

## **Summary Report of Opposition Briefs to Citizens' Initiative to Re-Regulate Electric Utility Industry**

Today is the deadline for opponents to file briefs on the Re-regulation ballot initiative. Parties have until 11:59 p.m. (ET) today to electronically file briefs but a number of important entities have already submitted their filings. All filed briefs can be found on the Florida Supreme Court Portal, click [here](#). FECA's brief and press release are attached for your convenience.

Initially, we have reviewed the filings that we feel are more pertinent to our position or that add different but strong arguments against the Initiative. A high-level review of those briefs, which include briefs from the Attorney General, PSC, IOUs, Florida Chamber, AIF, Audubon, PACE, Florida Association of Realtors and the League of Cities/Association of Counties are outlined below. We will continue to review other briefs and send an updated analysis next week.

You will notice the redundancy with the filings, the cases cited, and the general arguments because of the limited scope of the Supreme Court's review of ballot initiatives. The Court's advisory opinions on constitutional initiatives are limited to whether a proposed amendment complies with the single-subject requirement of article XI, section 3 of the Florida Constitution; whether the ballot title and summary comply with section 101.161(1), Florida Statutes; and whether the Financial Impact Statement complies with section 100.371, Florida Statutes. However, each of the opponents applied their unique circumstances to the Court's regimented review process to provide them with various perspectives on why the initiative should not be on the ballot in 2020.

### **Summary of Briefs by Certain Opponents of the Initiative:**

#### **1. Attorney General**

- Fails to sufficiently inform the public of the amendment's true purpose: to force IOUs out of the electricity market and to create a new, less competitive market that excludes substantial market participants.
- Voters will not be able to understand the true meaning and ramifications
- Voters are told they have the right to choose their energy provider but 75% of Floridians won't be allowed to choose their current IOU.
- Does not inform voters that IOUs must divest their generating assets – vastly shrinking the generating market

- Average voter not able to understand the highly regulated and complex electric industry
- Prohibits the Legislature from creating a competitive market due to barriers to enter the market (i.e. IOUs prohibited from entering the market)
- The public is unaware that they may be required to compensate the IOUs' stranded costs

## **2. Florida Public Service Commission**

- Customers would no longer have a voice in rate increases and could not appeal a rate increase to the Supreme Court
- Customers would give up their right to get electricity service (no obligation to serve) and there is no guarantee that service will be available in certain areas
- Customers will lose certain consumer protections
- Customers will pay rates plus stranded costs
- No assurance that future capacity demands will be met (uses Texas as an example of lower reserves)
- Storm restoration
- Fuel diversity
- Effect on customer-owned generation
- No carrier-of-last resort
- FERC, not the PSC, would have oversight

## **3. Florida Power & Light/Gulf Power Company**

- Contains terminology that the average voter cannot understand (i.e. investor-owned utility)
- Contains material ambiguities that render it defective (i.e. who are the "customers of IOUs, if IOUs can't sell electricity; if an IOU is a private company that generates and sells electricity, wouldn't a customer who begins to generate and sell electricity become an IOU; does IOU refer only to companies generating and selling electricity on the effective date of the amendment; can ousted IOUs return to the market by investing in a new company)
- Does not create new consumer protections

- Constitutional effects: Guarantee the right to possess and protect property; guarantee that no person will be deprived of property without due process of law; impairment of contracts

#### **4. Tampa Electric Company/Duke Energy Florida**

- Brief was written by a legal lexicographer, a grammarian and the coauthor of a leading treatise on legal interpretation.
- The Court should clarify the meaning of the Florida Constitution's single-subject restriction
- "Subject" should be defined at the lowest level of abstraction to avoid multiplicity of subjects (the greater the level of abstraction, the greater the number of subjects)
- Customers would gain 2 rights: one to choose among multiple providers and other to reject them and generate their own electricity
- Initiative should meet the standard of a clear thesis statement- a voter initiative should be focused and concrete enough that voters of average intelligence will understand its single purpose.
- If any part of the proposal can stand alone as a constitutional amendment in its own right it violates the single-subject restriction
- Multiple and far-flung purposes don't state a clear thesis or the Court's requirement for a "logical and natural oneness of purpose."
- Lack of concrete definition of investor-owned utility

#### **5. Jacksonville Electric Authority**

- Municipal electric utilities will not be insulated from the amendment's affects by virtue of their ability to "opt-out"
- Amendment will cause a substantial disruption of energy supply, impact contractual relations with IOUs and Cities
- Attempts to merge one purpose- the creation of competitive electricity markets with a second purpose where IOUs are singled out for disparate treatment
- Effects the functions of the PSC and legislative branch, FDEM and executive branch
- Independent market monitor will perform executive branch duties
- Significantly impact local government and alter their current operations (i.e. eliminates franchises)

- Average voter will not understand all the implications in the initiative
- Relies heavily on future, unknown legislative action

**6. Florida Chamber of Commerce/FL Economic Development Council**

- Logrolling argument: Promotes competition but excludes IOUs from competing
- Nullifies existing legislative structure (through the PSC)
- Florida would do what no other state has done- restructure a regulated electric market through a constitutional amendment (when it should be done legislatively)
- Competition does not mean lower rates

**7. Associated Industries of Florida (AIF)/FL Health Care and FL Hospital Assoc.**

- Misleading because the ballot statement says that the proposal **grants** customers of IOUs the right choose but the amendment actually **denies** customers the right to choose to continue receiving service from their current provider by prohibiting an IOU from engaging in the retail sale of electricity.
- Violates single subject by having 5 distinct subjects: 1) right to choose; 2) right to produce electricity; 3) denies choice by prohibiting IOUs to participated in the market; 4) eliminates the PSC's ratemaking duties; 5) creates an undisclosed cause of action of any Floridian to sue and compel the Legislature to act.

**8. League of Cities/Association of Counties/FL Sheriffs Assoc./FL Police Benevolent Assoc.**

- Constitutional effects: Impairs Franchise Fee ordinances and agreements, violates Home Rule power and conflicts with recently passed Solar amendment which is tied to the current regulatory compact.
- Huge adverse financial impacts.

**9. Audubon FL/The Nature Conservancy**

- Impact on ability of customer to choose source of energy generation
- Continued validity of existing laws on conservation and renewable energy
- Impact on solar generation and net metering

#### **10. Partnership for Affordable Clean Energy (PACE)/aka Energy Fairness**

- Rhetoric relating to “choice” and “competitive” markets are misleading
- Promise of consumer protections is misleading
- Adoption and effective dates are conflicting
- Significantly impacts hundreds, maybe thousands, of agreements between co-ops/munis and IOUs
- Barring an entire class of electric utility providers (IOUs) will likely have an opposite, anti-competitive effect.
- Nothing in the amendment which requires multiple providers to compete to serve in all areas of the State.

#### **11. Florida Association of Realtors**

- Amendment may affect property values and the costs associated with owning real property in Florida (utility costs/ad valorem taxes)
- Uncertainties could have significant impacts on property markets and local taxing districts
- Municipalities may need to increase ad valorem property taxes to replace lost revenues