

>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME  
COURT.

THE CASE ON THE DOCKET TODAY IS  
THE ADVISORY OPINION TO HAVE THE  
ATTORNEY GENERAL.

THIS TIME, WHO SPEAKS FIRST?

>> GOOD MORNING, MR. CHIEF  
JUSTICE, MAY IT PLEASE THE  
COURT.

I'M RACHEL NORDBY APPEARING ON E  
BEHALF OF THE ATTORNEY GENERAL.  
WE'RE HERE TODAY FOR AN ADVISORY  
PETITION REGARDING THE BALLOT  
INITIATIVE ENTITLED RIGHTS OF  
ELECTRICITY CONSUMERS REGARDING  
SOLAR ENERGY CHOICE.

TWO PARTIES WILL ARGUE TODAY IN  
FAVOR OF BALLOT PLACEMENT.

FIRST, MR. CANTERO WILL PRESENT  
ON BEHALF OF THEN SPONSOR,  
CONSUMERS FOR SMART SOLAR,  
FOLLOWED BY MR. DAVIS ON BEHALF  
OF FOR PROPONENT ELECTRIC  
PROVIDERS.

MR. NABORS ARE PRESENT ON BEHALF  
OF POINT, FLORIDIANS FOR SOLAR  
CHOICE, AND MR. GUEST WILL  
PRESENT ON BEHALF OF THREE  
ORGANIZATIONS.

FINALLY, MR. CANTERO WILL RETURN  
AND PRESENT REBUTTAL.

THANK YOU.

>> MAY IT PLEASE THE COURT,  
RAOUL CANTERO FOR THE SPONSOR,  
CONSUMERS FOR SMART SOLAR.

THIS INITIATIVE IS A SIMPLE AND  
STRAIGHTFORWARD AMENDMENT TO THE  
FLORIDA CONSTITUTION THAT WOULD  
ESTABLISH IN THE CONSTITUTION  
FOR THE FIRST TIME THE RIGHT--  
FOR THE FIRST TIME THE RIGHT TO  
OWN AND LEASE SOLAR EQUIPMENT  
FOR ONE'S OWN USE AND CLARIFIES  
THAT THE STATE AND LOCAL  
GOVERNMENTS RETAIN THE ABILITY  
TO REGULATE THAT USE FOR HEALTH,

SAFETY AND WELFARE OF THE PUBLIC.

>> YOU-- IS IT MAINTAINING THE STATUS QUO, OR IS IT ENHANCING THE RIGHTS FOR SOLAR ENERGY CONSUMERS OR DETRACTING FROM THE ALREADY-EXISTING RIGHTS?

IN OTHER WORDS, WHAT IS, THERE'S ARGUMENT THAT IT'S JUST NEUTRAL, THAT IT'S MAINTAINING WHAT EXISTS NOW, AND THEN THERE'S ARGUMENT THAT IT ACTUALLY-- BY PROHIBITING CERTAIN LEASES, THAT IT MAY ACTUALLY DECREASE EVEN WHAT IS EXISTING.

>> WELL, FIRST, THERE'S SUBPART A, AND THEN THERE'S SUBPART B. SUBPART A CREATES A RIGHT FOR THE FIRST TIME IN THE CONSTITUTION TO OWN AND LEASE SOLAR EQUIPMENT FOR ONE'S OWN USE.

THAT IS NOT STATED IN ANY STATUTE OR ANY ORDINANCE AND, THEREFORE, THAT IS AN EXPANSION OF CURRENT LAW.

WHAT--

>> WELL, IT'S AN EXPANSION OF THE CONSTITUTION, RIGHT?

>> YES.

>> BUT IS IT AN EXPANSION, YOU SAY, OF CURRENT LAW?

>> THERE'S CURRENTLY NO STATUTE THAT SAYS THAT THERE IS A RIGHT, A STATUTORY RIGHT TO OWN OR LEASE SOLAR EQUIPMENT.

SO IN THAT SENSE--

>> [INAUDIBLE]

>> I'M SORRY?

>> WHY DO YOU NEED THAT KIND OF RIGHT IN THE CONSTITUTION?

I MEAN, I WOULD ASSUME THAT THERE ARE PEOPLE WHO OWN AND/OR LEASE SOLAR THINGS RIGHT NOW, CORRECT?

>> YES.

>> AND SO WHY-- IF THERE IS NOTHING THAT PROHIBITS THEM FROM DOING SO, WHY DO WE NEED THIS--

>> THIS AMENDMENT?

>>-- ESTABLISHMENT IN THE  
CONSTITUTION?

>> WELL, BECAUSE SOLAR ENERGY IS  
BECOMING A MORE AND MORE  
COMMONLY-USED AND  
COMMONLY-DISCUSSED TYPE OF  
ENERGY, AND THE PEOPLE OF  
FLORIDA HAVE THE RIGHT TO SAY WE  
WANT THIS AS A CONSTITUTIONAL  
RIGHT SO THAT EVERYBODY KNOWS  
THEY HAVE A RIGHT TO PURCHASE  
SOLAR EQUIPMENT AND USE IT FOR  
THEIR OWN USE.

RIGHT NOW IT'S CERTAINLY THE  
POSSIBILITY THAT IT CAN BE  
OUTLAWED AT A TIME AFTER  
SOMEBODY SPENDS THE CAPITAL TO  
IMPROVE THEIR HOME OR THEIR  
HOUSE WITH SOLAR EQUIPMENT AND  
SUDDENLY THEY CAN'T USE IT.  
SO IT GIVES PEOPLE A COMFORT  
LEVEL THAT THIS IS A RIGHT IN  
THE CONSTITUTION THAT THEY CAN  
USE.

>> SO IF YOU WERE IN FAVOR OF  
EXPANSION OF SOLAR ENERGY, YOU  
WOULD VOTE FOR THIS AMENDMENT?

>> ABSOLUTELY.  
SURE.

>> SEE, AND HERE'S, I GUESS,  
WHERE THE CONCERN IS.

AND WE UNDERSTAND WE DO NOT  
ADDRESS THE MERITS.

BUT THIS IS SORT OF THE FLIPSIDE  
OF THE AMENDMENT WE HEARD IN  
OCTOBER WHERE WE HAVE THE SAME  
PARTIES THAT OPPOSED THAT  
AMENDMENT NOW SAYING WE WANT  
TO-- THE ELECTRIC COMPANIES  
SAYING WE WANT TO GIVE RIGHTS TO  
ELECTRIC, EXCUSE ME, SOLAR  
ENERGY CONSUMERS.

THEIR ARGUMENT IS THAT THE  
CHOICE, WHICH IS IN THE BALLOT  
TITLE, IS MISLEADING BECAUSE  
IT'S ACTUALLY WITH ONE HAND  
GIVING CONSUMERS A RIGHT BUT  
THEN SAYING IT CAN BE REGULATED  
TO WHATEVER EXTENT THE  
GOVERNMENT DEEMS NECESSARY,

RIGHT?

SO I GUESS THAT WAS MY CONCERN.  
I THOUGHT THIS REALLY WAS MORE  
OF A AMENDMENT TO STAVE OFF THE  
OTHER AMENDMENT THAT HAD COME IN  
REACTION TO THE AMENDMENT THAT  
WAS TRYING TO EXPAND SOLAR  
ENERGY USE IN FLORIDA.

>> NO, YOUR HONOR.

FIRST OF ALL, THE BALLOT TITLE  
DOES NOT SAY THAT IT'S A RIGHT  
TO SOLAR CHOICE.

IT'S-- WE'RE TALKING ABOUT THE  
RIGHTS REGARDING SOLAR CHOICE.  
SO IT ASSUMES THAT RIGHT NOW  
THERE IS A CHOICE FOR SOLAR, BUT  
IT'S A DISCUSSION REGARDING  
THOSE RIGHTS TO MAKE SURE THAT  
IN ASSURING THE RIGHTS OF  
CONSUMERS TO USE SOLAR THAT  
WE'RE NOT INADVERTENTLY OR  
ADVERTENTLY INFRINGING UPON THE  
RIGHTS OF THOSE WHO DO NOT USE  
SOLAR ENERGY X. SO THAT-- AND  
SO THAT, THE PURPOSE IS NOT TO  
RESTRICT ANYBODY'S RIGHTS TO  
SOLAR ENERGY, THE PURPOSE IS TO  
HAVE THE RIGHT TO SOLAR ENERGY  
BUT WITHIN THE CONTEXT OF A  
REGULATORY ATMOSPHERE THAT  
ALREADY EXISTS FOR ELECTRICITY  
SO THAT SOLAR ENERGY IS NOT THE  
ONE ITEM OF ENERGY THAT IS  
ABSOLVED FROM ANY REGULATION  
WHATSOEVER WHEN EVERY OTHER FORM  
OF ENERGY IS REGULATED.

