IN THE SUPREME COURT OF FLORIDA

Case Numbers SC15-780 and 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)

BRIEF OF INTERESTED PARTIES FLORIDA LEAGUE OF CITIES, INC., and FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.

IN OPPOSITION TO THE PROPOSED AMENDMENT

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STATEMENT OF THE CASE AND FACTS

The Florida Attorney General has requested this Court's advisory opinion on the validity of an initiative petition titled, "Limits or Prevents Barriers to Local Solar Electricity Supply," which has been assigned Case No. SC15-780 by the Court. The Attorney General also has requested the Court's review of the Financial Impact Statement prepared for the amendment, assigned Case No. SC15-890. The Court will determine (1) Whether the ballot title and summary are clear and unambiguous and thus comport with the requirements of Section101.161(1), Florida Statutes; and (2) Whether the proposed amendment violates Article XI, section 3 of the Florida Constitution, which requires that the proposed amendment embrace but one subject.

STANDARD OF REVIEW

The issues before the Court are questions of law, and therefore the review is *de novo*.

SUMMARY

The Solar Initiative does not comport with the requirements of the Florida Constitution or the Florida Statutes. It does not reveal its impacts to municipalities, electric utilities, utility customers, and the public at large. Moreover, it violates the single-subject requirement of the Florida Constitution by impacting multiple layers of government and, in particular, the Legislature.

The proposed amendment will disrupt contractual relationships between and among municipalities and utilities that enter into franchise agreements to provide electric utilities to municipal citizens. The Solar Initiative will reduce revenues available to municipalities and utilities under Florida law and, as a result, municipalities will curtail services to citizens or will be forced to pass additional fees inequitably onto non-solar customers in order to recoup revenue losses. These impacts are not disclosed to the electors in the ballot title and summary, as required.

The Solar Initiative will significantly impact the ability of the state and local governments from protecting the health, safety, and welfare. Irrespective of how reasonable or necessary such protections are, if they have the effect of prohibiting in a particular instance the generation or supply of solar energy, the protections will be disallowed.

The Solar Initiative violates the constitutional single-subject requirement by engaging in logrolling in that it forces a voter to balance a preference for solar power against the adverse fiscal impacts that the Initiative may have by resulting in inequitable rate structures between solar and non-solar utility customers. The Solar Initiative also performs multiple functions of government, including local governments and the state, and impairs the lawmaking power of the Florida

Legislature. The impacts are unauthorized and therefore the Solar Initiative should not be placed on the ballot for elector consideration.

STATEMENT OF INTEREST

A. THE FLORIDA LEAGUE OF CITIES, INC.

The Florida League of Cities, Inc. ("League") has a special interest in the ballot initiative titled, "Limits or Prevents Barriers to Local Solar Electricity Supply" ("Solar Initiative") as a result of the anticipated financial and operating impacts of the Solar Initiative on Florida municipalities.

The League is a voluntary organization whose membership consists of municipalities and other units of local government rendering municipal services in the State of Florida. The League membership comprises more than 400 municipalities. Under its Charter, its purpose is to work for the general improvement of municipal government and its efficient administration, and to represent its members before various legislative, executive, and judicial branches of government on issues pertaining to their general and fiscal welfare.

The issues of interest to the League with respect to the Solar Initiative are:

- The material financial impact to municipalities based upon a reduction in franchise fees and public service tax revenues that will be received by Florida's municipalities.

- The financial impact on Florida's municipally-owned electric utilities because the proposal appears to prohibit a municipal utility from charging fees and conditioning service on solar energy customers that are rationally related to a utility's cost of accommodating the solar energy customer.
- The lack of clarity in the Solar Initiative language that will cause confusion and require litigation in order to ascertain its parameters.

The League does not oppose solar energy. In fact, the League currently is appearing as an amicus in a pending case in this Court in support of a law that permits cities to loan money to citizens to fund energy efficiency and renewable energy improvements to their homes. See, *Florida Bankers Association v. Florida Development Finance Corporation*, Case No. SC14-1603. For the reasons indicated above, however, the League brings to the attention of the Court the significant financial and operating impacts the Solar Initiative will have on Florida's municipalities.

