No. 17A377

In the

Supreme Court of the United States

Michael Kupritz, *Petitioner*

vs.

Chase Bank USA, N.A., *Respondent*

On Petition for a Writ of *Certiorari* to
the District Court of Appeal
of the State of Florida Fourth District

Petition for Writ of *Certiorari*

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QUESTION PRESENTED

Whether, under the Fourteenth Amendment or 42 U.S.C. § 1981, a *pro se* litigant is entitled to procedural safeguards – including the liberal pleading standard established in *Haines v. Kerner*, adequate notice of the defects in his pleadings when leave to amend is given, and a written statement of findings of fact and conclusions of law when his case is decided – that are not required for a litigant represented by counsel.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page. In this petition, Petitioner Michael Kupritz, an indigent *pro se* defendant, will be referred to as "Kupritz." Respondent Chase Bank USA, N.A., a subsidiary of JPMorgan Chase & Co., a global financial services firm with roughly $2.3 trillion in assets, will be referred to as "Chase."

Please note that where court opinions are quoted in this petition, any internal citations and quotation marks in the original have been omitted. Unless otherwise indicated, all emphasis is in the original.

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Kupritz respectfully petitions for a writ of *certiorari* to review the judgment of the District Court of Appeal for the State of Florida, Fourth District in this case.

OPINIONS BELOW

The order of the district court of appeal (App. 1), the order denying rehearing, rehearing *en banc*, certification, and issuance of a written opinion (App. 2), the orally given and transcribed opinion of the circuit court judge (App. 6), and the order of the circuit court (App. 3) are all unreported.

JURISDICTION

The judgement of the district court of appeal was entered on May 25, 2017. A timely motion for rehearing, rehearing *en banc*, certification, and issuance of a written opinion was denied on July 19, 2017. On October 10, 2017, Justice Thomas granted an extension to file this petition to and including December 16, 2017.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a) and arises from the fact that "the Supreme Court of Florida lacks jurisdiction to review *per curiam* decisions of the several district courts of appeal of this state rendered without opinion." *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980); *Florida v. Rodriguez,* 469 US 1, 10 (1984) ("Recognizing that the Florida Supreme Court does not provide a forum for error-correcting review of lower court judgments in that State's judicial system, the Florida Attorney General instead filed a petition for writ of certiorari in this Court."); See also *Palmore v. Sidoti,* 466 US 429 (1984); *Ibanez v. Florida Dept. of Business and Prof. Regulation, Bd. of Accountancy,* 512 US 136 (1994)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. I

Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.

2. U.S. Const. Amend. V

No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

3. U.S. Const. Amend. XIV, § 1

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. 42 U.S.C. § 1981 - Equal rights under the law

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

5. Florida Const. Art. I – Declaration of Rights, § 21 – Access to Courts

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

6. Florida Const. Art. V – Judiciary, § 3 – Supreme Court

(b) JURISDICTION.--The supreme court:

(3) May review any decision of a district court of appeal that . . . expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

STATEMENT OF THE CASE

In 1966, the year Kupritz was born, the business of banking was largely unregulated. Lawmakers, frustrated with rampant fraud by lenders and "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices," tried to impose order on the chaos.[1] Beginning in the late 1960s, Congress enacted a series of consumer protection statutes that included the Truth in Lending Act, the Electronic Funds Transfer Act, and the Fair Debt Collection Practices Act (upon which the Florida Consumer Collection Practices Act was closely modeled).

These statutes helped to curtail some abusive practices, but many continue, due in part to lax enforcement. In 2009, the year in which the events of this case took place, the Federal Trade Commission received an astonishing 41,028

[1] 15 U.S.C. § 1692(a)

complaints from consumers who were called by debt collectors "repeatedly or continuously," 7,411 of them "after consumers sent written cease communication notices."[2] 6,463 civil cases were filed in federal courts alleging violations of the Fair Debt Collection Practices Act or Fair Credit Reporting Act.[3] Even more troubling, the National Consumer Law Center reports, "Deceptive and abusive practices by creditors are often designed deliberately to lead consumers into default."[4]

1. Factual Background

The initial fact pattern mirrored that of a nationwide class action that Chase settled for $100 million in 2012. That lawsuit alleged Chase fraudulently induced more than a million of their most responsible customers into accepting credit card loans while obscuring their true terms. Chase advertised a low fixed rate but intended to charge a much higher one once the borrowers defaulted. When those borrowers instead met their obligations, Chase forced them into default by dramatically increasing their minimum payments. Chase then attempted, often successfully, to coerce the borrowers into accepting much less favorable terms. Although he opted out of the class, Kupritz was among the affected borrowers.

Here, Chase went even further. First it enticed Kupritz into accepting loans with a low rate that was "fixed for the life of the loan." When Kupritz performed as

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[2] Federal Trade Commission, *Annual Report 2010: Fair Debt Collection Practices Act*, p. 6-10

[3] *Civil Suits Against ARM Companies Soar in 2009: US Courts*, InsideARM, March 17, 2010.

[4] Nat. Consumer Law Center, *Collecting Consumer Debts: The Challenges of Change*, 2007

agreed, Chase raised the rate and increased his minimum payments by 250%, forcing him into default. Then, Chase employed an array of debt collection practices that included the unauthorized withdrawal of funds from Kupritz's bank account, misstatements of fact, and an intense campaign of dunning calls. (R I/821-827)

2. Proceedings Below

The description of the proceedings below is condensed greatly to show only how the federal questions presented by this petition are relevant to and dispositive of the case, how and when they were raised and decided below, and where they can be found in the record and/or appendix.

