## Solar Power

**Number:** PETITION

**Date:** April 27, 2015

The Honorable Jorge Labarga
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Labarga and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On March 25, 2015, this office received a letter from the Secretary of State (a copy of which is attached) advising this office that the initiative petition entitled “Limits or Prevents Barriers to Local Solar Electricity Supply” had met the registration, submission, and signature criteria set forth in section 15.21, Florida Statutes. Pursuant to Rule 9.510(b), Florida Rules of Appellate Procedure, this petition provides the following information:

The initiative petition is sponsored by Floridians for Solar Choice, Inc.,
Mr. Tory Perfetti, Chairperson,120 East Oakland Boulevard, Suite 105, Fort Lauderdale, FL 33334.

The name and address of the sponsor’s attorney is unknown.

As of March 25, 2015, the sponsor had not obtained the requisite number of signatures to have the proposed amendment placed on the ballot.

As of March 25, 2015, the Supervisors of Elections had certified a total of 72,025 valid petition signatures to the Division of Elections for this initiative petition. This number represents more than 10% of the total number of valid signatures needed from electors statewide and in at least one-fourth of the congressional districts in order to have the initiative placed on the 2016 general election ballot.

The date of the election during which the sponsor is planning to submit the proposed amendment to the voters is unknown. The earliest date of election that this proposed amendment can be placed on the ballot is November 8, 2016, provided the sponsor successfully obtains the requisite number of valid signatures by February 1, 2016.

The last possible date that the ballot for the target election can be printed in order to be ready for the election is unknown.

The Secretary of State has advised this office that he forwarded a letter to the Financial Impact Estimating Conference in the care of the coordinator on March 25, 2015.

The names and complete mailing addresses of all of the parties who are to be served is unknown at this time. Section 16.061(2), Florida Statutes, requires that a copy of the petition be provided to the Secretary of State and to the principal officer of the sponsor:

Mr. Tory Perfetti Mr. Ken Detzner
Chairperson Secretary of State
120 East Oakland Boulevard Florida Department of State
Suite 105 R.A. Gray Building, Room 316
Ft. Lauderdale, Florida 33334 500 South Bronough Street
Tallahassee, Florida 32399-0250

While not required by law, this office provides copies of the petition to:

The Honorable Rick Scott The Honorable Andy Gardiner
Governor, State of Florida President, Florida Senate
The Capitol Senate Office Building, Room 312
400 South Monroe Street 404 South Monroe Street
Tallahassee, Florida 32399-0001 Tallahassee, Florida 32399-1100

The Honorable Steve Crisafulli
Speaker, Florida House of Representatives
Room 420 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300

No other parties are known at this time.

The full text of the proposed amendment states:

"Add new Section 29 to Article X

Section 29. Purchase and sale of solar electricity. —
(a) PURPOSE AND INTENT. It shall be the policy of the state to encourage and promote local small-scale solar-generated electricity production and to enhance the availability of solar power to customers. This section is intended to accomplish this purpose by limiting and preventing regulatory and economic barriers that discourage the supply of electricity generated from solar energy sources to customers who consume the electricity at the same or a contiguous property as the site of the solar electricity production. Regulatory and economic barriers include rate, service and territory regulations imposed by state or local government on those supplying such local solar electricity, and imposition by electric utilities of special rates, fees, charges, tariffs, or terms and conditions of service on their customers consuming local solar electricity supplied by a third party that are not imposed on their other customers of the same type or class who do not consume local solar electricity.
(b) PURCHASE AND SALE OF LOCAL SMALL-SCALE SOLAR ELECTRICITY.

