IN THE SUPREME COURT OF FLORIDA

Case Nos. SC15-780 and SC15-890
(Consolidated)

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

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

INITIAL BRIEF OF OPPONENT FLORIDA STATE HISPANIC CHAMBER OF COMMERCE

Floyd R. Self, B.C.S.
Berger Singerman LLP
125 South Gadsden St., Suite 300
Tallahassee, Florida 32301
fself@bergersingerman.com
Phone: (850) 521-6727
Florida Bar No. 608025

Javier L. Vazquez, Esq.
Berger Singerman LLP
1450 Brickell Avenue, Suite 1900
Miami, Florida 33131
JVazquez@bergersingerman.com
Phone (305) 755-9500
Florida Bar No. 861121

Counsel for Opponent, Florida State Hispanic Chamber of Commerce

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PRELIMINARY STATEMENT

Within this Initial Brief of Opponent, Florida State Hispanic Chamber of Commerce will be identified as "FSHCC".

The subject of these proceedings, the proposed amendment to the Florida Constitution titled the "Limits or Prevents Barriers to Local Solar Electricity Supply" will be referred to as the "Solar Initiative" or the "Amendment." Entities that may provide exempt solar power pursuant to the Amendment if it passes will be referred to as the "Exempt Providers."

The Florida Public Service Commission will be referred to as the "PSC" or the "Commission."

STATEMENT OF THE CASE AND FACTS

Pursuant to Article XI, Section 3 of the Florida Constitution, the Florida Attorney General has requested this Court's advisory opinion on the validity of an initiative petition entitled "Limits or Prevents Barriers to Local Solar Electricity Supply," which has been docketed by the Court as Case No. SC15-780. The Attorney General has also asked for this Court's review of the Financial Impact Statement prepared for the Amendment, which has been docketed in Case No. SC15-890. The Amendment's sponsor is a political committee called Floridians for Solar Choice, Inc. This Court's review must address 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."[1] This Court has jurisdiction to determine the Amendment's compliance with these standards by Article V, Section 3(b)(10), of the Florida Constitution.

In addition, the ballot summary must have "***clear and unambiguous language*** on the ballot after the list of candidates, followed by the word 'yes' and also by the word 'no,' and shall ***be styled in such a manner that a "yes" vote will indicate approval of the proposal*** and a "no" vote will indicate rejection."[2]

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[1] *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 795 (Fla. 2014).

[2] Section, 101.161(1), Fla. Stat. (emphasis added).

Further, 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."[3]

IDENTITY OF THE OPPONENT

Florida State Hispanic Chamber of Commerce ("FSHCC"), represents 80,000 Hispanic-owned businesses and appears in opposition to the Amendment pursuant to this Court's Scheduling Order dated May 22, 2015.

FSHCC is supportive of a balanced energy portfolio for the State of Florida that includes nuclear, coal, natural gas, and renewables – including solar. However, FSHCC opposes the Amendment because it does not fully inform the voter of price increases – that are almost a certainty in the near future – and other potential problems should the Amendment pass. A citizen may want to vote "yes" to increase solar choice, but the vote may be "no" if the ballot fully informed the voters of the potential adverse consequences on overall electric rates or the other issues that may arise from the exempt status of the solar providers.

The potential electric rate increases arise from several potential factors. All electric utilities have some form of revenue requirement, which is the total revenue necessary to cover all of the utility's expenses. The Solar Initiative may materially impact an electric utility's revenues if Exempt Providers are able to have

[3] *Advisory Op. to Att'y Gen. Re: Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998).

significant market penetration and shift load away from the incumbent electric utility. An investor-owned electric utility subject to traditional, rate-base rate-of-return regulation whose earnings fall below its authorized rate of return may seek rate increases from the PSC to meet its revenue requirement. Similarly, municipal or cooperative electric utilities may be more sensitive to revenue declines and have more flexibility than PSC-regulated utilities to more quickly pass through rate increases. Electric rate increases applied to the utility's general body of ratepayers would include FSHCC, which may be disproportionately impacted than the average electric customer.

