No. 20-881

In The
Supreme Court of the United States

HUONG L. TRAN and RICHARD 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

RESPONDENT CITY OF HOLMES BEACH, FLORIDA'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION

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The Eleventh Circuit Court of Appeals' unpublished Opinion affirming the district court's dismissal of Petitioners' third amended complaint can be found at 817 Fed. Appx. 911 (11th Cir. 2020) (App. A, 1-12). The United States District Court, Middle District of Florida, Tampa Division's order dismissing the Petitioners' third amended complaint with prejudice can be found at App. A., 16-18.

JURISDICTIONAL STATEMENT

Respondents do not dispute this Court's discretionary jurisdiction over this case pursuant to 28 U.S.C. § 1254(1), but deny that the case satisfies the standard set forth in Supreme Court Rule 10. Respondents deny that 28 U.S.C. § 2403(b) applies in this case. Petitioners filed their Petition for Writ of Certiorari on December 22, 2020.

COUNTERSTATEMENT OF THE CASE

Petitioners contend that this case presents two "broad question[s]," the first concerning the application of pleading rules and the second concerning the "finality requirement" of *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), and three meandering "specific

subsidiary questions." In fact, the case presents only a single, pedestrian issue: whether the Eleventh Circuit Court of Appeals properly affirmed the United States District Court for the Middle District of Florida's order dismissing with prejudice Petitioners' Third Amended Complaint? Petitioners argue this Court should review the case because they have been deprived of "equal access to federal courts to seek equal justice, relief and secure their constitutional rights. . . ." They have not.

This matter began in late 2011, when Petitioners were cited for violating the Respondent City of Holmes Beach's Code of Ordinances by constructing a "tree house" on their coastal property without the necessary permits. It is no ordinary tree house as that term is commonly understood. The tree house is elevated approximately ten feet above ground level and relies in part for support on a large Australian pine tree. It is also supported by pilings driven into the ground and is located within the setback from the erosion control line established by the State of Florida. Petitioners contend that they received verbal assurance from the City that the tree house did not require a permit, while the City denies the contention. Every one of the proceedings described herein revolves around Petitioners' attempts to preserve the unauthorized structure and the City's efforts to enforce its codes relative to it.

In the first case, *City of Holmes Beach Code Enforcement Board,* City of Holmes Beach Code Enforcement Board Case No. CE 11-12-225, Petitioners proceeding *pro se* were found in violation of numerous sections of the City's land development and building

codes following a quasi-judicial hearing. In a final administrative order dated July 31, 2013, the Code Enforcement Board determined the tree house had been built without the necessary permits or permissions, and required Petitioners to either obtain the necessary approvals or remove the tree house.

Petitioners, through counsel, appealed the order finding them in violation to the appellate division of Florida's Twelfth Judicial Circuit Court. In *Hazen, et al. v. City of Holmes Beach*, Twelfth Judicial Circuit Court Case No. 2013-AP-000297, the court affirmed the findings of the Code Enforcement Board and ruled that a section of the City's Land Development Code was not unconstitutional as argued by Petitioners because it was not more restrictive than Chapter 161, Fla. Stat., governing beach and shore preservation. The court further held that the doctrine of equitable estoppel argued by Petitioners, based upon the allegation that they were informed by the City's Building Official that a permit was not required for the tree house, was without merit. Petitioners, through counsel, filed a writ of certiorari with Florida's Second District Court of Appeals on October 16, 2014 challenging the circuit court's order.

In *Hazen, et al. v. City of Holmes Beach*, Florida Second District Court of Appeals Case No. 2D14-4833, the court issued a per curiam denial of the writ on June 12, 2015. Petitioners' motion for certification and written opinion filed on June 24, 2015 was denied on July 22, 2015. Petitioners' motion for rehearing filed on July

30, 2015 was stricken as unauthorized on October 28, 2015, and the case was closed on December 29, 2015.