(1) A local solar electricity supplier, as defined in this section, shall not be subject to state or local government regulation with respect to rates, service, or territory, or be subject to any assignment, reservation, or division of service territory between or among electric utilities.
(2) No electric utility shall impair any customer's purchase or consumption of solar electricity from a local solar electricity supplier through any special rate, charge, tariff, classification, term or condition of service, or utility rule or regulation, that is not also imposed on other customers of the same type or class that do not consume electricity from a local solar electricity supplier.
(3) An electric utility shall not be relieved of its obligation under law to furnish service to any customer within its service territory on the basis that such customer also purchases electricity from a local solar electricity supplier.
(4) Notwithstanding paragraph (1), nothing in this section shall prohibit reasonable health, safety and welfare regulations, including, but not limited to, building codes, electrical codes, safety codes and pollution control regulations, which do not prohibit or have the effect of prohibiting the supply of solar-generated electricity by a local solar electricity supplier as defined in this section.
(c) DEFINITIONS. For purposes of this section:
(1) 'local solar electricity supplier' means any person who supplies electricity generated from a solar electricity generating facility with a maximum rated capacity of no more than 2 megawatts, that converts energy from the sun into thermal or electrical energy, to any other person located on the same property, or on separately owned but contiguous property, where the solar energy generating facility is located.
(2) 'person' means any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, government entity, and any other group or combination.
(3) 'electric utility' mean every person, corporation, partnership, association, governmental entity, and their lessees, trustees, or receivers, other than a local solar electricity supplier, supplying electricity to ultimate consumers of electricity within this state.
(4) 'local government' means any county, municipality, special district, authority, or any other subdivision of the state.
(d) ENFORCEMENT AND EFFECTIVE DATE. This amendment shall be effective on January 3, 2017."

The ballot title for the proposed amendment is Limits or Prevents Barriers to Local Solar Electricity Supply. The ballot summary for the proposed amendment states:

"Limits or prevents government and electric utility imposed barriers to supplying local solar electricity. Local solar electricity supply is the non-utility supply of solar generated electricity from a facility rated up to 2 megawatts to customers at the same or contiguous property as the facility. Barriers include government regulation of local solar electricity suppliers' rates, service and territory, and unfavorable electric utility rates, charges, or terms of service imposed on local solar electricity customers."

Ballot Title and Summary

Section 101.161(1), Florida Statutes, sets forth substantive and technical requirements for the ballot title and summary, stating in pertinent part:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, a ballot

summary of such amendment . . . shall be printed in clear and unambiguous language on the ballot . . . . The ballot summary of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

This Court has stated that section 101.161(1), Florida Statutes, "requires that the ballot title and summary for a proposed constitutional amendment state in clear and unambiguous language the chief purpose of the measure. This is so that the voter will have notice of the issue contained in the amendment, will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Advisory Opinion to the Attorney General re Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans*, 902 So. 2d 763, 770 (Fla. 2005), quoting *In re Advisory Opinion to the Attorney General–Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 1994). Thus, "the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), quoting *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). The ballot “must give the voter fair notice of the decision he must make.” *Askew v. Firestone, supra* at 155.

The ballot title at issue complies with the limit of 15 words. The summary of the petition, likewise, complies with the 75 word limitation. This Court may wish to consider whether the language of the ballot title and summary will lead to confusion as to the intent of the amendment or otherwise fail to provide voters and consumers with fair notice.

As required by law, I respectfully request this Honorable Court’s opinion as to whether the amendment’s ballot title and summary comply with section 101.161, Florida Statutes, and clearly apprise the voter of the effect of the amendment.

Single Subject

Article XI, section 3, Florida Constitution, requires that a constitutional amendment proposed by citizens’ initiative "embrace but one subject and matter directly connected therewith." As this Court stated in *Fine v. Firestone*, 448 So. 2d 984, 993 (Fla. 1984), this limitation protects the State Constitution from "precipitous" and "spasmodic" changes by preventing logrolling. Logrolling is "a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed." *Advisory Opinion to the Attorney General--Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans*, 902 So. 2d 763, 766 (Fla. 2005), quoting *Advisory Opinion to the Attorney General--Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System*, 769 So. 2d 367, 369 (Fla. 2000).

In addition, the single-subject rule "prevent[s] a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." *Advisory Opinion to the Attorney General--Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System, supra*. Thus, the single-subject rule ensures that the impact of a constitutional amendment proposed by a citizen's initiative is limited and accurately disclosed.

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone, supra*. This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution."

This Court may wish to consider whether the amendment has a "logical and natural oneness of purpose" and whether it would substantially affect multiple functions of government.

I respectfully request this Honorable Court's opinion as to whether the proposed constitutional amendment complies with Article XI, section 3, Florida Constitution.

Respectfully submitted,

Pamela Jo Bondi
Attorney General