Hispanic families and businesses represent a significant segment of electric rate payers in Florida. According to the U.S. Census Bureau, in 2013, there were 450,148 Hispanic businesses in Florida, comprising 22.4% of the total businesses in Florida.[4] In addition, the Census Bureau reported for the same year that the Florida Hispanic population was 4,694,818, comprising 23.6% of Florida's total population.[5] Collectively, this means that the Hispanic community is a large consumer of electricity. But more importantly, the Hispanic Community may be more sensitive to rate increases than other Floridians. According to the U.S. Census Bureau report, approximately 54% of Florida's families have gross annual

[4] U.S. Census Bureau, *2009-2013 American Community Survey 5-Year Estimates, Household Income in the Past 12 Months* (In 2013 Inflation-Adjusted Dollars) (Hispanic or Latino Householder), 2013, Table B19001I
[5] Id.

incomes of $50,000 or less, with an average after-tax income of $23,767 resulting in less than $2,000 per month for food, medicine, transportation, electricity, water, telephone and rent.[6] In a more recent Census Bureau report, Hispanic families' gross income is almost $10,000 less, or $40,629 per family, than the average gross income for non-Hispanic Florida families.[7] This means Hispanic families have less net income to pay for essential family needs than the average non-Hispanic family. The Hispanic community cannot readily absorb an increase in electric rates caused by a utility's loss of revenues dues to electric customers shifting to Exempt Providers offering solar power if this Amendment becomes law. FSHCC requests this Court require strict compliance with the ballot initiative requirements so voters are fully informed of this Amendment's potential cost impacts.

The Solar Initiative also raises a number of potential public safety and operational issues due to the ballot's exemption from regulation provisions. For example, if approved, the Amendment could have an unintended safety consequence during restoration of power following hurricanes and natural disasters. Since the Exempt Providers are not subject to any regulatory oversight, it is unclear whether and to what extent Exempt Providers could or would

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[6] U.S. Census Bureau, *American Fact Finder, Florida Selected Economic Characteristics for 2012* (2014).

[7] U.S. Census Bureau, *2009-2013 American Community Survey 5-Year Estimates, Household Income in the Past 12 Months* (In 2013 Inflation-Adjusted Dollars) (Hispanic or Latino Householder), 2013, Table B19001I

participate in recovery operations. This scenario raises interesting questions that the ballot does not address, such as: What obligation, if any, does an Exempt Provider have to ensure a working solar panel is not causing safety issues? Will an Exempt Provider's worker be required to have a license from the Department of Business and Professional Regulation reflecting the proper training? If there is no obligation to restore by the Exempt Provider, how do customers get restored? What coordination will there be, or can be required, between the incumbent local electric utility and the Exempt Provider and how will restoration priorities be determined? Since there could be multiple Exempt Providers operating within a local area, and perhaps dozens of providers in a large county, ranging from large to small providers, the ability to respond after a natural disaster and coordinate with the electric utility and first responders could be very complicated. The exempt status of most every aspect of the Exempt Provider's operations raise more questions than answers due to the ballot language. Neither the Legislature nor the courts are identified in the ballot to determine how to resolve these implementation issues.

FSHCC has a strong interest in how providers of retail electric service operate and charge customers in Florida. The well-being of FSHCC is dependent upon low-cost, thoughtful energy policy from Florida policymakers. To date, the statutory framework from the Florida Legislature and the Florida PSC's

implementing regulations have worked appropriately. The average price of electricity in Florida is consistently in the same range as the nation's average,[8] and maintains very high reliability of approximately 99.9%.[9] However, none of these concerns are spelled out for the voter. Therefore, FSHCC respectfully submits this Initial Brief, because adoption of the Amendment without proper explanations could threaten Florida's longstanding high quality electric service and could raise costs to FSHCC. Thus, the substantial interests of FSHCC and Hispanic electric consumers in Florida would be directly affected by the substantive provisions of the Amendment.

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[8] Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry*, page 6, March 2015, citing, Energy Information Administration's *Electric Power Monthly*, Table 5.6.A, November 2014.

[9] Florida Public Service Commission, *Review of Florida's Investor-owned Utilities 2013 Service Reliability Reports*, pages 75-76, December 2014; Under the Florida PSC reliability review (pages 89-90 of the report), you'll see statistics labelled "SAIDI" for each of the four major IOUs, plus Florida Public Utilities Company which is a small electric and gas public utility. SAIDI is a measure of the number of minutes per year that electric service is interrupted and averaged for all customers. As the report reveals, FPL's SAIDI in 2013 was 61 minutes. The statistic that the report reveals - 99.9% reliability - is derived as follows: (1 – [SAIDI ÷ 525,600 minutes per year]) x 100 . Therefore, a SAIDI in 2013 of 61, FPL's reliability would be (1 – [61 ÷ 525,600]) x 100 = 99.988, which supports claiming reliability of greater than 99.9%. Similarly, with a SAIDI of 95 (highest of the four IOUs), Gulf's reliability would be (1 – [95 ÷ 525,600]) x 100 = 99.981, which still is greater than 99.9%.

