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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC19-1336

WILSONART, LLC and SAMUEL ROSARIO,

Petitioners,

v.

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

Respondent.

On review from the District Court of Appeal
Fifth District of Florida

CASE NO.: 5D18-2907

BRIEF OF AMICUS CURIAE FEDERATION OF DEFENSE & CORPORATE COUNSEL IN SUPPORT OF PETITIONERS

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IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST

The Federation of Defense & Corporate Counsel (FDCC) is a not-for-profit corporation with a national and international membership of 1,400 defense and corporate counsel working in private practice, as in-house counsel, and as insurance claims representatives. A significant number of FDCC members practice in Florida's trial and appellate courts. The FDCC constantly strives to protect the American system of justice. Its members have established a strong legacy of representing the interests of civil defendants, including publicly and privately-owned businesses, public entities and individual defendants. The FDCC seeks to assist courts in addressing issues of importance to its membership that concern the fair and predictable administration of justice.

In this case, the Court has indicated its intention to address the summary judgment standard to be applied in Florida state court proceedings. The FDCC's membership is able to provide scholarly and practical insight into the utilization of summary judgment proceedings in both Florida and federal courts as a procedural vehicle for avoiding unnecessary litigation, delay and expense. Through its broad membership and nationwide perspective, FDCC is uniquely qualified to address the important public policy question posed by the Court.

SUMMARY OF ARGUMENT

In a trilogy of cases decided 33 years ago, the United States Supreme Court adopted a summary judgment standard now known collectively as the *Celotex* standard. This standard provides structure and fairness to dispositive motion practice before trial. In granting discretionary review, this Court specifically asks if Florida should adopt the *Celotex* standard.[1] The answer – emphatically – is "yes."

Florida jurisprudence has maintained a restrictive attitude toward the granting of summary judgment motions over the past fifty years. This antagonism is out of step with not only federal practice, but virtually every state in the country. These courts recognize that after a movant comes forward with evidence that there is no genuine issue of material fact to preclude the entry of summary judgment as a matter of law, responsibility shifts to the non-moving party to demonstrate the existence of triable issues of fact.

As this case illustrates, summary judgment should be granted when there is insufficient evidence to present a prima facie case. When the evidence shows (as here, via the dash cam video) that the resisting party cannot offer reasonable proof

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[1] *See Celotex Corp. v. Catrett,* 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574 (1986).

to support his position on the genuine and material issues in the cause, summary judgment should be granted. To the extent current practice fails to implement these principles, this Court should align Florida with the federal standard which requires that the party opposing a summary judgment motion present sufficient evidence to demonstrate a genuine issue of material fact supporting the challenged claim.

ARGUMENT

A. SUMMARY JUDGMENT MOTIONS PROVIDE AN IMPORTANT PROCEDURAL VEHICLE TO DISPOSE OF MERITLESS CASES, NARROW ISSUES FOR TRIAL AND PROMOTE SETTLEMENT

Every civil case begins with the filing of a complaint against the defendant. Liberal pleading rules permit the parties great latitude to allege claims or defenses based merely on a short and plain statement of ultimate facts. Motions to dismiss have limited utility in challenging a complaint because they must accept the scant factual allegations as true. A motion for summary judgment, however, is designed to "pierce" these allegations, and to put the party to the test of coming forward with sufficient evidence to warrant a trial on a claim or defense.

Summary judgment is *not* a disfavored remedy. It is part of a procedural framework to secure the just, speedy and inexpensive determination of every action. Fla. R. Civ. P. 1.510(f), Authors' Comment—1967 ("function of summary

judgment procedure is to supply an efficient procedural device for the prompt disposition of actions”). Its advantages include focusing trials, by narrowing the claims or defenses, and encouraging settlement.

The “just, speedy, and inexpensive” process does not mean a hasty one without time for discovery or a lack of due process. A party, in fact, can seek to continue a summary judgment motion by demonstrating time is needed to obtain additional evidence to oppose the summary judgment motion. Fla. R. Civ. P. 1.510(f). Perhaps most significantly, summary judgment proceedings mark an important milestone in the case, as the hearing may be the first, and possibly only, time a judge will study the law and evidence surrounding the claim.

