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

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

ANSWER BRIEF OF SPONSOR CONSUMERS FOR SMART SOLAR, INC.

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INTRODUCTION

The Solar Rights Amendment seeks to create a framework of rights in the Florida Constitution regarding the use of solar equipment to safeguard the interests of all electricity consumers. Specifically, the amendment would guarantee the right of consumers to own or lease solar equipment on their own property for personal use, and would preserve the powers of State and local governments to protect the interests of all consumers—solar and non-solar. The amendment would not require State and local governments to exercise their powers in any particular way, but leaves policy decisions to the respective government agencies.

The parties opposing the Solar Rights Amendment (the "Opponents") ask this Court to exceed its proper scope of review. First, they ask the Court to review the amendment in the context of the proposed solar amendment the Court addressed *In re Advisory Opinion to Attorney General re Limits or Prevents Barriers to Local Solar Electricity Supply ("Limits or Prevents Barriers")*, 177 So. 3d 235, 243 (Fla. 2015), which purports to encourage solar installations by exempting from regulation a specific business model for financing solar equipment. The voters have not approved that proposed amendment, and its proponents have not obtained the signatures required for placement on the November 2016 ballot. By contrast, the Florida Department of State has determined that the Solar Rights Amendment has received enough valid signatures

to be placed before the voters in November 2016. *See* FLA. DEPT. OF STATE, DIV. OF ELECTIONS (Feb. 1, 2016, 11:49 am), http://dos.elections.myflorida.com/initiatives/initdetail.asp?account=64817&seqnum=1 (indicating that the Solar Rights Amendment has 720,723 valid signatures). Therefore, the November ballot will not contain competing solar ballot measures. The Solar Rights Amendment must be reviewed on its own merits. Contrary to the suggestion of the Florida Solar Energy Industries Association ("FlaSEIA") (br. at 4), the Court should apply the same degree of scrutiny to the Solar Rights Amendment that it applies to every other proposed amendment.

The Opponents further ask the Court to review the Solar Rights Amendment based on the relative merits of competing policies for regulating solar energy. How this increasingly-common technology should be regulated remains subject to substantial debate. Some believe that the use of solar equipment should be exempt from all regulation and given generous incentives; others believe that owners of solar equipment should not receive special treatment at the expense of non-solar consumers. Most of the Opponents' arguments reflect policy choices on the issue, and they oppose the Solar Rights Amendment because it does not mandate the specific policies they support. Unlike the prior proposed amendment, however, this one does not attempt to settle the debate, but only to ensure that State and local governments retain the power to decide.

Whatever the merits of these competing policies, they have no role in the Court's review. The Court does not "consider or address the merits or wisdom of the proposed amendment." *Limits or Prevents Barriers*, 177 So. 3d at 242. The only issue for the Court is whether the Opponents have met the "high threshold" of showing that the Solar Rights Amendment is "clearly and conclusively defective." *Id.* at 241, 246. The Opponents have failed to meet this threshold. Therefore, the Court should approve the Solar Rights Amendment for placement on the ballot.

ARGUMENT

I. THE SOLAR RIGHTS AMENDMENT ADDRESSES A SINGLE SUBJECT BECAUSE CREATING A CONSTITUTIONAL RIGHT AND ALLOWING FOR REGULATION OF THAT RIGHT ARE NATURALLY RELATED

To comply with the single-subject requirement of article XI, section 3 of the Florida Constitution, a proposed amendment must manifest a "logical and natural oneness of purpose." *Advisory Op. to Att'y Gen. re Use of Marijuana for Debilitating Medical Conditions*, Case Nos. SC15-1796, SC15-2002, 2015 WL 9258263, at * 5 (Fla. Dec. 17, 2015). The Solar Rights Amendment serves only one purpose—to establish a constitutional framework of rights to protect all electricity consumers regarding the use of solar equipment. It places in the Constitution an explicit right to own or lease solar equipment on one's own property for personal use, subject to the ability of State and local governments to

regulate and protect the interests of solar and non-solar consumers alike. *See generally* Initial Br. of Consumers for Smart Solar ("Sponsor's br."), at 7-11.

