justice"." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

"Pro se pleadings are held to a less stringent standard . . . " *Tannenbaum*, 148 F.3d 1262, 1263 (11th Cir. 1998). *Garrett v. Selby*, 425 F.3d 836, 840 (10th Cir. 2005). . . . *federal courts have discretion to dismiss pro se claims only if they lack arguable basis either in fact or in law. Neitzke*, 490 U.S. 319, 324-25 (1989);" *Spear v. Nix*, 215 F. App'x 896, 899 (11th Cir. 2007). *Huey v. Stine*, 230 F.3d 226, 229 (6th Cir. 2000) (examining "thrust," not just text, of pro se litigant's arguments)."

However, "The basic pleading essentials are not abrogated in *pro se* cases." *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 2011). " . . . Rule 8 apply to self-represented and counseled plaintiffs alike." *Wynder v. McMahon*, 360 F.3d 73, 79 n.11 (2d Cir. 2004). "The essence of liberal construction is to give a *pro se* plaintiff a break when, although he stumbles on a technicality, his pleading is otherwise understandable." *Greer v. Chicago Bd. Of Educ.*, 267 F.3d 723, 727 (7th Cir. 2001). See also *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). "A court, however, will not supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf." *Whitney*, 113 F.3d 1170, 1173-74 (10th Cir. 1997). See also *Beaudett*, 775 F.2d 1274, 1278 (4th Cir. 1985); *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993).

"When presented with a pro se complaint, a court should . . . draw fair inferences from what is not alleged as well as from what is alleged." *Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003). "Pro se litigants still must allege sufficient facts in their complaints to support a claim." *Mala v. Crown Bay Marina*, 704 F.3d 239, 245 (3d Cir. 2013). *See also Smith v. U.S.*, 561 F.3d 1090, 1096 (10th Cir. 2009). "The Court stands prepared to "apply the applicable law, irrespective of whether a *pro se* litigant has mentioned it by name." " *Holley v. Dep't of Veteran Affairs*, 165 F.3d 244, 247-48 (3d Cir. 1999).

"Pro se complaint can be dismissed . . . *only* if the petitioner cannot make any rational argument in law or fact which would entitle him or her to relief."

Williams v. Faulkner, 837 F.2d 304, 307 (7th Cir. 1988). "In the pro se context, this court finds it preferable to address Plaintiff's claims under Rule 12(b)(6) rather than dismissing them for failure to comply with federal pleading standards." *Starr v. Tiwari*, 1:18CV219, at *6 (M.D.N.C. Feb. 27, 2019). "See *Phillips v. Girdich*, 408 F.3d 124, 125 (2d Cir. 2005) ("hold that harmless violations of [FRCP 10(b)] should be excused so that claims may be resolved on their merits.")." *Purvis v. Clarksville*, No. 3:19-cv-1161, at *12 (M.D. Tenn. Aug. 20, 2020)

Tran-Hazen's harsh dismissal with prejudice provided no findings in laws or facts. They did not receive liberal or lenient treatment when they have tried to comply with courts' order and follow the pleading rules.

B. Need to Reconsider Williamson County's Costly "Finality Requirement"

It is an injustice and error to preclude all Tran-Hazen's claims after coercive code enforcement and required exhaustion of administrative remedies. The "Finality" and "Exhaustion" requirements need clear parameters and limitations as it is costly, exhausting and a barrier for the property owners to protect and enforce their constitutional rights. Constitutional relief should be accessible prior to suffering irreparable losses.

The City did not establish claim preclusion with particularity under the Florida and Federal legal

standards by broadly presuming that the federal claims were either the same or could be raised in prior lawsuits. The Department joined in and claimed "claim preclusion" when the Department was not a party in any prior state court's proceedings. The District Court accepted their general presumption with no explanation in facts or laws.

"When the judgment of a state court, ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes." *Hansberry v. Lee*, 311 U.S. 32, 40 (1940).

The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, . . . collectively referred to as "res judicata." *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). The Florida Supreme Court in *Albrecht*, 444 So.2d 8 (Fla. 1984), (in order for res judicata to apply, four identities must occur *simultaneously*: identity of the thing sued for, identity of the cause of action, identity of parties, and identity of the quality in the person for or against whom the claim is made. Further, res judicata can be applied only if the subsequent lawsuit is based upon the same cause of action as the prior lawsuit.)

"Generalities in defining the primary right and duty are inappropriate; instead courts must look to the factual issues to be resolved [in the second cause of action] and compare them with the issues explored in the first cause of action."" *Cheshire Bridge Holdings*, No. 18-10477, at *16 (11th Cir. 2019).

"The party asserting claim preclusion as a defense must establish four elements: (1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the same causes of action." *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001). *Lobo v. Celebrity Cruises*, 704 F.3d 882, 892 (11th Cir. 2013). See also *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 276 (3d Cir. 2014)

"Holding that nonparty preclusion was inconsistent with due process . . . " *Sturgell*, 553 U.S. 880, 881 (2008). ("[R]es judicata does not bar claims that are predicated on events that postdate the filing of the initial complaint"); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2305 (2016). "Action involved different marks, different legal theories, and different conduct—occurring at different times . . . lacked a "common nucleus of operative facts,"" *Lucky Brand v. Marcel Fashions*, No. 18-1086, at *12 (May 14, 2020).

"In general, *Patsy*, 457 U.S. 496, 516 (1982) does not "require exhaustion of judicial remedies as a precondition to bringing a federal civil rights suit."