B. THE FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.

The Florida Municipal Electric Association, Inc. ("FMEA"), is the statewide trade association for 33 of Florida's public power retail electric utilities.[1] Founded in 1942 in response to the WWII fuel shortages, for more than 70 years FMEA has been committed to supporting its public power members in their goals for reliable

[1] General information concerning FMEA as well as specific data about its public power members can be found at its website: www.publicpower.com.

and low-cost electric service to their communities. FMEA's member utilities provide approximately 15 percent of Florida's electric load, which translates to serving approximately three million Floridians.

Like the League, the FMEA is not opposed to solar energy. As the League has done, the FMEA also currently is appearing as an amicus in a pending case in support of a law that permits cities to loan money to citizens to fund energy efficiency and renewable energy improvements to their homes. See, *Florida Bankers Association v. Florida Development Finance Corporation*, Case No. SC14-1603.

If the Solar Initiative is approved, however, the retail customers of FMEA's members will be greatly incentivized to develop local solar facilities. This is an untenable position for FMEA's members, as they would be deprived of the right or ability under law to mitigate an ever- increasing cost shift to non-solar customers. Should more homes and businesses become solar customers as a result of the Solar Initiative, cost-shifting between solar and non-solar customers – as explained in greater detail, infra – could become quite substantial, particularly if municipal utilities are not allowed to fully recoup the cost of accommodating these solar customers.

C. EFFECT OF SOLAR INITIATIVE ON MUNICIPALITIES AND ELECTRIC UTILITIES

The Solar Initiative would permit a "local solar electricity supplier" to use solar energy to generate up to two megawatts of electricity and to either consume it on the supplier's property to sell it to the owners of "contiguous" property. The amendment prohibits electric utilities, including municipal electric utilities, from charging any fee or placing any service condition on the solar-generated electricity supplier's customers that are not imposed on the utility's other customers. The amendment permits laws designed to protect the public's health, safety, and welfare so long as the laws don't prohibit "the supply of solar-generated electricity by a local solar electricity supplier."

(1) Effect on Franchise Agreements and Fees

Many Florida municipalities charge franchise fees to electric utilities to permit the electric utility to provide electric service within the municipality's jurisdiction. For the Fiscal Year ending September 30, 2012 (the most recent information available), Florida's municipalities derived approximately $563 million in franchise fees.[2]

Franchise fees are negotiated fees that are charged to the electric utility to provide electric service within the municipality. See, *Florida Power Corporation v. City of Winter Park*, 887 So. 2d 1237 (Fla. 2004); *City of Plant City v. Mayo*,

[2] See, edr.state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm.

337 So. 2d 966 (Fla. 1976). The consideration from the municipality in exchange for the fees consists of three parts: (1) the privilege of using the municipality's rights-of-way, (2) the municipality's agreement not to compete with the electric utility, or to not allow others to compete with the electric utility, during the term of the franchise, and (3) a fee paid to the municipality to offset the costs incurred by the municipality as a result of the electric utility's disparate and exclusive use of public property. *City of Hialeah Gardens v. Dade Cnty.*, 348 So. 2d 1174 (Fla. 3rd DCA 1977); *Santa Rosa Cnty. v. Gulf Power Co.*, 635 So. 2d 96 (Fla. 1st DCA1994), rev. denied, 645 So. 2d 452 (Fla. 1994); *Flores v. City of Miami*, 681 So. 2d 803 (Fla. 3rd DCA 1996). The electric utility collects the franchise fee from the customers who receive service within the municipality. See, Rule 15-6.100, F.A.C.

The prevailing practice in the electric industry is to account for solar-generated electricity through the use of a "net meter" installed by the electric utility. As electricity flows from the utility to the solar power generator, the meter records the amount of electricity flowing to the generator. When solar-generated electricity flows from the solar power generator to the electric utility, the meter literally "spins backwards." If the meter reads more than it did the last time it was read, this indicates that the solar generator has used more electricity than it generated, and the electric utility bills the owner the "net amount." For example,

assume that a customer's bill ordinarily would be $200, but that customer generates $125 in solar-generated electricity. In this case, the customer would only be billed $75, the difference between the ordinary bill and the solar-generated electricity.

