IN THE SUPREME COURT OF FLORIDA
Case No.: SC15-2150

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

AMICUS BRIEF OF FLORIDA ENERGY FREEDOM, INC.

Corrected on Friday, January 29, 2016.

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FULL TEXT OF THE BALLOT INITIATIVE

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.

Full text of the proposed constitutional amendment:
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.

Financial impact statement:

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.

INTRODUCTION AND INTEREST OF FLORIDA ENERGY FREEDOM

Florida Energy Freedom is a 501(c)(4) nonprofit organization whose mission is to represent Florida's residential, commercial, and industrial end users – the customers who ultimately purchase electricity and pay for the electric grid – in calling for a competitive restructuring of Florida's electricity market. At present, the only competitive alternative that Florida's millions of end users have to the vertically-integrated electric utilities – affordable, self-generated solar energy – is at risk in this case, and that is why Florida Energy Freedom seeks to participate in the case by intervening in opposition to the initiative petition in this case.

STATEMENT OF THE CASE AND FACTS

This matter comes to this Court from a petition for an Advisory Opinion from the Attorney General, dated November 24, 2015, and filed in accordance with Article IV, Section 10 of the Florida Constitution and Section 16.061, Florida Statutes. The question now before this Court is whether the text of the proposed amendment, entitled "Rights of Electricity Consumers Regarding Solar Energy Choice" (the "proposed amendment"), complies with the single-subject rule of Article XI, Section 3 of the 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) of the Florida Constitution.

SUMMARY OF THE ARGUMENT

The proposed amendment promises stronger protections for solar rights and a vigorous consumer protection regime. But a close reading of its text through the rules of construction this Court has applied to other constitutional provisions – in pari materia ("upon the same matter or subject") and expressio unius est exclusio alterius ("the express mention of one thing excludes all others") – illustrates that there are at least three disparate subjects to the proposed amendment.

1. It reduces to writing an inherent right under the Florida Constitution.

2. It embeds restrictions on property and contract rights into the Florida Constitution, and elevates statutory prohibitions into this Constitution.

3. It restrains the abilities of state and local governments to protect the public welfare by regulating solar equipment in the public interest.

The result of this is an amendment which uses the popular promise of a narrowly construed right which already exists to lead Floridians into voting for two proposals which they would likely never vote for on their own: one which will leave every end user less free, and another which will leave both state and local governments less able to promote solar energy development in Florida. Further, by changing the ability of state and local governments to set energy policy, it also substantially alters the functions of multiple branches of state and local government. Therefore, the proposed amendment is unconstitutional, because it is burdened with logrolling and because of its cataclysmic effects on energy policy.

ARGUMENT: The proposed amendment combines three distinct subjects and substantially alters and performs the functions of multiple branches of government, violating the Florida Constitution's single-subject rule.

The single-subject rule of Article XI, Section 3 of the Florida Constitution is a "rule of restraint designed to insulate Florida's organic law from precipitous and cataclysmic change." Advisory Op. to the Atty. Gen. – Save Our Everglades, 636 So. 2d 1336, 1339 (Fla. 1994). It protects the fundamental power of the people to amend their Constitution by preventing proposals "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 Atty. Gen. – Water & Land Conservation, 123 So.3d 47, 50 (Fla. 2013). By combining three disjointed subjects that would substantially alter and perform the functions of multiple branches of government, the proposed amendment engages in both of these prohibited practices, violating Article XI, Section 3 of the Florida Constitution.

I. Statutory rules of construction are not only applicable, but necessary, for evaluating the actual, functional effects of the proposed amendment.

To meet these constitutional requirements, a proposed amendment must "manifest 'a logical and natural oneness of purpose.'" Advisory Op. to Atty. Gen. - Fla. Marriage Prot., 926 So. 2d 1229, 1233 (Fla. 2006). According to its sponsors, this one manifests its "logical and natural oneness of purpose" as follows:

> "[T]o 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…."

