IN THE SUPREME COURT OF FLORIDA

Case Nos. SC15-780; SC15-890

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

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

UPON REQUEST FROM THE ATTORNEY GENERAL FOR AN ADVISORY OPINION AS TO THE VALIDITY OF AN INITIATIVE PETITION

INITIAL BRIEF OF FLORIDA CHAMBER OF COMMERCE IN OPPOSITION TO THE INITIATIVE PETITION

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IDENTITY AND INTEREST OF THE FLORIDA CHAMBER OF COMMERCE

The Florida Chamber of Commerce ("Chamber") is the state's largest federation of employers, chambers of commerce and associations advocating for Florida businesses. The Chamber's ongoing efforts to make Florida more competitive include advocating among all branches of government for effective policies that encourage private-sector job creation.

The Chamber generally opposes the amendment of the Florida Constitution to achieve policy goals that can be accomplished through the legislative process. Such is the case with the proposed initiative petition. In fact, similar legislation was proposed in the 2015 legislative session. *See* S.B. 1118, 2015 Leg., Reg. Sess. (Fla. 2015). The Chamber also supports all types of energy production, and believes that the business community is best served by government policies that do not favor any one source of energy over another. Finally, the Chamber opposes government policies that could increase the cost of doing business in Florida, including those that would require businesses to absorb higher energy costs.

STATEMENT OF THE CASE AND FACTS

The Attorney General of Florida has requested this Court's advisory opinion to determine the validity of an initiative petition to amend the Florida Constitution related to solar electricity (the "Solar Initiative"). The Court has jurisdiction. *See* Art. V, § 3(b)(10), Fla. Const. The Court reviews the petition to determine

whether it satisfies the single-subject requirement of article XI, section 3 of the Florida Constitution, and whether the ballot title and summary satisfy section 101.161(1), Florida Statutes. *Advisory Op. to the Att'y Gen. re: Use of Marijuana for Certain Med. Conditions,* 132 So. 3d 786, 791 (Fla. 2014).

The Solar Initiative would allow certain local solar electricity suppliers to sell electricity to customers in a public utility's territory. It would change current law governing the sale of electricity and would affect the economics of electric utilities. Below we summarize the proposed amendment and explain its effects within the regulatory context.

A. Existing Regulation of Florida Electricity Markets

Florida has a system of regulated electric utilities designed to make affordable and reliable electricity universally available. But supplying electricity to millions of Floridians is a complex task and requires a significant investment. To deliver power from generation facilities to customers, an extensive system of transmission lines, substations, and other facilities must be built and maintained. The construction and maintenance of the power grid is expensive, especially in the aftermath of natural disasters such as hurricanes. Operating the power grid is enormously complicated, requiring grid operators to precisely balance supply and demand for electricity to avoid blackouts. *See, e.g.*, U.S. DEP'T OF ENERGY, OFFICE OF INDIAN ENERGY, ELECTRICITY GRID BASICS,

http://energy.gov/sites/prod/files/2013/04/f0/DOE-IE_%20Foundational_Electricity_Grid_Basics_PresentationSlides.pdf (last visited June 9, 2015).

To keep electricity reliable and affordable, Florida has a traditional model of regulated public and private utilities. Utilities operate within fixed service territories in which one utility is responsible for delivering electricity and maintaining the power grid. *See, e.g., Storey v. Mayo,* 217 So. 2d 304, 307 (Fla. 1968) (discussing logic of territorial exclusivity of utilities). Every person who wants to purchase electricity in the territory must buy it from that utility, and the utility must sell electricity to anyone who asks. *Id.* at 308. This system allows the utility to aggregate all of the costs of operating and maintaining the power grid in a given area, and to aggregate all of the revenues from the sale of electricity there. The utility can then spread those costs across the entire population of customers, including the fixed costs of maintaining the power grid, by charging a single rate per kilowatt hour. *Id.* at 306; *see also* Alexander D. White, Comment, *Compromise in Colorado: Solar Net Metering and the Case for "Renewable Avoided Cost,"* 86 U. Colo. L. Rev. 1095, 1108 (2015). The utilities are regulated by governmental entities—the Florida Public Service Commission in the case of public utilities—to ensure that the utilities reliably deliver electricity and recover

only a reasonable rate of return on their investment. *See generally* Ch. 366, Fla. Stat. (2014).