If the meter reads less than the last time it was read, that indicates that the solar energy generator generated more electricity than was used. In that case, the net amount is "banked" in the generator's account and is applied to the electric bill for the following month. As an example, if the customer's bill ordinarily would be $125, and the same customer generates $200 in solar energy, a $75 credit will be banked to the customer's account. In either case, the generator results in lower revenues to the electric utility than otherwise as a result of the solar-generated electricity.

It is clear that the primary purpose of the Solar Initiative is to increase the amount of electricity generated by solar power. In doing so, the Solar Initiative undoubtedly will reduce the revenue streams of electric utilities. As a result, franchise fee revenues to municipalities will likewise be reduced, as franchise fees are based on a percentage of an electric utility's gross revenues. There will be impacts to the electric utility customer as a result. The electric rates will increase for those who cannot or do not generate solar energy, which would include seniors and middle-income citizens, and those who are not permitted to install solar

electric facilities, such as renters. Alternatively, municipalities will decrease services to accommodate the reductions in revenue occasioned by the Solar Initiative.

The Solar Initiative also will impair the consideration that the municipality provides to the electric utility in return for the franchise fee, as the municipality will no longer be able to prohibit others from providing electric services within the municipality. It therefore is likely that extant franchise agreements will no longer be valid due to decreased consideration, in that the franchise fee will no longer bear a reasonable nexus to the cost of using municipal rights-of-ways. See, *Alachua Cnty. v. State*, 737 So. 2d 1065 (Fla. 1999); see also, *Santa Rosa Cnty. v. Gulf Power Co., supra.*

Further, franchise agreements often contain provisions that permit the electric utility to terminate the franchise agreement if any other person is permitted to provide electric services within the municipality, whether authorized by the municipality or through enactment of any law authorizing the same. Candidly, these provisions may be ameliorated somewhat by other provisions that may be contained in franchise agreement that give a municipality the right to purchase the electric utility's infrastructure upon termination of the agreement. Notwithstanding, it is clear that the Solar Initiative will disrupt the current

contractual relationships between municipalities and the electric utilities, as well as the franchise fee revenue that municipalities derive from the relationships.

(2) Effect on Public Service Tax

Florida law permits municipalities to levy a tax on the purchase of electricity in an amount not to exceed ten percent of the payments received by the electric utility. The tax is paid by customers who receive service from an electric utility within a municipality. Section 166.231, Fla. Stat. For the fiscal year ending December 30, 2012 (the most recent information available), municipalities received approximately $666 million from the public service tax on electricity.[3] The Solar Initiative undoubtedly will cause a reduction in the public service tax revenues that municipalities currently derive from the public service tax on electricity.

The clear purpose of the Solar Initiative is to increase the production of solar-generated electricity. As stated above in "(1) Effect on Franchise Agreements and Fees," the prevalent practice in the industry is to use "net metering" to account for solar-generated electricity. Those municipalities that levy the public service tax on electricity undoubtedly will experience a reduction in public service tax revenues as a result of the Solar Initiative.

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[3] See, edr. state.fl.us/content/local-government/data/revenues.expenditures/munifiscal.cfm.

In that case, it is likely that municipalities will be faced with two options. The municipality either will absorb the loss in revenues by decreasing municipal services, or recoup the lost revenues by increasing the public service tax – to the extent authorized by law – on all of its citizens. In the latter instance, the effect will be to shift a portion of the solar generator's tax burden to those citizens who cannot install solar energy facilities, including those who are unable to afford the capital costs of the facilities, such as seniors and middle-income citizens, as well as those not allowed to install solar-electric facilities, such as renters.

(3) Effect on Non-Solar Generating Customers

The Solar Initiative seeks to limit or prevent

> regulatory and economic barriers that discourage the supply of electricity generated from solar energy sources to customers who consume the electricity at the same or a contiguous property as the site of the solar electricity production.

