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)

ANSWER BRIEF OF SPONSOR

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SUMMARY OF THE ARGUMENT

The proposed amendment entitled "Limits or Prevents Barriers to Local Solar Electricity Supply" (hereinafter, the "Solar Amendment" or the "Amendment") satisfies the single subject requirement of Article XI, Section 3 of the Florida Constitution. The single subject presented by the Amendment 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. All other aspects of the Solar Amendment are directly connected to that purpose and designed to implement this single goal in a defined and limited way.

The title and summary of the Amendment also meet the requirements of section 101.161, Florida Statutes, and the language of the ballot title and summary clearly inform the voters of the chief purpose of the Amendment. That is, that the Amendment would limit or prevent governmental and electric utility imposed barriers to the supplying of a limited amount of solar electricity to the same site and contiguous property owners. Nor does the language mislead the public in any way.

Finally, the Financial Impact Statement 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 proposal presents a clear choice to voters.

ARGUMENT

In their Initial Briefs, Opponents of Solar Choice devise certain hyperbolic "the sky is falling" type policy arguments claiming cost shifting between solar and non-solar customers and a lack of consumer protection. The assumptions underlying the opponents' arguments are speculative, unsupported and intended to stir up public opposition to the ballot initiative. As a threshold matter, these arguments are briefly addressed here.

It is important to recognize that the cost of customer-sited solar systems are borne by the customer. As customer-sited solar systems may generate power that displaces power that it might otherwise obtain from the utility, this may have the effect of reduced demand from the incumbent utility. However, this reduced demand is no different in nature than customers choosing to make their homes or businesses more energy efficient. Technological development, changes in the economy and weather patterns are also among the multitude of factors that can impact utility demand. These Opponents assert there is cost shifting, yet offer no evidence that the current system is free of cost shifting; that customers who install solar are currently paying no more than the cost to serve those individual

customers, or that reduced demand caused by onsite solar generation, and hence less utility revenue, may significantly raise the costs of other customers without the offsetting benefits in the form of a more efficient system of power supply. Opponents' argument of cost shifting is unfounded, speculative, and the Court should resist attempts by opponents to pit customers against each other.

Moreover, though some Opponents suggest that there is a vibrant solar energy program within the State, the reality is that onsite solar generation in the Sunshine State is abysmally low relative to other States. Florida has a mere 6,600 onsite solar systems despite a 9 million-customer base. Today, solar customers represent just 0.07% of all Florida electric customers, and their solar systems account for just 0.1% of Florida's power capacity. By comparison, the State of New Jersey has over 30,000 onsite solar systems representing 4.5% of that State's capacity – a State with half the population of Florida and a weaker solar resource. In fact, the Sunshine State's anemic solar development and limited customer choice was a major driver in the genesis of the initiative drive. Floridians for Solar Choice has a coalition consisting of over 40 endorsing organizations and has thus far gathered approximately 100,000 signatures for Florida registered voters.

The assumptions underlying the assertion that there would be a sudden lack of consumer protections similarly ring hollow. Florida is one of only four States that expressly prohibit the sale of power to a customer by any entity other than a

utility. In States that allow third party retail sale transactions, there are additional ownership models and financing options – simply allowing consumers more choice in accessing the economic benefits of solar power. In the first quarter of 2014, more than 50% of onsite solar systems in New York, Colorado, Arizona, and New Jersey were third party owned. Third party retail sales are an established practice in many States, with little consumer complaints. Assuming *arguendo*, that complaints arise, the petition language clearly preserves the right of State and local government entities to provide regulatory control of local solar electricity suppliers, as discussed below.

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

The test for determining whether a proposed initiative satisfies the single subject requirement was set forth in *Advisory Opinion 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), and was expressed as follows:

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

See also, Advisory Opinion to Att'y Gen. re Water and Land Conservation, 123 So. 3d 47 (Fla. 2013).

The Solar Amendment satisfies that test, as it presents a single unified question to voters. That single question is whether voters should limit, remove or prevent barriers to the non-utility supply of up to two (2) megawatts of solar generated electricity by a local solar electricity supplier (hereinafter "LSES" or "LSES Provider") to a customer who is located on the same property, or upon contiguous property with that supplier. The Solar Amendment would prevent the application of government regulations on such a non-utility LSES's rates, service and territory, and would also limit the imposition of rates, charges or terms of service by electric utilities by requiring that they not discriminate against LSES customers, both of which are consistent with the single dominant plan or purpose of the Solar Amendment. As such, 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's impacts on government are not substantial.

Several Opponents contend that the Solar Amendment violates the single subject requirement, as it affects the functions of several branches of government, including various levels of government.[1] They suggest that the Amendment alters the function of the legislative branch through the limitation of its authority to regulate through its delegated agency the Florida Public Service Commission (the "PSC"). Further, some Opponents argue that it also effects the executive branch in the development of its energy policy. Though the Solar Amendment does impact upon the functions of the legislative branch and, perhaps, in an extremely remote manner the executive branch, these impacts are not substantial. The Solar Amendment therefore does not run afoul of the Constitution's single subject requirement for amendment by citizens' initiative. *See Re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 496 (Fla. 2002) (quoting *Advisory Opinion to Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353-54 (Fla. 1998)).

Paragraph (b)(1) of the Solar Amendment does limit the regulatory authority of the Legislature and its delegated agency, the PSC, by removing from them the

[1] *See* Initial Brief of The Florida Electric Cooperatives Association, Inc., Initial Brief of Opponents Florida Power & Light Co., Duke Energy Florida, Gulf Power Company, and Tampa Electric Company.

power to determine what price an LSES Provider may charge its customers, to define the character and quality of service that an LSES Provider must deliver, and to exclude LSES Providers from operating within existing monopolized electric utility service territories.[2] However, the Solar Amendment's exemption of LSES Providers from PSC regulation is extremely limited and applies only to a narrowly-defined class of non-utility electricity suppliers – those using only solar generating facilities with a rated capacity up to two (2) megawatts to serve customers located on the same property as the generating facility, or on a property that shares a boundary with the facility site. Further, such exemption as to LSES Providers extends only ". . . with respect to rates, service, or territory, or be subject to any assignment, reservation, or division of service territory between or among electric utilities." *See* paragraph (b)(1) of the Solar Amendment. To the extent that additional regulatory powers of the PSC exist beyond that limitation, then they will remain.

