

IN THE SUPREME COURT OF FLORIDA

Case Nos.: SC15-2150; SC 16-12

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: RIGHTS OF
ELECTRICITY CONSUMERS REGARDING SOLAR ENERGY CHOICE

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: RIGHTS OF
ELECTRICITY CONSUMERS REGARDING SOLAR ENERGY CHOICE (FIS)

INITIAL BRIEF OF

The Florida Electric Cooperatives Association, Inc.
(Filed in Support of the Initiative Petition)

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STATEMENT OF INTEREST

The Florida Electric Cooperatives Association, Inc. (“FECA”) submits this brief as an interested party in response to this Court’s Order of December 21, 2015. FECA is a not-for-profit trade association organized under Chapter 617, Florida Statutes, and is the service organization for fifteen electric distribution cooperatives that sell retail electricity directly to their member consumers, and two generation and transmission electric cooperatives that transmit, generate, and purchase electricity for sale to their member distribution cooperatives at wholesale.¹ FECA’s member cooperatives are nonprofit membership corporations organized for the purpose of supplying safe, reliable, and affordable electric energy to their member consumers. FECA’s member cooperatives promote the use of a diversified generation mix, including the use of solar and other renewable options. Florida’s electric cooperatives are regulated as electric utilities by the Florida Public Service Commission (“PSC”) for purposes of rate structure, service territory

¹ FECA’s members include distribution cooperatives Central Florida Electric Cooperative, Inc., Choctawhatchee Electric Cooperative, Inc., Clay Electric Cooperative, Inc., Escambia River Electric Cooperative, Inc., Florida Keys Electric Cooperative Association, Inc., Glades Electric Cooperative, Inc., Gulf Coast Electric Cooperative, Inc., Okefenoke Rural Electric Membership Corporation, Peace River Electric Cooperative, Inc., Sumter Electric Cooperative, Inc., Suwannee Valley Electric Cooperative, Inc., Talquin Electric Cooperative, Inc., Tri-County Electric Cooperative, Inc., West Florida Electric Cooperative Association, Inc., and Withlacoochee River Electric Cooperative, Inc., and generation and transmission cooperatives PowerSouth Energy Cooperative and Seminole Electric Cooperative, Inc.

and safety, and they currently serve approximately 2.4 million customers in 57 counties throughout Florida.

The Florida Electric Cooperatives Association, Inc. has a direct and vital interest in the outcome of these proceedings and presents this brief in support of the placement of this proposed constitutional amendment on the ballot.

STATEMENT OF THE CASE AND FACTS

This matter comes before the Court upon a petition for an advisory opinion submitted by the Attorney General on November 24, 2015, in accordance with the provisions of Article IV, Section 10, Florida Constitution, and section 16.061, Florida Statutes. The question before this Court is whether the text of the proposed amendment entitled “Rights of Electricity Consumers Regarding Solar Energy Choice” (hereinafter “Solar Amendment” or the “Amendment”), complies with Article XI, Section 3, Florida Constitution, and whether the proposed ballot title and summary comply with section 101.161, Florida Statutes. This Court has jurisdiction pursuant to Article V, Section 3(b)(10), Florida Constitution.

The Solar Amendment seeks to amend Article X of the Florida Constitution (“Miscellaneous”) by adding a new section numbered “29” at the end of the article.

The proposed Amendment states as follows:

Section 29 – Rights of electricity consumers regarding solar energy choice. –

(a) ESTABLISHMENT OF CONSTITUTIONAL RIGHT. Electricity consumers have the right to own or lease solar equipment installed on their property to generate electricity for their own use.

(b) RETENTION OF STATE AND LOCAL GOVERNMENTAL ABILITIES. State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.

(c) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

(1) "consumer" means any end user of electricity regardless of the source of that electricity.

(2) "solar equipment," "solar electrical generating equipment" and "solar" are used interchangeably and mean photovoltaic panels and any other device or system that converts sunlight into electricity.

(3) "backup power" means electricity from an electric utility, made available to solar electricity consumers for their use when their solar electricity generation is insufficient or unavailable, such as at night, during periods of low solar electricity generation or when their solar equipment otherwise is not functioning.

