

**IN THE SUPREME COURT OF FLORIDA**

**Case No. SC15-780; SC15-890**

---

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: LIMITS OR  
PREVENTS BARRIERS TO LOCAL SOLAR ELECTRICITY SUPPLY

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: LIMITS OR  
PREVENTS BARRIERS TO LOCAL SOLAR ELECTRICITY SUPPLY (FIS)

---

---

**INITIAL BRIEF OF SPONSOR  
FLORIDIANS FOR SOLAR CHOICE, INC.**

---

ROBERT L. NABORS  
Florida Bar No. 97421  
GREGORY T. STEWART  
Florida Bar No. 203718  
WILLIAM C. GARNER  
Florida Bar No. 577189  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308  
(850) 224-4070 (Telephone)  
(850) 224-4073 (Facsimile)  
rnabors@ngnlaw.com  
gstewart@ngnlaw.com  
bgarner@ngn-tally.com  
legal-admin@ngnlaw.com

**Counsel for Sponsor  
Floridians for Solar Choice, Inc.**

## TABLE OF CONTENTS

	PAGE NO.
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE AND FACTS .....	1
SUMMARY OF ARGUMENT .....	6
ARGUMENT .....	9
I. THE SOLAR AMENDMENT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT .....	9
A. The Solar Amendment has a logical and natural oneness of purpose, and its component parts have a natural connection and relation as part of a single dominant plan or scheme to effect that purpose .....	10
B. The Solar Amendment does not substantially alter or perform the functions of multiple branches of government.....	15
C. The Solar Amendment's impacts on state law are not precipitous or calamitous, but are minimal and limited in scope and effect .....	18
II. THE SOLAR AMENDMENT'S BALLOT TITLE AND SUMMARY CLEARLY AND ACCURATELY DESCRIBE THE CHIEF PURPOSE OF THE AMENDMENT, AND PROVIDE VOTERS WITH SUFFICIENT INFORMATION TO MAKE AN INFORMED DECISION.....	23
III. THE FINANCIAL IMPACT STATEMENT ACCURATELY EXPLAINS TO VOTERS THE MINIMAL FISCAL IMPACT OF THE PROPOSAL .....	28
CONCLUSION .....	30
CERTIFICATE OF SERVICE .....	32
CERTIFICATE OF FONT SIZE COMPLIANCE.....	35

## TABLE OF AUTHORITIES

### PAGE NO.

#### Cases

<i>Advisory Op. to Att’y Gen. re Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose,</i> 880 So. 2d 630 (Fla. 2004).....	9
<i>Advisory Op. to the Att’y Gen. re Water and Land Conservation,</i> 123 So. 3d 47 (Fla. 2013).....	9, 10
<i>Advisory Opinion to the Att’y Gen. re Funding of Embryonic Stem Cell Research,</i> 959 So. 2d 195 (Fla. 2007).....	28
<i>Advisory Opinion to the Att’y Gen. re Referenda Required for Adoption &amp; Amend. of Local Govt. Comprehensive Land Use Plans,</i> 14 So. 3d 224 (Fla. 2009).....	28
<i>Advisory Opinion to the Att’y Gen. re Standards for Establishing Legis. Dist. Boundaries,</i> 2 So. 3d 161 (Fla. 2009).....	28
<i>Advisory Opinion to the Att’y Gen’l – Limited Marine Net Fishing,</i> 620 So. 2d 997 (Fla. 1993).....	17
<i>Advisory Opinion to the Att’y Gen’l – Restricts Laws Related to Discrimination,</i> 632 So. 2d 1018 (Fla. 1994).....	15
<i>Advisory Opinion to the Att’y Gen’l – Save Our Everglades,</i> 636 So. 2d 1336 (Fla. 1994).....	15, 24, 25, 27
<i>Advisory Opinion to the Att’y Gen’l re Additional Homestead Tax Exemption,</i> 880 So. 2d 646 (Fla. 2004).....	27

<i>Advisory Opinion to the Att’y Gen’l re Amendment to Bar Government From Treating People Differently Based on Race in Public Education,</i> 778 So. 2d 888 (Fla. 2000).....	8, 16
<i>Advisory Opinion to the Att’y Gen’l re Fish and Wildlife Conservation Commission,</i> 705 So. 2d 1351 (Fla. 1998).....	16
<i>Advisory Opinion to the Att’y Gen’l re Florida Minimum Wage Amendment,</i> 880 So. 2d 636 (Fla. 2004).....	18
<i>Advisory Opinion to the Att’y Gen’l re Limited Casinos,</i> 644 So. 2d 71 (Fla. 1994).....	17, 18, 19
<i>Advisory Opinion to the Att’y Gen’l re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking,</i> 814 So. 2d 415 (Fla. 2002).....	23, 24
<i>Advisory Opinion to the Att’y Gen’l re Protect People, Especially Youth From Addiction, Disease, and Other Health Hazards of Using Tobacco,</i> 926 So. 2d 1186 (Fla. 2006).....	8, 16, 29
<i>Advisory Opinion to the Att’y Gen’l re Public Protection from Repeated Medical Malpractice,</i> 880 So. 2d 667 (Fla. 2004).....	17
<i>Advisory Opinion to the Att’y Gen’l re Right to Treatment &amp; Rehabilitation for Non-Violent Drug Offenses,</i> 818 So. 2d 491 (Fla. 2002).....	15, 17, 18, 25
<i>Advisory Opinion to the Att’y Gen’l re Standards for Establishing Legis. Dist. Boundaries,</i> 2 So. 3d 175 (Fla. 2009).....	14, 16
<i>Advisory Opinion to the Att’y Gen’l re Tax Limitation,</i> 644 So. 2d 486 (Fla. 1994).....	23