Practice and custom demonstrate that a party facing summary judgment is far more likely to settle if the hearing will test the sufficiency of the evidence to establish a prima facie case. Even in cases where summary judgment is denied, the judge’s questions and ruling are likely to guide the parties in future settlement discussions and trial strategy. By contrast, a movant who is effectively denied the opportunity to demonstrate the absence of a material issue of fact by factoring in the burden of proof applicable to the claim in question may be disinclined to pursue settlement, believing the only path to a fair outcome is a trial.

B. THE *CELOTEX* TRILOGY PROVIDES A SUMMARY JUDGMENT FRAMEWORK RESULTING IN A LOGICAL, PREDICTABLE APPROACH FOR COURTS TO DECIDE SUMMARY JUDGMENT MOTIONS

In 1986, the United States Supreme Court decided *Celotex Corp. v. Catrett,* 477 U.S. 317, 327 (1986), a products liability lawsuit in which a widow sued over the death of her husband, alleging exposure to asbestos. Discovery followed and Celotex asked the widow the factual basis for her claim. When requested to identify exposure evidence, she could not. Celotex moved for summary judgment relying on the widow's failure to produce any evidence he was exposed to its product. The court of appeals reversed the district court's grant of summary judgment, but the Supreme Court reversed that decision. *Id*. at 319.

The Supreme Court determined that once Celotex met its initial burden of establishing an absence of material fact, the burden then shifted to the widow to produce evidence of exposure to the defendant's product, which she failed to meet.

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment after adequate time for discovery and 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. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of [the non-moving party's] case necessarily renders all other facts immaterial.

477 U.S. at 322-323. *Celotex* "burden-shifting" became the guiding procedural framework of federal summary judgment law.

The Supreme Court decided two other cases in this trilogy. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242 (1986), was a libel lawsuit. Plaintiff, the founder of Liberty Lobby, sued Anderson claiming he published defamatory articles. Anderson, a journalist, moved for summary judgment asserting plaintiff could not establish actual malice by clear and convincing evidence. The district court granted summary judgment, but the court of appeals partially reversed, ruling that plaintiff did not need to meet that standard at the summary judgment stage. *Id*. at 246-47.

The Supreme Court reversed, explaining that the materiality of a fact must be determined in the context of the applicable substantive law. Plaintiff needed to prove there was a triable issue of fact as to "actual malice," and further show a factual dispute under the "clear and convincing" evidence standard, not a preponderance of the evidence. The court equated summary judgment to the "substantive evidentiary standard of proof that would apply at the time of trial on the merits." *Id.* at 247-48.

The third case, *Matsushita Electric Industrial Co. v. Zenith Radio Corp.,* 475 U.S. 574 (1986), was a complex antitrust case. The plaintiffs were American

manufacturers who claimed the defendant Japanese electronic firm schemed to sell their products in Japan at artificially high prices in order to sell their products in the United States at artificially low prices. After several years of discovery, the defendants moved for summary judgment. The district court granted summary judgment, but the court of appeals reversed. *Id*. at 579-80.

When the Supreme Court reviewed the matter, it found the scheme alleged was "implausible." *Id*. at 594 n. 19. The Court reasoned that the inability of Japanese manufacturers to wrest away market share sufficient to justify twenty years of below-market pricing belied the American manufacturers' claims of a conspiracy. Properly understood, *Matsushita* did not approve a weighing of competing versions of the facts; rather, it accepted the facts presented, but authorized federal courts to objectively assess the plausibility of the claims asserted based on those facts. *Id*. at 586-88.

Following these decisions, the federal procedure and standard for deciding if a genuine issue of material fact exists aligns with a party's burden of proof at trial. The standard is no different than a motion for nonsuit or directed verdict.

