IN THE SUPREME COURT OF FLORIDA

Case Nos. SC15-2150, SC16-12

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)

UPON REQUEST FROM THE ATTORNEY GENERAL FOR AN ADVISORY OPINION AS TO THE VALIDITY OF AN INITATIVE PETITON

INITIAL BRIEF OF SPONSOR CONSUMERS FOR SMART SOLAR, INC.

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STATEMENT OF THE CASE AND FACTS

This is a petition for an advisory opinion regarding the validity of a citizen initiative amendment to the Florida Constitution entitled, "Rights of Electricity Consumers Regarding Solar Energy Choice" (the "Solar Rights Amendment"), and corresponding Financial Impact Statement. The proposed amendment is sponsored by Consumers for Smart Solar, Inc., a coalition of business, civic, and faith-based organizations, and submitted pursuant to article XI, section 3 of the Florida Constitution. The Court has jurisdiction. *See* Art. V, § 3(b)(10), Fla. Const.

On October 19, 2015, the Secretary of State certified that the proposed amendment satisfied all registration, submission, and signature requirements and submitted it to the Attorney General. On November 24, the Attorney General petitioned the Court for an advisory opinion on the petition's validity. On November 30, the Financial Impact Estimating Conference forwarded to the Attorney General a financial impact statement, informing her that the petition is not expected to have any impact on the revenues or costs of State and local governments.

The Solar Rights Amendment seeks to create a minimum framework of rights to use solar equipment. Specifically, it would place in the Florida Constitution a right of consumers to own or lease solar equipment to generate electricity for their own use, while preserving the ability of State and local

governments to protect the interests of both solar and non-solar electricity consumers.

The Amendment provides 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.

As required by Section 101.161(1), Florida Statutes, the Solar Rights 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 Financial Impact Statement reads 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.

SUMMARY OF THE ARGUMENT

The Solar Rights Amendment complies with the single-subject requirement of article XI, section 3 of the Florida Constitution. It manifests a logical oneness of purpose, which is to protect the rights of all electricity consumers regarding the use of solar equipment. The proposed amendment has only a minimal impact on the functions of government, as it creates a constitutional right to own or lease solar equipment for one's own use, but preserves the ability of State and local governments to regulate solar in the public interest.

The proposed amendment's title and ballot summary satisfy section 101.161(1), Florida Statutes. Both meet the statute's word limitations and clearly and unambiguously inform voters of the proposed amendment's chief purpose. The ballot summary quotes the Solar Rights Amendment's operative provisions almost verbatim, ensuring that it accurately informs voters of the proposed amendment's true legal effect.

Finally, the Financial Impact Statement complies with section 100.371(5), Florida Statutes. As required, the statement contains less than 75 words and only

addresses the Solar Rights Amendment's impact on the revenues and costs of state and local governments.

ARGUMENT

This Court's review is limited to three issues. First, it decides whether the amendment itself "embrace[s] but one subject and matter directly connected therewith," as required by article XI, section 3 of the Florida Constitution. Second, it decides whether the ballot title and summary meet the requirements of section 101.161(1), Florida Statutes, which limits their length and requires that they state the "chief purpose" of the measure in "clear and unambiguous language." § 101.161(1), Fla. Stat. (2014). Third, the Court determines whether the Financial Impact Statement complies with the requirements of section 100.371(5), Florida Statutes, which limits its length and scope, and requires that it be clear and unambiguous. *See* § 100.371(5), Fla. Stat. (2011); *see, e.g., Advisory Op. to Att'y Gen. re Use of Marijuana for Debilitating Medical Conditions ("Medical Marijuana II"),* Case Nos. SC15-1796, SC15-2002, slip op. at 7, 13 (Fla. Dec. 17, 2015).

This Court's review is highly deferential and limited to determining whether "there is an entire failure to comply with a plain and essential requirement." *Pope v. Gray*, 104 So. 2d 841, 842 (Fla. 1958); *see also In re Advisory Op. to Att'y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply ("Limits or*

Prevents Barriers"), 177 So. 3d 235, 241, 246 (Fla. 2015) (noting that the Court applies a "deferential standard of review" that sets a "high threshold" for invalidating a ballot initiative). The Court is "obliged to uphold a proposed amendment unless it is 'clearly and conclusively defective.'" *Medical Marijuana II,* slip op. at 7 (quoting *In re Advisory Op. to Att'y Gen. re Florida's Amend. To Reduce Class Size ("Class Size"),* 816 So.2d 580, 582 (Fla. 2002)); *see also Limits or Prevents Barriers,* 177 So.3d at 246 ("As we have said many times, our 'duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'"). The Court does not "consider or address the merits or wisdom of the proposed amendment . . . and 'must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people.'" *In re Advisory Op. to the Att'y Gen. re Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose*, 880 So. 2d 630, 633 (Fla. 2004). "[T]he Court has no authority to inject itself into the process, unless the laws governing the process have been 'clearly and conclusively' violated." *Id.*

The burden is on opponents to show that a proposed amendment violates these standards. *See, e.g., Limits or Prevents Barriers,* 177 So.3d at 246 (approving an amendment because "[t]he proposal has not been shown to be 'clearly and conclusively defective'"); *In re Advisory Op. to Att'y Gen. re Use of*

Marijuana for Certain Medical Conditions ("Medical Marijuana I"), 132 So. 3d 786, 795 (Fla. 2014) ("this Court has long explained that our 'duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'") (quoting *Class Size*, 816 So.2d at 582).