Initial Brief of Sponsor Consumers for Smart Solar, Inc., at 8. This Court has said that "enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement." Evans v. Firestone, 457 So. 2d 1351, 1353 (Fla. 1984). Because "a framework of rights to protect all electricity consumers regarding the use of solar equipment" is "so broad as to fail to delineate the subject or subjects of this amendment in any meaningful way," this Court "must look to the functional effect of [the amendment] to determine whether it satisfies the single subject requirement." Evans v. Firestone, 457 So. 2d, 1353-54 (Fla. 1984). The functional effects of the proposed amendment amount to three distinct subjects:

A. It reduces to writing an inherent right under the Florida Constitution.

The sponsors of the proposed amendment have said that "[t]he amendment would create a constitutional right to own or lease solar equipment, which would prevent the Legislature itself from prohibiting such equipment." Initial Brief of Sponsor Consumers for Smart Solar, Inc., at 15. But when subsection (a) of the proposed amendment says that "electricity consumers have the right to own or lease solar equipment installed on their property to generate electricity for their own use," it reduces to writing an inherent right already provided for by the Florida Constitution. This Court has said that "the right to contract and to use one's property as one wills are fundamental rights guaranteed by the constitution of the

United States and the constitution of Florida." Palm Beach Mobile Homes, Inc. v. Strong, 300 So. 2d 881, 884 (Fla. 1974). The right to property "includes the incidents of property ownership: the '[c]ollection of rights to use and enjoy property, including [the] right to transmit it to others.'" Shriners Hosp. for Crippled Children v. Zrillic, 563 So. 2d 64, 67 (Fla. 1990). The right to lease solar equipment exists as surely as does the right to own it. With respect to the rights protected by the Florida Constitution's Declaration of Rights, this Court has said:

> [N]o other broad formulation of legal principles…provides more protection from government overreaching or a richer environment for self-reliance and individualism than does this 'stalwart set of basic principles.'

N. Fla. Women's Health & Counseling Servs. v. State, 866 So. 2d 612, 618-19 (Fla. 2003). It is hard to imagine by what basis the Legislature could prohibit anyone from owning or leasing "solar equipment installed on their property to generate electricity for their own use" under a Florida Constitution that provides an "environment for self-reliance and individualism." The proposed amendment reduces to writing a narrow right that exists already under the Florida Constitution.

B. It embeds restrictions on property and contract rights into the Florida Constitution, and elevates statutory prohibitions into this Constitution.

The preexisting right which subsection (a) of the proposed amendment reduces to writing is minimal by comparison to the broader right "to own or lease solar equipment" that already exists as a part of the broader constitutional rights to property and to contract. In reducing to writing "the right to own or lease solar

equipment installed on their property to generate electricity for their own use," the proposed amendment not only takes the broader right "to own or lease solar equipment" from the broad reservoir of unenumerated or implied rights, but then adds to it specific limitations on how, where, and to what end this constitutional right may be exercised. Under the proposed amendment, an electricity consumer would have a right "to own or lease solar equipment" that is (1) installed on an electricity consumer's property (2) for the purpose of generating electricity (3) for the electricity consumer's own use. This limits both the right to property and the right to contract described by the Florida Constitution's Declaration of Rights.

For example, subsection (a) of the proposed amendment restricts property rights. This is because "[t]his Court has consistently held that the Constitution shall be construed in such a manner as to give effect to every clause and every part thereof. Every provision is inserted for a definite purpose and all sections and provisions of the Constitution must be construed in pari materia." In re Advisory Op. of Governor, 313 So. 2d 697, 701 (Fla. 1975). As a result, to determine the functional effect of this part of the proposed amendment, this Court must determine how it should be construed with the rest of the provisions of the Florida Constitution so as to have effect. If subsection (a) of the proposed amendment reduces to writing a constitutional right which already exists under Article I, Section 2 of the Florida Constitution, then its effect can be neither the increased

protection of a right which is not yet constitutionally protected, nor the expansion of existing constitutional rights. If it has any functional effect when construed in pari materia with the rest of the Florida Constitution, it must be to scale back what constitutional rights currently exist regarding solar equipment. The scope of the broad property right in solar equipment which now exists, but is reduced to writing in subsection (a) of the proposed amendment, is narrowed by application of expressio unius est exclusio alterius. It limits the right to that solar equipment which is (1) installed on an electricity consumer's property (2) for the purpose of generating electricity (3) for the electricity consumer's own use, and in so doing, removes any constitutional right to own or lease solar equipment in any other way.