Additionally, the Solar Amendment has no impact on the Legislature's or the PSC's power to fully regulate traditional public utilities supplying electricity to

[2] Solar Amendment paragraph (b)(1) 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, or territory, or be subject to any assignment, reservation, or division of service territory between or among electric utilities.

the public, other than this narrowly defined class of solar providers. Thus, the essential lawmaking and regulatory functions of the Legislature and the PSC are intact with respect to public utility regulation, contrary to assertions made by the Opponents.

The second branch of State government purportedly impacted by the Solar Amendment is the executive branch. Here the sole and exclusive impact cited by the Opponents is its purported interference with the development of the State's energy policy. Their argument as to the impact on the executive branch is silent as to precisely how the Amendment would effect the development of a State policy on energy other than the fact that both the Amendment and the developed policy would deal with energy. However, the test is not merely that the functions of two branches or more are affected, but that the impact must be substantial. That is not present with the Amendment.

Although the Solar Amendment touches upon the legislative branch, none of its effects are substantial so as to render it out of compliance with the constitutional single subject requirement. As this Court has stated, "[a] proposal that affects several branches of government will not automatically fail; rather, it is when a proposal *substantially* alters or performs the functions of multiple branches that it violates the single-subject test." *Advisory Opinion to the Att'y Gen. re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live*

Embryo, 959 So. 2d 210, 213 (Fla. 2007) (quoting *Advisory Opinion to the Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353-54 (Fla. 1998) (emphasis added). This Court has also emphasized that the rationale of the single-subject restriction in general is to guard against "precipitous" or "cataclysmic" changes to the government structure. *Id*. *See also, e.g.*, *Advisory Opinion to Att'y Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 650 (Fla. 2004). The Solar Amendment as explained above, involves no significant changes to the government structure, rather, it places narrow limitations on the power of government to regulate a small and well-defined class of electricity suppliers. The effects on government are neither precipitous nor cataclysmic, and, notwithstanding the pronouncements of doom and gloom from some Opponents, the effects on the electric utility grid, utility regulation, and the provision of electric service will be neither precipitous nor calamitous but, rather, incidental at most.

Opponents suggest that the Amendment violates the single subject requirement, as it also impacts upon local governments, in addition to the State. To the extent that there are any impacts on local government, they are also not substantial. First, though the Solar Amendment would similarly prohibit local governments from regulating LSES, any impact on the power of local governments would be illusionary at best, as their authority to regulate utilities is currently

preempted to the PSC. The Solar Amendment also ensures that State and local governments retain their authority to exercise police powers for the protection of the health, safety and welfare of the public, subject only to the limitation that application of regulations cannot have the effect of prohibiting the supply of solar electricity by an LSES Provider.

Similar provisions have been previously addressed by the courts. In *Ormond Beach v. State*, 426 So. 2d 1029 (Fla. 5th DCA 1983), the court addressed the ability of a local government to apply regulations affecting renewable energy devices in light of the limitations of section 163.04, Florida Statutes.[3] In that case, a property owner sought a variance (for height and setback restrictions) to construct a windmill, which was denied by the City's Board of Adjustments. The court, in applying the provisions of section 163.04, Florida Statutes, prohibited the City from applying regulations which would have the effect of prohibiting the installation of the renewable energy devices. However, the court found that the

[3] Section 163.04(1), Florida Statutes, states as follows:

> (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.

statute did not wholly divest a local government of its ability to regulate development and stated:

> Section 163.04 eliminates the need to prove a hardship as a basis for the property owner's desire to install the energy device, but it does not, however, mean that appellee can place the windmill where he pleases or to such height as he pleases. He must still abide by the setback and height restrictions of the zoning ordinance, unless he can demonstrate the requisites for a variance; i.e., that the variance is needed so that the windmill can operate satisfactorily.

Id. at 1032.

Paragraph (b) (4) of the Solar Amendment does not divest local governments and State agencies of their regulatory police powers, rather it preserves their ability to apply health, safety and welfare laws and regulations, including electrical codes, safety codes, health codes, building codes and zoning codes, subject only to reasonable limitation.

Opponents also suggest that the Solar Amendment fails the single subject test because it also places limitations on both governmental entities and on electric utilities. The Solar Amendment only limits and prevents an electric utility from undermining an LSES Providers by imposing burdensome requirements on its customers, such as special rates, charges, or terms or conditions of service that are not also imposed on other customers not supplied by an LSES Provider. In other words, the Solar Amendment prevents an electric utility from discriminating

against its customers who choose to also obtain electricity from an LSES Provider. This is not a blanket prohibition against an electric utility's use of such rates, charges or terms or conditions of service, only those that discriminate against LSES customers. As such, this limitation supports the singular purpose of the Amendment.

Nor does the Solar Amendment have the effect of requiring a utility to shift recovery of its costs from customers who use solar energy to those who do not. This is a misstatement of the effect of the Amendment. It does not constitute a blanket prohibition against the imposition of such compensatory rates or charges, or terms or conditions of service. Rather, it prohibits a utility from imposing a rate, fee or charge that impairs a customer's purchase or consumption of solar electricity from an LSES Provider, and then, only if the rate, fee or charge is one that is not also imposed on other customers of the same type or class. Therefore, if the law allows the placing of a rate, fee or charge on a customer who uses solar electricity because that use reduces the revenue the electric utility had anticipated collecting from that customer when it made its system investments, then the Solar

Amendment would also allow placing the same rate, fee or charge on a customer obtaining electricity from an LSES Provider. [4]

This is not merely a theoretical or academic distinction, as many electric utility customers currently own or lease solar panels, or use electricity produced by other technologies that produce electricity intermittently, such as from wind, and also rely on access to the grid when needed to supplement this renewable energy supply. These types of utility customers present similar cost and technical requirements to the utility as those who will obtain electricity from an LSES Provider. Because LSES customers do not present unique cost or technical profiles that differentiate them from self-generating solar or wind customers, it would be possible for an electric utility to design rates, charges or terms of service that address otherwise unrecovered costs of service which are applicable to all such customers, including LSES customers, and remain in compliance with the Solar Amendment's impairment provision.

