CASE NO. SC19-1336

In the Supreme Court of Florida

WILSONART, LLC, *et al.*,

Petitioners,

v.

MIGUEL LOPEZ, *etc.*,

Respondent.

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL
CASE NO. 5D18-2907

BRIEF OF FLORIDA JUSTICE REFORM INSTITUTE AND FLORIDA TRUCKING ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

The Florida Justice Reform Institute ("Institute") is Florida's leading organization of concerned citizens, business owners and leaders, doctors, and lawyers who seek the adoption of fair legal practices to promote predictability and personal responsibility in the civil justice system. The Institute has advocated practices that build faith in Florida's court system and judiciary. It represents a broad range of participants in the business community who share a substantial interest in a litigation environment that treats plaintiffs and defendants evenhandedly.

The Florida Trucking Association ("Association") has been the voice of Florida's trucking and transportation industry for more than 80 years, promoting and protecting its interests. It consists of both carrier members (trucking companies) and supplier members (industry partners and associated vendors). The Association serves as the direct liaison between the trucking industry and the Florida Legislature and state regulatory agencies, as well as an advocate on behalf of its members' interests in key litigation.

Amici have an interest in securing the just, speedy, and inexpensive determination of litigation in Florida courts. *Amici*'s members are frequently named defendants in personal injury lawsuits. Many of those members also employ on-premises or in-vehicle video equipment for risk management and security purposes, and rely on the information captured by such video equipment in defending lawsuits arising from incidents of alleged injury. Reliance on objective video evidence plays a critical role when it comes to managing risk and controlling litigation expense.

The summary judgment standard employed by the Fifth District Court of Appeal below permits plaintiffs to contradict objective or unrebutted evidence—frequently through subjective and unverifiable evidence—in order to avoid summary judgment, thus causing defendants to incur unnecessary litigation costs as a case is permitted to proceed to trial. This materially increases risk in an unwarranted manner and makes it impossible to assess (and possibly resolve) the merits of claims. Adoption of the federal summary judgment standard is in the interest of *amici*, as it would facilitate the consideration of often dispositive (and unrebutted) evidence, like video evidence, at the summary judgment stage and conserve resources.[1]

SUMMARY OF ARGUMENT

The plain text of Florida Rule Civil Procedure 1.510 calls for this Court to adopt the federal summary judgment standard.

I. A. To adopt the federal summary judgment standard in Florida, this Court need only interpret Rule 1.510 as written. The rule and its predecessors were patterned on Federal Rule of Civil Procedure 56, and remain textually analogous to this day. Those textual similarities are best reflected by the U.S. Supreme Court's 1986 decisions that comprise the *Celotex* Trilogy. The language in Rule 56 that led the U.S. Supreme Court to adopt the summary judgment standard applied in federal court is also contained in Rule 1.510. Those textual similarities explain why

[1] For purposes of this brief, *amici* use the term "federal summary judgment standard" to refer to Federal Rule of Civil Procedure 56, as interpreted by the United States Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (collectively, the "*Celotex* Trilogy").

decisions from this Court have, from adoption of the summary judgment procedure in Florida in 1950, set forth a standard that resembles the federal summary judgment standard. Under those cases, as under federal law, the summary judgment standard mirrors the standard for a directed verdict. And under those cases, as under federal law, the moving party need not negate the nonmoving party's case. Rather, when the moving party demonstrates that there is no genuine issue of material fact precluding judgment as a matter of law, the nonmoving party must come forward with sufficient admissible evidence to establish a genuine, as opposed to alleged, factual dispute.

B. Certain decisions from this Court articulate a summary judgment standard that runs counter to the plain text of Rule 1.510 and other precedents of this Court. In *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966), the Court interpreted the rule to (i) require the moving party to negate its opponent's case before summary judgment can be granted, and (ii) preclude summary judgment if the record raises even the slightest doubt that a material issue could be present. Because the moving party bears such a high burden, this Court's decisions following *Holl* recognize that the summary judgment standard is more demanding than the standard for obtaining a directed verdict.

C. The Court should interpret Rule 1.510 according to its plain meaning, adopt the federal summary judgment standard, and recede from or disapprove *Holl*. Because *Holl*'s judicial gloss on Rule 1.510 is inconsistent with the rule's text, no amendment to the rule is necessary.