>> SO IT IS THE OPPOSITION TO  
WHAT WAS APPROVED BY THE COURT.  
WHICH IS FINE--

>> ONLY IN PART.

>> BUT LET ME ASK YOU THIS  
QUESTION.

IF THAT BALLOT, THAT AMENDMENT  
WENT ON THE BALLOT-- WHICH I  
GUESS THEY DON'T HAVE ENOUGH  
SIGNATURES-- BUT IF THEY BOTH  
WENT ON AND THEY BOTH PASSED,  
WHAT WOULD HAPPEN?

>> WELL, THEY WOULD HAVE TO BE  
RECONCILED JUST AS, YOU KNOW,

STATUTES ARE RECONCILED.  
AND THE COURT, MAYBE THIS COURT  
BUT OTHER COURTS WOULD HAVE TO  
DETERMINE HOW YOU RECONCILE  
THOSE TWO STATUTES.

>> HAS THERE BEEN ANY-- IT  
SEEMS TO ME PARTICIPANT OF THE  
GUT OF-- PART OF THE GUT OF  
THIS HAS TO DO WITH HEARING THAT  
CONSUMERS WHO DO NOT CHOOSE TO  
INSTALL SOLAR ARE NOT  
SUBSIDIZING COST OF OTHER POWER  
FOR PEOPLE WHO DO.

>> YES.

>> HAS THERE BEEN A PROBLEM WITH  
THAT IN.

>> NOT YET, YOUR HONOR.  
THERE HASN'T BEEN A PROBLEM.  
BUT, AGAIN, IN THE ATMOSPHERE  
THAT EXISTS WITH SOLAR ENERGY  
CONSTANTLY BEING USED, THERE MAY  
BE A PROBLEM IN THE FUTURE WITH  
THAT.

>> SO WHAT DOES THAT EXACTLY  
MEAN?

DOES THAT MEAN THAT IF YOU'RE,  
FOR EXAMPLE, IF YOUR SOLAR  
PANELS ARE NOT WORKING AND YOU  
HAVE TO SWITCH TO, I GUESS,  
HYDROELECTRIC OR WHATEVER OTHER  
FORM OF ELECTRICITY IS  
AVAILABLE, THAT YOU HAVE TO PAY  
FOR IT?

I'M NOT SURE WHAT THAT MEANS.

>> THAT OCCURS EVEN NOW, YOUR  
HONOR.

RIGHT NOW YOU CANNOT USE SOLAR  
ENERGY 24 HOURS A DAY BECAUSE  
THE PHOTOVOLTAIC CELLS ONLY WORK  
DURING THE DAYLIGHT HOURS.

SO THERE ARE TIMES WHEN YOU HAVE  
TO USE ELECTRICITY ANYWAY.

WHAT THIS MEANS IS KIND OF  
HARKING BACK TO THE P.W.

VENTURES CASE FROM THIS COURT  
WHERE IT SAYS THAT THERE ARE  
CERTAIN FIXED COSTS TO PROVIDING  
ELECTRIC ENERGY.

SO TO THE EXTENT THAT MORE AND  
MORE PEOPLE USE SOLAR AND THEY

ARE PAYING SOME FOR LEKKING  
TERRORIST-- ELECTRICITY, THE  
FACT THAT THEY'RE USING SOLAR  
SHOULDN'T BE SUBSIDIZED BY  
OTHERS THAT ARE ONLY USING  
ELECTRICITY.

SO BECAUSE--

>> BUT THE PEOPLE WHO USE SOLAR  
HAVE TO PAY SOME ELECTRIC-- IN  
THEY DO.

>>-- TYPICAL ELECTRIC BILL  
ANYWAY, CORRECT?

>> YES.

YES.

>> WILL THIS PROHIBIT NET  
METERING?

>> IT WILL NOT, YOUR HONOR.  
ON ALL TYPES OF REGULATION, THIS  
AMENDMENT IS AGNOSTIC.

SO THAT IS PURPOSELY LEFT TO THE  
LEGISLATURE AND THE PSC TO  
DETERMINE THESE ISSUES.

IT MERELY CLARIFIES THAT BY  
CREATING A CONSTITUTIONAL RIGHT  
TO SOLAR ENERGY, WE ARE NOT  
PREDETERMINING EITHER THE  
LEGISLATURE'S OR THE PSC'S  
AUTHORITY TO REGULATE IN THIS  
FEAR.

BUT AS FAR AS NET METERING,  
ACCOUNTING, ALL OF THOSE THINGS,  
THAT'S LEFT TO THE EXPERTS IN  
THE FIELD, THE LEGISLATURE AND  
THE PSC TO DETERMINE THAT.

>> BUT DOESN'T THE TERM  
"SUBSIDIZE," AGAIN, THIS GOES  
PACK TO WHO WOULD VOTE FOR THIS.  
YOU SAY EVERYBODY COULD VOTE FOR  
IT BECAUSE IT'S AGNOSTIC.

>> YES. YES.

>> SO IT SORT OF GOES BACK TO  
WHY DO WE NEED IT, EXCEPT THAT  
IT WAS PROPOSED TO DEFEAT THE  
OTHER AMENDMENT.

I MEAN, I THINK IT'S FAIR TO SAY  
THAT THAT WAS THE IMPETUS.

BUT SO THE QUESTION IS, IS THAT  
ARE THEY-- ISN'T SUBSIDIZE A  
TERM THAT IMPLIES THAT AT  
PRESENT TIME ALL ELECTRIC

CONSUMERS OTHER THAN SOLAR ENERGY CONSUMERS ARE PAYING FOR THE RIGHT OF INDIVIDUALS TO HAVE SOLAR ENERGY?

>> NO, IT DOES NOT SAY THAT. BECAUSE BOTH THE SUMMARY-- FIRST OF ALL, THIS IS DISTINGUISHED FROM OTHER CASES THAT HAVE USED KIND OF POLITICIZED TERMS SUCH AS SAVE OUR EVERGLADES AND MANDATES THAT DON'T WORK AND THINGS LIKE THAT BECAUSE SUBSIDIZE IS USED IN THE SUMMARY, AND IT'S USED IN THE AMENDMENT.

IN FACT, THE SECOND, THE SECOND SENTENCE OF THE SUMMARY IS A VERBATIM RECITATION OF SECTION B OF THE AMENDMENT.

>> THE PROBLEM IS OF ALL THE-- EVERYTHING'S DEFINED, BUT "SUBSIDIZE" IS NOT DEFINED IN THE AMENDMENT.

>> BUT THAT IS A TERM THAT PEOPLE RECOGNIZE.

IT'S A COMMON TERM.

AND IT'S A TERM THAT IS A NEUTRAL TERM.

SOME PEOPLE WANT SUBSIDIZATION, OTHER PEOPLE DON'T WANT SUBSIDIZATION.

BUT IT'S IN THE AMENDMENT ITSELF.

SO THE FACT THAT IT'S IN THE SUMMARY CANNOT BE MISLEADING.

>> WELL, WHO WOULD WANT, IF YOU DON'T USE SOLAR ENERGY, TO PAY FOR OTHER PEOPLE'S RIGHT TO USE SOLAR ENERGY?

SO ISN'T THAT-- THAT'S THE PART.

IT STARTS OUT BY SAYING YOU HAVE SOLAR CHOICE WHICH, IRONICALLY, IT WAS THE NAME OF THE GROUP, THE PROPONENTS OF THE LAST AMENDMENT.

IT'S SORT OF LIKE WHEN YOU PUT JUSTICE INTO AN AMENDMENT AND TRY TO FIGURE OUT IF IT'S GOOD OR BAD.

BUT YOU'VE GOT, WOW, I WANT SOLAR CHOICE, BUT THEN I'M AN ELECTRIC CONSUMER, I DON'T REALLY WANT TO PAY FOR THOSE, YOU KNOW, PEOPLE THAT WANT GREEN ENERGY.

SO IT'S CREATING-- AND THEY SAY IT'S A SINGLE-SUBJECT VIOLATION. I'M NOT SURE ABOUT THAT, BUT IT'S SORT OF CREATING ON ONE HAND YOU'RE GIVING THE RIGHT, ON THE OTHER HAND YOU'RE TAKING IT AWAY.