Opponents Floridians for Solar Choice ("FSC") and FlaSEIA argue that the Solar Rights Amendment has more than one purpose. According to them, establishing in the Constitution a right to own or lease solar equipment is a separate purpose from preserving the abilities of State and local government to regulate solar energy, and that preserving the power to limit subsidies is a different purpose from protecting consumer rights and the public health, safety and welfare (FSC br. at 26; FlaSEIA br. at 26-27). Their contention is incorrect for several reasons. Establishing a constitutional right while retaining the government's authority to regulate that right does not address more than one subject. As this Court has repeatedly held, "a proposed amendment may 'delineate a number of guidelines' consistent with the single-subject requirement as long as th[o]se components possess 'a natural relation and connection as component parts or aspects of a single dominant plan or scheme.'" *In re Advisory Op. to Att'y Gen. re Use of Marijuana for Certain Medical Conditions*, 132 So. 3d 786, 796 (Fla. 2014) (citations omitted); *see also Advisory Opinion to Attorney Gen. re Standards for Establishing Legislative Dist. Boundaries*, 2 So. 3d 175, 182 (Fla. 2009) (holding that a proposed amendment may "enumerate[ ] various elements necessary to accomplish [a] plan" as long as it "encompasse[s] a single plan[.]"). The Solar

Rights Amendment has a single plan, which is to create a constitutional framework of rights related to solar in which consumers would have an express right to solar, subject to regulation by State and local governments.

If the Opponents' interpretation of the single-subject requirement were correct, several proposed amendments that were approved by the Court—including the prior solar amendment FSC sponsored—would flunk the test. Indeed, FSC's own proposal is far more multifarious than the Solar Rights Amendment. *See Limits or Prevents Barriers*, 177 So. 3d at 243 (approving the proposed amendment "[a]lthough [it] contain[ed] a number of provisions—some dealing with economic barriers to supply of solar electricity and others dealing with government regulation with respect to rates, service, or territory.").

Moreover, individual rights and social regulation are two sides of the same coin. Individual rights are not absolute; they must not infringe on the rights of others. "Under the American System of laws and government everyone is required to so use and enjoy his own rights as not to injure others in their rights or to violate any law in force for the preservation of the general welfare." *State ex rel. Hosack v. Yocum*, 136 Fla. 246, 252, 186 So. 448, 451 (Fla. 1939).

In *Limits or Prevents Barriers*, the Court found that FSC's proposed amendment met the single subject requirement when it would both grant a right to solar and prohibit the regulation of that right. 177 So. 3d at 243-44. Since the

Solar Rights Amendment would grant a right to solar and permit regulation of that right, it is hard to see how the Court could reach a different result here.

Additionally, contrary to FSC's suggestion (Answer br. at 4-5), the Solar Rights Amendment does not contain multiple policy prescriptions like the amendment addressed *In re Advisory Opinion to Attorney General re Fairness Initiative Requiring Legislative Determination that Sales Tax Exemptions and Exclusions Serve a Public Purpose,* 880 So.2d 630 (Fla. 2004). Instead, it creates a single express right to own or lease solar equipment, and retains State and local governments' ability to regulate that right. There is no logrolling because voters are presented with only one policy proposal, not several. If anything, the amendment in the *Fairness Initiative* case looks far more like FSC's own proposed solar amendment, which has several discrete policy prescriptions, than the Solar Rights Amendment.

Other Opponents argue that the Solar Rights Amendment constitutes logrolling because it "purport[s] to establish a widely popular new right, while endorsing the principle that rooftop solar users should pay higher bills." Initial Brief for Progress Florida, Inc., Environment Florida, Inc., and the Environmental Confederation of Southwest Florida, Inc. ("Progress br.") at 13-14. Nothing in the proposed amendment requires—or even refers to—an increase in electricity rates. The Solar Rights Amendment leaves such policy choices to State and local

governments. It does not ask voters to choose between a right to solar and higher electricity rates. Therefore, logrolling is not an issue.