A. The Complaint

In 2009, Chase's bare-bones claim in the county court merely recited the elements of "account stated." Despite being advised repeatedly that the evidence was manufactured for the purpose of litigation and improperly sworn (R I/304-9,327-8,343,458-460,650,387,699-700), and there were numerous outstanding issues of material fact (R I/302,306-7,322,324,329,470), the court awarded summary judgment in favor of Chase. (R I/311) The circuit court reversed on appeal. (R I/239)

In 2015, a Consent Order was filed by the Consumer Financial Protection Bureau ("CFPB") in coordination with the Office of the Comptroller of the Currency, joined by the Attorneys General of 47 states and the District of Columbia. The CFPB found that, among other unlawful practices, Chase systematically violated statutory prohibitions against unfair, deceptive, or abusive acts and practices by filing more than 528,000 misleading debt collection lawsuits against consumers using robo-signed and illegally sworn statements to obtain false or inaccurate judgments for unverified debts. In just one of a series of such penalties, the CFPB ordered Chase to dismiss the lawsuits, discontinue its unlawful practices, and pay $50 million in consumer refunds, a $30 million civil penalty to the CFPB, a $30 million civil penalty to the OCC, and $106 million to the states.[5]

Chase did not comply. When the circuit court finally moved to dismiss *sua sponte*, Chase voluntarily dismissed its complaint without prejudice. (R I/1068-71)

B. The Counterclaim

i. Proceedings in the Trial Court

Kupritz filed his counterclaim in 2009. An indigent[6] who could not afford counsel and has no legal training, he appeared *pro se*. (R I/820-867)

The essence of the counterclaim was that Chase fraudulently induced Kupritz into accepting a loan under false pretenses in a bait-and-switch scheme and related collection effort that involved repeated, intentional violations of the Truth in Lending Act, the Electronic Funds Transfer Act, and the Florida Consumer Collection Practices Act. (R I/820-821)

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[5] CFPB (2015), *CFPB, 47 States and D.C. Take Action Against JPMorgan Chase for Selling Bad Credit Card Debt and Robo-Signing Court Documents* [Press release]

[6] Kupritz wouldn't learn until filing the first of two successful appeals that he was entitled to file *in forma pauperis*. He paid the $295 filing fee, a significant burden for an indigent.

Chase's theory was quite different. It chose to reframe the case as turning on one of the least important allegations of the counterclaim: that Chase increased the APR on Kupritz's loans above the rate it had promised in writing. Chase insisted that the allegations (R I/824-825) conflicted with the exhibits (R I/851-860) and that the attached account statements Chase prepared contained no language evidencing Chase raised the APR above the advertised rate. (R I/635)[7]

Kupritz contended that Chase's assertion was wholly without merit, noting that a mere glance at the exhibits confirms that the language evidencing Chase increased the rate above the promised rate is missing only from Chase's arguments. In both his written pleadings and at oral argument, Kupritz repeatedly brought to the trial court's attention the exact lines of the exhibits, printed in boldface type, showing that the APR Chase applied exceeded the rate it promised. (R I/473-474)[8]

Chase sought dismissal four times. Judge Shepherd, the county court judge whose summary judgement was later reversed, accepted Chase's legal conclusions and repeated each of them verbatim in her dismissal without prejudice. (R I/484) Judge Booras, her successor judge, did not, transferring the case to the circuit court. (R I/7,18) There, Judge Barkdull initially flatly rejected Chase's assertions. (R I/819) On Chase's next motion, he accepted them, dismissing with prejudice. (R I/1273)

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[7] In one form or another, Chase repeated this assertion literally hundreds of times throughout its written and oral arguments. We cite only the first instance.

[8] Again, we cite only the first instance.

During the May 23, 2014 hearing, his first appearance before the circuit court, Kupritz asked Judge Barkdull to take judicial notice of the fact that he is an indigent *pro se* litigant, requested that the court notify him if he overlooked any rights or remedies to which he was entitled, and cited Florida law requiring that the court hold *pro se* litigants to a less stringent pleading standard. Judge Barkdull declined on all counts, ruling that *pro se* litigants "are held to the same standard as someone who is represented." (R I/994-5, App. 5)

During the next and final hearing on October 31, 2014, Kupritz reminded the court of his *pro se* status and the correct standard of review on a motion to dismiss. He asked Judge Barkdull not to accept Chase's invitation to misread the exhibits. The court did anyway, dismissing with prejudice. In his orally given opinion, Judge Barkdull gave his sole reason: the counterclaim failed to state a cause of action due to "significant conflict between the exhibits attached thereto and the Complaint itself." He cited "the Harry Pepper Rule" as authority. (R I/1273, App. 6)

At the court's request, Chase prepared a draft order for Kupritz's review. Kupritz objected, as there was no mention of the circuit court's reasoning. Kupritz asked Chase to add the language quoted above from the transcript. Chase refused, noting Kupritz's objection in a cover letter to the court, but urging the court not to include its reasoning. (R I/918) The circuit court adopted Chase's initial draft order and issued its decision without opinion, dismissing with prejudice Kupritz's second amended counterclaim and its four causes of action. (R I/920, App. 3)

In Kupritz's timely-filed motion for reconsideration, he described at length the circuit court's misreading of the allegations and the exhibits, explained at length why dismissal with prejudice was the wrong remedy for counts that did not depend upon the court's finding of conflict, advised the court of the impropriety of disregarding the provisions of TILA, and asked the court to "reduce its reasoning to writing, so that an appellate court may more readily assess whether [the court] erred." The court did not respond. (R I/921-9)

Kupritz appealed to the District Court of Appeal of the State of Florida, Fourth District.

ii. Proceedings in The Appellate Court

The appeal addressed three issues, two of which are relevant here: (1) The trial court erred when it found conflict between the exhibits and allegations that directly quoted the exhibits; and (2) The trial court erred by dismissing the counterclaim with prejudice when only a small percentage of the counts depended in any meaningful way upon the reason the trial court gave for dismissal. (In. Br. 2)

In his initial brief, Kupritz cited the substantial case law in Florida regarding the correct standards applied to *pro se* litigants. (In. Br. 37) He described the heightened pleading standard the trial court applied instead (In. Br. 38-39) and its failure to reduce its reasoning to writing, even upon formal request. (In. Br. 20) He explained the importance of written opinions not just in allowing litigants to understand the basis on which their cases are decided but also in terms of saving judicial resources on appeal. (In. Br. 37)

In its answer brief, Chase reiterated 47 times the interest-rate argument it made below and cited three Florida district court decisions holding *pro se* litigants are held to the same standards as reasonably competent attorneys. (Answer Br. 10) In his reply brief, Kupritz pointed to the conflict and reminded the appellate court of the many cases he cited that demonstrate otherwise. (Reply Br. 10) There were no oral arguments, which are disfavored in Florida.

The appellate court affirmed without opinion.