>> IT CANNOT BE MISLEADING IF THE BALLOT SUMMARY EXPLAINS THE VERBATIM WHAT THE AMENDMENT DOES.

THE MISLEADING PART IS IT'S MISLEADING IN THAT THE SUMMARY DOESN'T ADEQUATELY EXPLAIN WHAT THE AMENDMENT DOES.

>> I THINK-- BUT AREN'T THERE-- I DON'T KNOW IF YOU'RE--

>> I WANT TO ANSWER YOUR QUESTIONS, YOUR HONOR.

>> AREN'T THERE CASES THOUGH, THE QUESTION IS WHAT'S THE CHIEF PURPOSE AND EFFECT?

AND MY CONCERN HERE AND, AGAIN, WE DO NOT RULE ON THE MERITS. BUT IS THAT IF THE CHIEF PURPOSE IS REALLY TO MAINTAIN THE STATUS QUO, IS THAT ADEQUATELY CONVEYED IN THE BALLOT TITLE AND SUMMARY?

>> I WOULD RESIST THE PREMISE THAT IT'S DESIGNED TO MAINTAIN THE STATUS QUO.

SECTION B MAY DO THAT, BUT SECTION A ACTUALLY ESTABLISHES A CONSTITUTIONAL RIGHT WHICH DIDN'T EXIST BEFORE TO OWN AND LEASE SOLAR EQUIPMENT FOR ONE'S OWN PERSONAL USE.

SO TO THAT EXTENT, SECTION A IS NOT STATUS QUO.

>> SO WOULD IT BE THEN IF IT ESTABLISHES A CONSTITUTIONAL RIGHT IN OUR DECLARATION OF RIGHTS AS A FUNDAMENTAL RIGHT,



THEN WOULD THE STATE HAVE TO  
SHOW A COMPELLING STATE INTEREST  
IN ORDER TO IN ANY WAY LIMIT  
THAT RIGHT?

>> WELL, IT'S NOT IN THE  
DECLARATION OF RIGHTS, IT'S IN  
SECTION 29.

AND WE MAKE CLEAR THAT THE STATE  
DOES HAVE THE ABILITY, AND  
THAT'S WHY IT'S NECESSARY TO  
CLARIFY THAT THE STATE HAS THE  
ABILITY FOR, TO ACT FOR THE  
STATE'S WELFARE, HEALTH, SAFETY  
AND WELFARE.

>> BUT IT'S ONLY THE RIGHT TO  
INDIVIDUALLY OWN IT.

>> YES.

>> THE OTHER AMENDMENT WAS  
ALLOWING PEOPLE TO SELL IT  
WITHIN THEIR, THE PROXIMITY.  
THAT'S NOT ESTABLISHED AS A  
RIGHT--

>> CORRECT.

>>-- IN THIS AMENDMENT.

>> CORRECT.

AND SO I'LL SAVE THE REST OF MY  
TIME FOR REBUTTAL.

THANK YOU.

>> GOOD MORNING, ALVIN DAVIS.  
I'M SPEAKING ON BEHALF OF THE  
INVESTIGATOR-OWNED UTILITIES--  
INVESTOR-OWNED UTILITIES, BUT  
ALSO ON BEHALF OF THE CO-OPS AND  
THE MUNICIPALS.

>> COULD YOU JUST TELL ME WHAT  
THE UTILITIES' INTEREST IS IN  
THIS PARTICULAR AREA?

>> OH, YES.

THAT'S THE PURPOSE OF MY BEING  
HERE.

THE UTILITY INTEREST IS THIS:  
ALL OF THOSE ENTITIES THAT I  
JUST MENTIONED ARE REGULAR  
RATED-- REGULATED UTILITIES  
UNDER A STRUCTURE DESIGNED BY  
THE LEGISLATURE IN FLORIDA.  
THEY ARE REGULATED AS TO  
SERVICE, AS TO RATES, AS TO  
SAFETY AND AS TO TERRITORIES.  
THAT'S THE SYSTEM IN FLORIDA.

THE INTEREST OF THE UTILITIES IN THIS AMENDMENT AND THEIR OPPOSITION TO THE PREVIOUS AMENDMENT IS TO KEEP THAT STRUCTURE IN PLACE, FUNCTIONING PROPERLY.

THIS COURT HAS SPOKEN OF OTHER AMENDMENTS SAYING THAT THEY HAVE TO BE THE LANGUAGE, THAT THEY HAVE TO BE INTEGRATED INTO EXISTING POLICIES OF THE STATE. AND OUR POSITION HERE IS THAT THIS AMENDMENT ALLOWS SOLAR-- WHICH ALL OF THESE ENTITIES SUPPORT, ALL OF THE INVESTOR-OWNED UTILITIES PRODUCE SOLAR ENERGY AND HAVE SOLAR ENERGY THAT'S PUT IN OUR BRIEF. SOME OF THE CO-OPS ALSO HAVE SOLAR, AND SOME OF THE MUNICIPALS HAVE SOLAR.

>> DOES IT HAVE THE EFFECT OF KEEPING THE CONSUMER OUT OF THE SOLAR BUSINESS?

>> IT HAS THE OPPOSITE EFFECT.

>> WELL, IT SEEMS TO ME THAT WHAT WE'RE, WHAT THIS AMENDMENT REALLY SAYS IS THAT YOU CAN GET SOME SOLAR EQUIPMENT FOR YOUR HOUSE, BUT BE CAREFUL BECAUSE THERE'S ALL KIND OF REGULATIONS THAT ARE GOING TO FOLLOW, AND YOU BETTER NOT HAVE TO USE TOO MUCH ELECTRICITY, OTHER SIDE-GENERATED ELECTRICITY, BECAUSE PEOPLE ARE NOT GOING TO SUBSIDIZE YOU.

I MEAN, IT JUST SEEMS TO ME THAT THERE'S A SORT OF-- WE WANT TO KEEP THE CONSUMER OUT OF THIS, THIS AREA.

>> WELL--

>> TO THIS AMENDMENT.

>> WE WANT TO KEEP THE CONSUMER IN THIS AREA.

THE OTHER PETITION, WHICH WAS A STIMULUS IN PART FOR THIS PETITION, KEPT THE CONSUMER OUT OF EVERYTHING.

IT ALLOWED PEOPLE TO COME IN,

SELL THESE ARRAYS THAT COULD GENERATE UP TO, ELECTRIFY UP TO 715 HOMES WITH NO REGULATION WHATSOEVER INCLUDING CONSUMER PROTECTION.

THE PUBLIC SERVICE COMMISSION IN THIS STATE IS CREATED TO INSURE THAT THERE ARE FAIR AND NONDISCRIMINATORY RATES.

AND ANY RATE PAYER IN THE STATE HAS THE RIGHT TO GO TO THE PUBLIC SERVICE COMMISSION AND CLAIM THAT THE RATES IT'S PAYING ARE NOT FAIR, THEY ARE DISCRIMINATORY.

AND THAT'S A POINT OF GREAT EMPHASIS IN OUR SUPPORT FOR THE AMENDMENT.

BECAUSE WE WANT THE REGULATORY AUTHORITIES TO REMAIN IN PLACE. IF THE SOLAR PROVIDERS BELIEVE THAT THERE'S GOING-- BELIEVE THAT THERE'S GOING TO BE A RATE THAT IS DISCRIMINATORY AGAINST THEM, THIS SO-CALLED SUBSIDY ARGUMENT, THEY GO TO THE PUBLIC SERVICE COMMISSION.

THE PUBLIC SERVICE COMMISSION IS CHARGED WITH ESTABLISHING RATES THAT ARE FAIR TO ALL CLASSES. SO IF A UTILITY PURPORTED TO CHARGE A SOLAR CUSTOMER A RATE THAT THE SOLAR CUSTOMER BELIEVES IS NOT FAIR, THEY WOULD FIRST HAVE TO GO TO THE PUBLIC SERVICE COMMISSION AND GET THAT RATE APPROVED.

AND IN THAT RATE PROCESS, THE SOLAR PROVIDERS, THE CUSTOMERS, HAVE THE RIGHT TO COME IN-- AS THEY'VE OUTLINED IN SOME OF THE BRIEFS SAYING, NO, ACTUALLY SOLAR IS A NET BENEFIT TO THE UTILITY.

THAT'S FINE.

IF IT'S A NET BENEFIT TO THE UTILITY, THERE WILL BE NO SUBSIDY.

