IN THE SUPREME COURT OF FLORIDA

CASE No. SC19-1336
L.T. CASE Nos. 5D18-2907,
2018-CA-000237

WILSONART, LLC, ET AL.,

Petitioners,

vs.

MIGUEL LOPEZ, ETC.,

Respondent.

AMICUS CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE FLORIDA CHAMBER OF COMMERCE IN SUPPORT OF PETITIONERS WILSONART, LLC AND SAMUEL ROSARIO

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IDENTITY AND INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America (the "U.S. Chamber") is the world's largest business federation. The U.S. Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, sector, and geographic region of the country. The Florida Chamber of Commerce ("Florida Chamber") is Florida's largest federation of employers, chambers of commerce, and associations championing Florida job creators. The Florida Chamber consists of more than 139,000 member businesses that employ more than three million workers in Florida.

As frequently named defendants in Florida lawsuits, the members of the U.S. Chamber and Florida Chamber have struggled with the inequity and inefficacy of Florida's summary judgment standard. Since it was first announced 53 years ago in *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966), Florida's standard has prevented the resolution of both meritless and meritorious litigation prior to lengthy and expensive trials, needlessly increasing costs for Florida's business industry and consumers. The U.S. Chamber and Florida Chamber have a substantial interest in Florida's adoption of the federal *Celotex* summary judgment standard, which serves as a better test for determining whether a case may be decided as a matter of law prior to trial.

SUMMARY OF THE ARGUMENT

Summary judgment serves an important purpose, offering a pretrial opportunity to resolve a case or an issue on the merits where there is no genuine, disputed issue of material fact for a jury to decide. Florida's current summary judgment standard fails to fulfill this purpose. Under the Florida standard, the movant must meet an almost impossible burden: to *conclusively* "prov[e] a negative, i.e., the non-existence of a genuine issue of material fact." *Holl*, 191 So. 2d at 43. As a consequence of this unworkable threshold, "[t]he cases are legion to say summary judgments should be granted rarely." *Phillips v. Hartford Cas. Ins. Co.*, 373 So. 2d 415, 416 (Fla. 4th DCA 1979).

The federal summary judgment standard offers a more reasonable test, taking into account the burden that each party must bear at trial. As announced by the U.S. Supreme Court in the *Celotex* trilogy, once the party moving for summary judgment has met its initial burden, the party opposing summary judgment must come forward with evidence—and may not simply point to the allegations—to support the essential elements of his or her claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). Under the federal standard, the trial court is allowed to assess the proof presented and "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-

moving party, there is no genuine issue for trial" and summary judgment should be granted. *Matsushita*, 475 U.S. at 587 (internal quotation marks and citation omitted).

Thus, the federal *Celotex* standard succeeds where the Florida standard does not. It makes summary judgment a practical tool to resolve cases prior to costly trials, alleviating burdens on litigants and our state courts. Adopting the *Celotex* standard will also enhance predictability in Florida's legal system and bring Florida's summary judgment standard into conformity with the vast majority of jurisdictions, making Florida a less attractive destination for forum shopping.

Importantly, this Court need not amend Florida Rule of Civil Procedure 1.510 to adopt the *Celotex* standard. The relevant provisions of Federal Rule of Civil Procedure 56 and Rule 1.510 are nearly identical, and it is the application, not the text, of each rule that has resulted in different standards. In fact, prior to *Holl*, Florida courts applied a standard much like the *Celotex* one. This Court can return to that textual interpretation of Rule 1.510 without modifying the rule. There is also no need to go through a formal rule process when this Court has provided an opportunity for all interested parties to be heard on the state's standard, and the standard under consideration for adoption has long been in practice in federal courts and the clear majority of states.