Kupritz moved for rehearing, rehearing *en banc*, certification, and issuance of a written opinion. He argued that the appellate court overlooked the point of law that an indigent *pro se* litigant is entitled to leniency in technical matters, a relaxed pleading standard, and liberal interpretation, citing the relevant authority. He stressed the importance of the issues, which affect a great many people beyond the litigants. He highlighted the importance of resolving the conflict among the decisions of the panel and other panels within the same court, citing those opinions. He described the extensive conflict among the decisions of the court, other district courts of appeal within Florida, and the Florida Supreme Court, citing those opinions. He elaborated the compelling reasons a written opinion was required, particularly in a case that was fully briefed and presented significant issues yet to be settled under Florida law. (Kupritz Mot. 1-11)

Chase's response, filed days after the deadline, without extension, addressed none of the points in Kupritz's motion. (Chase Resp. 1-12) The court accepted the untimely filing, then denied Kupritz's motion, again without opinion. (App. 2)

REASONS FOR GRANTING THE PETITION

Central to our nation's democratic ideals is a judicial system that guarantees fundamental fairness to all. We cannot overlook the growing majority of litigants. Most cases that come before the bench today involve self-represented litigants – many of whom are indigent, incarcerated, or both. With few exceptions, *pro se* litigants do not choose to represent themselves; they do so because they cannot afford counsel. It is imperative that we ensure a level playing field so that they can compete, in our adversarial system of justice, against those with wealth and power. "There can be no equal justice where the kind of a trial a man gets depends on the amount of money he has." *Griffin v. Illinois*, 351 US 12, 19 (1956)

This Court has long recognized that *pro se* litigants are entitled to special protections. But it's piecemeal approach to elaborating specific accommodations has left in its wake widespread disagreement among both state and federal courts about what procedural safeguards, if any, are required.

Here, the courts held a *pro se* litigant to a heightened pleading standard and failed to prepare written findings of fact and conclusions of law. At issue is whether a *pro se* litigant's rights are abridged by those actions. If the courts below erred, the nature of their error applies far beyond the litigant in this case to *pro se* litigants in all cases across the country and at all levels of the judicial system.

A decision without opinion is not ordinarily a good candidate for review by the United States Supreme Court. However, as we discuss in the section entitled "Decisions Without Opinion Prejudice *Pro Se* Litigants," the very fact that the appellate court refused to write demonstrates why review is warranted. This case may, oddly enough, be the perfect vehicle to resolve the issues involved, because it turns on a single finding of fact flowing from the trial court's explicit conclusion of law that it need not treat a *pro se* litigant's pleadings liberally.

1. The Case Presents an Issue of National Importance

> "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship . . ." *Chambers v. Baltimore & Ohio R. Co.*, 207 US 142, 148 (1907)

It is widely understood that litigants who lack the resources to engage counsel are at a distinct disadvantage. They are, by definition, without an advocate in a system that all but demands one. They routinely forfeit important rights they didn't know they had. They have little understanding of the various legal theories that may apply to their cases. They are unfamiliar with pleading requirements. They have not been trained to cite proper legal authority. They are unaware of the customs of courtroom procedure. They may even be unable to express themselves clearly and persuasively in written English.

The problem is not a small one. *Pro se* litigants are a category that is large and growing. According to this Court's 2016 Year End Report, of 60,357 cases filed in U.S. Courts of Appeal during the fiscal year ending September 30, 2016, 52 percent involved at least one *pro se* litigant. If one assumes a similar percentage of all 1,235,145 federal cases involved *pro se* litigants, at least 642,275 cases annually in the federal courts alone are affected by the issues in this petition. In state courts, the numbers are just as staggering. Clearly, this is an issue of national scope.

When a class of citizens is systematically disadvantaged, the problem is one of fundamental legal, societal, and practical significance. We must ask ourselves whether those who are unrepresented by counsel are entitled to any legal protections. If so, we must then ask ourselves whether we are willing to tolerate discrimination on the basis of whether one can afford counsel. And finally, we must ask ourselves what effects those choices will have in the real world.

The answers to these questions are informed by our understanding of the First Amendment to the United States Constitution, which guarantees the right to "petition the Government for a redress of grievances (the "Petition Clause")." This Court has interpreted the Petition Clause to imply a right of access to the courts. In Florida, the right of access to the courts is explicit. Article I, § 21 of the Florida Constitution plainly states, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

Because this case concerns actions by a state government through its courts, our analysis also depends largely on the Fourteenth Amendment. (It should be noted that the issues here pertain equally to *pro se* litigants in federal courts, which would require an analysis based upon the Fifth Amendment.) It commands, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States (the "Privileges or Immunities Clause"); nor shall any State deprive any person of life, liberty, or property, without due process of law (the "Due Process Clause"); nor deny to any person within its jurisdiction the equal protection of the laws (The "Equal Protection Clause")."

In addition, 42 U.S.C. § 1981 (as amended) addresses many of the same rights. It provides, "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings" and protects against "impairment under color of State law."

The provisions above are interrelated but fundamentally different. One set of rights may be denied by the state, while the others may not. The right to life, liberty, and property is subject to balancing against state interests precisely because the language of the Amendment explicitly permits it to be abridged by the state following due process. By contrast, if we respect the plain meaning of the Amendment, the right to equal protection of the laws is absolute. If the framers intended to permit equal protection to be abridged by the state following due process, they would have declared this purpose in the same plain and intelligible language employed in the immediately preceding clause. The fact that the Equal Protection Clause speaks in uniformly mandatory terms militates against balancing that right against state interests. Equal protection was meant to be inviolable. By the same reasoning, the full and equal benefit of all laws guaranteed by the Civil Rights Act of 1866 (as amended) may not be abridged under any circumstances.

Whether, and to what extent, these provisions protect the rights at issue in this case will be the subject of the merits brief, should *certiorari* be granted.

How we resolve these issues will have profound practical considerations in courtrooms throughout the country. *Pro se* litigants present unique challenges, and judges are routinely called upon to engage in a delicate balancing act. They must protect any special rights to which *pro se* litigants are entitled. At the same time, the court must maintain ethical standards of judicial neutrality and objectivity. As evidenced by the court's response when the issue was raised here (R I/994-5, App. 5) and by many of the opinions cited in this petition, judges are concerned about this issue but are not always aware of what is required of them. They fear being seen as favoring the *pro se* litigant when, in reality, the procedural protections afforded *pro se* litigants are designed to correct a status quo that favors the represented party.