I. THE SOLAR RIGHTS AMENDMENT COMPLIES WITH THE SINGLE-SUBJECT REQUIREMENT

Article XI, section 3 of the Florida Constitution provides that a ballot initiative seeking to amend the Constitution must "embrace but one subject and matter directly connected therewith." This limitation "is a rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." *In re Advisory Op. to the Att'y General−Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994). As we demonstrate below, the Solar Rights Amendment meets the single-subject requirement because (A) it has a logical and natural oneness of purpose; and (B) it will not substantially alter or perform the functions of State and local governments.

A. The Solar Rights Amendment and its Implementing Provisions Have a Logical and Natural Oneness of Purpose

The first requirement of the single-subject rule is that an amendment must manifest a "logical and natural oneness of purpose." *Medical Marijuana II,* slip op. at 8. The initiative must "'be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme."

Fine v. Firestone, 448 So. 2d 984, 990 (Fla. 1984). This requirement protects against "logrolling"—the practice of combining several disparate issues "into a single initiative in order to aggregate votes or secure approval of an otherwise unpopular issue." *Medical Marijuana II,* slip op. at 8 (quoting *Save Our Everglades,* 636 So.2d at 1339).

Consistent with the single-subject requirement, the Solar Rights Amendment has a logical and natural oneness of purpose: to establish in the Constitution a framework of rights to protect all electricity consumers regarding the use of solar equipment. The amendment would create a constitutional right to use solar equipment to generate electricity for personal use, subject to regulation, at a time when the use of such equipment is rapidly increasing.

The purpose of the amendment is to protect the rights of *all* consumers of electricity regarding the use of solar equipment. For those who choose to generate some of their electricity through solar power systems, the amendment establishes the constitutional right to own or lease the necessary equipment. For those who choose not to use solar power, the amendment preserves the ability of state and local governments to regulate solar power in the public interest so that non-solar users do not pay a disproportionate amount for their use of electricity by subsidizing solar consumers. Subsidies arise because solar equipment only produces electricity when the sun shines. Therefore, consumers with solar

equipment typically rely on the power grid to ensure continuous access to electricity. But this circumstance creates concerns that solar consumers do not pay their fair share of the costs to maintain their connection to the power grid. Grid maintenance costs are built into the kilowatt-hour price of electricity. Solar consumers purchase less electricity from the grid, which means that electric utilities (whether investor-, municipal-, or cooperative-owned) must recover from other customers the fixed costs of maintaining the grid. *PW Ventures, Inc. v. Nichols,* 533 So. 2d 281, 283 (Fla. 1988) (finding that if consumers could purchase electricity from a party other than a public utility, "[t]his revenue would have to be made up by the remaining customers of regulated utilities since the fixed costs of the regulated systems would not have been reduced.").

The Solar Rights Amendment would allow (but not require) State and local governments to regulate the use of solar equipment so that non-solar consumers are not required to subsidize solar consumers' use of the power grid by paying higher utility rates. The amendment therefore would create an individual right to solar power balanced with the government's authority to act in the interests of other consumers, such as those who do not have the financial means to install solar equipment.

A proposed amendment may establish a number of guidelines, so long as its components are directed toward a single unifying purpose. For example, in

Medical Marijuana I, 132 So. 3d 786, this Court approved a ballot initiative that included several provisions addressing the initiative's administration. In addition to creating a right for qualifying patients to use marijuana for medical purposes, the amendment also outlined the Department of Health's role in overseeing the drug's use. The amendment also preserved the government's ability to enforce laws relating to the use, possession, production, or sale of non-medical marijuana. *Id.* at 793-94. Notwithstanding objections that the amendment encompassed several subjects, the Court found that it was consistent with the single-subject rule. It determined that a proposal may "delineate a number of guidelines" or "enumerate various elements necessary to accomplish [a] plan" as long as its components have a natural and logical connection to a single plan or scheme. *Id.* at 796.