ARGUMENT

A. Florida's current summary judgment standard is deficient.

Summary judgment is and should be a viable tool. "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part" of the judicial rules "as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." *Celotex*, 477 U.S. at 327 (internal quotation marks and citation omitted). Indeed, summary judgment is an "important feature of the most modern practice systems," meant to prevent delay and encourage the "prompt disposition of bona fide issues of law as well as of sham defenses." Charles E. Clark & Charles U. Samenow, *The Summary Judgment*, 38 Yale L.J. 423, 423 (1929). "Except where a trial is necessary to settle an issue of fact, the whole judicial process is, by this procedure, made to function more quickly and with less complexity than in the ordinary long drawn out suit." *Id.*

After all, "[a] party should not be put to the expense of going through a trial, where the only possible result will be a directed verdict." *Martin Petrol. Corp. v. Amerada Hess Corp.*, 769 So. 2d 1105, 1108 (Fla. 4th DCA 2000). Thus, "[w]hile [the Court has] consistently urged caution in the exercise of the power to grant summary judgment," this Court has also emphasized the propriety of "exercising the authority in appropriate situations as a means of expediting the disposition of

baseless litigation." *Food Fair Stores of Fla., Inc. v. Patty*, 109 So. 2d 5, 7 (Fla. 1959), *abrogated by Visingardi v. Tirone*, 193 So. 2d 601, 605 (Fla. 1966).

And yet, since this Court's decisions 53 years ago in *Holl* and *Visingardi*, the purpose and benefits of summary judgment have not been realized. These decisions made it much more difficult for Florida courts to grant summary judgment, even when the opposing party could not succeed at trial as a matter of law.

In federal courts, the summary judgment standard mirrors the directed verdict standard, and the party who bears the burden of proof at trial has the obligation to establish evidence showing the existence of the elements of the party's case. *Celotex*, 477 U.S. at 323. The moving party bears the burden of demonstrating the absence of a genuine issue of material fact but is not obligated to support its motion with affidavits or to completely negate the nonmoving party's claim. *See id.* Once the moving party meets that initial burden, the nonmovant must come forward with specific facts showing that there is a genuine and disputed issue for trial—through a response, affidavits, or other evidence—and may not simply rest on the pleadings. *Anderson*, 477 U.S. at 248-49. Significantly, the trial court is allowed to assess the proof presented, and "where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial" and summary judgment should be granted. *Matsushita*, 475 U.S. at 587. "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an

otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson*, 477 U.S. at 247–48 (emphasis in original).

Prior to *Holl*, Florida courts used a standard much like *Celotex*. *See, e.g.*, *Harvey Bldg. v. Haley*, 175 So. 2d 780, 782–83 (Fla. 1965) (holding that the summary judgment standard resembled a "pre-trial motion for a directed verdict" and that the movant was not required to "exclude every possible inference that the opposing party might have other evidence available to prove his case" (internal quotation marks omitted)); *Food Fair Stores*, 109 So. 2d at 6–7 (rejecting the idea that the burden to show the absence of proof on summary judgment shifts to the movant where the party bearing the burden of proof at trial has no evidence to support his or her allegations).

But in 1966, this Court deviated from precedent and first announced that a party moving for summary judgment must "*prov[e] a negative*, i.e., the non-existence of a genuine issue of material fact," which the movant "must prove . . . conclusively . . . . as to overcome all reasonable inferences which may be drawn in favor of the opposing party." *Holl*, 191 So. 2d at 43 (emphasis added); *see also Visingardi*, 193 So. 2d at 604 ("[T]he burden of a party moving for summary judgment *is greater*, not less, than that of the plaintiff at the trial. The plaintiff may prevail on the basis of a mere preponderance of the evidence. However, the party

moving for summary judgment must show [c]onclusively that no material issues remain for trial." (emphasis added)). In Florida, even though the defendant does not bear the burden of proof at trial, the defendant's "burden [on summary judgment] is satisfied only where the movant clearly establishes what the true factual picture is, and thereby removes any serious doubt as to the existence of any genuine issue of material fact." *Suggs v. Allen*, 563 So. 2d 1132, 1133 (Fla. 1st DCA 1990). Given this questionable burden, Florida's summary judgment standard has been roundly criticized. *See, e.g.*, Thomas Logue & Javier Alberto Soto, *Florida Should Adopt the* Celotex *Standard for Summary Judgments*, 76 Fla. B.J. 20 (Feb. 2002).

The problems with Florida's standard, and the differences between the federal and Florida standards, are highlighted by two examples.