This Court applied this rule of construction to the Florida Constitution when it said that where it "expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner." Bush v. Holmes, 919 So. 2d 392, 407 (Fla. 2006). This Court has declined to apply the rule where a statute does not violate the primary purpose behind the constitutional provision at issue. For example, in Taylor v. Dorsey, 19 So. 2d 876 (1944), the Florida Constitution said that if a married woman bought or improved property, she could be liable for those actions at equity. The legislature then enacted a statute giving married women the right to make contracts, for which they would be liable for at law in the event of a dispute. Here, this Court found no need for the rule:

> We consider it inapplicable here because it was not the primary purpose of [the provision] to effect the adjudication in equity of all claims against married women, but to require positive action on the part of the Legislature.

Id. at 317. But by contrast, where, "[u]nlike the constitutional provision at issue in Taylor, which had a narrow primary purpose," a constitutional provision "provides a comprehensive statement," this Court applied expressio unius. Bush v. Holmes, at 408 (Fla. 2006). The rule should similarly apply to reading subsection (a), which aspires to provide a comprehensive statement of the right to own or lease solar.

The language of Article I, Section 2 of the Florida Constitution was drafted with this rule in mind. Its recent history is an illustrative example of how a drafter can write a constitutional amendment to impliedly, though effectively, limit some individual rights by a provision protecting others. In 1998, the Constitutional Revision Commission amended Article I, Section 2 in two key ways:

> "Female and male alike," was added after and modifies the term "natural persons" [and] "national origin" was added to the listing of protected classes.

Frandsen v. Cty. of Brevard, 800 So. 2d 757, 759 (Fla. Dist. Ct. App. 2001). The Court of Appeal explained why the provision was amended. As initially filed, the proposal would have simply added the term "sex" to the list of protected classes, along with national origin. But questions arose as to whether that would require Florida courts to recognize same-sex marriages. To address this, a statement of intent was left in the Constitution Revision Commission's journal of proceedings:

> "[The intent of the original proposal] was to affirm explicitly that all natural persons, female and male alike, are equal before the law…the purpose of amending the original proposal and adopting it in its amended form was to assure that [it] would not be deemed…to countenance same-sex marriages."

Id. at n.4. This minor revision achieved its major goal. Even prior to the addition of Article I, Section 27 to the Florida Constitution in 2008, lower courts had found that the 1998 amendment worked as its drafters had intended in denying strict scrutiny to sex-based classifications. A Choice for Women v. Fla. Agency for Health, 872 So. 2d 970, 973 (Fla. Dist. Ct. App. 2004). Based upon a similar reading, this Court concluded that sexual orientation was not a protected class under the Florida Constitution. D.M.T. v. T.M.H., 129 So. 3d 320, 342 (Fla. 2013). By rules of construction through which the placement of its list of protected classes was read to exclude sex, the 1998 amendment had worked as planned.

If these rules can be used in reading an amendment to the Florida Constitution so as to limit individual rights, they would likely find even stronger application with a technical subject like solar equipment – especially one comprised of multiple comprehensive subjects. The rule is even stronger because the sponsor's commentary on the proposed amendment is comparatively vague. It "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." Initial Brief of Sponsor Consumers for Smart Solar, at 8.

1. The proposed amendment reduces property rights in solar equipment.

Just as with the 1998 amendment to Article I, Section 2, subsection (a) of the proposed amendment establishes a right in such a way as to limit its exercise. And because it comprehensively states a narrow right to own or lease solar equipment, expressio unius is applicable. By its application, the functional effect of subsection (a) is to restrict the extent to which "electricity consumers" may exercise their "right to own or lease solar equipment." This restriction would give subsection (a) a definite purpose in that it would delineate the full extent of the now broad right of "electricity consumers" to "own or lease solar equipment." For example, renters interested in solar equipment would be excluded from this right, even with a landlord's consent, because solar equipment must be "installed on their property."