As a result of this system, virtually everyone in Florida has access to electricity, with much lower rates than in many other parts of the country. *See* U.S. ENERGY INFO. ADMIN., RANKINGS: AVERAGE RETAIL PRICE OF ELECTRICITY TO RESIDENTIAL SECTOR (Feb. 2015), http://www.eia.gov/state/rankings/?sid=US#/series/31 (last visited June 9, 2015) (showing national rates ranging from 30.85 to 8.65 cents/kWh, with average Florida rate of 12.09 cents/kWh). Florida utilities also are very reliable in their ability to deliver electricity on demand with minimal interruptions. *See* FLORIDA PUBLIC SERVICE COMM'N, REVIEW OF FLORIDA'S INVESTOR-OWNED ELECTRIC UTILITIES 2013 SERVICE RELIABILITY REPORTS 2-6 (Dec. 2014), http://www.psc.state.fl.us/utilities/electricgas/distributionreports/2013/IOU/FINAL2014ReliabilityReportFINAL12-23-2014.pdf (last visited June 9, 2015) (indicating that the average minutes that investor-owned utility customers were without power in 2013 ranged from only 61 minutes for Florida Power & Light Co. to 170 minutes for Florida Public Utilities Company, which means customers had electric service over 99.9% of the time). This benefits residents and businesses alike.

B. Solar Power in Florida

Solar power systems, which typically use large panels of photovoltaic cells to convert sunlight into electricity, are installed on homes and businesses across Florida. In recent years, the pace of their installation has increased dramatically. *See* INITIATIVE FINANCIAL INFORMATION STATEMENT, LIMITS OR PREVENTS BARRIERS TO LOCAL SOLAR ELECTRICITY SUPPLY ("FIS") 7 (indicating that from 2008 to 2013, the number of customer-owned solar systems increased from 577 to 6,678). Solar photovoltaic systems usually are owned by the homeowners and businesses where they are installed. *Id.* at 6-7.

Solar photovoltaic systems produce electricity only when the sun shines, which means that most homes and businesses using those systems remain connected to the power grid. In a common arrangement known as "net metering," such customers purchase electricity from the power grid when their systems are not producing enough to meet demand, and sell electricity to the grid when their systems are producing more than they need. FIS at 7; *see also* Fla. Admin. Code R. 25-6.605 (PSC rule regarding interconnection and net metering).

Florida law encourages the installation of solar energy systems. The Legislature has announced a policy "to promote, stimulate, develop, and advance the growth of the solar energy industry in the state." § 288.041(2), Fla. Stat. (2014). The State Comprehensive Plan promotes the use of all renewable energy

resources, and the Florida Building Code encourages the use of renewable energy. §§ 163.08(1)(a), 553.886, Fla. Stat. (2014). Florida law prohibits property appraisers from increasing the tax-assessed value of residential property when a homeowner installs renewable energy devices such as solar systems. Art. VII, § 4(i)(2), Fla. Const.; § 193.624, Fla. Stat. (2014). Florida law also bars local governments and homeowner associations from prohibiting the installation of solar energy systems. § 163.04(1)-(2), Fla. Stat. (2014).

C. The Solar Initiative

The Solar Initiative would add a new Section 29 to Article X of the Florida Constitution. The ballot title and summary read as follows:

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

The amendment would essentially create a category of electricity companies called "local solar electricity suppliers." A "local solar electricity supplier" would be defined as "any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of no more than two

megawatts, that converts energy from the sun into thermal or electrical energy, to any other person located on the same property, or on a separately owned but contiguous property, where the solar energy generating facility is located." Proposed Art. X, § 29(c)(1), Fla. Const. Two megawatts is enough electricity to power about 200 Florida homes. *See* SOLAR ENERGY INDUSTRIES ASSOCIATION, ISSUES & POLICIES, http://www.seia.org/policy/solar-technology/photovoltaic-solar-electric/whats-megawatt (last visited June 9, 2015).