C. FLORIDA'S SUMMARY JUDGMENT JURISPRUDENCE IS UNFAIRLY RESTRICTIVE IN EVALUATING SUMMARY JUDGMENT MOTIONS

In contrast to the *Celotex* trilogy, Florida's summary judgment process is premised on the flawed predicate that the moving party must prove conclusively that there are no genuine issues of triable fact. In practice this means:

1. The moving party cannot shift to the non-moving party the burden of demonstrating a genuine issue of material fact;

2. The moving party must prove not only that there is no material fact in dispute but that there is no *possibility* of a genuine issue of fact; and

3. The non-moving party need not submit evidence to oppose a summary judgment motion but may rely on the movant's failure to conclusively prove a negative.

Historically, Florida law was not always so hostile to summary judgment proceedings. This Court initially adopted a standard that foreshadowed the burden-shifting adopted by *Celotex*. In a personal injury case, *Food Fair Stores of Fla., Inc. v. Patty,* 109 So. 2d 5 (Fla. 1959), the defendant retailer moved for summary judgment after the plaintiff was unable to prove how long a substance was on the floor before she fell. Summary judgment was granted but then reversed by the intermediate appellate court, which required the defendant to present proof it was

not negligent in maintaining its floors. This Court soundly rejected the suggestion that defendant prove the negative, i.e., that it was not negligent. *Id*. at 6-7 ("Upon an application for summary judgment in an action for negligence when it is properly shown the plaintiff is completely without proofs to sustain her complaint the defendant has no obligation to offer evidence to excuse itself.").

Likewise, in *Harvey Building, Inc. v. Haley*, 175 So. 2d 780 (Fla. 1965), this Court expressly adopted burden-shifting. "If the moving party presents evidence to support the claimed nonexistence of a material issue, he will be entitled to summary judgment unless the opposing party comes forward with some evidence that will change the result – that is, evidence sufficient to generate an issue on a material fact." *Id.* at 782-83. The summary judgment motion functions as a "pre-trial motion for directed verdict." *Id.* at 783.

The shift in the summary judgment standard took root in two medical malpractice cases, *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966) and *Visingardi v. Tirone*, 193 So. 2d 601 (Fla. 1966). Each Supreme Court decision repudiated burden-shifting. Even more troubling, each case adopted the concept that the moving party must do far more than show the *absence* of evidence to support the non-moving party's claims. Rather, to prevail on summary judgment, the moving

party was required to "conclusively" prove why it was not legally responsible or that the non-movant is unable to present requisite proof to sustain the claim.

In *Holl*, the defendant doctors and hospital submitted expert evidence in support of summary judgment. Plaintiff countered with expert evidence from a New York doctor. The trial court struck the plaintiff's expert's affidavit on grounds of "legal insufficiency" and then granted summary judgment. On appeal, the *Holl* court changed Florida summary judgment law to introduce the requirement of *conclusive* evidence, or evidence that "*removes all doubt*," as the test for granting summary judgment. *Id*. at 48. The court stated the movants' affidavits "do not in themselves demonstrate conclusively that the respondents were not guilty of malpractice so as to justify a determination that as a matter of law there was no genuine issue of material fact necessary to be tried." *Id.* at 46.

On rehearing, *Holl* explained the movant could meet its burden by (1) showing conclusively that he is not guilty of the negligence charged against him; (2) showing conclusively that the negligence charged was not causally related to the plaintiff's injury; or (3) showing conclusively that the plaintiff is unable to present requisite proof of the negligence charged in the pleadings. *Id*. at 47-48. In sum, *Holl* heightened the burden on summary judgment to require the moving party to prove "conclusively" the absence of medical negligence.

Next came *Visingardi*, another medical malpractice case in which doctors and a hospital were allegedly negligent in their operative and postoperative care resulting in a patient's death. The trial court granted defendants' motion for summary judgment on both standard of care and causation. In reversing, this court announced plaintiff was "under no obligation to put in evidence showing such causal relationship. In other words, causal relationship, as any other material issue, should be considered a triable issue that will preclude summary judgment until it is conclusively shown, by affidavit or other permissible evidence, that no causal relationship exists and trial of it is no longer required." *Id.* at 604-05.