In the meantime, on June 24, 2013, Petitioners had filed, through counsel, an original action in Florida's Twelfth Judicial Circuit Court, *Hazen, et al. v. City of Holmes Beach, et al.*, Case No. 2013-CA-4098. An amended complaint was filed on May 17, 2019 after the City's motion for more definite statement was granted on April 29, 2019. A second amended complaint was filed on September 11, 2019, and the circuit court granted the City's partial motion to dismiss count III of the Second Amended Complaint on November 15, 2019. The third amended complaint filed on January 7, 2020 alleged (1) that a City ordinance violated the single subject requirements of Art. III, Sec. 6, Fla. Const. and Section 166.041, Fla. Stat., and was therefore void; (2) that adoption of the same ordinance violated the procedural due process clause of the Constitution of the State of Florida and was therefore void; (3) that part of the City's code was unconstitutional on its face in violation of Petitioners' substantive due process rights and was therefore void; and (4) that part of the City's code was unconstitutional on its face as being in direct conflict with the provisions of Sections 161.141 and 161.053, Fla. Stat. The case remains pending before the Twelfth Judicial Circuit.

Also during pendency of the code enforcement matter, Petitioners, through counsel, attempted to use the citizen initiative process contained in the City's charter to force a referendum of the City's voters seeking to compel the City to issue a development order

authorizing the tree house. In *City of Holmes Beach v. Pet. Cmte., et al.*, Twelfth Judicial Circuit Court Case No. 2013-CA-5990, the City filed a complaint seeking declaratory relief on September 23, 2013, against the petitioners' committee, Petitioner Richard Hazen, and Petitioner Huong Tran in her individual capacity and as the designated representative of the petitioners' committee. On August 15, 2016, the court permanently prohibited Petitioners from submitting the proposed ordinance to the voters under the initiative provisions of the City's charter because Section 163.3167(8)(a), Fla. Stat., prohibits use of the initiative process regarding any development order. Petitioners appealed the circuit court's order to Florida's Second District Court of Appeals on September 8, 2016.

In *Pet. Cmte., et al. v. City of Holmes Beach*, 225 So.3d 853 (Fla. 2d DCA 2017), the Second District Court of Appeal issued its per curiam affirmance of the circuit court's order. A motion for rehearing *en banc* filed on May 17, 2017 was denied on July 17, 2017. Petitioners, through counsel, filed a Petition for Writ of Certiorari to this Court on October 26, 2017, which was denied on January 8, 2018 in *Pet. Cmte., et al. v. City of Holmes Beach,* Supreme Court of the United States, 138 S.Ct. 658 (2018), Case No. 17-603.

On February 22, 2018, in *City of Holmes Beach v. Hazen, et al.,* Twelfth Judicial Circuit Court Case No. 2018-CA-784, the City filed a petition for enforcement and injunctive relief concerning the code enforcement order that had been entered originally in July 2013 and affirmed on appeal in December 2015 and

pursuant to Section 553.83, Fla. Stat., based on violations of the Florida Building Code. The case remains pending before the state circuit court.

On December 10, 2018, Petitioners, proceeding *pro se*, filed a verified petition for temporary injunction against the City and the Florida Department of Environmental Protection in *Hazen, et al. v. City of Holmes Beach, et al.*, Twelfth Judicial Circuit Court Case No. 2018-CA-5800. On March 25, 2019, Petitioners filed an amended verified complaint for negligence, violation of inalienable rights and other rights and petition for preliminary/permanent injunctive relief and other relief, then a second amended complaint on September 10, 2019. The second amended complaint was dismissed on December 11, 2020. Petitioners filed a third amended complaint for relief and damages on January 29, 2021, alleging (1) that the City violated Art. I, Sec. 2, Fla. Const., the Florida Civil Rights Act, and that the same City ordinance challenge previously was in violation of Sections 553.72 and 553.79, Fla. Stat.; (2) that the City violated Art. I, Sec. 9, Fla. Const. and exceeded its authority under Sections 161.053(3), 161.053(5), and 161.053(15) Fla. Stat.; and (3) that the City was negligent, made negligent misrepresentations, and negligently supervised its personnel, all relative to the tree house. Petitioners' claim also asserts three counts against the Florida Department of Environmental Protection. The case remains pending before the state circuit court.