**TABLE OF AUTHORITIES CONT.****PAGE NO.**

<i>Advisory Opinion to the Att’y Gen’l re Term Limits Pledge,</i> 718 So. 2d 798 (Fla. 1998).....	16
<i>Advisory Opinion to the Attorney General re Florida Marriage Protection</i> <i>Amendment,</i> 926 So. 2d 1229 (Fla. 2006).....	13, 23, 24
<i>Advisory Opinion to the Att’y Gen’l re Patient's Right to Know About Adverse Med.</i> <i>Incidents,</i> 880 So. 2d 617 (Fla. 2004).....	14
<i>Askew v. Firestone,</i> 421 So. 2d 151 (Fla. 1982).....	27
<i>Chiles v. Pub. Serv. Comm’n Nominating Council,</i> 573 So. 2d 829 (Fla. 1991).....	18
<i>Citizens v. Pub. Serv. Comm’n,</i> 146 So. 3d 1143 (Fla. 2014).....	18
<i>City of Coral Gables v. Gray,</i> 19 So. 2d 318 (Fla. 1944).....	15
<i>Evans v. Firestone,</i> 457 So. 2d 1351 (Fla. 1984).....	15
<i>Fine v. Firestone,</i> 448 So. 2d 984 (Fla. 1984).....	13, 14, 15
<i>Grose v. Firestone,</i> 422 So. 2d 303 (Fla. 1982).....	24
<i>Hill v. Milander,</i> 72 So. 2d 796 (Fla. 1954).....	28
<i>Pub. Serv. Comm’n v. Bryson,</i> 569 So. 2d 1253 (Fla. 1990).....	18

**TABLE OF AUTHORITIES CONT.****PAGE NO.****Florida Statutes**

Section 100.371 .....	passim
Section 101.161 .....	passim
Section 101.161(1) .....	3
Section 16.061 .....	1
Section 366.04(1) .....	21
Section 366.04(2) .....	21

**Other Authorities**

Chapter 04-33, Laws of Florida .....	4
Florida Rule of Appellate Procedure 9.210(a)(2) .....	35

**Constitutional Provisions**

Article IV, Section 10 .....	1
Article V, Section 3(b)(10) .....	1
Article XI, Section 3 .....	passim

## **STATEMENT OF THE CASE AND FACTS**

This matter comes before the Court upon a petition for an advisory opinion submitted by the Attorney General on April 24, 2015 in accordance with the provisions of Article IV, Section 10, Florida Constitution, and section 16.061, Florida Statutes. The question before this Court is whether the text of the proposed amendment entitled “Limits or Prevents Barriers to Local Solar Electricity Supply” (hereinafter “Solar Amendment” or the “Amendment”), complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and summary comply with section 101.161, Florida Statutes. This Court has jurisdiction pursuant to Article V, Section 3(b)(10), Florida Constitution.

Floridians for Solar Choice, Inc. is the Sponsor of the proposed amendment and has filed with the Secretary of State the proposed initiative petition which would amend the Florida Constitution by adding a new Section 29 to Article X. The proposed Amendment states as follows:

Section 29. Purchase and sale of solar electricity. –

(a) PURPOSE AND INTENT. It shall be the policy of the state to encourage and promote local small-scale solar-generated electricity production and to enhance the availability of solar power to customers. This section is intended to accomplish this purpose by limiting and preventing regulatory and economic barriers that discourage the supply of electricity generated from solar energy sources to customers who consume the electricity at the same or a contiguous property as the site of the solar electricity production. Regulatory and economic barriers include rate, service and territory

regulations imposed by state or local government on those supplying such local solar electricity, and imposition by electric utilities of special rates, fees, charges, tariffs, or terms and conditions of service on their customers consuming local solar electricity supplied by a third party that are not imposed on their other customers of the same type or class who do not consume local solar electricity.

**(b) PURCHASE AND SALE OF LOCAL SMALL-SCALE SOLAR ELECTRICITY.**

(1) A local solar electricity supplier, as defined in this section, shall not be subject to state or local government regulation with respect to rates, service, or territory, or be subject to any assignment, reservation, or division of service territory between or among electric utilities.

(2) No electric utility shall impair any customer's purchase or consumption of solar electricity from a local solar electricity supplier through any special rate, charge, tariff, classification, term or condition of service, or utility rule or regulation, that is not also imposed on other customers of the same type or class that do not consume electricity from a local solar electricity supplier.

(3) An electric utility shall not be relieved of its obligation under law to furnish service to any customer within its service territory on the basis that such customer also purchases electricity from a local solar electricity supplier.

(4) Notwithstanding paragraph (1), nothing in this section shall prohibit reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations, which do not prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier as defined in this section.

**(c) DEFINITIONS.** For the purposes of this section:

(1) "local solar electricity supplier" means any person who supplies electricity generated from a solar electricity generating facility with a



maximum rated capacity of no more than 2 megawatts, that converts energy from the sun into thermal or electrical energy, to any other person located on the same property, or on separately owned but contiguous property, where the solar energy generating facility is located.

(2) "person" means any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, government entity, and any other group or combination.

(3) "electric utility" means every person, corporation, partnership, association, governmental entity, and their lessees, trustees, or receivers, other than a local solar electricity supplier, supplying electricity to ultimate consumers of electricity within this state.

(4) "local government" means any county, municipality, special district, district, authority, or any other subdivision of the state.

(d) ENFORCEMENT AND EFFECTIVE DATE. This amendment shall be effective on January 3, 2017.