This holding again rejected burden-shifting in summary judgment motions. It also fortified *Holl's* requirement that the movant "conclusively" disprove the non-movant's theory of the case. The *Visingardi* court distinguished *Food Fair* on the ground that the record there showed plaintiff "could not possibly prove her case, and not because she had simply failed to come forward with relevant evidence doing so." *Id.* at 605.

The impact of *Holl* and *Visingardi* on the summary judgment process in this state has been profound.

Florida's approach undermines the "just, speedy and inexpensive determination" of cases. *See Celotex*, 427 U.S. at 327. While the purpose of

summary judgment is to determine if there is a genuine issue of fact warranting trial, Florida case law embraces a standard that burdens the movant with establishing a negative beyond a reasonable doubt – a much higher burden than the non-movant must establish to prevail at trial. Rather than serve as a vehicle to pierce the pleadings by challenging a party's ability to prove a claim, summary judgment in Florida requires a conclusive showing that no genuine issue of fact can exist before courts shift the burden to the non-movant to support allegations in the pleading by evidence. *See, e.g., Keough v. Wimpy*, 585 So. 2d 302, 303 (Fla. 2d DCA 1991) (summary judgment should be denied "[i]f the record reflects the existence of any material issue of fact or *the possibility of any issue*, or if the record raises even the slightest doubt that an issue might exist.") (emphasis added); *Gomes v. Stevens*, 548 So. 2d 1163, 1164 (Fla. 2d DCA 1989) ("If the record reflects the existence of any genuine issue of material fact, or the possibility of any issue, or if the record raises even the slightest doubt than an issue might exist, summary judgment is improper."); *Graff v. McNeil*, 322 So. 2d 40, 43-44 (Fla. 1st DCA 1975) (movant must negate the factual allegations in the complaint) (*citing Soper v. Stine*, 184 So. 2d 892, 894-95 (Fla. 2d DCA 1966)); *see also Green v. CSX Transp., Inc.*, 626 So. 2d 974 (Fla. 1st DCA 1993) (allegations of complaint sufficient to defeat summary judgment unless moving party's evidence is

conclusive). As a result, Florida's practice unfairly fails to place the burden on the party asserting a claim to demonstrate the ability to establish a prima facie case and deprives litigants of a logical, predictable approach to avoiding the expense and delay of trial, where trial may be unnecessary.

D. THE ADOPTION OF *CELOTEX* IN FLORIDA WILL ALIGN FLORIDA WITH FEDERAL LAW AND THE LAW OF VIRTUALLY EVERY OTHER STATE

When *Celotex* was adopted at the federal level, many legal commentators predicted a sea change in both the filing and granting of summary judgment motions. Indeed, this Court expressed similar concerns when reiterating its restrictive standard in *Visingardi*, 193 So. 2d at 605-06. However, as the Federal Judicial Center's empirical studies have shown, this did not occur. *A Quarter Century of Summary Judgment Practice in Six Federal District Courts*, 4 J. Empirical Legal Stud. 861, 882 (percentage of cases with one or more motions for summary judgment increased *before* the *Celotex* trilogy from approximately 12% in 1975 to 17% in 1986, but afterwards remained fairly steady at approximately 19%).

Meanwhile, adopting the *Celotex* trilogy as the framework for deciding summary judgment motions has found widespread support throughout the country. At this time, over 40 states have adopted or expressed approval of the *Celotex*

standard. Only a handful of states have not adopted *Celotex*, and even some of these states have not expressly rejected it. An appendix to this brief summarizes the law in all other states.

States adopting the *Celotex* burden-shifting standard recognize that the purpose of summary judgment is "to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." *Aguilar v. Atlantic Richfield Co.*, 24 P.3d 493 (Cal. 2001). As one court put it:

> Having reexamined the *Celotex* trilogy, *Byrd*, and the majority and dissenting opinions in *Hannan*, as well as the cases that have followed it, we conclude that the standard adopted in *Hannan* is incompatible with the history and text of Tennessee Rule 56 and has functioned in practice to frustrate the purposes for which summary judgment was intended—a rapid and inexpensive means of resolving issues and cases about which there is no genuine issue regarding material facts. *Bowman*, 547 S.W.2d at 529; *Evco Corp*., 528 S.W.2d at 24. Whether the standard began with *Byrd* or originated in *Hannan*, we conclude that the standard has shifted the balance too far and imposed on parties seeking summary judgment an almost insurmountable burden of production, as the Court of Appeals' decision in this case illustrates.