2. The Decision Below Conflicts with Established Precedent

> "The State's obligations under the Fourteenth Amendment are not simply generalized ones; rather, the State owes to each individual that process which, in light of the values of a free society, can be characterized as due." *Boddie v. Connecticut*, 401 US 371 (1971)

Some laws that seem fair generally may not be fair to particular individuals. As this Court succinctly stated, "a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question." *Id.*

The Court has applied that principle many times. In *Boddie*, it held that paying a fee in order to dissolve a marriage, although sufficient for those of means, was not sufficient for those without. *Id.* In *Mullane v. Central Hanover Tr. Co.*, 339

U. S. 306 (1950), it held that notice by publication in a local newspaper, although sufficient as to beneficiaries of a trust whose addresses were unknown to the trustee, was not sufficient for known ones. In *Covey v. Town of Somers*, 351 U. S. 141 (1956), it held that notice by publication in a foreclosure action, even though sufficient to provide a normal person with an opportunity for a hearing, was not sufficient where the defendant was a known incompetent. The Court expressly rejected an argument that "the Fourteenth Amendment does not require the State to take measures in giving notice to an incompetent beyond those deemed sufficient in the case of the ordinary taxpayer." *Id.* at 146

Likewise, ordinary procedural standards, though sufficient for litigants with counsel, are not sufficient for litigants without. The state can protect the rights of *pro se* litigants only by taking additional measures to modify those standards.

A. *Pro Se* Pleadings Must Be Held to Less Stringent Standards

For at least the last 45 years, this Court has been consistent and unambiguous in its holding that *pro se* pleadings are to be construed liberally. If a *pro se* litigant's complaint *can* be read to state a cause of action, it *must*. Protecting the rights of *pro se* litigants is neither voluntary nor at the courts' discretion.

In *Haines v. Kerner*, 404 US 519, 520 (1972), generally regarded as the controlling authority, this Court established a pleading standard for *pro se* litigants that differed from the standard for represented litigants. Reversing dismissal of a self-represented litigant's complaint, the Court unanimously held that the "inartfully pleaded" allegations of a *pro se* litigant must be held "to less stringent standards than formal pleadings drafted by lawyers." In *Estelle v. Gamble*, 429 US 97, 106 (1976), this Court held that a *pro se* litigant's handwritten complaint "is to be liberally construed," citing with approval the standard set forth in *Haines*:

> "The Haines test is not whether the facts alleged in the complaint would entitle the plaintiff to relief. Rather, it is whether the Court can say with assurance on the basis of the complaint that, beyond any doubt, no set of facts could be proved that would entitle the plaintiff to relief. The reasons for the Haines test are manifest. A *pro se* complaint provides an unsatisfactory foundation for deciding the merits of important questions because typically it is inartfully drawn, unclear, and equivocal, and because thorough pleadings, affidavits, and possibly an evidentiary hearing will usually bring out facts which simplify or make unnecessary the decision of questions presented by the naked complaint." *Id.*

In *Hughes v. Rowe*, 449 US 5, 9 (1980), this Court minced no words. "Petitioner's complaint . . . was not prepared by counsel. *It is settled law* that the allegations of such a complaint, however inartfully pleaded are held to less stringent standards than formal pleadings drafted by lawyers." [emphasis added] The Court continued, "An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." In *Polk County v. Dodson*, 454 US 312, 326 (1981), the Court highlighted "the sympathetic pleading requirements applicable to *pro se* petitioners." In *Boag v. MacDougall*, 454 US 364 (1982), the Court found a *pro se* litigant's "crudely written" complaint stated a cause of action under the liberal reading required by *Haines*. In *Maleng v. Cook*, 490 US 488, 493-494 (1989), this Court reminded us of "the deference to which *pro se* litigants are entitled" and held that their pleadings must be considered adequate if they *"can be read"* to satisfy procedural requirements. [emphasis added] In *Becker v. Montgomery*, 532 US 757 (2001), the lower court seemed to know its responsibilities, writing to the *pro se* litigant, "The court is aware that you are not an attorney and it will not hold you to the same standards it requires of them in stating your case." Nevertheless, it then *sua sponte* dismissed his appeal for failing to hand sign the notice of appeal, a pleading defect he had already cured. In a unanimous decision, this Court emphatically reversed.

B. Decisions Without Opinion Prejudice *Pro Se* Litigants

The procedural safeguards necessary to protect the rights of *pro se* litigants are not limited to relaxed pleading standards. Notice requirements are equally important, as *pro se* litigants routinely forfeit rights to which they did not know they were entitled – as Kupritz did when he paid the fee for filing his counterclaim.

Florida differs from most other states in that the vast majority of appeals are disposed of by PCA – *per curiam* affirmed decisions by the District Courts of Appeal that are without written opinion. The Florida Supreme Court lacks jurisdiction to review such decisions, even when they conflict with its own authority or decisions of other districts. (Fla. Const. Art. V § 3) Therefore, the District Courts of Appeal are the courts of last resort for most cases, and interdistrict conflicts go unresolved.

With no supervisory element, the District Courts of Appeal may act in a way that is capricious and arbitrary. Leaving to their discretion the decision about whether to write opinions allows them to control both access to and the functional jurisdiction of the state's highest court. At issue is whether Florida's procedures interfere with the sound administration of justice and deny the rights of those whose controversies are affected, imposing profound consequences on thousands of litigants whose cases are decided on technicalities rather than the merits.

This situation has caused much consternation among the public, litigants, the bar, and even the bench. Perhaps the most compelling argument against PCAs was made by the elected Public Defender for Miami-Dade County:

> "The current PCA practice deprives litigants of an understanding of the basis on which their cases are decided, increases the likelihood that arguable issues will be overlooked, sometimes conceals inconsistent intradistrict and interdistrict dispositions, detracts from the public's confidence in the district courts' accessibility and fairness, obstructs access to and review in the [Florida] supreme court, and generally diminishes the reliability of individual decisions and the appellate process in general." Bennett H. Brummer, *Independent, Professional Judgment: The Essence of Freedom*, 10 St. Thomas L. Rev. 607, 608 (1998)

Every one of the undesirable consequences cautioned against is echoed here. Kupritz provided the appellate court with extensive evidence of conflict among the various district courts and the Florida Supreme Court on the issue. By failing to write an opinion, not only is the conflict unreviewed and unreviewable, but also it is hidden from view. In addition, the appellate court's failure to set out written findings of fact and conclusions of law in support of its decision forced Kupritz to widen his arguments to include all possible reasons for affirmation and robbed this Court of the ability to narrow its review to that specific decision without speculating as to the appellate court's reasoning, a waste of precious judicial resources.

