
IN THE SUPREME COURT OF FLORIDA

Case No. SC15-2150; SC16-12

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

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

**INITIAL BRIEF IN SUPPORT OF INITIATIVE PETITION
BY DUKE ENERGY FLORIDA, FLORIDA POWER & LIGHT CO.,
GULF POWER COMPANY, and TAMPA ELECTRIC COMPANY**

Upon Request from the Attorney General for an Advisory
Opinion as to the Validity of an Initiative Petition and FIS

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STATEMENT OF CASE AND FACTS

The Florida Attorney General has requested this Court's advisory opinion on the validity of an initiative petition filed under Article XI, section 3 of the Florida Constitution. The title of the proposed amendment is "Rights of Electricity Consumers Regarding Solar Energy Choice" (the "Initiative"). The sponsor of the Initiative is Consumers for Smart Solar, Inc., a coalition of business, civic and faith-based organizations. The Court's review addresses two legal issues: "(1) whether the proposed amendment violates the single-subject requirement of Article XI, Section 3, of the Florida Constitution; and (2) whether the ballot title and summary violate the requirements of Section 101.161(1), Florida Statutes." *Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 795 (Fla. 2014). The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.

The Initiative provides an essential, balanced approach to what is expected to be the continuing development and expansion of solar power in Florida. It embeds in Florida's Constitution an immutable right of all consumers to have access to solar power for use on their own property. At the same time, the Initiative ensures that necessary health, safety and welfare protections will be available and that regulatory procedures can be established, if necessary, to

properly and fairly allocate the costs of such solar power to those for whom the benefits are being obtained.

The full text of the Initiative is as follows:

Section 29 to Article X – 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 make 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 Initiative 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 Financial Impact Statement states as follows:

FINANCIAL IMPACT STATEMENT:

**RIGHTS OF ELECTRICITY CONSUMERS REGARDING
SOLAR ENERGY CHOICE (15-17)**

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

IDENTITIES OF THESE PROPONENTS

Duke Energy Florida (“DEF”), Florida Power & Light Company (FPL), Gulf Power Company (“Gulf Power”), and Tampa Electric Company (“Tampa Electric”) (together, the “Companies”) appear in support of the Initiative pursuant to this Court’s Scheduling Order dated December 21, 2015. All of these proponents are investor-owned utilities operating under the jurisdiction of the Florida Public Service Commission (“FPSC”) pursuant to Chapter 366 of the Florida Statutes.

The Companies have a demonstrated and continuing interest in the development and implementation of solar energy in the State of Florida, which they fully support. They have an equally abiding interest in ensuring that the impact of the development of solar energy is safe and is fair and responsive to the rights of all of their customers. The safety and economic well-being of the Companies’ many customers are dependent upon the availability of necessary regulatory oversight, an appropriate allocation of the costs implicated by the increasing reliance on solar power and a properly coordinated functioning of the electric power grid in the state. The substantial interests of the Companies and their customers would be directly affected by the substantive provisions of the Initiative.

SUMMARY OF ARGUMENT

The Initiative complies with both the constitutional and statutory requirements of Florida law. Its objective is to provide, with a necessary constitutional imprimatur, for the balanced development and expansion of solar power in Florida in a manner that benefits all electricity consumers. It has an obvious oneness of purpose by providing support and protection for both consumers and non-consumers of solar power. It does not purport to alter or perform the functions of any branches of the government. To the contrary, it enhances those functions by cloaking them in constitutional certitude.

The Title and Summary are concise, accurate and completely informative. They conform to the word limitations of Florida law and provide the voter with full and fair notice of the decision the voter is being asked to make. Consumers' rights to ownership of solar equipment are specified. Consumers' rights to health, safety and economic protection are expressly addressed.

This Initiative, if adopted, is not expected to result in any impact on the revenues or costs of state or local governments.

ARGUMENT

I. Standard of Review for Proposed Amendments

The Initial Brief of the Sponsor of the Initiative correctly and comprehensively recites the standard for this Court’s review of the Initiative. The first three paragraphs of the Argument portion of the Sponsor’s Initial Brief are accordingly adopted by reference and that discussion will not be repeated here.

