

# Morgan Lewis

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**VIA THE FLORIDA COURTS E-FILING PORTAL**

Florida Supreme Court  
Office of the Clerk  
500 South Duval Street  
Tallahassee, FL 32399

Re: *In re: Amendments to Florida Rule of Civil Procedure 1.510*, No. SC20-1490

To the Honorable Justices of the Florida Supreme Court:

The following comments regarding the Florida Supreme Court's amendments to Florida's summary judgment rule, Fla. R. Civ. P. 1.510, are submitted on behalf of the Retail Litigation Center, Inc. ("RLC"), the only organization dedicated to advocating for the retail industry's top priorities in the federal and state judiciary.

The RLC strongly supports the Florida Supreme Court's decision to amend the Florida summary judgment rule by adopting the federal summary judgment standard. The adoption of the federal summary judgment standard will foster efficiency and conserve judicial resources as well as litigants' resources. Granting summary judgment when a party "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" would avert the unnecessary costs that would otherwise accrue to parties and the judicial system from trying claims that cannot succeed. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In contrast, under the pre-amendment summary judgment standard, a claim can proceed to trial even in the absence of evidence supporting all elements of the claim if the movant cannot "conclusively" "prov[e] a negative, i.e., the non-existence of a genuine issue of material fact." *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966). This creates inefficiency and wastes resources for clients, lawyers, judges, jurors, and witnesses, as a claim can survive summary judgment only to have the court enter a directed verdict at trial because of the lack of evidence. See Thomas W. Logue & Javier Alberto Soto, *Florida Should Adopt the Celotex Standard for Summary Judgment*, 76 FLA. BAR J. 20 (Feb. 2002), available at <https://www.floridabar.org/the-florida-bar-journal/florida-should-adopt-the-celotex-standard-for-summary-judgments/> ("As stated by a dissenting judge whose views on summary judgment were later adopted by the U.S. Supreme Court, "[t]here is no point in sending a case to trial only to have the judge direct a verdict."").

Under the amendment, parties with evidence in support of their claims will continue to be able to present their cases to a jury, without the parties, courts, and jurors being forced to incur significant time, effort, and resources addressing claims at trial for which there is insufficient

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Florida Supreme Court  
March 15, 2021  
Page 2

evidence. The amendment therefore fulfills the rules' purpose of "secur[ing] the just, speedy, and inexpensive determination of every action." Fla. R. Civ. P. 1.010.

Sincerely,

/s/Anne Marie Estevez

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