Proponents of the practice urge that decisions without opinion conserve judicial resources. But there is no rational connection between depriving *pro se* litigants of their constitutional rights and the asserted goal of reducing the workload of judges. The goal could be accomplished much more easily simply by dismissing frivolous, unsubstantiated complaints like the one brought by Chase in this case. In some jurisdictions, up to 85% of cases are filed by Chase and other debt collectors, overwhelming the courts and leading them to rubber-stamp claims.[9]

Many respected authorities believe every case deserves a written opinion. The American Bar Association recommends "the decision in every case be supported at least by reference to the authorities or grounds upon which it is based."[10] In his minority report to the PCA Committee[11], the Honorable Gerald B. Cope called for

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[9] Beth Healy, *et. al.*, *Dignity faces a steamroller: Small-claims proceedings ignore rights, tilt to collectors*, Boston Globe, July 31, 2006

[10] *Standards Relating to Appellate Courts*, American Bar Association Judicial Administration Division, Standards of Judicial Administration, Vol. III, 1994, pp. 65-69.

[11] Recognizing that summary dispositions affect the public's confidence in the judiciary, the Florida Supreme Court took the recommendation of its Judicial Management Council Committee on Per Curiam Affirmances (the "PCA Committee") and amended Fla. Rule App. Proc. 9.330 to give a party the right to request a written opinion, as part of a motion for rehearing. But parties already had that right, compliance is voluntary, and the District Courts of Appeal deny without explanation most petitions for written opinion, leaving us in the same situation the rules changes were meant to correct. Mention of the PCA Committee is relegated to a footnote here not because it is unimportant, but because the good work of the committee led to rules changes that had little or no practical effect.

written opinions in all cases that are fully briefed. The Honorable Henry J. Friendly, widely regarded as an authority on the subject and among our most revered judges, included in his list of fundamental due process rights the "requirement that the tribunal prepare written findings of fact and reasons for its decision."[12] It is the only right on his list that this Court has yet to uphold.

Even if this Court chooses not to require written opinions in every case, there is a practical path forward. Texas has implemented a compromise solution, mandating written opinions upon request by a party. If such a motion tolls the time for filing a motion for rehearing or notice of appeal, rights are preserved and resources saved. In family court, some states, like Tennessee, require a trial court to enter findings of fact and conclusions of law with their final orders, while others, like Hawaii, require them once a notice of appeal has been filed. This is not quite as effective, though, as one objective of giving litigants notice of the reasons their case was decided is to discourage meritless appeals.

Desirable as it is to reduce the workload of overburdened judges, this aim cannot be accomplished by laws, rules, or procedures that deny rights created or protected by the Constitution. A more balanced approach is needed – one that recognizes the urgent need to relieve the pressure on judges at all levels, but one that respects the constitutional guarantees of due process and equal protection. The rules in Texas and Hawaii demonstrate that such an approach is possible.

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[12] Henry J. Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267, 1278-1281 (1975)

C. *Pro Se* Litigants Cannot Cure Defects Without Adequate Notice

Written opinions also serve another crucial function: notice. As many of the cases cited above demonstrate, without adequate notice of the defects in their pleadings, *pro se* litigants cannot reasonably be expected to cure them. One might assume that a litigant could just pore over the hearing transcripts to determine the court's reasoning. But an indigent *pro se* litigant like Kupritz does not ordinarily have access to transcripts; he cannot afford them. He is forced to guess and, without the court's guidance, usually guesses wrong. As the court in *Noll v. Carlson*, 809 F. 2d 1446, 1448-1449 (9th Cir. 1987) noted, "Amendments that are made without an understanding of underlying deficiencies are rarely sufficient to cure inadequate pleadings." Here, when the trial court gave notice of the defects in his pleadings, Kupritz cured them. When it did not, he could not.

In *Denton v. Hernandez*, 504 US 25 (1992), this Court stated, "Because it is not properly before us, we express no opinion on the Ninth Circuit rule, applied below, that a *pro se* litigant bringing suit *in forma pauperis* is entitled to notice and an opportunity to amend the complaint to overcome any deficiency unless it is clear that no amendment can cure the defect." For reasons that we will develop in the merits brief, should *certiorari* be granted, this may be an opportune time to do so.

3. The Courts are Divided on the Question Presented

One would think that, particularly after this Court declared the matter to be settled law in 1980, the lower courts would respect controlling authority and afford procedural latitude to *pro se* litigants. But many have not, and this area of the law is again badly in need of this Court's authoritative voice. To say that the courts are confused and divided on the issue would be an understatement. They are not merely split but scattered. The conflict that has developed among both the federal circuit and the state supreme courts is ripe for review, and only this Court can resolve it.

Since 1980, a whole spectrum of interpretations of *Haines* and other cases establishing more protective procedural standards for *pro se* litigants has arisen. At one end of the spectrum are rebellious courts that regard the *Haines* test as a mere suggestion to be disregarded at the court's discretion. These courts flatly reject the idea that *pro se* litigants are entitled to any special consideration. At the other end of the spectrum are courts that respect this Court's binding precedent. These courts have explicitly stated what is required, echoing the same general language in *Haines* and subsequent United States Supreme Court cases, and some go to extremes to tease a cause of action from a jumble of facts and allegations. And in the middle of the spectrum are courts that can't seem to decide what standard should be applied to *pro se* litigants. These courts use words like "typically," "usually," and "generally" to describe their case-by-case approach.

We summarize some of the more illuminating cases below.

