SC15-780

IN THE SUPREME COURT OF FLORIDA

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: LIMITS OR PREVENTS BARRIERS TO LOCAL SOLAR ELECTRICITY SUPPLY

ATTORNEY GENERAL'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The Attorney General initiated this action by submitting a petition for an advisory opinion on April 24, 2015, pursuant to Article IV, Section 10, of the Florida Constitution. This Court has jurisdiction pursuant to Article V, Section 3(b)(10), of the Florida Constitution.

SUMMARY OF THE ARGUMENT

When asked to amend their constitution, voters deserve a fair ballot summary that enables them to make an informed decision. Because the proposal does not provide the clear summary that the Florida Constitution demands, this Court should remove it from the ballot.

While the proposal's title and summary advertise an Amendment that "limits or prevents" uncertain "barriers to local solar electricity supply," they hide the Amendment's core purpose, which is to remove a class of utilities from the jurisdiction of the Public Service Commission, ending the public protections it provides. Rather than explain this significant change, neither the title nor the summary even mentions the Public Service Commission.

The summary also misleads by suggesting that the Amendment addresses "non-utility" electric supply. But under current law, the "non-utility" providers at issue are defined as (and would be regulated as) "public utilities." Rather than address the so-called "non-utility supply of solar generated electricity," the proposal places a class of utility providers beyond the reach of utility regulators.

In addition, because local solar energy already exists in Florida, the summary misleads by suggesting the existence of "barriers" and implying that the Amendment is necessary to allow local solar energy. What this proposal addresses

is a particular business arrangement relating to solar—the *sale* of electricity by unregulated entities—not local solar energy as a general matter.

The defects in the title and summary preclude the Amendment's ballot placement. But even separate from those problems, the proposal itself is invalid because it violates the single-subject rule. First, the Amendment would impose public and private limitations: It would prevent local and state governments from regulating a "local solar electricity supplier," and it would prevent private utility companies from charging a "special rate" or imposing specified other terms. Second, the Amendment would substantially impact both the state government and local governments by explicitly removing regulatory authority from both. And third, it would combine multiple functions of government. Finally, the Amendment is guilty of logrolling because it combines an objective that might be popular (prohibiting certain utility rates and charges) with another that might be less so (eliminating PSC regulation over an entire class of electric utilities), forcing voters to make an all-or-nothing choice.

For these reasons, this Court should remove the proposal from the ballot.

ARGUMENT

By all accounts, solar energy offers great promise, particularly in the Sunshine State. It is therefore unsurprising that a ballot initiative promising to address "barriers" to solar electricity might enjoy intuitive appeal. But rather than address "barriers" to solar energy, the proposed Amendment removes long-standing consumer protections and creates a new class of electric utilities—one unregulated by the Public Service Commission, immune from legislative control, and unrestrained by the consumer-protection rules that apply to other public utilities. Because the ballot summary does not provide voters fair notice of the proposal's true purpose, it is legally insufficient. The initiative also violates the constitutional single-subject rule by combining multiple distinct subjects into one proposal. This Court should protect voters by removing the initiative from the ballot.

I. THE BALLOT SUMMARY AND TITLE DO NOT PROVIDE FAIR NOTICE OF THE AMENDMENT'S TRUE PURPOSE.

Voters have a right to know the proposal's "true meaning and ramifications." *Advisory Op. to Atty. Gen. re Tax Limitation*, 644 So. 2d 486, 495 (Fla. 1994); *accord Smith v. Am. Airlines, Inc.*, 606 So. 2d 618, 620 (Fla. 1992) ("The summary must give voters sufficient notice of what they are asked to decide to enable them to intelligently cast their ballots."); *see also* § 101.161(1), Fla. Stat. (requiring summary "in clear and unambiguous language"). This proposal's core

purpose is to remove a class of utilities from the jurisdiction of the Public Service Commission and the public protections it provides. Voters deserve to know this.

