

Summary of Opposition Briefs to the Re-Regulation Citizens' Initiative

Several more briefs were filed overnight, including a brief by the Florida Municipal Electric Association, in conjunction with OUC and FMPA. In addition, the Florida House and Senate, respectively, filed briefs in opposition. All filed briefs can be found on the Florida Supreme Court Portal by clicking [here](#).

The summaries below are now grouped by the various entities and each summary contains a link to the brief on the Florida Supreme Court's website. All the briefs are summarized in the report. For now, the high-level summaries focus on the briefs of interest. We will continue to review the report and send out updates or add summaries as needed.

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

Government Entities

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 Senate

- Fails to inform voters of the sweeping effects of requiring the Legislature to upend the entire electric utility regulatory framework
- Substantially alters all 3 branches of state government and local government
- Requires the Legislature to implement a broad, aspirational overhaul of the utility regulatory framework instead of components of a readily definable program
- Not self-executing because it lacks definitions
- Unanswered questions: How would the courts compel the Legislature? Would a circuit judge be able to order a special session? Could legislators be held in contempt if nothing passed? What if the Governor vetoes the legislation? Could the courts declare the law valid even if vetoed?
- Impacts the PSC
- Impacts the Governor and Cabinet siting functions for power plants and transmission lines
- State would create an RTO/ISO that the federal government would regulate
- Impacts taxes- sales tax, gross receipts tax (PECO funds), issuance of bonds
- No state allows for the sale of electricity by residential consumers
- **The ability for munis and co-ops to expand outside their territory is another change in policy**

- **Creates additional powers for municipalities to sell power across the state on their own initiative**
- **Co-ops were created with a specific purpose in mind and the initiative would allow co-ops to move away from their initial purpose and enter the competitive market. Co-ops would also have market advantages like the munis.**
- Restructuring of the electric market has never been accomplished through a constitutional amendment
- Fails to specify the myriad of statutes, regulations and orders that would be voided upon enactment
- **Co-ops and munis may believe the initiative does not apply to them but in fact they will be significantly affected**
- Not clear what authority the state will have over storm protection, reliability and hardening

3. [Florida House of Representatives](#)

- The amendment is an abuse of the initiative process
- Gave a comprehensive history of Florida's Constitution and the amendatory process since 1885.
- Citizens' initiatives are limited to proposed alterations to the Constitution and precludes adding policy changes
- Statutory law is easily amended and adaptable while constitutions are generally considered timeless documents that need little modifications.
- Framers of the Constitution rejected "direct democracy" through initiatives which allows citizens to directly control the enactment of laws and chose to limit citizen initiative power to propose changes that amend or revise the constitution
- An initiative cannot adopt new policy
- Initiative exercises legislative authority by creating a new statewide policy
- Alters separation of powers by giving the judiciary the power to monitor and manage the Legislature

4. [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

Electric Utilities

5. 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

6. 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

7. [FMEA/OUC/FMPA](#)

- Initiative falsely implies that Florida’s Public Power Utilities are unaffected unless they opt-in. There is no practical way public power utilities can avoid the initiatives overall negative impact.
- The Financial Impact Statement fails to meet the statutory requirement because it is indefinite, unclear and misleading
- Substantial impairment of existing contractual relationships for power supply, transmission service and generating plant joint ownership.
- Negative impact on FMPA bondholders: Holders of FMPA bonds for its interest in a nuclear plant will be impaired if FPL is prohibited from being a co-owner
- Alters the functions of state, federal and local governments.
 - State level: compromises the PSC’s ability to regulate territories and obligation to serve
 - Federal level: federal authority extends to wholesale sales of electricity by FERC and regulation of nuclear generation plants through the NRC
 - Local level: franchise fee agreements eliminated
- Constitutional effects include trampling on home rule authority; impairment of contract

- Impairment of contract violation includes territorial agreements, power purchase agreements, joint ownership agreements, interconnection agreements, transmission service agreements

8. **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

Tallahassee Trade Associations and Other Groups

9. **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

10. **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.

11. League of Cities/Association of Counties/FL Sheriffs Assoc./FL PBA

- 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.

12. 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

Environmental Groups

13. 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

Energy Policy Thinktank

14. 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.

Miscellaneous Groups

15. [America Senior Alliance](#)
16. [City of Fort Lauderdale, et al](#)
17. [City of Belle Glade, et al](#)