Beyond this, the language could bar the ownership or lease (and implicitly, the transmission and sale) of many types of useful solar equipment. For example, community solar installations provide power to apartment complexes and dense neighborhoods, and are often owned by multiple community members. But by the proposed amendment, electricity consumers would have only a right to solar equipment installed on their own property "for their own use." Also threatened is equipment designed to connect solar to the electric grid, like net metering hookups or inverters that convert DC power from the solar equipment into AC power for the grid. Electricity consumers would have only the right to "generate electricity for

their own use," so this equipment would be excluded. Solar thermal equipment is used by homes and businesses of all sizes to heat water and air. The proposed amendment describes only a right to solar equipment used to "generate electricity," which altogether excludes solar heat generation from this "framework of rights to protect all electricity consumers regarding the use of solar equipment."

Notably, the proposed amendment delineates the full extent of the right to own or lease solar equipment only with respect to "electricity consumers," which subsection (c)(1) defines as "any end user of electricity regardless of the source of that electricity." End users purchase electricity for their own use, rather than for resale; essentially, everyone except an electric utility is an end user. "Electric utilities" are defined by subsection (c)(6) as "any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system." But by either prohibiting or otherwise creating a constitutional basis for the prohibition of many types of solar equipment to everyone else, the proposed amendment restricts property rights that exist now under Article I, Section 2 of the Florida Constitution.

2. The proposed amendment reduces contract rights in solar equipment.

The proposed amendment then restricts contract rights by defining a "lease," as used in subsections (a) and (c)(4), as 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." If this language is read with other constitutional provisions so as to have a functional effect and a definite purpose, and read by the same rules of construction, it embeds a statutory prohibition of power purchase agreements into the Florida Constitution.

Third-party financing agreements make most solar equipment installations possible. In these agreements, which usually run from 10 – 30 years, a third-party owner installs their solar equipment on an electricity consumer's property at no cost, which immediately offsets the electricity consumer's utility bill. How an electricity consumer pays to use the equipment depends upon whether they finance through a lease or a power purchase agreement (PPA). A solar lease is paid in fixed monthly installments, which do not change based on the amount of electricity the solar equipment generates. Because these lease payments are decoupled from the amount of electricity generated, they place the risk in the financing agreement on the electricity consumer, who must pay the third-party owner regardless of how much electricity their solar equipment generates. By contrast, in a solar PPA:

> [The owner] sells the electric power to the consumer at a pre-established fixed rate, thereby providing the customer with a hedge against price increases from the traditional electric utility serving the location. PPAs thus minimize the up-front cost barrier, and greatly stabilize, if not reduce, costs for the consumer thereafter. In addition, the [owner] is ordinarily…able to take advantage of the tax benefits afforded to alternative energy...Moreover, the [owner], who maintains the system, is an expert with PV technology. Thus, under a PPA, the [owner] absorbs the high initial costs, retains the

> responsibility of maintenance…and is compensated based on electricity actually produced by the system.

SZ Enters., LLC v. Iowa Utils. Bd., 850 N.W. 2d 441, 454 (Iowa 2014). The key advantage to a solar PPA over a solar lease is that electricity consumers on PPAs pay the third-party owner for the cost of their solar equipment by purchasing the electricity it generates each month at a rate which is normally lower than that of the electric consumer's utility. This is why PPAs are a popular way for homeowners, businesses, nonprofits, and public entities to finance solar equipment – they permit any electricity consumer to see savings as soon as it is installed.[1] Though fixed rates under a solar PPA may increase at set intervals, depending on the terms of an individual PPA, electricity usage always determines how much an electricity consumer pays each month. This places the risk of paying for the solar PPA on the third-party owner, who only recovers their investment so long as the solar equipment operates smoothly and generates the anticipated amount of electricity.

[1] Over 70 percent of the 189,000 residential solar projects finished in 2014 were third-party owned; most of that was PPAs. U.S. Residential Solar Financing 2015-2020. (GTM Research 2015), available at www.greentechmedia.com. More than 50 percent of all non-residential solar projects were financed through PPAs by 2007, and they remain useful today. Katharine Kollins, Solar PV Project Financing (Nat'l Renewable Energy Lab. 2010), available at http://www.nrel.gov and Solar Means Business 2014: Top Commercial Users (Solar Energy Industries Association, 2014), available at www.seia.org.