INTRODUCTION AND CONTEXT

FSHCC is supportive of a balanced energy portfolio for the State of Florida that includes nuclear, coal, natural gas, and renewables – including solar. However, it appears that the proposed amendment does not fully inform the voter of all the consequences of voting "yes" on the amendment. In addition, the proposed solar amendment is not clear as to how the amendment reduces barriers to solar development in Florida that are not already spelled out in Florida law.

The ballot title and summary speak to increasing consumer choice and reducing barriers. However, this is misleading to the voters because Florida law already allows customers to use solar, or lease solar from third party businesses. Specifically, the Florida PSC's net metering rule[10] is designed to promote distributed solar for residents and businesses in Florida. Subsection (1) and (2) of this rule states,

> (1) The purpose of this rule is to ***promote the development of small customer-owned renewable generation, particularly solar*** and wind energy systems; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on fossil fuels for the production of electricity; minimize the volatility of fuel costs; encourage investment in the state; improve environmental conditions; and, at the same time, minimize costs of power supply to investor-owned utilities and their customers. This ***rule applies to all investor-owned utilities,*** . . .

[10] Rule 25-6.065, Fla. Admin. Code.

> (2) Definitions. As used in this rule, the term.
> (a) "Customer-owned renewable generation" means an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy. The term "customer-owned renewable generation" ***does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party*** under terms and conditions that do not include the retail purchase of electricity from the third party.[11]

Florida law already promotes distributed solar for all Floridians by incentivizing citizens to self-generate and consume electricity from solar installations on their homes. Present law also allows third-party businesses to lease solar panels to citizens that want to purchase solar energy but who do not want to own or pay for the large upfront cost of the solar panel.

The Florida Legislature has already addressed the removal of barriers to solar development in adopting the "Solar Energy; Advancement; Economic Development Strategy." This policy states,

> ***The use of solar energy is a proven***, effective means of reducing air pollution, while also creating new jobs, saving energy, lowering consumer utility bills, and stimulating economic development. As such, ***this state is committed to advancing the use of solar energy*** in the state. Towards this end, the state shall ***give priority to removing identified barriers to and providing incentives for increased solar energy development and use***. In addition, the state shall capitalize on solar energy as an

[11] Rule 25-6.065(1)-(2), Fla. Admin. Code (emphasis added).

> economic development strategy for job creation, market development, international trade, and other related means of stimulating and enhancing the economy of this state.[12]

To facilitate the advancement of these policies, the Legislature has mandated the monitoring of the progress of solar development by requiring the Florida Department of Environmental Protection to report the status of solar energy in Florida to the Governor, Speaker of the House, and the Senate President on January 15th of each year.[13]

The current policy of reducing barriers to solar development is best seen in the Florida Homeowner's Solar Rights Act.[14] Under this Act, a municipality can regulate and zone energy devices based on renewable resources as long as the zoning does not effectively prohibit the use of the renewable devices. This policy enables citizens to use renewable energy – particularly access to sunlight - for drying clothes and hot water needs with minimal obstructions from local government. The Act reads,

> 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

[12] Section 288.0415, Fla. Stat. (emphasis added).
[13] Section 288.041(3), Fla. Stat.
[14] Section 163.04, Fla. Stat.

resources is expressly prohibited.[15]

Thus, the Legislature has already taken important steps to reducing barriers to solar energy development by disallowing a municipality from adopting ordinances that prohibit or effectively prohibit solar installations. Similar provisions apply to other local governments and homeowner associations for comparison purposes.

Thus, existing statutory language materially mirrors the relevant text of the Solar Initiative, except the Amendment is in some respects broader in its application to local governments but narrower since it does not address homeowner's associations. The chart below compares the language from existing law to the proposed Amendment:

§ 163.04(1) Fla. Stat.	**Amendment Excerpts**
(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.	(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. *** (4) . . . nothing in this section shall prohibit reasonable . . . 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."
(emphasis added)	(emphasis added)

[15] Section 163.04(1), Fla. Stat. (emphasis added).

