
IN THE SUPREME COURT OF FLORIDA

CASE NOS. SC15-2150; SC16-12 (CONSOLIDATED)

**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
(FINANCIAL IMPACT STATEMENT)**

**INITIAL BRIEF OF INTERESTED PARTY
60 PLUS ASSOCIATION
IN SUPPORT OF THE INITIATIVE**

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“Arizona's Stealth Solar owners admit fraud,” *The Arizona Republic* (Feb. 9, 2015).1

“2015 Fact Sheet,” *State of Florida, Department of Elder Affairs*1

IDENTITY AND INTEREST OF THE 60 PLUS ASSOCIATION

Founded in 1992, The 60 Plus Association, Inc. (“Association”) is a nationwide nonpartisan non-stock corporation qualified as tax exempt under Section 501(c)(4) of the Internal Revenue Code and a seniors advocacy organization with more than 800,000 senior supporters in Florida. The Association regularly advocates on seniors’ issues, including those related to energy policy, as low- and fixed- income seniors are among the most vulnerable to electric rate increases. Seniors are also particularly vulnerable to unfair consumer practices, including fraud perpetrated by unscrupulous solar contractors that have targeted senior homeowners.¹

With more than 4.9 million residents age 60 and older, Florida currently ranks first in the nation in percentage of citizens who are elders.² The 60 Plus

¹ See., e.g., “Going Green Solar admits fraud, will repay customers,” *The Arizona Republic*, March 3, 2015 (settlement of consumer fraud lawsuit involving illegal targeting of senior citizens by solar company); available at:

<http://www.azcentral.com/story/money/business/2015/03/03/phoenix-solar-company-owners-admit-fraud/24335515/>; “Arizona's Stealth Solar owners admit fraud,” *The Arizona Republic*, February 9, 2015, available at: <http://www.azcentral.com/story/money/2015/02/09/arizonas-stealth-solar-owners-admit-duping-customers/23121947/>

² State of Florida, Department of Elder Affairs, “2015 Fact Sheet,” available at: http://elderaffairs.state.fl.us/doea/pubs/pubs/DOEA_Fact_Sheet_2015_double_side_web.pdf

Association supports the Solar Rights Amendment because it would authorize important consumer protection standards for solar energy while protecting consumer access to developing solar technology.

As the solar industry has grown, so has the opportunity for predatory individuals and companies to use solar energy's popularity to take advantage of unsuspecting seniors. Florida, along with several other states, has already experienced incidents of consumers being misled and defrauded by solar companies. Protecting consumers from bad actors in any industry is paramount, and has become essential as predatory interests have proposed exempting the solar industry from state and local regulatory oversight. Florida's 4.9 million seniors, along with all Florida consumers, deserve to have an explicit constitutional provision authorizing consumer protection of their health, safety, and welfare by their state and local governments in the area of solar energy.

STATEMENT OF THE CASE AND FACTS

On November 24, 2015, the Florida Attorney General petitioned this Court for an advisory opinion as to the validity of an initiative petition entitled "Rights of Electricity Customers Regarding Solar Energy Choice." This Court has jurisdiction under article V, section 3(b)(10), of the Florida Constitution.

The proposed amendment includes the following ballot title and summary:

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.

The full text of the proposed amendment, which would create a new Section 29 to Article X of the Florida Constitution, is set forth on page 6 of the Attorney General's Petition.

The Attorney General subsequently petitioned this Court for an advisory opinion as to the Financial Impact Statement for the Solar Rights Amendment prepared by the Financial Impact Estimating Conference. The Financial Impact Statement provides:

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

By order of this Court, that Financial Impact Statement matter has been consolidated for all purposes with the advisory opinion on the validity of the initiative petition.

This Court directed interested parties to submit briefs on or before January

11, 2016. The 60 Plus Association submits this brief in support of the proposed Solar Rights Amendment.

STANDARD OF REVIEW

This Court applies “a deferential standard of review to the validity of a citizen initiative petition.” *Advisory Op. to Att’y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d 235, 241 (Fla. 2015). Under this standard, the Court is obliged to uphold a proposed amendment unless it is “clearly and conclusively defective.” *Advisory Op. to Att’y Gen. re Use of Marijuana for Debilitating Medical Conditions*, 40 Fla. L. Weekly S715 (Fla. Dec. 17, 2015) (quoting *Advisory Op. to Att’y Gen. re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 580 (Fla. 2002)).