1. Summary judgment may not be granted even when undisputed, objective evidence proves or disproves a claim.

First, Florida's summary judgment standard permits a claim or defense to survive summary judgment and go to trial notwithstanding the existence of convincing, objective evidence that refutes or proves the claim or defense.

This very case is a compelling example. *See Lopez v. WilsonArt, LLC*, 275 So. 3d 831 (Fla. 5th DCA 2019). Jon Lopez died after his vehicle struck the rear of a freightliner truck. *Id.* at 832. The Estate sued the trucking company, arguing that the truck driver's negligence caused Lopez's death. *Id.* The trucking company's liability turned on whether the truck driver veered unexpectedly into Lopez's lane

before the impact. According to the truck driver and undisputed video evidence captured by a dash cam video on the truck, the truck never left its lane. *Id.* at 832–33. According to the Estate, however, the truck suddenly changed lanes prior to impact, causing the crash, based in large part on the testimony of a single eyewitness. *Id.* at 833. Despite the existence of objective video evidence that directly refuted the Estate's theory, the Fifth District was compelled to deny summary judgment, stating that it "would be the jury's job to assess the credibility of the Estate's witnesses as to the cause of the accident and to weigh and compare Appellees' conflicting evidence, including the videotape." *Id.* at 834.

The Fifth District struggled with the fact that summary judgment would have been proper under the *Celotex* standard. *See WilsonArt*, 275 So. 3d at 833. Under the federal standard, where there is an irrefutable piece of evidence—such as an unaltered videotape—that disproves the nonmovant's version of events, a federal court cannot ignore it. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007). In *Scott*, the U.S. Supreme Court said summary judgment was proper when a video "utterly discredited" the plaintiff's version of events. *Id.* at 380-81. After *Scott*, federal courts regularly grant summary judgment in the face of indisputable video evidence

which contradicts the nonmovant's version of events. *See, e.g.*, *Williams v. Norfolk S. Corp.*, 919 F.3d 469, 471–72 (7th Cir. 2019) (affirming grant of summary judgment in personal injury case where plaintiff's testimony was "blatantly contradicted by video evidence"); *Buckman v. Morris*, 736 F. App'x 852, 853–54 (11th Cir. 2018) (affirming grant of summary judgment where video "obviously contradict[ed]" the plaintiff's version of events); *Hall v. Wash. Metro. Area Transit Auth.*, 33 F. Supp. 3d 630, 633–34 (D. Md. 2014) (granting summary judgment in negligence action where transit surveillance video showed that plaintiff's fall was not caused by doors of bus).

The jury's task is to resolve conflicting evidence, particularly conflicts in testimony which will require assessing the credibility of witnesses. *See Buck v. Lopez*, 250 So. 2d 6, 8 (Fla. 1971). But with "clear, objective, neutral" evidence, *see WilsonArt*, 275 So. 3d at 834, which plainly refutes one party's argument or even proves a party's claim, there is no fact finding required by a jury and no need to incur the significant expense and delay associated with trial. A summary judgment standard that accounts for this reality would drastically improve Florida's litigation climate. Businesses could invest in video and other technology to increase the amount of available evidence and help reduce the high cost of litigation. Yet as *WilsonArt* shows, this investment currently does not make financial sense, as the

existence of convincing, objective evidence regarding the critical facts is meaningless under Florida's standard.

2. Florida's summary judgment standard creates disparity in how the same substantive claim is decided in state courts versus federal courts.

Second, the contrasts between the federal and Florida summary judgment standards have had real consequences for the substantive law too, creating disparities in how the same claim is resolved in a Florida state court versus a federal one. One example is bad faith claims against insurance companies.

