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IN THE SUPREME COURT OF FLORIDA

Case Numbers SC15-780 and SC15-890

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

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ORLANDO UTILITIES COMMISSION ANSWER BRIEF

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## SUMMARY OF ARGUMENT

Sponsor's Initial Brief argues among other things that the proposed solar ballot initiative to amend Section 29, Article X of the Florida Constitution and titled "Limits or Prevents Barriers to Local Solar Electricity Supply" (the "Solar Initiative") complies with the single subject requirement of Article XI, Section 3, of the Florida Constitution. In support of that argument, Sponsor states that the Solar Initiative does not impact local government control over utility rates, services and territory because those powers are in the "...exclusive domain of the Legislature..."<sup>1</sup> This argument is incorrect and highlights the lack of understanding of the current system of utility operation and governance on the part of the Sponsor. Local government and municipal utilities are governed by their elected or appointed Boards and these Boards, not the Public Service Commission, set the rates and terms of service charged by municipal utilities. The Sponsor argues that the Solar Initiative does not have an effect on local governments and therefore does not impact multiple branches of government.<sup>2</sup>

The Solar Initiative allows the creation of a new class of retail solar generating utility ("local solar electricity supplier[s]"), alters the effect of enough existing laws to make

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<sup>1</sup> Initial Brief of Sponsor at 7.

this new utility immune to the authority of state and local government and removes the current powers of local government utilities to manage the complexities of the retail electric utility industry and set its own terms of service, rates and charges. This multi-level impact on current government powers leaves no doubt that the Solar Initiative violates the Single-Subject Requirement.

### **ARGUMENT**

#### **I. UTILITY RATE SETTING IS NOT WITHIN THE EXCLUSIVE DOMAIN OF THE FLORIDA PUBLIC SERVICE COMMISSION.**

This Court has held that a proposed constitutional amendment that substantially affects multiple functions or levels of government violates the Single-Subject Requirement. *Evans v. Firestone*, 457 So. 2d 1351 (Fla. 1984) (stating that, "In *Fine*, we found multiplicity of subject matter because the proposed amendment would have affected several *legislative* functions.") (emphasis by court). The Single-Subject Requirement will apply not only where it substantially alters the functions of the executive and legislative branches of state government, but where there is distinct and substantial effect on each local government entity. See *Advisory Op. re Tax Limitation*, 644 So. 2d 486, 494-

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<sup>2</sup> Initial Brief of Sponsor at 6.

495 (1994) (*citing* impacts on the ability to enact zoning laws, to require development plans, to have comprehensive plans for a community, to have uniform ingress and egress along major thoroughfares, to protect the public from diseased animals or diseased plants, to control and manage water rights, and to control or manage storm-water drainage and flood waters). The Solar Initiative substantially affects multiple functions of state and local government to the extent that local solar electricity providers are immune to regulation or the powers and actions of each governmental entity are inconsistent with restrictions in the Solar Initiative.

There is no doubt that the Solar Initiative impacts legislative and executive functions of the state under Section 366.80-366.85, Fla. Stat. (2013) ("FEECA") and to regulate electrical grid reliability, rates, service and service territories generally. The Sponsor argues that those powers, through the Florida Public Service Commission, are the "...exclusive domain of the Legislature, through the Florida Public Service Commission (FPSC"), a legislative agency performing exclusively delegated state legislative functions."<sup>3</sup> This is not true and ignores the powers of local government

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<sup>3</sup> Initial Brief of Sponsor at 17-18.

boards, as the representatives for the local rate payers, to make such decisions.

The authority of the Florida Public Service Commission over utility rates, service territory and grid reliability is broad, but Chapter 366, Florida Statutes (2013), does limit that authority such that it does not divest each municipal utility board from its power to operate its system and govern its terms of service and rates. This Court has recognized local powers to set rates. In *City of Tallahassee v. Mann*, 411 So.2d 162, 163 (Fla. 1982), this Court stated "We agree that the [Florida public service] commission does not have jurisdiction over a municipal electric utility's rates."

In *Amerson v. Jacksonville Electric Authority*, 362 So.2d 433, 434 (Fla. 1st DCA 1978), the First District Court of Appeals explained that

"The PSC's power to regulate is based upon the provisions of Chapter 366, Florida Statutes (1975). With limited exceptions, not relevant here, the jurisdiction of the PSC is limited to "public utilities", which are defined in Section 366.02, Florida Statutes (1975), as: ". . . every person, corporation, partnership, association or

other legal entity . . . supplying electricity .  
. . . to or for the public within this state,  
directly or indirectly for compensation; but the  
term 'public utility' as used herein does not  
include either a cooperative now or hereafter  
organized and existing under the rural  
electrification cooperative law of the state nor  
a municipality . . . ." Thus, the statute by its  
very terms specifically excludes electric  
utilities operated by Rural Electrification  
Cooperatives and municipalities from its rate  
change jurisdiction. Further, Section 366.11,  
Florida Statutes (1975), provides certain  
exemptions from the PSC's jurisdiction stating,  
in part: "No provision of this chapter shall  
apply in any manner, other than as specified in  
ss. 366.04(2), and (3), 366.05(7) and (8), and  
366.055, to utilities owned and operated by  
municipalities, whether within or without any  
municipality . . . ."

The case law is well settled that rate making authority does not  
rest solely in the purview of the Florida Public Service

Commission. Local government boards still have the authority to establish and change rates.

**II. IMPACTS OF THE SOLAR INITIATIVE ON RATE MAKING AUTHORITY AT THE STATE AND LOCAL GOVERNMENT LEVELS ARE SEPARATE AND DISTINCT IMPACTS ON TWO LEVELS OF GOVERNMENT.**

Subsection (b)(2) of the Solar Initiative provides that: "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." This provision is the corollary to Subsection (b)(1) of the Solar Initiative. Whereas Subsection (b)(1) makes the local solar electric utility immune to regulation, this provision strips the local utility governing boards of the authority to allocate costs of providing service fairly among the different user classes if (a) doing so would require a fee that is unique to the customers of local solar electricity suppliers and (b) doing so would "impair" a customer's ability to purchase solar energy from a local solar electricity.

Under the Solar Initiative, neither the state nor the local utility governing board will have the authority needed to set these rates. Sponsor's Initial Brief argues that the impact to the state and the local government utility are one and the same because of the mistaken belief that all rate making authority is vested in the Florida Public Service Commission. In fact, the Solar Initiative impacts two separate levels of government, state and local.

### **CONCLUSION**

The Solar Initiative impacts multiple levels of government and multiple government functions and therefore violates the Single-Subject Requirement. Based on the same misunderstanding by Sponsor of the impacts of the Solar Initiative on various levels of government, the title and ballot summary of the Solar Initiative have substantive omissions and inconsistencies between the summary and text which will mislead the voter. These omissions and inconsistencies cause the Solar Initiative to violate the requirements for accurate and fair disclosure under section 101.161 of the Florida Statutes. The Court must as a matter of law strike the Initiative from the ballot.

Respectfully submitted this 30<sup>th</sup> day of June, 2015.



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