[4] To the extent that municipal electric utilities might similarly use such rates, fees or charges, then the same analysis as to the applicability of the Solar Amendment would apply.

B. The Solar Amendment does not substantially affect multiple constitutional provisions.

Opponents suggest that the Solar Amendment does not meet the single subject requirement, as it effects two provisions of the Florida Constitution. The first is Article VIII, Section 2(b) relating to the powers of municipalities, and the second is Article I, Section 10 relating to impairment of contract. Any impact to these constitutional provisions is incidental and not substantial. Each will be discussed separately.

It is argued that Article VIII, Section 2(b) of the Florida Constitution is affected by the provisions of the Solar Amendment, as it would limit municipalities in their ability to govern municipally-owned electric utilities, to establish municipal utility rates that are in conflict with the Amendment, and to implement local safety, environmental and zoning regulations that would interfere with the operations of an LSES Provider.[5] This is the same argument asserted as to impact on multiple levels of government, previously addressed.

Initially, Article VIII, Section 2(b) is a grant of authority for a municipality to exercise governmental, corporate and proprietary powers. That grant of authority is not impacted by the Solar Amendment, as Article VIII, Section 2(b)

[5] *See* Initial Brief of Opponent National Black Chamber of Commerce; Initial Brief of Opponent Florida State Hispanic Chamber of Commerce; and Initial Brief of Opponents Florida Power & Light Co., Duke Energy Florida, Gulf Power Company, and Tampa Electric Company.

has always been limited by the language, ". . . *except as otherwise provided by law*." Therefore, the adoption of some limited restraints against the exercise of powers for municipal purposes against LSES Providers, as provided for in the Solar Amendment, does not substantially affect this constitutional grant of power, as that grant of the power itself has always contemplated the imposition of some limitations.

Second, as previously discussed, any impact of the Solar Amendment on the ability of a municipality to impose utilities rates, charges or terms or conditions of service, is extremely limited. The scope of the Amendment only prohibits the imposition of rates, charges or terms or conditions of services that discriminate against LSES customers and there is a preservation of rights of a local government to apply reasonable regulations which do not prohibit or have the effect of prohibiting LSES. As such, the Solar Amendment's limited restriction on the exercise of local government regulatory powers over an LSES Provider does not substantially affect this constitutional grant of power.

Similarly, the Solar Amendment has no effect on Article I, Section 10 of the Florida Constitution, which prohibits, among other things, any ". . . law impairing the obligation of contracts . . . ." The Solar Amendment does not interact with this constitutional provision, let alone affect it. Opponents assert that territorial agreements are contracts and are therefore subject to protection against

government actions that impair contractual obligations. They ignore, however, that territorial agreements are enforceable contracts only with the imprimatur of government approval and supervision, and are therefore subject to change when change is in the public interest. Indeed, only government supervision prevents them from being unlawful. *See Public Service Commission v. Fuller*, 551 So. 2d 1210 (Fla. 1989); *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335 (Fla. 1966).

This Court recognized in *H. Miller & Sons, Inc. v. Hawkins*, 373 So. 2d 913 (Fla. 1979), the inherent ability to modify such contracts in the interest of public welfare. The Court stated:

> the well-settled principle that contracts with public utilities are made subject to the reserved authority of the state, under the police power of express statutory or constitutional authority, to modify the contract in the interest of the public welfare without unconstitutional impairment of contracts.

Id. at 914.

It is this power of the State to regulate and protect monopoly service territory that is addressed by the Solar Amendment, not the obligations contained within any private contract. As such, the Solar Amendment does not substantially affect Article I, Section 10 of the Florida Constitution.

C. The Solar Amendment does not violate the Article XI, Section 3 prohibition against "Logrolling."

The Solar Amendment does not engage in logrolling by presenting voters with multiple distinct subjects that could appeal to voters with different conflicting preferences or interests. Contrary to the argument of the Opponents, the unified purpose of the Solar Amendment clearly does not constitute logrolling. "Logrolling" only occurs when disparate issues are combined into one initiative so that voters are forced to accept a change they do not want in order to gain something else that they do want. *See Advisory Opinion to the Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So. 2d 367, 369 (Fla. 2000) (quoting *Advisory Opinion to the Att'y Gen. General re Limited Casinos*, 644 So. 2d 71, 73 (Fla. 1994)). The instant initiative presents only the subject of allowing small solar energy facilities to operate without undue regulation and barriers imposed by government or utility companies. Specifically, the Opponents suggest that paragraph (b)(1) of the Solar Amendment, which exempts an LSES Provider from the PSC's public utility regulations, may appeal to a voter who favors limiting government interference with business, but that the same voter might not be supportive of paragraphs (b)(2) or (b)(4), which they assert shift most of the costs of maintaining the power grid onto non-solar customers and eliminate

government's ability to enforce public safety regulations, consumer protections or zoning laws that might have the effect of prohibiting LSES operations on a specific property.[6] Apart from being inherently speculative in nature, these arguments present a series of false choices because they misrepresent the effects of the Solar Amendment.

Though the Amendment does limit the PSC and local governments from regulation with respect to rates, service, or territory, or enforcing any assignment or division of service territory among electric utilities, this provision is essential to its purpose. The City of Coral Gables suggests that the Amendment requires voters to choose between limiting regulation of LSES Providers and prohibiting a local government from applying its zoning and other regulations. This also presents a false choice. As previously discussed, the Solar Amendment provides that the Amendment's exemption of LSES Providers from public utility regulation does not "prohibit reasonable health, safety and welfare regulations … which do not prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier . . . ."

[6] *See* Initial Brief of Opponents Florida Power & Light Co., Duke Energy Florida, Gulf Power Company, and Tampa Electric Company.

