

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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(FIS)**

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

**SUPPLEMENTAL ANSWER BRIEF OF SPONSOR
CONSUMERS FOR SMART SOLAR, INC.**

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EXHIBIT A

Consumers for Smart Solar, Inc. (“Sponsor”) hereby files this Supplemental Answer Brief to respond to the arguments made by Florida Energy Freedom, Inc. (“FEF”), in its late-filed brief. To the extent that FEF repeats arguments made by other parties, the Sponsor refers the Court to its original Answer Brief. The new arguments made by FEF are based on an incorrect application of the rules of statutory interpretation.

I. THE SOLAR RIGHTS AMENDMENT DOES NOT REMOVE ANY EXISTING RIGHTS TO USE SOLAR ENERGY

FEF’s primary claim is that the Solar Rights Amendment would reduce Floridians’ right to use and install solar equipment. It argues that the Florida Constitution already contains a broad “unenumerated or implied right” to solar use in article I, section 2, and that by adding a specific constitutional right to use solar energy, the Solar Rights Amendment would implicitly prohibit any use of solar equipment not specifically protected (FEF br. at 5-7).

This argument is based on the false premise that the Florida Constitution provides an unlimited right to use or install solar equipment today. As discussed in the Sponsor’s Answer Brief (at pages 9-10), article I, section 2 creates only a general right to property ownership; it does not provide a right to own or possess any specific type of property.

FEF's reasoning about the principle of *expressio unius* also leaves a major gap. It is true that the Solar Rights Amendment would establish a specific constitutional right to own or lease solar equipment. If something is not covered by the language of that express right, then the Solar Rights Amendment would not establish a right to the matter not covered. It does not follow, however, that those other matters would be prohibited, as FEF argues. The Florida Constitution is not a grant of power to the Legislature, but a limitation on that power. *See, e.g., Bush v. Holmes*, 919 So. 2d 392, 406 (Fla. 2006) (citing *Savage v. Bd. of Pub. Instruction*, 133 So. 341, 344 (Fla. 1931), and *State v. Bd. of Pub. Instruction*, 170 So. 602, 606 (Fla. 1936)). Nothing in the Solar Rights Amendment prohibits any Legislative action related to solar energy (except those that would remove the right to own or lease solar equipment on a person's property for personal use). To the contrary, the amendment expressly states that State and local governments retain the ability to exercise their governmental powers. This means that State and local governments may allow solar-related activities not expressly protected by the Solar Rights Amendment. *See Savage*, 133 So. at 344 ("unless legislation [is] clearly contrary to some express or *necessarily* implied prohibition found in the Constitution, the courts are without authority to declare legislative acts invalid. The Legislature may exercise any lawmaking power that is not forbidden by organic law.") (emphasis added).

The primary case FEF cites, *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), is easily distinguishable. There, this Court held that a Florida Constitutional provision specifically commanded the Legislature to support education by funding public schools. *Id.* at 402-03 (quoting various iterations of the constitutional provision relating to education, the current version of which states that “[a]dequate provision shall be made by law for a . . . system of free public schools”). The Court held that “when the Constitution prescribes *the manner* of doing an act, the manner prescribed is exclusive, and it is beyond the power of the Legislature to enact a statute that would defeat the purpose of the constitutional provision.” *Id.* at 407 (quoting *Weinberger v. Bd. of Pub. Instruction*, 112 So. 253, 256 (Fla. 1927)) (emphasis added). In contrast, the Solar Rights Amendment issues no commands to the Legislature, and does not prescribe the manner by which the Legislature may regulate the use of solar energy. Instead, the Solar Rights Amendment establishes a minimum right to use solar energy and expressly retains State power to regulate as it sees fit.

II. THE SOLAR RIGHTS AMENDMENT DOES NOT PROHIBIT POWER PURCHASE AGREEMENTS

FEF next argues that the Solar Rights Amendment would infringe on contractual rights because the definition of “lease” does not include power purchase agreements, and therefore the amendment would implicitly prohibit them (FEF br. at 11-12). This argument repeats the flawed reasoning of the prior

argument. If the definition of “lease” does not include power purchase agreements, it simply means that there will be no *constitutional* right to execute power purchase agreements. State and local governments would retain their powers to regulate. If they want to allow such agreements, they can. The Solar Rights Amendment would create a minimum of rights related to solar energy, which State and local governments may expand.

III. THE SOLAR RIGHTS AMENDMENT WOULD NOT FREEZE THE EXISTING ALLOCATION OF GOVERNMENTAL POWERS

FEF’s last claim is that the Solar Rights Amendment would remove the Legislature’s ability to delegate its regulatory powers related to solar energy, or to revoke existing delegations (FEF br. at 19-20). But the amendment provides that “State and local governments”—which includes the Florida Legislature—“shall retain their abilities. . . .” Proposed Article X, section 29(b). The current allocation of authority to regulate solar energy is established by statute. Since the Legislature would retain its powers to act, it would retain the ability to pass, repeal, and amend statutes addressing which branches of State and local governments may regulate solar.

The Solar Rights Amendment is intended to create a minimum framework of rights to use solar energy, and leave all decisions of how to regulate it to State and local governments. It increases the protections for solar; it does not decrease them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 11, 2016, a copy of this brief was served by e-mail

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CERTIFICATE OF COMPLIANCE

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

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