II. The Proposed Amendment Meets The Single Subject Requirement

A. The Initiative Has a Oneness of Purpose

The Single Subject Requirement for proposed constitutional amendments is found in Article XI, Section 3 of the Florida Constitution. In pertinent part it provides that a proposed amendment “shall embrace but one subject and matter directly connected therewith.” Art. XI, § 3, Fla. Const. To meet this standard the proposed amendment must have a “natural relation and connection as component parts or aspects of a single dominant plan or scheme.” *Advisory Opinion to Atty. Gen.-Ltd. Political Terms in Certain Elective Offices*, 592 So. 2d 225, 227 (Fla. 1991) (quoting *Fine v. Firestone*, 448 so. 2d 984, 990 (Fla. 1994)). It must have a logical and natural “oneness of purpose.” *Fine*, 448 so. 2d at 990. “Unity of object and plan is the universal test.” *Right to Treatment & Rehab. for Non-Violent Drug Offenses*, 818 So. 2d 491, 495 (Fla. 2002) (quoting *City of Coral Gables v. Gray*, 19 So. 2d 318, 320 (Fla. 1944)).

As articulated in numerous decisions of this Court, the need for this “oneness,” that is, for this single subject restriction, is to prevent a practice that has come to be known as “log-rolling.” “Log-rolling” is said to occur when an amendment proposal contains two unrelated provisions, one which electors might wish to support and one which they might disfavor. *Advisory Op. to Atty. Gen. – Ltd. Marine Net Fishing*, 620 So. 2d 997, 999 (Fla. 1993). Proposed amendments may not be tailored in such a fashion as to obtain the approval of “an otherwise unpopular issue” by coupling it with an issue that has anticipated voter appeal. *In re Advisory Opinion to the Atty. General-Save Our Everglades Trust Fund*, 636 So. 2d 1336, 1339 (Fla. 1994).

The Initiative here has an obvious, cohesive oneness of purpose. It is intended to help ensure support for the continuing, orderly development and expansion of solar power in the state within an essential regulatory framework. It provides constitutionally underwritten certainty to those consumers who wish to add solar power to their sources of electricity while ensuring that this effort occurs against a backdrop of essential regulatory protections regarding safety and economic impacts. Section (b) of the Initiative, addressing retention of regulatory protections, is clearly and logically related to its principal purpose: promoting the implementation and further development of solar power in the state. Consumers who are not themselves interested in installing solar equipment, can, nonetheless,

be supportive of solar power, knowing that regulatory authority to prevent subsidization has been constitutionally mandated.

Importantly for purposes of “oneness,” the Initiative does not mandate any new legislation or require the creation of any new entities. *See e.g. Advisory Opinion to the Atty. Gen. re: English--The Official Language of Florida*, 520 So. 2d 11 (Fla. 1988) and *Advisory Opinion to the Ag Re Local Trs. & Statewide Governing Bd. to Manage Fla.’s Univ. Sys.*, 819 So. 2d 725 (Fla. 2002).

There is no “unpopular” issue being swept along with the effort to stimulate further solar development. Rather, the express constitutional continuation of regulatory protections is clearly a “necessary component” of the single dominant plan of supporting the continuing, orderly development and expansion of solar power in the state. *See e.g. Local Trs. & Statewide Governing Bd. to Manage Fla.’s Univ. Sys.*, 819 So. 2d at 730 (Finding that when the sole purpose of the proposed amendment is to “create a governance of the state university system,” the enumeration of the “duties and responsibilities of the statewide board of governors and the local university boards of trustees is a necessary component”); *see also Advisory Opinion to the Atty. Gen. Re Casinos*, 644 So. 2d 71, 74 (Fla. 1994) (finding that the language requiring the legislature to implement legislation was “incidental and reasonably necessary to effectuate the purpose of the proposed amendment”).