A. The Amendment Would Change Existing Law to Remove a Class of Utilities from Public Service Commission Regulation.

The Florida Legislature long ago declared "[t]he regulation of public utilities . . . to be in the public interest." § 366.01, Fla. Stat.; *accord id*. (public utility regulation "shall be . . . for the protection of the public welfare"). To advance this public interest, the Legislature created the Public Service Commission (PSC), a separate body with comprehensive regulatory authority. *See generally* § 350.001, *et seq*., Fla. Stat. The PSC "has been and shall continue to be an arm of the legislative branch [and] shall perform its duties independently." § 350.001, Fla. Stat.; *cf. Fla. Power Corp. v. Pinellas Util. Bd*., 40 So. 2d 350, 357 (Fla. 1949) ("The Legislature has the power by statute to delegate to a board, commission or other functionaries the power to adopt reasonable rules and regulations of a business or trade in behalf of the public interest."). These duties include the supervision and regulation of each public utility to ensure affordable rates throughout the State. *See* § 366.04(1), Fla. Stat. ("[T]he commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service. . . ."); *id.* § 366.03 ("All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule

and regulation of such public utility, *shall be fair and reasonable*." (emphasis added)).

Under existing law, as interpreted by this Court, sellers of electricity generally fall under the PSC's broad jurisdiction. *See infra* (discussing *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988)). Under the Amendment, a new and limited class of electricity sellers would *not* be subject to PSC regulation—or any other government regulation—at least not "with respect to rates, service, or territory," topics currently covered by PSC regulation. Indeed, the Sponsor identified this as a primary purpose of the Amendment. *See* Memorandum from Floridians for Solar Choice to the Financial Impact Estimating Conference, at 3 (Apr. 8, 2015) ("The Solar Amendment is intended to . . . accomplish the following: 1. Prohibit the Public Service Commission (PSC) from regulating small scale solar energy providers as an electric utility. . . .").[1] Yet the summary does not even mention the PSC, let alone the dramatic change in Florida law the Amendment would make. And although the summary and title describe a purpose of "limit[ing] or prevent[ing]" "barriers"—described to include "government regulation of local solar electricity suppliers' rates, service and territory," they fall short of disclosing the Amendment's true scope. *See Askew v. Firestone*, 421 So.

[1] The Memorandum, along with other materials submitted to the Financial Impact Estimating Conference, are available at http://edr.state.fl.us/Content/constitutional-amendments/2016Ballot/SolarAdditionalInformation.cfm.

2d 151, 155 (Fla. 1982) (ballot summary must allow voters to "comprehend the sweep of [the] proposal" and understand "that it is neither less nor more extensive than it appears to be" (quoting *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976)) (internal quotation marks omitted)); *see also Advisory Op. to Atty. Gen. re Stop Early Release of Prisoners*, 642 So. 2d 724, 727 (Fla. 1994) (rejecting amendment that "will not deliver to the voters of Florida what it says it will").

The ballot summary misleads because it does not tell voters that the Amendment will divest the PSC of jurisdiction. Generally "preventing" or "limiting" future legislative prerogatives is one thing. Removing entirely a class of utilities from an existing comprehensive regulatory regime is quite another. Based on the summary, voters would have no idea that the PSC currently exists to regulate electric utilities (including the "local solar electricity supplier[s]" proposed here) but would be left regulating only non-local-solar electric utilities. *Cf. In re Advisory Op. to the Atty. Gen.—Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1021 (Fla. 1994) ("Both the summary and the text of the amendment omit any mention of the myriad of laws, rules, and regulations that may be affected by the repeal of 'all laws inconsistent with this amendment.' The summary also fails to state that the proposed amendment would curtail the authority of government entities. Instead, the summary merely states that the proposed amendment 'restricts laws related to discrimination.' Thus, a voter might

conclude from the summary that the amendment would restrict *existing* laws when in fact the amendment would restrict the power of governmental entities to enact or adopt any law in the future that protects a group from discrimination, if that group is not mentioned in the summary.").