Rye v. Women's Care Ctr. of Memphis, MPLLC, 477 S.W.3d 235, 261 (Tenn. 2015).

Exactly how the *Celotex* burden-shifting operates varies by state. A few states permit summary judgment motions based on the moving party merely

asserting that the non-moving party cannot prove its case. Such motions need not be supported by any evidence. *See First Hawaiian Bank v. Weeks*, 772 P.2d 1187, 1190 (Haw. 1989). However, the majority of states require supporting evidence to demonstrate there is no genuine issue of fact. *See, e.g., Jarboe v. Landmark Community Newspapers of Indiana, Inc.*, 644 N.E.2d 118, 123 (Ind. 1994).

Those states with a summary judgment statute or rule that is identical or similar to Federal Rule of Civil Procedure 56 require the moving party to present evidence to shift the burden to the non-moving party. *See, e.g., Rye,* 477 S.W.3d at 264 (when the moving party does not bear the burden of proof at trial, the moving party meets its summary judgment burden by either affirmatively negating an essential element of the nonmoving party's claim or defense, or demonstrating that the nonmoving party's evidence is insufficient to establish the claim or defense); *White v. Kent Medical Center, Inc.,* 810 P.2d 4 (Wash. 1991) (moving party has the burden of showing the absence of an issue of material fact and must generally cite evidence).

Meanwhile, states not following Federal Rule of Civil Procedure 56 have, nevertheless, made statutory or rule changes to achieve a similar burden-shifting. For example, California made statutory changes to its summary judgment statute after *Celotex*, to adopt burden-shifting. The effect of those changes was wholly

consistent with *Celotex*. In California, once the moving party meets its initial burden, the non-moving party may not simply rely on its pleadings, but must "set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto." *Aguilar*, 24 P.3d at 493 (*citing* Cal. Code Civ. Proc. §437c.(o)(1)). "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Id.* at 510. A plaintiff bears the burden of persuasion that "each element" of the "cause of action" in question has been "proved," and hence that "there is no defense thereto." Cal. Code Civ. Proc. §437c.(o)(1). Defendant bears the burden of persuasion that "one or more elements" of the cause in question "cannot be established" or "there is a complete defense." Cal. Code Civ. Proc. §437c.(o)(2).

Likewise, Louisiana acted through statutory amendments. In 1996, the legislature adopted an article providing that "summary judgment procedure is designed to secure the just, speedy and inexpensive determination of every action … The procedure is favored and shall be construed to accomplish these ends." La. Code Civ. Proc. Ann. art. 966(A)(2). The next year, the Louisiana legislature enacted La. Code Civ. Proc. Ann. art. 966(C)(2) stating: As one court put it:

> The burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action or defense but rather to point out to the court there is an absence of factual support. Thereafter, if the adverse party fails to produce the factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact.

Anders v. Andrus, 773 So. 2d 289, 291 (La. Ct. App. 2000) (internal citations omitted) (amendment "closely parallels" language of *Celotex*).

E. THE PRESENT CASE PRESENTS A CLEAR EXAMPLE OF WHY FLORIDA SHOULD ADOPT *CELOTEX*

This appeal arises from a summary judgment motion relying on video evidence that the lower court deemed "compelling" and reliable but ostensibly in conflict with the recollection of a single eyewitness. The facts are simple: Lopez was driving a vehicle that struck the rear of a Freightliner driven by Rosario. Under Florida law, if Lopez rear-ended the Freightliner, without the Freightliner suddenly changing lanes, Lopez was the sole cause of the accident resulting in his death. The dash cam mounted in the Freightliner plainly shows it made no sudden lane change before rear impact. However, a single witness to the collision (Mendez) testified the Freightliner changed lanes moments before impact by the Lopez vehicle.[2]