This Court has determined that zoning regulations, including those based solely on aesthetics, are not outside the scope of the police power.[7] *See City of Lake Wales v. Lamar Adver. Ass'n of Lakeland, Fla.*, 414 So. 2d 1030, 1032 (Fla. 1982) (recognizing that "[z]oning solely for aesthetic purposes is an idea whose time has come; it is not outside the scope of the police power.") (quoting *Westfield Motor Sales Co. v. Town of Westfield*, 129 N.J. Super. 528, 324 A.2d 113, 119 (N.J. Super. Ct. Law Div. 1974)); *Int'l Co. v. City of Miami Beach*, 90 So. 2d 906 (Fla. 1956) (finding that zoning regulations based on aesthetics are relevant to maintaining the general welfare and well-being of a community). Therefore, regulations can therefore be applied to the installation of solar equipment used by an LSES Provider, subject only to the limitation that the regulations, or the enforcement of the regulations, may not have the effect of prohibiting the LSES Provider from supplying solar-generated electricity.

Moreover, cities and counties applying zoning ordinances or other local regulations are already constrained by Florida law, which limits the adoption against or enforcement of any ordinance ". . . that prohibits or has the effect of prohibiting the installation of … energy devices based on renewable resources…." *See* § 163.04(1), Fla. Stat. Therefore, the voter considering whether to cast his or her ballot for the Solar Amendment is not making a choice between exempting the

[7] *See* Initial Brief of the City of Coral Gables.

LSES Provider from public utility regulations on one hand, and restricting the ability of local governments to apply zoning ordinances and other regulations on the other, as such ordinances and regulations are already restricted by Florida Statutes in substantially the same manner as they would be under the Solar Amendment.

Also, contrary to the argument of Opponents, the Solar Amendment's non-impairment provision does not eliminate tools that can be used by utilities and local governments to allow for utility cost recovery and to fairly apportion costs among utility customers and customer classes. Rather, the paragraph has the effect of prohibiting only those special rates, charges, tariffs, classifications, terms or conditions of service, or utility rules or regulations that discriminate against customers who obtain electricity from an LSES Provider. Therefore, the suggestion that the Amendment engages in logrolling is inherently incorrect, as it is premised on a misstatement of the Solar Amendment's effect.

Consequently, the Solar Amendment does not force a voter to accept a provision preventing electric utilities from fairly apportioning their costs of doing business in order to limit the application of public utility regulations against LSES Providers, as claimed by Amendment's Opponents. Therefore, it does not force a voter to accept a provision he or she might not agree with or understand.

D. The Solar Amendment does not impermissibly restrict both government regulation and private conduct.

Opponents also assert that the Solar Amendment, in attempting to restrict both government conduct in regulating LSES Providers and private conduct in the imposition of certain special rates, charges, tariffs, classifications, terms or conditions of service, or utility rules or regulations, impermissibly embraces multiple subjects and engages in a form of logrolling. This argument relies on this Court's decision in *Advisory Opinion to the Att'y Gen. re Right of Citizens to Choose Health Care Providers ("Heath Care Providers")*, 705 So. 2d 563 (Fla. 1998), which held that the amendment proposed in that case combined 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.

Central to this Court's decision in *Health Care Providers* was its determination that the amendment would have forced a voter who may favor or oppose one aspect of the initiative to vote on the healthcare provider issue in an "all or nothing" manner. It is this aspect which was central to the Court's holding, not merely that the amendment addressed both government and private conduct.

The Solar Amendment is distinguishable from the *Health Care Providers* amendment. That initiative presented to voters a single proposal that would have

done two separate things – it would have prohibited government from restricting choice of health care providers by law, and it would also have prohibited private parties, such as insurers, from restricting choice of health care providers by contract. Thus, a voter who might have been in support of eliminating government restrictions on provider choice, but might not have supported eliminating such restrictions on private parties, such as insurers, would have been forced to accept the proposal he or she opposed to obtain the proposal he or she supported. The Court was troubled that the proposed amendment "creates an illusory right to choose a health care provider when in fact it would severely limit an individual's ability to enter into a health care contract." *Health Care Providers*, 705 So. 2d at 566.

Here, the choice is essentially this – remove obstacles to third party supply of solar electricity in specified and limited circumstances, or do not remove obstacles to third party supply of solar electricity in specified circumstances. Both the government regulations that are restricted by the Solar Amendment, and the discriminatory rates, charges, terms of service, etc., that might be imposed by publicly and privately owned utilities on their customers, present economic and practical obstacles that render such third party supply of solar electricity infeasible. These provisions are interdependent because implementation of either one of them alone is insufficient to achieve the purpose of the Amendment.

Moreover, because the Solar Amendment's restraint on private conduct does not have the effect claimed by Opponents, the voter is not faced with the dilemma of accepting a provision he or she might oppose in order to obtain the favored provision, as was the case in *Health Care Providers*. These features properly constitute matters directly and logically connected to the subject of the Amendment.

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.

The test for determining the legality of an initiative's ballot title and summary is well settled by the precedents of this Court.

- The title and summary must inform the average voter of the chief purpose of the amendment without misleading the voter as to important effects of the initiative, but need not enumerate or describe every detail or ramification.

- The title and summary must be evaluated by reading them together.

- To be removed, the ballot title and summary must be clearly and conclusively defective.

The purpose of this test is to allow voters to make an informed decision and to allow citizens to have reasonable access to the ballot through initiative. The ballot title and summary for the amendment, read together, accurately place the voter on notice the scope and effect of this initiative. *See Roberts v. Doyle*, 43 So.

3d 654, 659 (Fla. 2010). The Court also does not require that the ballot title and summary contain every ramification of a proposal. *Advisory Opinion to the Att'y Gen. re Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415 (Fla. 2002).

If a ballot title or summary misleads voters as to an amendment's chief purpose, this Court will reject it. In *Askew v. Firestone*, 421 So. 2d 151, 155-56 (Fla. 1982), this Court rejected a summary which implied that the amendment placed limits on lobbying by former officeholders, when in fact it would have removed an absolute ban then existing in the Constitution. In the instant case, the Opponents again seek to argue that the effect of the Amendment is substantially broader than as set forth in the title and summary. This argument is without merit.

