IN THE SUPREME COURT OF FLORIDA

Case No. SC15-780

Upon Request from the Attorney General for an Advisory Opinion as to the Validity of an Initiative Petition

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

INITIAL BRIEF OF OPPONENTS FLORIDA POWER & LIGHT CO., DUKE ENERGY FLORIDA, GULF POWER COMPANY, and TAMPA ELECTRIC COMPANY

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Florida Constitution

Florida Statutes

Other Authorities

STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested this Court's advisory opinion on the validity of an initiative petition filed under article XI, section 3 of the Florida Constitution. The title of the proposed amendment is "Limits or Prevents Barriers to Local Solar Electricity Supply" (the "Initiative"). The sponsor of the Initiative is a political committee called Floridians for Solar Choice, Inc. The Court's review addresses two legal issues: "(1) whether the proposed amendment violates the single-subject requirement of article XI, section 3, of the Florida Constitution; and (2) whether the ballot title and summary violate the requirements of section 101.161(1), Florida Statutes." *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 795 (Fla. 2014). The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.

IDENTITY OF THESE OPPONENTS

Florida Power & Light Company ("FPL"), Duke Energy Florida ("DEF"), Gulf Power Company ("Gulf Power"), and Tampa Electric Company ("Tampa Electric") (together, the "Companies") appear in opposition to the Initiative pursuant to this Court's Scheduling Order dated May 21, 2015. All of these opponents are investor-owned utilities operating under the jurisdiction of the Florida Public Service Commission ("FPSC") pursuant to Chapter 366 of the Florida Statutes.

The Companies have a serious and abiding interest in the manner in which providers of retail electric service operate and interact in Peninsular Florida. The safety and well-being of the Companies' many customers are dependent upon the properly coordinated functioning of the electric power grid in the state. The substantial interests of the Companies and their customers would be directly affected by the substantive provisions of the Initiative.

SUMMARY OF THE ARGUMENT

I. THE INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT

The Initiative, for the asserted purpose of eliminating undefined "barriers" to solar power, is contrary to Florida's comprehensively regulated system for the provision of safe, efficient electric power and provides constitutionally-mandated economic protection for one component of the solar industry at the expense of the state's electric power providers and their non-solar customers. The Initiative interferes with state and local protections and functions and disrupts funding of state and local activities. Finally, it forces voters to accept consequences they might not otherwise wish to accept in order to obtain the promised benefits of local solar providers.

Multiple functions of government are impacted

To persuade voters to allow this unprecedented status, the Initiative violates numerous, protective standards established under Florida law to provide voters with a fair and full understanding of the purpose and impact of an initiative. The Initiative systematically interferes with multiple governmental functions. The Florida legislature will be barred from regulating the beneficiaries of the Initiative, while simultaneously being barred from providing relief to the local utilities that will be adversely impacted. Service territories will be ignored by local solar

providers. Coordination among electric service providers will be degraded. Inefficiencies will be unavoidable. Health and safety regulations need not apply.

The Initiative interferes with a number of executive/agency activities. Ironically, it will obstruct development of the state's energy policy, including the promotion of solar power. Comprehensive growth and emergency energy policies will have to be developed around what could be a significant number of new, free-lance providers.[1]

Local governments are similarly impacted. These governments would be barred from comprehensive land-planning and environmental regulation to the extent these efforts could be said to "impede" the local solar electricity supplier (LSES).

Multiple unidentified articles and sections of the constitution are affected

The impact an initiative may have on other articles or sections of the constitution must be considered in determining whether there is more than one subject included in the proposal. There is no reference in the title, the summary or the amendment itself that addresses the multiple effects the Initiative will have on the constitution.

[1] The Initiative proposes to allow the LSES to generate up to 2 megawatts of power, according to the sponsor, enough to meet the energy requirements of 714 residential customers.

Article I, section 10's protection against impairment of contracts is implicated here. Territorial agreements providing for exclusive service within defined territories will be abrogated by the LSES, wherever they choose to locate.

The governmental, corporate and proprietary powers granted by article III, section 2 to municipalities and counties are eroded; particularly in regard to the rate-setting prerogatives of municipal utilities, which are circumscribed by the Initiative.

The Initiative also collides with article III powers by providing that LSES may override county and local health, welfare and pollution control regulations, as well as building and safety codes if, in the judgment of the LSES, such regulations and codes would "impede" their efforts.

The Initiative is replete with forbidden logrolling

"Logrolling" occurs when an initiative requires voters to approve a provision which they might disfavor in order to obtain a provision which they find beneficial. This packaging of disparate elements is not permitted. It occurs here repeatedly. To gain the imprecise benefits of the Initiative, voters must be willing to waive health and safety regulations, to permit restrictions on contract and property rights and to eliminate PSC oversight over rate and service issues. The logrolling prohibition is also breached by the Initiative's impact on three separate types of electric utilities.

II. THE BALLOT TITLE AND SUMMARY VIOLATE SECTION 101.161 OF THE FLORIDA STATUTES

Neither the current state of the law nor the dramatic impact on utility service and regulation are disclosed

The title and summary imply that the Initiative is required in order to permit the development of solar power in Florida. Voters are not informed of the extensive, existing, legislatively-supported development of solar power already provided under multiple provisions of Florida law.

Characterizing all regulation as "barriers," neither the title nor the summary discloses the disruption of the state's carefully calibrated and monitored electric grid that will necessarily follow implementation of the Initiative's "hands-off" policy toward any regulation that "impedes" LSES' efforts. There is no reference to the consequent transfer of costs to non-solar users.

There are omissions and inconsistencies within the summary

Franchise fees are a significant component of the budgets of numerous cities and counties. Neither the title nor the summary acknowledges the downward impact the Initiative will have on these revenues and the consequent reduction in services or increases in other taxes that will necessarily follow.

The proposed Amendment provides that LSES will be able to disregard health, safety, welfare and other similar regulations. Neither the title nor the summary informs the voter of these fundamental risks embedded in the

Amendment. Basic police powers are also negatively implicated, but that significant consequence is never disclosed.