An insurance company may be found liable for acting in bad faith by failing to settle a claim. *See, e.g.*, *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 58–59 (Fla. 1995). To determine whether an insurance company acted in bad faith, Florida courts are required to apply the "totality of the circumstances" standard. Under this test, it must be determined whether an insurance company met its duty "'to exercise such control and make such decisions in good faith and with due regard for the interests of the insured'" by investigating the facts, providing fair consideration to a reasonable settlement offer, and settling, if possible, where a reasonably prudent person would do so. *Berges v. Infinity Ins. Co.*, 896 So. 2d 665, 669, 680 (Fla. 2004) (quoting *Boston Old Colony Ins. Co. v. Gutierrez*, 386 So. 2d 783, 785 (Fla. 1980)). Although an insurer's liability is typically limited to the coverage limit in the insurance policy, if found liable for acting in bad faith, the

insurer may be liable for damages far in excess of that limit. *See, e.g.*, *Harvey v. GEICO Gen. Ins. Co.*, 259 So. 3d 1, 15 (Fla. 2018) (Canady, C.J., dissenting) (noting that the insurer was found liable for $8.47 million excess judgment against insured on $100,000 insurance policy).

Presently, application of this standard differs significantly depending upon whether the parties are in state or federal court. In Florida state courts, bad faith claims rarely if ever resolve at summary judgment, on the apparent view that the determination of whether bad faith occurred is always a jury question—no matter the evidence adduced at the summary judgment stage. So, in cases like *Goheagan v. American Vehicle Insurance Co.*, 107 So. 3d 433 (Fla. 4th DCA 2012), a bad faith claim survived summary judgment because the court said a jury could find the insurer failed to proactively settle a case in good faith even though the record evidence demonstrated the insurer repeatedly attempted to contact the mother of the comatose injured party to settle the matter. The Fourth District emphasized the difference between the state and federal standards for summary judgment, observing that "Florida places a higher burden on a party moving for summary judgment in state court." *Id.* at 439 (internal quotation marks omitted).

In contrast, federal courts using the *Celotex* standard—which more properly recognizes and accounts for the parties' respective burdens at trial—regularly grant summary judgment in these cases when justified by the facts. *See, e.g.*, *Feijoo v.*

GEICO Gen. Ins. Co., 678 F. App'x 862, 865–66 (11th Cir. 2017); *Coulter v. State Farm Mut. Auto. Ins. Co.*, 614 F. App'x 998, 1000–01 (11th Cir. 2015); *Wojciechowski v. Allstate Prop. & Cas. Ins.*, No. 8:14–cv–03176–MSS–TBM, 2016 WL 10732584, at *13–15 (M.D. Fla. Dec. 27, 2016); *Eads v. Allstate Indem. Co.*, No. 14–CIV–61791–Bloom/Valle, 2016 WL 3944072, at *6–12 (S.D. Fla. Jan. 26, 2016). As a consequence, members of the U.S. Chamber and Florida Chamber who are frequently defendants in lawsuits—in bad faith cases and others—must grapple with disparate results simply depending on where the plaintiff chooses to file suit.

That Florida's standard fails to account for credible video evidence and operates to treat the same substantive claims differently between federal and Florida courts are mere examples of the inequity caused by dueling legal standards. This Court should adopt and apply the *Celotex* standard in all cases, not just those involving video evidence, as the Fifth District suggested. This will ensure equal treatment of claims in Florida's federal and state courts.

B. Adopting the *Celotex* standard will restore fairness to Florida's court system and align Florida with the majority of jurisdictions.

1. The *Celotex* standard is more efficient.

The *Celotex* standard offers numerous efficiencies. It creates a critical "put up or shut up" moment in the litigation, *see Johnson v. Cambridge Indus., Inc.*, 325 F.3d 892, 901 (7th Cir. 2003), that requires the parties to seriously evaluate the facts learned in discovery and the applicable law before undertaking the substantial

expense and delay necessitated by a trial. Further, while the *Celotex* standard might require investment of the trial court's time at an earlier stage, resolution of the case at an earlier point can also avoid unnecessary litigation and increase judicial efficiency.

The *Celotex* standard also has important benefits for non-moving parties. When a nonmovant's claim survives summary judgment, that may spur the movant to settle the case. "Settlements tend to occur when the disputants see the handwriting on the wall and are guided by a clear sense of what will likely happen at a full trial." Edward Brunet, *The Efficiency of Summary Judgment*, 43 Loy. U. Chi. L.J. 689, 697 (2012). When a summary judgment motion is denied, "the nonmoving party achieves a form of premium that enables a case to settle for an additional amount. Put simply, the settlement value of a case increases when a motion for summary judgment is denied." *Id.* at 703. This settlement premium incentivizes the prudent defendant to "file only [summary judgment] motions that are probable winners to avoid paying this premium." *Id.* at 699.