II. *Stare decisis* does not require adhering to *Holl*, because *Holl* cannot be reconciled with the text of Rule 1.510 and clashes with other decisions of this Court and the district courts of appeal. *Holl*'s conflict with the federal summary judgment standard has resulted in an unworkable divergence between Florida and federal courts, even though Rule 1.510 and Rule 56 are textually analogous. Because *Holl*'s error concerns only procedural rights, no plausible argument can be made that adopting the federal summary judgment standard would result in injustice.

ARGUMENT

Rule 1.510 and its federal counterpart, Rule 56, both require trial courts to grant summary judgment when there is no genuine issue or dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fla. R. Civ. P. 1.510(c) ("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."); Fed. R. Civ. P. 56(a) ("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."). Both rules stand as an integral part of the goal of the Florida and federal rules of civil procedure "to secure the just, speedy, and inexpensive determination of every action." Fla. R. Civ. P. 1.010; Fed. R. Civ. P. 1; *see Farrey v. Bettendorf*, 96 So. 2d 889, 893 (Fla. 1957) (a trial court should grant summary judgment "if in [its] judgment it should be desirable to secure a just, speedy and inexpensive determination of [an] action"); *Celotex Corp.*

v. Catrett, 477 U.S. 317, 327 (1986) ("Summary judgment procedure is … an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'").

And yet, this Court and other Florida courts have often employed a summary judgment standard that differs markedly from the federal one: a standard that stands in stark contrast to the expressly stated purpose of the Florida rules to achieve the "just, speedy, and inexpensive" resolution of litigation. At the same time, though, other decisions from this Court have, for almost 70 years, articulated a summary judgment standard similar to that applied by the federal courts. This longstanding inconsistency in the Court's summary judgment jurisprudence calls out for clarification. A plain reading of Rule 1.510's text demonstrates that the Court should definitively adopt the federal summary judgment standard. And by interpreting Rule 1.510 consistent with its plain meaning, this Court can adopt the federal summary judgment without a rule amendment.

I. THE PLAIN TEXT OF RULE 1.510, WHICH WAS PATTERNED ON RULE 56, REQUIRES ADOPTION OF THE FEDERAL SUMMARY JUDGMENT STANDARD.

"It is well settled that the Florida Rules of Civil Procedure are construed in accordance with the principles of statutory construction." *Koppel v. Ochoa*, 243 So. 3d 886, 891 (Fla. 2018) (quoting *Saia Motor Freight Line, Inc. v. Reid*, 930 So. 2d 598, 599 (Fla. 2006)); *see also Syndicate Props. v. Hotel Floridian Co.*, 114 So. 441, 443 (Fla. 1927). "When construing a statute, this Court … look[s] first to

the actual language used in the statute and its plain meaning." *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 439 (Fla. 2013). "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (quoting *A.R. Douglass, Inc. v. McRainey*, 137 So. 157, 159 (Fla. 1931)).

In the context of the Florida rules, "decisions by federal appellate courts applying a similar provision in the Federal Rules of Civil Procedure provide persuasive authority." *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246, 1268 (Fla. 2006); *see also Yisrael v. State*, 993 So. 2d 952, 957 n.7 (Fla. 2008); *Crump v. Gold House Rests., Inc.*, 96 So. 2d 215, 218 (Fla. 1957); *Rich v. Kaiser Gypsum Co.*, 103 So. 3d 903, 908 (Fla. 4th DCA 2012). And "[t]he general guide to construction of the procedural rules is set forth in Florida Rule of Civil Procedure 1.010, which states that the rules 'shall be construed to secure the just, speedy, and inexpensive determination of every action.'" *Barco v. Sch. Bd. of Pinellas Cty.*, 875 So. 2d 1116, 1123 (Fla. 2008). Here, fidelity to the plain text of Rule 1.510 dictates that Florida should adopt to the federal summary judgment standard.