II. THE BALLOT TITLE AND SUMMARY ARE NOT MISLEADING

A proposed amendment's ballot title and summary comply with section 101.161(1), Florida Statutes, if they are "fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982). As shown in the Sponsor's Initial Brief, the Solar Rights Amendment is clear and unambiguous (Sponsor's br. at 13-17). The title, "Rights of Electricity Consumers Regarding Solar Energy Choice," clearly informs voters that the proposal concerns the rights of all electricity consumers, not just those who choose to own or lease solar equipment. And the ballot summary quotes the amendment's operative provisions nearly verbatim, advising voters of exactly what the proposed amendment would do.

The Opponents nevertheless assert a myriad of reasons why the ballot summary and title are invalid, arguing that the amendment: (1) purports to establish a right that already exists under Florida law; (2) would prevent consumers from choosing solar by retaining existing law; (3) deceives voters into believing that the powers of State and local governments are at risk; (4) would cause voters to believe that local governments have the power to prevent an electric rates subsidy, when that power is vested in the State; (5) fails to inform voters that the

Solar Rights Amendment would increase electricity rates, disallow net-metering, and require voters to accept a certain method of accounting; and (6) uses political rhetoric and misleading language by including the terms "subsidize," "back-up power," and "right." As we demonstrate below, none of these arguments has merit.

A. The Solar Amendment Does Not Just Reaffirm Existing Law, But Enshrines Rights in the Constitution and Extends Current Protections

Several Opponents contend that the ballot title and summary are misleading because the Solar Rights Amendment purports to create a right that allegedly already exists under Florida law. They cite article I, section 2 of the Florida Constitution; section 163.04(1), Florida Statutes; and Rule 25-6.065(2)(a), Florida Administrative Code (FSC br. at 12, 22; Progress br. at 6-7; FlaSEIA br. at 9-11).

This argument is based on the false premise that the Solar Rights Amendment does not establish a right that is new or different from existing law. The proposed amendment would place in the Constitution "the right [of consumers] to own or lease solar equipment installed on their property to generate electricity for their own use." With this provision, electricity consumers would be guaranteed the right to own or lease solar equipment, install it on their own property, and to use the electricity it produces. No such right exists in the Florida Constitution today.

Article I, section 2 of the Constitution does not provide such a right. That provision provides a general right to "acquire, own, and protect property . . . ," Art. I, § 2, Fla. Const.; but it does not secure the right to own any specific good or asset. This Court has interpreted the provision to create a general right of property ownership "subject to the fair exercise of the power inherent in the State." *Shriners' Hosp. for Crippled Children v. Zrillac*, 563 So. 2d 64, 68 (Fla. 1990) (quoting *Golden v. McCarty*, 337 So. 2d 388, 390 (Fla. 1976)); *see also Haire v. Fla. Dept. of Agric. & Consumer Affrs.*, 870 So. 2d 774, 783 (Fla. 2004) (the Court applies "the reasonable relationship test . . . to evaluate statutes and regulations that infringe on property rights."); *cf. Dist. Columbia v. Heller*, 554 U.S. 570, 626 (2008) ("Like most rights, the right secured by the Second Amendment is not unlimited. . . . [It does not establish] a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."). As a result, notwithstanding this provision, the Legislature has prohibited and restricted the ownership or possession of many types of property. *See, e.g.*, § 893.13, Fla. Stat. (2015) (prohibiting individuals from possessing certain types of drugs); Rule 68A-6.002, F.A.C. (2008) (banning the possession of certain wildlife); *see also Paternack v. Bennett*, 138 Fla. 663, 666-69, 190 So. 56, 57-59 (Fla. 1939) (upholding a statute providing that "[t]he right of property in and to any [slot] machine . . . is hereby declared not to exist").

Nothing in article I, section 2 would prevent the Legislature or local governments from barring the installation or use of solar panels; if that were the case, then there would have been no need for the Legislature to enact § 163.04, Fla. Stat., which prohibits local governments from barring the installation of "solar collectors." Thus, the establishment of a specific constitutional right to own or lease solar equipment, install it on one's property, and use the electricity it generates, creates clear protection that does not already exist in the Constitution.