The title and summary indicate that the proposed amendment "limits or prevents" barriers, while the Initiative itself provides that it is "limiting and preventing" such barriers. Thus, the title and summary are inconsistent with the amendment and misinform the voter. The employment of the undefined term "contiguous" is similarly uninformative and creates an obligation for the Court to engage in statutory construction that it has consistently eschewed in the past.

The title and summary rely on improper, subjective rhetoric

The title and summary are required to provide a neutral, dispassionate description of the legal effects of the Initiative, and no more. They are not to be sales devices. The proponents have selected subjective, political rhetoric to characterize the changes they are promoting. Regulations are not "barriers" if they have been properly enacted for protective or regulatory purposes. Rates adopted after approval by the PSC, which is charged with protecting ratepayers, are not "unfavorable" just because they may be inconvenient to the proponent's economic objectives.

For these reasons, the Court must strike the Initiative from the ballot.

ARGUMENT AND AUTHORITIES

I. STANDARD OF REVIEW

The issues before the Court are questions of law. *Fine v. Firestone*, 448 So. 2d 984, 987 (Fla. 1984). Accordingly, the standard of review is *de novo*. *Armstrong v. Harris,* 773 So. 2d 7, 16 (Fla. 2000), *cert. den.*, 532 U.S. 958 (2001). The Court has stated that it "must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people," *Askew v. Firestone,* 421 So. 2d 151, 156 (Fla. 1982). That sensitivity notwithstanding, amendments proposed by initiative are nonetheless subject to rigorous analysis because they do not "provide a filtering legislative process for the drafting of any specific proposed constitutional amendment or revision." *Advisory Op. re Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994); *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984). Such is the case presented by the Initiative.

II. INTRODUCTION AND CONTEXT

As a predicate to all that follows here, it is essential for the Court to have in mind that — contrary to the clear implication of the Initiative — Florida law already permits and extensively promotes solar energy production. More than that, "It is the policy of this state to promote, stimulate, develop, and advance the growth of the solar energy industry in this state." § 288.041(2), Fla. Stat. (2014). Contrary to the "barriers" implied by the sponsors of the Initiative, the Florida

legislature has found it to be in the public interest to promote the development of renewable energy sources, including solar energy, in Florida. § 366.91, Fla. Stat. (2014); *See* Section III B I *supra* for a detailed summary of Florida's comprehensive efforts in this regard.

In Florida, electric power is provided to customers via an "electric grid". To avoid expensive, overlapping facilities, power is provided by exclusive utility providers within defined service territories.

Further, the only rates that investor-owned electric utilities can charge are those set by the FPSC. *See, e.g.,* §§366.03, 366.041, 366.06, Fla. Stat. (2014). Rates must be based on the electric utility's cost to serve customers.

Grid costs are relatively fixed. The electric utility will fully recover its grid costs only if it sells as much power as it expects. This cost-of-service rate framework would be fundamentally disrupted if alternative suppliers were able to intrude upon existing service territories and siphon off an unknown number of customers.

This Court specifically described the problem of alternative suppliers in *PW Ventures, Inc. v. Nichols,* 533 So. 2d 281 (Fla. 1988), where the Court rejected a claim for exemption from FPSC regulation for retail sales by a cogeneration facility. The Court observed that the purpose of the legislative requirement for FPSC regulation of even a single-customer cogenerator was to avoid duplication of

facilities, "drastic change[s] in the regulatory scheme in this state," and the necessary recovery of lost revenue from the remaining customers of the electric utility.

The Initiative will directly result in the pernicious reality the Court rejected in *PW Ventures*. The intent of the Initiative is to mandate constitutionally that LSES be permitted to sell electricity, on a wholly unregulated basis, within previously established electric utility service territories.

The electric utility will incur the same fixed costs to maintain the grid, while selling significantly less electricity to the LSES customers. Consequently its normal rates would not allow recovery of the costs of serving the LSES customers.

Beyond rate-setting dislocations, the Initiative would have other harmful, undisclosed impacts:

- Electric utilities are subject to detailed regulation as to their quality of service, but section (b)(1) of the Initiative precludes such regulation of an LSES.

- To ensure reliability of the statewide grid, electric utilities are required to engage in comprehensive planning and coordination of their electric systems. LSES's would have no such duties.

- Basic health, safety and welfare regulations such as building codes, electrical codes, environmental regulations and pollution controls are at risk.

- Finally, LSES sales would not be subject to numerous taxes and franchise fees that apply to sales by electric utilities. These revenues are an essential component of the budgets for many state and local governmental entities.

Thus, while the Initiative is couched in carefully crafted terms as a way to "limit or prevent barriers to local solar electricity supply," it is truly a wolf in sheep's clothing that threatens to undermine the well-structured, well-balanced and well-proven system of electric utility regulation that currently exists in Florida, for the benefit of a particular set of commercial interests, i.e., local solar providers who seek to supply solar energy in an amount capable of powering a substantial number of homes or businesses.

III. THE INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT

Of the five methods of amending the Florida constitution, only amendment by initiative petition is restricted to a single subject. Thus, with one exception not germane here, amendments proposed by initiative "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const.

The rationale for the single-subject restriction is sensible and compelling. The initiative process requires nothing more than a sponsor and the requisite number of petition signatures to place a proposed amendment before the electorate. For this reason, the authors of the article XI mandated that "the electorate's attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution." *Fine v. Firestone*, 448 So. 2d at 998. In recognition of this important constitutional

mandate, this Court has demanded that initiative proposals adhere to "strict compliance with the single-subject rule," *Fine v. Firestone*, 448 So. 2d at 989; and has construed the single-subject provision in article XI, section 3 more stringently than the single-subject requirement for laws enacted by the Legislature. *Fine v. Firestone*, 448 So. 2d at 998.

This Court has held that the single-subject requirement includes the following critical components: (1) the amendment may not substantially affect multiple functions or levels of government; (2) the amendment must identify all articles and sections of the constitution that are substantially affected; and (3) the amendment may not deal with separate subjects in a manner that results in logrolling. The current Initiative violates all three requirements.