Similarly, in *Advisory Op. to the Att'y Gen. re: Protect People, Especially Youth, from Addiction, Disease, and Other Health Hazards of Using Tobacco ("Health Hazards of Using Tobacco")*, 926 So. 2d 1186 (Fla. 2006), this Court approved a proposed amendment that contained several implementing provisions. The scheme sought to establish a tobacco education and prevention program by providing for: (1) the appropriation of money to an education and prevention fund, (2) the creation of an advertising campaign to discourage the use of tobacco and to educate people about the health hazards of tobacco, (3) the implementation of

evidence-based curricula and local community-based partnerships to discourage the use of tobacco, and (4) the enforcement of laws, regulations, and policies against the sale or other provision of tobacco to minors. *See id.* at 1189. Although the plan contained various components, it nonetheless satisfied the single-subject rule because it did not "combine *unrelated* provisions" but addressed "a single comprehensive plan for the education of youth about the health hazards related to tobacco." *Id.* at 1191-92 (emphasis added).

This Court recently approved another proposed solar amendment that contained multiple provisions, "some dealing with economic barriers to [the] supply of solar electricity and others dealing with government regulation with respect to rates, service or territory." *Limits or Prevents Barriers,* 177 So. 3d at 243. The Court found that it met the single-subject requirement because "the various provisions [we]re all directly connected to the amendment's purpose." *Id.*

Just like the proposed amendments in these cases, the Solar Rights Amendment complies with the single-subject rule. All of its provisions are directly connected to the purpose of protecting the rights of consumers in the use of solar generating equipment. The Solar Rights Amendment is far simpler than the earlier solar amendment found to be constitutionally sufficient.

B. The Solar Rights Amendment Does Not Substantially Alter or Perform the Functions of Multiple Branches of the Government

The single-subject rule also protects against substantial alterations or performance of the functions of multiple branches of the government. *Advisory Op. to Att'y Gen. re Right to Treatment and Rehabilitation*, 818 So. 2d 491, 494-95 (Fla. 2002). Because "it is difficult to conceive a constitutional amendment that would not affect other aspects of government to some extent," nominal impacts on government functions do not render a ballot proposal invalid. *Advisory Op., to Att'y Gen. re Ltd. Casinos*, 644 So. 2d 741, 74 (1994). Rather, to fail this test, the amendment "must alter or perform the functions of multiple branches of government and thereby cause 'precipitous' or 'cataclysmic' changes to the government structure." *Limits or Prevents Barriers,* 177 So.3d at 244 (citing *Advisory Op. to Att'y Gen. re Funding of Embryonic Stem Cell Research,* 959 So.2d 195, 213 (Fla. 2007)).

The Solar Rights Amendment would have no such impact. It protects the regulatory authority of State and local governments consistent with the new constitutional right for consumers to own or lease solar equipment installed on their properties to generate electricity for their own use. "[T]he 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 the Att'y Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 180-81 (Fla. 2009).

This Court has upheld several initiatives that affected the functions of government much more than this proposal does. *See, e.g., Medical Marijuana I*, 132 So. 3d at 796 (finding that a proposed amendment did not substantially alter or usurp the functions of government by requiring a government agency to "perform regulatory oversight."); *Health Hazards of Using Tobacco*, 926 So. 2d at 1193 (holding that a proposed amendment requiring the Legislature to establish and fund a statewide tobacco education and prevention program did not substantially alter or perform the function of the government); *Medical Marijuana II,* slip op. at 10 (finding that the performance of regulatory oversight by agencies does not substantially alter a governmental function). The Court should approve the Solar Rights Amendment as well.

II. THE BALLOT TITLE AND SUMMARY CLEARLY AND ACCURATELY DESCRIBE THE SOLAR RIGHTS AMENDMENT'S CHIEF PURPOSE

This Court reviews a proposed amendment's title and its ballot summary to determine "whether the proposed amendment will be 'accurately represented on the ballot.'" *Medical Marijuana II,* slip op. at 11 (quoting *Armstrong v. Harris,* 773 So. 2d 7, 12 (Fla. 2000)). Section 101.161(1), Florida Statutes, requires a ballot summary to contain a short explanatory statement of a measure's "chief

purpose," that the ballot title and summary be "clear and unambiguous," and that they not exceed 15 and 75 words, respectively. *See* § 101.161(1), Fla. Stat. This Court has interpreted this provision to mean that "the voter should not be misled [but] have an opportunity to know and be on notice as to the proposition on which he is to cast his vote." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). "Simply put, the ballot must give the voter fair notice of the decision he must make." *Id.*

To conform with section 101.161(1), a ballot summary must state the measure's main effect. *See Armstrong vs*, 773 So. 2d at 18. The summary is not required to explain every detail or consequence, but must convey the initiative's true reach. *See Fla. Educ. Ass'n v. Fla. Dep't of State,* 48 So. 3d 694, 700-01 (Fla. 2010). This Court's "duty is to uphold the proposal unless it can be shown to be 'clearly and conclusively defective.'" *Medical Marijuana I,* 132 So. 3d at 795. This standard sets a "high threshold" for finding a measure to be invalid. *Limits or Prevents Barriers,* 177 So.3d at 246.