Adopting *Celotex* also makes sense in light of the correlation between a directed verdict and a motion for summary judgment. "Although occurring at different procedural points in a lawsuit, these motions serve the same purpose: to test whether a genuine issue of material fact exists that must be resolved by the finder of fact." Logue & Soto, *supra*, at 21. It makes little sense to send a case to a jury

only to have the judge direct a verdict based on the very same set of facts, after undertaking the time and expense of a full-blown trial. *See id.* at 23. Indeed, commentators have highlighted one example, *Sylvester v. City of Delray Beach*, 486 So. 2d 607 (Fla. 4th DCA 1986), where the First District dutifully applied the current Florida summary judgment standard and "unapologetically upheld the grant of a directed verdict *based upon the same facts on which it previously reversed the grant of a summary judgment*." Logue & Soto, *supra*, at 23 (emphasis added).

Furthermore, *Celotex* is premised on the fact that summary judgment is considered only after adequate time for discovery. *See* 477 U.S. at 322; *compare* Fed. R. Civ. P. 56(d) (where nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may defer considering the motion or deny it, allow time for additional affidavits or discovery, or issue any other appropriate order), *with* Fla. R. Civ. P. 1.510(f) (providing similar). Thus, the parties will have access to the same evidence in supporting or opposing summary judgment motions as they would at trial. Consequently, there is no reason to ignore the parties' respective substantive burdens of proof at trial when deciding summary judgment.

It is certain that even under the *Celotex* standard, summary judgment will be difficult to obtain, particularly in cases that involve a question of fact such as negligence, fraud, or state of mind. Indeed, there are numerous instances in which

a directed verdict under Florida law—which is essentially the same as the *Celotex* standard—is inappropriate. *See, e.g.*, *Sanders v. ERP Operating Ltd. P'ship*, 157 So. 3d 273, 280 (Fla. 2015) ("A directed verdict is not appropriate in cases where there is conflicting evidence as to the causation or the likelihood of causation." (internal quotation marks and citation omitted)). But adoption of the *Celotex* standard will still make summary judgment more equitable and effective.

"A restrictive standard, like Florida's, serves only to skew the analysis in a manner that unnecessarily prolongs litigation, increases costs, and wastes limited judicial resources in derogation of Rule 1.010 which instructs that the Florida Rules of Civil Procedure should be 'construed to secure the just, speedy, and inexpensive determination of every action.'" Logue & Soto, *supra*, at 26. For all these reasons, the *Celotex* standard offers a more reasonable and workable solution.

2. Adopting the *Celotex* standard will conform Florida's standard with the majority of jurisdictions and limit forum shopping.

In addition to its deficiencies, Florida's summary judgment standard is a national outlier.

Florida has long patterned its rules of civil procedure on the federal rules, and "the objective in promulgating the Florida rules has been to harmonize our rules with the federal rules to the extent possible." *See Miami Transit Co. v. Ford*, 155 So. 2d 360, 362 (Fla. 1963) ("[I]n substantial measure the Florida Rules of Civil Procedure

are modeled after the Federal Rules of Civil Procedure"). Yet, in application Florida has sharply diverged from the federal courts in deciding motions for summary judgment through the wayward judicial interpretation of Florida Rule of Civil Procedure 1.510.

Along with all federal courts, 38 states and the District of Columbia have adopted the *Celotex* standard or a similar one.[1] In a country with 50 states that are inextricably connected, predictability and consistency across state and federal legal systems is vital. There is something inherently inequitable if the governing standard in the state court on one side of the street imposes a higher threshold than the standard governing proceedings in the federal court on the other side of the street.