THERE'LL BE NOTHING IN THE RATE STRUCTURE THAT WOULD PREVENT

SOLAR FROM BEING PROVIDED IN THE STATE.

BUT THAT'S WHY WE HAVE A PUBLIC SERVICE COMMISSION, AND THAT'S THE IMPORTANCE OF THIS AMENDMENT.

>> WHAT ABOUT, WHAT IS THE ISSUE ON PAY-BY-THE-WATT LEASES? WHICH THE ARGUMENT FOR THOSE THAT ARE IN FAVOR OF EXPANDED SOLAR ENERGY IS THAT IT'S VERY EXPENSIVE FOR A INDIVIDUAL CONSUMER TO INSTALL THE EQUIPMENT ON THEIR OWN PROPERTY, AND THEY'VE ENTERED INTO THESE I THINK IT'S PAY-BY-THE-WATT LEASES, AM I CORRECT ON THAT? WOULD THAT, THE DEFINITION OF "LEASE" THAT'S IN THE AMENDMENT APPEARS TO PRECLUDE THE USE OF PAY-BY-THE-WATT LEASES, IS THAT CORRECT?

>> NO, I DON'T BELIEVE IT'S CORRECT.

AGAIN, THAT COULD BE DECIDED BY THE PUBLIC SERVICE COMMISSION. THAT'S THE IMPORTANCE OF THIS AMENDMENT.

THESE ARE ISSUES, RESPECTFULLY, THAT CAN'T BE ADDRESSED BY THE COURT.

THESE ARE ISSUES THAT CAN'T BE ADDRESSED IN A PETITION AMENDMENT.

>> WHY WOULD SOMEBODY--

>> [INAUDIBLE]

PUBLIC SERVICE COMMISSION.

>> IF SOMEBODY WAS IN FAVOR OF EXPANDED SOLAR ENERGY--

>> YES.

>> AND THIS IS WHERE THE CONCERN IS.

THE MERITS, YOU'VE MADE A VERY GOOD CASE FOR WHY THE STATUS QUO A GOOD IDEA.

AND, YOU KNOW, I MAY AGREE WITH THAT, THAT THAT'S A GOOD IDEA, THAT THIS OTHER AMENDMENT WAS NOT A GOOD IDEA FOR, YOU KNOW, NOT TO HAVE AN INDUSTRY PROPERLY

REGULATED BY THE-- BUT WHY IF I WERE A GREEN ENERGY, SOLAR ENERGY PROPONENT WOULD I WANT TO VOTE IN FAVOR OF THIS?

AND THE CONCERN THAT THEY'VE RAISED IS THE WAY IT'S FRAMED WITH SOLAR CHOICE IS THAT A VOTER WOULD BE MISLED THAT THIS IS A PRO-SOLAR ENERGY AMENDMENT WHEN, IN FACT, IT'S ACTUALLY THE OPPOSITE?

>> YOU WOULD WANT TO VOTE FOR THIS BECAUSE IT PROVIDES THE PUBLIC SERVICE COMMISSION'S AVAILABILITY IF YOU HAVE A PROBLEM WITH YOUR SERVICE, IF YOUR RATES ARE UNFAIR.

WHAT WE'RE CONCERNED--

>> BUT DON'T, ISN'T THAT-- RIGHT NOW THAT'S EXACTLY WHAT A SOLAR ENERGY CONSUMER HAS NOW.

>> IT DOES NOT HAVE IT--

[LAUGHTER]

THAT'S WHERE WE GET INTO--

>> THEY DON'T HAVE IT, WHAT, IN THE CONSTITUTION?

>> THEY DON'T HAVE IT IN THE CONSTITUTION.

>> WELL, THAT WOULD BE, THERE'S ABOUT HUNDREDS OF STATUTORY SCHEMES WHERE SOMETHING'S NOT IN THE CONSTITUTION.

THE CONCERN IS BY PUTTING THIS INTO THE CONSTITUTION, IT MAINTAINS THE STATUS QUO AND PREVENTS A FURTHER EXPANSION OF THOSE THAT WANT SOLAR ENERGY. ISN'T THAT-- THAT'S WHY THEY'RE OPPOSING IT.

AM I CORRECT ABOUT THAT?

>> WELL, WHY THEY'RE OPPOSING IT IS BECAUSE THEY SELL SOLAR PANELS.

BUT THE POINT IS THAT THE EARLIER PETITION TOOK ALL OF THAT AWAY.

THEY WOULD NOT HAVE THE RIGHTS TO THE CONSUMER PROTECTION.

THE PURPOSE OF THIS AMENDMENT IS TO PUT THEM BACK IN A WAY THAT

CAN'T BE CHANGED BY SOMEONE  
COMING IN AND SAYING WE WANT TO  
PROCEED WITHOUT REGULATION.  
AND ANY PERSON THAT WANTS SOLAR  
SHOULD VOTE FOR THIS AMENDMENT  
BECAUSE YOU CANNOT HAVE SOMEONE  
COMING INTO THE STATE SELLING  
YOU A SOLAR ARRAY, GOING BACK TO  
WHEREVER THEY CAME FROM, AND  
WHEN THE PANELS DON'T WORK OR  
WHEN THE PRICES AREN'T FAIR, YOU  
ARE STUCK WITH IT.

WE'RE ARGUING THAT--

>> WELL, THE PSC AND STATUTES  
COVER THAT SURGEON.

IF THERE ARE-- THAT CONCERN.

IF THERE ARE ABUSES--

>> THEY WILL NOW, AND THEY WILL  
IF IT'S IN THE CONSTITUTION.

THEY WON'T IF AN AMENDMENT SUCH  
AS THE BARRIERS AMENDMENT PASSES  
WHICH ELIMINATES ALL OF THAT  
REGULATORY PROTECTION.

>> WHAT I'M ASKING, SINCE THAT'S  
NOT ON THE BALLOT, THE BARRIERS  
ONE, IF RIGHT NOW THERE IS EVERY  
ABILITY OF THE LEGISLATURE TO  
REGULATE THOSE THAT WOULD COME  
IN AND SELL SOLAR PANELS,  
CORRECT?

AND THE PSC?

>> YES.

>> OKAY.

>> WELL, IT'S TO INSURE THAT  
THOSE PROTECTIONS REMAIN,  
BECAUSE THE BARRIERS PETITIONERS  
HAVE PROMISED THAT THEY'LL BE  
BACK.

THANK YOU.

>> MAY IT PLEASE THE COURT, BOB  
NABORS.

IN MANY WAYS THIS CASE IS AN  
EASY CASE.

YOU REALLY DON'T HAVE TO GO  
BEYOND EVANS V. OR FIRESTONE TO  
FIND THAT THIS BALLOT LANGUAGE  
IS MISLEADING.

IN THAT CASE IT SAYS ANY BALLOT  
SUMMARY, ANY BALLOT SUMMARY THAT  
CANNOT CAUSE A VOTER TO BELIEVE

THAT THEY MUST VOTE FOR A  
PROPOSED AMENDMENT TO OBTAIN A  
RIGHT THEY ALREADY HAVE, THEY  
CAN'T FILE UNDER FALSE  
PRETENSIONS.

WE HAVE CURRENTLY IN THE FLORIDA  
CONSTITUTION IN THE DECLARATION  
OF RIGHTS THE RIGHT TO OWN  
PROPERTY.

THERE ARE STATUTES THAT DEAL  
WITH SOLAR ENERGY, THERE ARE  
RULES THAT DEAL WITH THE RIGHT  
TO POSSESS AND USE SOLAR ENERGY.

>> SO HOW DOES THIS AMENDMENT  
CHANGE THAT?

I MEAN, IT SEEMS TO ME THAT  
THE--

[INAUDIBLE]

IS PRETTY CLEAR.

YOU HAVE THE RIGHT TO OWN OR  
LEASE SOLAR EQUIPMENT.

HOW-- AND THAT YOU HAVE THAT  
RIGHT RIGHT NOW EVEN THOUGH IT'S  
NOT CONSTITUTIONAL OR STATUTORY,  
SO HOW DOES THIS CHANGE THAT?

>> WELL, IT MAY NOT CHANGE.

I WOULD ARGUE THAT THAT'S NOT  
THE POINT.

THE POINT IS THAT WE PUT ON THE  
BALLOT A PROPOSAL THAT DOES  
NOTHING, THAT CREATES CONFUSION  
IN THE AREA IN WHICH IT DEALS  
WITH.