"Local solar electricity suppliers" would be exempted from "state or local government regulation with respect to rates, service or territory," and would not "be subject to any assignment, reservation, or division of service territory between or among electric utilities." Proposed Art. X, § 29(b)(1), Fla. Const. The amendment would allow those companies to sell electricity to customers within a utility's service territory. It also would restrict local governments' zoning and land use powers related to local solar energy suppliers, because this Court has interpreted the authority to regulate electric utilities' "rates and service" to include requirements that affect rates even indirectly. *See Fla. Power Corp. v. Seminole Cty.*, 579 So. 2d 105, 107 (Fla. 1991) (holding that a local government requirement to bury power lines was a regulation of "rates and service"). The only allowed regulation of those companies would be "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." Proposed Art. X, § 29(b)(4), Fla. Const.

The amendment also requires electric utilities to provide electricity to customers who also purchase electricity from local solar power companies. Proposed Art. X, § 29(b)(3), Fla. Const. Therefore, they would be required to maintain those customers' connection to the power grid. However, the utilities would be prohibited from charging "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 energy from a local solar electricity supplier." Proposed Art. X, § 29(b)(2), Fla. Const. Since utilities' costs to maintain the power grid are built into their per-kilowatt hour charges, this means that they would not be allowed to recoup those grid maintenance costs from customers who now will be purchasing less electricity from the utilities because they will be purchasing from local solar electricity suppliers.

SUMMARY OF ARGUMENT

The Solar Initiative violates the single-subject requirement of article XI, section 3 of the Florida Constitution. The proposed amendment would allow the direct non-utility sale of solar electricity to certain customers; impose limitations on electric utilities that would cause non-solar customers to shoulder a

disproportionate share of the cost to maintain the power grid; and restrict the land use powers of local governments over local solar suppliers. These three subjects are not necessary components of a single overall plan, and including them in the same initiative forces voters to weigh their support or opposition for the different subjects in deciding how to cast a single vote.

The title and ballot summary also violate section 101.161, Florida Statutes, by failing to clearly inform voters of the chief purpose of the Solar Initiative, which is to favor sales of solar electricity by certain types of companies. The title and ballot summary are also misleading, because they falsely suggest that the purpose of the initiative is to encourage the production of solar energy rather than its sale by certain companies, and because they do not inform voters about the initiative's likely effects on rates charged to non-solar customers.

ARGUMENT

I. THE SOLAR INITIATIVE VIOLATES THE SINGLE-SUBJECT REQUIREMENT

The Florida Constitution provides that a proposed citizen initiative to amend the constitution "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. The single-subject requirement "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *In re Advisory Op. to the Att'y Gen. re: Save Our Everglades Trust Fund*, 636 So. 2d 1336, 1339 (Fla. 1994); *Marijuana*, 132 So. 3d

at 796. To comply with the single-subject requirement, "the proposed amendment must manifest a 'logical and natural oneness of purpose.'" *In re Advisory Op. to Att'y Gen. – Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)). This prevents "logrolling," the "practice wherein several separate issues are rolled into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." *Marijuana*, 132 So. 3d at 795 (quoting *Everglades*, 636 So. 2d at 1339). "This requirement avoids voters having to accept part of an initiative proposal which they oppose in order to obtain a change in the constitution which they support." *Fine*, 448 So. 2d at 988.

The Solar Initiative violates the single-subject requirement because it would change Florida law in disparate ways and force voters to choose between supporting the sale of solar electricity by local suppliers and shifting most of the costs of maintaining the power grid onto non-solar customers.

The Solar Initiative has three different objectives. First, it would allow for the unregulated sale of electricity by "local solar energy suppliers." Proposed Art. X, § 29(b)(1), Fla. Const. This would give Floridians the option to buy solar electricity from a party other than their utility, a choice they do not have now.

Second, the Solar Initiative would shift more of the costs of maintaining the power grid to non-solar customers, an objective that likely will be much less

popular with voters. The proposed amendment would require electric utilities to provide grid interconnection to solar customers. Proposed Art. X, § 29(b)(3), Fla. Const. Yet they would be prohibited from charging solar customers any differently from other customers, *see id.* § 29(b)(2), even though those customers may no longer purchase enough electricity to cover the costs to maintain their connection to the power grid.