This omission is particularly critical because existing utility regulation is unlike much other industry regulation: The PSC exists as an independent body, § 350.001, Fla. Stat., with appointed leadership selected by elected officials, *id.* § 350.031, a full complement of staff, *id.* § 350.06(3), and an extensive statutory framework for operation, *id.* § 350.001, *et seq.* The Florida Constitution specifically grants this Court mandatory jurisdiction to "review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service." Art. V, § 3(b)(2), Fla. Const.; *see also* § 366.10, Fla. Stat. ("[T]he Supreme Court shall review, upon petition, any action of the commission relating to rates or service of utilities providing electric or gas service."). Yet there is nothing in the title or summary to alert voters to the extent and scope of existing regulation and the concomitant change the proposal would effect. "When the summary of a proposed amendment does not accurately describe the scope of the text of the amendment, it fails in its purpose and must be stricken." *Advisory Op. to Atty. Gen. re Term Limits Pledge*, 718 So. 2d 798, 804 (Fla. 1998); *accord Advisory Op. to the Atty. Gen. re Right of Citizens to Choose Health Care*

Providers, 705 So. 2d 563, 565 (Fla. 1998) (rejecting ballot summary that "fails to completely inform voters of the impact that the initiative will have on existing laws and the Florida Constitution"). In addition, when the amendment's chief purpose is to override or change existing law, voters must have notice. *Cf. Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 489 (Fla. 2008) ("The ballot summary, like the text of the amendment itself, clearly expressed an intent to do away with then current Florida law . . . ."); *In re Advisory Op. to the Atty. Gen. re Pub. Prot. from Repeated Med. Malpractice*, 880 So. 2d 667, 672 (Fla. 2004) (upholding ballot summary whose first line explained state of existing law that the amendment sought to change).

Instead of disclosing the full extent of existing regulation the proposal would remove, the summary suggests only limited effects. Rather than explaining that the proposal will end PSC regulation of certain utilities, the summary says the proposal will only "limit[] or prevent[]" regulations. People understand "prevent" refers to stopping something before it happens. *See, e.g.*, Webster's Third New International Dictionary 1798 (1981) (defining prevent as "to keep from happening or existing esp. by precautionary measures. . . ."). The proposal would not "prevent" *future* PSC regulation; it would end *existing* PSC regulation. Nor would the proposal merely "limit" regulation; it would all but eliminate it. Some voters might support limiting regulation without ending it, and some might support prohibiting new

regulation without dismantling that currently in existence. The voters need to understand the Amendment's true reach, and the curious word choice "limits or prevents" will not foster that understanding.[2]

This defect is similar to one the Court identified in *Advisory Opinion to Attorney General re Term Limits Pledge*, 718 So. 2d at 798. The proposal in that case would have substantially altered the Secretary of State's existing powers and duties, but "the ballot summary simply state[d] that the proposed amendment *affects* the powers of the Secretary of State." *Id.* at 803. The summary was technically true in that regard—the amendment surely would "affect" the Secretary of State's duties—but the summary was nonetheless invalid because it was silent as to the proposal's true ramifications. *Id.* at 804. "In short, the problem 'lies not with what the summary says, but, rather, with what it does not say.'" *Id.* (quoting

[2] Moreover, there is a separate question about the proposal's true reach. The summary and Section (b)(1) indicate that the regulatory "barriers" targeted by the proposal include government regulation of rates, service, and territory. Section (b)(4) ostensibly exempts from this regulatory prohibition "reasonable health, safety and welfare regulations" such as building codes, electrical codes, safety codes and pollution control regulations. However, this exemption applies only if the regulation does not "prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier." This suggests that *any* regulation (including one addressing public health, safety, or welfare) that prohibited or had the effect prohibiting the supply of solar electricity would be barred—not just those affecting rates, service, or territory. This far exceeds the scope the summary reflects.

Advisory Op. to the Atty. Gen. re Fish & Wildlife Conservation Comm'n, 705 So. 2d 1351, 1353 (Fla. 1998)).