There has only been one relevant case involving a regulation that served as a barrier to renewable energy. That regulation was by a homeowner's association and struck down by the Fifth District Court of Appeal. In *Sorrentino v. River Run Condominium Ass'n*,[16] there was a dispute between a homeowner and a homeowner's association over an unauthorized building of a skylight by the homeowner, and the court interpreted Section 163.04, Florida Statutes, to resolve the matter. The court sided with the homeowner that the association could not prohibit the use of a skylight, and the homeowner was able to keep an authorized skylight despite objection from the homeowner's association. Further, the homeowner was awarded attorney fees which are also provided for under the statutes: "In any litigation arising under the provisions of this section, ***the prevailing party shall be entitled to costs and reasonable attorney's fees***."[17] The ability of a prevailing party to obtain attorney's fees can be an important driver for property owners seeking to enforce their solar rights when barriers are presented. The proposed Amendment does not include an attorney's fee provision.

It is important to note that there are no reported appellate cases where a local government served as a barrier to solar development, as is suggested by the Amendment. In addition to the Florida Homeowner's Solar Rights Act, the Florida

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[16] *Sorrentino v. River Run Condominium Ass'n,* 925 So.2d 1060 (Fla. 5th DCA 2006)

[17] Section 163.04(3), Fla. Stat. (emphasis supplied); See also, *Sorrentino, 925* So. 2d at 1063.

Legislature has adopted several other laws that further serve to promote solar energy.[18] Together these laws have taken valuable strides in reducing consumer barriers to solar energy availability. The absence of significant litigation involving an enforcement of these rights, suggests that consumers do not appear to be experiencing any legal barriers to the self-deployment of solar options.

The Amendment also appears to identify Florida's regulatory framework as a barrier to solar availability and suggests the present monopoly electric utility laws are unfair. In Florida, third party electric power generation and distribution is provided to customers through investor owned electric utilities regulated by the Florida PSC, municipal electric utilities governed by the respective local governments, or cooperative electric providers managed by their customers.[19] To minimize inefficiency and avoid overlapping facilities, the PSC is granted certain specific authority to approve territorial agreements, resolve territorial disputes, and prevent further uneconomic duplication of generation, transmission, and distribution facilities.[20] This statutory arrangement provides Florida with a well-coordinated, efficient, and reliable electric grid that requires each electric utility to

[18] See, Section 366.91, Fla. Stat. (2014); Section 377.705, Fla. Stat. (2014); Section 704.07, Fla. Stat. (2014); Section 163.04, Fla. Stat. (2014); Section 1013.44(2), Fla. Stat (2014); and, Section 193.624(2), Fla. Stat (2014).
[19] Section 366.02, Fla. Stat.; Section 366.04(1), Fla. Stat.
[20] Sections 366.04(2) and (5), Fla. Stat.

service to all customers within its service territory.[21]

The legal structure that supports the integrated electric grid was addressed by this Court in 1988 in the case *PW Ventures*.[22] In in this case, *PW Ventures* wanted to construct and own a cogeneration facility and sell electricity and thermal power to a single customer, Pratt and Whitney ("Pratt") that was a large consumer of electricity. *PW Ventures* sought a declaratory statement from the PSC prior to undertaking any activities in order to have the PSC determine whether such service was permitted under the statutes.

In affirming the PSC decision to declare the proposed sale of electricity was not permitted,[23] the Court observed the purpose and benefits of the integrated electric grid. Specifically, the court wrote:

> The regulation of the production and sale of electricity necessarily contemplates the granting of monopolies in the public interest. *Storey v. Mayo*, 217 So.2d 304 (Fla.1968), *cert. denied*, 395 U.S. 909, 89 S.Ct. 1751, 23 L.Ed.2d 222 (1969). Section 366.04(3), Florida Statutes (1985), directs the PSC to exercise its powers to avoid "uneconomic duplication of generation, transmission, and distribution facilities." . . . The effect of [third party sales of electricity] would be that revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers. This revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems

[21] See, e.g., Sections 366.03 and 366.04, Fla. Stat. (2014).
[22] *PW Ventures, Inc. v. Nichols,* 533 So. 2d 281 (Fla. 1988).
[23] Florida PSC Docket No. 87446-EU, Order No. 18302-A (Oct. 22, 1987).

would not have been reduced.[24]

The Court in *PW Ventures* was dealing only with a single customer scenario, and yet the prospect of harm to the remaining electric customers from the loss of that single customer was very real. Under the Amendment, it appears that an Exempt Provider could potentially serve hundreds of people from a single location and there could be multiple Exempt Providers in a local community each having more than one service location. Unregulated and unchecked, the consequences of the Amendment could be significant for electric ratepayers.