(4) "lease," when used in the context of a consumer paying the owner of solar electrical generating equipment for the right to use such equipment, means an agreement under which the consumer pays the equipment owner/lessor a stream of periodic payments for the use of such equipment, which payments do not vary in amount based on the amount of electricity produced by the equipment and used by the consumer/lessee.

(5) "electric grid" means the interconnected electrical network, consisting of power plants and other generating facilities, transformers, transmission lines, distribution lines and related facilities, that makes electricity available to consumers throughout Florida.

(6) "electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

(d) EFFECTIVE DATE. This section shall be effective immediately upon voter approval of this amendment.

The proposed Solar Amendment includes the following title and summary as required by section 101.161(1) Florida Statutes:

BALLOT TITLE: Rights of Electricity Consumers Regarding Solar Energy Choice

BALLOT SUMMARY: This amendment establishes a right under Florida's constitution for consumers to own or lease solar equipment installed on their property to generate electricity for their own use. State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.

On November 24, 2015, the Attorney General petitioned this Court for a written opinion as to the validity of the Solar Amendment. As set forth in the Petition, the Secretary of State has determined that at least 68,792 valid petition signatures have been submitted to the Division of Elections, which constitutes a number equal to or greater than 10 percent of the required signatures.

On November 30, 2015, the Financial Impact Estimating Conference met and approved a "Summary of Initiative Financial Information Statement" and a "Financial Impact Statement." The Conference approved the following Financial

Impact Statement to be placed on the ballot alongside the title and summary of the Amendment:

FINANCIAL IMPACT STATEMENT

The amendment is not expected to result in an increase or decrease in any revenues or costs to state and local government.

On December 21, 2015, this Court issued an order that authorized interested parties to file briefs on or before January 11, 2016, addressing the initiative petition's compliance with the requisites for its placement on a general election ballot. On January 5, 2016, the Attorney General petitioned this Court to consider whether the Financial Impact Statement is in accordance with section 100.371, Florida Statutes. On January 7, 2015, this Court issued an order consolidating the two advisory opinions for briefing purposes.

The Florida Electric Cooperatives Association, Inc. is an interested party, and respectfully submits that the initiative proposal complies with the single-subject and ballot summary requirements, and that the Financial Impact Statement is in accordance with section 100.371, Florida Statutes.

SUMMARY OF THE ARGUMENT

The Solar Amendment satisfies all of the prerequisites for a ballot initiative. The Amendment meets the single subject requirement, as it presents a single unified issue to voters. That single issue is whether there should be a constitutional framework for consumers to own or lease solar equipment installed on their

property to generate electricity for their own use. The Amendment would establish rights of electricity consumers to own or lease solar equipment, while retaining the rights of state and local governments to protect consumers and the public. The Solar Amendment does not alter or perform the functions of multiple branches of State government and there is no “logrolling”.

The Amendment’s ballot title and summary comply with the mandates of section 101.161, Florida Statutes. The ballot title and summary both comply with the word limitations of the Statute and use clear and unambiguous language to inform voters of the chief purpose of the Amendment. They also identify the Amendment’s logically connected components which work together to accomplish its chief purpose. Further, the ballot title and summary do not use advocacy language, sloganeering, or political rhetoric.

Finally, the Financial Impact Statement prepared by the Financial Impact Estimating Conference presents a clear and unambiguous statement that there is not any estimated increase or decrease in any revenues or costs to State or local governments resulting from the proposed initiative, which satisfies the requirements of section 100.371, Florida Statutes.

In sum, the Solar Amendment provides a clear and direct question to Florida’s voters that is in compliance with the single subject requirement and the statutory requirements for the ballot title and summary.

ARGUMENT

I. THE AMENDMENT COMPLIES WITH THE SINGLE SUBJECT REQUIREMENT OF ART. XI, SEC. 3.

Article XI, Section 3, Florida Constitution, reserves to the people the power to propose amendments or revisions to their Constitution by initiative. Article XI limits initiatives to one subject and matters that are directly connected to that subject. The single subject requirement is “intended to prevent an amendment from engaging in either of two practices: (a) logrolling; or (b) substantially altering or performing the functions of multiple branches of state government.” *Advisory Op. to the Att’y Gen. re Water and Land Conservation*, 123 So. 3d 47, 50-51 (Fla. 2013). The single subject requirement is satisfied if the 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 Op. to Att’y Gen. re Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose*, 880 So. 2d 630, 634 (Fla. 2004).