AND THAT'S THE PURPOSE OF THIS.  
THERE'S NO DOUBT IN ANYBODY'S  
MIND THAT THE REASON IN THIS  
AMENDMENT IS GOING FORWARD AND  
PROPOSED IS TO KILL THE BARRIERS  
AMENDMENT.

THEY'VE SAID THAT.

THAT'S THE PRIMARY PURPOSE.

AND IT'S NOT MENTIONED ANYWHERE  
IN HERE.

BUT THE POINT WOULD BE--

>> SO, SO RIGHT NOW YOU CAN BUY  
AND LEASE THE EQUIPMENT.

RIGHT NOW IN THE PUBLIC SERVICE  
COMMISSION, PROMULGATE RULES  
CONCERNING A CONSUMER'S USE OF  
THAT SOLAR EQUIPMENT.

>> WELL, THEY CAN, YES.  
EXCEPT IN-- IF THE BARRIER  
AMENDMENTS PASSES, THEY'RE  
PROHIBITED IN THE AREAS IN WHICH  
IT COVERS.

>> I MEAN, RIGHT NOW NO  
AMENDMENT, NO THIS ONE, NOT THE  
OTHER ONE, A CONSUMER CAN BUY,  
CAN HAVE THIS EQUIPMENT.  
CAN THE PSC PROMULGATE RULES  
ABOUT THE USE OF THAT EQUIPMENT?

>> WELL, I WOULD ARGUE THEY  
WOULD HAVE A CONSTITUTIONAL  
PROBLEM IF THEY TRIED TO  
PROMULGATE A RULE THAT BASICALLY  
SAID AN INDIVIDUAL CANNOT OWN--

>> NO, I'M NOT SAYING THEY CAN'T  
OWN, I'M SAYING REGULATE IT.  
YOU OWN IT, BUT THESE ARE THE  
RULES YOU HAVE TO PLAY BY.

>> WELL, AND THIS ATTEMPTS TO  
CONSTITUTIONALLY PRESERVE THAT  
AREA OF REGULATION.

AND THE ONLY DIFFERENCE IS, IS  
THAT THE BARRIERS AMENDMENT--  
WHICH WE ARGUED TO THE COURT A  
COUPLE MONTHS AGO-- CREATES A  
NICHE, IT ENCOURAGES THE USE OF  
SOLAR ENERGY AND REMOVES CERTAIN  
BARRIERS THAT INTERFERE WITH  
THAT.

BUT THE POINT WOULD BE IS IF  
THEY'RE BOUND BY THE LAW IN THE  
STATE OF FLORIDA AS A FOUR  
CORNERS REVIEW OF AN INITIATIVE  
THAT IS NOT MISLEADING, EVEN IF  
IT DOESN'T DO MUCH, IF IT'S  
MISLEADING TO THE VOTERS AND IT  
GETS IN OUR CONSTITUTION--

>> WELL, HOW EXACTLY AGAIN IS IT  
MISLEADING?

WHAT'S THE-- HOW ARE THE VOTERS  
MISLED EXACTLY?

>> BECAUSE THE VOTERS ARE NOT  
TOLD, THE VOTERS ARE NOT TOLD  
THAT THE PRIMARY REASON, LIKE  
THE REASON IN EVANS V.  
FIRESTONE, THEY'RE NOT TOLD THAT  
THERE'S-- THEY'RE GIVEN THE  
FALSE IMPRESSION THAT THEY MUST



VOTE FOR THIS AMENDMENT IN ORDER TO OBTAIN RIGHTS THEY ALREADY HAVE.

IN--

>> WELL, THE PREMISE FOR THAT SEEMS TO BE THAT THE VOTERS ARE GENERALLY IGNORANT ABOUT THE AVAILABILITY TO THEM OF SOLAR ENERGY.

I JUST-- THAT SEEMS TO, I MEAN, I THINK PEOPLE GENERALLY UNDERSTAND THAT THEY CAN GET ACCESS TO SOLAR ENERGY, AT LEAST IN CERTAIN CIRCUMSTANCES.

SO THE NOTION THAT SOMEHOW THE VOTERS DON'T UNDERSTAND THAT AND THIS IS GOING TO FOOL THEM INTO THINKING THEY DON'T CURRENTLY HAVE ANY ACCESS TO SOLAR SEEMS TO ME TO BE FANCIFUL.

WHAT AM I MISSING THERE?

>> I WOULD ARGUE--

>> DON'T WE HAVE TO TAKE INTO ACCOUNT THE KIND OF COMMON SENSE UNDERSTANDING ABOUT THINGS AND GENERAL KNOWLEDGE THAT'S OUT THERE?

WE CAN'T JUST PUT THAT ASIDE AND LOOK AT THIS IN SOME KIND OF NARROW WAY THAT DISCOUNTS WHAT EVERYBODY KNOWS.

>> WELL, IF YOU LOOK AT EVANS V. FIRESTONE, EVANS V. FIRESTONE BASICALLY SAYS THAT YOU CANNOT-- YOU CAN'T LEAD THE VOTERS TO VOTE FOR SOME CONSTITUTIONAL AMENDMENT TO CREATE A RIGHT THEY ALREADY HAVE.

IN THAT CASE IT WAS CIVIL ACTIONS, SUMMER JUDGMENTS AND THINGS LIKE THAT.

HERE, THERE'S NO DOUBT THAT THIS IS CREATING THE IMPRESSION THAT IN ORDER TO USE SOLAR ENERGY, YOU'VE GOT TO VOTE FOR THIS AMENDMENT WHEN YOU ALREADY HAVE THAT RIGHT.

THAT'S THE POINT.

THAT'S WHY IT'S MISLEADING.

AND WHAT IT DOES, IT CREATES  
CONFUSION IN THE WHOLE AREA OF  
SOLAR ENERGY USE.

THE POINT IS, IT'S A, IT'S A  
SITUATION WHERE THE VOTERS ARE  
TOLD, LED TO BELIEVE HERE  
CLEARLY THAT THEY NEED TO VOTE  
FOR THIS, OR THEY'RE GOING TO  
LOSE SOMETHING, SOLAR ENERGY  
CHOICE.

WHAT DOES THAT MEAN?

THERE'S NO CHOICE AT ALL IN THIS  
AMENDMENT.

THERE'S NO BEEF IN THIS  
AMENDMENT.

THERE'S NO CHOICE.

AND SO THAT'S ANOTHER AREA WHERE  
IT'S MISLEADING.

THERE'S NO CHOICE.

SOMEONE WHO WOULD READ THIS  
WOULD SAY I NEED TO VOTE FOR  
THIS SO I'LL HAVE A CHOICE, AND  
THERE'S NO CHOICE IN THE  
AMENDMENT AT ALL.

>> CAN I ASK YOU A QUESTION  
ABOUT IF TWO AMENDMENTS WERE ON  
THE BALLOT AT THE SAME TIME, AND  
I GUESS YOUR AMENDMENT DID NOT  
GARNER THE NECESSARY SIGNATURES  
TO GET ON THE AMENDMENT.

WHAT WOULD HAPPEN?

AND I GUESS WE'D HAVE TO DECIDE  
OR THE COURT WOULD HAVE TO  
DECIDE, BUT IT WOULD SEEM LIKE  
ONE WOULD CANCEL, ONE WOULD  
CANCEL THE OTHER.

YOU CAN'T BE IN FAVOR OF BOTH  
AMENDMENTS.

>> WELL, I DON'T KNOW.

I MEAN, THERE'S AN ARGUMENT THAT  
THEY BOTH WOULD SURVIVE.

THE PROBLEM IS WOULD THEY  
SURVIVE THE 60-VOTE--

>> NO, I'M NOT SAYING IF THEY  
BOTH PASSED, WOULD THE-- ONE  
SAYS YOU CAN'T DO ANYTHING  
BEYOND LEASE, OWNING SOLAR  
ENERGY FOR YOURSELF.

YOU CAN'T SELL IT TO OTHERS.

AND THE OTHER SAYS YOU CAN SELL

IT UP TO TWO-- WHATEVER THE WATTAGE WAS.

>> WELL--

>> IT DOESN'T SEEM, IT SEEMS THAT ONE IS IF YOU'RE IN FAVOR OF EXPANDED SOLAR ENERGY, YOU WOULD HAVE VOTED FOR YOUR AMENDMENT.