B. The Initiative Does Not Substantially Alter or Perform the Functions of Multiple Branches of the Government

Article XI, Section 3 of the Constitution also protects against amendment initiatives that might substantially alter or perform functions of multiple branches of the government. *Advisory Opinion to the AG: Prohibiting State Spending for Experimentation That Involves the Destruction of a Live Human Embryo*, 959 So. 2d 210, 213 (Fla. 2007); *Right to Treatment & Rehab. for Non-Violent Drug Offenses*, 818 So. 2d at 495. That aspect of section 3 is simply not implicated here. *See e.g. Advisory Opinion to the AG re: Fla. Minimum Wage Amendment*, 880 So. 2d 636, 639 (Fla. 2004).

The Initiative does not purport to alter any existing function of state or local government. To the contrary, it preserves, but in the form of a constitutional mandate, the existing powers of state and local governmental agencies to protect the health, safety and welfare of consumers. This mandate protects, among other things, the authority of the FPSC to oversee the rates and charges associated with the provision of electric service. Importantly, for purposes of this Court’s review, the Initiative does not direct or require any action by any state or local government or governmental agency. *See e.g. Casinos*, 644 So. 2d at 74 (finding that “[n]othing in the petition usurps, interferes with, or affects, the powers and authority of the executive branch of government or of local governments to integrate casinos into existing governmental policies for planning, zoning, land

use, or environmental considerations” and that “[t]here is no directive in the petition for an override of local or state environmental, land use, or regulatory policies.”)

The Initiative does not interfere with the performance of the functions of any, let alone multiple, branches of the government. The only functions conceptually implicated are those already being performed by existing agencies. They will continue to be performed by those entities. No new entity is established where none existed before. *Local Trs. & Statewide Governing Bd. to Manage Fla.’s Univ. Sys.*, 819 So. 2d at 729.

In other petition-related cases before the Court, concerns have been expressed regarding the need for unspecified legislation to be enacted in order to fully effectuate the purpose of the proposed amendment. *See e.g. English--The Official Language of Florida*, 520 So. 2d at 12-13. That is not the case here. No additional legislation of any kind needs to be enacted to implement the Initiative. Certainly none is mandated in the Initiative itself.

The Initiative will provide meaningful support for the growth of solar power in the state.¹ As more and more consumers turn to solar power as contemplated

¹ Significant statutory support for solar power already exists. *See e.g.* § 288.041(2), Fla. Stat. (2015) (“It is the policy of this state to promote, stimulate, develop, and advance the growth of the solar energy industry in this state.”); § 366.91(1), Fla. Stat. (2015) (“The Legislature finds that it is in the public interest to promote the development of renewable energy resources [defined to include

here, it is inevitable that some existing regulations will require enforcement or that some additional regulations may be required. That the Initiative may indirectly result in such developments at the regulatory level does not put it into a collision course with the single subject requirement of the constitution. *Prohibiting State Spending for Experimentation That Involves the Destruction of a Live Human Embryo*, 959 So. 2d at 213. The Initiative does not require regulatory functions to be undertaken nor does it introduce a new agency to perform regulatory or oversight activities. Customary functions will simply be performed in the solar power environment by the customary governmental entities. This Court has noted that “virtually every amendment will have some effect on multiple branches of government.” *Fla. Minimum Wage Amendment*, 880 So. 2d at 640; *see also Casinos*, 644 So. 2d at 74 (finding it “difficult to conceive of a constitutional amendment that would not affect other aspects of government to some extent”). That consequential effect on “other aspects” of government, if it occurs, does not disqualify a proposed amendment.

To be clear, these proponents share the concern of the sponsor of the Initiative, that essential regulatory protections play their necessary role in the

solar energy] in this state.”); § 163.04, Fla. Stat. (2015) (barring ordinances which prohibit or have the effect of “prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources”); *see also* § 704.07, Fla. Stat. (2015) and § 212.08(7)(hh), Fla. Stat. (2015) (which protect and encourage local solar electricity supply through the use of easements and tax incentives).

expansion of solar energy in the state. The Initiative is intended in large measure to encourage the necessary support for solar expansion by even those consumers who will not be turning to solar for their personal energy needs. It does so by embedding in the state constitution, the means by which their health, safety and welfare will be safeguarded. Likewise, it provides the constitutional assurance that the costs of individual solar access will be appropriately allocated and not underwritten by non-solar consumers. With this amendment in place, concerns that might otherwise slow or discourage the anticipated growth of this alternative form of energy may be effectively addressed.