A. The substantive standard for Rule 1.510 is largely identical to that of Rule 56.

The summary judgment procedure first came to Florida in 1950 with the adoption of Common Law Rule 43 and Equity Rule 40. *See* Henry P. Trawick, Jr., *Trawick's Florida Practice & Procedure* (2019–2020 ed.); Bruce J. Berman & Peter

D. Webster, *Berman's Florida Civil Procedure* § 1.510:1 (2019 ed.) ("*Berman*"). Those two rules were consolidated into Rule 1.36 of the 1954 Florida Rules of Civil Procedure before becoming Rule 1.510 in 1967. *See In re Fla. Rules of Civ. Proc. 1967 Revision*, 187 So. 2d 598, 630 (Fla. 1966) (Committee Note to Fla. R. Civ. P. 1.510); Fla. R. Civ. P. 1.510 (1967 Authors' Comment). From the beginning, this Court recognized that Florida's summary judgment procedure was "patterned after" Rule 56. *Boyer v. Dye*, 51 So. 2d 727, 728 (Fla. 1951); *see also Johnson v. Studstill*, 71 So. 2d 251, 252 (Fla. 1954) (applying federal summary judgment standard). And since then, the principal provisions of Rule 1.510 and Rule 56 have not substantively changed. Indeed, until Rule 56 was amended in 2007 and 2010,[2] "the Florida and federal rules were close to verbatim duplicates and easy to compare." *Berman* § 1.510:2. Notwithstanding the amendments to Rule 56, "[s]ubstantively … the rules remain the same, though one must look to different subdivisions to find the comparable provisions." *Id.* The textual similarities between the rules are best illustrated by the U.S. Supreme Court's *Celotex* Trilogy.

In *Celotex*, the U.S. Supreme Court held that "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and

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[2] Rule 56 underwent "stylistic" amendments in 2007. Fed. R. Civ. P. 56 (2007 Advisory Committee's Notes). In 2010, Rule 56 was revised to "improve the procedures for presenting and deciding summary-judgment motions and to make the procedures more consistent with those already used in many courts." Fed. R. Civ. P. 56 (2010 Advisory Committee's Notes). The 2010 amendments, however, left "[t]he standard for granting summary judgment … unchanged" and were not designed to "affect continuing development of the decisional law construing and applying" the substantive summary judgment standard. *Id.*

upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." 477 U.S. at 322. At the time *Celotex* was decided, Rule 56(c) provided:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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.

The *Celotex* Court further explained that, while "a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion," the moving party need not "support its motion with affidavits or other similar materials *negating* the opponent's claim." 477 U.S. at 323. According to *Celotex*, such a requirement would run contrary to Rule 56(c)'s express language that a moving party need not support its motion with affidavits:

> Rule 56(c), which refers to "the affidavits, *if any*"…, suggests the absence of such a requirement. And if there were any doubt …, such doubt is clearly removed by Rules 56(a) and (b), which provide that claimants and defendants, respectively, may move for summary judgment "*with or without supporting affidavits*"…. The import of these subsections is that, regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment … is satisfied.

Id.[3]

[3] The substantive provisions at issue in *Celotex* are now in subdivision (c)(1)(B), which provides: "*Supporting Factual Positions*. A party asserting that a

Rule 1.510 contains identical language. Rules 1.510(a) and (b) provide that a claimant or defendant "may move for a summary judgment … *with or without supporting affidavits*." (Emphasis added.) And though Rule 1.510 does not contain the words "affidavits, if any," neither does the current version of Rule 56.

While *Celotex* teaches that the text of Rule 56 does not require the moving party to do certain things to demonstrate the absence of a genuine issue for trial, the decisions in *Anderson* and *Matsushita* explain what the nonmoving party must do to defeat summary judgment. These two cases are simply the flip-side of the same summary judgment coin where we find *Celotex.* Specifically, *Anderson* and *Matsushita* both looked to the text of Rules 56(c) and (e), which each employs the phrase "genuine issue." Rule 56(c) requires that there be "no *genuine issue* as to any material fact" in order for summary judgment to be entered, while Rule 56(e) provides that the nonmoving party opposing a properly supported motion "must … set out specific facts showing a *genuine issue for trial*." (Emphasis added.)

Consistent with the plain language of Rules 56(c) and (e), "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. … Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. 586–87 (footnote omitted). "By its very terms," then, the federal summary judgment standard

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fact cannot be or is genuinely disputed must support the assertion by … showing … that an adverse party cannot produce admissible evidence to support the fact."

"provides that the 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. Or, as the U.S. Supreme Court put it more recently, "[w]hen 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).