Second, the summary misleads by suggesting that the Amendment addresses "non-utility" electric supply. In reality, the proposal provides for unregulated utilities, not for "non-utility" anything. Under Florida law, "'Public utility' means every person, corporation, partnership, association, or other legal entity . . . . supplying electricity . . . to or for the public within this state." § 366.02(1), Fla. Stat.[3] This longstanding statutory definition is consistent with the general understanding of what a "utility" is—which includes one in the business of selling electricity. Therefore, what the proposal defines as a "local solar electricity supplier" would, in fact, be a public utility. Perhaps because of negative connotations associated with "utilities," the sponsor chose to describe the "supply" at issue as the "non-utility supply of solar generated electricity." And to be sure, the *text* of the Amendment redefines "electric utility" to exclude "a local solar electricity supplier," Amendment § (b)(3), but the voters are not informed in the *summary* that the "non-utility" providers allowed are, in fact, public utilities under current law.

[3] The term excludes certain cooperatives, municipalities, and others inapplicable here. *Id.*

This Court considered the definition of "public utility"—and therefore the reach of the PSC's jurisdiction—in *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281 (Fla. 1988). In that case, a seller of electricity sought to avoid PSC jurisdiction by arguing that it would not sell "to the public" because it would have just one customer, an industrial complex on the site of the proposed power generation. *Id.* at 282, 283. This Court rejected the argument and concluded that PSC jurisdiction would attach because PW Ventures would be a seller of electricity. *Id.* at 283. As a seller of electricity, it would be a "public utility," and as a "public utility," it would be subject to PSC regulation. *Id.*[4] It is therefore clear that what the summary labels as "non-utility" services are, in fact, utility services. And unlike other electric utility services, they will be unregulated. Voters deserve to know this.[5]

[4] In reaching its conclusion, the Court noted the consequences of allowing some sellers of electricity to evade regulation. PW Ventures sought "to go into an area served by a utility and take one of its major customers." *Id*. at 283. If permitted, that practice would allow "revenue that otherwise would have gone to the regulated utilities which serve the affected areas [to] be diverted to unregulated producers." *Id*. Other electricity customers' costs would increase because the missing "revenue would have to be made up by the remaining customers of the regulated utilities since the fixed costs of the regulated systems would not have been reduced." *Id*.

[5] Voters also deserve to know that a purpose is to override this Court's decision in *PW Ventures*. *See supra*.

B. The Summary Misleads Voters by Suggesting That Local Solar Energy Supply Is Currently Unavailable.

By mislabeling a class of utility services as "non-utility supply," the summary misleads in still another way: It suggests that there are currently barriers to true non-utility supply of local solar electricity. As the fiscal impact estimating conference concluded, local solar energy already exists in Florida. And even the Sponsor acknowledges that the Amendment does not address local solar supply generally, but rather a particular *business form* of providing that supply—the *sale* of electricity by unregulated entities. *See* Memorandum from Floridians for Solar Choice to the Financial Impact Estimating Conference, at 4 (Apr. 22, 2015) ("The focus of the Amendment is to remove regulatory barriers inhibiting the third-party local solar supplier business model specifically, *not to protect the use of distributed solar electricity generally*." (emphasis added)).[6] Voters need to know the difference.

"According to the PSC, as of 2013, there were 6,678 customer-owned solar systems in Florida." Financial Impact Estimating Conference, *Initiative Financial Information Statement, Limits or Prevents Barriers to Local Solar Electricity Supply: Summary of Initiative Financial Information Statement ("FIS Summary"),*