The present monopoly service arrangement and the integrity of the integrated electric grid is based upon a statutory structure that may appear complicated and unable to meet the needs of consumers seeking competitive third party service, but it has protected consumers from high cost electric service. If there is going to be change to this statutory structure, it cannot be done piecemeal. As important as it is that Florida increases its use of renewable energy, policies that seek to increase solar power production must be addressed in a comprehensive manner and in a way that protects consumers from unnecessarily high electric rates during the transition process to a more diversified, renewable energy portfolio.

This Amendment does not do that. This Amendment, on its face, does not comply with the legal standards for an initiative because it does not properly

[24] *PW Ventures,* 533 So. 2d at 283 (footnote omitted).

inform the votes of the negative impacts adoption may cause. Because of this lack of information in the ballot, FSHCC is concerned that voters will vote "yes" because of the popular support for solar, and not get into the details to learn of the potential rate increases that may occur from the utility's loss of revenue as this Court described in *PW Ventures*.[25] While the success of any widespread deployment of solar under the Amendment is certainly speculative, a utility's revenues losses will be real and at some point need to be made up from somewhere. As this Court found in *PW Ventures*, this loss of revenue will be made up from the rest of the utility's general body of ratepayers, and that includes FSHCC.

STANDARD OF REVIEW

The issues before the Court are questions of law.[26] Accordingly, the standard of review is *de novo*.[27] 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."[28] That sensitivity notwithstanding, amendments proposed by initiative are nonetheless subject to a more detailed analysis because they do not "provide a filtering legislative process for the drafting

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[25] *Id.*
[26] *Fine v. Firestone*, 448 So. 2d 984, 987 (Fla. 1984).
[27] *Armstrong v. Harris,* 773 So. 2d 7, 16 (Fla. 2000), *cert. den.*, 532 U.S. 958 (2001).
[28] *Askew v. Firestone,* 421 So. 2d 151, 156 (Fla. 1982).

of any specific proposed constitutional amendment or revision."[29] This is the case presented by the Solar Initiative.

ARGUMENT

I. THE AMENDMENT VIOLATES THE SINGLE-SUBJECT REQUIREMENT.

Article XI of the Florida Constitution requires 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."[30] In recognition of this important constitutional mandate, this Court has demanded that initiative proposals adhere to "strict compliance with the single-subject rule;"[31] 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 contained in Article III, Section 6.[32]

This Court also 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

[29] *Advisory Op. re Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994).
[30] *Fine v. Firestone*, 448 So. 2d at 998.
[31] *Fine v. Firestone*, 448 So. 2d at 989.
[32] *Fine v. Firestone*, 448 So. 2d at 998.

logrolling. In *Fine,* we found multiplicity of subject matter because the proposed amendment would have affected several *legislative* functions."[33]

The Solar Initiative under review here violates all three requirements for the following reasons: (1) passage of the Amendment would trigger changes to local government zoning laws; (2) the Amendment fails to identify any part of the constitution that is negatively affected; and (3) the Amendment violates the single-subject rule by creating asymmetrical regulations for solar energy, and increasing the price of electricity for all consumers.

1. Passage of the Proposed Amendment Would Trigger Changes to Multiple Levels of Government and Florida Laws

The Solar Initiative has an effect on the exercise of executive branch functions, because it removes the power to plan and implement Florida's energy policy from the executive branch. The state's energy policy already includes a directive for "the full participation of citizens in the development and implementation of energy programs."[34] State agencies have the responsibility for implementation of the state's energy policy.[35]

Furthermore, the Amendment substantially affects local governments through the loss of franchise fees. Municipalities and counties rely upon franchise

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[33] *Advisory Op. re Personal Property Rights*, 699 So. 2d 1304, 1308 (Fla. 1997) (emphasis by court).
[34] See, Section 377.601(2)(f), Fla. Stat. (2014).
[35] See also, Section 377.703(1), Fla. Stat. (2014).

fees collected from electric utilities. Typically, franchise fees are paid by the utilities and often based on a percentage of the utility's sales in exchange for granting utilities the right to locate their facilities on public rights-of-way and the right to provide electric service within the cities' limits. If Exempt Providers are successful in expanding their business then the utilities' revenues will decline and franchise fees will be reduced. If franchise fees are reduced then the local government will need to make up those losses to have a balanced budget.