Unfortunately, Florida prohibits solar PPAs under Section 366.02(1), Florida Statutes, which reserves the sale of electricity to public utilities.[2] Florida is one of only four states which specifically prohibit solar PPAs by statute. The proposed amendment would go even further, making Florida only the second state to put this prohibition into its Constitution, and the first to do it so explicitly.[3] It creates the right to "own or lease solar equipment" and defines a lease as "an agreement under which the consumer pays the equipment owner/lessor a stream of periodic payments for the use of such equipment." On its own, this language would include solar PPAs, but this right is then limited to those leases in "which payments do not vary in amount based on the amount of electricity produced by the equipment and used by the consumer/lessee." Solar PPAs are defined by payments which "vary in amount based on the amount of electricity produced by the equipment and used by the consumer/lessee" and so the right to lease solar equipment, as defined by the proposed amendment, excludes them. Because the proposed amendment defines

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[2] Section 366.02(1) defines a "public utility" as every "person, corporation…or other legal entity…supplying electricity or gas…to or for the public." A lease where payments "vary…based on the amount of electricity produced" is a sale of electricity by an entity other than a public utility, and so is prohibited by statute. PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 284 (Fla. 1988).

[3] Along with Florida, Kentucky, North Carolina, and Oklahoma also prohibit PPAs through similar statutes. Other states either permit them, or have not yet had enough demand to rule on it. Samuel Farkas, Third-Party PPAs: Unleashing America's Solar Potential, 28 J. Land Use & Envtl. L. 91 (2012).

which leases electricity consumers have a right to enter into, and excludes solar PPAs, it elevates a statutory prohibition against them into the Florida Constitution.

Therefore, if the proposed amendment can have any functional effect, it is that electricity consumers no longer have a right to own or lease solar equipment beyond its limits. In this way, it adds new restrictions on property and contract rights to the Florida Constitution, and embeds existing statutory restrictions into it.

C. It restrains the abilities of state and local governments to protect the public welfare by regulating solar equipment in the public interest.

At first glance, the "state and local governments" described in subsection (b) are already constitutionally empowered to "protect consumer rights and public health, safety, and welfare" and to "ensure that customers 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." For example, the right to contract and the right to own property are protected by the Florida Constitution, but they are "held subject to the fair exercise of the power inherent in the State to promote the general welfare of the people through regulations that are reasonably necessary to secure the health, safety, good order, general welfare." Golden v. McCarty, 337 So. 2d 388, 390 (Fla. 1976). Local governments already have these broad abilities as well, in line with the Florida Constitution and state statutes. Both state and local governments already have the inherent authority that the proposed amendment would "retain," except where they are prohibited by constitutional provisions or

state statutes from exercising it. Subsection (b) partly reduces to writing abilities already entrusted to state and local governments under the Florida Constitution, retaining merely that which is already constitutionally defined.

But by specifically tempering the open-ended individual "right to own or lease solar equipment" that "electricity consumers" already have with the qualifier that this equipment be "installed on their property to generate electricity for their own use," the proposed amendment restricts the ability of state and local governments to regulate solar equipment in the public interest. Programs that incentivize consumers to generate solar electricity for others to use – net-metering, feed-in tariffs, and distributed energy resource incentives, for example – would now be impossible for state and local governments to promote, because the proposed amendment provides consumers with only the right to "generate electricity for their own use," and so permits no right to grid access. In the same way the proposed amendment limits the right of electricity consumers to "own or lease solar equipment" that generates electricity beyond "their own use," it limits state and local governments in their ability to create programs which would reward, incentivize, or loosen regulations on solar generation. Because subsection (a) restricts individual rights, it is at odds with the abilities which "state and local governments shall retain" in subsection (b), because the programs state and local

governments organize with respect to solar energy depend upon electricity consumers exercising the rights which the proposed amendment would curtail.

II. The proposed amendment constitutes logrolling because it combines three distinct subjects into a single initiative in an attempt to use a popular issue to secure voter approval of otherwise unpopular issues.