This Court does not require the title and summary to be identical to the text or that it even be perfect.[8] It does require reasonable notice to voters. In *Advisory*

[8] As this Court has noted:

> It is true . . . that certain of the details of the [text] as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test.
> There is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length. Such would hamper instead of aiding the intelligent exercise of the privilege of voting.

Re Right to Treatment and Rehabilitation, 818 So. 2d 491, 498 (Fla. 2002) (quoting *Metropolitan Dade County v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA 1978)).

Opinion to the Att'y Gen. re: Limited Casinos, 644 So. 2d 71, 75 (Fla. 1994), this Court upheld a summary even though it did not "reveal the number of casinos authorized, [or] disclose the location or number of existing pari-mutuel facilities, and [failed] to mention that one casino must be placed [at a specific location in Miami Beach]." This Court, noting the constraints of the 75-word limit, did not require all details to be listed, but found that the summary provided voters with "sufficient information to make an informed decision." *Id.*

Further, in evaluating the ballot title and summary, it will be presumed that the voter will have a certain amount of common sense and knowledge. For example, in *Advisory Opinion to the Att'y Gen. re Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, this Court rejected arguments that voters would not understand that the term "enclosed indoor workplace" in the summary also included restaurants. 814 So. 2d 415, 418-19 (Fla. 2002). This Court found that voters could be expected to understand that a restaurant may be a workplace. *Id.*

A. The ballot title and summary of the Solar Amendment are not misleading as to its purpose.

Opponents make a number of inaccurate assertions that the ballot title and summary somehow attempt to "hide the ball" as to the true purpose of the Solar Amendment. For example, the Attorney General suggests that "[t]he title and

summary portray an amendment designed to enable homeowners to produce their own solar electricity for their own use. But homeowners currently have that ability, and the Amendment misleads by implying that 'barriers' must be removed to allow 'local solar electricity supply.'" (*See* Attorney General's Initial Brief, at page 16). These statements by the Attorney General mischaracterize the ballot summary.

First, the ballot title and summary do not portray an amendment designed to enable homeowners to produce their own solar electricity for their own use. Nothing in the title or summary implies this. The Summary's first sentence states that the amendment "[L]imits or prevents government and electric utility imposed barriers to *supplying* local solar electricity." Notwithstanding the Attorney General's unusual argument that the word "supply" connotes personal production for one's own use, that term actually suggests production for another person's use. Black's Law Dictionary, Sixth Edition, citing *Clayton v. Bridgeport Mach. Co.*, 33 S.W. 2d 787, 789 (Tex. Civ. App. 1930), defines "supply" as "[t]o furnish with what is wanted . . . the act of furnishing with what is wanted." Similarly, the dictionary definition of "supply" is, among others, "to give, furnish, or provide (what is needed or wanted); to meet the needs or requirements of; furnish, provide, or equip with what is needed or wanted." *Webster's Dictionary*, 1438 (2007 ed.). Each of these definitions connotes one person supplying a thing to another person.

Indeed, the language of the summary itself references the supply of electricity from a facility to customers.

Some Opponents purport that the "true purpose" of the Amendment is to remove regulations for a distinct class of service provider, and that this "true purpose" is somehow hidden from the voter. Though the true purpose of the Solar Amendment is to limit or prevent specified barriers to the supply of solar generated electricity by LSES Providers, including the application of traditional public utility regulations to small localized providers with limited customers, this fact is not hidden. Rather, that purpose is clear from the text of the summary itself.

The Attorney General and other Opponents also theorize that the scope of the Amendment's effects are undisclosed, because the summary fails to disclose that the Solar Amendment would divest the PSC of regulatory jurisdiction over LSES Providers. First, the language of the ballot title and summary could not be clearer. The Solar Amendment "Limits or prevents government and electric utility imposed barriers to supplying local solar electricity." It then proceeds to set forth what those barriers are and states that they include ". . . regulation of local solar electricity suppliers' rates, service and territory . . . ."

The primary complaint raised by the Opponents is that the ballot title and summary did not specifically reference the PSC. A reasonable person would assume many, if not most, voters may be unaware of the PSC's existence. Many

fewer actually know what the PSC does or how it regulates. It would be impossible to describe the intricacies of the agency's jurisdiction to voters within the 15-word limitation of a ballot title and the 75-word limitation of a ballot summary, and still accurately reflect the chief purpose and effect of the Solar Amendment. Rather, the ballot title and summary described the type of barriers and regulations that would be prohibited.

Indeed, as argued in the context of the single subject requirement, to suggest to voters that the PSC will be completely divested of all jurisdiction over LSES Providers is not correct and misstates the true legal effect of the Amendment. To the extent that the PSC is authorized to regulate conduct that is not related to rates, service or territory, it is possible the PSC may retain some jurisdiction over LSES suppliers after passage of the Solar Amendment. Instead, the summary describes the types of government regulations that will not apply to LSES Providers, so that the voter can be apprised of the actual legal effect of the Solar Amendment, as so to avoid confusion should responsibilities for these types of regulations transfer by law to a different agency or a different level of government.

B. The ballot title and summary do not mislead or fail to inform the voter by failing to disclose the full ramifications of the Solar Amendment.

This 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 Advisory Opinion to Att'y Gen. re Protect People from the Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415, 419 (Fla. 2002); *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." *Advisory Opinion to Att'y Gen. re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491, 497 (Fla. 2002) (quoting *Advisory Opinion to the Att'y Gen.-- Save Our Everglades Trust Fund*, 636 So. 2d 1336, 1341 (Fla. 1994)).