A. The Initiative substantially affects multiple functions and levels of government

This Court has held that a proposed amendment that substantially affects multiple functions or levels of government violates the single-subject restriction. *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984) ("In *Fine,* we found multiplicity of subject matter because the proposed amendment would have affected several *legislative* functions.") (emphasis by court); *Advisory Op. re Property Rights*, 699 So. 2d 1304, 1308 (Fla. 1997) ("In addition, we find that this initiative would have a distinct and substantial effect on more than one level of government."); *see Advisory Op. re 1.35% Property Tax Cap,* 2 So. 3d 968 (Fla. 2009 (receding from

Property Rights on other grounds); *Advisory Op. re Tax Limitation,* 644 So. 2d 486, 494 (1994) ("This initiative not only substantially alters the functions of the executive and legislative branches of state government, it also has a very distinct and substantial effect on each local government entity"). The current Initiative substantially affects multiple functions of state government, and substantially affects government at both the state and local levels.

1. The Initiative substantially affects the legislative and executive branches of state government

(a) Legislative functions

The Initiative precludes exercise of the Legislature's lawmaking power with respect to rates, service or territories of "local solar electricity supplier[s]." Initiative § (b)(1). The Initiative also restricts the Legislature's lawmaking power over rates, charges, tariffs, classifications, terms or conditions of service of electric utilities in connection with customers of local solar electricity suppliers. Initiative § (b)(2)

Thus, the Initiative essentially eliminates significant, fundamental functions of the FPSC. The FPSC performs legislatively-delegated administrative and quasi-judicial functions with respect to rates, service and territories of electric power providers. Ch. 366, Fla. Stat. The Initiative strips the FPSC of virtually all of those functions as they relate to local solar electricity suppliers.

The FPSC's carefully calibrated allocations of service territories would be compromised by the ability of LSESs to pick and choose among locations, as their isolated and individual economic interests dictate. Freed of any obligation to coordinate with existing electric providers, the LSESs will inevitably cause costly, inefficient duplication of facilities and providers. And, the LSESs will be free to do so without regard to consequences because of their immunity from regulation and the inability of existing electric providers to impose appropriate charges to fully cover LSES customer access to the electric grid.

The Initiative also substantially affects the Legislature's significant power and duty to protect the public's health, safety and welfare. Section (b)(4) of the Initiative effectively prohibits the Legislature from imposing health, safety, and welfare regulations on LSES that "prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier."

(b) Executive functions

The Initiative's restriction on health, safety and welfare regulations that would prohibit solar power generation by LSES also substantially affects multiple executive branch agencies at the state and local levels. The provision would impair the ability of such agencies to implement environmental, health, safety and zoning regulations. The Initiative also has an effect on the exercise of executive powers because it removes from the executive branch, in multiple ways, the power to

implement the state's energy policy, if it can be said to impact LSESs. This energy policy already includes a directive for "the full participation of citizens in the development and implementation of energy programs." § 377.601(2)(f), Fla. Stat. (2014). State agencies have the responsibility for implementation of section 377.601(2). § 377.703(1), Fla. Stat. (2014). The Division of Emergency Management is responsible for the development of an energy emergency contingency plan to respond to serious shortages of energy sources. § 377.703(2)(a), Fla. Stat. (2014). The Department of Agriculture and Consumer Services has been tasked with, among other things:

- "Formulation of specific recommendations for improvement in the efficiency of energy utilization in government, residential, commercial, industrial, and transportations sectors." § 377.703 at (2)(f)1.

- "Identifying barriers to greater use of renewable energy resources in this state, and developing specific recommendations for overcoming identified barriers, with findings and recommendations to be submitted annually in the report to the Governor and Legislature . . . ." *Id*. at (2)(h)3.

The Department of Agriculture is instructed to cooperate with other state agencies to investigate opportunities, pursuant to the National Energy Policy Act of 1992, the Housing and Community Development Act of 1992, and any subsequent federal legislation, for renewable energy resources and other renewable energy manufacturing, distribution, and installation that enhance this state's position as a leader in renewable energy research, development, and use.

§ 377.703(2)(h)4, Fla. Stat. (2014). Removing an entire sector — the local solar electricity suppliers — from the reach of statewide, coordinated, long-range regulation and planning reduces and otherwise interferes with the abilities of the Department of Agriculture and other state agencies to implement the state's comprehensive and balanced energy plan.

2. Local government functions are similarly impacted

At the same time, the Initiative substantially affects local governments in at least two respects. First, it would have a substantial impact on municipal-owned electric utilities, which would be subject to the restraints in the Initiative. The Initiative imposes its restrictions on all "electric utilities" and defines electric utility to include "governmental entities." Initiative § (b)(2),(3), (c)(3). Second, the Initiative would eliminate the possibility of local government stepping in to fill the regulatory vacuum created at the state level by also expressly prohibiting "local government regulation" of local solar electricity suppliers.

The Initiative's restriction on local government regulation of local solar electricity suppliers is not a trivial matter. The Initiative defines "local solar electricity supplier" as any entity:

> . . . 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 gut contiguous property, where the solar energy generating facility is located.

Initiative § (c)(1) (emphasis added) Two megawatts is enough electricity to serve a substantial number of customers. The Initiative's sponsor stated in its submission to the Financial Impact Estimating Conference that two megawatts is equivalent to the average electric peak demand of approximately 714 residential customers.[2] The Initiative would enable numerous commercial and residential complexes to generate and sell solar electricity to their tenants and neighbors as mini-utilities, constitutionally insulated from all regulatory oversight as to rates, service or locations at both the state and local level. The damaging duplication of utility facilities noted above will be unavoidable.

Thus, the Initiative affects multiple independent functions of Florida government. It also affects multiple levels of Florida government. This Court's jurisprudence affirms that Florida's constitution forbids a single initiative from modifying multiple functions and levels of state government. Such an initiative may not appear on the ballot.

[2] A local solar electricity supplier clearly could not meet customers' full-time electricity requirements, due to the limitations on the hours during which solar electricity is generated. Estimates indicate that the total energy generated by a two megawatt solar facility over the course of a year would serve the energy requirements of approximately 200-300 typical residential customers. *See, e.g.,* http://www.ouc.com/environment-community/solar/community-solar. In any event, numerous customers would be served by a two megawatt facility.