SUMMARY OF THE ARGUMENT

The Solar Rights Amendment complies with the ballot initiative single-subject requirement by presenting a unified question to the voters: whether they wish to include a provision in the state constitution establishing the right of electricity consumers to own or lease solar equipment to generate electricity for their own use. The proposal’s retention of certain state and local government regulatory authority to protect the public safety and the rights of all electricity users is directly connected with the amendment’s purpose. The Solar Rights

Amendment does not “logroll” by combining separate issues into a single initiative, nor does it perform or alter multiple functions of state government. In short, the proposed amendment embraces “but one subject and matter directly connected therewith” as required by the Florida Constitution.

The Solar Rights Amendment’s ballot title and summary also comply with the clarity requirement of section 101.161, Florida Statutes. The ballot summary clearly and unambiguously discloses the proposal’s chief purpose: the establishment of 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. By tracking the operative language of the proposed amendment’s text, the ballot summary provides fair notice of the content of the proposed amendment so that a voter will not be misled as to the purpose of the Solar Rights Amendment, and can cast an intelligent and informed ballot.

Finally, the Financial Impact Statement complies with Florida law by stating clearly, unambiguously, and in no more than seventy-five words that the Solar Rights Amendment is not expected to result in an increase or decrease in any revenues or costs to state and local government.

ARGUMENT

I. THE SOLAR RIGHTS AMENDMENT COMPLIES WITH THE FLORIDA CONSTITUTION’S SINGLE-SUBJECT REQUIREMENT.

The Florida Constitution restricts constitutional amendments proposed by initiative petition to “one subject and matter directly connected therewith.” Art. X, § 3, Fla. Const. The single-subject requirement “was designed to protect against multiple precipitous and cataclysmic changes in the constitution by limiting to a single subject what may be included in any one amendment proposal.” *Ray v. Mortham*, 742 So. 2d 1276, 1282 (Fla. 1999) (*internal quotations omitted*). “In evaluating whether a proposed amendment violates the single-subject requirement, the Court must determine whether it has a ‘logical and natural oneness of purpose.’ ” *Advisory Op. to Att’y Gen. re Amend. to Bar Gov’t from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 891-92 (Fla. 2000) (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

The single-subject requirement prevents a proposal “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 Att’y Gen. re Water & Land Conservation*, 123 So. 3d 47, 50 (Fla. 2013). This Court has defined “logrolling” as a practice wherein “several separate issues are rolled into a

single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue.” *Advisory Op. to Att’y Gen. re Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994). A proposal that merely affects multiple branches of government does not violate the single-subject requirement; rather it is “when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test.” *Advisory Op. to Att’y Gen. re Fish & Wildlife Conservation Comm’n*, 705 So. 2d 1351, 1353-54 (Fla. 1998).

The Solar Rights Amendment readily satisfies the single-subject requirement by presenting a unified question to the voters. Every aspect of the proposal has “a natural relation and connection as component parts or aspects of a single dominant plan.” *Advisory Op. to Att’y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 181-82 (Fla. 2009).

First, the Solar Rights Amendment does not logroll. The proposal has a logical and natural oneness of purpose, specifically, whether Floridians wish to include a provision in the state constitution establishing the right of electricity consumers to own or lease solar equipment to generate electricity for their own use. The Solar Rights Amendment’s retention of certain state and local government regulatory authority to protect the public safety and the rights of all electricity users is directly connected with this purpose. *See Advisory Op. to Att’y*

Gen. re Use of Marijuana for Debilitating Medical Conditions, 40 Fla. L. Weekly S715 (Fla. Dec. 17, 2015) (concluding that the proposal did not violate the single-subject requirement and explaining that the specific regulatory role for the Department of Health is “directly connected” to the purpose of permitting the medical use of marijuana.) Accordingly, the Solar Rights Amendment does not engage in impermissible logrolling.

Nor does the Solar Rights Amendment substantially alter or perform the functions of multiple branches of state government. Although the proposal’s creation of a new constitutional right would *affect* the Legislature and other governmental entities by limiting their authority to regulate in violation of that right, “the fact that [a] branch of government is required to comply with a provision of the Florida Constitution does not necessarily constitute the usurpation of the branch’s function within the meaning of the single subject rule.” *Advisory Op. to Att’y Gen. re Protect People, Especially Youth, From Addiction, Disease, & Other Health Hazards of Using Tobacco*, 926 So. 2d 1186, 1192 (Fla. 2006); *see also Advisory Op. to Att’y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d at 245 (concluding that a proposal limiting the regulatory authority of the Legislature and other governmental entities in certain areas did not violate the single-subject requirement because the proposed

amendment did not “substantially alter or perform the functions of multiple branches of government producing ‘precipitous’ or ‘cataclysmic’ changes”). The Solar Rights Amendment likewise does not “alter or perform” the functions of multiple branches of government—and certainly not in a manner that would produce precipitous or cataclysmic changes.