The proposed Solar Amendment includes the following title and summary as required by section 101.161(1), Florida Statutes:

**BALLOT TITLE:** Limits or Prevents Barriers to Local Solar Electricity Supply.

**BALLOT SUMMARY:** Limits or prevents government and electric utility imposed barriers to supplying local solar electricity. Local solar electricity supply is the non-utility supply of solar generated electricity from a facility rated up to 2 megawatts to customers at the same or contiguous property as the facility. Barriers include government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electric utility rates, charges, or terms of service imposed on local solar electricity customers.

On April 24, 2015, the Attorney General petitioned this Court for a written opinion as to the validity of the Solar Amendment. As set forth in the Attorney General's petition, the Secretary of State has determined that there are at least 72,025 valid petition signatures validated to the Division of Elections which constitute a number equal to or greater than 10 percent of the required signatures.

On May 7, 2015, the Financial Impact Estimating Conference, in accordance with the provisions of Chapter 04-33, Laws of Florida, met and approved a "Summary of Initiative Financial Information Statement" and a "Financial Impact Statement" as required by law. The Conference approved the following Financial Impact Statement to be placed on the ballot alongside the title and summary of the amendment.

#### FINANCIAL IMPACT STATEMENT

Based on current laws and administration, the amendment will result in decreased state and local government revenues overall. The timing and magnitude of these decreases cannot be determined because they are dependent on various technological and economic factors that cannot be predicted with certainty. State and local governments will incur additional costs, which will likely be minimal and partially offset by fees.

On May 13, 2015, the Attorney General petitioned this Court to consider whether the Financial Impact Statement is in accord with section 100.371, Florida Statutes. On May 21, 2015, this Court issued an order consolidating the two

advisory opinions for briefing purposes and set forth the briefing schedule and invited all interested parties to file briefs.

Floridians for Solar Choice, Inc., as Sponsor of the proposed Amendment, submits this Initial Brief as an interested party.

## **SUMMARY OF ARGUMENT**

The proposed Solar Amendment complies with the single subject requirements of Article XI, Section 3, as it presents one clear single subject to Florida voters, that is, the limitation or prevention of government and electric utility imposed barriers to supplying a limited amount of solar electricity to same-site and contiguous customers. The Solar Amendment complies with the single subject requirements of the Constitution, as its provisions limiting government's regulatory authority over local solar electricity suppliers, as defined in the Solar Amendment, and its restrictions on electric utilities' discriminatory imposition of special rates, charges, tariffs, classifications, terms of service, and utility rules and regulations on their customers who also obtain electricity from local solar electricity suppliers, constitute logically and naturally related component parts of a single dominant plan or scheme to limit or prevent barriers to local solar electricity supply.

The Solar Amendment also does not substantially alter or perform the functions of multiple branches of State government. While the Solar Amendment may limit the scope of the Legislature's regulatory authority, those impacts are not substantial.

Nor does the Solar Amendment have a substantial affect on local governments. Again, though the Solar Amendment would prohibit local

governments from the regulation of rates, services and territories of local solar electricity suppliers, the impact, if any, would be nominal as these are areas which are not currently within the purview of local government authority. Those areas are the exclusive domain of the Legislature, through the Florida Public Service Commission.

The Solar Amendment's ballot title and summary also complies with the statutory mandates of section 101.161, Florida Statutes. Both the ballot title and summary complies with the word limitations of the Statute and uses clear and unambiguous language to inform voters of the chief purpose of the Amendment. They also identify the Amendment's logically connected components which work together to accomplish its chief purpose. Further, the ballot title and summary avoids the use of advocacy language, sloganeering, or political rhetoric.

Finally, the Financial Impact Statement prepared by the Financial Impact Estimating Conference presents a clear and unambiguous statement as to the estimated increase or decrease in any revenues or costs to State or local governments resulting from the proposed initiative as required by section 100.371, Florida Statutes.

In sum, the Solar Amendment provides a clear and direct question to the Florida voters which complies with both the single subject requirement and the statutory requirement for the ballot title and summary, and it is not clearly or

conclusively defective on either ground.<sup>1</sup> Likewise, the proposed Financial Impact Statement is clear and unambiguous as to the estimated increase or decrease in any revenues or costs to State or local governments which are likely to result from the Solar Amendment. Accordingly, this Court should approve the Solar Amendment and allow its title and summary to be placed on the ballot accompanied by the proposed Financial Impact Statement.

---

<sup>1</sup> As this Court has noted, when considering whether an initiative proposal complies with the Single Subject requirement of Article XI, Section 3, as well as when considering the compliance of the ballot title and summary with the requirements of section 101.161, Florida Statutes, an amendment will only be invalidated when “the proposal is clearly and conclusively defective on either ground.” *Advisory Opinion to the Att’y Gen’l re Protect People, Especially Youth From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1190 (Fla. 2006) (Quoting *Advisory Opinion to the Att’y Gen’l re Amendment to Bar Government From Treating People Differently Based on Race in Public Education*, 778 So. 2d 888, 890-91 (Fla. 2000)).

## ARGUMENT

### I. THE SOLAR AMENDMENT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT.

Article XI, Section 3, Florida Constitution, reserves to the people the power to propose amendments or revisions to their Constitution.<sup>2</sup> However, the single subject requirement, contained within that provision, limits such citizen initiatives to one subject and those matters directly connected therewith. The single subject requirement is intended to prevent a proposed amendment from engaging in either of two practices: (a) logrolling; or (b) substantially altering or performing the functions of multiple branches of state government. *Advisory Op. to the Att’y Gen. re Water and Land Conservation*, 123 So. 3d 47 (Fla. 2013).

As set by this Court, in *Advisory Op. to Att’y Gen. re Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose* (Fairness Initiatives), 880 So. 2d 630, 634 (Fla. 2004):

A proposed amendment meets this test when it may be logically viewed as having a natural relation and connection as component parts or aspects of a single

---

<sup>2</sup> Article XI, Section 3, Florida Constitution provides:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith.

dominant plan or scheme. Unity of object and plan is the universal test.