IF YOU DON'T, IF YOU ARE-- BELIEVE THAT IT ALL SHOULD BE REGULATED BY THE PSC AND THAT THERE SHOULDN'T BE ANY EXPANSION BEYOND WHAT THE ELECTRIC UTILITIES WANT, YOU WOULD VOTE FOR THE OTHER ONE, RIGHT? THAT'S HOW--

>> WELL, WHAT THAT WOULD MEAN IS IF BOTH PASS, I WOULD BE UP HERE ARGUING AN INTERPRETATION OF ONE OF THOSE, THAT IT TRUMPS THIS AMENDMENT.

ARE WE IN THE BUSINESS HERE, INITIATIVE OF CREATING AMBIGUITIES IN THE CONSTITUTION? THAT'S WHAT THIS IS.

THERE'S NO QUESTION IN THIS CASE THAT UNDER THE LONG-TERM STANDING OF THE EVANS V. FIRESTONE CASE IS, A SUMMARY IS NOT INTENDED TO-- A SUMMARY IS NOT INTENDED TO LEAD THE VOTER TO ROTE FOR SOMETHING THEY ALREADY HAVE THE RIGHT TO DO. IT WASN'T A CONSTITUTIONAL AMENDMENT, IT WAS A RULE.

>> WELL, NOW THEY'RE SAYING THAT IF YOU WERE IN FAVOR OF SOLAR ENERGY, YOU WOULD WANT TO VOTE FOR THIS AMENDMENT.

>> I WOULD DISPUTE THAT TO THE ENDS OF THE EARTH.

[LAUGHTER]

>> AND WHY WOULD THAT BE?

>> HUH?

>> WHY WOULD THAT BE?

>> WELL--

>> IF YOU READ IT AND IT SAYS "SOLAR CHOICE," SOMEONE THINKS THAT MEANS YOU'RE GOING TO GET EXPANDED RIGHTS.

THEY SAY, NO, IT'S NOT,  
IT'S--.  
>> WELL--  
>> LET ME-- FAVORS SOLAR ENERGY  
THAT WOULD VOTE FOR THIS.  
>> WHAT IS A SOLAR CHOICE?  
WHAT CHOICE IS GIVEN?  
THERE IS NO CHOICE.  
THERE WOULD BE A CHOICE IN THE  
CONTEXT IF BOTH WERE ON THE  
BALLOT AND YOU CAN SKIP OVER ONE  
BALLOT TO THE OTHER, BUT THERE  
IS NO CHOICE GIVEN HERE.  
THAT'S MISLEADING.  
THAT'S ANOTHER MISLEADING ASPECT  
OF THIS CASE.  
THERE IS NO CHOICE.  
>> NOW, DID I HEAR YOU SAY THAT  
UNDER THIS AMENDMENT A CONSUMER  
WOULD NOT-- WHO HAS ACCESS, HAS  
PURCHASED OR LEASED THE SOLAR  
EQUIPMENT AND THEY HAVE EXCESS  
ENERGY, THAT THEY WOULD NOT BE  
ABLE TO, UNDER THIS AMENDMENT,  
SELL IT TO THEIR NEIGHBOR OR  
WHEREVER YOU COULD SELL IT?  
>> NO, THEY COULDN'T, NOT IN THE  
CURRENT--  
>> WHAT IN HERE SAYS YOU CAN'T  
DO THAT?  
>> HMM?  
>> WHAT IN THIS AMENDMENT WOULD  
PROHIBIT YOU FROM DOING THAT?  
>> BECAUSE IT'S THE FACT IT  
CODIFIES OUR  
CONSTITUTIONALLY-CURRENT LAW.  
CURRENT LAW DOES NOT ALLOW YOU  
TO DO THAT.  
THAT'S WHY THE OTHER AMENDMENT  
WAS NECESSARY.  
>> BUT IT DOESN'T SAY THAT IN  
THE AMENDMENT ITSELF.  
>> NO, BUT--  
>> THAT WAS THE QUESTION.  
>> THE OTHER THING WRONG WITH  
THE AMENDMENT IS--  
>> WAIT, WAIT, WAIT.  
LET'S BEFORE WE-- THERE'S  
NOTHING IN THIS PROPOSED  
AMENDMENT, WHETHER WE LIKE IT OR

NOT, THAT PROHIBITS THAT IN THE AMENDMENT THOUGH.

THAT WAS THE QUESTION AS I UNDERSTOOD IT.

>> WELL, IT DOES SAY THE STATE-- THE PROBLEM, THE REASON YOU NEEDED THE BARRIERS AMENDMENT WAS IS THAT THE CURRENT STATUTORY SCHEME OF THE PSC--

>> WELL, IT WOULD GRANT A CONSTITUTIONAL RIGHT THAT DOES NOT EXIST.

JUST LIKE THE PRESENT ONE GRANTS A SPECIFIC CONSTITUTIONAL RIGHT TO PROPERTY.

AS THERE'S A DIFFERENCE BETWEEN THE CLAUSE, IS THERE NOT?

LET ME ASK THIS QUESTION.

IS THERE NOT A DIFFERENCE BETWEEN THE RIGHT TO OWN PROPERTY AND THE SECOND AMENDMENT WITH REGARD TO FIREARMS?

>> WELL, YES, THERE IS.

>> WELL, SEE, THAT'S-- ISN'T THAT WHERE THIS IS?

YOU MAY DISAGREE THAT IT OUGHT TO BE CODIFIED IN THE CONSTITUTION, AND I MAY AGREE WITH THAT WITH YOU.

BUT THAT DOESN'T MAKE IT MISLEADING OR THAT THE RIGHT IS THE SAME.

A CONSTITUTIONAL RIGHT MAY PROHIBIT CERTAIN REGULATIONS THAT COME UP THAT, JUST A GENERAL PROPERTY RIGHT WOULD NOT PROHIBIT.

ISN'T THAT THE CASE?

>> WELL, JUDGE, I DON'T KNOW HOW YOU CAN SQUARE THAT WITH THE EVANS V. FIRESTONE CASE.

>> SO WHAT YOU'RE SAYING THEN IS THAT IT WOULD NOT RECEIVE A HIGHER PROTECTION IN A COURT OF LAW AS A CONSTITUTIONAL RIGHT SPECIFICALLY NOMINATED AS SUCH, JUST A GENERAL RIGHT TO OWN PROPERTY?

>> WELL, I THINK THE EVANS CASE ALSO SAYS IF YOUR INTENT IS TO ELEVATE A STATUTORY RIGHT TO CONSTITUTIONAL STATUS--

>> RIGHT.

>>-- IF THAT'S YOUR INTENT, IT'S TO CAN-- IT'S GOT TO BE DONE CAREFULLY, WITH NO AMBIGUITY.

>> OKAY.

I GUESS IT'S IN THE EYE OF THE BEHOLDER HERE WITH REGARD TO CAREFULLY OR IN THE EYE OF THE BEHOLDER.

I MEAN, I JUST DON'T-- I'M NOT SEEING, AND I'M LOOKING VERY DEEPLY INTO THIS, AND I'M NOT SEEING THE CONFUSION THAT YOU'RE PORTRAYING.

I SEE THIS AS IT MAY BE COMPETING WITH SOME OTHER PROPOSED AMENDMENT, BUT THE QUESTION THAT WE LOOK TO SO WHAT ARE AS FAR AS OUR ANALYSIS? THAT DOESN'T CONTROL OUR ANALYSIS, DOES IT?

?

>> WELL, NO.

BUT I THINK EVANS V. FIRESTONE DOES.

>> WELL, I AGREE WITH THAT.

>> IT DOES.

I MEAN, IT CLEARLY SAYS, IT CLEARLY SAYS THAT YOU CANNOT CREATE A FALSE IMPRESSION.

>> WELL, HERE'S THE THING.

LET ME JUST MAKE SURE BECAUSE JUSTICE QUINCE WAS ASKING ABOUT THE RIGHT TO SELL IT TO OTHERS. THIS RIGHT SIMPLY GIVES A CONSUMER THE RIGHT TO OWN SOLAR EQUIPMENT FOR THEIR OWN USE.

IT CAN DOES NOT ESTABLISH ANYTHING OTHER-- SO IT DOESN'T, I MEAN, RIGHT NOW I DON'T KNOW IF IT'S ALLOWED TO, IF THERE IS A ALLOWANCE TO SELL IT TO OTHERS.

BUT WHAT-- ISN'T THAT THE RIGHT THAT'S ALREADY EXISTING?

I MEAN, IT'S NOT EXPANDING THE RIGHT TO OWN SOLAR ENERGY PANELS.

>> WELL, BUT IF I'M A VOTER IN THE VOTER BOOTH AND I--

>> WELL, I'M ASKING YOU THOUGH, IT DOES SEEM-- THAT'S THE ONLY RIGHT THAT'S ESTABLISHED, IS THE RIGHT TO USE IT INDIVIDUALLY FOR YOURSELF.