The *Anderson* Court further looked to Rule 56(e)'s requirement that the non-moving party "may not rest upon the mere allegation or denials of [its] pleading, but must set forth specific facts showing that there is a genuine issue for trial." 477 U.S. at 256. Thus, the Court concluded that "the proper focus of the [summary judgment] inquiry is strongly suggested by the Rule itself." *Id.* at 250. And because, under Rules 56(c) and (e), "a material fact is 'genuine' … if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," *id.* at 248, the summary judgment standard "mirrors the standard for a directed verdict …, which is that a trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict," *id.* at 250.[4]

[4] Following the 2010 amendments to Rule 56, the substantive provisions at issue in *Anderson* and *Matsushita* are now in subdivision (c)(1), which provides: "*Supporting Factual Positions*. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record …; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute…." Fed. R. Civ. P. 56(c)(1)(A)–(B).

The provisions of Rule 56 that guided the U.S. Supreme Court in *Anderson* and *Matsushita* can also be found in Rule 1.510. Like Rule 56, Rule 1.510(c) employs the phrase "no genuine issue as to any material fact." And like Rule 56, Rule 1.510(c) does not permit the nonmoving part to merely rest on the pleadings. Rather, this Court amended Rule 1.510(c) in 2005 and 2016 to provide that "the adverse party *must* identify … any summary judgment evidence on which the adverse party relies," and that such evidence will be considered as part of the summary judgment analysis.[5] Fla. R. Civ. P. 1.510(c) (emphasis added). Thus, just as Rule 1.510 and its predecessors were patterned on Rule 56, to this day Rule 1.510 and Rule 56 remain linked because of substantially identical provisions.

These textual similarities explain why decisions of this Court have, since the adoption of the summary judgment procedure, articulated a summary judgment standard that resembles the federal summary judgment standard. In *Harvey Building, Inc. v. Haley*, 175 So. 2d 780 (Fla. 1965), this Court "categorized" summary judgment "as a 'pre-trial motion for a directed verdict.'" *Id.* at 783. The Court further

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[5] In 2005, this Court amended Rule 1.510 to add language imposing a mandatory burden on the nonmoving party to identify its own summary judgment evidence. *See In re Amends. to the Fla. Rules of Civ. Proc. (Two Year Cycle)*, 917 So. 2d 176, 185 (Fla. 2005). Prior to 2006, the second sentence of Rule 1.510 provided that "[t]he adverse party *may serve opposing affidavits*." Fla. R. Civ. P. 1.510(c) (2005) (emphasis added). Beginning in 2006, the second sentence of Rule 1.510(c) read: "The adverse party *shall* identify … any summary judgment evidence on which the adverse party relies." Fla. R. Civ. P. 1.510(c) (2006) (emphasis added). In 2016, the Court substituted the word "shall" for "must" throughout the Florida Rules of Civil Procedure, including in Rule 1.510. *See In re Amends. to Fla. Rules of Civ. Proc.*, 199 So. 3d 867, 885–86 (Fla. 2016).

reiterated that the moving party need not negate the nonmovant's case. Rather, once "the moving party presents evidence to support the claimed non-existence of a material issue, [it] will be entitled to a summary judgment unless the opposing party comes forward with some evidence which will change the result—that is, evidence sufficient to generate an issue on a material fact." *Id.* at 782–83; *see Connolly v. Sebeco, Inc.*, 89 So. 2d 482, 484 (Fla. 1956) ("But if the party moved against has admitted facts which preclude him ever obtaining a judgment, or is without evidence to support a fact which he must establish to succeed, or, in the face of substantial evidence by [its] opponent, is without evidence to rebut a fact established by [its] opponent's evidence which, if true, precludes a judgment in [its] favor, then there is no necessity for a trial and a summary judgment is proper.").

This Court has further underscored that, once the moving party "tenders competent evidence to support [its] motion, the opposing party must come forward with counterevidence sufficient to reveal a genuine issue. *It is not enough for the opposing party merely to assert that an issue does exist*." *Landers v. Milton*, 763 So. 2d 368, 369 (Fla. 1979) (emphasis added). Instead, "it is 'incumbent upon the opposing party to come forward with competent evidence revealing a genuine issue of fact.'" *Fla. Bar v. Mogil*, 763 So. 3d 303, 307 (Fla. 2000) (brackets omitted; quoting *Landers*, 370 So. 3d at 370). To do so, "the opposing party must demonstrate the existence of [a genuine issue of material fact] either by countervailing facts or justifiable inferences from the facts presented." *Harvey Bldg.*, 175 So. 3d at 783; *see* Fla. R. Civ. P.

