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)

ANSWER BRIEF OF INTERESTED PARTY 60 PLUS ASSOCIATION IN SUPPORT OF THE INITIATIVE

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SUMMARY OF THE ARGUMENT

The parties filing briefs in opposition to the Solar Rights Amendment advance two contradictory arguments: the proposal would "simply maintain the status quo" while also causing "precipitous and cataclysmic changes in state government." The reality lies between these extreme positions. The Solar Rights Amendment would establish a new constitutional right of electricity consumers to own or lease solar equipment to generate electricity for their own use, while retaining state and local government regulatory authority to protect public safety and the rights of all electricity users. The proposal addresses a single subject and its chief purpose is clearly and unambiguously described in the ballot title and summary. There is no basis in law or this Court's precedents to remove from the voters the opportunity to consider the adoption of the Solar Rights Amendment.

The Solar Rights Amendment presents a single 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 installed on their property to generate electricity for their own use. Each provision of the amendment is directly connected with this single subject as required by the Florida Constitution. Contrary to the arguments of various Opponents, the Solar Rights Amendment does not "logroll" unrelated issues.

The Solar Rights Amendment's ballot title and summary clearly and unambiguously disclose the proposal's chief purpose. By tracking the operative language of the proposed amendment's text nearly verbatim, 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. The ballot statement does not include any inflammatory, emotional, or political rhetoric and its terms are not misleading as to the proposal's effect.

This Court should approve the proposed amendment and its Financial Impact Statement for placement on the ballot.

ARGUMENT

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

The Solar Rights Amendment readily satisfies the Florida Constitution's single-subject requirement for ballot initiatives by presenting a unified question to the voters: 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 proposal's retention of certain state and local government regulatory authority to protect public safety and the rights of all

electricity users is directly connected with this purpose as required by Article X, section 3, of the Florida Constitution. The Solar Rights Amendment does not include multiple subjects or "logroll," as alleged by the Opponents, because 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). Accordingly, the proposal should be approved for placement on the ballot.

A. The Solar Rights Amendment addresses a single subject.

The Opponents argue that the provisions of the Solar Rights Amendment retaining the ability of state and local government to protect consumer rights and public health, safety, and welfare constitute a separate constitutional "subject" (or "subjects") from the establishment of the right to own or lease solar equipment. *See* FSCI Init. Brief at 26-27; Progress Fla. Init. Brief at 13; FSEIA Init. Brief at 24-28. Yet this Court has repeatedly approved ballot initiatives that both create a constitutional right and provide a regulatory structure for the implementation or exercise of that right. *See, e.g.*, *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); *Advisory Op. to Att'y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d 235, 243 (Fla. 2015) (rejecting single-subject challenge and noting that while proposed amendment contained "a number of provisions," its "oneness of purpose" included an allowance for certain "*reasonable health, safety, and welfare regulations*") (emphasis added).

Here, the Solar Rights Amendment does not even create a new regulatory structure or agency, but retains the existing ability of state and local governments to regulate in this area. The provisions retaining the ability of state and local government to protect consumer rights and public health, safety, and welfare share a "oneness of purpose" and are "directly connected" with the purpose of the Solar Rights Amendment. The proposal addresses a single subject and matters directly connected to that subject as required by the Florida Constitution.

B. The Solar Rights Amendment does not engage in logrolling.

In suggesting that the Solar Rights Amendment engages in "logrolling" of favored and disfavored subjects, the Opponents ignore the actual text of the proposal. As noted above, the Solar Rights Amendment creates a constitutional right for electricity consumers to own or lease solar equipment installed on their property to generate electricity for their own use, while providing that state and

local governments will retain certain regulatory authority. The Opponents speculate that the applicable governmental bodies will exercise their regulatory authority in a manner contrary to the Opponents' policy preferences[1] and, therefore, that voters on the Solar Rights Amendment are being forced into an "all or nothing" choice. *See, e.g.*, Progress Fla. Init. Brief at 13 (voters "forced to decide whether to accept those discriminatory rates and charges"); FSEIA Init. Brief at 27 (suggesting "imposition of charge on the solar customer by the utility, or the weakening of net metering rules for customers"). But nothing in the Solar Rights Amendment dictates the direction of future solar energy regulatory policy—it merely provides that the authority to regulate in the interest of consumer rights, health, safety, and welfare is retained by state and local governments.