Opponents argue that the ballot title and summary fail to adequately apprise the voter of the various effects of the Solar Amendment. They then proceed to set forth a "parade of horribles" of perceived impacts, including: 1) result in unfair apportionment of operating and infrastructure costs to customers who cannot or do not use solar electricity; 2) take away existing legal protections for consumers against discriminatory rates; 3) upend the regulatory structure governing utilities in Florida; 4) disrupt the State's "carefully calibrated and monitored electric grid"; 5) "disassemble" PSC-established electric utility service territories exposing electric customers to uneconomic duplication of facilities and higher rates; 6) disrupt existing franchise agreements between electric utilities and local government, resulting in reduced revenues to those local governments; and 7) reduce revenues

from State and local taxes due to displacement of electricity sales by traditional electric utilities. With respect to each of these undisclosed "effects" of the Solar Amendment, they are either not truly effects of the Amendment or it is speculative whether they will occur at all. Regardless, they are simply not required to be disclosed within the ballot summary.

As has been amply discussed, the Solar Amendment will not cause unfair apportionment of operating and infrastructure costs to customers who cannot or do not use solar electricity. This asserted "effect" is based on Opponents' incorrect reading of, or misrepresentation of, the Amendment's provision which prevents electric utilities from imposing rates, charges or terms of service that discriminate against their customers who also obtain electricity from an LSES Provider. It is the same misreading of this provision that leads Opponents to assert that existing electric utility customers will lose protections against discriminatory rates. The Solar Amendment does not impact the current law that allows fair apportionment of operating and infrastructure costs so electric utilities and their rate setting bodies will have the ability to set rates, provided that they are not discriminatory.[9]

[9] There is a body of evidence that there is not unfair cost shifting or "free-riding" at the expense of non-solar customers. See the analysis of this debate co-authored by immediate past Chair of the Federal Energy Regulatory Commission Jon Wellinghoff and James Tong, is presented in: "A Common Confusion Over Net Metering is Undermining Utilities and the Grid." http://www.utilitydive.com/news/wellinghoff-and-tong-a-common-confusion-over-

Nor will the Solar Amendment "upend" the regulatory structure governing utilities in Florida, disrupt the "carefully calibrated and monitored" electric grid, or "disassemble" existing PSC-established service territories. The LSES Providers impacted by the Amendment are narrowly defined both by their extent of capacity and the customers they may serve. It is a matter of rank speculation to assert that operations by LSES will have any impact, let alone disrupt the grid or upend the regulatory structure for electric utilities in Florida.[10] Moreover, nothing in the Amendment changes the applicability of existing regulations to traditional electric utilities and the PSC and other utility governing bodies will maintain their same regulatory authority to maintain this "carefully calibrated and monitored" electric grid.

As previously discussed, it is also a matter of speculation whether and to what extent franchise agreements between local governments and electric utilities might be disrupted.[11] The extent that any utility will be placed at a competitive

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net-metering-is-undermining-u/355388/.

[10] Indeed, new research indicates that utilities can get almost nine percent of their electricity from solar without costs or compromises in reliability. *See* article by Herman K. Trabish "Why utilities can add 8.8% rooftop solar at little cost or reliability loss." http://www.utilitydive.com/news/why-utilities-can-add-88-rooftop-solar-at-little-cost-or-reliability-loss/289118/

[11] To the extent that the Amendment will affect local government revenues, this is a matter more appropriately addressed in the Financial Impact Statement and not

disadvantage with respect to a LSES who operates as authorized under the Solar Amendment will depend upon the extent of that supplier's operations and the specific terms of the franchise. A franchise agreement is more than just an agreement as to the electric utility's payment of a fee to the local government. Such agreements generally grant significant benefits to the utility, including the local government's agreement not to compete and providing a means for addressing the utilities' uses of the public rights of way and public easements within the jurisdiction. There are a multitude of benefits that must be evaluated in evaluating the extent of any disruption and to do so in the abstract is purely speculation. Certainly not sufficiently certain to require its inclusion in the ballot summary.

Finally, it is not reasonable to suggest that the Solar Amendment is likely to cause any electric utility to lose its customer because of retail competition. The nature of solar energy almost assures that continued access to the grid will be required. The continued ability to access the grid is essential to the development of LSES. Indeed, the express language of the Solar Amendment provides that the electric utility may not be relieved of its obligation under law to provide electric service to any customer in its service territory on the basis that the customer also

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the ballot summary.

purchases electricity from a LSES.[12] In the same way, a customer who invests in more efficient LED lightbulbs and reduces energy use or a part time Florida resident who only resides in the State during the winter months, remains a retail customer paying retail rates and charges.

C. The ballot title and summary do not imply that Florida law currently prohibits solar or severely restricts solar energy production.

Opponents also contend that the ballot title and summary are misleading and implies that Florida law currently prohibits or severely restricts solar energy production, and its failure to mention existing laws that promote the use of solar electricity would undergo "sweeping changes" if the Solar Amendment is adopted.[13] Most fundamentally, the ballot title and summary imply nothing of the sort, this argument is based on a complete misreading of the language.

As discussed elsewhere in this brief, the Solar Amendment's ballot title and summary, like the Amendment itself, do not address "solar energy production" broadly, as asserted by the Attorney General, rather, in plain language they address the application of government and utility regulations and restrictions to a specified type of solar electricity provider and the application of rates, charges and terms of

[12] Additional discussion and information regarding the Solar Amendment's impact on franchise agreements can be found in memoranda supplied to the Financial Impact Estimating Conference by the Sponsor.

[13] *See* Attorney General's Initial Brief, pages 13-17.

service that discriminate against electric utility customers who are supplied electricity by such a provider. Additionally, the ballot title and summary say nothing to indicate that Florida law currently prohibits or restricts the production of solar energy generally. Instead, it correctly states that current law imposes a regulatory barrier inhibiting a provider that would not be recognized by the general public as a traditional electric utility from supplying electricity. This Court rejected a nearly identical contention raised by initiative opponents in *Advisory Opinion to Att'y Gen. re Right to Treatment and Rehabilitation for Non-Violent Drug Offenses*, 818 So. 2d 491 (Fla. 2002).

In that decision, the Court rejected the opponent's contention that the ballot title and summary were misleading because they failed to mention the then-current diversion system or inform voters that the proposed amendment was actually at odds in many respects with the then-current drug court scheme and other diversion programs. This Court disagreed with the measure's opponents, concluding:

> Given the fifteen-word statutory maximum for the title and the seventy-five word maximum for the summary, it would have been impossible for the sponsors to include such detailed language concerning pre-existing programs. The sponsors did precisely as this Court has advised them to do in decision after decision: they apprised the voter of the chief purpose of the amendment.