B. The Initiative substantially affects multiple articles and sections of the constitution and those articles and sections are not identified in the Initiative

The constitution permits amendment by initiative of more than one article or section so long as the amendment is limited to a single subject and does not substantially affect more than one government function. Nevertheless, the Court has recognized that, "how an initiative proposal affects other articles or sections of the constitution is an appropriate factor to be considered in determining whether there is more than one subject included in an initiative proposal." *Tax Limitation*, 644 So. 2d at 490. In addition, as part of its single-subject analysis, the Court has held that identifying substantially affected provisions of the constitution is imperative "in order for the public to fully comprehend the contemplated changes and to ensure that the initiative's effect on other unnamed provisions is not left unresolved and open to various interpretations." *Health Care Providers,* 705 So. 2d at 565 (quoting *Tax Limitation*); *accord, Treating People Differently Based on Race in Public Education,* 778 So. 2d 888 (Fla. 2000); *Fine,* 448 So. 2d at 989 (identification is "necessary for the public to be able to comprehend the contemplated changes in the constitution and to avoid leaving to this Court the responsibility of interpreting the initiative proposal to determine what sections and articles are substantially affected by the proposal."). The current Initiative expressly amends article X by creating a new section 29. The Initiative identifies

no other article or section of the constitution that is affected, despite the fact that it substantially affects at least two other articles and multiple sections.

The Initiative substantially affects article I, section 10, which protects contracts against impairment. The provision is understandably taken very seriously by this Court. *See Yamaha Parts Distributors, Inc. v. Eherman,* 316 So. 2d 557, 559, in which the Court notes that "virtually no degree of contract impairment has been tolerated in this state."

Investor-owned, cooperative, and municipal electric utilities enter into contracts establishing the boundaries of territories served, with the expectation that each utility has the exclusive right to provide electric service within its territory. The FPSC has authority to approve such agreements and to resolve disputes arising under the agreements. § 366.04, Fla. Stat. (2014). The Initiative impairs contract rights existing pursuant to such agreements by providing that local solar electricity suppliers would not be "subject to any assignment, reservation, or division of service territory between or among electric utilities."

The Initiative also substantially affects article III, section 2 of the Florida Constitution, which grants municipalities "governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services" so long as they are not in conflict with state law. Municipalities can and do exercise such powers by operating their own

electric utilities. The Initiative strips municipal utilities of the power to charge any rates that are in conflict with it, or enter into agreements or exercise rights provided by such agreements regarding exclusive territories that are in conflict with the Initiative.

The Initiative also substantially affects the article III powers of both municipalities and counties by providing:

> . . . 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.

Initiative § (b)(4) (emphasis added). Rules of statutory construction require the conclusion that the amendment would ban local safety, environmental, and zoning regulations that would interfere with the operations of a local solar electricity supplier, a prohibition that does not exist for any other utility or, for that matter, any other kind of business.

The Initiative fails to alert the voter to the fact that the Initiative will significantly alter these vital areas of local police power regulation. The Initiative, by failing to identify such provisions, also interferes with this Court's ability to resolve conflicts between constitutional provisions.

A comparison of the current Initiative with the initiative in *Advisory Opinion re Physicians Fees, supra,* illustrates this problem. The initiative in *Physician*

Fees required physicians to charge the same fee to all patients regardless of the source of payment. The current Initiative contains a similar provision that requires electric utilities to charge customers who also purchase from a local solar electricity supplier the same rate as is charged to other customers. However, the amendment in *Physicians Fees* contained a grandfather provision protecting contracts entered into prior to the amendment's adoption, which the current initiative does not. As a result of the grandfather provision, the Court found that the proposed amendment in *Physicians Fees* did not affect the impairment of contracts clause in article I, section 10 because the initiative "will only apply to fee agreements entered into following the enactment of the amendment." *Physicians Fees*, 880 So. 2d at 663.

Unlike the initiative in *Physician Fees*, there is no grandfather clause in this Initiative. Indeed, this Initiative is actually intended to substantially affect article I, section 10, by impairing existing contracts. Voters cannot be expected to be aware of this issue or, if they are, to be able to address this issue in the voting booth. Moreover, in a post-election challenge, the lack of any legislative history would leave this Court without any guidance on the question, so the Court would be tasked with the unacceptable alternative of writing in its own language. These are exactly the problems that this Court observed in *Fine* will arise when a proposed amendment does not clearly identify what portions of the constitution it affects.

The single-subject restriction was placed in the constitution to ensure that voters are not asked to consider changes to our organic law while being subjected to logrolling and uncertain impact on other unspecified constitutional provisions. The current Initiative fails to meet that important requirement.

C. The Initiative deals with separate subjects in a manner that results in logrolling

The single-subject requirement is intended to avoid logrolling — that is, including disparate provisions in a single amendment, "some of which electors might wish to support, in order to get an otherwise disfavored provision passed." *Advisory Op. re Physicians Fees*, 880 So. 2d 659, 662 (Fla. 2004). The Court has consistently refused to approve initiatives that contained multiple provisions that had this effect of logrolling. Typical of those cases was *Save Our Everglades*, 636 So. 2d 1336 . The amendment would have created a fund to restore the Everglades and would also have imposed a fee upon sugarcane processors as the source of revenue for the fund. The Court stated:

> There is no "oneness of purpose," but rather a duality of purposes. One objective – to restore the Everglades – is politically fashionable while the other – to compel the sugar industry to fund the restoration – is more problematic. Many voters sympathetic to restoring the Everglades might be antithetical to forcing the sugar industry to pay for the cleanup by itself and yet those voters would be compelled to choose all or nothing.

Id., 636 So. 2d at 1341. The current Initiative is a classic case of logrolling. While the *Save Our Everglade*s petition suffered from a duality of purposes, the current

Initiative suffers from a multiplicity of purposes. First, it prohibits government regulation of certain solar electricity suppliers:

> 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.

Initiative § (b)(1).