Such a market structure would have the effect of causing non-solar customers to subsidize solar customers' use of the power grid. This Court discussed this exact scenario in *P.W. Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988), which involved a proposal by the owner of a cogeneration facility to sell electricity to a single customer without regulation as a utility. The Court found that if small power companies could sell electricity to individual customers within an electric utility's territory, "[t]he effect of this practice 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 would not have been reduced." *Id.* at 283. This finding is consistent with concerns raised elsewhere. *See, e.g.*, White, 86 U. Colo. L. Rev. at 1108-1110 (describing experience in Colorado); INSTITUTE FOR ELECTRIC INNOVATION, VALUE OF THE GRID TO DG CUSTOMERS 4 (Oct. 2013),

http://www.edisonfoundation.net/
iee/Documents/IEE_ValueofGridtoDGCustomers_Sept2013.pdf (last visited June 8, 2015) (describing effect on electricity rates caused by distributed electrical generation).

A third objective of the Solar Initiative is to limit local land use restrictions on local solar electricity suppliers. The amendment would exempt these companies from "local government regulation with respect to rates [and] service," Proposed Art. X, § 29(b)(1), Fla. Const., which the Court has interpreted to mean any regulation that affects rates, *Fla. Power Corp.*, 579 So. 2d at 107. The only regulations that would be allowed would be "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." Proposed Art. X, § 29(b)(4), Fla. Const. Therefore, local governments could longer enforce zoning laws that might have the effect of prohibiting local solar companies from establishing operations on a specific property, such as restrictions on commercial uses in residentially-zoned neighborhoods. Nothing would prevent a local solar power company from buying an empty lot in a residential neighborhood, covering it with solar panels, and selling electricity to neighbors.

None of these objectives "may be logically viewed as having a natural relation and connection as component parts of a single dominant plan or scheme."

Advisory Op. to Att'y Gen. Re: Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Dists., 926 So. 2d 1218, 1224 (Fla. 2006) (quoting *Fine*, 448 So. 2d at 990). The Solar Initiative's cost-shifting objective is not necessary to accomplish the separate objective of allowing the direct sale of local solar electricity to individual customers. Florida law could allow the direct sale of solar electricity to some businesses and homeowners without forcing non-solar customers to shoulder a disproportionate share of the cost to maintain the power grid. Nor is it necessary to override local zoning rules governing the location of solar facilities. Where a ballot initiative combines different objectives that are not necessary elements of a single scheme, no oneness of purpose exists. *See id.* at 1225-26 (holding that proposed ballot initiative that would have created a new redistricting commission and also changed the standards for drawing new legislative districts violated the single-subject requirement because "the creation of new standards to be used in apportioning the districts is not a component part of this apportionment").

The inclusion of these different objectives in one initiative is classic logrolling. Many voters may support allowing Floridians to purchase solar electricity directly from local, non-utility producers, but they may not support forcing non-solar customers to subsidize it. The Solar Initiative forces voters to

choose between these different objectives in deciding whether to amend the Florida Constitution.

This Court rejected another proposed initiative involving similar circumstances. In *In re Advisory Op. to the Att'y Gen. re: Save Our Everglades Trust Fund*, 636 So. 2d 1336 (Fla. 1994), the initiative proposed both to restore the Everglades and to require the sugar industry to pay for it. The Court held that the proposed amendment

> embodies precisely the sort of logrolling that the single-subject rule was designed to foreclose. . . . 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.

Similarly, in *Advisory Op. to the Att'y Gen. re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563 (Fla. 1998), the Court rejected a ballot initiative that would have prohibited any laws limiting individuals' choice of health care providers—akin to the Solar Initiative's proposed prohibition on laws preventing consumers from purchasing electricity from a local solar energy supplier. *See id.* at 565. The Health Care Provider Initiative also would have prohibited private companies from doing anything by contract that would limit individuals' choice of health care providers—much as the Solar Initiative would

limit the right of electric utilities to impair by contract the right of customers to purchase electricity from local solar electricity suppliers. *Id.* This Court held that including both objectives in a single ballot initiative was prohibited logrolling because

> [t]he proposed amendment combines two distinct subjects by banning limitations on health provider choices imposed by law and by prohibiting private parties from entering into contracts that would limit health provider choice. The amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote on the health care provider issue in an "all or nothing" manner.

