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.

AMICUS BRIEF OF FLORIDA HEALTH CARE ASSOCIATION AND ASSOCIATED INDUSTRIES OF FLORIDA IN SUPPORT OF PETITIONERS

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

Florida Health Care Association (FHCA) is a federation representing over 82% of the state's 690 nursing centers. The organization's members include more than 1,000 individuals, nearly 600 long term care centers, as well as more than 400 associate members/companies that provide valuable products and services to long term care providers. FHCA furthers its mission of advancing the quality of services, image, professional development and financial stability of its members. FHCA has a strong history of leadership and advocacy that dates back to 1954. The organization, which advocates for its members and the public they serve, is interested in ensuring that the voices of its members are heard.

Known as "The Voice of Florida Business" in the Sunshine State, Associated Industries of Florida (AIF) has represented the principles of prosperity and free enterprise before the three branches of state government since 1920. AIF is a voluntary association of diversified businesses, which was created to foster an economic climate in Florida conducive to the growth, development, and welfare of industry and business and the people of the state. AIF's projects are guided by one simple idea: The good fortune of our state hinges on the prosperity of our state's employers. AIF works to lessen the burdens government would place on employers, while seeking solutions to conditions that threaten their success.

SUMMARY OF ARGUMENT

Florida should adopt the federal summary judgment standard, as set forth in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Florida's summary judgment rule, Fla. R. Civ. P. 1.510, was patterned after its federal counterpart, Fed. R. Civ. P. 56. Both share the same important purpose of avoiding the expense and delay of unnecessary trials. Through decisional law, the courts have developed standards that apply the rules. The key difference between the federal and Florida standards is that the federal summary judgment standard – which has been adopted by the majority of states – provides a far more reasonable and effective tool to accomplish the purpose of summary judgment. Florida's adoption of the federal standard does not interfere with a party's constitutional right to a trial by jury.

As practical matter, there is no need for the Court to amend Rule 1.510 to effectuate that change because it is the summary judgment standard developed through decisional law – not the rule itself – that the Court would be changing.

ARGUMENT

I. Florida Should Adopt the Federal Summary Judgment Standard, Which Is Entirely Consistent With the Right To Trial By Jury Guaranteed By the Florida Constitution

A. The federal and Florida summary judgment standards

The federal summary judgment standard, as set forth in *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. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986), offers a reasonable and balanced approach to determine if there are actually factual issues that need to be tried. The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact, but is not required to completely negate the nonmoving party's claim. *See Celotex*, 477 U.S. at 322-24. If the moving party meets its initial burden, the non-moving party must "go beyond the pleadings" and by its own affidavits or other evidence "designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (citation omitted); *Anderson*, 477 U.S. at 248-49. "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 (citation omitted).

The result is a balanced approach, in which the summary judgment rule[1] is "construed with due regard not only for the rights of persons asserting claims and

[1] Rule 56(a) of the Federal Rules of Civil Procedure provides in pertinent part: "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

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 [summary judgment] Rule, prior to trial, that the claims and defenses have no factual basis." *Celotex*, 477 U.S. at 327.

In contrast, under the Florida standard, a party seeking summary judgment has the "burden of proving a negative, *i.e.*, the non-existence of a genuine issue of material fact," and must do so "conclusively," so that "[t]he proof must be such as to overcome all reasonable inferences which may be drawn in favor of the opposing party." *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966) (citations omitted). It is an unrealistic burden, which leaves many cases that should be resolved on summary judgment postured for trial instead – unnecessarily requiring parties to spend more on litigation, taking up additional judicial resources, and delaying the final outcome of cases. *See*, *e.g.*, *Wills v. Sears, Roebuck & Co.*, 351 So. 2d 29, 30 (Fla. 1977) ("the burden on parties moving for summary judgment is greater than the burden which the plaintiff must carry at trial").

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matter of law." Florida's summary judgment rule provides substantially the same: "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." Fla. R. Civ. P. 1.510(c).