However, the . . . ripeness requirements of *Williamson County* create a takings claim exception to *Patsy*'s. . . . Therefore litigants . . . who assert a takings claim under §1983 may not rely solely on *Patsy*, but must meet the . . . ripeness requirements of *Williamson County*." *Daniels v. Com'n of Allen County*, 306 F.3d 445, 453 (7th Cir. 2002)

See *Williamson Cty.*, 473 U.S. 172, 186, 193-95 (1985) (an as-applied challenge generally is not ripe until two prerequisites are satisfied: "(1) 'the *government entity* charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue' (*the 'finality rule'*), . . . and (2) the plaintiff has unsuccessfully exhausted the state's procedures for seeking 'just compensation'. . . . "The finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual, concrete injury; the exhaustion requirement refers to administrative and judicial procedures by which an injured party may seek review of an adverse decision and obtain a remedy if the decision is found to be unlawful or otherwise inappropriate.)

"The state-litigation requirement of *Williamson County* is overruled." *Knick v. Township of Scott*, 139 S. Ct. 2162, 2179 (2019), meaning that litigants can file in federal court for taking of property without exhausting the state compensation procedure. But the Supreme Court did not address the "finality" and exhaustion of state/local municipality non-compensation administrative remedy that include quasi-judicial

hearing, state trial, and appellate court's review. In Tran-Hazen's case, two government agencies were involved with two costly "final decision" exhaustion proceedings.

The court in *Fields v. Sarasota Manatee Airport*, 953 F.2d 1299, 1306 (11th Cir. 1992) ("hold that would-be federal court litigants who are forced to pursue state court proceedings in order to satisfy exhaustion requirements imposed by federal law incident to a takings clause claim are "involuntarily" in the state courts, and therefore qualify for the exception to generally applicable res judicata principles." There are two exceptions, applicable here is " . . . when federal law imposes an exhaustion requirement . . . as a precondition of bringing his federal claim.") *Id.*

"A number of courts have recognized that the ripeness doctrine must also apply to claims that are "coextensive" with takings claims. See *Rocky Mountain Materials Asphalt.*, 972 F.2d 309, 311 (10th Cir. 1992); *Bigelow*, 970 F.2d 154, 160 (6th Cir. 1992). " "Dressing a takings claim in the raiment of a due process violation does not serve to evade the exhaustion requirement." *Deniz*, 285 F.3d 142, 149 (1st Cir. 2002)." *Downing/Salt Pond Partners*, 698 F. Supp. 2d 278, 288-89 (D.R.I. 2010).

"*Williamson County* applies to due process claims arising from the same nucleus of facts as a takings claim. See, e.g., *B. Willis, C.P.A., Inc.*, 531 F.3d 1282, 1299 n.19 (10th Cir. 2008) . . . ; See also *Greenfield Mills, Inc.*, 361 F.3d 934, 961 (7th Cir. 2004); See

Dougherty, 282 F.3d 83, 88 (2d Cir. 2002) (stating *Williamson County* "has been extended to equal protection and due process claims asserted in the context of land use challenges"). "*Williamson* . . . ripeness requirement applies to all procedural due process claims arising from the same circumstances as a taking claim." *Kurtz v. Verizon N.Y., Inc.*, 758 F.3d 506, 514-16 (2d Cir. 2014). See also *Guatay Christian Fellowship*, 670 F.3d 957, 979 (9th Cir. 2011).

But in *Liberty*, "*Williamson* . . . finality requirement did not require the plaintiff to exhaust administrative remedies by utilizing administrative and judicial procedures to review the adverse decision but only required the plaintiff to obtain a final answer from the initial decision-maker. . . ." *Liberty Mutual Insurance v. Brown*, 380 F.3d 793, 797-99 (5th Cir. 2004).

And "*Williamson County* final decision requirement is inapplicable in cases of physical invasion. . . . A physical taking, . . . , is by definition a final decision, and thereby satisfies *Williamson County* first requirement." *Sinaloa Lake Owners Ass'n*, 864 F.2d 1475, 1478 (9th Cir. 1989). "*Williamson County* expressly distinguished procedural due process claims from taking claims, stating that due process may be violated regardless of the availability of post-deprivation remedies. . . . Two or more legal theories may cover the same conduct and a plaintiff is entitled to prove each claim according to its terms. Accordingly, we reject the contention that *Williamson County* requires plaintiffs

to seek relief in state court for the alleged violation of their right to due process. *Id.*, 1481.

Tran-Hazen, by obeying the "finality" and "exhaustion" rules, have been prejudiced and denied access to justice on the merits while facing irreparable loss and damages.

CONCLUSION

The Supreme Court is Tran-Hazen and other similarly situated pro se litigants and property owners' hope to enforce equal access to federal courts on the merits to protect their rights. The heightened "shotgun" pleading rules prevent and deny equal access to justice on the merits.

The double state and local enforcement process, the vague intertwining regulations and jurisdiction, the inconsistent interpretation and application of rules and laws, the finality and exhaustion of administrative remedies are costly to all parties and a hindrance to seeking prompt and justiciable resolution to preserve constitutional rights.

This case is an ideal vehicle to redefine the Williamson County's finality and exhaustion requirement and to address the problem of "shotgun" pleading and "shotgun" law. The Eleventh Circuit already sets itself apart on the "shotgun pleading" matter and departed from the Supreme Court's precedents. This Court should act to resolve the contradictions. Petitioners

pray that this Court grants their petition for a writ of certiorari.

Respectfully submitted,

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