

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC19-1336

WILSONART, LLC and SAMUEL
ROSARIO,

Petitioners,

vs.

DCA Case No. 5D18-2907
L.T. Case No. 2018-CA-000237

MIGUEL LOPEZ, as Personal
Representative of the Estate of JON
LOPEZ, deceased,

Respondent.

_____ /

**AMICUS BRIEF OF
RETIRED FLORIDA CIRCUIT COURT
JUDGES IN SUPPORT OF RESPONDENT**

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STATEMENT OF IDENTITY AND INTEREST

This amicus brief is filed on behalf of retired Florida circuit court judges, many of whom are former chief judges of their respective circuits and have rules committee experience. Although the judges disagree with each other about the substance of any change to Florida's summary judgment rule, all of the retired judges named in this brief believe that any change to Florida's summary standard should go through the rules committee process. In particular, these retired judges believe any rule change should be made with input during the committee process from experienced practitioners and trial judges.

The judges who have joined together as amicus curiae have taken the bench by appointment from Republican governors, from Democratic Governors, and by popular election. Together, they have over **three centuries' worth** of combined judicial experience (309 years, to be exact). They are:

- **A.C. Soud, Jr.**, who served as a Circuit Court Judge in the Fourth Judicial Circuit from 1981 to 2007;
- **Charles W. Arnold**, who served as a Circuit Court Judge in the Fourth Judicial Circuit from 1997 to 2012;
- **James R. Case**, who served as a Circuit Court Judge in the Sixth Judicial Circuit from 1985 to 2006; during that time he was appointed by the Chief Justice of the Florida Supreme Court to the Florida Judicial Council, the Florida Court Education Council and the Article V Task Force for the State of Florida. From 1989 until 2006 he was a member of the Executive Committee of the Florida Conference of Circuit Court Judges;

- **Robert Bonanno**, who served as a County Court Judge in the Sixth Judicial Circuit from 1982 to 1989 and as a Circuit Court Judge from 1989 to 2002;
- **Jack Day**, who served a Circuit Court Judge in the Sixth Judicial Circuit from 2007 to 2018;
- **Manuel Menendez**, who served as a County Court judge in the Thirteenth Judicial Circuit from 1983 to 1984, as a Circuit Court judge from 1984 to 2014. He served as Chief Judge from 2001 to 2014;
- **William Levens**, who served as a Circuit Court Judge in the Thirteenth Judicial Circuit from 2000 to 2017;
- **Dennis Alvarez**, who served as a Circuit Court Judge in the Thirteenth Judicial Circuit from 1984 to 2001. He served as Chief Judge from 1988 to 2001 and also served as Chairman of the Florida Conference of Circuit Court Judges;
- **Moses Baker, Jr.**, who served as a Circuit Court Judge in the Fifteenth Judicial Circuit from 1994 to 2017;
- **Lucy Chernow Brown**, who served as a Circuit Court Judge in the Fifteenth Judicial Circuit from 1991 to 2015;
- **Jeff Colbath**, who served as a Circuit Court Judge in the Fifteenth Judicial Circuit from 2002 to 2019, during that time he served as Chief Judge from 2013 to 2017;
- **Fred Hazouri**, who served as a Circuit Court Judge in the Fifteenth Judicial Circuit from 1995 to 1998 and as a District Court Judge on the Fourth District Court of Appeal from 1998 to 2012;
- **Peter Weinstein**, who served as a Circuit Court Judge in the Seventeenth Judicial Circuit from 1998 to 2018; during that time, he acted as Chief Judge from 2011 to 2017; he also served on the Senate Judiciary committee from 1984 to 1996 including positions as chairman or vice chairman;
- **Tom Lynch**, who served as a County Court judge in the Seventeenth Judicial Circuit from 1985 to 1995; he then served as a Circuit Court Judge from 1996 to 2017; and

- **Bruce Jacobus**, who served as a Circuit Court Judge in the Eighteenth Judicial Circuit from 1995 to 2009 and as a District Judge on the Fifth District Court of Appeal from 2009 to 2013.

SUMMARY OF ARGUMENT

For over three quarters of a century, absent an emergency that does not exist in this case, the Florida Supreme Court has been loathe to sua sponte change a rule of procedure without first sending the issue to a rules committee for contemplation. The change to Florida's summary judgment rule being requested by the array of amici supporting Petitioners should be no different. This is especially true where the contemplated change would impact not only the citizens of Florida, but also the trial judges and practitioners tasked with implementing the change. The amicus brief takes no position regarding the substance of any change to the summary judgment rule; indeed, the judges who have joined the brief have differing points of view on that subject differ. The aligned request of the amicus brief is that any change to the summary judgment rule be brought about through the committee process whereby experienced practitioners and trial judges will have the opportunity to provide input and comment on the rule change. In that way, this Court increases the likelihood of avoiding any consequences that the Court never contemplated nor intended if it decides to change the rule.