[6] *Available at* http://edr.state.fl.us/Content/constitutional-amendments/2016Ballot/SolarAdditionalInformation.cfm

at 6 (May 7, 2015) (note omitted).[7] This represents a dramatic increase over the previous six years, "primarily due to the rapidly decreasing price of solar energy systems and the availability of state and federal incentives which alleviate substantial up-front costs to customers." *Id.* There are several ways customers currently address the existing up-front costs. Some purchase equipment outright, and some finance it. In addition, some customers choose "solar leases," under which the property owner contracts with a third-party to provide solar equipment. *Id.* at 7. The property owner then pays the third-party for the use and maintenance of the equipment, while consuming the electricity the equipment produces. *Id.*

Under any of these arrangements, customers with solar panels (leased, financed, or owned) can use "net metering," meaning they connect to the power grid like other customers, but pay only for the electricity beyond what their own panels produced. *Id*. When a customer's panels produce more electricity than needed, the excess energy is put back on the power grid, and "the utility bill will be credited for the excess production." *Id.* In other words, the customers pay only for the "net" difference between their solar panels' total production and the customers'

[7] The *FIS Summary* accompanied the Financial Impact Statement transmitted to this Court on May 13, 2015 in case number SC15-890.

total consumption. "Net metering is currently allowed and commonly used in Florida." *Id.* The proposal does not address these types of arrangements.[8]

The arrangement the proposal would address is different. Under that type of arrangement, sometimes called a solar power purchase agreement, a developer owns and installs solar equipment on someone else's property and then sells the electricity that equipment produces to customers. *Id.* According to the fiscal impact estimating conference, Florida law currently makes these arrangements "infeasible because the purchase of solar-generated electricity in these types of financial arrangements would subject the provider of electricity to PSC regulation as an 'electric utility.'" *Id.* at 8; *see also supra*.

Although the proposal would address only this limited arrangement—and not the local production of solar electricity generally—the title and summary suggest otherwise. They reference "barriers to local solar electricity supply" and "barriers to supplying local solar electricity." A customer who owns or leases solar panels is surely supplying "local solar electricity," but there are no "barriers" to his

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[8] As the proposal's Sponsor put it:

> Currently, a property owner who owns his own solar panels can net meter. A property owner who leases panels from a third party can net meter. These activities are permitted b*ecause the property owner is not purchasing electricity from a third party*, but is instead purchasing or leasing the panels. A property owner who buys solar generated power from a company which has placed solar panels on his or her property cannot net meter.

FIS Summary, at 8 (emphasis added) (quoting material from Sponsor).

doing so—at least none that the proposal would "limit or prevent." The only type of "local solar electricity" at issue is electricity that is *sold* to customers by third-parties, hardly the only manner of supplying local solar electricity.[9]

The title and summary portray an amendment designed to enable homeowners to produce their own solar electricity for their own use. But homeowners currently have that ability, and the Amendment misleads by implying that "barriers" must be removed to allow "local solar electricity supply." This is similar to the defect this Court identified in *Advisory Opinion to the Attorney General re Casino Authorization, Taxation and Regulation*, 656 So. 2d 466 (Fla. 1995). In that case, the proposal's summary promised the amendment would "prohibit[] casinos" absent specific authorization, which "create[d] the false impression that casinos [were then] allowed in Florida." *Id.* at 469. It was invalid not so much for what it said, but for what it did not say: "It fail[ed] to inform the voter that most types of casino gaming are currently prohibited by statute." *Id.* It was therefore misleading "in that it suggest[ed] that the amendment [was] necessary to prohibit casinos in this state." *Id.*

Similarly, in *In re Advisory Opinion to the Attorney General—Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994), this Court rejected a ballot initiative with

[9] Notably, neither the ballot title nor the summary uses the words "sell" or "sale," therefore intimating that the "local solar electricity" at issue includes that which is not sold.

misleading implications. That proposal's title—"Save Our Everglades"—implied "that the Everglades [was] lost, or in danger of being lost . . . and need[ed] to be 'saved' via the proposed amendment." *Id.* at 1341. But the amendment's text said nothing about the purported peril. *Id.* "A voter responding to the emotional language of the title could well be misled as to the contents and purpose of the proposed amendment." *Id.* The Court therefore found the amendment to "fly under false colors" and precluded its ballot placement. *Id.*

In this case, voters might favor removing "barriers" to "local solar energy" generally, without realizing that the Amendment addresses only one business arrangement for the delivery of local solar energy. Because the summary suggests that the Amendment is needed to allow local solar energy as a general matter, it does not provide adequate notice to voters.