Second, in a separate provision, the Initiative prohibits private and municipal electric utilities from imposing certain rates and other requirements upon customers who also buy solar power from local solar electric suppliers:

> (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.

Third, at the same time that the Initiative precludes this basic form of utility regulation in Florida and forecloses full recovery of the cost of the grid - without necessary rate increases for non-LSES customers - the Initiative would require electric utilities to continue to serve LSES customers from the grid:

> (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.

Initiative § (b).

The logrolling implications of these three separate requirements are not technical or academic. A person who believes in limited government interference with business, and would therefore favor prohibiting government regulation of local solar electricity suppliers as provided in subsection (b)(1), might also be equally opposed to interference with a business's right to sell its product and enter into contracts, including being forced to provide service for which it is not adequately compensated. This voter might therefore be opposed to subsections (b)(2) and (3). The Initiative would compel such a voter to swallow the disfavored restriction on property and contract rights in order to obtain the favored restriction on government regulation.

This Court's decision in *Advisory Opinion to the Atty. Gen. re Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563 (Fla. 1998), is on point. As with the current Initiative, the initiative in *Health Care Providers* restricted both government regulation and private contracts. The Court held that the initiative violated the single-subject requirement, stating:

> The proposed amendment combines two distinct subjects by banning limitations on healthcare provider choices imposed by law and by prohibiting private parties from entering into contracts that would limit healthcare provider choice. The amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote on the healthcare provider issue in an "all or nothing" manner. Thus, the proposed amendment has a prohibited logrolling effect and fails the single-subject requirement.

705 So. 2d at 566. The lesson from *Health Care Providers* is simple and clear: a single initiative cannot include restrictions on both government regulatory authority and private conduct. The current Initiative does both.

Health, safety, zoning, or environmental regulations that might push the costs of the local solar supplier to an uneconomic level, might logically have "the effect of prohibiting the supply of solar-generated electricity" and could accordingly be ignored by the local solar supplier. Thus, voters who favor the purported elimination of "barriers" to solar power will be required, at the same time, to vote in favor of the elimination of regulations enacted for the voters' protection.

The average voter could be expected to want to have some governmental entity to turn to when it comes to service issues, like the amount of time it takes the LSES to answer a call or whether the LSES keeps appointment times, or corrects solar electric power outages in a timely fashion. The same voter would reasonably desire sensible land use, zoning, and environmental regulations. Here, the voter is forced to give up that assurance of recourse and those essential civic protections in hopes of gaining whatever benefits he or she may hope to derive from deregulating local solar electricity providers from rate and territorial regulation. This trade-off of local solar power in exchange for reduced safety, reliability, or consumer

protection is precisely the kind of logrolling that this Court has consistently and understandably rejected.

The Initiative further violates the logrolling prohibition by substantially affecting rights and functions of three separate types of electric utilities: private companies, rural electric cooperatives, and municipalities. The Initiative's restrictions are imposed on any "electric utility," which is defined to include "every person, corporation, partnership, association, *government entity*. . . ." Initiative § (c)(3) (emphasis added). Thus, the Initiative would apply not only to investor-owned electric utilities, but also to Florida's 16 electric distribution cooperatives and two generation and transmission cooperatives, and to Florida's 34 municipal-owned electric companies. Restrictions on private electric utilities on the one hand and rural electric cooperatives and publicly owned utilities on the other are three different subjects that could elicit different voter responses. A voter might favor such restrictions on private utility companies, but oppose them on cooperatives or municipal-owned utilities. Again, the Initiative gives such a voter no choice but to accept the disfavored provision in order to obtain the favored one.

IV. THE BALLOT TITLE AND SUMMARY VIOLATE SECTION 101.161 OF THE FLORIDA STATUTES

The ballot title and summary have been carefully crafted to disguise the true purpose, intent, and consequences of the amendment. That true purpose is to deregulate the local retail sale of electricity, but only for local solar electric

suppliers; and to exempt the customers they serve from having to reimburse the local electric utility for any costs it has to incur because of such deregulation. The local electric utility's other customers will effectively be required to subsidize the solar power generator's customers. This would represent a complete departure from the manner in which retail electric service providers have been regulated in Florida for many decades. Voters could not reasonably be expected to understand from the summary as written the grave nature of such a change or its impact on them, as electric utility customers.

The ballot title and summary must "provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Advisory Op. to Att'y Gen. Re: Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998); § 101.161(1), Fla. Stat. (2013). The accuracy and clarity of the ballot title and summary are of "paramount importance" because they are all the voter sees in the voting booth; the text is not on the ballot. *Armstrong,* 773 So. 2d at 12-13.

The ballot title and summary of the proposed amendment violate the requirements of Florida law in three respects. First, they are misleading on the current state of the law and the legal effect of the Initiative; thus, the Initiative "flies under false colors" or "hides the ball." Second, there are substantive omissions and inconsistencies within the ballot summary. Finally, the title and

summary utilize political rhetoric and emotional appeal rather than properly informing the voter of the legal effect of the Initiative.

A. The ballot title and summary fail to reflect the current state of the law and fail to disclose the sweeping changes in utility service and regulation that will result from the Initiative

1. Solar electricity is amply supported under current law

A ballot summary must fairly and accurately inform the voter of the legal effect of the proposed amendment. *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). An amendment cannot substantially alter existing law without fairly reflecting the current state of the law. *See Askew,* 421 So. 2d at 156 (summary was fatally defective for failing to explain current law on lobbying ban or that the proposal weakened current law; "The problem, therefore, lies not with what the summary says, but, rather, with what it does not say."); *Advisory Op. to Att'y Gen. Re: Casino Authorization,* 656 So. 2d 466, 469 (Fla. 1996) (summary was misleading by suggesting that the amendment was necessary to prohibit casinos in this state, when existing law already prohibited casinos; "This language is misleading not because of what it says, but what it fails to say"). Implementing these protective requirements, this Court refuses to approve ballot language that "flies under false colors" or "hides the ball." *Armstrong,* 773 So. 2d at 16.