Public confidence in the judicial system flourishes when that system is seen to be fair and consistent. Confidence erodes when uncertainty and inconsistency abound. Given Florida's current standard, Florida is fertile ground for tort lawsuits by plaintiffs with the thinnest of claims. As this Court recognized in adopting the *Daubert* standard for the admissibility of expert evidence, a rule is particularly worthy of adoption where it "will create consistency between the state and federal courts . . . and will promote fairness and predictability in the legal system, as well as

[1] Zachary D. Clopton, *Procedural Retrenchment and the States*, 106 Calif. L. Rev. 411, 432, 476-80 (2018); *see also Salo v. Tyler*, 417 P.3d 581, 583-84 (Utah 2018).

help lessen forum shopping." *In re Amendments to Fla. Evid. Code*, 278 So. 3d 551, 554 (Fla. 2019). The same is true for adoption of *Celotex*.

C. Adopting the *Celotex* standard does not necessitate a formal rule amendment.

Florida Rule of Civil Procedure 1.510 need not be amended to reflect the adoption of the *Celotex* summary judgment standard. The critical language of Federal Rule of Civil Procedure 56(a) and Florida Rule 1.510(c) is the same. Federal Rule 56(a) states, *inter alia*: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Florida Rule 1.510(c) states, *inter alia*: "The judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Although federal Rule 56 sets forth specific procedures as to how to show that a fact cannot be or is genuinely disputed, this does not mean that the Court must formally amend Rule 1.510 to adopt *Celotex*. Any differences in language between federal Rule 56 and Rule 1.510 are immaterial and were not the basis for the U.S. Supreme Court's adoption of *Celotex*. Logue & Soto, *supra*, at 27; *see also Celotex*, 477 U.S. at 325 (holding that Rule 56(e) was "not intended to *reduce* the burden of the moving party").

Notably, the *Celotex* Court held that Rule 56(a)'s provision that supporting affidavits were *not* necessary buttressed the Court's conclusion that Rule 56 contained "no express or implied requirement . . . that the moving party support its motion with affidavits or other similar materials *negating* the opponent's claim." 477 U.S. at 323. Similarly, Rule 1.510 states that a party "may move for a summary judgment in that party's favor on all or any part thereof *with or without supporting affidavits*." Fla. R. Civ. P. 1.510(a) (emphasis added); *see also id.* 1.510(b). This Court should hold that these words have similar meaning and purpose to those found in Rule 56(a).

And, as previously noted, Florida once had a *Celotex*-type standard for summary judgment. *See Harvey Bldg.*, 175 So. 2d at 782–83; *Food Fair Stores*, 109 So. 2d at 6–7. There was no textual basis for the Court in *Holl* to severely constrict the plain wording of Rule 1.510. Consequently, cases like *Harvey* show "that the adoption of a *Celotex*-type standard by judicial decision would constitute not a departure from, but a return to, principles already embraced by Florida's highest court." Logue & Soto, *supra*, at 28.

Adoption of *Celotex* can be accomplished through this proceeding alone. The Court's internal operating rules recognize its inherent constitutional authority to amend its own rules at any time, including by receding from past precedent and adopting a new interpretation of Florida's rule on summary judgment. *See* F.S.A.

Sup. Ct. Manual Internal Operating P. § II.G.1. But even aside from that inherent authority, this Court will have obtained input from not only the parties, but also numerous amici curiae.

More generally, *Celotex* and its progeny are not new, and there is little need for additional consideration via the more formal Florida Bar rule process. *Celotex* is the prevailing summary judgment standard in not only the federal courts but in a supermajority of states. Courts have applied this standard for decades without issue. There can be little dispute that this standard represents the better manner in which to decide summary judgment. *Cf. In re Amendments to Fla. Evid. Code*, 278 So. 3d at 553 (the fact that the federal system had applied standard for 23 years and the standard had been adopted by 36 states illustrated that the standard was constitutionally sound and workable).

CONCLUSION

The summary judgment rule "must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis." *Celotex*, 477 U.S. at 327. For all the reasons explained above, the Court should formally adopt

the *Celotex* standard to govern summary judgment under Florida Rule of Civil Procedure 1.510 without any need for revising the text of the rule.

Respectfully submitted on December 13, 2019.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 13, 2019, this brief was filed with the Florida Supreme Court by using the Florida Courts e-Filing Portal and a true and correct copy of the foregoing was served by email to:

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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14 point type, and complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

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