"Contiguous property" is not defined in the proposed amendment, but clearly it includes individual parcels of real property that abut each other, large developments wherein real parcels abut one another, and shopping centers and shopping malls containing multiple businesses. Its impact therefore impacts a greater number of properties than may be inferred from its language.

The "regulatory and economic barriers" that are included within the terms of the Solar Initiative include "rate, service and territory regulations" that may be imposed by the state or local governments. Further, the "regulatory and economic

barriers" include "imposition by electric utilities of special rates, fees, charges, tariffs, or terms and conditions of service" on customers consuming solar electricity, unless they are also imposed on other customers of the "same type or class" who do not consume local solar electricity.

Solar-generated electricity is inherently sporadic and uncertain and is thus not dependable. Solar-generating facilities are unable to produce electricity when it is overcast, after sunset, and during storm events. They also are unable to generate electricity when they are shut down for maintenance reasons. Moreover, there is currently no economically viable method to store solar-generated electricity during these nonproductive periods. Therefore, solar electric customers must use conventional electricity when solar-generating facilities are unable to generate electricity. Concomitantly, electric utilities must continue to maintain the infrastructure necessary to provide electric service to solar energy customers irrespective of whether the customer is able to generate solar electricity.

Moreover, customers who generate solar electricity have a disparate cost impact on a utility's infrastructure that is not shared by the customers who do not generate or consume solar electricity. As examples of the activities that will generate disparate cost impacts to solar and non-solar customers, electric utilities must monitor the flow of solar electricity through transmission lines and transfer stations, must account for the solar generated electricity, must conduct safety

inspections during the construction of solar generating facilities, must conduct safety reviews of the facilities' electrical systems, and must install meters. A fair reading of the Solar Initiative will not permit the utility to charge the solar energy customer for the disparate impact that the solar customer will have on the utility's system. Rather, citizens who do not generate or consume solar generated electricity will subsidize those who do.

This inequitable shifting of costs would be especially significant for smaller municipal utilities. Florida's municipal electric utilities vary greatly in size, from the Jacksonville Electric Authority – which has approximately 422,315 customers and a peak load of 2,665 MW – to the City of Moore Haven, which has approximately 1,058 customers and a peak load of 3.8 MW. In fact, of FMEA's 33 members, six utilities have peak loads less than 10 MW. The Solar Initiative would allow any person to enter into a municipal electric utility's service territory and supply electricity generated from a solar-generating facility of up to 2 MW to an existing customer and its contiguous properties, with no cap on the aggregate capacity of the generation on the utility's system.

As a result, the Solar Initiative could have a substantial impact on a municipal electric utility's system. It would not take many of these solar generating systems to engulf a small municipal electric utility's entire system. In such instance, however, the utility still would be required to maintain the generation and

distribution assets necessary to meet its entire load (i.e., its full potential load assuming all solar generation is offline).

Since the customers purchasing power from the solar generation would not be contributing fully to the fixed costs associated with the utility's generation and distribution system – and the Solar Initiative would prohibit the utility from directly assigning these costs to the solar generators or customers – these costs would be passed on to the non-solar customers. In a town with fewer than 1,000 customers to bear these costs, the impact to a non-solar customer would be quite significant.

Additionally, most municipal electric utilities require the solar energy customer to install a "disconnect switch" so that a utility worker repairing or maintaining the system is able to turn off the switch to disable temporarily the solar energy system. The owner in turn is able to switch the system back on when power is restored. Other electric utilities must remove the meter physically to assure that the solar energy system is turned off and the electric lines are not operating as "hot." Again, when overall power is restored, the electric utility must return and reinstall the meter. The Solar Initiative, however, will not permit the electric utility to charge these costs to the solar energy customer. As a result, the Solar Initiative will require citizens who do not generate or consume solar generated electricity – inequitably – to subsidize the costs of those who do.

(4) Effect on Public Health, Safety, and Welfare

The Solar Initiative permits laws designed to protect the public's health, safety, and welfare so long as the laws do not operate to prohibit "the supply of solar-generated electricity by a local solar electricity supplier." In doing so, the initiative would impair numerous necessary public health, safety, and welfare regulations having the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier. To name a few, wetlands protection laws, construction setback lines, pollution abatement measures, and nuisance abatement ordinances effectively could operate to prohibit a local solar electricity supplier from generating solar energy on a parcel of property.