The ballot title and summary of the Initiative violate this requirement because they fail to advise voters of comprehensive, existing Florida law addressing solar electricity and the sweeping changes the Initiative would make to

a series of interrelated provisions of Florida law. The title — "Limits or Prevents Barriers to Local Solar Electricity Supply" — implies that this Initiative is necessary to permit production of local solar energy. That implication is demonstrably false, because Florida law already permits and strongly promotes solar energy production. "It is the policy of this state to promote, stimulate, develop, and advance the growth of the solar energy industry in this state." § 288.041(2), Fla. Stat. (2014). Section 366.91 of the Florida Statutes, entitled "Renewable Energy," provides that "The Legislature finds that it is in the public interest to promote the development of renewable energy resources [defined to include solar energy] in this state." § 366.91(1), Fla. Stat. (2014). And, substantial solar production is occurring.

Even more to the point, Section 163.04, Fla. Stat. (2014), is known as the Florida Home Owners' Solar Rights Act and provides in pertinent part:

> Energy devices based on renewable resources.—
>
> > (1) Notwithstanding any provision of this chapter or other provision of general or special law, the adoption of an ordinance by a governing body, as those terms are defined in this chapter, which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited.

This prohibition on impediments to local solar energy is complemented by section 163.08, Fla. Stat. (2014) which empowers local governments to fund local solar

energy systems with non-ad valorem assessments. Florida statutes also protect and encourage local solar electricity supply through the use of easements and tax incentives. *See* § 704.07, Fla. Stat. (2014) and § 212.08(7)(hh), Fla. Stat. (2014). Other statutes encourage the increase of local solar electricity and prevent any rate or rate structure from being established by public utilities that discriminates against the use of local solar electricity.

In contrast to all of these existing laws promoting local solar electricity, the title and summary create the false impression that there are unspecified barriers to local solar energy supply. They fail to inform the voter that there already are existing laws prohibiting deterrents to local solar energy supply and, in fact, that the existing laws specifically encourage local solar energy supply.

In addition, Florida law already gives the FPSC jurisdiction over cogeneration and small power production, including transmission of power generated by a customer to another facility owned by the customer. § 366.051, Fla. Stat. (2014). Public and municipal utilities and rural electric cooperatives are required to offer purchase contracts to cogenerators and small power producers, including individuals generating solar electricity at their own property, § 366.91(3), Fla. Stat. (2014); and to "develop standardized interconnection agreement[s] and net metering program[s] for customer-owned renewable generation." § 366.91(5), (6), Fla. Stat. (2014).

Part III of chapter 377 of the Florida Statutes "provides incentives" including grants and pilot programs for the use of "renewable energy," expressly defined to include solar energy. § 377.802, 377.803(4), Fla. Stat. (2014). Existing law already forbids local ordinances and property restrictions from prohibiting or having the effect of prohibiting the installation of energy devices based on renewable resources, including solar collectors. § 163.04, Fla. Stat. (2014).

This is a far cry from a legal landscape filled with "barriers" prohibiting or discouraging the use of solar electricity, as the Initiative's title and summary strongly suggest. In this regard, the Initiative is essentially just the flip side of the amendment at issue in *Casino Authorization,* which purported to prohibit casino gambling except in certain locations, when casino gambling was already prohibited statewide. 656 So. 2d at 469. For the ballot title and summary of the Initiative to suggest that this proposal is necessary to allow local solar electricity is misleading, and solicits a "yes" vote on false pretenses.

2. The title and summary omit any reference to significant changes in Florida law

The ballot title and summary of the Initiative further fail to even hint at the sweeping changes to existing law and consumer protections that will necessarily follow its implementation. Preservation of the carefully established utility regulatory system in Florida was at the heart of this Court's analysis and ruling in *PW Ventures.* As the Court there noted, utility regulation in Florida "necessarily

contemplates the granting of monopolies in the public interest." *PW Ventures,* 533 So. 2d at 283. Without the existing regulatory structure, the state could experience uneconomic duplication of facilities, grid reliability problems, diversion of revenue away from regulated electric utilities, and shifting of cost deficits to other customers of the utilities, together "drastically chang[ing] the regulatory scheme in this state." *Id.*

If voters are being asked to essentially abandon the longstanding, orderly statewide system of public utility regulation and operation in Florida, they must be informed of that legal effect in the title and summary – but they are not. If voters are being asked to force non-solar electric customers to shoulder the cost of solar customers' choices, they must be told that in the summary — but they are not. If voters are being asked to accept reductions in the franchise fees collected by cities and counties and the consequent reduction in local governmental services, they should be told that in the summary — but they are not.

Not only does the summary fail to disclose these significant legal consequences, but more disturbingly, it dissembles as to the true legal effect of the Initiative. Taken together, the key elements of the proposed amendment demonstrate that its real purpose is to create an unregulated, unsupervised, undefined market for solar energy. The result will be manifestly disruptive of Florida's carefully regulated electric energy system, for the explicit economic

benefit of a particular industry. The business interests promoting this initiative will stand as the only unregulated and constitutionally protected class of power providers in Florida. Elsewhere, vendors of solar electricity systems are simply competitive commercial enterprises — but in Florida, they will wear the badge of "LSES" and enjoy unparalleled constitutional protection and subsidies. Voters are entitled to "fair notice" of the actual impact of the Initiative, but neither the title nor the summary of the Initiative provides anything remotely close to fair notice.

B. There are substantive omissions and inconsistencies within the ballot summary

The Court must invalidate a proposed amendment if there are substantive omissions from the ballot summary or substantive inconsistencies between the ballot summary and the operative text of the amendment. The Court has stricken several prior proposed amendments because of misleading inconsistencies between the summary and text of the amendments. *Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Government from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888, 896-897 (Fla. 2000) (striking four related anti-discrimination amendments because their ballot titles and summaries referred to "people" while the texts referred to "persons," thus failing to "give voters notice that corporations may also be prohibited from receiving preferential treatment."); *Advisory Op. re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (striking amendment for ballot summary's use of "citizens" in

contrast to text's use of phrase "every natural person," which Court concluded was material, misleading, and "leaves voters guessing whether the terms are intended to be synonymous or whether the difference in terms was intentional."); *Casino Authorization*, 656 So. 2d at 468 (striking casino gaming amendment because of inconsistency between summary and text, where summary referred to gaming in "hotels" but text said "transient lodging establishments," which was broader). The Initiative's title and summary likewise violate the requirements of clear and accurate disclosure of the actual language and legal effect of its text.