Id. at 498.

As Florida's existing laws to promote the use of solar energy have no bearing on the chief purpose of the amendment, the Court should similarly conclude that a description of such laws is not required in the ballot title and summary for the Solar Amendment.

D. Terms used in the ballot title and summary are adequately defined, unambiguous, materially consistent with terms and phrases used in the body of the amendment, and do not improperly use emotional language or editorializing.

The Opponents note that the Solar Amendment's title and summary describe the Amendment's effect as "limiting or preventing barriers" to local solar electricity supply, while the Amendment's text, as stated in the "Purpose and Intent" section, speaks to the goal of the Amendment being "limiting and preventing regulatory and economic barriers." Opponents argue that this usage represents a misleading inconsistency, and cite to this Court's decision in *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000). In that case, this Court held that an "and/or" inconsistency between the initiative's text and summary was misleading. However, in *Armstrong*, the ballot summary's usage implied that the amendment would increase the protection against cruel or unusual punishments when in fact the legal effect would have been the precise opposite. The Solar Amendment's ballot title and summary do not suffer this same defect, as the actual Amendment will not operate differently than as described in the summary.

The Solar Amendment's ballot title and summary accurately reflect the effect of the operative portions of the Amendment, which, depending on circumstances, will either limit a barrier to local solar electricity supply, or will prevent such a barrier. With respect to government application of rate, service and territory regulations, the Solar Amendment prevents this barrier to operations by an LSES Provider. With respect to government application of certain health, safety and welfare regulations, the Amendment limits the manner in which such regulations may be applied so that they do not have the effect of prohibiting an LSES Provider from supplying electricity. With respect to an electric utility's ability to thwart competition from an LSES Provider by imposing unfavorable rates, charges, or terms of service on LSES customers, this potential barrier is limited by requiring that such rates, charges, or terms of service be non-discriminatory with respect to LSES customers. The summary therefore accurately describes the effects of the Solar Amendment, by recognizing that barriers to local solar electricity supply will either be limited or prevented depending on the circumstance.

The Florida Council for Safe Communities (hereinafter "FCSC") contends that the ballot summary deviates from the text in a material and misleading way because, when describing barriers to local solar electricity supply, it refers to "unfavorable" electric utility rates, charges, or terms of service imposed on local

solar electricity customers, rather than the use of the term - "special" which is contained within the text of the Amendment itself. FCSC argues that "unfavorable" and "special" have different and inconsistent meanings – the word "unfavorable" suggests opposition, adverseness, and unfairness, while "special" connotes difference, but not necessarily unwarranted difference.[14]

This argument ignores that the purpose of a ballot summary is to summarize the chief purpose of the amendment and not to present the full text of the Amendment itself. FCSC incorrectly focuses its attention and analysis on a single word in the text rather than the entire passage that is addressed by the summary. The relevant text is contained in paragraph (b)(2) of the Solar Amendment, and when read in its entirety, it is clear that the provision is designed to limit an electric utility's ability to impose charges or other requirements on its customers that are punitive, or otherwise create an economic barrier, for the sole reason that they also consume electricity from an LSES Provider. Such charges would, in fact be unfavorable to these customers and to LSES Providers because these parties would be disadvantaged in comparison to other customers who do not experience such charges.

Where there is a discrepancy in the uses of words between the ballot title and summary and the text of an Amendment, this court must determine whether

[14] Initial Brief of Opponent Florida Council for Safe Communities, at pages 14-17.

the words used differ materially in meaning, and if they do, whether the voter is likely to be misled. *Advisory Opinion to the Att'y Gen. re Patients' Right to Know About Adverse Medical Incidents*, 880 So. 2d 617 (Fla. 2004). Although there is a difference between the words "unfavorable" and "special," the voter is nevertheless accurately informed as to the purpose of the Solar Amendment because the word "unfavorable" accurately summarizes the paragraph (b)(2) impairment provisions.

The Opponents also contend that the Amendment and ballot summary use the term "contiguous" differently to describe the properties that can be served by an LSES Provider, resulting in the voter being misinformed as to the Solar Amendment's true effect.[15] The Opponents note that 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) of the Solar Amendment says that local solar electricity supply is available only to customers "located on the same property, or on separately owned but contiguous property." Thus, the Opponents argue, 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 facility. Voters, they assert, will be misled into

[15] See Initial Brief of Opponents Florida Power & Light Co., Duke Energy Florida, Gulf Power Company, and Tampa Electric Company, at page 38.

believing that the measure would authorize more properties to be served than are actually authorized by the Solar Amendment.

This Court has previously approved summaries that omit certain details that are otherwise included in the full amendment, recognizing that given the 75-word limit contained in section 101.161(1), Florida Statutes, it would be impossible for sponsors to detail all possible factual circumstances or ramifications of the proposed amendment. *See Advisory Opinion to the Att'y Gen. re Funding of Embryonic Stem Cell Research*, 959 So. 2d 195, 201 (Fla. 2007). "The statute itself requires only that the voter be made aware of the *chief purpose* of the amendment." *Id.* at 202 (quoting *Advisory Opinion to the Att'y Gen. re Physician Shall Charge the Same Fee for the Same Health Care Service to Every Patient*, 880 So. 2d 659 (Fla. 2004)).

In *Advisory Opinion to the Att'y Gen. re Funding of Embryonic Stem Cell Research*, 959 So. 2d 195 (Fla. 2007), the Court approved a ballot summary notwithstanding initiative opponents argument that it misled voters by implying that the consideration given in exchange for the embryos would be more limited than the amendment actually provides. *Id.* at 201. In that case, this Court concluded that the discrepancy was not a fatal flaw, because the "language in the summary closely tracks that which is used in the amendment itself …." *Id.* As in

that case, the language in the summary for the Solar Amendment similarly tracks the language in the amendment's text.