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[1] Indeed, significant portions of the Opponents' briefs are focused on their policy arguments against the Solar Rights Amendment, disagreement with the manner in which the Solar Rights Amendment could be implemented by state and local government bodies, and political attacks on the proposal's Sponsor and supporters. *See, e.g.*, FSCI Init. Brief at 9-10; Progress Fla. Init. Brief at 7-12, FSEIA Init. Brief at 4-5, 12-17, 19, 21-24. Although the 60 Plus Association disagrees with many of the Opponents' assertions, it is clear that this Court's review "does not consider or address the merits or wisdom of the proposed amendment." *Advisory Op. to Att'y Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply*, 177 So. 3d at 242 (quoting *Advisory Op. to Att'y Gen. re Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose*, 880 So. 2d 630, 633 (Fla. 2004)).

The prohibition against "logrolling" is only implicated when "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). Reading the proposal according to its actual terms, it is apparent that no separate or "otherwise unpopular" issues have been included to present a "Hobson's choice" to the voter. Instead, voters on the Solar Rights Amendment will be presented with "one subject and matter directly connected therewith" as required by the Florida Constitution. The proposal complies fully with 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.

The Solar Rights Amendment's ballot title and summary comply fully with the clarity requirements of section 101.161, Florida Statutes. "[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)). By tracking the language of the proposed amendment, the ballot summary clearly, accurately, and unambiguously conveys

the chief purpose and content of the Solar Rights Amendment.

Contrary to the allegations of the Opponents, the language of the ballot summary is not misleading as to the purpose or content of the Solar Rights Amendment, nor does it include prohibited "emotional" or "political" rhetoric. Instead, 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 798, 803 (Fla. 1998). The proposal should be approved for placement on the ballot.

A. The ballot summary of the Solar Rights Amendment is not misleading.

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 at 803. Despite the nearly word-for-word correspondence between the ballot summary and the operative provisions of the Solar Rights Amendment, the Opponents argue that the proposal's ballot summary is misleading to the voters. These arguments find no support in the language of the proposal or this Court's precedents and should be rejected.

The Opponents argue first that the ballot summary creates a "false

impression" that electric customers do not currently have a constitutional right to own or lease solar equipment. *See* FSCI Init. Brief at 11-13; Progress Fla. Init. Brief at 6-7; FSEIA Init. Brief at 9. The basis for this argument is the Opponents' contention that the right of electricity consumers "to own or lease solar equipment installed on their property to generate electricity for their own use"—which would be provided by the Solar Rights Amendment—is already an inalienable "basic right" under Article I, section 2 of the Florida Constitution. *See* Art. I, § 2, Fla. Const. (providing that all natural persons have inalienable rights "to acquire, possess and protect property").

The Opponents cite nothing in this Court's precedents that would support the extraordinarily broad reading they ascribe to this constitutional provision. Indeed, the sole decision of this Court advanced in support of the Opponents' argument suggests that a mere "reasonableness" standard applies to legislation affecting property rights under Article I, section 2, of the Florida Constitution. *See Shriners Hosp. for Crippled Children v. Zrillic*, 563 So. 2d 64, 68 (Fla. 1990). In contrast to the general right to "possess property," the Solar Rights Amendment would provide an explicit constitutional right for electricity consumers "to own or lease solar equipment installed on their property to generate electricity for their own use." The ballot summary is not misleading in stating accurately that the

Solar Rights Amendment would create this new constitutional right.