B. The federal summary judgment standard does not interfere with the constitutional right to a jury trial

Florida's strict summary judgment standard can be traced in part to this Court's concern that the use of summary judgment is in "derogation of the constitutionally protected right to trial." *Holl*, 191 So. 2d at 48; *see Drahota v. Taylor Constr. Co.*, 89 So. 2d 16, 18 (Fla. 1956) ("The constitutional right to jury trial demands that particular care be accorded in this field, to the end that controverted issues of fact be resolved not upon pleadings and depositions but by a jury functioning under proper instructions.") (citations omitted).[2]

But protecting the right to a jury trial is no less critical in the context of applying the federal summary judgment standard. As the United States Supreme Court held over a 100 years ago when confronted with this issue:

> If it were true that the [summary judgment] rule deprived the plaintiff in error of the *right* of trial by jury,[3] we should pronounce it void without reference to cases. But it does not do so. It prescribes the means of making an issue. The issue made as prescribed, the right of trial by jury accrues. The purpose of the rule is to preserve the court from frivolous defenses, and to defeat attempts to use formal pleading as means to delay the recovery of just demands.

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[2] *See* Fla. Const. art. I, § 22 ("The right of trial by jury shall be secure to all and remain inviolate.").

[3] *See* U.S. Const. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved"). The Seventh Amendment does not apply to the states, *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 432 (1996), but the analogous provisions in the state constitutions should be interpreted the same. *See*, *e.g.*, *Newport Housing Auth. v. Ballard*, 839 S.W.2d 86, 89 (Tenn. 1992).

> Certainly a salutary purpose, and hardly less essential to justice than the ultimate means of trial.

Fidelity & Deposit Co. of Maryland v. U.S., 187 U.S. 315, 320 (1902) (original emphasis).[4]

Indeed, summary judgment plays a proper and integral role in civil cases by helping to avoid the expense and delay of unnecessary trials. *E.g.*, *Celotex*, 477 U.S. at 327 ("[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'") (citation omitted); *National Airlines, Inc. v. Florida Equip. Co.*, 71 So. 2d 741, 744 (Fla. 1954) ("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

[4] *Accord*, *e.g.*, *Jackson v. Blue Mountain Prod. Co.*, 761 Fed. Appx. 356, 362 (5th Cir. 2019); *Michael v. Gen. Motors LLC*, 18-3658-CV, 2019 WL 5561211 (2d Cir. Oct. 29, 2019); *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 919 (11th Cir. 2018); *McLaud v. Indus. Res., Inc.*, 715 Fed. Appx. 115, 120 (3d Cir. 2017); *Sibley v. St. Albans Sch.*, 134 A.3d 789, 800–01 (D.C. 2016); *Conklin v. Anthou*, 495 Fed. Appx. 257, 261 (3d Cir. 2012); *Cook v. McPherson*, 273 Fed. Appx. 421, 425 (6th Cir. 2008); *Byrnes v. Lockheed Martin Corp.*, 257 Fed. Appx. 34, 36 (9th Cir. 2007); *Burks v. Wisconsin Dept. of Transp.*, 464 F.3d 744, 759 (7th Cir. 2006); *Harris v. Interstate Brands Corp.*, 348 F.3d 761, 762 (8th Cir. 2003); *Singh v. Blue Cross/Blue Shield of Massachusetts, Inc.*, 308 F.3d 25, 33 (1st Cir. 2002); *Koski v. Standex Intern. Corp.*, 307 F.3d 672, 676 (7th Cir. 2002); *Shannon v. Graves*, 257 F.3d 1164, 1167 (10th Cir. 2001); *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 221 (4th Cir. 1978).

a contention of fact."); *Stepp v. State Farm Fire & Cas. Co.*, 656 So. 2d 494, 496–97 (Fla. 1st DCA 1995) ("[S]ummary judgment 'is a proper and necessary means for accomplishing the purpose of terminating litigation short of a jury trial, which satisfies the constitutional 'right of access' to the courts as a means of resolving civil disputes.") (citation omitted).