Id. at 566.

The Solar Initiative also echoes the proposed sales tax initiative this Court rejected in *Advisory Op. to the Att'y Gen. re: Fairness Initiative,* 880 So. 2d 630 (Fla. 2004). That initiative would have required the Legislature to review existing sales tax exemptions, to create a new sales tax on services, and to limit the Legislature's power to create or continue sales tax exemptions. *Id.* at 634. This Court held that including different subjects in a single ballot initiative constituted impermissible logrolling:

> A voter may support requiring the Legislature to periodically review tax exemptions on the sale of certain goods, but oppose the actual creation of a broad sales tax on undefined services that are currently excluded from the sales tax. This initiative requires the voter to 'choose all or nothing' among the three apparent effects of the amendment.

Id. at 635.

For all these reasons, the Solar Initiative violates the single-subject requirement.

II. THE PROPOSED BALLOT TITLE AND SUMMARY ARE MISLEADING

A ballot title and summary for a proposed Constitutional amendment must use "clear and unambiguous language" and state "the chief purpose of the measure." § 101.161, Fla. Stat. (2014). When they vote, voters do not see the actual language of the proposed constitutional amendment, and so must rely on an accurate ballot title and summary. Therefore, the ballot title and summary "cannot either 'fly under false colors' or 'hide the ball' as to the amendment's true effect." *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000). To determine whether a proposed initiative complies with section 101.161, the Court must consider (1) whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment in clear and unambiguous language, and (2) whether the language of the title and summary misleads the public. *Fla. Dep't of State v. Slough*, 992 So. 2d 142, 146 (Fla. 2008) (citing *Advisory Op. to Att'y Gen. re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 213-24 (Fla. 2007), and *Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Amendment*, 926 So. 2d 1229, 1236 (Fla. 2006)). "Simply put, the ballot must give the voter fair notice of the decision he must make." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982).

As we explain below, (A) the title and summary do not inform voters that the amendment's chief purpose is to allow unregulated companies to sell solar electricity; and (B) the title and summary mislead voters about the need to foster the production of solar energy and the effect of the measure on non-solar customers.

A. The Title and Summary Do Not Inform Voters that the Amendment's Chief Purpose is to Allow Unregulated Companies to Sell Solar Electricity

The proposed amendment's obvious purpose is to allow a select group of solar energy producers to sell electricity to customers in electric utilities' territory with virtually no regulation, an advantage that no other seller of electricity would receive. But a voter reading the ballot title and summary would not know that.

The ballot title and summary do not clearly inform voters that the proposed amendment is about the sale of electricity, not its production. The title and summary only discuss the "supply" of local solar electricity. Yet the actual text of the amendment is about the sale of electricity: the title of the proposed new article X, section 29 of the Florida Constitution would be "*Purchase and sale* of solar electricity."

More importantly, the ballot title and summary do not inform voters that the proposed amendment would exempt certain solar electricity sellers from regulations to which all other sellers of electricity are subject. The ballot title and

summary suggest that local solar electricity suppliers are subject to some sort of special discrimination not applicable to other sellers of electricity, and that the amendment is designed to end that discrimination. The ballot title and summary refer to "barriers" that "limit or prevent" the supply of local solar electricity, and indicate that they "include government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electric utility rates, charges and terms of service imposed on local solar electricity customers." The reference to "barriers" imposed by government regulations and electric utilities on local solar electricity supply, without any explanation that those barriers apply to all forms of electricity supply, suggests that government agencies and electric utilities are imposing special burdens on solar producers. This perception is reinforced by the reference in the ballot summary to "unfavorable electric utility rates, charges and terms of service imposed on local solar electricity customers," which implies that utilities are disfavoring customers who buy electricity from local solar energy producers. Since nobody other than a utility may currently sell electricity to a customer within its territory, *see* FIS at 14, it is unclear how utilities can be imposing "unfavorable rates, charges and terms on service" on customers who are buying electricity from a local solar energy supplier as the amendment defines that term. The overall impression the title and summary create is that the Solar Initiative would prevent government regulators and utilities from discriminating

against local solar power companies, when in reality its chief purpose is to discriminate *in favor* of those companies by exempting them from regulation and shifting grid maintenance costs onto non-solar customers.