1.510 (1967 Authors' Comment) (citing to *Harvey Building* as the prevailing summary judgment standard). This Court and all five district courts of appeal have followed a like path in recent years. *See, e.g.*, *Fla. Bar v. Tipler*, 8 So. 3d 1109, 1117 (Fla. 2009); *Bradley v. Fort Walton Beach Med. Ctr., Inc.*, 260 So. 3d 1178, 1180 (Fla. 1st DCA 2018); *Tank Tech, Inc. v. Valley Tank Testing, L.L.C.*, 244 So. 3d 383, 389 (Fla. 2d DCA 2018); *Gonzalez v. Citizens Prop. Ins. Corp.*, 273 So. 3d 1031, 1036 (Fla. 3d DCA 2019); *Volvo Aero Leasing, LLC v. VAS Aero Servs., LLC*, 268 So. 3d 785, 790 (Fla. 4th DCA 2019); *Contardi ex rel. B.C. v. Fun Town, LLC*, 280 So. 3d 1114, 1116–17 (Fla. 5th DCA 2019).

B. Certain of this Court's cases adhere to a summary judgment standard that runs counter to the plain text of Rule 1.510 and other decisions from this Court.

Certain decisions from this Court articulate a summary judgment standard that ostensibly is contrary to Rule 1.510's text and other precedent from this Court. In *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966), for example, the Court held that a moving party can obtain summary judgment "[o]nly after it has been *conclusively shown* that the party moved against cannot offer proof to support [its] position on the genuine and material issues in the cause should [its] right to trial be foreclosed." *Id.* at 47 (emphasis added). *Holl* established—contrary to prior and subsequent decisions from this Court—that the nonmoving party "is under no obligation to show that issues do remain to be tried" until "the movant has successfully met [its] *burden of proving a negative*, i.e., the non-existence of a genuine issue of material fact." *Id.* at 43 (emphasis added); *see also Escobar v. Bill Curie Ford, Inc.*, 247 So. 2d 311, 314

(Fla. 1971) ("The party moving for summary judgment must disprove all contrary evidence including all reasonable inferences which may be drawn in favor of the opposing party…."). The moving party, this Court recently observed, does not meet this burden until it "establish[es] *irrefutably* that the moving party cannot prevail." *D.H. v. Adept Cmty. Servs., Inc.*, 271 So. 3d 870, 877 (Fla. 2018) (quoting *Bryson v. Branch Banking & Tr. Co.*, 75 So. 3d 783, 785 (Fla. 2d DCA 2011)).[6]

Florida cases also diverge significantly from federal case law with respect to the meaning of the phrase "genuine issue as to any material fact." As noted, under some of this Court's precedents and under the federal summary judgment standard, "some" alleged factual dispute is insufficient to raise a genuine issue of material fact. But many Florida decisions, including the Fifth District's below, hold that a genuine issue of material fact exists "if the record raises the *slightest doubt* that material issues *could* be present." *Lopez v. Wilsonart, LLC*, 275 So. 3d 831, 833 (Fla. 5th DCA 2019) (emphasis added; citation omitted); *see also Williams v. Lake City*, 62 So. 2d 732, 733 (Fla. 1953); *Berman* § 1.510:27 n.6 (collecting cases).

Finally, in contrast to this Court's cases and the federal summary judgment standard, *Holl* and its progeny reject any comparison between the summary judg-

[6] While the *D.H.* Court articulated the summary judgment standard in this fashion, it does not appear that the decision on the merits turned on whether the movant's proof at summary judgment accomplished anything "irrefutably." The Court did not rely on its own precedent in articulating this characterization of the standard, but rather cited the Second District's decision in *Bryson*. The characterization, then, is but *dicta*.

ment standard and the directed verdict standard. Consequently, because *Holl* requires the movant to prove a negative with respect to the non-existence of a genuine dispute of material fact, "the burden on parties moving for summary judgment is greater than the burden which the plaintiff must carry at trial." *Wills v. Sears, Roebuck & Co.*, 351 So. 2d 29, 30 (Fla. 1977); *see also Visingardi v. Tirone*, 193 So. 2d 601, 605 (Fla. 1966) (distinguishing between "the burden of the plaintiff at trial" and the plaintiff's burden as the party opposing a motion for summary judgment); *Le v. Lighthouse Assocs., Inc.*, 57 So. 3d 283, 287 (Fla. 4th DCA 2011) ("[U]nder the current state of the law, a motion for summary judgment cannot be used as a pre-trial motion for directed verdict.").[7]

C. This Court should definitively adopt the federal summary judgment standard and recede from or disapprove those cases that articulate a different standard.