Courts applying the federal summary judgment standard advance that purpose, without cutting litigants off "from their right of trial by jury if they really have issues to try." *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627 (1944). "[A]t the summary judgment stage[,] the judge's function is not himself to weigh the evidence and determine the truth of [a disputed] matter." *Jefferson*, 891 F.3d at 920 (citing *Anderson*, 477 U.S. at 249). "But when the 'facts are obvious and indisputable,' or when the district court considers disputed facts in the light most favorable to the nonmoving party, the district court does not intrude on the constitutional role of the jury when it considers whether a complaint fails as a matter of law." *Jefferson*, 891 F.3d at 920 (citation omitted). And that is because the jury's role is limited to the facts, to the extent there are factual issues for it to resolve:

> The jury is a finder of *fact*; it does not determine the law. The jury is charged with applying the law, as instructed by the judge, to the facts found by the jury. Consequently, if there is no material fact in dispute, the parties do "not suffer injury to any interest protected by the Seventh Amendment [right to a trial by jury]."

Sibley, 134 A.3d at 800-01 (original emphasis; citation omitted); *see Jefferson*, 891 F.3d at 920 ("'Even though [a grant of summary judgment] prevents the parties from having a jury rule upon [the] facts,' a jury trial is unnecessary 'when the pertinent facts are obvious and indisputable from the record[ ] [and] the only remaining truly debatable matters are legal questions that a court is competent to address.'") (citations omitted); *Shannon*, 257 F.3d at 1167 (the right to a jury trial "is not violated by proper entry of summary judgment, because such a ruling means that no triable issue exists to be submitted to a jury") (citing *Fidelity*, 187 U.S. at 319-20); *Koski*, 307 F.3d at 676 (the constitutional right to a jury trial "does not entitle parties to litigate before a jury when there are no factual issues for a jury to resolve"); *accord Burks*, 464 F.3d at 759; *Harris*, 348 F.3d at 762.

This Court's adoption of the federal summary judgment standard would continue to safeguard the right to a jury trial guaranteed under the Florida Constitution. *See*, *e.g.*, *Rye v. Women's Care Center of Memphis, MPLLC*, 477 S.W.3d 235, 262 (Tenn. 2015) ("adoption of the standards enunciated in the *Celotex* trilogy is entirely consistent with the constitutional right to trial by jury guaranteed by article I, section 6 of the Tennessee Constitution," which provides that "the right of trial by jury shall remain inviolate"); *Orme School v. Reeves*, 802 P.2d 1000, 1007-08 (Ariz. 1990) ("applying the [summary judgment] rule of *Anderson* in all civil cases will do no violence to our guarantee of trial by jury

under article 2, § 23 of the Arizona Constitution," which provides that the right to jury trial "shall remain inviolate."). And in doing so, Florida would be joining the vast majority of states that have already aligned themselves with the federal summary judgment standard. *See* Amicus Brief of the Florida Defense Lawyers Association in Support of Petitioners, filed in this case on December 13, 2019, at 2-7 (presenting chart with a breakdown of each of the 41 states that has adopted the federal standard or cited to it favorably).

C. There is no need to amend the Florida Rules of Civil Procedure

Florida's summary judgment rule is patterned after the federal rule. *See* Fla. R. Civ. P. 1.510, Authors' Comment, 1967. The two are substantially the same. *See supra*, n. 1. The Court is considering whether to change the standard by which Florida's rule is applied. That standard has been developed over time through decisional law. *E.g.*, *Holl*, 191 So. 2d at 43; *Visingardi v. Tirone*, 193 So. 2d 601, 605 (Fla. 1966). The same is true for the federal summary judgment standard. *E.g.*, *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 247-48; *Matsushita*, 475 U.S. at 586-87.

The point is that the change the Court is considering would affect the standard developed by case law, *not* the rule itself. Thus, it is not necessary to amend Rule 1.510 to effectuate a change to the standard by which the rule would be applied.

CONCLUSION

This Court should adopt the federal summary judgment standard set forth in *Celotex*, *Anderson* and *Matsushita*, and it does not need to amend Florida Rule of Civil Procedure 1.510 to put that change into effect.

Respectfully submitted,

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I hereby certify that, on December 16, 2019, this amicus brief was served through the Florida Courts E-Filing Portal to counsel listed below.

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I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with rule 9.210(a) of the Florida Rules of Appellate Procedure, as well as with the requirements of rule 9.370 of the Florida Rules of Appellate Procedure.

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