In this respect, the Solar Initiative is similar to the ballot initiative addressing lobbyists' financial disclosures that this Court invalidated in *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982). The ballot title for that proposed amendment stated that it would prohibit former elected officials from lobbying any state government body for two years unless they filed a financial disclosure. But it neglected to tell voters that this would actually relax existing restrictions on some lobbyists. *Id.* at 154-55. The Court found it to be misleading: "The problem . . . lies not with what the summary says, but, rather with what it does not say." *Id.* at 156; *see also Armstrong*, 773 So. 2d at 18, 21 (holding that a ballot summary "hid the ball" regarding the initiative's main effect; "the ballot language in the present case is defective for what it does *not* say").

B. The Title and Summary Mislead Voters Regarding the Need for the Proposed Amendment to Foster the Production of Solar Energy and the Effect of the Measure on Non-Solar Customers

The ballot title and summary also are misleading about the need for the amendment and its effect on non-solar customers. The title, "Limits or Prevents Barriers to Local Solar Electricity Supply," implies that the proposed amendment would remove obstacles to the production of solar energy at local facilities. But

Florida law currently allows businesses and homeowners to buy or lease their own solar panels and use that electricity. FIS at 14. Florida law also bars local governments from prohibiting installation of solar panels on buildings, § 163.04(1), Fla. Stat. (2014), and requires public utilities to have "net metering" programs by which utilities buy back excess solar electricity. § 366.91, Fla. Stat. (2014). As a result of these and other policies, the number of customer-owned solar systems in Florida increased by a factor of twelve from 2008 to 2013 (from 577 systems to 6,678 systems). FIS at 7. It is therefore misleading to suggest that the Solar Initiative is needed to overcome obstacles to producing solar electricity, when in reality it is needed only to facilitate a specific business model in which certain small solar producers would sell their power to customers.

The ballot title and summary also say nothing about the aspects of the proposed amendment that would shift the cost of maintaining the power grid to non-solar customers. The amendment would require utilities to continue to provide grid connections for solar customers, Proposed Art. X, § 29(b)(3), Fla. Const., but would prohibit them from recovering all of the costs of maintaining the grid by setting special rates or conditions of service to make up for lower power purchases, *id.* § 29(b)(2). These provisions would force utilities to recover the costs of maintaining the power grid by raising rates on the remaining non-solar ratepayers. That was this Court's conclusion in *P.W. Ventures*, where it held that

allowing non-utilities to sell electricity to customers in a utility's service area "would drastically change the regulatory scheme in this state" by forcing the revenue captured by the non-utility seller "to be made up by the remaining customers of the regulated utilities." 533 So. 2d at 283. Nowhere do the ballot title or summary state that the amendment drastically changes the regulatory scheme and shifts more of the costs to maintain the power grid to non-solar customers. Nowhere are voters told that local governments would no longer be able to enforce residential-only zoning regulations against local solar power companies that want to establish commercial operations in residential neighborhoods.

This Court has stricken other ballot titles and summaries that do not "advise the electorate of the true meaning and ramifications of the amendment." *See, e.g.*, *League of Women Voters of Fla., Inc. v. Smith* (*Advisory Op. to the Att'y Gen. re Tax Limitation*), 644 So. 2d 486, 495 (Fla. 1994) (striking a property tax initiative in part for failing to mention the fiscal impact and consequences of the proposal); *Restricts Laws Related to Discrimination*, 632 So. 2d at 1021 (finding the ballot summary of an anti-discrimination initiative misleading because it failed to mention the "myriad laws, rules and regulations that may be affected" by the amendment). The Court should strike this one, too.

CONCLUSION

For the reasons stated, this Court should strike the Solar Initiative from the ballot because it violates article XI, section 3 of the Florida Constitution and section 101.161, Florida Statutes.

Respectfully submitted,

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