In short, the Solar Rights Amendment complies fully with the requirements of the single-subject requirement and should be approved for placement on the ballot.

II. THE SOLAR RIGHTS AMENDMENT’S BALLOT TITLE AND SUMMARY CLEARLY AND UNAMBIGUOUSLY DISCLOSE THE AMENDMENT’S CHIEF PURPOSE.

When reviewing the validity of a ballot title and summary under section 101.161 of the Florida Statutes, this Court asks two questions: 1) whether the ballot title and summary fairly 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 Op. to Att’y Gen. re Water & Land Conservation*, 123 So. 3d at 50; *Fla. Dept. of State v. Slough*, 992 So. 2d 142 (Fla. 2008). The ultimate purpose of the ballot title and summary requirements is “to 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.” *Advisory Op. to the Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998). “Reduced to colloquial terms, a ballot title and summary cannot ‘fly under false colors’ or ‘hide the ball’ with regard to the true effect of an amendment.” *Fla. Dept. of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

The Solar Rights Amendment’s ballot title and summary readily satisfy the requirements of section 101.161, Florida Statutes. The ballot title, “Rights of Electricity Consumers Regarding Solar Energy Choice,” is “a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.” § 101.161(1), Fla. Stat. The ballot summary, in turn, is “an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.”

“[T]here is no requirement that the ballot summary explain its complete terms ‘at great and undue length.’” *Advisory Op. to Att’y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d at 245 (quoting *Metro. Dade Cty. v. Shiver*, 365 So. 2d 210, 213 (Fla. 3d DCA 1978)). Nevertheless, perhaps the strongest evidence that the Solar Rights Amendment’s ballot statement provides “fair notice of the content of the proposed amendment” is the fact that the ballot summary directly tracks the full text of the Solar Rights Amendment’s substantive provisions:

Ballot Summary of Solar Rights Amendment

“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.”

Text of Solar Rights Amendment

(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.

By tracking the language of the proposed amendment, the ballot summary clearly and unambiguously conveys the actual content of the Solar Rights Amendment. A voter reading the ballot title and summary “will not be misled as to its purpose, and can cast an intelligent and informed ballot.” *Advisory Op. to the Att’y Gen. re Term Limits Pledge*, 718 So. 2d at 803. Accordingly the Solar Rights

Amendment's ballot title and summary comply with the clarity requirements of section 101.161, Florida Statutes and should be approved for placement on the ballot.

III. THE FINANCIAL IMPACT STATEMENT IS CLEAR, UNAMBIGUOUS, AND COMPLIES WITH SECTION 100.371(5)(a), FLORIDA STATUTES.

This Court's review of financial impact statements is narrow, addressing only "whether the statement is clear, unambiguous, consists of no more than seventy-five words, and is limited to address the estimated increase or decrease in any revenues or costs to the state or local governments." *Advisory Op. to Att'y Gen. re Local Gov't Comprehensive Land Use Plans*, 963 So. 2d 210, 214 (Fla. 2007); *see also* § 100.371(5), Fla. Stat. (specifying procedures for preparation and review of Financial Impact Statement).

As noted above, the Financial Impact Statement prepared for the Solar Rights Amendment by the Financial Impact Estimating Conference states:

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

The Financial Impact Statement is twenty-two words in length and clearly and unambiguously states that the Solar Rights Amendment is not expected to result in an increase or decrease in revenues or costs to state and local government.

The Financial Impact Statement for the Solar Rights Amendment satisfies the

requirements of section 100.371 of the Florida Statutes and should be placed on the ballot.

CONCLUSION

The Solar Rights Amendment complies with all constitutional and statutory requirements for ballot placement. This Court should approve the proposed amendment and its Financial Impact Statement for placement on the ballot.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210(a), Florida Rules of Appellate Procedure, and that a true copy of the foregoing has been furnished this 11th day of January, 2016, through the e-filing Portal to:

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