*See also Water and Land Conservation*, 123 So. 3d at 47.

The Solar Amendment satisfies the single subject requirement, as it presents a single unified question to voters. That single question is whether there should be restrictions or limitations on the ability of government or electric utilities from imposing or placing charges or terms of service upon a local solar electricity supplier, as defined in the Amendment, from supplying up to two (2) megawatts of solar generated electricity to a customer who is on the same site, or upon contiguous property with the supplier. The Solar Amendment's provisions, which limit government regulations on a local solar electricity supplier's rates, service and territory and prevent electric utilities from imposing discriminatory rates, charges or terms of service, are consistent with this single dominant plan or scheme. Therefore, the Solar Amendment manifests a logical and natural oneness of purpose and does not result in the substantial altering or performing of multiple functions of government.

**A. The Solar Amendment has a logical and natural oneness of purpose, and its component parts have a natural connection and relation as part of a single dominant plan or scheme to effect that purpose .**

The Solar Amendment is designed to limit or prevent the imposition of government and electric utility-imposed barriers that impede the ability of limited-



scale distribution of solar electricity supply to customers located on site with, or on contiguous property to, a solar electricity generating facility, thereby making such supply infeasible or uneconomical. The Amendment does this in several ways. Initially, the Solar Amendment limits its application to local solar electricity suppliers, which are defined by Paragraph (c)(1) of the Amendment as follows:

“local solar electricity supplier” means any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of no more than 2 megawatts, that converts energy from the sun into thermal or electrical energy, to any other person located on the same property, or on a separately owned but contiguous property, where the solar energy generating facility is located.

As to this limited class of suppliers, the Amendment limits or prevents the imposition of barriers upon them by prohibiting state or local governments from regulating the supplier’s rates, service or territory, or enforcing monopoly rights against them from pre-existing service territories. These limitations are outlined within Paragraph (b)(1) of the Solar Amendment, which provides:

A local solar electricity supplier, as defined in this section, shall not be subject to state or local government regulation with respect to rates, service, territory, or be subject to any assignment, reservation, or division of service territory between or among electric utilities.

It would also prohibit efforts by other electric utilities to frustrate the use of local solar electricity supply by these suppliers through the use of discriminatory

special rates, charges, tariff provisions, classifications, terms or conditions of service, or utility rules or regulations. This particular limitation is contained within paragraph (b)(2) of the Solar Amendment, which states:

No electric utility shall impair any customer's purchase or consumption of solar electricity from a local solar electricity supplier through any special rate, charge, tariff, classification, term or condition of service, or utility rule or regulation, that is not also imposed on other customers of the same type or class that do not consume electricity from a local solar electricity supplier.

Further, the Amendment makes it clear that nothing within its terms would relieve an existing utility from its regulatory obligation under existing law to provide service to customers within its defined service territory on the basis that the customer also purchases electricity from a local solar electricity supplier. As stated in paragraph (b)(3) of the Solar Amendment:

An electric utility shall not be relieved of its obligation under law to furnish service to any customer within its service territory on the basis that such customer also purchases electricity from a local solar electricity supplier.

Finally, the Solar Amendment clearly sets forth the scope of its limitations by providing guidance on those regulations which would be permitted under the Amendment. Paragraph (b)(4) of the Solar Amendment provides:

Notwithstanding paragraph (1), nothing in this section shall prohibit reasonable health, safety and welfare regulations, including, but not limited to, building codes,

electrical codes, safety codes and pollution control regulations, which do not prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier as defined in this section.

Though the Solar Amendment addresses multiple existing and possible future barriers to the supply of local solar electricity, the proposed Amendment complies with the single subject requirement, as all of its components are a logical part of a single dominant plan to accomplish the chief purpose of the Amendment, which is to limit or prevent the establishment of barriers that impede the practice of limited-scale distributed solar electricity supply to customers located on site with, or on property contiguous to, a solar electricity generating facility, by a person or entity other than an electric utility.<sup>3</sup>

This Court has been clear and consistent on the standard of review in determining compliance with the logrolling prohibition within the single subject rule. In *Advisory Opinion to the Attorney General re Florida Marriage Protection Amendment*, this Court stated, “A proposed amendment must manifest ‘a logical and natural oneness of purpose’ to accomplish the purpose of Article XI, Section 3.” 926 So. 2d 1229, 1233 (Fla. 2006) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)). This Court has also noted that, in determining compliance with

---

<sup>3</sup> Paragraph (c)(3) of the Solar Amendment excludes a “local solar electricity supplier” from the definition of an “electric utility.”

the single subject rule “this Court must evaluate whether the proposal ‘may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme.’” *Advisory Opinion to the Att’y Gen’l re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 175, 181 (Fla. 2009) (quoting *Advisory Opinion to the Att’y Gen’l re Patient’s Right to Know About Adverse Med. Incidents*, 880 So. 2d 617, 620 (Fla. 2004)); see also *Fine v. Firestone*, 448 So. 2d at 990 (“Unity of object and plan is the universal test.”). The Solar Amendment satisfies this standard, as the various provisions are all part of a unified plan to achieve a common object.

Each of the provisions within the Solar Amendment are therefore incidental to the purpose of the Amendment, and are reasonably necessary to effectuate the main object and purpose. Giving effect to any one provision without the others would be fruitless. For example, should the voters choose to limit regulation so as to make local solar electricity supply practically and economically feasible, without also restricting the ability of electric utilities to impose discriminatory rates or surcharges, or burdensome conditions of service, against their customers who consume such local solar electricity supply, would severely undermine the purpose and intent of the Amendment. Similarly, if an electric utility is permitted to deny service to a person on the basis that the customer consumes solar electricity

supplied by a local solar electricity supplier, then the purposes of the Solar Amendment would also be defeated.