III. The Ballot Title and Summary Comply with the Requirements of Section 101.161 (1) of the Florida Statutes.

To be accurately represented on the ballot, the summary of a proposed amendment must consist of a short explanatory statement of the measure's chief purpose. § 101.161 (1), Fla. Stat. (2015). The ballot title and summary must be clear and unambiguous. The title may not exceed 15 words; the summary may not exceed 75 words. The objective is to give the voter "fair notice of the decision he must make." *Askew v Firestone*, 421 So. 2d 151, 155 (Fla. 1982). "Nevertheless, the title and summary need not explain every detail or ramification of the proposed amendment." *Advisory Opinion to the AG re: Limiting Cruel and Inhumane Confinement of Pigs during Pregnancy*, 815 So. 2d 597, 599 (Fla. 2002).

The Title and Summary here meet the statutory standard. The word limitations have been met. The title, “Rights of Electricity Consumers Regarding Solar Choice” encompasses both sections of the Initiative and provides clear notice of what is to be decided. Taken together with the summary, the voter is informed that consumers may own or lease solar equipment on their property and that consumers who elect not to do so will have, among other health, safety and welfare protections, protection from underwriting costs associated with those who do elect a solar option.

The language of the Summary tracks closely – in some places verbatim – the language of the Initiative itself. No new terms or descriptions are found in the summary that are not contained in the Initiative.

The growth of solar energy as a source of alternative power has been exponential in recent years. It is anticipated to expand even more quickly as the costs and availability of the technology shift in favor of the consumer. This is a very positive development and one that these proponents support fully and enthusiastically. However, that growth is not without concerns or grounds for caution. A proliferation of household solar devices, unchecked by reasonable and historically validated regulatory oversight, could result in significant dislocations in the state’s electric grid and in unintended economic distortions.

This Initiative clearly and fairly addresses these issues. It unequivocally establishes and essentially endorses the constitutional right for consumers to own or lease solar, for all of its benevolent purposes. At the same time the voter is advised that there may need to be regulatory boundaries established through existing means, to avoid an unhealthy and unfair subsidization of solar consumers by non-solar consumers. The voter is being asked to decide on a balanced, orderly development of solar power in the state. The Title and Summary clearly advise the voter of that choice in unambiguous terms.

IV. The Financial Impact Statement Accurately Explains to Voters the Minimal Fiscal Impact of the Solar Choice Amendment.

Section 100.371(5) of the Florida Statutes provides that the Financial Impact Estimating Conference “shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative.” § 100.371 (5)(a), Fla. Stat. (2015). In deciding the validity of a financial impact statement, this Court is limited “to addressing whether the statement is clear and unambiguous, consists of no more than seventy-five words, and is limited to addressing the estimated increase or decrease in any revenues or costs to the state or local governments.” *Prohibiting State Spending for Experimentation That Involves the Destruction of a Live Human Embryo*, 959 So. 2d at 214.

The Financial Impact Statement in this case simply and unambiguously provides that “[t]he amendment is not expected to result in an increase or decrease in any revenues or costs to state and local government.” Similar financial impact statements have already been found to comply with Florida law. *See e.g. id.* at 215 (approving an impact statement that provided that the “amendment is not expected to have an impact on state or local government expenses.”); *see also Advisory Opinion to the AG in re Extending Existing Sales Tax to Non-Taxed Servs. Where Exclusion Fails to Serve Pub. Purpose*, 953 So. 2d 471, 491 (Fla. 2007) (approving a financial statement that simply stated “[t]he amendment will not have an impact on state and local government revenues or expenses.”).

CONCLUSION

As demonstrated, the Petition complies with all the requirements of Florida law. These proponents respectfully request that it be approved for placement on the ballot.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this Brief was prepared using Times New Roman 14 point type, a font that is proportionately spaced and in compliance with Florida Rule of Appellate Procedure 9.210.

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