The loss of franchise fees are not the only adverse revenue impacts, because it appears that Exempt Providers will not pay taxes on the electricity they sell. The consequences of this could be significant. The Financial Impact Estimating Conference's Report on the Solar Initiative found 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."[36]

2. The Solar Initiative Failed to Identify Sections of the Florida Constitution That Will Be Impacted

The Florida Constitution provides in Article VIII, Section 2(b) that,

[36] *Initiative Financial Information Statement for Limits or Prevents Barriers to Local Solar Electric Supply*, Serial Number 14-02, Fiancial Impact Statement, May 7, 2015

"Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law." The proposed Amendment, as drafted, threatens the municipality's ability to preserve tree lines and civic landmarks. These large, commercial-scale solar power plants need open access to sunlight, and trees could be lost. These solar panels are not small and are more akin to a mini electric grid, than a small residential rooftop solar panel. The local impacts could be substantial.

In addition, the Amendment substantially affects Article I, Section 10, of Florida's Constitution which protects contracts against impairment by law. The proponents do not identify impacts to franchise agreements. Many municipalities and counties have franchise fee agreements with electric utilities that will be negatively impacted if the ballot is passed. Impairment to contract provision is understandably taken very seriously by this Court,[37] and it is worth reminding the court that "virtually no degree of contract impairment has been tolerated in this state." The impact to Article I, Section 10, of Florida's Constitution has not been identified by proponents of this Initiative.

[37] *See Yamaha Parts Distributors, Inc. v. Ehrman,* 316 So. 2d 557, 559 (Fla. 1975); rehearing denied (Sept. 3, 1975).

3. Proposed Amendment Addresses Several Subjects Not Identified in the Solar Initiative And Guilty of Logrolling

It appears that the proposed Amendment is about more than just solar choice. The Solar Initiative appears to be about deregulation, and concealing potential price increases for electric service. This violates the single-subject rule because the Amendment engages in logrolling. The single-subject requirement is intended to avoid combining non-conforming provisions in a single amendment, "some of which electors might wish to support, in order to get an otherwise disfavored provision passed."[38] The Court has consistently refused to approve initiatives that contained multiple provisions that had this effect of logrolling. The Solar Initiative is most like the case *In re Advisory Opinion to the Attorney General – Save Our Everglades.*[39]

In *Save Our Everglades*, that amendment was designed to restore the Everglades using a fund created by the amendment, and funded by imposing a fee upon sugarcane processors. 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. 636 So. 2d at 1341.

[38] *Advisory Op. re Physicians Fees*, 880 So. 2d 659, 662 (Fla. 2004).
[39] *In re Advisory Opinion to the Attorney General – Save Our Everglades,* 636 So.2d 1336 (Fla. 1994).

The Solar Initiative appears to be a case of logrolling like that seen in *Save Our Everglades*. While the *Save Our Everglade*s petition suffered from a duality of purposes, the current Amendment suffers from multiple purposes.

The central point not made clear by the Amendment is that it could increase the cost of electric service. The utility will lose revenue but still have the same fixed costs to maintain a reliable electric grid. The utility's unrecovered costs would have to be paid by the utility's remaining customers, and that includes Hispanic families and business owners that simply cannot afford another increase to the cost of living. Further, the ballot suffers from a duality of purpose and is guilty of logrolling – both expressly prohibited by this Court as state above.