In *City of Coral Gables v. Gray*, 19 So. 2d 318 (Fla. 1944), this Court first addressed the question of whether a proposed Constitutional amendment embraced only a single subject. That decision recognized that “[i]n order to constitute more than one amendment the propositions submitted must not only relate to more than one subject, but must also have at least two separate and distinct purposes not dependent upon or connected with each other.” By that standard, the Solar Amendment clearly embraces only one subject.

**B. The Solar Amendment does not substantially alter or perform the functions of multiple branches of government.**

As an additional requirement of the single subject rule, a proposed amendment may not substantially alter or perform the functions of the multiple government branches and thereby cause multiple precipitous and cataclysmic changes in state government. *See Advisory Opinion to the Att’y Gen’l re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 496 (Fla. 2002); *Advisory Opinion to the Att’y Gen’l – Save Our Everglades*, 636 So. 2d 1336, 1340 (Fla. 1994); *Advisory Opinion to the Att’y Gen’l – Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994); *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984); *Fine v. Firestone*, 448 So. 2d at 990. An

initiative which affects several branches of government will not automatically fail; rather, it is only when a proposal *substantially* alters or performs the functions of multiple branches that it violates the single-subject test. *Treating People Differently Based on Race*, 778 So. 2d at 892 (quoting *Advisory Opinion to the Att’y Gen’l re Fish and Wildlife Conservation Commission*, 705 So. 2d 1351, 1353-54 (Fla. 1998)). Merely having an effect on a particular function or branch of government is acceptable, provided that the effect is not substantial.

As this Court has explained, “the fact that [a] branch of government is required to comply with a provision of the Florida Constitution does not necessarily constitute the usurpation of the branch’s function within the meaning of the single subject rule.” *Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d at 181 (quoting *Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d at 1192). Similarly, an initiative will not be removed just because there is some “possibility that an amendment might interact with other parts of the Florida Constitution.” See *Advisory Opinion to the Att’y Gen’l re Term Limits Pledge*, 718 So. 2d 798, 802 (Fla. 1998). An initiative may supersede a statutory provision, revoke the discretion of an agency, and limit the Legislature’s power to enact any other law in conflict with the proposed amendment, but still not be “sufficiently substantial to constitute the type of multiple precipitous and cataclysmic changes that the single-

subject requirement is designed to prevent.” *Advisory Opinion to the Att’y Gen’l re Public Protection from Repeated Medical Malpractice*, 880 So. 2d 667, 670 (Fla. 2004).

The Solar Amendment does not substantially alter or perform the functions of multiple branches of government. Though it may limit the regulatory authority of the Legislature, these limitations are consistent with the past determination by this Court. Such limited effects on the legislative functions are consistent with this Court’s findings of compliance in the Net Ban initiative, the Limited Casinos Initiative, and the Right to Treatment and Rehabilitation for Non-Violent Drug Offenses. *See Advisory Opinion to the Att’y Gen’l – Limited Marine Net Fishing*, 620 So. 2d 997 (Fla. 1993); *Advisory Opinion to the Att’y Gen’l re Limited Casinos*, 644 So. 2d 71 (Fla. 1994); *Right to Treatment and Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d at 491.

The Amendment also has no substantial effect on the function of any other branch or level of government, including local governments. Although the Solar Amendment nominally prohibits local governments from regulating the rates, service and territory of local solar electricity suppliers, under current law, such regulation of electricity suppliers is already beyond the purview of local governments and is within the exclusive domain of the Florida Public Service

Commission (“FPSC”), a legislative agency performing exclusively delegated state legislative functions.<sup>4</sup>

**C. The Solar Amendment’s impacts on state law are not precipitous or calamitous, but are minimal and limited in scope and effect.**

The purpose of the single-subject rule’s prohibition against a single amendment substantially altering or performing the functions of multiple branches of government is to avoid causing multiple ‘precipitous’ and ‘cataclysmic’ changes in state government.” *Advisory Opinion to the Att’y Gen’l re Florida Minimum Wage Amendment*, 880 So. 2d 636, 640 (Fla. 2004); *Right to Treatment & Rehab. for Non-Violent Drug Offenses*, 818 So. 2d at 495. This Court has recognized that although virtually every amendment will have some effect on multiple branches of government, not every amendment causes multiple cataclysmic changes so as to violate the constitutional constraints. *See Limited Casinos*, 644 So. 2d at 74.

---

<sup>4</sup> This Court previously established that the oversight and setting of rates for electric utilities is a legislative function. The Florida Public Service Commission was established by the Legislature and delegated a portion of its authority in this regard to establish rates and to regulate electric utility service and territory. *See Citizens v. Pub. Serv. Comm’n*, 146 So. 3d 1143, 1150 (Fla. 2014); *citing Pub. Serv. Comm’n v. Bryson*, 569 So. 2d 1253, 1254 (Fla. 1990)(noting that “the legislature granted the [Commission] exclusive jurisdiction over matters respecting the rates and service of public utilities.”); *Chiles v. Pub. Serv. Comm’n Nominating Council*, 573 So. 2d 829, 832 (Fla. 1991)(“[R]ate-making by the [Commission] is a legislative function.”).



In *Limited Casinos*, this Court approved a measure authorizing a limited number of gaming casinos to be located in specified cities and counties and specifying standards for their location and size notwithstanding objections by opponents that the proposed amendment might usurp the functions of multiple branches and levels of government by performing or usurping the Legislature's power over gaming and local governments' exercise of planning, land use and zoning functions. *Id.*

The proposed Solar Amendment similarly avoids broad impacts on state law or government, as it does not impact on the Legislature's authority over the provision or use of solar electricity generally, or authority over other forms of renewable or non-renewable electricity supply. Rather, it relates only to the Legislature's authority over a limited group of suppliers identified as a "local solar electricity supplier." That term is specifically defined in paragraph (c)(1) of the Solar Amendment.