The textual similarities between Rule 1.510 and Rule 56 provide a sound basis for harmonizing Florida summary judgment jurisprudence with its federal counterpart. From Florida's adoption of the summary judgment procedure in 1950, this Court has recognized that Rule 1.510 and its predecessors are patterned on, and closely resemble, the federal summary judgment procedure. Thus, cases from this Court have long articulated principles similar to those reflected in the U.S. Supreme

[7] To be sure, *Holl* did state that "the burden of proving the existence of such issues [of material fact] is not shifted to the opposing party until the movant has successfully met [its] burden." 191 So. 2d at 43–44. But *Holl*'s requirement that the moving party negate the nonmoving party's case essentially renders any burden shifting "an unnecessary exercise." *Berman* § 1.510:25.

Court's decisions in *Celotex*, *Anderson*, and *Matsushita*—principles that, those three decisions explained, are based in the plain text of Rule 56.

The summary judgment doctrine set forth by this Court in *Holl*, however, cannot withstand careful analysis because it is not grounded in the text of Rule 1.510. *Holl* has always conflicted—and continues to conflict—with other summary judgment decisions from this Court, and is often not followed by the district courts of appeal.[8] The need for consistency, stability, and predictability in the law calls out for the Court to clarify Florida's summary judgment doctrine. *See generally In re Amends. to Fla. Evidence Code*, 278 So. 3d 551, 554 (Fla. 2019) ("[T]he *Daubert* amendments will create consistency between the state and federal courts with respect to the admissibility of expert testimony and will promote fairness and predictability in the legal system, as well as help lessen forum shopping."); *Garner v. Ward*, 251 So. 2d 252, 257 (Fla. 1971) ("In the case at bar, the decisions under examination have not been consistent and such consistency as exists has been achieved under protest; have not been even-handed; and have not aided predictability because every decision implementing the statute has called for a change in the statute.").

[8] For example, this Court's precedents precluding the imposition of liability based on the stacking of inferences drawn from the evidence, *e.g.*, *Nielsen v. City of Sarasota*, 117 So. 2d 731, 733 (Fla. 1960), have been applied by the district courts of appeal at the summary judgment stage, *see, e.g.*, *Wilson-Greene v. City of Miami*, 208 So. 3d 1271, 1275 (Fla. 3d DCA 2017); *Estate of Githens ex rel. Seaman v. Bon Secours-Maria Manor Nursing Care Ctr., Inc.*, 928 So. 2d 1272, 1274 (Fla. 2d DCA 2006); *Cohen v. Arvin*, 878 So. 2d 403, 405 (Fla. 4th DCA 2004). In theory, this should not be possible under *Holl*.

Because nothing it the plain language of Rule 1.510 mandates the summary judgment standard set forth in *Holl*, no rule change is required in order for Florida to adopt the federal summary judgment standard. This Court need only interpret Rule 1.510 according to its plain meaning and recede from or disapprove *Holl* and its progeny.

II. *STARE DECISIS* DOES NOT REQUIRE ADHERING TO CASES ARTICULATING A SUMMARY JUDGMENT STANDARD DIFFERENT THAN THE FEDERAL ONE.

Stare decisis does not counsel in favor of retaining *Holl* as precedent, despite its error. This Court's adherence to *stare decisis* is "not unwavering." *Roughton v. State*, 185 So. 3d 1207, 1210 (Fla. 2016). The doctrine of *stare decisis* "bend[s] 'where there has been a significant change in circumstances since the adoption of the legal rule or where there has been an error in legal analysis.'" *Robertson v. State*, 143 So. 3d 907, 910 (Fla. 2014) (quoting *Brown v. Nagelhout*, 84 So. 3d 304, 309 (Fla. 2012)). The Court has identified several factors to consider in deciding whether to recede from a past decision, including whether the decision is unsound in principle, whether it is unworkable in practice, and whether there has been reliance on the prior decision. *Brown*, 84 So. 3d at 309.