IN THE AMENDMENT.

>> WELL, AND IT ALSO GIVES CONSTITUTIONAL STATUTE WHICH IS A SINGLE-SUBJECT PROBLEM.

BASICALLY, IT GIVES--

>> I GUESS YOU DIDN'T REALIZE THAT WAS SORT OF A FRIENDLY QUESTION, BUT THAT'S OKAY.

>> WELL, I--

[LAUGHTER]

I'M SORRY, I DIDN'T CATCH IT.

>> IT DOES SAY SPECIFICALLY FOR THEIR OWN USE, CORRECT?

>> PARDON ME?

>> THE PROPOSED AMENDMENT DOES SAY SPECIFICALLY THAT YOU CAN OWN OR LEASE THIS PROPERTY--

>> FOR THEIR OWN USE.

>>-- FOR YOUR OWN USE.

>> ABSOLUTELY.

>> WHICH WOULD PRECLUDE YOUR USING IT FOR SOMEONE ELSE, CORRECT?

>> RIGHT, RIGHT.

I CAUGHT IT.

SEE, THAT GOES TO THE HEART OF THIS PRIMARY PURPOSE OF THIS AMENDMENT, AND THAT WAS TO KILL THE OTHER AMENDMENT THAT'S GOING TO PERHAPS BE ON THE BALLOT. AND NOWHERE IS THE VOTER TOLD THAT THAT'S THE PRIMARY PURPOSE. NOWHERE.

>> WELL, THEY DON'T HAVE TO--

>> [INAUDIBLE]

>> THEY DON'T HAVE TO SAY, I MEAN, WE'VE HAD SITUATIONS WHERE WE HAD PRO-HETEROSEXUAL MARRIAGE AND ANTI-SAME-SEX MARRIAGE.

I MEAN, YOU DON'T HAVE TO SAY

ONE IS THERE TO KILL THE OTHER.  
THE QUESTION REALLY IS WHERE  
THERE'S SOMEBODY-- WHETHER  
THERE'S SOMEBODY VOTING FOR THIS  
WILL KNOW THEY'RE VOTING FOR IT,  
ARE THEY FOR EXPANDED SOLAR  
ENERGY IN THIS USE OR AGAINST  
IT.

AND I THINK THAT IS WHERE MY  
CONCERN IS, IS ABOUT THE USE IN  
THE BALLOT SUMMARY OF "SOLAR  
CHOICE."

BECAUSE IT'S, AS YOU SAY, YOU  
KNOW, TO ME-- AND WE OBVIOUSLY  
HAVE DIFFERING VIEWS UP HERE--  
THERE REALLY ISN'T A CHOICE.  
THE CHOICE IS THAT YOU GET TO  
OWN IT INDIVIDUALLY, AND THEN ON  
THE OTHER HAND, THEY GET TO  
REGULATE IT EXTENSIVELY AS THEY  
DO NOW.

THAT'S--

>> BUT YOU HAVE TO ASK YOURSELF  
WHAT DOES THE TERM "SOLAR  
CHOICE" MEAN.

THE ONLY REASON THAT IS IN THERE  
IN THE CONTEXT OF THE ROAD THEY  
WERE GOING DOWN WAS TRYING TO  
KILL THE OTHER AMENDMENT.  
THEY USED THE TERM "SOLAR  
CHOICE."

IT HAS NO MEANING.

IT MISLEADS THE VOTER.

THEY THINK WE'RE VOTING FOR  
THAT, WE GET A CHOICE.

>> WELL, ACTUALLY, I THINK IF  
THEY READ THE SUMMARY, THEY READ  
THE SUMMARY, THEY READ THE  
TITLE, IT HAS TO DO WITH RIGHTS  
OF ELECTRICITY CONSUMERS  
REGARDING SOLAR ENERGY CHOICE.  
SO THEY KNOW IT HAS TO DO WITH  
THAT SUBJECT.

BUT THEN THEY GO ON IN THERE X  
THEY'RE GOING TO SEE THAT IT'S  
GOING TO LIMIT THEIR ABILITY TO  
GET A SUBSIDY.

>> WELL, THAT'S PART OF IT,  
BUT--

>> AND THEY'RE GOING TO



UNDERSTAND THAT IN A WAY THIS IS  
A LIMITATION ON THE POTENTIAL  
BENEFITS THAT THEY MIGHT GET.  
ISN'T THAT CORRECT?

BE ALL THEY'VE GOT TO DO IS READ  
THE SUMMARY TO SEE THAT.

>> WELL, THE TERM-- THE PROBLEM  
IS A LOT OF THE--

>> BECAUSE THERE'S SOMETHING IN  
HERE TO PROTECT CONSUMERS WHO DO  
NOT CHOOSE TO USE SOLAR.

>> BUT THERE ARE ALSO  
PROVISIONS-- BUT THE TITLE SAYS  
REGULATING, RIGHTS OF CUSTOMERS.  
BUT THERE ARE PROVISIONS IN HERE  
THAT HAVE NOTHING TO DO WITH  
RIGHTS, THEY'RE REGULATIONS.

>> THAT'S LIKE THE OPPOSITE SIDE  
OF THE SAME COIN.

YOU CAN'T LOOK AT RIGHTS WITHOUT  
LOOKING AT THE LIMITATIONS ON  
THE RIGHTS.

I MEAN, THAT'S JUST--  
THROUGHOUT THE LAW THAT IS THE  
CASE.

>> WHAT WOULD YOU, MINE, WHAT  
WOULD A VOTER THINK WHEN HE  
READS THAT THIS AMENDMENT  
PROTECTS RIGHTS REGARDING A E  
SOLAR ENERGY CHOICE?

WHAT DOES THAT TELL THE VOTER  
WHAT CHOICE THAT THEY'RE MAKING?

>> WHETHER TO HAVE SOLAR OR NOT  
TO HAVE SOLAR.

ISN'T THAT THE CHOICE THAT IT'S  
TALKING ABOUT?

>> THEY WOULD HAVE THE CHOICE  
NOT TO-- RIGHTS REGARDING THAT  
CHOICE?

WELL, I WOULD THINK THAT'S A--

>> IT'S ABOUT THE RIGHTS, IT'S  
ABOUT THE RIGHTS OF PEOPLE WHO  
MAKE THE CHOICE TO HAVE SOLAR.  
I THINK THAT'S WHAT IT'S TALKING  
ABOUT.

>> WELL, WE THINK IT IS, BUT I  
DON'T THINK IT'S CLEAR.

>> WELL, I THINK THAT'S  
PERFECTLY CLEAR.

I DON'T KNOW WHAT ELSE IT COULD

MEAN.

IT'S TALKING ABOUT THE RIGHTS OF PEOPLE WHO CHOOSE SOLAR.

>> WELL, THEY COULD CAN FINISH--

>> AND IT'S CLEAR FROM THE SUMMARY THAT IT DOES PLACE A LIMITATION ON THEM.

I'M NOT SURE IF I BUY THE VIEW THAT, WELL, IF I'M FOR SOLAR, I'M GOING TO VOTE FOR THIS.

I THINK IF I'M FOR SOLAR, I MIGHT WANT A SUBSIDY.

AND I DON'T WANT A LIMITATION ON THAT.

OF COURSE, EVERYBODY'S LOOKING FOR A SUBSIDY IN MANY DIFFERENT CONTEXTS.

>> WELL, TO ME, IF YOU READ THE THRUST OF THE OPINION IN THE FIRESTONE CASE, YOU COULD SAY SOMETHING SUCH AS ELEVATES THE RIGHT TO OWN SOLAR ENERGY TO CONSTITUTIONAL STATUS, OR YOU COULD DO SOMETHING LIKE THAT. BUT YOU CANNOT GIVE THE FALSE IMPRESSION THAT YOU'RE GIVING SOMETHING TO THE VOTER THAT THEY DON'T ALREADY HAVE.

>> WELL, LET ME SEE IF I CAN UNDERSTAND WHAT THE VOTERS ALREADY HAVE.

VOTERS ALREADY HAVE THE RIGHT TO PURCHASE OR LEASE SOLAR EQUIPMENT, CORRECT?

>> RIGHT.

>> AND WHAT CAN THE VOTERS PRESENTLY, WITHOUT CONSIDERATION OF EITHER OF THESE AMENDMENTS, WHAT COULD A CONSUMER DO IF THEY GENERATE MORE SOLAR ENERGY THAN THEY CAN USE?