ARGUMENT

1. BALLOT TITLE AND SUMMARYARE NOT CLEAR AND UNAMBIGUOUS

The Solar Initiative's ballot summary and title do not meet the requirements set forth in section 101.161, Florida Statutes. The Solar Initiative fails to disclose to the electors a number of impacts to municipalities, regulated electric utilities under contract to municipalities, electric utility customers, and the citizenry at large through impacts to the public health, safety, and welfare.

In order to pass legal muster, a ballot title and summary must be clear and unambiguous and must fairly inform voters of the chief purpose of the amendment and not mislead the public. *Advisory Opinion to Attorney General re Prohibiting State Spending for Experimentation that Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 213-14 (Fla. 2007). To meet this requirement, a ballot's title and summary must, in clear and unambiguous language, fairly inform the voter of the chief purpose of the amendment. *Id.*

The Court must determine whether the language of the ballot title and summary, as written, mislead the public. *Id.* The ballot title and summary may not be read in isolation, but must be read together when the Court makes this determination. *Advisory Opinion to the Attorney Gen. re Fla. Amendment to Reduce Class Size*, 816 So.2d 580, 585 (Fla. 2002). Since the ballot title and summary are the only information available to the electors, their completeness and

accuracy are of paramount importance in the determination as to whether the proposed amendment may appear on the ballot. *Armstrong v. Harris*, 773 So. 2d 11, 13 (Fla. 2000).

Although the title of the Solar Initiative, "Limits or Prevents Barriers to Local Solar Electricity Supply," may at first blush appear to be clear and unambiguous, the ballot summary is defective because it does not appropriately convey to the voter the reasonably foreseeable impacts that the proposed amendment will have on municipal franchise agreements with electric utilities, municipal revenues, additional costs to electric utility customers who do not generate or consume local solar electricity, and the public health, safety, and welfare. Further, the Solar Initiative ballot summary does not accurately reflect the provisions included within the proposed amendment itself.

The title and ballot summary convey a sentiment that the purpose of the amendment would be to remove barriers to solar production by implying that the true purpose of the amendment would be to remove restrictions on the harnessing and transmittal of solar energy. While the Solar Initiative does call for the removal of regulatory barriers on production, much of the amendment would have the de facto effect of repealing, or requiring the adjustment of, rates, fees, charges, and tariffs on customers.

As outlined above in the Statement of Interest in "(1) Effect on Franchise Agreements and Fees," the Solar Initiative will disrupt the current contractual relationships between municipalities and the electric utilities, as well as the franchise fee revenues municipalities derive from the contractual relationships. For the reasons outlined, supra, the Solar Initiative doubtless will result in reduced revenues from franchise fees available to municipalities and utilities. These revenue reductions will result in reduced services to municipal citizens, or will result in utility rate increases passed on to citizens. None of these impacts are disclosed in the ballot title and summary of the Solar Initiative.

At the least, the Solar Initiative will impact and disrupt the current contractual relationships municipalities have with electric utilities. As outlined above in the "Statement of Interest," municipalities enter into exclusive contracts with utilities to provide electricity to customers. The Solar Initiative would impact those contractual obligations without disclosing the impact thereof to the electors. And, while municipalities may ultimately choose to purchase an electric utility in these circumstances, any additional costs resulting therefrom will be passed along to municipal residents. This realistic potential is not disclosed to the voter.

Further, as discussed above in the Statement of Interests in "(2) Effect on Public Service Tax," once again municipal revenues will be reduced as a result of the Solar Initiative. In such a case, a municipality will reduce its services to its

citizens, increase utility rates or increase taxes to recoup the losses in municipal revenues.