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

An initiative ballot amendment must be clear and unambiguous so that the voter is informed of their "yes" or "no" vote. Specifically:

> Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in ***clear and unambiguous language*** on the ballot after the list of candidates, followed by the word "yes" and also by the word "no," and shall ***be styled in such a manner that a "yes" vote will indicate approval of the proposal*** and a "no" vote will indicate rejection.[40]

In addition, 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

[40] Section, 101.161(1), Fla. Stat. (emphasis added).

can cast an intelligent and informed ballot."[41] 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.[42]

Under the Solar Initiative, the ballot language misleads the voter to solicit a "yes" vote on false pretenses, because solar is already a choice for citizens and Florida law promotes solar as a choice; just not to the liking of the proponents of the Solar Initiative. The ballot title, "Limits or Prevents Barriers to Local Solar Electricity Supply," wrongly implies that a constitutional amendment is required to permit production of local solar energy in Florida. This is very misleading because the general public may conclude that Florida is not promoting solar. However, Florida law already permits solar energy production by a business or a citizen to meet their energy needs. Therefore, the ballot language misleads the voter and is designed to solicit a "yes" vote on false pretenses. The ballot's true purpose is to deregulate a small portion of an energy market in Florida using solar.

The ballot title and summary violate this requirement because the language used fails to advise voters of the comprehensive, existing Florida law addressing solar electricity and the sweeping changes the Amendment would make to that law.

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[41] *Advisory Op. Att'y* Gen., 718 So. 2d at 803; see, also, Section 101.161(1), Fla. Stat. (2013).
[42] *Armstrong,* 773 So. 2d at 12-13.

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 barriers to local solar energy supply and, in fact, that the existing laws specifically encourage local solar energy supply – most notably the Florida Homeowner's Solar Rights Act[43] discussed earlier in this brief.

This Act 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. Municipalities are very mindful of this law and often use an architectural review board to balance the community's appearance while trying to promote solar.

In addition, under Florida law public and municipal utilities and rural electric cooperatives are required to offer purchase contracts to co-generators and small power producers, including individuals generating solar electricity at their own property,[44] and are required to "develop standardized interconnection agreement[s] and net metering program[s] for customer-owned renewable generation."[45] Chapter 377 of the Florida Statutes "provides incentives" to offset a portion of the upfront cost of renewables and facilitate the use of "renewable

[43] Section 163.04, Fla. Stat. (2014).
[44] See, Section 366.91(3), Fla. Stat. (2014),
[45] Section 366.91(5), (6), Fla. Stat. (2014)).

energy," which includes solar energy.[46]

The Florida PSC has developed a net metering rule that promotes customer-owned solar power, and the rule has been in effect for over five years. This rule, Interconnection and Net Metering of Customer-Owned Renewable Generation,[47] is designed to promote the use of customer-owned solar by allowing the customer credit for excess energy generated. According to the Solar Industries Association, "net metering is a billing mechanism that credits solar energy system owners for the electricity they add to the grid."[48] For example, if a residential customer has a solar rooftop system, it may generate more electricity than the building uses during daylight hours. If so, the electricity meter will run backwards to provide a credit against what electricity is consumed by the consumer during night or other periods where the home's electricity use exceeds the system's output. In Florida, customers are only billed for their "net" energy use, and compensated at the wholesale rate for any surplus sent back into the grid for others to use.

The PSC rule even allows for third-party leasing programs that function almost identically to the proposed amendment. Specifically, net metering rule is designed to stimulate solar development:

The ***purpose of this rule is to promote the development of small***

[46] Section 377.802, 377.803(4), Fla. Stat. (2014).
[47] Rule 25-6.065, Fla. Admin. Code.
[48] See, Solar Industries Association, Policies & Issues webpage, net metering; June 1, 2015.

> ***customer-owned renewable generation, particularly solar*** and wind energy systems; diversify the types of fuel used to generate electricity in Florida; lessen Florida's dependence on fossil fuels for the production of electricity; minimize the volatility of fuel costs; encourage investment in the state; improve environmental conditions; and, at the same time, minimize costs of power supply to investor-owned utilities and their customers. This rule applies to all investor-owned utilities, . . .
>
> (a) "Customer-owned renewable generation" means an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy. The term *"customer-owned renewable generation"* ***does not preclude the customer of record from contracting for the purchase, lease, operation,*** *or maintenance of an on-site renewable generation system* ***with a third-party*** under terms and conditions that do not include the retail purchase of electricity from the third party.[49]

As outlined and emphasized above, the customer has several choices to develop customer-owned or leased solar systems.