Examples of cases in which the court found *pro se* litigants *are not* entitled to a more protective procedural standard abound. In *State ex rel. Fuller v. Mengel,* 100 Ohio St. 3d 352, 354 (Ohio 2003), the court reiterated the surprising reason for Ohio's long tradition of denying special treatment to *pro se* litigants. "It is well established that *pro se* litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." In *Newsome v. Farer*, 708 P. 2d 327, 331 (NM 1985), the court held that "a *pro se* litigant must comply with the rules and orders of the court, enjoying no greater rights than those who employ counsel. Although *pro se* pleadings are viewed with *tolerance*, a *pro se* litigant, having *chosen* to represent himself, is held to the same standard of conduct and compliance with court rules, procedures, and orders as are members of the bar." [emphasis added] In *Wells v. Brown*, 891 F. 2d 591 (6th Cir. 1989), the court avoided the merits and decided an incarcerated *pro se* litigant's claim on a pleading standard that had only just been established. In an explicit reference to *Haines*, the court opined, "Before the recent onslaught of *pro se* prisoner suits, the Supreme Court *suggested* that *pro se* complaints are to be held to a less stringent standard than formal pleadings drafted by lawyers. Neither that Court nor other courts, however, have been willing to abrogate basic pleading essentials in *pro se* suits." [emphasis added] In *Woods v. Sanders*, 244 P. 3d 197, 201 (Idaho 2010), the court declined on technical grounds to consider the arguments of a mother who lost custody of her minor child to a father she claimed was a habitual domestic violence abuser. "*Pro se* litigants are not accorded any special consideration simply because they choose to represent themselves, and are not excused from adhering to procedural rules. Rather, *pro se* litigants are held to the same standards and rules as those represented by an attorney." In *Nurriddin v. Bolden*, 818 F. 3d 751 (D.C. Cir. 2016), the court not only failed to afford the *pro se* litigant's allegations the liberal reading required by *Haines*, but also, as the dissent noted, applied an elevated standard. In *Cooney v. Rossiter*, 583 F. 3d 967 (7th Cir. 2009), the court described the complaint as "paranoid *pro se* litigation" and considered the nature of the cause of action asserted, but not the plaintiff's *pro se* status, in holding that a higher pleading standard was proper. In *Shrader v. Biddinger*, 633 F. 3d 1235, 1249 (10th Cir. 2011), the court held that a *pro se* litigant's motion to amend is properly denied when "all he did [was] send an email to opposing counsel and then file his motion when a prompt reply was not forthcoming" rather than conferring in person with opposing counsel to resolve differences, as strict adherence to the rules requires.

Examples of cases in which the court found *pro se* litigants *are* entitled to a more protective procedural standard don't always agree on what that standard entails. They are instructive, though, in crafting a more comprehensive approach to the issue. In *Xiaoyan Tang v. Citizens Bank, NA*, 821 F. 3d 206, 219 (1st Cir. 2016), the court explained the reason for a liberal pleading standard: "The fact that the plaintiff filed the complaint *pro se* militates in favor of a liberal reading. The policy behind affording *pro se* plaintiffs liberal interpretation is that if they present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled." In *Triestman v. Federal Bureau of Prisons*, 470 F. 3d 471 (2nd Cir. 2006), the court explained what was at stake:

> "It is well established that the submissions of a *pro se* litigant must be construed liberally and interpreted to raise the strongest arguments that they suggest. This policy of liberally construing *pro se*

submissions is driven by the understanding that implicit in the right of self-representation is an obligation on the part of the court to make reasonable allowances to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training." *Id.* at 474-475

In *Franklin v. Rose*, 765 F. 2d 82 (6th Cir. 1985), the court explained the extent to which a trial court's obligation was affirmative:

> "It is equally well settled that however inartfully pleaded, allegations in a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers. The allegations of a *pro se* [pleading], though vague and conclusory, are entitled to a liberal construction. The appropriate liberal construction requires active interpretation in some cases to construe a *pro se* petition to encompass any allegation stating federal relief." *Id.* at 84-85

In *Donald v. Cook Cnty. Sheriff's Dep't*, 95 F.3d 548, 555 (7th Cir. 1996), the court explained the importance of allowing amendment, holding "courts have a special responsibility to construe *pro se* complaints liberally and to allow ample opportunity for amending the complaint when it appears that by so doing the *pro se* litigant would be able to state a meritorious claim." The Ninth Circuit has consistently taken the view that the courts are required to provide *pro se* litigants notice of the deficiencies in their pleadings, and, if they fail to do so, dismissal will be reversed. In *Noll*, the court explained the importance of the notice requirement:

> "The rule favoring liberality in amendments to pleadings is particularly important for the *pro se* litigant. Presumably unskilled in the law, the *pro se* litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel. Indeed, the [United States] Supreme Court has held that allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers. The requirement that courts provide a *pro se* litigant with notice of the deficiencies in his or her complaint helps ensure that the *pro se* litigant can use the opportunity

> to amend effectively. Without the benefit of a statement of deficiencies, the *pro se* litigant will likely repeat previous errors. This is equally true for the *pro se* litigant who amends his complaint at his own instance without any guidance from the court. Amendments that are made without an understanding of underlying deficiencies are rarely sufficient to cure inadequate pleadings. We are nevertheless mindful that courts should not have to serve as advocates for *pro se* litigants. A statement of deficiencies need not provide great detail or require district courts to act as legal advisors to *pro se* plaintiffs. Rather, when dismissing a *pro se* complaint for failure to state a claim, district courts need draft only a few sentences explaining the deficiencies. For example, in a 42 U.S.C. § 1983 action where the *pro se* plaintiff failed to allege that the defendant acted under color of state law, the court need point out only that the complaint fails to state a claim because it fails to allege facts sufficient to show that the defendant acted under color of state law." *Noll*, 809 F. 2d 1446, *supra.*

See also *Eldridge v. Block*, 832 F. 2d 1132, 1135-1136 (9th Cir. 1987); *Hebbe v. Pliler*, 627 F. 3d 338, 342 (9th Cir. 2010); and *Lucas v. Department of Corrections*, 66 F. 3d 245, 248 (9th Cir. 1995) ("Unless it is absolutely clear that no amendment can cure the defect, however, a *pro se* litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend prior to dismissal of the action.") In *Hall v. Bellmon*, 935 F. 2d 1106, 1110 (10th Cir. 1991), the court held, "the plaintiff whose factual allegations are close to stating a claim but are missing some important element that may not have occurred to him, should be allowed to amend his complaint." The court further explained a trial court's affirmative obligation:

> "A *pro se* litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. We believe that this rule means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Id.*

In *People v. Edwards*, 757 NE 2d 442 (Ill. 2001), rejecting the widely-held principle that a *pro se* defendant seeking post-conviction relief must state sufficient facts to allege all the elements of a cause of action, the Court held:

> "[T]he sufficient facts test imposes too heavy a burden on the *pro se* defendant. While in a given case the *pro se* defendant may be aware of all the facts pertaining to his claim, he will, in all likelihood, be unaware of the precise legal basis for his claim or all the legal elements of that claim. In many cases, the *pro se* defendant will be unaware that certain facts, which in his mind are tangential or secondary, are, in fact, critical parts of a complete and valid constitutional claim. Under the sufficient facts test, however, the *pro se* defendant must recognize the facts that need to be pled to support a valid claim. This is an unrealistic requirement. Accordingly, we decline to adopt the sufficient facts test." *Id.* at 446

In *Charboneau v. State*, 102 P. 3d 1108 (Idaho 2004), regarding applications for appointment of counsel, the court held:

> "[T]he trial court should keep in mind that petitions and affidavits filed by a *pro se* petitioner will often be conclusory and incomplete. Although facts sufficient to state a claim may not be alleged because they do not exist, they also may not be alleged because the *pro se* petitioner simply does not know what are the essential elements of a claim. It is essential that the petitioner be given adequate notice of the claimed defects so he has an opportunity to respond . . ." *Id.* at 1111-1112

The State of Alaska has a long tradition of imposing on the courts a higher obligation to *pro se* litigants. In *Collins v. Arctic Builders*, 957 P. 2d 980 (Alaska 1998), the court began with a notice requirement for pleadings, holding:

> "[T]he superior court must inform a *pro se* litigant of the specific defects in his [pleading] and give him an opportunity to remedy those defects. We conclude that failure to do so is manifestly unreasonable and thus constitutes an abuse of discretion. While [the applicable rules of procedure] may be models of clarity to one schooled in the law, a *pro*

> *se* litigant might not find them so. We are not concerned that specificity in pointing out the technical defects in *pro se* pleadings will compromise the superior court's impartiality." *Id.* at 982

The court then extended the notice requirement to procedure: "We believe the trial judge should inform a *pro se* litigant of the proper procedure for the action he or she is obviously attempting to accomplish." See also *Wagner v. Wagner*, 299 P. 3d 170, 173-174 (Alaska 2013) ("the pleadings of *pro se* litigants are held to a less stringent standard than those of lawyers, particularly where lack of familiarity with the rules rather than gross neglect or lack of good faith underlies litigants' errors") and *DeNardo v. Calista Corp.*, 111 P. 3d 326, 330 (Alaska 2005) ("We have held that the pleadings of *pro se* litigants should be held to less stringent standards than those of lawyers. This proposition reflects a policy against finding unintended waiver of claims in technically defective pleadings filed by *pro se* litigants.") See also *McDonald v. Hall*, 610 F. 2d 16 (1st Cir. 1979); *Fantone v. Latini*, 780 F. 3d 184, 193 (3rd Cir. 2015); *Jackson v. Lightsey*, 775 F. 3d 170, 179 (4th Cir. 2014); *Taylor v. Books A Million, Inc.*, 296 F. 3d 376, 378 (5th Cir. 2002); *Munson v. Gaetz*, 673 F. 3d 630, 633 (7th Cir. 2012); *Whitson v. Stone County Jail*, 602 F. 3d 920, 928 (8th Cir. 2010) [in *dicta*]; *Tannenbaum v. US*, 148 F. 3d 1262, 1263 (11th Cir. 1998); and *Jones v. Horne*, 634 F. 3d 588, 596 (D.C. Cir. 2011), all echoing *Haines*.

Examples of cases in which the court found *pro se* litigants *may be* entitled to a more protective procedural standard are common. In *Tabron v. Grace*, 6 F. 3d 147, 160 (3rd Cir. 1993), the court mentioned only in *dicta*, "we have *traditionally* given *pro se* litigants greater leeway where they have not followed the technical rules of pleading and procedure." [emphasis added] In *Mala v. Crown Bay Marina, Inc.*, 704 F. 3d 239 (3rd Cir. 2013), the court noted, "we *tend to* be flexible when applying procedural rules to *pro se* litigants, especially when interpreting their pleadings" but nevertheless held that an especially litigious incarcerated *pro se* litigant was not entitled to such protections. [emphasis added] The Florida Supreme Court falls into this category, remaining almost entirely silent on the issue. When seeking funding from the legislature for additional judges, it has acknowledged:

> "[S]everal of the trial court chief judges also note the significant increases in *pro se* (i.e., self-represented litigants) filings for multiple divisions of court. This observation is not surprising given the state of our economy. Many citizens cannot afford to hire an attorney and choose to represent themselves in court. *Pro se* litigants are often unprepared for the rigors of presenting evidence, following rules of procedure, and representing themselves in court. Cases involving *pro se* litigants frequently require enhanced judicial involvement." *In re Certification of Need for Judges*, 60 So. 3d 955, 956 (Fla. 2011)

However, it has not recognized any such obligation in a recorded decision. Only this year, in a decision yet to be published, *Pasha v. State*, No. SC13-1551 (Fla. 2017) did it observe, "courts *generally* afford *pro se* litigants leniency in technical matters," without acknowledging that it is, in fact, required. [emphasis added]

A few other cases shed light on the issue. For an extensive discussion of the types of solicitude that are offered to *pro se* litigants under different circumstances, see *Tracy v. Freshwater*, 623 F. 3d 90 (2nd Cir. 2010). For an extensive discussion of the challenges that the courts face in keeping their obligation to *pro se* litigants, see *Higgs v. Atty. Gen. of the US*, 655 F. 3d 333 (3rd Cir. 2011). For an example of a court that went to great lengths to tease a cause of action out of an incarcerated *pro se* litigant's complaint, see *Bretz v. Kelman*, 773 F. 2d 1026 (9th Cir. 1985).

4. The Issue is Ripe for Review

Clearly, the courts need better guidance; in fact, they are desperate for it. The divergence has resulted in intolerable practical consequences – a procedural arbitrariness that undermines both the uniformity of the law and the public's confidence in the courts' ability to render meaningful justice. In the trial courts, it can seem that each judge enforces an entirely different standard.[13]

Furthermore, it is clear from the decades this issue has already percolated through the courts that the conflict will only continue to widen if not resolved.