Likewise, as iterated above in the Statement of Interests in "(3) Effect of Cost Shift to Non-Solar Generating Customers," the Solar Initiative does not permit the utility to charge the solar energy customer for the disparate impact that the solar customer will have on the utility's system. In practice, solar generation requires utilities to monitor the flow of solar electricity through transmission lines and transfer stations, to account for the solar-generated electricity, to conduct safety inspections during the construction of solar-generating facilities, to conduct safety reviews of the facilities' electrical systems, and to install net meters. Solar generation as contemplated by the Solar Initiative will result in inequitable cost shifts to citizens who do not generate or consume solar, and those citizens will be required to subsidize those who do. The ballot summary does not disclose these impacts to the electors.

The Solar Initiative therefore is misleading in that it does not reflect the true consequences of the amendment. The Solar Initiative incentivizes solar generation at the expense of non-solar customers. Solar customers benefit from the reliability and stability of the grid without paying their full share of its costs because the grid must be built and maintained to serve their full load, regardless of how much solar energy is actually produced. At the modest level of solar that currently exists, the

subsidy could potentially be remedied through additional charges and fees on solar customers, which the Solar Initiative will not allow, and the ballot summary does not reveal this to the electors.

As well, the Solar Initiative impairs government's ability to protect fully the public health, safety, and welfare. For example, governmental regulations that derive from delegated legislative authority could be negated by the Solar Initiative. These could include regulations adopted: under the "Florida Air and Water Pollution Control Act," section 403.011, et seq.; under the "Pollution Prevention Act," section 403.072, et seq.; under the "Brownfields Redevelopment Act," section 376.77, et seq.; for the abatement of nuisances caused by storm water management or other water control systems, section 373.433; and for control of epidemics through quarantine by the Department of Health, section 381.00315. None of those potentially significant impacts to regulations protecting the public health, safety, and welfare are disclosed to the electors through the ballot summary.

Also in a broader sense, the purpose of the Solar Initiative is not simply to limit or prevent barriers for local solar electric supply, but instead to create favorable market conditions to solar energy providers that will impact adversely the general public through all of the impacts outlined above. Therefore, the title and summary effectively "hide the ball" as to the true purpose and consequences of

the amendment, which the Court has held to be unacceptable. *Armstrong*, 773 So. 2d at 16.

The Solar Initiative is unclear and ambiguous as to its application for customer-owned renewable generation. The ballot title and summary state that the Solar Initiative intends to limit or prevent barriers to entry to "local solar electricity supply." The Solar Initiative defines a "[l]ocal solar electricity supplier," as a person who supplies solar energy to "any other person." It is not at all clear from a reading of this language as to the effect the Solar Initiative would have on customer-owned renewable generation, and its potential impact is not revealed to the voter.

2. THE PROPOSED AMENDMENT DOES NOT MEET THE SINGLE SUBJECT REQUIREMENT OF ARTICLE XI, SECTION 3 OF THE FLORIDA CONSTITUTION

Article XI, section 3 of the Florida Constitution states that any amendment proposed by the people, except those limiting the power of the government to raise revenue, shall embrace but one subject and matter directly connected therewith. Florida Constitution (1998). To accomplish this dictate, the amendment must manifest a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984).

The single-subject requirement has two distinct purposes. The first of these purposes is to prevent "logrolling," the practice of including two separate issues

together to aid in the passing of an unpopular issue. *Advisory Opinion to the Attorney Gen. re the Med. Liab. Claimant's Comp. Amendment*, 880 So. 2d 675, 677 (Fla. 2004) (quoting *Advisory Opinion to the Attorney Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Sys.*, 769 So. 2d 367, 369 (Fla. 2000)) The test for logrolling is met when a proposed amendment "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." *Advisory Opinion to Attorney Gen. re: Additional Homestead Tax Exemptions*, 880 So. 2d 646, 649 (Fla. 2004).

In this regard, the Solar Initiative engages in logrolling by placing the elector in the untenable position of balancing a preference for solar power against the adverse impacts that the Initiative may have in terms of eliminating special rates, fees, and charges for solar-generated electricity, and the accompanying potentially untoward economic consequences on customer utility rates overall. The balancing that the Solar Initiative would require of electors violates the single-subject requirements.