1. The summary fails to disclose the Initiative's impact on local revenue sources

Neither the title, the summary, nor the Initiative itself discloses the potential negative financial impact of the Initiative on franchise fees that are paid to the municipalities in which voters reside. Thus, a voter will not be informed that a "yes" vote on this ballot could result in the voter enjoying fewer municipal services or paying higher municipal taxes to make up for the lost electric utility franchise fee payments.

Franchise fee charges collected by electric utilities and remitted to municipalities are not taxes but, instead, are bargained for in exchange for specific property rights relinquished by the municipalities. *City of Plant City v. Mayo*, 337 So. 2d 966, 973 (Fla. 1976). Municipalities rely upon franchise fees as a funding source for numerous municipal services and functions. Utilities pay franchise fees

in exchange for a bundle of benefits provided by the municipalities. The service contemplated by the Initiative does not rely on these benefits. Accordingly, there will be no basis for franchise agreements between LSES and municipalities and, consequently, no basis for payment of franchise fees. The reduction in the amounts paid by the utilities will not be offset by payments from LSES. To the extent local solar electricity suppliers displace sales that would otherwise be made by local electric utilities, the franchise fees paid by the utilities will be reduced, because they are based on sales. Other state and local government revenues that are based on utility sales will be reduced as well. This impact is recognized in the Financial Impact Estimating Conference's report on the Initiative, which finds that "revenues from the following sources will be lower than they otherwise would have been as sales by local solar electricity suppliers displace sales by traditional utilities: State regulatory assessment fees; Local government franchise fees; Local Public Service Tax; State Gross Receipts Tax; State and local Sales and use Tax; and Municipal utility electricity sales." Nowhere is a voter informed of this inevitable impact in the title, summary or text of the Initiative.

2. The summary fails to disclose that health, safety, and welfare regulations would be prohibited if they prohibit solar electricity

The Initiative 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.

Initiative (b)(4) (emphasis added).

The provision is worded to give the appearance of preserving governments' ability to regulate in the interests of health, safety and welfare, but in reality has the effect of placing LSES beyond the reach of such regulations if they might affect rates, service or territory and may consequently have the effect of prohibiting such LSES from selling solar-generated energy. Having omitted any reference to this provision, the summary necessarily also fails to advise the voter that such a result could occur on the basis of undefined, subjective prohibitions or prohibitive "effects." *Id.* Finally, the summary fails to advise voters that this constitutionally authorized elimination of reasonable health, safety, and welfare regulations could have the effect of suspending fundamental, protective police powers. These are material omissions that render the summary fatally misleading.

In today's regulatory climate voters may reasonably assume that an unsafe product or service cannot be used or sold and that there would be remedies when customary planning, environmental or safety regulations are ignored or violated. Not so under this proposed amendment, which requires the provision of local solar electricity to take priority over a wide, but unspecified range of health, safety, and welfare regulations, if the two conflict. This will have a particularly limiting

impact on the ability of governments to enforce zoning, land use, and licensure requirements that would otherwise protect consumers and the public. The ballot summary makes no reference to this exceedingly significant element of the Initiative and consequently violates fundamentally the requirements for accurate and fair disclosure under section 101.161 of the Florida Statutes.

3. The and/or inconsistency is misleading

This Court has previously held that the use of "and" in the summary and "or" in the text, or vice versa, can be misleading, if the context would produce a different result for each of those words. Thus, in *Armstrong v. Harris,* 773 So. 2d 7 (Fla. 2000), this court struck down an amendment that required Florida's broader prohibition against cruel "or" unusual punishment to be linked to the Supreme Court's interpretation of the Eighth Amendment's narrower prohibition of cruel "and" unusual punishment. 773 So. 2d at 16. The fatal flaw in *Armstrong* was that the ballot summary used the ambiguous phrase "and/or," implying that the amendment would increase the protection against cruel or unusual punishments when in fact the legal effect would be the opposite. *Id.* The problem arose because "and" and "or" have different meanings, and the amendment would operate differently depending on which meaning applied. *Id.*

That same problem exists here because both the title and summary state that the proposed amendment "limits *or* prevents" barriers to local solar electricity,

while Paragraph (a) of the Initiative states that it is "limiting *and* preventing" such barriers. Reading only the title and summary, the voter is not informed that prevention is a certainty. The voter is told that "barriers" will be limited "or" prevented, and that "barriers" are government regulations and unfavorable electric utility actions. However, prevention is not assured in the title and summary as it is in the Initiative itself. The voter is not informed that regulation and utility company actions will be prevented. The text of the Initiative, on the other hand, provides that the Initiative accomplishes its purpose "by limiting ***and*** preventing regulatory and economic barriers." Initiative § (a). The text of the Initiative promises prevention, which is more extensive than merely limiting. The latter — "and" — is an accurate portrayal of the legal effect of the Initiative because, in fact, regulations by government and actions by electric utilities are prevented. The use of the ambivalent "or" in the title and summary soft-sells the Initiative and misleads the voter. This is not permitted under the accuracy and clarity requirements of section 101.161 of the Florida Statutes.

4. The summary is vague, and inconsistent with the text, regarding the supply of solar electricity to "contiguous" properties

The summary fails to define "contiguous," so from the outset the voter cannot be certain what properties may be served by any given local solar electricity supplier. This is a particularly troublesome omission considering the substantial

number of customers that could be served by 2 megawatts of electricity.[3] Failing to define "contiguous" deprives the voter of the information necessary to assess the actual legal effect of the Initiative and thus violates the clarity requirement of section 101.161 of the Florida Statutes.

