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

REPLY BRIEF FOR PETITIONERS

HUONG L. TRAN, Pro Se
RICHARD W. HAZEN, Pro Se
103 29th Street
Holmes Beach, FL 34217
941-778-3519
beachlynn@angelsealodge.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

Page

MUNICIPALITY ORDINANCES

OTHER AUTHORITIES

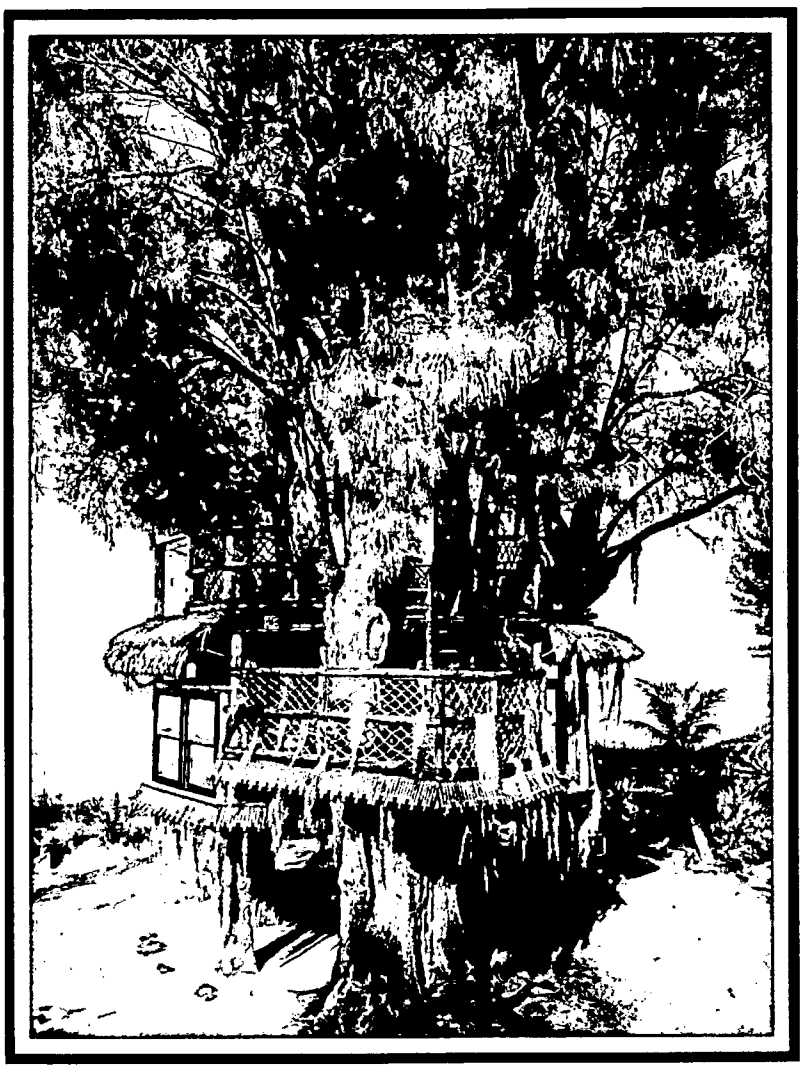
TABLE OF AUTHORITIES – Continued

EPIC PROLOGUE

An Australian pine tree
A tree house by the sea, a free house
Like the famous Robinson Crusoe's movie house
Turned infamous by the town
We thought we built it to be free
To enjoy the sky, the birds and the bees
To live in harmony, in peace and privacy

We never thought we would see
The City cutting down grand trees
Beautiful shaded trees
That are house to treehouses
Nor the money pit
Lawsuits and daily penalty
While we exhaust administrative remedy
Remedy or punishment? You tell me
A one sided "shotgun" affair
In favor of the City
How can we save our beloved house of trees?
A hut in a tree

Can the Court hear our little voice?
Against big lawyers
Who use double meaning words, like a double edge sword
Vague common words
Plain words but uncommon meaning
A boring issue, they call it a "pedestrian" issue
A complaint, a pleading, a claim, a count . . .
Are they all the same?
Notice pleading or "shotgun" pleading
Plead and you will bleed
What do you call rambling, confusing, lengthy laws?
That take away liberty and property
I should listen to the proverb
"He who is his own lawyer has a fool for a client."



ARGUMENT

In their two almost duplicative briefs, Respondents reframed the questions presented by pro se Petitioners (Tran-Hazens), but the initial questions and need for clarity still remain. Their questions could be rephrased as whether dismissing a pleading on precise technical procedural ground without some discovery denied Petitioners of their due process and constitutional rights; And whether strict pleading standard and the finality or exhaustion of administrative remedy requirement create a barrier of access to federal courts on the merits and cause a proliferation of court cases.