Nor does the Solar Rights Amendment merely reaffirm the protections in section 163.04, Florida Statutes. That statute prohibits only local governments and homeowner associations—not the Legislature—from barring the installation of "solar collectors, clothes lines, or other energy devices." § 163.04, Fla. Stat. (2008). The Legislature may repeal this statute at any time. Moreover, that statute says nothing about the ownership or lease of solar equipment or the use of solar electricity.

The same goes for Rule 25-6.065 of the Florida Administrative Code, which simply delineates the conditions a customer must satisfy to be eligible for expedited grid interconnection and net-metering. *See* R. 25-6.065(2)(a), F.A.C. (2008) (only "customer-owned renewal generation" qualifies for expedited interconnection and net-metering). The rule does not create a right for consumers to own or lease solar equipment, and says nothing about the installation of solar

equipment. This rule also is not set in stone; in fact, the Opponents' briefs are riddled with fear that this and other similar rules could be changed. (*See, e.g.*, FlaSEIA Initial Br. at 10-12.)

The Solar Rights Amendment would establish a specific right to solar energy use that is stronger and more extensive than current law. By embedding it in the Constitution, it would provide greater protection to consumers who own or lease solar equipment than they have today. It is ironic that the Opponents are against such a measure, which strengthens protections for solar energy, merely because the measure does not completely exempt it from oversight.

Even if the Solar Rights Amendment did not strengthen legal protections for solar energy use, the ballot title and summary do not suggest that the amendment is necessary for consumers to be able to install solar equipment. The ballot title identifies the proposed amendment as creating a balanced framework of "rights of electricity consumers *regarding* solar energy choice"—not simply rights *to* solar energy choice as the Opponents suggest. The ballot summary accurately tells voters that "[t]his amendment establishes a right *under the Constitution*," not that it allows solar energy use for the first time. The ballot summary also tells voters that "State and local governments *shall retain* their abilities . . . 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 "retain"

indicates that State and local governments already have the ability to protect non-solar consumers, which necessarily implies that solar energy use exists now. *Retain*, WEBSTER'S II NEW COLLEGE DICTIONARY (2001) (defining retain as "to keep or hold in one's possession"). Thus, the ballot summary meets the requirement that it "should tell the voter the legal effect of the amendment, and no more." *Fla. Dept. of State v. Mangat,* 43 So. 3d 642, 648 (Fla. 2010).

None of the cases the Opponents cite compels a different result. Those cases simply hold that a ballot summary cannot cause voters to believe that they must vote for a proposed amendment to obtain a right when that right already exists, or lead voters to believe that an amendment would create a right when it really seeks to eliminate it. In *Evans v. Firestone*, 457 So. 2d 1351, 1353, 1359 (Fla. 1984), the Court found misleading a ballot summary which generally stated that the "[a]mendment establishes citizens' rights in civil actions," when the rights in question already existed under Florida rules of procedure. In contrast, this ballot summary does not say that the Solar Rights Amendment establishes a right in general, but that it "establishes a right *under Florida's Constitution*," and the right the amendment establishes extends the protections of existing law.

Other cases are similarly distinguishable. In *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466, 469 (Fla. 1995), the Court found misleading a ballot summary that suggested

"that the amendment is necessary to prohibit casinos in this state," when "most types of casino gaming are [already] prohibited by statute." Nothing in the Solar Rights Amendment's ballot summary suggests that it is necessary to allow solar energy use in Florida. To the contrary, the language implies that solar installations occur today, in referring to governments "retain[ing] their abilities 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." To "retain" an ability to regulate, governments must have it.

Another case the Opponents cite—*Askew v. Firestone*, 421 So. 2d 151, 155-56 (Fla. 1982)—is also distinguishable. There, the Court declared a ballot summary invalid because it implied that it would place restrictions on certain lobbying activities, when its chief effect was the opposite—to abolish a two-year ban on lobbying. The Solar Rights Amendment does not impose any new limitations on solar energy use—it preserves the abilities of State and local governments to regulate in the interest of all consumers—and establishes a new constitutional right to solar use that extends the protections of existing law.

The ballot title and summary here do not suffer from any of the infirmities this Court identified in prior cases. The Solar Rights Amendment does not merely reprise an existing right. It does not attempt to hide the ball or leave out pertinent

details. To the contrary, it quotes the amendment's operative provisions almost verbatim, informing voters of the amendment's exact legal effect.