C. The Summary Includes Improper Editorializing.

The ballot title and summary also include "the type of 'political rhetoric' that was denounced by this Court." *Casino Authorization, Taxation, and Regulation*, 656 So. 2d at 469 (citing *Save Our Everglades*, 636 So. 2d at 1342). By framing the Amendment as "limiting or preventing barriers," rather than "eliminating PSC regulation," or "restricting existing utility practices," the title and summary improperly editorialize. *See Evans v. Firestone*, 457 So. 2d 1351, 1355 (Fla. 1984) (holding ballot summary defective in part because phrase "thus

avoiding unnecessary costs" constituted "editorial comment"); *see also Advisory Op. to Atty. Gen. re Fla. Marriage Prot. Amendment*, 926 So. 2d 1229, 1238 (Fla. 2006) ("Political rhetoric in a ballot title and summary that invites an emotional response from voters as opposed to providing only a synopsis of a proposed amendment is improper.").

In addition, the summary promises to bar "unfavorable electric utility rates," without ever explaining what those are. No person supports "unfavorable" rates, and including that language (which appears nowhere in the text) improperly editorializes about the Amendment's purported effect. It also misleads regarding current law, under which all rates and charges "shall be fair and reasonable." § 366.03, Fla. Stat.; *accord id*. ("No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.").

* * *

"The citizen initiative constitutional amendment process relies on an accurate, objective ballot summary for its legitimacy." *Advisory Op. to Atty. Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004). Because voters "never see the actual text of the proposed amendment" and "vote based *only* on the ballot title and the summary," the title and summary are paramount. *Id.* Indeed, "an accurate, objective, and neutral summary of the proposed amendment

is the *sine qua non* of the citizen-driven process of amending our constitution. Without it, the constitution becomes not a safe harbor for protecting all the residents of Florida, but the den of special interest groups seeking to impose their own narrow agendas." *Id.* at 653-54.

"Simply put, the ballot must give the voter fair notice of the decision he must make." *Askew*, 421 So. 2d at 155. Because the title and summary at issue here do not, this Court should remove the proposal from the ballot.

II. THE PROPOSAL VIOLATES THE SINGLE SUBJECT RULE.

Even putting the ballot title and summary aside, the proposal is invalid because it violates the single-subject rule. A citizen initiative like this one "shall embrace but one subject and matter directly connected therewith." Art. XI, § 3, Fla. Const. This limitation "is a rule of restraint" designed to prevent the citizen initiative process from combining multiple distinct subjects in the same amendment. *Save Our Everglades*, 636 So. 2d at 1339. This Amendment would do just that.

First, the Amendment would impose public and private limitations. Local and state governments would not be authorized to regulate a "local solar electricity supplier." *See* Amendment § (b)(1) (suppliers "shall not be subject to state or local government regulation with respect to rates, service, or territory"). And private utility companies could not charge a "special rate" or impose specified other terms.

Id. § (b)(2) ("No electric utility shall impair any customer's purchase or consumption of solar electricity from a local solar electricity supplier . . . ."). This Court has rejected similar efforts to combine public and private regulation. In *Advisory Opinion to the Attorney General re Right of Citizens to Choose Health Care Providers*, the Court found a single-subject violation when an amendment combined "two distinct subjects by banning limitations on health care provider choices imposed by law and by prohibiting private parties from entering into contracts that would limit health care provider choice." 705 So. 2d at 566 . With the present proposal, some voters might prefer restrictions on government regulation but not limits on private actors. Yet, as in *Right of Citizens to Choose Health Care Providers*, "[t]he amendment forces the voter who may favor or oppose one aspect of the ballot initiative to vote . . . in an 'all or nothing' manner." *Id.* This improper logrolling invalidates the Amendment.