A. Respondents' Misstatements and Errors

To highlight a few examples that can easily be verified by a review of the records in the Courts below:

1. In the City's Brief

On page 2, the City denied that the City gave verbal authorization to build without permit despite the fact that the City's code enforcement written records clearly admitted it. The City also stated that Tran-Hazens were pro se in the City's Code Enforcement Case when they were represented by counsel.

On page 3, the City stated that the State Circuit Court ruled that "a section of the City's Land Development Code was not unconstitutional" in the appeal of

the Code Enforcement Board final administrative order. In fact, the Court wrote:

"While it is true that some structures may be allowed under Florida statutory law that would be prohibited under the City code, the tree house is prohibited under both laws because it does not qualify as a "shore protection structure, minor structure, or pier." . . . In sum, the Court finds section 161.053, Florida Statutes (2010), is consistent with Part III, Article VII, Division 2, Section 7.2 of the City of Holmes Beach Land Development Code. . . . Appellants have failed to show that the City code is unconstitutionally more restrictive than Chapter 161, Florida Statutes." *Hazen, et al. v. City of Holmes Beach*, No. 2013-AP-0297. Tran-Hazens failed because they did not have an opportunity to present evidence for such an issue at the Code Board hearing.

2. In the Department's Brief

On page 8, the Department must mean Fed.R.Civ.P. 8 and 10(b), not Sup.Ct.R. 8 and 10(b).

On page 1, ¶ 2, the Department stated that the multi-story assembly structure (treehouse) was built on "the City's coastal property." The deed and survey show that the structure is on Tran-Hazens' property.

On page 2, the Department implied that the proliferation of state court actions was Tran-Hazens' fault when the City initiated code enforcement and lawsuit to stop Tran-Hazens' initiative petition and

declaratory action. The Department also stated that *Hazen, et al. v. City of Holmes Beach*, Docket No. 17-603, raised a similar constitutional challenge when it did not.

B. Citations and Argument

The Respondents cited the same case authorities in both briefs. Some cannot be verified or stated something different. The majority of cases were represented by counsels. Cited below are examples of cases that said something different than quoted in Respondents' brief.

Casavelli v. Johanson, No. CV-20-00497-PHX-JAT, at *12-13 (D. Ariz. Dec. 23, 2020) ("Judges have immunity for their judicial acts "even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." . . . immunity applies even if a judge's actions are ex parte, . . . even to alleged acts of conspiracy or bribery . . . "). This is a pro se shotgun complaint with 30 claims, 97 pages, against numerous defendants including judges. Although it was shotgun, the Court examined and explained each claim.

Ducksworth v. Rook, 647 F. App'x 383 (5th Cir. 2016) is a civil rights claim against several police officers. The district court determined that his § 1983 claims were barred under *Heck v. Humphrey*, 512 U.S. 477 (1994). The district court granted in part and denied in part motion to dismiss even though his

complaint was shotgun and came close to warranting sanctions.

Kuehl v. F.D.I.C., 8 F.3d 905 (1st Cir. 1993) is a lender liability lawsuit of 43 pages, 358 paragraphs, 36 counts against 28 defendants plus two federal agencies. Complaint was verbose and several counts were redundant. Represented attorney failed to amend and reduce the number of defendants as ordered. This is not a pro se complaint as stated in Respondents' briefs.

1. Public Trust and Confidence in the Courts

The court doors are open to all, but to obtain legal redress in an impartial environment is not.

As cited in Respondents' briefs, *Anderson* was a discrimination case, represented by counsel, proceeded to several rounds of discovery, then summary judgment before appeal. "Anderson's complaint is a perfect example of "shotgun" pleading, . . . unless cases are pled clearly and precisely . . . *society loses confidence in the court's ability to administer justice*". *Anderson v. District Board of Trustees*, 77 F.3d 364, 366, 367 (11th Cir. 1996).

According to studies by the Institute for the Advancement of the American Legal System (IAALS) and its peers including the National Center for State Courts (NCSC), the problem of the public's distrust in the legal system is a problem of legal access and to equal justice under the law. "One of the most striking findings was the relatively large proportion of cases

(76%) in which at least one party was self-represented." See *Civil Justice Initiative*,[1] *The Landscape of Civil Litigation in State Courts*, NCSC, pg. 4, Paula Hannaford-Agor, JD, 2015. Also see *Public Trust and Confidence in the Legal System: The Way Forward*[2] (University of Denver, IAALS – Sept. 13, 2019).

On access to the Courts, the citizenry feels removed from the court system, in part because there are so many barriers to entry. "Under- and unrepresented parties face myriad hurdles in getting the outcome they think they deserve, and many emerge from the process feeling "frustrated, lost, disempowered, and disillusioned."" See *Giving Up on Impartiality*,[3] . . . pgs. 19, 21-24, by Hon. Chase T. Rogers and Stacy Guillon (Sept. 2019), IAALS, University of Denver.[4]

"Other people attribute not going to court to not knowing where to go for advice on the process and a lack of understanding that their issues were legal ones. But, perhaps most troubling, some people say they do not go to court because they do not believe it would make a difference. Indeed, public perception studies

---

[1] See document at https://www.ncsc.org/__data/assets/pdf_file/0020/13376/civiljusticereport-2015.pdf.