The case leading to the instant Petition began as *Hazen, et al. v. City of Holmes Beach, et al.*, United

States District Court for the Middle District of Florida, Tampa Division, Case No. 19-cv-00534. While three other cases seeking to validate the tree house were pending in state court, Petitioners, proceeding *pro se*, filed a verified complaint for violation of civil rights and constitutional rights on March 4, 2019. Petitioners amended the pleading before any of the defendants responded, identifying as defendants "The City of Holmes Beach" and "The City and State Officials." The body of the pleading identified the following as parties defendant: City Mayors, Chairs and Vice Chairs of the City Commission, City Commissioners, City Building Officials, Code Enforcement Officers and Code Enforcement Board, and Environmental Manager (Bureau of Beaches and Coastal Systems). In response, the City filed a motion for a more definite statement arguing that the amended complaint was a shotgun pleading because, among other deficiencies under *Weiland v. Palm Beach County Sheriff's Office*, 792 F.3d 1313 (11th Cir. 2015), it failed to adequately identify the persons being sued and upon which counts or legal theories any such person was sued. The district court granted the motion, dismissed the amended complaint without prejudice, and permitted Petitioners to file a second amended complaint.

Petitioners filed their second amended complaint on May 9, 2019, and again the City moved for a more definite statement or dismissal based on many of the same arguments it advanced in its prior motion. The district court granted the motion, writing that "the pleading is arguably more confusing [than its

predecessor] because it includes more causes of action and more alleged facts about events that occurred many years ago regarding [Petitioners'] treehouse" and that Petitioners' claims were "so vague, ambiguous, and inextricably intertwined that [the City defendants] are unable to reasonably frame a responsive pleading." The district court again dismissed the pleading without prejudice and again granted leave to amend, explicitly cautioning Petitioners that "this will be [Petitioners'] final chance to amend their complaint. The Court strongly encourages [Petitioners] to seek legal advice on these matters as it is not the Court's responsibility to further educate [Plaintiffs] on the Federal Rules of Civil Procedure."

Petitioners filed their third amended complaint on July 12, 2019. Over twenty-five pages and 177 paragraphs, Petitioners sued the City, its building officials including but not limited to Thomas O'Brien and James McGuinness, and "[o]ther unnamed City officials, in their official or individual capacity" along with other identified and unidentified State officials. (Dkt. 47 at 1-2). Petitioners alleged in rambling fashion the same series of events recounted previously relative to the treehouse.

Petitioners alleged that in 2011 they had built a treehouse in a grand pine tree that "beckoned them to build" such a structure for purposes of viewing and relaxation. They were told by the City only to "build it safe," and that no permits were required for the treehouse's construction. An anonymous complaint prompted a notice of violation issued by co-Respondent

FDEP, which also ordered removal and relocation of the treehouse in December 2011.

Later, in 2013, the City's building official ordered the structure to be torn down and allegedly circulated false statements to the media concerning same. He determined that the structure could not be built within fifty feet of the erosion control line. Petitioners alleged that, in June 2013, they filed a declaratory judgment action in state court challenging the building official's determination, including the constitutionality of same, and that the City's Special Magistrate had imposed a daily fine of $50.00 since June 2015 "to force voluntary removal of their tree house." Later, a permit application submitted to the City was denied. The City in 2018 brought an affirmative action against Appellants to remove the treehouse.

FDEP at some point in 2012 also determined that the treehouse should be removed, but reconsidered and allowed Petitioners to apply for a permit with the City's "noncontravention." In January 2014, FDEP denied the permit application and ordered the structure removed. Petitioners referenced prior affidavits submitted with the original complaint in support of the facts alleged against FDEP and likewise made general reference to previously filed affidavits in another section of the third amended complaint making additional allegations against the City, including O'Brien and a building inspector, Dave Green.

On the facts alleged, Petitioners brought nine or ten numbered counts against the City and "unnamed

City officials, in their official or individual capacity" and "other unnamed anonymous persons, in their individual capacities." The City moved to dismiss it with prejudice as a shotgun pleading because (1) Petitioners had still failed to identify who were parties defendant, in what capacities they were sued, and what conduct of the defendants was at issue; (2) the individual counts of the pleading continued to incorporate the substantive elements of the preceding legal theories; and (3) it was replete with conclusory, vague, and immaterial facts. The City further argued the counts of the third amended complaint were barred by the doctrines of claim preclusion or issue preclusion. Petitioners responded, and the district court granted the motion on August 6, 2019, finding that the third amended complaint "should be dismissed with prejudice because the legal claims remain impermissibly unclear." The district court's order went on to note that the third amended complaint would also be subject to dismissal based on the preclusive doctrines argued by the City. Petitioners appealed to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit Court of Appeals affirmed in an opinion dated July 17, 2020, holding that the district court did not abuse its discretion in dismissing the third amended complaint because it remained a shotgun pleading under *Weiland*. The court remarked upon the district court's admonition to Petitioners to seek legal advice before filing their third amended complaint, and noted that Petitioners nevertheless filed it *pro se*. The third amended complaint still failed to give the

defendants adequate notice of the claims against them and the grounds upon which each claim rested, a failing which the court described as follows:

> The Hazens' latest (and last) pleading does not specify what claims they are bringing against most of the named defendants. Eight of the nine counts in the third amended complaint are labeled as against the City, against the Department, or both. The one exception is Count VI, which does not name a defendant at all but instead alleges in the abstract that certain provisions of law are unconstitutional. None of the counts specify that the claims (if any) in them are against any of the officials named or referred to in the 'parties' section. The Hazens must be trying to bring *some* sort of claim against those officials because they named them as parties defendant. But they never say what those claims are and those parties as well as the Court are left to guess what they might be.

(App. 7).

The circuit court also rejected Petitioners' contentions that they had not been afforded a chance to fix their mistakes and had been subjected to a "heightened" pleading standard, remarking that Petitioners were given two chances to amend the pleading where only one was required and that there was "nothing heightened about application of the rule against shotgun pleading, which is based on Rule 8, Rule 10, and our precedent." (App. 10). The court's opinion makes no reference to and contains no holding concerning the

application of any doctrines of finality under *Williamson County* or otherwise.

In sum, the tree house has been the subject of eleven distinct judicial or quasi-judicial proceedings, three of which remain pending. Petitioners have not been denied the ability to seek equal justice, relief, or secure their constitutional rights. Instead, they were held to pleading standards developed, amended, and applied over many years to work substantial justice for *all* litigants, and those standards require that persons being sued have adequate notice of the claims against them and the grounds upon which each claim rests. Because Petitioners failed in three attempts to meet those standards, the district court properly dismissed their third amended complaint with prejudice and the Eleventh Circuit Court of Appeals properly affirmed. The case raises no other questions.

REASONS FOR DENYING THE PETITION

I. IN AFFIRMING THE DISTRICT COURT'S DISMISSAL OF THE THIRD AMENDED COMPLAINT, THE ELEVENTH CIRCUIT COURT OF APPEALS NEITHER DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS NOR SANCTIONED ANY SUCH DEPARTURE.

This case does not concern a conflict between circuit courts of appeals. It does not concern a circuit

court decision on an important federal question which conflicts with a decision by a state court of last resort. It does not concern a state court's decision on an important federal question decided in a way that conflicts with another decision of another state court of last resort or a United States court of appeals. It does not concern a United States court of appeals decision on an important question of federal law that has not been, but should be, settled by the United States Supreme Court. It does not concern a United States court of appeals decision on an important question of federal law that conflicts with relevant decisions of the United States Supreme Court. While neither controlling nor comprehensive, the foregoing comprise the indicia of the character of the reasons considered by the Court in granting certiorari review under Supreme Court Rule 10, save for one: that a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Court's supervisory power.

In upholding the most basic principle that defendants to a lawsuit must be given adequate notice of the claims against them and the grounds upon which each claim rests, the Eleventh Circuit adhered to, rather than departed from, the accepted and usual course of judicial proceedings. Its decision does not warrant this Court's review.

A. Federal circuit and district courts have condemned and dismissed shotgun pleadings for many years.

Shotgun pleadings like the Petitioners' third amended complaint in this case are routinely and properly denounced in federal courts across the country. In the Eleventh Circuit, they have been condemned "for decades." *Nurse v. Sheraton Atlanta Hotel*, 618 Fed. Appx. 987, 990 (11th Cir. 2015) (citing *Davis v. Coca-Cola Bottling Co. Consol.*, 516 F.3d 955, 979 n.54 (11th Cir. 2008)). Among other justifications for rejecting shotgun pleadings, the Eleventh Circuit has observed that "unless cases are pled clearly and precisely, issues are not joined, discovery is not controlled, the trial court's docket becomes unmanageable, the litigants suffer, and society loses confidence in the court's ability to administer justice." *Anderson v. District Bd. of Trustees of Cent. Florida Community College*, 77 F.3d 364, 367 (11th Cir. 1996).