The Solar Amendment in no way changes the state or local government's ability, as applicable, to regulate current uses of solar electricity generating facilities such as: by a property owner purchasing or leasing an array of solar photo-voltaic panels installed on the property where the owner will use the electricity; or by a power producer selling wholesale electricity to an electric utility.

With respect to electricity supplied by anyone other than a “local solar electricity supplier,” such as by an existing retail electric utility or an electricity wholesaler producing electricity from either conventional or renewable power generation technologies, or by a property owner using on its own property for its own use purchased or leased equipment that produces electricity from renewable energy sources, there is no impact by the Solar Amendment and existing law still controls.

The Solar Amendment does not create a new state agency and provides that government entities shall continue to have the authority to exercise their powers for the enhancement and protection of the health, safety and welfare of the public as they have under current law.<sup>5</sup> This limiting language in the Solar Amendment is designed to avoid undue impacts on government’s ability to protect the health, safety and welfare of the people while still accomplishing the chief purpose of the Amendment to limit or prevent barriers to the supply of local solar electricity. Under the Solar Amendment, the state and local governments maintain their respective authority to require solar electric generating facilities to meet existing electrical and building safety codes, for example.

---

<sup>5</sup> See Paragraph (b)(4) of the Solar Amendment.

The Legislature has delegated to the FPSC broad supervisory authority over public utilities, defined in Florida Statutes to include Florida's five investor-owned electric utilities and any other type of electric utility that is not municipally owned or a rural electric cooperative. Section 366.04(1), Fla. Stat. This broad supervisory authority includes authority over the rates public utilities charge, the service they provide, and the means they use to finance their operations. *Id.* In addition to this supervisory authority, the Legislature has also granted to the FPSC authority over all electric utilities, including municipally owned utilities and rural electric cooperatives, for a variety of purposes including enforcement of monopoly service territory. Section 366.04(2), Fla. Stat. None of these powers are altered by the Solar Amendment with respect to public utilities, municipal utilities or rural electric cooperatives, or with respect to any entity that does not fall within the Solar Amendment's narrow definition of a "local solar electricity supplier."

The Solar Amendment's impacts on law and government are limited in scope. The Amendment's restrictions apply only to the legislative function of government and only to a narrow class of persons or entities, leaving government's regulation of electricity supply largely unchanged. Furthermore, the regulatory activity proscribed by the Amendment is currently performed only by the FPSC, not local governments, so the Solar Amendment's impacts affect only one level of government. The changes to Florida's law and government proposed in the Solar

Amendment are clearly neither precipitous nor calamitous, and therefore do not violate the Florida Constitution's single-subject requirement.

**II. THE SOLAR AMENDMENT'S BALLOT TITLE AND SUMMARY CLEARLY AND ACCURATELY DESCRIBE THE CHIEF PURPOSE OF THE AMENDMENT, AND PROVIDE VOTERS WITH SUFFICIENT INFORMATION TO MAKE AN INFORMED DECISION.**

This Court's analysis of the ballot title and summary must focus on two questions: (1) whether the title and summary clearly and accurately inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, is likely to mislead the public. *See, e.g., Florida Marriage Protection Amend.*, 926 So. 2d at 1236; *but see Advisory Opinion to the Att'y Gen'l re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 419 (Fla. 2002) (because of the statutory 75-word limit, the summary and title cannot necessarily detail every aspect of a proposed initiative). The title and summary for the proposed Solar Amendment accomplish the fundamental purpose of explaining the "true meaning and ramifications" of the amendment. *Advisory Opinion to the Att'y Gen'l re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994).

The ballot title and summary for the proposed Solar Amendment clearly inform voters of the chief purpose of the proposal. The ballot title for the proposed amendment reads: "*Limits or Prevents Barriers to Local Solar Electricity Supply.*" The ballot summary reads:

Limits or prevents government and electric utility imposed barriers to supplying local solar electricity. Local solar electricity supply is the non-utility supply of solar generated electricity from a facility rated up to 2 megawatts to customers at the same or contiguous property as the facility. Barriers include government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electric utility rates, charges, or terms of service imposed on local solar electricity customers.

Initially, both the ballot title and summary satisfy the word limitations of section 101.161, Florida Statutes. Further, the title and summary are written in clear and unambiguous language so that "the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Florida Marriage Protection Amendment*, 926 So. 2d at 1236 (citing *Save Our Everglades*, 636 So. 2d at 1341).

The Court has recognized that because of the statutory 75- and 15- word limits the summary and title are not required to detail every aspect of a proposed initiative. See *Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d at 419; *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982). Rather, the ballot title and summary must describe only the major purpose of the initiative. "[I]t is not necessary to explain every ramification of a proposed amendment, only the chief purpose." *Right to Treatment &*

*Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d at 497(quoting *Save Our Everglades*, 636 So. 2d at 1341).

The title for the Solar Amendment informs the voters that the chief purpose of the amendment is to limit or prevent barriers to local solar electricity supply and summarizes that purpose in a clear and straightforward manner. The ballot summary clearly informs the voter of the scope of the Amendment's application to local solar electricity supply which is defined as the non-utility supply of solar generated electricity from a facility rated up to two (2) megawatts to customers located on the same or contiguous property as the facility. The definition in the summary tracks the definition provided in paragraph (c)(1) of the text, which provides:

“local solar electricity supplier” means any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of no more than 2 megawatts, that converts energy from the sun into thermal or electrical energy, to any other person located on the same property, or on separately owned but contiguous property, where the solar energy generating facility is located.