[2] See document at https://iaals.du.edu/blog/public-trust-and-confidence-legal-system-way-forward.

[3] See document at https://iaals.du.edu/sites/default/files/documents/publications/rogers-guillon_giving_up_on_impartiality.pdf.

[4] See also *American (Dis) Trust of the Judiciary*, by Benjamin H. Barton, Sept. 2019, IAALS at https://iaals.du.edu/sites/default/files/documents/publications/barton_american_distrust_of_the_judiciary.pdf.

reveal the public believes the courts are often unavailable or unequipped to resolve their legal disputes . . . Study has shown that up to 86 percent of low-income Americans' legal needs go unmet, which is damaging not only to the individuals experiencing those needs but also to the function of the rule of law in our society more generally." Id. at 21-24.

2. Barriers to Access Courts on the Merits, Illusion of Due Process

In addition to the difficulty of understanding and communicating in legal language for pro se litigants, an elevated or precise pleading standard is particularly burdensome. Any standard requiring specific facts to be tied to each claim and to each defendant prior to discovery, plus requiring the analytical skills needed to separate the claims, discuss the elements, know the immaterial vs. the material, and so on to avoid being thrown out the door as "shotgun" impose extremely high standards that place the pro se litigant at a severe disadvantage. Important civil rights cases can be dismissed at first glance, without the benefit of discovery or any meaningful fact-finding before dismissal with prejudice.

"The erection of barriers to court access under the guise of procedural efficiency seems misguided and shortsighted: it will burden the weak and the aggrieved unfairly, and it ultimately will undermine the legitimacy of the legal system which most of these "reformers" hold dear. Concern over excess litigation in

the federal courts is also typically exaggeration. Sober attention to the statistical evidence indicates that we are no more overwhelmed now than at many times in the past. The truth about the "litigation explosion" is that it is a weapon of perception, not substance. The procedural mess of technical and confining rules substantially reduced respect for the courts." See *After Fifty Years of the Federal Rules of Civil Procedure: Are the Barriers to Justice Being Raised?*,[5] by Jack B. Weinstein, University of Pennsylvania Law Review [Vol. 137:1901-1989, pgs. 1907, 1908, 1919-1921].

See also Suzette M. Malveaux, *Clearing Civil Procedural Hurdles in the Quest for Justice*,[6] 37 Ohio N.U. L. Rev. 621 (2011) (procedural mechanisms can act as barriers to justice, as hurdles that deny due process if they are too high to clear).

"If constitutional rights protect important moral interests, then the harm from failing to vindicate a valid constitutional claim must be measured in moral terms too. This means that the cost side of the policy balance includes moral harms, and moral harms must be accorded great weight." See *Restoring Access to Justice: The Impact of Iqbal and Twombly on Federal Civil Rights Litigation*,[7] by Joshua Civin and Debo P.

---

[5] See document at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3865&context=penn_law_review.

[6] See document at https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2244&context=articles.

[7] See document at https://www.acslaw.org/wp-content/uploads/2018/04/Civin_Adegbile_Iqbal_Twombly.pdf.

Adegbile, Sept. 2010, American Constitution Society for Law and Policy.

Also see *A. B. Spencer, Understanding Pleading Doctrine*,[8] 108 Mich. L. Rev. 1 (2009), pg. 26. Michigan Law Review at University of Michigan Law School (standard that dismisses valid claims at the very front end of the system based on an inability to offer facts that claimants are, at this early stage, unlikely or unable to know, blocks access to the courts in a way that is fundamentally improper.).

CONCLUSION

Respondents assert that Petitioners (Tran-Hazens) have not met the compelling reasons under Supreme Court Rule 10 as if the list provided in Rule 10 are the only reasons this Court can grant review. This Court has broad discretion to determine compelling reasons, not only to render justice on specific cases but also to establish guidance of public importance. "Review on a writ of certiorari is not a matter of right, but of judicial discretion." The criteria provided in Rule 10 are "neither controlling nor fully measuring the Court's discretion."

In their petition for a writ of certiorari and here, Petitioners have provided to this Court a detailed and thorough analysis of the confusing and costly pleading

[8] See document at https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1307&context=mlr.

landscape that acts as a barrier and deprives Petitioners as well as many other civil rights litigants of their day in court on the merits. This Court should grant their petition for certiorari and provide much needed guidance and faith in justice.

Respectfully submitted,

HUONG L. TRAN, Pro Se
RICHARD W. HAZEN, Pro Se
103 29th Street
Holmes Beach, FL 34217
941-778-3519
beachlynn@angelsealodge.com