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[2] Plaintiff also relied on an affidavit from an accident reconstruction expert (Stewart). His affidavit relied on Mendez's testimony and opined the Freightliner

The trial court, citing *Scott v. Harris*, 550 U.S. 372 (2007), a case concerning reliable video evidence, granted summary judgment. It concluded the video dash cam evidence "blatantly contradicted" the eyewitness testimony. Following Florida law requiring summary judgment be denied when there is "the slightest doubt that material facts could be presented," the appellate court reversed. *Lopez v. WilsonArt, LLC*, 275 So. 3d 831, 833 (Fla. 5th DCA 2019). Yet it was clearly troubled by this result in the face of undeniably "compelling" dash cam evidence showing with clarity and certainty there was no sudden lane change by the Freightliner. It certified to this Court the question of whether there should be an exception to the present summary judgment standards applied in Florida to permit summary judgment when the moving party's video evidence "completely negates or refutes any conflicting evidence presented by the non-moving party and …there

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video camera showed the Freightliner did not stay in a single lane and was straddling the lane line separating the center and right outside lanes before impact. [R.180]. Although not part of the summary judgment evidence, this expert was deposed the day after the summary judgment hearing and testified the Freightliner dash cam did not show it veering into the left lane or right lane before the impact. [R.277]. The position of the Freightliner existed for some distance before the Freightliner came to a stop and the rear impact occurred. [R. 278-79, 309]. Thus, the Plaintiff's expert confirmed that the video evidence refuted Mendez's testimony that the Freightliner suddenly changed lanes.

is no suggestion that the videotape evidence has been altered or doctored." *Id.* at 833.

This case illustrates the need for reassessment and change in Florida's summary judgment process. It is easy to understand why the trial court relied on *Scott*. In that case, the Supreme Court confronted the exact issue here: In deciding a summary judgment motion, what should the court do when indisputably reliable video evidence ostensibly conflicts with the testimony of a single witness? There, Harris testified his driving while under police pursuit was not dangerous. But the police officer's video cam evidence recording the chase told a very different story. As the majority observed, Harris's account of the chase was "so utterly discredited by the record that no reasonable jury could have believed him." 550 U.S. at 378. Quoting *Matsushita*, the Supreme Court affirmed the summary judgment noting: "[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 Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 . . .

(footnote omitted)).” 550 U.S. at 380. In light of the video cam evidence, there could be no genuine issue of disputed fact.[3]

Like *Scott*, this case squarely turns on objective, factual video evidence where there is no challenge to its authenticity or reliability. Under the *Celotex* standard, WilsonArt and Rosario clearly established the absence of any genuine issues of material fact because, in light of the compelling and reliable video evidence, the eyewitness’s version of the events is so utterly discredited by the record that no reasonable jury could have believed him.

CONCLUSION

The Federation of Defense & Corporate Counsel strongly urges the Florida Supreme Court to adopt the summary judgment standard articulated by the United States Supreme Court in *Celotex*, *Anderson*, and *Matsushita*.

Respectfully submitted,

By: *_/s/ Angela C. Flowers_*
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[3] Critics suggest the majority decision in *Scott* essentially ignored the plaintiff’s testimony or at least failed to draw all reasonable inferences in favor of it. But in *Scott,* the plaintiff’s evidence was not new evidence, or objective facts contrary to the video presented by the defendant. The opposition evidence was only Harris’s *conclusory and subjective* testimony commenting on his perception of his safe driving and his perception it did not pose a risk of harm to others.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail to all parties listed on the Service List below and filed via the Florida Courts e-Filing Portal on this 16th day of December, 2019.

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CERTIFICATE OF COMPLIANCE

In compliance with Florida Rule of Appellate Procedure 9.210(2), counsel for Amicus Curiae Federation of Defense & Corporate Counsel certifies that the size and style of type used in this brief are 14 point type, Times New Roman.

/s/ Angela C. Flowers
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