Second, the Amendment would substantially impact both the state government and local governments; it explicitly removes regulatory authority from both. *See* Amendment § (b)(1). This Court has rejected other attempts to combine expansive changes to multiple levels of government into one citizen initiative. In *Advisory Opinion to the Attorney General re People's Property Rights Amendments Providing Compensation for Restricting Real Prop. Use May Cover Multiple Subjects*, the Court invalidated the proposed initiative because it "would

have a distinct and substantial effect on more than one level of government." 699 So. 2d 1304, 1308 (Fla. 1997), *receded from on other grounds by Advisory Opinion to Atty. Gen. re 1.35% Prop. Tax Cap, Unless Voter Approved*, 2 So. 3d 968 (Fla. 2009). The initiative addressed the state, special districts, and local governments, all of which had various legislative, executive, and quasi-judicial functions applicable to land use. *Id.* Because the amendment altered these multiple levels of government, it violated the single-subject requirement. *Id*.; *see also Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.*, 778 So. 2d 888, 896 (Fla. 2000) ("[T]he proposed amendments' substantial effect on local government entities, coupled with its curtailment of the powers of the legislative and judicial branches, renders it fatally defective and violative of the single-subject requirement."); *Restricts Laws Related to Discrimination*, 632 So. 2d at 1020 ("By including the language 'any other governmental entity,' the proposed amendment encroaches on municipal home rule powers and on the rulemaking authority of executive agencies and the judiciary.").

Third, the proposal combines multiple functions of government, which the single-subject rule prohibits. *See Evans*, 457 So. 2d at 1354 (when an amendment "changes more than one government function, it is clearly multi-subject"). The Amendment has legislative function, both by establishing state policy and by

limiting the Legislature's authority. *Cf. Save Our Everglades*, 636 So. 2d at 1340 ("This provision implements a public policy decision of statewide significance and thus performs an essentially legislative function."). But it also substantially affects the executive function, if for no other reason than it regulates how municipalities operate their utilities. *See* Amendment §§ (b)(2)-(3) (imposing requirements on "electric utilities"); (c)(3) (defining "electric utility" to include a "governmental entity" that sells electricity).

Finally, as in *Save Our Everglades*, the proposal combines an objective that might be "politically fashionable," 636 So. 2d at 1341—what the summary calls avoiding "unfavorable electric utility rates"—with another that "is more problematic," *id.*—removing from PSC jurisdiction an entire class of electric utility. *See supra*. In that sense, "the initiative embodies precisely the sort of logrolling that the single-subject rule was designed to foreclose." *Save Our Everglades*, 636 So. 2d at 1341.

Because the proposal violates the single-subject requirement, this Court should remove it from the ballot.

CONCLUSION

The ballot title and summary are misleading, and the proposal violates the constitutional single-subject requirement. This Court should remove the proposal from the ballot.

Respectfully submitted,

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I further certify that a true and correct copy of the foregoing has been furnished by U.S. mail this 10th day of June 2015, to the following:

Financial Impact Estimating Conference
ATTN: Amy Baker, Coordinator
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111 W. Madison St., Ste. 574
Tallahassee, Florida 32399-6588

I further certify that a true and correct copy of the foregoing has been furnished via interoffice mail delivery this 10th day of June, 2015, to the following:

Mr. Ken Detzner, Secretary of State
ATTN: Adam S. Tanenbaum, General Counsel

The Honorable Rick Scott Governor, State of Florida
ATTN: Tim Cerio, General Counsel

The Honorable Andy Gardiner, President, Florida Senate
ATTN: George T. Levesque, General Counsel

The Honorable Steve Crisafulli, Speaker, Florida House of Representatives
ATTN: Matthew Carson, General Counsel

/s/ Allen Winsor
Allen Winsor

CERTIFICATE OF COMPLIANCE

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

/s/ Allen Winsor
Allen Winsor