This Court rejected similar criticisms of the ballot summary in *Limits or Prevents Barriers*, when opponents of that measure argued that it would mislead voters into believing that solar energy is not currently allowed in Florida. The Court should reject the same criticisms here.

B. The Ballot Title Does Not Mislead Voters Regarding "Solar Energy Choice"

After arguing that the ballot summary is misleading because current law already creates a right to solar (FSC br. at 11), FSC next argues that the ballot title's use of the phrase "solar energy choice" is misleading because the Solar Rights Amendment would "keep in place the status quo which prohibits electricity consumers from making choices regarding solar electricity" (*id.* at 13-14).

Putting aside the obvious contradictions in FSC's position, this argument misconstrues the ballot title. The ballot title reads: "Rights of Electricity Consumers *Regarding* Solar Energy Choice." In this context, the word "regarding" means "with respect to" or "concerning." *Regards*, WEBSTER'S II NEW COLLEGE DICTIONARY (2001). The title does not say, "Rights of Electricity Consumers *to* Solar Energy Choice." Thus, the title informs voters that the proposed amendment will address the rights of all electricity consumers with respect to deciding whether to use solar energy. For those who choose to do so,

the amendment will establish the right to own or lease solar equipment to generate electricity for personal use, which as discussed above, would go beyond the protections of existing law. But the amendment will also protect the interests of those who elect *not* to use solar power.

The case cited by FSC, *Florida Department of State v. Mangat*, 43 So.3d 642 (Fla. 2010), is easily distinguishable. There the ballot summary affirmatively told voters that the amendment would accomplish certain matters related to health care when the actual amendment said nothing about those specific matters. *Id.* at 647-48. In this case, the ballot title clearly states that the amendment is about the rights of all consumers regarding solar energy choice, not just those who choose solar, and accurately informs voters that it would create a specific constitutional right to solar.

C. The Ballot Summary Does Not Deceive Voters Into Believing that State and Local Governments Are at Risk of Losing Their Regulatory Powers

FSC contends that the ballot summary is misleading because it states that the Solar Rights Amendment would retain the ability of State and local governments to protect the interests of all consumers, when the powers of government are not at risk (FSC br. at 2, 23). The word "retain," however, does not imply that State and local governments are in danger of losing their regulatory powers. It simply indicates that in creating the new constitutional right to use solar energy, the

government's authority to regulate for the public health, safety, and welfare would remain. It also makes clear that the creation of such a right would not diminish the government's power to guard the interests of non-solar consumers. The Opponents read concepts into the ballot summary that are not contained there.

FSC also argues that the reference to retaining the abilities of state and local governments to protect consumer rights and public safety and welfare constitutes political or emotional rhetoric (FSC br. at 22-23). This language in the ballot summary, however, is a verbatim quote from the amendment. *In re Advisory Op. to Att'y Gen. re Florida Marriage ("Florida Marriage")*, 926 So. 2d 1229, 1237-38 (Fla. 2006) (approving a proposed amendment, and distinguishing other cases, because "there is no divergence in terminology either between the ballot title and summary, or between the ballot summary and the language of the actual amendment."). FSC apparently would have the Court bar the Solar Rights Amendment from the ballot because it deals with an important concept to which some voters may have an emotional response. Nothing in this Court's decisions supports such an argument.

D. The Ballot Summary Does Not Cause Voters to Think That Local Governments Have Powers They Lack

FSC also claims that the ballot summary is misleading because it suggests that local governments have the power to address rate subsidies and grid access, when the Public Service Commission typically exercises those powers (FSC br. at

21). The ballot summary says that both "State and local governments shall retain their abilities"—whatever they are. It does not single out any specific level of government as having any specific type of ability. Moreover, FSC itself admits that some local governments have the power to regulate electric utility rates:

> In fact, the Florida Public Service Commission, the Boards of Trustees of rural electric cooperatives, and the relatively few municipalities responsible for electric utilities which they own all have, under current law, both the authority and the legal obligation to set rates that are 'fair, just and reasonable" and to structure rates in a non-discriminatory manner.