The Opponents also argue that the Solar Rights Amendment "flies under false colors" because of its ballot title: "Rights of Electricity Consumers Regarding Solar Choice." *See* FSCI Init. Brief at 13-14 (citing *Armstrong v. Harris*, 773 So. 2d 7, 16 (Fla. 2000)). Claiming that the Solar Rights Amendment does not involve solar choice, the Opponents assert that it is therefore similar to the ballot language rejected by this Court in *Florida Department of State v. Mangat*, 43 So. 3d 642 (Fla. 2010). In *Mangat*, the ballot summary referred to "waiting lists" and "protecting the doctor-patient relationship"—subjects that were nowhere to be found in the actual amendment. *Id*. at 647-48. Here, in contrast, the Solar Rights Amendment outlines specific rights for electricity consumers who exercise the choice to purchase or lease solar equipment—the precise topic addressed in the proposal's ballot title. The ballot title is not misleading.

One Opponent asserts that the ballot summary's description of the abilities retained by local government is misleading because "only local governments that own a municipal utility have an ability to ensure the prevention of any electric rate subsidy, but only to customers of its own utility." FSCI Init. Brief at 16. By providing that state and local governments "shall retain" their abilities to regulate in certain areas, the Solar Rights Amendment does not purport to confer additional

regulatory authority. Instead, the ballot summary accurately conveys to the voter that the current authority of state and local government to regulate in these areas is not abrogated by the proposal. 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.

B. The ballot summary of the Solar Rights Amendment does not include prohibited "emotional" or "political" rhetoric.

The proper role of a ballot summary is "to tell the voter the legal effect of the amendment, and no more." *Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984). This Court has therefore invalidated ballot summaries for including "political rhetoric in a ballot title and summary that invites an emotional response from the voters as opposed to providing only a synopsis of a proposed amendment." *Advisory Op. to Att'y Gen. re Fla. Marriage Prot. Amendment*, 926 So. 2d 1229, 1238 (Fla. 2006). The ballot summary for the Solar Rights Amendment complies fully with this Court's precedents by informing the voter of the proposal's legal effect without emotional or political rhetoric.

The Opponents contend principally that the use of the term "subsidize" in the ballot summary is "inflammatory political rhetoric." *See* FSCI Init. Brief at 18 (claiming that the term "subsidize" evokes "an emotional response"); FSEIA Init. Brief at 18 fn. 17 (same). Citing three particular government subsidies that it

alleges are "controversial," one Opponent suggests that a voter reading the ballot summary of the Solar Rights Amendment will be inflamed by an "emotional response." FSCI Init. Brief at 19, 21.

Far from any attempt at "emotional" or "political" persuasion, the ballot summary for the Solar Rights Amendment uses the term "subsidize" to describe precisely a specific provision of the proposed amendment's actual text. The ballot summary states, in relevant part, that one of the abilities retained by state and local government is "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 corresponding text of the amendment itself also states that state and local governments will retain the ability "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 term "subsidize" is therefore used for exactly the purpose that this Court has approved, to "tell the voter the legal effect of the amendment, and no more." *Evans*, 457 So. 2d at 1355. The descriptive use of the term "subsidize" here bears no resemblance to the ballot titles and summaries previously rejected for including misleading emotional and political rhetoric. *See, e.g.*, *Advisory Op. to Att'y Gen. re Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994) (rejecting ballot

summary stating that sugarcane industry had "polluted the Everglades" and ballot title that "implies that the Everglades is lost, or in danger of being lost, to the citizens of our State, and needs to be 'saved' via the proposed amendment"); *Mangat*, 43 So. 3d at 648 (rejecting as "political rhetoric" ballot summary's reference to "mandates that don't work"). A voter reading the ballot summary for the Solar Rights Amendment will not encounter "inflammatory political rhetoric," but a clear and accurate description of the proposal's legal effect as required by this Court's precedents.

Finally, one Opponent asserts that the Solar Rights Amendment's ballot summary is "politically charged and misleading" in stating that state and local governments will retain their abilities to protect consumer rights and public health, safety, and welfare. FSCI Init. Brief at 22. As with the reference to "subsidize" described above, the ballot summary describes precisely the proposal's legal effect, without more. No evidence is presented to suggest that voters will be emotionally or politically influenced by a neutral and accurate description of the Solar Rights Amendment's actual text.

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.

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[2] for placement on the ballot.

Respectfully submitted,

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[2] No Opponent has disputed the clarity or accuracy of the Financial Impact Statement.

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 1st day of February, 2016, through the e-filing Portal to:

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