The second purpose of the constitutional single-subject requirement is to prevent a single amendment from substantially altering or performing the functions of multiple aspects of government. Here, the test is a functional one that examines what the amendment actually does. A proposed amendment can affect multiple

branches of government and still pass the court's review. See, *Advisory Opinion to the Attorney General – Limited Political Terms in Certain Elective Offices*, 592 So. 2d. 225, 227 (Fla. 1991) ("We have found proposed amendments to meet the single subject requirement even though they affected multiple branches of the government."). But "where such an initiative performs the functions of different branches of government, it clearly fails the functional test of the single-subject limitation the people have incorporated into article XI, section 3, Florida Constitution." *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984); *Advisory Op. re Property Rights*, 699 So. 2d 1304, 1308 (Fla. 1997) ("In addition, we find that this initiative would have a distinct and substantial effect on more than one level of government." The Solar Initiative violates these constitutional proscriptions in a number of ways.

First, the Florida Public Service Commission is statutorily authorized to approve "territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction" and to resolve disputes arising under the agreements. § 366.04, Fla. Stat. The Solar Initiative would not only impair contract rights existing pursuant to such agreements by providing that local solar electricity suppliers would not be "subject to any assignment, reservation, or division of service territory between or among

electric utilities" but would also deprive the Public Service Commission of its jurisdiction in these regards.

The Solar Initiative also would substantially affect Article III, Section 2 of the Florida Constitution. That section grants municipalities "governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services" not in conflict with state law. Some of municipalities own and operate municipal electric utilities under these constitutional provisions. The Solar Initiative would disallow municipal utilities the power to charge any rates that are in conflict with the Solar Initiative. It would further forbid these municipalities from entering into agreements or exercising rights provided by such agreements for exclusive geographical service territories in conflict with the Initiative.

The Initiative also substantially impacts Article III powers of both municipalities and counties by providing:

> [N]othing in this section shall prohibit reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations, *which do not prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier* as defined in this section.

Solor Initiative § (b)(4) (emphasis added). As discussed in the Argument component regarding clarity of the ballot summary, supra, the Solar Initiative thus would impact the police powers of local governments by banning regulations

protecting the public health, safety, and welfare if they would prevent the operation of a solar electricity supplier notwithstanding a compelling need for, or the reasonableness of, the regulation.

Moreover, the Solar Initiative would deprive the Legislature of a significant component of its lawmaking power. See, *Evans v. Firestone*, 457 So. 2d at 1354 ("In *Fine,* we found multiplicity of subject matter because the proposed amendment would have affected several *legislative* functions.") (emphasis in original).

The Initiative would preclude the Legislature from exercising its lawmaking power with respect to rates, service, or territories of a local solar electricity supplier. See, Initiative § (b)(1). The Solar Initiative also would restrict the Legislature's lawmaking power over classifications, terms, or conditions of service of electric utilities in connection with customers of local solar electricity suppliers. See, Initiative § (b)(2).

Additionally, the Solar Initiative would block the Legislature from exercising its lawmaking power with respect to public policy formulations. The Legislature currently is empowered to make law with respect to solar energy, but would be fundamentally restricted under the Solar Initiative as to the extent of its public policymaking prerogatives. The Legislature, for example, would be prohibited from imposing rate restrictions with respect singularly to solar-

generated electricity, and would be stripped of its ability to prescribe utility rate guidelines unless in conformance with the Solar Initiative.

The effects on the multiple government powers are not authorized in a constitutional initiative. These effects are only authorized in a constitutional revision. The Solar Initiative thus violates the single-subject rule and cannot be countenanced by the Court and allowed on the ballot.

CONCLUSION

The Solar Initiative does not comport with the requirements of the Florida Constitution nor the dictates of the Florida Statutes. The Court should determine that the proposed amendment therefore cannot legally be placed on the ballot.

Respectfully submitted,

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Dan R. Stengle, Florida Bar No. 352411

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by electronic mail to the E-Service List provided for the above-styled and numbered cases in the Florida Supreme Court this 10th day of June, 2015.

Dan R. Stengle, Florida Bar No. 352411

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this document is presented in Times New Roman font, 14-point style, a font that is proportionately spaced as required by the Florida Rules of Appellate Procedure.

Dan R. Stengle, Florida Bar No. 352411