FSC br. at 21. Therefore, even if FSC were correct that the ballot summary implies that local governments have ratemaking authority, the summary still would not be misleading.

E. The Ballot Title and Summary Are Not Misleading Due to a Failure to Inform Voters of an Alleged Increase in Rates

The Opponents next argue that the ballot title and summary do not inform voters that the Solar Rights Amendment allegedly would increase the electricity bills of solar customers, disallow net metering, and require voters to accept a certain accounting methodology (Progress br. at 1, 10; FlaSEIA br. at 10-12). Yet nothing in the amendment obliges State or local governments to take *any* specific action or adopt *any* particular policy regarding the regulation of solar equipment. The amendment leaves such decisions to government policymakers.

The Opponents' arguments are contradictory. On the one hand, they argue that the Solar Rights Amendment does nothing but restate existing law, which they claim gives a right to use solar energy. On the other hand, they claim that the amendment would lead to a parade of horribles barring the use of solar energy. In their view, the amendment will *both* lead to catastrophe *and* do nothing at all. Both cannot be true.

F. The Ballot Summary Does Not Contain Ambiguous or Misleading Terms

The Opponents' final argument is that the ballot summary is misleading because they include allegedly misleading terms, such as "subsidize," "back-up power," "electric grid access," and "right" (FSC br. at 18-22; Progress br. at 11). The Opponents ignore the plain meaning of these words and attempt to infuse them with political rhetoric and emotional language where none exists.

The Opponents demand a level of detailed explanation which could not possibly fit in the 75-word limit for a ballot summary. A ballot summary need not "explain every ramification of a proposed amendment," because it is impossible to do so. *In re Advisory Op. to Att'y Gen. re Right to Treatment & Rehabilitation for Non-Violent Drug Offenses ("Right to Treatment")*, 818 So. 2d 491, 497 (Fla. 2002) ("Although the details alleged by the opponents are accurate, the sponsors of the amendment were required to work within the statutory limit of seventy-five words for the *entire* summary. *They used all seventy-five words.* Had the sponsors

explained the phrase [in question] in the same detail that the opponents suggest, they would have violated the law.") (italics in original). They demand more of this proposed amendment than they did of their own amendment.

The Opponents first take issue with the word "subsidize." FSC and Progress first claim that the term is subjective and constitutes emotional political rhetoric that will mislead voters (FSC br. at 18-22; Progress br. at 11). The use of that term in the ballot summary is a direct quote from the proposed amendment itself. By definition, it cannot mislead voters as to what is included in the amendment.

In addition, the term "subsidize" is used in multiple Florida Statutes. *See, e.g.*, § 154.302, Fla. Stat. (1998) ("The Legislature further finds that it is inequitable for hospitals and taxpayers of one county to be expected to *subsidize* the care of out-of-county indigent persons.") (emphasis added); § 429.54(2), Fla. Stat. (2006) ("Local governments or organizations may contribute to the cost of care of local facility residents by further *subsidizing* the rate of state-authorized payment to such facilities. Implementation of local *subsidy* shall require departmental approval and shall not result in reductions in the state supplement.") (emphasis added). The ballot summary's use of the term is consistent with its commonly-used meaning in these statutes and elsewhere. The ballot summary indicates that if the government determines that non-solar customers are being required to bear the burden of solar consumers' connection to the power grid, it

may regulate on their behalf. This usage is harmonious with the definition of "subsidy," as it commonly means "financial assistance given by one person or government to another." *See Subsidy*, WEBSTER'S II NEW COLLEGE DICTIONARY (2001); *Subsidy*, THE AMERICAN HERITAGE DICTIONARY (2d Col. Ed. 1991). This Court itself has recognized that a reduction in the sale of electricity could result in other parties paying more to maintain the electric power grid. *See 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."). There is nothing inaccurate about the use of that term in the Solar Rights Amendment.

The Opponents also argue that embedded in the ballot summary's use of the term "subsidize" is the approval of a specific "accounting theory advocated by the utilities that when they buy rooftop solar electricity, the price should exclude any charge attributable to the infrastructure cost of their electric grid and power plants" (Progress br. at 10; FlaSEIA br. at 21). Nothing in the amendment requires the Public Service Commission or any other governmental body to adopt any accounting theory, or take any specific regulatory action at all. The proposed amendment simply retains the ability of State and local governments to make such policy decisions.