Holl is unsound in principle. In recent years, this Court has not hesitated to recede from previous decisions "based on a serious interpretative error, which resulted in imposing a meaning on the statute that is 'unsound in principle.'" *Id.* at 310 (citation omitted); *see Roughton*, 183 So. 3d at 1211 (receding from a decision that committed "a serious legal error …, which flies in the face of the manifest intent of

the Legislature"); *Valdes v. State*, 3 So. 3d 1067, 1077 (Fla. 2009) (overruling a decision to bring "stability in a manner that most comports with legislative intent and the plain meaning of the [statute]"). *Holl* cannot be reconciled with the text of Rule 1.510 or with the express purpose of the Florida Rules of Civil Procedure to achieve "just, speedy, and inexpensive" resolution of disputes. Fla. R. Civ. P. 1.010. Its reasoning also conflicts with summary judgment decisions from Florida courts dating from the inception of the summary judgment procedure in Florida on through to this day. *Holl*, therefore, was wrong when it was decided and continues to be wrong today. *Cf. Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2178 (2019) (overruling a decision that "was not just wrong," but also contained "reasoning [that] was exceptionally ill founded and conflicted with much of [the Court's] takings jurisprudence"); *Janus v. Am. Fed'n of State, Cty., & Mun. Emps.*, 138 S. Ct. 2448, 2479 (2018) (overruling a decision that "went wrong at the start").

For similar reasons, *Holl* has also proven unworkable in practice. This Court's decisions "have recognized that the circumstance that 'the prior decision proved unworkable due to reliance on an impractical legal "fiction"' militates in favor of departing from a precedent.'" *Brown*, 84 So. 3d at 310 (quoting *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 637 (Fla. 2003)). This Court and the district courts of appeal continue to employ a summary judgment standard that frequently differs from the one articulated in *Holl*. *See N. Fla. Women's Health*, 866 So. 2d at 638 (noting "legal fictions" can require receding from past decisions when they "subsequently prove[] too abstruse for courts to maintain").

Florida courts, therefore, are not even of one mind as to whether *Holl* remains good law in this State. And *Holl*'s conflict with the U.S. Supreme Court's interpretation of Rule 56 has resulted in an unworkable divergence between Florida and federal courts, even though Rule 1.510 and Rule 56 are textually analogous and the former was patterned on the latter.

Lastly, no serious reliance interests are at stake that would result in injustice were this Court to reject *Holl*. The questionable aspects of *Holl* concern themselves with procedural mechanisms rather than substantive rights. It is not plausible to suggest that litigants have organized their affairs or chosen whether and when to bring suit based on *Holl*'s atextual gloss on Rule 1.510.[9] The existence of the federal summary judgment standard has not led to injustice in the federal system and there is no reason to think that it would do so in Florida. In the end, "[p]erpetrating [*Holl*'s] error in legal thinking under the guise of stare decisis serves no one well and only undermines the integrity and credibility of the court." *Shepard v. State*, 259 So. 3d 701, 707 (Fla. 2018) (quoting *State v. Gray*, 654 So. 2d 552, 554 (Fla. 1995)). The Court should recede from or disapprove *Holl* and its progeny and adopt the federal summary judgment standard.

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[9] Except, of course, where the differences created by *Holl* have resulted in detrimental forum shopping as litigants weigh the benefits of pursuing identical substantive rights in one forum or another. *See In re Amends. to Fla. Evidence Code*, 278 So. 3d at 554 (receding from prior decisions not to adopt the Legislature's *Daubert* amendments to the Evidence Code in part to "lessen forum shopping"); *Kinney Sys., Inc. v. Cont'l Ins. Co.*, 674 So. 2d 86, 93 (Fla. 1996) (adopting the federal *forum non conveniens* doctrine and receding from prior Florida precedent in part to avoid "the rankest forum shopping by out-of-state interests").

CONCLUSION

"The function of the rule authorizing summary judgments is to avoid the expense and delay of trials when all facts are admitted or when a party is unable to support by any competent evidence a contention of fact." *Nat'l Airlines v. Fla. Equip. Co. of Miami*, 71 So. 2d 741, 744 (Fla. 1954). To fulfill the underlying purpose of Rule 1.510, the Court should interpret the rule according to its plain meaning, definitively adopt the federal summary judgment standard, and recede from or disapprove those cases that hold otherwise. Accordingly, the decision of the Fifth District Court of Appeal below should be quashed.

Respectfully submitted,

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I certify that a copy of this brief was served via E-Portal on December 13, 2019, on:

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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