The dictionary definition of "contiguous" is "being in actual contact; touching along a boundary or at a point; touching or connected throughout in an unbroken sequence." Merriam-Webster Dictionary online (Merriam-webster.com). Even if a voter assumed that "contiguous" meant "physically adjacent to," the voter would be unaware that the ballot summary is inconsistent with the text of the proposed amendment. The summary defines local solar electricity supply as extending to customers "at the same or contiguous property" as the generating facility, whereas paragraph (c)(1) in the text of the Initiative says that local solar electricity supply is available only to customers "located on the same property, or on *separately owned* but contiguous property." (Emphasis added.) The summary is inaccurate because it is broader than the text, which would exclude contiguous property under the same ownership as that of the site of the generating equipment. In this respect the Initiative is analogous to the gaming amendment in *Casino Authorization*, which was stricken because the summary used the more narrow term "hotel" while the text used the broader term "transient lodging

[3] See discussion on page 17.

establishment." 656 So. 2d at 468. Likewise in this case, the voter cannot discern from the ballot summary the more limited scope of properties that can be served, and therefore the summary is inaccurate and misleading in violation of section 101.161 of the Florida Statutes.

C. The ballot title and summary of the Initiative improperly employ subjective rhetoric

This Court has held that the ballot summary must set forth "the legal effect of the amendment, *and no more*":

> Moreover, the ballot summary is no place for subjective evaluation of special impact. *The ballot summary should tell the voter the legal effect of the amendment, and no more. The political motivation behind a given change must be propounded outside the voting booth.*

Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984) (emphasis added). Implementing this essential protective principle, the Court has invalidated ballot summaries that relied upon impermissible political rhetoric or solicited an emotional response. *E.g., Advisory Op. to the Atty. Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004) (use of phrase "provides property tax relief… constitutes political rhetoric that invites an emotional response"); *Save Our Everglades,* 636 So. 2dat 1341 (invalidating ballot title's use of "save" because "A voter responding to the emotional language of the title could well be misled as to the contents and purpose of the proposed amendment."); *Evans,* 457 So. 2d at 1355 (improper to include "editorial comment" that provision of

amendment elevating summary judgment rule to constitutional status would "avoid unnecessary costs").

The Initiative intentionally violates this prohibition in the title and the summary. Both wrongfully rely on the word "barriers" to describe what the amendment is purporting to change or eliminate. "Barriers," however, has a universally understood negative connotation. It is a pejorative description of the sponsor's view of any regulation as an unwanted and problematic obstacle. What is required is a neutral and dispassionate description of the legal effects of the Initiative. Instead, the title and summary misleadingly portray in an exclusively negative light long-standing, effective, state-mandated utility regulations overseen by a body expressly charged with protecting the consumer. "Barriers" is intended to induce the voter to believe that the Initiative eliminates only draconian, or indefensible regulations that thwart the development of solar power in Florida.

The ballot summary reinforces this negative implication by stating that such "barriers" include governmental regulation of rates, service, and territory and "unfavorable" electric utility rates, charges, or terms of service. This implies that only "bad" regulations and charges would be limited or prevented, when, in fact, all regulation and consumer protection is targeted, whatever the benefit.

The term "unfavorable," besides having a negative and confusing connotation, is ambiguous as to what standard might make a particular electric

utility rate charge or term of service "unfavorable," or favorable for that matter. The summary also does not indicate from whose perspective a particular electric utility rate, charge, or term of service might be considered "unfavorable." The summary also fails to disclose that, under the full text of the Initiative, electric utilities would be precluded from imposing *any* rate, fee, charge, tariff, or term or condition of service on customers who consume solar electricity supplied by a third party that are not also imposed on the utility's other customers of the same type or class who do not consume local solar electricity.

The deceptive and clearly calculated use of the term "unfavorable" is compounded because that is not the term contained in the text, creating a fatal inconsistency. This Court has necessarily rejected amendments in the past when inconsistencies between the ballot summary and ballot text rendered the ballot language inaccurate or misleading. *E.g., Casino Authorization*, 656 So. 2d at 468 (rejecting gaming amendment where ballot summary authorized casinos in "hotels" but text authorized them in broader "transient lodging establishments").

There is an unfortunate irony in this wholesale assault on all regulation. The language of the title and summary clearly imply that utilities are free to charge whatever they choose. In fact, of course, the very government regulations that the Initiative would eliminate are designed to prevent any such abusive practices.

The legal effect of the Initiative is to prohibit electric utilities from recovering from solar customers the full costs that they impose on the electric grid by their solar power choice, and to require instead that such costs be shared by non-solar electric utility customers. The ballot summary gives the opposite impression. It implies that solar customers will be protected from discriminatory and negative treatment while failing to disclose it will be at the expense of non-solar customers, who will be required to subsidize solar customers' power choices. This is an inaccurate and incomplete disclosure built on the improper foundational use of the emotional terms "barriers" and "unfavorable." This tactic has been properly rejected in the past. It should be rejected here.

CONCLUSION

The Initiative violates the single-subject rule because it is guilty of logrolling, it substantially alters or performs the functions of multiple branches and levels of government, and it amends more than one provision of the Florida Constitution. Its title and ballot summary improperly use political rhetoric, mislead the voter through substantive inconsistencies between the summary and text, and hide the ball by failing to disclose to voters the current state of the law of utility regulation and the sweeping changes this Initiative would create. The Court must strike the Initiative from the ballot.

Respectfully submitted this 10th day of June, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished electronically to Attorney General Pamela Jo Bondi at pam.bondi@myfloridalegal.com; Solicitor General Allen Winsor at allen.winsor@myfloridalegal.com; and counsel for the Sponsor, Jon L. Mills, at jmills@bsfllp.com, this 10th day of June, 2015.

/s/ Barry Richard
BARRY RICHARD

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this Brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced and in compliance with Florida Rule of Appellate Procedure 9.210.

/s/ Barry Richard
BARRY RICHARD

Appendix

TITLE, BALLOT SUMMARY, AND TEXT OF THE INITIATIVE

The ballot title for the Initiative is "Limits or Prevents Barriers to Local Solar Electricity Supply."

The ballot summary provides as follows:

> 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.

The full text of the Initiative provides as follows:

> ARTICLE X, SECTION 29.—
>
> 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.