The voter is also informed as to the types of government regulatory and utility- imposed barriers that are limited or prevented from applying to these local solar electricity suppliers. For example, the ballot summary states that barriers include regulation of a local solar electricity supplier's rates, service and territory. This language tracks paragraph (b)(1) of the Amendment's text. The ballot

summary also states that barriers include unfavorable electric utility rates, charges, or terms of service imposed on local solar electricity customers. This language tracks paragraph (b)(2) of the Amendment's text. Though the Solar Amendment's text is not identical to the language used in the summary, these summary statements fairly describe the meaning and application of the operative paragraphs of the text.

The title and summary of the Solar Amendment not only provide a fair summary of the contents of the Amendment, but also accurately apprise the voter of the effect of the Amendment. The Solar Amendment limits barriers to local solar electricity supply by prohibiting government regulation of a local solar electricity supplier's (as defined in the Solar Amendment and described in the ballot summary) rates, service and territory – the types of regulations that are imposed on monopoly electric utilities by the FPSC. The imposition of such regulations to local solar electricity supply would act as a barrier, as the cost of compliance with such regulations would make the supply of electricity by a local solar electricity supplier to a single customer or a few customers from limited-scale solar generating facilities infeasible and uneconomical. The summary plainly explains that these types of regulations will not apply to the class of suppliers known as local solar electricity suppliers.



Additionally, the Solar Amendment prevents future barriers to local solar electricity supply by prohibiting an electric utility from imposing a special rate, charge, tariff, classification, term of condition of service, or utility rule or regulation against its customers who also obtain electricity from a local solar electricity supplier that is not also charged to other customers of the same type or class who do not consume electricity from a local solar electricity supplier. Such discriminatory measures, if imposed by utilities against their customers who also obtain electricity from a local solar electricity supplier, could create a barrier to local solar electricity supply by prohibiting it or making it practically or economically infeasible. The ballot summary clearly sets forth this restriction against the establishment of such barriers by electric utility entities.

There is nothing either expressed or implicit in the summary that would mislead a voter as to the contents of the Solar Amendment's text. The title and summary do not include emotional language or political rhetoric. *Cf. Advisory Opinion to the Att'y Gen'l re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004) (citing *Save Our Everglades*, 636 So. 2d at 1341-42).

The ballot title and summary for the proposed Solar Amendment therefore “advise the voter sufficiently to enable him intelligently to cast his ballot.” *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (quoting *Hill v. Milander*, 72 So. 2d

796, 798 (Fla. 1954)). Accordingly, this Court should hold that the title and summary comply with the requirements of section 101.161, Florida Statutes.

### **III. THE FINANCIAL IMPACT STATEMENT ACCURATELY EXPLAINS TO VOTERS THE MINIMAL FISCAL IMPACT OF THE PROPOSAL.**

Likewise, the Financial Impact Statement prepared by the Financial Impact Estimating Conference presents a clear and unambiguous statement as to the estimated increase or decrease in any revenues or costs to State or local governments resulting from the proposed initiative as required by section 100.371, Florida Statutes. This Court has reviewed many Financial Impact Statements for proposed initiatives and found this to be a narrower review focusing on the clarity of the statement and its accuracy in detailing likely costs. *See, e.g., Advisory Opinion to the Att’y Gen. re Referenda Required for Adoption & Amend. of Local Govt. Comprehensive Land Use Plans*, 14 So. 3d 224, 226 (Fla. 2009); *Advisory Opinion to the Att’y Gen. re Funding of Embryonic Stem Cell Research*, 959 So. 2d 195, 202 (Fla. 2007); *cf. Advisory Opinion to the Att’y Gen. re Standards for Establishing Legis. Dist. Boundaries*, 2 So. 3d 161, 164 (Fla. 2009) (Court has “an obligation to review the ballot *as a whole* to ensure that no part of the ballot — which includes the financial impact statement — is misleading.”) (emphasis in original).

In the case of the proposed Solar Amendment, the Financial Impact Estimating Conference found that a decrease in state and local revenues will result overall, but determined that the timing and magnitude cannot be determined, as they are dependent on various technological and economic factors that cannot be predicted with certainty. Merely because the timing and magnitude of the decrease in revenue cannot be determined does not invalidate a proposed Financial Impact Statement. This Court has upheld a finding of a range of possible impacts within a valid Financial Impact Statement, those for which the financial impact of the initiative were unable to be determined with any degree of certainty. *See Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d at 1195. The proposed Statement for the Solar Amendment is clear and represents an accurate appraisal of its financial impacts. This Court should find that the Financial Impact Statement for the Amendment complies with the requirements of section 100.371, Florida Statutes.

## **CONCLUSION**

As the proposed Solar Amendment presents a single subject in compliance with Article XI, Section 3, and because the ballot title and summary clearly and accurately describe the chief purpose of the proposal as required by section 101.161, Florida Statutes, this Court should allow the Solar Amendment to appear on the ballot. Additionally, because the Financial Impact Statement prepared by the Financial Impact Estimating Conference presents a clear and unambiguous statement as to the estimated increase or decrease in any revenues or costs to State or local governments resulting from the proposed initiative, the Court should find that the proposed Statement meets the requirements of section 100.371, Florida Statutes.

Respectfully submitted,

/s/ Gregory T. Stewart

ROBERT L. NABORS

Florida Bar No. 97421

GREGORY T. STEWART

Florida Bar No. 203718

WILLIAM C. GARNER

Florida Bar No. 577189

Nabors, Giblin & Nickerson, P.A.