On occasion, a circuit will resolve conflict itself, without this Court's intervention. In *Jacobsen v. Filler*, 790 F. 2d 1362 (9th Cir. 1986), the majority held, "First and foremost is that *pro se* litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." *Id.* at 1364-1365. It then acknowledged that *pro se* prisoners were entitled to notice of the procedural requirements of summary judgement proceedings but expressly rejected the same

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[13] For an example at the county court level, one need look no farther than this case. The Honorable Caroline Shepherd would not allow Kupritz to speak in her courtroom unless asked a direct question and established a rule prohibiting setting any *pro se* litigant's motions for hearing. See Kupritz's letter, to which Judge Shepherd did not reply, seeking clarification of the heightened standard she applied to *pro se* litigants. (R I/317-319)

notice requirement to unencarcerated *pro se* litigants. In *dicta,* the majority explained how it reached its conclusion. Although "an inmate's choice of self-representation is less than voluntary" due primarily to "limited access to legal materials," an unencarcerated litigant is free to choose whether to be represented by counsel. *Id.* at 1370 In his spirited and well-supported dissent, which we quote at length due to its eloquence, Judge Reinhardt argued:

> "The majority portrays a litigant's *pro se* status as the product of choice, whereas such status is most often the result of necessity. The majority equates a litigant's so-called "choice" to appear *pro se* with other litigants' choice of counsel. The comparison ignores the economic reality that lies behind most *pro se* appearances. Given the disparity in legal skills and knowledge that exists between a layman and a lawyer, few litigants will "choose" to prosecute or defend a suit without representation if they are able to hire a lawyer.
>
> . . .
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> Although practicing attorneys can be expected to draw the proper inferences from the language of legal rules, the court can not presume that laymen possess such interpretive skills. The majority's reading of the law is incorrect as well. This circuit recognizes that courts have a duty to ensure that *pro se* litigants do not lose their right to a hearing on the merits of their case due to ignorance of technical procedural requirements.
>
> . . .
>
> The majority's fear that the impartiality of the district court would be compromised were it to notify, or require notification to, *pro se* litigants of the written response requirements of Fed.R.Civ.P. 56 is wholly without merit. A court may legitimately assume that the attorneys who appear before it have been trained in legal procedure, and may just as legitimately assume that lay litigants have not. Courts, no less than the parties to a dispute, have an interest in the quality of justice. In assuring that notice is given a *pro se* litigant of the requirements of summary procedure, the court merely redresses a categorical disparity between the parties' abilities to obtain a just resolution to their dispute. The court does not thereby become a player in the adversary process, but rather ensures that the adversary process functions properly." *Id.* at 1367-1370

History has sided with Judge Reinhardt's dissent. Since 1986, the 9th Circuit has consistently afforded special procedural protections to *pro se* litigants. However, reversing course on the issue is the exception rather than the rule.

5. The Court Below Erred

> "We recently reviewed the dismissal . . . of a complaint . . . and found by a 9-to-0 vote that it had, in fact, stated a cognizable claim – a powerful illustration that a finding of a failure to state a claim does not invariably mean that the claim is without arguable merit." *Neitzke v. Williams*, 490 US 319, 329 (1989)

This case turned on a single finding of fact and conclusion of law below: the trial court's ruling that the exhibits contradicted the allegations – presumably on Chase's theory that the account statements contained no language evidencing Chase increased the effective APR above the promised rate – and "the Harry Pepper Rule" – presumably requiring dismissal with prejudice of all counts when a few are in conflict with an exhibit. We say "presumably" because, as discussed previously, the trial court declined to reduce its reasoning to writing, leaving us to guess.

The standard the trial court should have applied is clear. It is a matter of law that, on a motion to dismiss, the trial court must treat the factual allegations of the counterclaim as true and consider the evidence in the light most favorable to the non-moving party – in this case Kupritz. It is also well settled that inconsistencies *within* a document are resolved *against* the preparer of the document – in this case Chase. And the *Haines* standard requires liberal interpretation of *pro se* pleadings.

Here, the court did just the opposite.

In citing "the Harry Pepper Rule" in support of his finding, we assume Judge Barkdull meant the case over which his learned father was among the presiding judges, *Harry Pepper & Associates, Inc. v. Lasseter*, 247 So. 2d 736 (Fla. 3rd DCA 1971). Kupritz does not dispute the *Pepper* premise that inconsistent exhibits cancel the corresponding allegations. However, the court applied it improperly. (R I/922)

First, allegations that directly quote the exhibits cannot be in conflict with those exhibits. The exhibits in question were account statements in which Chase first recited the APR it had *promised* to charge and then, in boldface type a few lines below, disclosed the higher effective APR it *actually* charged. If there was any contradiction at all, it was between two lines of an account statement that Chase itself prepared, a contradiction the court was required to resolve in Kupritz's favor.

Even if there had been conflict between the exhibits and the allegations, the *Pepper* proposition requires striking only the offending allegations – in this case claims which depend upon the APR having been increased. (As clarified in *Blue Supply Corp. v. Novos Electro Mech., Inc.*, 990 So. 2d 1157, 1159 (Fla. 3rd DCA 2008)

The trial court erred first by finding conflict, then by dismissing with prejudice counts of the counterclaim that did not depend upon the supposed conflict. (R I/928) The appellate court erred by upholding the trial court's decision to apply a heightened pleading standard to a *pro se* litigant. Both the trial and appellate courts abused their discretion by failing to write an opinion upon request, when presented with compelling reasons to do so.

* * *

> "Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise. As Mr. Justice Frankfurter has said: The history of American freedom is, in no small measure, the history of procedure. But in addition, the procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data. Procedure is to law what scientific method is to science." *In re Gault*, 387 US 1 (1967)

CONCLUSION

The petition for a writ of *certiorari* should be granted, and this Court should require the appellate court to compile and submit an adequate record for review. If this Court concludes the decision below is plainly wrong, but does not agree that the issue is worthy of *certiorari*, summary reversal would be an appropriate remedy. In addition, for all the foregoing reasons, Kupritz respectfully requests the appointment of counsel.