The Solar Amendment satisfies the single subject requirement, as it presents a single unified issue to voters. That single issue is whether there should be a constitutional framework for consumers to own or lease solar equipment installed on their property to generate electricity for their own use. The Solar Amendment’s

provisions regarding the retention of state and local government rights to protect consumers² and the public's health, safety and welfare are consistent with this single dominant plan or scheme. Therefore, the Solar Amendment manifests a "logical and natural oneness of purpose" and there is no "logrolling". *Advisory Op. to Att'y Gen. re Fla's Amendment to Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

The amendment also does not alter or perform the functions of multiple government branches, and does not cause any precipitous and cataclysmic changes in state government. In fact, the Amendment does not alter the functions of multiple branches of government at all, as it simply retains state and local governments' existing authority and ability to protect consumers and the public's health, safety and welfare.

II. THE SOLAR AMENDMENT'S BALLOT TITLE AND SUMMARY CLEARLY AND ACCURATELY DESCRIBE THE CHIEF PURPOSE OF THE AMENDMENT, AND PROVIDE VOTERS WITH SUFFICIENT INFORMATION TO MAKE AN INFORMED DECISION.

Both the ballot title and summary satisfy the respective 15 and 75 word limitations of section 101.161, Florida Statutes. Therefore, this Court's analysis of

² Protected consumers' rights would include the right of those consumers that do not install solar equipment to forgo subsidizing certain costs of those who choose to install solar.

the ballot title and summary must focus on two questions: (1) whether the title and summary clearly and accurately inform the voter of the chief purpose of the amendment; and (2) whether the language of the title and summary, as written, is likely to mislead the public. *See, e.g., Advisory Opinion to the Attorney General re Florida Marriage Protection Amendment*, 926 So. 2d 1229, 1236 (Fla. 2006). The title and summary for the proposed Solar Amendment accomplish the fundamental purpose of explaining the “true meaning and ramifications” of the amendment and clearly inform voters of the chief purpose of the proposal.

The ballot title for the proposed amendment reads: “Rights of Electricity Consumers Regarding Solar Energy Choice.” The 75-word ballot summary reads:

This amendment establishes a right under Florida’s constitution for consumers to own or lease solar equipment installed on their property to generate electricity for their own use. State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.

The title and summary are written in clear and unambiguous language. The words and language clearly and accurately inform the voter of the chief purpose of the amendment and will not mislead the public. The title and summary provide an accurate summary of the contents of the Amendment, and there is nothing either expressed or implicit in the summary that would mislead a voter as to the contents of the Solar Amendment’s text. The title and summary also do not include

emotional language or political rhetoric. Accordingly, this Court should hold that the title and summary comply with the requirements of section 101.161, Florida Statutes.

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

The Financial Impact Statement prepared by the Financial Impact Estimating Conference clearly and unambiguously states that “The Amendment is not expected to result in an increase or decrease in any revenues or costs to state and local governments.” Therefore, this Court should find that the Financial Impact Statement for the Amendment is in accordance with the requirements of section 100.371, Florida Statutes.

CONCLUSION

As the proposed Solar Amendment presents a single subject in compliance with Article XI, Section 3, and because the ballot title and summary clearly and accurately describe the chief purpose of the proposal as required by section 101.161, Florida Statutes, this Court should allow the Solar Amendment to appear on the ballot. Additionally, because the Financial Impact Statement prepared by the Financial Impact Estimating Conference presents a clear and unambiguous statement that the amendment is not expected to cause any increase or decrease in

revenues or costs to State or local governments, the Court should find that the proposed Statement meets the requirements of section 100.371, Florida Statutes.

Respectfully submitted this 11th day of January, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 11, 2016, a true and correct copy of the foregoing was electronically filed with the Florida Courts E-Filing Portal with notice furnished to all registered users, as indicated below:

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Pursuant to Florida Rules of Appellate Procedure 9.210(a), I certify that this Initial Brief in Support of the Initiative Petition was generated using Times New Roman, a proportionately spaced font, and has a typeface of 14 points.

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