This is very similar to the inverse of an amendment at issue in the case of *Advisory Opinion. To the Attorney General. Re: Casino Authorization,*[50] which purported to prohibit casino gambling except in certain locations, when casino gambling was already prohibited statewide. For the ballot title and summary of the Solar initiative to suggest that this proposal is necessary to allow local solar electricity is misleading, and solicits a "yes" vote on false pretenses. Moreover,

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[49] Rule 25-6.065(a), Fla. Admin. Code (emphasis added)
[50] *Advisory Op. to Att'y Gen. Re: Casino Authorization,* 656 So. 2d 466, 469 (Fla. 1996)

the Solar Initiative fails to inform the voter of loss revenues for municipalities due to declining franchise fees.

Voters are entitled to "fair notice" of the actual impact of the Solar Initiative. But neither the title nor the summary of the Amendment provides fair notice. The Amendment should thus be stricken for violating these important requirements designed to protect voters.

CONCLUSION

Although well intended, the Solar Initiative violates the single-subject rule because it engages in 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 Amendment would create. The Court must strike the Solar Initiative from the ballot.

Respectfully submitted, this 10th day of June, 2015.

Floyd R. Self, B.C.S.
Berger Singerman LLP
125 South Gadsden St., Suite 300
Tallahassee, Florida 32301
fself@bergersingerman.com
Phone: (850) 521-6727
Florida Bar No. 608025

Javier L. Vazquez, Esq.
Berger Singerman LLP
1450 Brickell Avenue, Suite 1900
Miami, Florida 33131
JVazquez@bergersingerman.com
Phone (305) 755-9500
Florida Bar No. 861121

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 10, 2015, a true and correct copy of the foregoing was electronically filed with the Florida Courts E-Filing Portal with noticed furnished to all registered users, as indicated below:

Via Electronic Mail:

The Honorable Pamela Jo Bondi
Attorney General
Lagran Saunders, Esq.
Assistant Attorney General
State of Florida
PL 01, The Capitol
Tallahassee, FL 32399-1050
oag@civil.eserve@myfloridalegal.com
Lagran.Saunders@myfloridalegal.com

Gregory Thomas Stewart, Esq.
William C. Garner, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
gstewart@ngnlaw.com
bgarner@ngn-tally.com
legal-admin@ngnlaw.com

The Honorable Rick Scott
Governor, State of Florida
ATTN: Timothy Michele Cerio, Esq.
The Capitol
400 South Monroe Street
Tallahassee, FL 32399-0001
tim.cerio@eog.myflorida.com

The Honorable Kenneth J. Detzner
Secretary of State
ATTN: Adam Scott Tanenbaum, General Counsel
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399
adam.tanenbaum@dos.myflorida.com

The Honorable Andy Gardiner
President, The Florida Senate
ATTN: George Levesque, General Counsel
409 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100
glevesque4@comcast.net

The Honorable Steve Crisafulli
Speaker, Florida House of Representatives
ATTN: Matthew Joseph Carson, General Counsel
420 The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300
matthew.carson@myfloridahouse.gov

Stephen H. Grimes, Esq.
D. Bruce May, Jr.
P.O. Drawer 810
Tallahassee, Florida 32302
Stephen.grimes@khlaw.com
Bruce.may@hklaw.com

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

Linda Lomis Shelley, Esq.
Buchanan, Ingersoll & Rooney, PC
101 North Monroe Street Suite 1090
Tallahassee, Florida 32301
Linda.Shelley@bipc.com

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

Harry Morrison, Jr., Esq.
Florida League of Cities, Inc.
301 South Bronough Street, Suite 300
Tallahassee, Florida 32302-1757
Cmorrison@flcitites.com

Via United States Mail:

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

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

By: s/Floyd R. Self

CERTIFICATE OF COMPLIANCE

Counsel for Appellant hereby certifies that this Initial Brief is typed in 14 point Times New Roman, in compliance with Fla. R. App. P. 9.100(l).

s/ Floyd R. Self, B.C.S.
Floyd R. Self, B.C.S.
Berger Singerman LLP
125 South Gadsden St., Suite 300
Tallahassee, Florida 32301
fself@bergersingerman.com
Phone: (850) 521-6727
Florida Bar No. 608025

And

Javier L. Vazquez, Esq.
Berger Singerman LLP
1450 Brickell Avenue, Suite 1900
Miami, Florida 33131
JVazquez@bergersingerman.com
Phone (305) 755-9500
Florida Bar No. 861121