Beyond concerns regarding the proper administration of justice, the scarcity of judicial resources also justifies dismissal of actions where pleading standards are repeatedly ignored. "Filing a lawsuit is a serious matter, which often times results in significant consequences to the parties. And judicial resources are far too scarce to be exploited by litigants who, after being specifically advised about how to correct their errors and warned that failing to do so will result in dismissal with prejudice, continue in their recalcitrance." *Nurse*, 618 Fed. Appx. at 990-991 (citing *Wagner v. First Horizon Pharmaceutical Corp.*, 464

F.3d 1273, 1279 (11th Cir. 2006)). That is precisely what occurred in the instant case. Petitioners were cautioned explicitly about the defects in their pleading, yet failed to correct them and herein attempt to place the onus for doing so onto the district and circuit courts.

While the Eleventh Circuit has issued the bulk of the existing law on shotgun pleadings, it is by no means alone in its rejection of them. The Third Circuit Court of Appeals has also rejected "the all too common shotgun pleading approach" to complaints. *Hynson v. City of Chester Legal Dep't*, 864 F.2d 1026, 1031 n.13 (3d Cir. 1988); *see also Wright v. City of Phila.*, 2005 WL 3091883, at *11 (E.D. Pa. Nov. 17, 2005) (citing *Hynson* for the proposition that "[t]he Third Circuit . . . has a policy against plaintiffs using a 'shotgun pleading approach' "). Like the Eleventh Circuit, the Third Circuit has explained that requiring a plaintiff to plead with specificity "ha[s] a twofold purpose: 1) to weed out at an early stage frivolous claims and those that should be heard in state court, and 2) to provide the defendant with sufficient notice of the claims asserted." *Hynson*, 864 F.2d at 1031 n.13.

Likewise, the Tenth Circuit has remarked that "[t]he law recognizes a significant difference between notice pleading and 'shotgun' pleading." *Glenn v. First Nat'l Bank in Grand Junction*, 868 F.2d 368, 371 (10th Cir. 1989) (affirming dismissal of shotgun RICO complaint because it "failed to state a claim under any conceivable matching of allegations"); *see also Pola v. Utah*, 458 Fed. Appx. 760, 762 (10th Cir. 2012) (affirming the dismissal of a complaint that was "incoherent,

rambling, and include[d] everything but the kitchen sink"); *McNamara v. Brauchler*, 570 Fed. Appx. 741, 743 (10th Cir. 2014) (allowing shotgun pleadings to survive screening "would force the Defendants to carefully comb through [the documents] to ascertain which . . . pertinent allegations to which a response is warranted"). District courts in the same circuit have observed that shotgun pleadings are "pernicious" because they "unfairly burden defendants and courts" by shifting onto them "the burden of identifying plaintiff's genuine claims and determining which of those claims might have legal support." *D.J. Young Publishing Co., LLC v. Unified Gov't of Wyandotte County*, 2012 WL 4211669, at *3 (D. Kan. Sep. 18, 2012).

The Fourth District Court of Appeals agrees. "[T]he use of shotgun pleadings in civil cases is a ubiquitous problem, making it particularly important for district courts to undertake the difficult, but essential, task of attempting to narrow and define the issues before trial." *McLean Contracting Co. v. Waterman S.S. Corp.*, 277 F.3d 477, 480 (4th Cir. 2002).

The key characteristic of a shotgun pleading is that it "fail[s] to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests," which renders them disfavored and usually subject to dismissal. *Casavelli v. Johanson*, 2020 WL 7643170, at *13 (D. Ariz. Dec. 23, 2020). A circuit-by-circuit or district-by-district recitation would belabor the point unnecessarily, but virtually every federal court in the country requires that defendants