ARGUMENT

I. Any change to Florida’s summary judgment rule should be made only after the opportunity for practitioners and judges to provide input on the change through the committee process.

These amici’s position is that before this Court acts in a legislative capacity, it should be guided by traditional legislative norms: that is, the policy change requested by Petitioners and their supporting amici should be contemplated by a rules committee after the opportunity for notice and comment by those who would be affected by the change, including practitioners and judges. In what is likely the seminal book on the Florida Constitution, Sandy D’Alemberte wrote that when this Court exercises its constitutional power under Article V, section 2(a) to “adopt rules for practice and procedure in all courts,” it is “function[ing] in a legislative capacity.” Talbot D’Alemberte, *The Florida State Constitution* 159 (2d ed. 2017). In this case, Petitioners have asked this Court to “explicitly adopt the federal summary judgment standard.” Initial Brief (“IB”), p.21. In short, Petitioners’ request that Florida’s summary judgment standard be made to mirror the directed verdict standard. IB 23. Multiple amici have chimed in with briefs making their policy arguments for why this Court should change Florida’s summary judgment rule to implement this new standard.

The retired judges in this amicus brief take no position on policy or even the outcome of a suggested rule change. The point on which they align is that this Court

should not undertake the sweeping change Petitioners and their amici request without first sending the issue to a rules committee. For the last 75 years, this Court has operated under the premise that changes to Florida’s rules of civil procedure should happen only after the opportunity for group consideration. In 1945, this Court said:

It is the consensus of the court that a committee should be selected by the Chief Justice, composed of lawyers and judges who shall, using these proposals as a basis, make such recommendations on the subject to the court as may appear to them advisable for early consideration and adoption.

Pet. of Fla. State Bar Ass’n for Adoption of Rules for Practice & Procedure, 21 So. 2d 605, 610 (1945) (quoting Ch. 21995, Laws of Fla. (1943)).

The tradition of this Court sending potential rule change to a committee is long-standing, having survived more than seven interceding decades between 1945 and today. The committee process continued after Florida voters in 1956 constitutionally transferred the legislative rulemaking authority exclusively to this Court. *See* Committee Substitute for House Joint Resolution No. 810, § 3 (App. 63) (“The practice and procedure in all courts shall be governed by rules adopted by the supreme court.”). And, it continued after Florida voters in 1972 made this Court’s rulemaking authority—unlike its judicial authority—subject to an override by the Legislature with a supermajority vote. *See* D’Alemberte, *supra* 157-58 (discussing Senate Joint Resolution 52-D (1971)); Art. V, § 2(a) (1972 & 2020); *see also* Gary

Blankenship, *The Story of the Florida Bar*, 74 Fla. B.J. 18, 22 (April 2000) (“The Bar was also heavily involved in overhauling and creating procedural rules.”); Bruce J. Berman and Peter D. Webster, *Florida Civil Procedure* § 1.010:1 (discussing the early history of the Florida rules).

The amici ask that, if this Court is contemplating instituting a sweeping change to make the Florida summary judgment standard align with the federal summary judgment standard, that the Court send the issue to a rules committee so that the change can be contemplated through what is likely a multi-faceted lens of reality. The amici believe that this Court’s consideration of a change would benefit from studied advice about safeguards (timing, notice, discovery, forms of evidence, and other things provided in federal courts) from those who appear regularly in the civil trial courts as well as input from the trial judges who would be presiding over the motions. In particular, amici are concerned that the active trial judges of Florida be given the opportunity to comment on how a change in the requirements of the summary judgment rule would impact them, given that Florida’s courts have far larger dockets than federal courts and far fewer resources (such as the multiple full-time law clerks who aid federal judges in sorting through evidence in a directed-verdict-like analysis and rendering decisions on summary judgment motions). The goal of sending a proposed change to a rules committee would be to avoid

unintended consequences for both litigants and judges by examining the summary judgment picture as a practical whole.

CONCLUSION

If this Court is inclined to contemplate altering Florida’s summary judgment rule, then this Court should send the proposed change to a rules committee—which is composed of experienced practitioners and trial judges—so that the Court can have the benefit of these critical participants in the civil justice system when changing Florida’s rule for summary judgment. Given the far-reaching impact of any change, the committee could then have the added benefit of soliciting input from other practitioners and trial judges throughout the state before making its recommendation. For three quarters of a century, this process has aided the Court and ensured that all voices in the legal community are heard before rule changes are implemented. By following this process, the Court will avoid potential consequences it neither contemplated nor intended when making a rule change.

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