1500 Mahan Drive, Suite 200

Tallahassee, FL 32308

(850) 224-4070 (Telephone)

(850) 224-4073 (Facsimile)

rnabors@ngnlaw.com

gstewart@ngnlaw.com

bgarner@ngn-tally.com

legal-admin@ngnlaw.com

**Counsel for Sponsor**

**Floridians for Solar Choice, Inc.**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following parties, this 10th day of June, 2015.

**By Electronic Mail via the Florida Courts E-Filing Portal, as authorized by Fla. R. Jud. Admin. 2.516:**

Hon. Pamela Jo Bondi  
Attorney General  
Alfred Lagran Saunders  
Assistant Attorney General  
Allen C. Winsor  
Solicitor General  
State of Florida  
The Capitol, PL-01  
Tallahassee, Florida 32399-1060  
oag.civil.eserve@myfloridalegal.com  
lagran.saunders@myfloridalegal.com  
allen.winsor@myfloridalegal.com

Timothy M. Cerio, Esquire  
Executive Office of the Governor  
State of Florida  
The Capitol  
400 S. Monroe Street  
Tallahassee, Florida 32399  
tim.cerio@eog.myflorida.com

Adam S. Tanenbaum, Esquire  
General Counsel  
Florida Department of State  
R. A. Gray Building  
500 S. Bronough Street  
Tallahassee, Florida 32399  
adam.tanenbaum@dos.myflorida.com

Matthew J. Carson, Esquire  
General Counsel  
Florida House of Representatives  
422 The Capitol  
402 S. Monroe Street  
Tallahassee, Florida 32399  
matthew.carson@myfloridahouse.gov

George T. Levesque, Esquire  
General Counsel  
The Florida Senate  
302 The Capitol  
404 S. Monroe Street  
Tallahassee, Florida 32399  
levesque.george@flsenate.gov

Raoul G. Cantero, Esquire  
T. Neal McAliley, Esquire  
White & Case, LLP  
Southeast Financial Center  
200 S. Biscayne Boulevard  
Suite 4900  
Miami, Florida 33131-2352  
raoul.cantero@whitecase.com  
ldominguez@whitecase.com  
nmcailley@whitecase.com  
fbailey@whitecase.com

Stephen H. Grimes, Esquire  
D. Bruce May, Jr., Esquire  
Holland & Knight LLP  
P.O. Drawer 810  
Tallahassee, Florida 32302  
stephen.grimes@hklaw.com  
bruce.may@hklaw.com

William G. Willingham, Esquire  
Michelle L. Hershel, Esquire  
Florida Electric Cooperatives  
Association, Inc.  
2916 Apalachee Parkway  
Tallahassee, Florida 32301  
fecabill@embarqmail.com  
mhershel@feca.com

Linda Loomis Shelley, Esquire  
Buchanan, Ingersoll & Rooney, PC  
101 North Monroe Street  
Suite 1090  
Tallahassee, Florida 32301  
linda.shelley@bipc.com

Harry Morrison, Jr., Esquire  
Florida League of Cities, Inc.  
301 South Bronough Street  
Suite 300  
Tallahassee, Florida 32302-1757  
cmorrison@flcities.com

Dan R. Stengle, Esquire  
Dan R. Stengle, Attorney, LLC  
502 North Adams Street  
Tallahassee, Florida 32301  
dstengle@comcast.net

Jody Lamar Finklea, Esquire  
Amanda L. Swindle, Esquire  
2061-2 Delta Way  
Tallahassee, Florida 32303  
jody.finklea@fmpa.com  
amanda.swindle@fmpa.com

Floyd R. Self, Esquire  
Berger Singerman LLP  
125 South Gadsden Street, Suite 300  
Tallahassee, FL 32301  
fself@bergersingerman.com  
awalker@bergersingerman.com  
sfulghum@bergersingerman.com  
drt@bergersingerman.com

Javier L. Vazquez, Esquire  
Berger Singerman LLP  
1450 Brickell Avenue, Suite 1900  
Miami, FL 33131  
jvazquez@bergersingerman.com  
mdavila@bergersingerman.com

Craig E. Leen, Esquire  
City Attorney, City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134-5717  
cleen@coralgables.com

M. Stephen Turner, Esquire  
Broad and Cassel  
215 South Monroe Street, Suite 400  
P.O. Drawer 11300  
Tallahassee, Florida 32302  
sturner@broadandcassel.com  
pwilliams@broadandcassel.com  
mubieta@broadandcassel.com

**By U.S. Mail:**

Tory Perfetti, Chairperson  
George Cavros, Esquire  
Floridians for Solar Choice, Inc.  
120 East Oakland Park Boulevard  
Suite 105  
Ft. Lauderdale, Florida 33334  
George@cavros-law.com

Hon. Rick Scott, Governor  
State of Florida  
Attn: General Counsel  
Office of the Governor  
The Capitol  
400 S. Monroe Street  
Tallahassee, Florida 32399-0001

Hon. Ken Detzner  
Secretary of State  
Attn: General Counsel  
Florida Department of State  
R. A. Gray Building  
500 South Bronough Street  
Tallahassee, Florida 32399

Hon. Steve Crisafulli, Speaker  
Florida House of Representatives  
Attn: General Counsel  
420 The Capitol  
402 South Monroe Street  
Tallahassee, Florida 32399-1300

Hon. Andy Gardiner, President  
The Florida Senate  
Attn: General Counsel  
409 The Capitol  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Financial Impact Estimating  
Conference  
Attn: Amy Baker, Coordinator  
Office of Economic and Demographic  
Research  
111 West Madison Street, Suite 574  
Tallahassee, Florida 32399-6588

/s/ Gregory T. Stewart  
GREGORY T. STEWART



## **CERTIFICATE OF FONT SIZE COMPLIANCE**

I HEREBY CERTIFY that the foregoing Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Gregory T. Stewart  
GREGORY T. STEWART