The ballot title and summary of the Solar Rights Amendment clearly satisfy section 101.161(1). There can be no question that they meet the word limitations in the statute. In fact, the ballot summary contains exactly 75 words.

The ballot title, "Rights of Electricity Consumers Regarding Solar Energy Choice," gives clear notice of the subject matter and the chief purpose of the

measure (to protect consumer rights regarding solar energy). The title expressly informs voters that the ballot initiative concerns the rights of all electricity consumers, not just those who choose to use solar equipment. And the ballot summary reaffirms this point, stating that governmental abilities will be retained so that they may "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." *Cf. Medical Marijuana I,* 132 So. 3d at 804 (considering the title and ballot summary together in determining whether they are misleading).

The ballot summary clearly states the proposed amendment's chief purpose and main effect. It tells voters that the amendment would establish a right in the Florida Constitution for consumers to own or lease solar equipment installed on their properties to generate electricity for their own use. Currently, Florida law prohibits local governments and homeowner associations—but not the state—from barring "the installation of solar collectors, clotheslines, or other energy devices based on renewable resources." § 163.04(1), Fla. Stat. (2015). The amendment would create a constitutional right to own or lease solar equipment, which would prevent the Legislature itself from prohibiting such equipment. Voters also are advised that State and local governments would retain their abilities to protect consumer rights, the public health, and the safety and welfare of citizens through regulation. In particular, the summary tells voters that State and local governments

would be able to regulate solar not just to protect the interests of those consumers who choose solar, but also the interests of those who do not.

The ballot summary even goes beyond the statute's requirements by disclosing every detail of the Solar Rights Amendment. It quotes its operative provisions almost verbatim, stating:

> 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 first sentence of the summary is almost a direct quote of the first operative provision of the amendment, proposed article X, section 29(a), which provides: "Electricity consumers have the right to own or lease solar equipment installed on their property to generate electricity for their own use." The only difference is that the ballot summary affirmatively tells voters that "[t]his amendment establishes a right under Florida's Constitution." The second sentence of the summary is a verbatim quote of the language in the other operative provision. Both sentences are written in plain, non-legal language.

The ballot summary's inclusion of the amendment's actual language easily distinguishes this initiative from those this Court has found misleading. Those summaries mischaracterized their measures by using terms not found in the

amendments themselves. *See Medical Marijuana I,* 132 So. 3d at 805 (collecting cases that found ballot summaries to be invalid because they contained materially and legally significant "discrepanc[ies] between the terms used in the ballot summar[ies] and the text of the amendment[s]."") (citing *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, 896-97 (Fla. 2000), and *In re Advisory Op. to the Att'y Gen. re Casino Authorization, Taxation & Regulation,* 656 So. 2d 466, 468 (Fla. 1995)).

Although the law does not require that a ballot summary repeat verbatim the language of an amendment, *e.g., Legislative Dist. Boundaries,* 2 So.3d at 185, such an approach ensures its legal accuracy, *In re Advisory Op. to Att'y Gen. Re the Medical Liability Claimant's Compensation Amendment,* 880 So.2d 675, 679 (Fla. 2004) (finding compliance with section 101.161 in part because "the summary in this amendment comes very close to reiterating the briefly worded amendment"). Far from being misleading, the ballot summary here informs voters of the exact legal effect of the Solar Rights Amendment. In fact, the ballot summary could legally say no more, because it is already at the 75-word limit. For these reasons, the ballot title and summary comply with section 101.161(1).

III. THE FINANCIAL IMPACT STATEMENT ACCURATELY STATES THE AMENDMENT'S FISCAL IMPACT

The Court's review of the Financial Impact Statement is "narrow," limited to "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 Referenda Required for Adoption & Amend. Of Local Gov't Comprehensive Land Use Plans*, 963 So.2d 210, 214 (Fla. 2007).

The Financial Impact Statement easily passes this review. It contains 22 words and addresses only the estimated increase or decrease in the costs and revenues of state and local governments. It unambiguously states: "The amendment is not expected to result in an increase or decrease in any revenues or costs to state and local government." The Court found valid an almost identical financial impact statement in *Embryonic Stem Cell Research,* 959 So.2d at 214-15, and should do the same here.

CONCLUSION

For the reasons stated, the Court should approve the Solar Rights Amendment for placement on the ballot because it complies with article XI, section 3, of the Florida Constitution, and section 101.161(1), Florida Statutes. The Court should also approve the Financial Impact Statement because it complies with section 100.371(5), Florida Statutes.

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CERTIFICATE OF COMPLIANCE

I certify that this brief was prepared using Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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