Opponents rely on the case of *Advisory Opinion to the Att'y Gen. re Casino Authorization ("Casino Authorization")*, 656 So. 2d 466, 468 (Fla. 1996). However, that matter is distinguishable. In *Casino Authorization*, the initiative was stricken from the ballot because the summary used the more narrow term "hotel" while the text used the broader term "transient lodging establishment." These terms are materially different, and obviously so. The Court recognized that the term "transient lodging establishment" embraced far more than just hotels, including within its meaning motels, resort condominiums, transient apartments, rooming houses, and resort dwellings. Therefore, the number of potential locations where a casino could be established under the initiative was vastly greater than was disclosed by the ballot summary. Because the discrepancy, if any exists, between the Solar Amendment and its ballot summary is more comparable to that in *Funding for Embryonic Stem Cell Research* than that in *Casino Authorization*, this argument should be rejected.

The Attorney General also contends that the Solar Amendment's ballot summary misleads by suggesting that the Amendment addresses "non-utility" solar electricity supply, when according to the Attorney General, the LSES Providers envisioned in the amendment would be classified as public utilities under current

law. While the Attorney General is correct, LSES Providers would be classified as a utility under current law, it is unclear how the phrase used in the ballot summary misleads the public.

Should the Solar Amendment take effect, an LSES Provider *will not be* an electric utility. Additionally, the Solar Amendment's definition of "electric utility" at paragraph (c)(4) precludes an electric utility from being an LSES Provider. The language in the ballot summary therefore tracks the substantive meaning contained within the Amendment itself, because it states that "[l]ocal 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." If the summary omitted from this sentence the phrase "non-utility," the summary would materially mislead, because one effect of the amendment is to prevent traditional electric utilities from acting as LSES Providers. As the language used in the ballot summary tracks the operative language in the Amendment text, and because it is unlikely to confuse or mislead a voter, the Attorney General's argument should be rejected.[16]

[16] The Attorney General also suggests that the terms "limit" and "prevent" are misleading, as they do not indicate that the impact of the Amendment would result in a change in the PSC's regulatory authority. This argument was previously addressed in the discussion of the single subject requirement.

Opponents also contend that the word "barriers" has a "universally understood negative connotation," and its use in the Solar Amendment's ballot title and summary constitutes impermissible political rhetoric or editorial comment that will cause voters to be misled as to the contents and purpose of the Amendment because they will respond emotionally to it. They argue further, that "[t]he Initiative intentionally violates this prohibition in the title and summary" … because "[i]t is a pejorative description of the sponsor's view of any regulation as an unwanted and problematic obstacle."[17]

Contrary to this argument, the word "barriers" is utterly without any inherent negative or pejorative meaning. The word's commonly understood definition makes it the appropriate choice for describing the Amendment's chief purpose. "Barrier" is defined as, among other things, "anything that holds apart, separates, or hinders." *Webster's Dictionary*, 118 (2007 ed.). That is precisely the meaning intended to be communicated by the ballot title and summary.

The types of regulations described in the summary which are prevented from applying to LSES Providers by the Amendment, are laws or rules that make the supply of solar electricity (in the manner contemplated by the Solar Amendment) difficult or impossible. Without the Solar Amendment, supply of solar electricity

[17] *See* Initial Brief of Opponents Florida Power & Light Co., Duke Energy Florida, Gulf Power Company, and Tampa Electric Company, at pages 40-41.

by an LSES Provider would be difficult at best because the provider would be fully regulated as a public utility notwithstanding its localized character and its limited number of customers. Absent the Solar Amendment, it would be legally impossible without subjection to such regulation. Likewise, the kind of electric utility surcharges or fees or special rates that could be imposed on the customer of an LSES Provider for obtaining electricity from an LSES Provider, would place an economic hardship and burden upon LSES customers which would make it difficult or impossible to receive electricity through an LSES Provider.

This Court heard and rejected similar arguments from initiative opponents in *Advisory Opinion to the Att'y Gen. re Protect People from the Health Hazards of Second-Hand Smoke by Prohibiting Workplace Smoking*, 814 So. 2d 415 (Fla. 2002). In that case, opponents likewise argued that the word "hazards" constituted political or emotional language and subjective evaluation. Nevertheless, based on dictionary definitions, the Court determined the term "hazards" to be accurate in describing the measure to be put before the voters and not misleading.

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

The financial impact statement issued for the Solar Amendment states as follows:

> 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.

Several of the Opponents raised questions concerning the impact of the Solar Amendment on revenues to local governments. These include impacts upon franchise fees, public service taxes and other revenue sources.[18] The Opponents generally suggest that these are matters that should be included with the ballot summary. Contrary to this argument, issues as to the financial impact of a proposed initiative are addressed in the Financial Impact Statement and not the ballot summary.

Though these are arguments that are primarily directed to the financial impact of the Amendment, the Opponents fail to articulate why the statement of

[18] *See* Brief of Interested Parties Florida League of Cities, Inc. and Florida Municipal Electric Association, Inc.; and Initial Brief of Opponents Florida Power & Light Co., Duke Energy Florida, Gulf Power Company, and Tampa Electric Company.

financial impact is misleading as to these issues.[19] As stated in the Financial Impact Statement itself, the Amendment will result in a decrease in State and local government revenues overall, however, the timing and magnitude cannot be determined because of a variety of factors. The Financial Impact Statement clearly sets forth that there may be impacts on revenues of State and local government as a result of the Solar Amendment and that information will be available to the voter in the consideration of the Amendment. Merely because such impacts cannot be determined does not make the Financial Impact Statement misleading. This Court has upheld a finding of a range of possible impacts within a valid financial impact statement, for which the financial impact of the initiative were unable to be determined with any degree of certainty. *See Advisory Opinion to the Att'y Gen. re Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186 (Fla. 2006).

[19] To the contrary, the Initial Brief of Opponents Florida Power & Light Co., Duke Energy Florida, Gulf Power Company, and Tampa Electric Company concede that the Financial Impact Statement is clear and unambiguous as to its financial impacts.

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,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following parties, this 30th day of June, 2015.

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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).

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