Even if the Opponents were correct in their belief that the Solar Rights Amendment suggests that regulators should make certain choices related to subsidies, their argument misses the point. The sentence of the ballot summary containing the word "subsidize" directly quotes from the amendment. It is not misleading for an amendment to represent a specific policy choice with which some might disagree. Indeed, the Florida Constitution includes many principles that would spark vigorous debate. *See* Art. X, § 24, Fla. Const. (stating that all Florida citizens are "entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families" and setting the rate at $6.15 per hour.); Art. X, § 22 (permitting the Legislature to require that a parent or guardian be notified before a minor child may terminate that child's pregnancy); Art. I, § 27 (defining marriage as "a legal union of only one man and one woman as husband and wife."). Some of the terms used in those provisions are much more loaded than the terms used in the Solar Rights Amendment. Voters are capable of considering the merits of competing policies and accepting or rejecting them as they wish. Indeed, that is the purpose behind citizen initiative petitions. *See, e.g., Right to Treatment,* 818 So. 2d at 494 ("Sovereignty resides in the people and the electors have a right to approve or reject a proposed amendment to the organic law of this State, limited only by those instances where there is an entire failure to

comply with a plain and essential requirement of [the law.]") (quoting *Pope v. Gray*, 104 So. 2d 841, 842 (Fla. 1958)) (brackets in original).

Progress argues that other terms used in the ballot summary are misleading, including "back-up power" and "electric grid access" (Progress br. at 7-12). This argument is even more far-fetched. Like the term "subsidize," these terms are found in the amendment itself, which means they are legally-operative language, not just rhetoric. *Florida Marriage*, 926 So.2d at 1237-38 (finding a ballot summary not misleading where it used the same terminology as the amendment). Progress argues that "in common parlance in Florida," the term "back-up power" refers to "gasoline generators used during unexpected power outages such as hurricanes," and the summary is therefore ambiguous (Progress br. at 7-9). But Progress interprets the word out of context. The ballot summary states that "State and local governments shall retain their abilities 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 of those who do." In that context, back-up power clearly does not refer to unexpected power outages during hurricane season. Most voters understand that solar consumers generally cannot power their homes exclusively with solar energy and must use traditional electric power as a supplement.

Progress also takes issue with the term "electric grid access." Progress Initial Br. at 9-11. But that term does not mean only the physical connection to power lines, as Progress suggests. Power lines' sole purpose is to transmit electricity as part of the electric power grid. The only reason to connect to power lines is to obtain access to electricity carried on those lines. Progress admits that "[t]he word 'access' in common parlance means … having permission to use…" *Id.* at 9. In this context, access to the electric grid means having permission to use electricity on the grid, a point obvious to the average voter. The "voter must be presumed to have a certain amount of common sense and knowledge." *In re Advisory Op. to the Att'y Gen. re Tax Limitation*, 673 So. 2d 864, 868 (Fla. 1996).

Lastly, FlaSEIA argues that the ballot summary's use of the term "right" is merely "an illusion" because "in today's culture rights are often cast as inalienable rights to gun ownership, same-sex marriage rights, and property rights—all connoting" an entitlement that cannot be infringed upon (FlaSEIA br. at 8). This is simply not true. As this Court has explained:

> Organic rights 'to acquire, possess and protect property' are subject to the lawful exercise of the inherent sovereign police power of the State to provide for and to conserve the safety, health, morals, comfort and general well being of human life and activities. Private rights may be regulated and restricted for the public welfare and without compensation when not done arbitrarily, needlessly or oppressively.

Hav-A-Tampa Cigar Co. v. Johnson, 149 Fla. 148, 159, 5 So. 2d 433, 437 (1941). Therefore, the fact that the right to own or lease solar equipment would be subjected to the government's regulatory powers does not render the right illusory.

CONCLUSION

For the reasons stated, the Court should approve the Solar Rights Amendment for placement on the November 16 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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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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