be put on adequate notice of the claims against them by prohibiting shotgun pleadings. *See Lee v. Ohio Education Association*, 951 F.3d 386 (6th Cir. 2020); *Sollberger v. Wachovia Securities, LLC*, 2010 WL 2674456, *4 (W.D. Cal. June 30, 2010) (dismissing as a shotgun pleading a nine-count complaint with leave to amend only a single negligence count because "[t]his shotgun pleading style deprives Defendants of knowing exactly what they are accused of doing wrong"); *Ziemba v. Incipio Techs., Inc.*, 2014 WL 4637006, *4 (D. N.J. Sep. 16, 2014) (finding that grouping together of claims into a single count "violates the pleading standard and fails to provide each Defendant with adequate notice of the particular claim(s) being asserted against them and the specific grounds upon which such claim(s) rest"); *Schachter v. Sunrise Senior Living Mgmt., Inc.*, 2020 WL 1274601, at *6 (D. Conn. Mar. 16, 2020) (relying upon the Third Circuit Court of Appeals' decision in *Atuahene v. City of Hartford*, 10 Fed. Appx. 33, 34 (2d Cir. 2001) (emphasizing that rules of pleading require that a defendant be given fair notice of what the plaintiff's claim is and the ground upon which it rests)).

The district court's dismissal of Petitioners' third amended complaint conformed with the accepted and usual course of judicial proceedings, as did the Eleventh Circuit Court's affirmance of the dismissal. Shotgun pleadings of the kind filed by Petitioners are roundly rejected by district courts and circuit courts because they fail to place defendants on proper notice of the claims against them, result in uncontrolled dockets and unbridled discovery, and further tax the

already stressed resources of the federal judicial system. Review of this matter is not warranted under these circumstances.

B. Dismissal with prejudice is the accepted and usual course of proceedings when *pro se* plaintiffs are given notice of the defects of their pleading and an opportunity to correct them, but repeatedly fail to do so.

Dismissal of the Petitioners' third amended complaint with prejudice under the circumstances presented in this case conformed entirely with the accepted and usual course of judicial proceedings. Federal courts for many years have dismissed complaints with prejudice or affirmed such dismissal when plaintiffs have been given reasonable opportunity to amend their pleadings to meet the required standards, even when such plaintiffs proceed without counsel.

In dismissing a shotgun complaint, a district court must give the plaintiff "one chance to remedy such deficiencies." *See e.g. Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018). As the Eleventh Circuit Court noted in its opinion, though, Petitioners here proceeded *pro se* and complained that the district court had not afforded them the "extra leeway" accorded to such litigants. The court rejected the argument, writing that "[t]he court did give them that much leeway and more . . . the district court did not demand that [Petitioners], as pro se litigants, submit

an artfully drafted or flawless complaint, just one that gave fair notice to the people the complaint mentioned about who was a defendant and what the claim or claims against them was or were." (App. at 11). The holding was in lockstep with other courts considering similar issues.

The First Circuit Court of Appeals has held similarly, *Kuehl v. F.D.I.C.*, 8 F.3d 905, 908 (1st Cir. 1993) (affirming dismissal with prejudice of *pro se* plaintiffs' amended complaint where plaintiffs failed to follow magistrate judge's instructions), as has the Ninth Circuit. *Destfino v. Reiswig*, 630 F.3d 952, 958-959 (9th Cir. 2011) (upholding a district court dismissal with prejudice after plaintiff repeatedly filed "shotgun pleadings" because "[p]laintiffs had three bites at the apple, and the court acted well within its discretion in disallowing a fourth"). Likewise, the Fifth Circuit Court of Appeals recognizes that a court may dismiss a *pro se* complaint with prejudice when the plaintiff "is fully apprised of [the] complaint's potential insufficiency and [has been] given [an] opportunity to correct any insufficiencies." *See Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998).

Petitioners here were cautioned two times about the pleadings' deficiencies and, instead of correcting them, made them worse. As noted by the Eleventh Circuit Court in issuing its opinion, the district court afforded Petitioners two opportunities to correct their complaint, "twice as many chances as are required." (App. at 9). Again, the Eleventh Circuit Court is not alone in controlling its dockets in this fashion, and the

case does not warrant review under any standard articulated by Rule 10 or otherwise.

CONCLUSION

The Eleventh Circuit's application of basic rules of pleading designed to give defendants fair notice of the claims against them does not warrant review. The district court afforded Petitioners two opportunities to correct their complaint and specifically cautioned them about the consequences of failing to do so in compliance with the rules. Petitioners have failed to demonstrate that they have been denied access to the courts or that this case raises any legal issue prompting the exercise of this Court's discretionary review authority. Accordingly, the City respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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