The single-subject rule "is intended to guard against "logrolling." Fine v. Firestone, 448 So.2d 984, 989 (Fla. 1984). 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 the Atty. Gen. – Use of Marijuana for Certain Med., 132 So. 3d 786, 795 (Fla. 2014). To "avoid this impermissible logrolling," a proposed amendment is required to "manifest 'a logical and natural oneness of purpose.'" Advisory Op. to Atty. Gen. – Fla. Marriage Prot., 926 So. 2d 1229, 1233 (Fla. 2006). "[T]his requirement is met where 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.'" Fine v. Firestone, 448 So. 2d at 990 (Fla. 1984). The proposed amendment ties three disparate subjects together into an attempted "framework of rights to protect all electricity consumers regarding the use of solar equipment." As follows, it:

1. Reduces to writing an inherent right under the Florida Constitution.

2. Embeds restrictions on property and contract rights into the Florida Constitution, and elevates statutory prohibitions into this Constitution.

3. Restrains the abilities of state and local governments to protect the public welfare by regulating solar equipment in the public interest.

These subjects are either inherently at cross-purposes, or otherwise have no need for one another. For instance, the first subject – the purpose for which the proposed amendment is most often explained – is irrelevant to either of the others, because the right it reduces to writing already exists. The second subject works against the first by restricting the expression of this right in such a way as to actually reduce the overall freedom that electricity consumers have to "own or lease solar equipment." It works against the third subject by elevating into the Florida Constitution existing prohibitions which not only have a major impact on solar growth, but which the Legislature would now be unable to repeal, despite the fact that the third subject seeks to retain such abilities. The third subject is likewise hamstrung by the other two. It has no relationship to the right reduced to writing by the first; neither this narrow right to own or lease solar equipment, nor the ability of state and local governments to regulate it, has ever been questioned. But it is also hampered by the second subject, which restricts the exercise of the right to "own or lease solar equipment" to generating electricity for personal use. State incentive programs cannot be effective if there is no longer any right to

generate electricity for the use of others. With all of these subjects not only irrelevant to one another, but ultimately in conflict with one another, the proposed amendment is burdened by logrolling, and therefore unconstitutional.

III. The proposed amendment constitutes logrolling because it substantially alters the functions of multiple branches of state and local government.

The proposed amendment also violates the single-subject rule because it "substantially alter[s]…the functions of multiple branches of government and thereby caus[es] multiple 'precipitous' and 'cataclysmic' changes in state government." Re: Right to Treatment & Rehab. for Non-Violent Drug Offenses, 818 So. 2d 491, 495 (Fla. 2002). The amendment does this by removing the ability of the state government to delegate its regulatory powers to its political subdivisions, and by prohibiting the state government from revoking any powers it delegated to local governments before the adoption of the proposed amendment.

Because every part of this Constitution must be given meaning and effect, the language of the proposed amendment must be evaluated by its functional effect. The language of the proposed amendment says that state and local governments "shall retain" their existing abilities. This Court has ruled that the imperative "shall" can be interpreted as being analogous to "may" in the right context. Rich v. Ryals, 212 So. 2d 641, 642-43 (Fla. 1968). To do so here would render the provision meaningless; state and local governments are already able to decide (within existing constitutional limits) how they wish to delegate power.

As a result, if it is to be interpreted to have any practical effect, it must be read as an authoritative command for governments to retain their current abilities with respect to solar equipment forever. The words "shall retain" can only operate then as a restriction upon these abilities – as an imperative command, they instruct the state and local governments that they may not give up these abilities. For example, by Section 366.81, Florida Statutes, "the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such facilities, systems, or devices." This statute represents the state giving up its ability to make special rate structures for solar energy. If the proposed amendment means that the state must forever retain these abilities, then statutes like this, and potentially others like it, would be vulnerable to constitutional challenge. It would deprive state and local governments of the ability to make solar energy policy: a substantial alteration indeed.

CONCLUSION

Therefore, the proposed amendment violates Article XI, Section 3 of the Florida Constitution, and we respectfully ask the Court to strike it from the ballot.

Respectfully submitted, this
Friday, January, 29, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on Friday, January 29, 2016, a true and correct copy of the foregoing was electronically filed with the Florida Courts E-Filing Portal, as authorized by Fla. R. Jud. Admin. 2.516, with notice furnished as indicated below:

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rules of Appellate Procedure 9.210(a), I certify that this Amicus Brief in Opposition 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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