>> WELL, THE VOTER, A CONSUMER WOULD HAVE THE RIGHT TO DO EXACTLY WHAT THIS AMENDMENT SAID.

THEY WOULD HAVE THE RIGHT TO LEASE OR OWN SOLAR EQUIPMENT INSTALLED ON THEIR OWN PROPERTY FOR THEIR OWN USE.

THAT'S EXACTLY WHAT THIS SAYS.

>> SO ANY EXCESS ENERGY THAT  
THEY WOULD GENERATE IS JUST  
GONE.

>> THEY CAN'T SELL IT.

>> THEY CAN'T--

>> WELL, THEY-- IT MAINTAINS  
THE RIGHT TO HAVE A NET  
METERING, DOESN'T IT?  
IF THEY CAN SELL IT BACK TO THE,  
WHAT THEY DO NOW, WHICH IS  
THERE'S, THEY SELL IT BACK OR  
WHATEVER THE ARRANGEMENT IS BACK  
TO THE UTILITY.

>> BUT--

>> DO YOU THINK IT PROHIBITS  
THAT?

THAT IT PROHIBITS NET METERING?

>> NO, I DON'T THINK IT DOES.

>> IT DOES NOT?

>> NO.

>> DOES IT PROHIBIT A NET EFFECT  
LEASE?

>> NO.

IT BASICALLY PUTS IN PLACE THE  
MAJORITY OF THE RIGHTS THAT ARE  
ALREADY HERE WHICH MAKES--  
CREATES A FALSE IMPRESSION TO  
THE VOTER THAT HE'S GETTING  
SOMETHING WHEN HE VOTES FOR  
THIS, AND HE'S NOT.

THERE'S NO SOLAR CHOICE HERE.  
EVANS SAYS WITH A PROPOSITION  
YOU CANNOT CREATE A FALSE  
IMPRESSION IN THE BALLOT  
SUMMARY--

>> SO YOU THINK IT SHOULD HAVE  
SAID THIS IS THE ANTI-SOLAR  
ENERGY AMENDMENT.

>> NO, I DON'T THINK IT HAD TO  
SAY THAT.

I THINK IT--

>> [INAUDIBLE]

>> IF YOU READ EVANS, I THINK IT  
SHOULD HAVE SAID THIS AMENDMENT  
ELEVATES THE CONSTITUTIONAL  
STATUTE, EXISTING CONSUMER  
RIGHTS, OR SOMETHING LIKE THAT.  
NOT THAT IT CREATES SOMETHING,  
THE FALSE IMPRESSION YOU'RE

GETTING SOMETHING YOU DON'T  
ALREADY HAVE BECAUSE YOU'RE NOT  
GIVEN A CHOICE.

YOU'RE NOT GIVEN SOMETHING YOU  
DON'T ALREADY HAVE.

EVANS WAS A VERY NARROW CASE.  
IN THAT CASE THE ISSUE WAS  
SUMMARY JUDGMENT RULES AND  
THINGS LIKE THAT, SUMMIT TO A  
CONSTITUTIONAL AMENDMENT--  
SUBJECT TO A CONSTITUTIONAL  
AMENDMENT WITHOUT EXPLAINING TO  
THE VOTER THAT YOU ALREADY HAVE  
THOSE RIGHTS, IT'S MISLEADING.  
IT'S MIS-- IF THE VOTER IS  
MISLED, IF THEY READ A BALLOT  
SUMMARY AND IT CREATES A FALSE  
IMPRESSION THAT YOU'RE GETTING  
SOMETHING CONSTITUTIONALLY YOU  
DON'T ALREADY HAVE, NOT JUST  
THAT YOU'RE GETTING  
CONSTITUTIONAL STATUS, THAT  
YOU'RE GETTING SOMETHING YOU  
DON'T ALREADY HAVE, IT'S  
MISLEADING.

AND THAT'S WHAT THIS DOES, IT  
MISLEADS THE CONSUMER.

YOU READ EVANS, I THINK EVANS IS  
CLEAR.

EVANS IS CLEAR.

THAT IT?

>> THAT'S IT.

>> OKAY, THANK YOU.

[LAUGHTER]

THANK YOU, COURT.

>> MAY IT PLEASE THE COURT, I'M  
DAVID GUEST REPRESENTING  
ENVIRONMENTAL FLORIDA, PROGRESS  
FLORIDA AND THE ENVIRONMENTAL  
CONFEDERATION OF SOUTHWEST  
FLORIDA.

JUSTICE LEWIS, YOU ASKED THE  
QUESTION OF HOW IS THIS  
DIFFERENT THAN A RIGHT TO, YOU  
KNOW, GUN OWNERSHIP THAT'S  
SUBJECT TO REGULATION.

AND THE QUESTION IS, HOW DOES  
THAT, HOW IS THAT DIFFERENT  
HERE?

HOW IS IT DIFFERENT THAN BEING

SUBJECT TO REGULATION?  
AND I THINK THAT, FIRST, IN THE  
EVANS CASE THERE'S A RIGHT TO  
DUE PROCESS WHICH IS ARTICULATED  
IN A FORM WHICH IS THE SUMMARY  
JUDGMENT RULE.

SO DO RIGHTS ALREADY EXIST.  
AND THEN THE QUESTION BECOMES  
WHAT RIGHTS DO YOU NOW HAVE.  
AND THERE ARE MANY RIGHTS THAT  
YOU HAVE RIGHT NOW.

FIRST, YOU HAVE A RIGHT UNDER  
SECTION 163 .04 TO HAVE NO  
ZONING THAT PROHIBITS SOLAR, TO  
HAVE THAT.

SECONDLY, YOU HAVE A STATUTORY  
RIGHT TO NET METERING.

360-- 399 1.66, A STATUTORY  
RIGHT TO IT.

YOU ALSO HAVE A RIGHT UNDER THE  
PUBLIC SERVICE COMMISSION  
CONTROLLING RULES, CHAPTER 25,  
SECTION 6.065, SUB 4E THAT SAYS  
SPECIFICALLY THAT UTILITIES  
CANNOT CHARGE HIGHER RATES FOR  
SOLAR USERS THAN OTHER SOLAR  
USERS.

SO THIS LOOKS A LOT MORE LIKE  
THE SUMMARY JUDGMENT IN EVANS  
WHERE THEY ALREADY HAVE THE RULE  
THAN IT DOES HIKE THE GUN  
OWNER-- LIKE THE GUN OWNERSHIP  
THING.

TURNING NOW TO THE MATTER OF  
DECEPTION.

WHAT IT SAYS IS NO SUBSIDIES,  
THAT INSURE NO SUBSIDIES FOR  
SOLAR USERS BY NOT SOLAR USERS  
FOR BACKUP POWER.

BACKUP POWER MEANS TO, IN COMMON  
PARLANCE, A GENERATOR USED  
DURING UNEXPECTED, UNSCHEDULED  
POWER OUTAGES SUCH AS  
HURRICANES.

AND THAT DEFINITION IS THE SAME  
LEGAL DEFINITION USED BY THE  
FEDERAL ENERGY REGULATORY  
COMMISSION WHICH SAYS BACKUP  
POWER MEANS FOR UNSCHEDULED  
OUTAGES.

THAT RULE, INCIDENTALLY, IS ADOPTED BY REFERENCE BY THE FLORIDA PUBLIC SERVICE COMMISSION.

SO THAT'S THE DEFINITION--

>> BUT ISN'T THAT AN ENTIRELY DIFFERENT CONTEXT THAN HERE?

I MEAN, WOULDN'T-- ISN'T THE MORE NATURAL UNDERSTANDING OF THIS TO MEAN THAT BACKUP POWER FOR WHEN YOU CAN'T GET YOUR POWER FROM SOLAR?

>> NOT AT ALL.

BECAUSE, FIRST OF ALL, I THINK IF YOU DON'T WANT TO-- IF YOU WANT TO DEPART FROM COMMON PARLANCE, IN FACT, IF YOU LOOK IN THE DICTIONARY, COMMON PARLANCE, LOOK IN THE DICTIONARY, IT SAYS "UNEXPECTED OUTAGES."

THAT'S THE FERC AND THE PSC INTERPRETATION.

SO, NO, THAT'S NOT AN AVAILABLE INTENTION.

AND SO-- INTERPRETATION.

SO THE DEFINITION IN THE TEXT VARIAN I HAVES-- VARIES COMPLETELY FROM THE DICTIONARY DEFINITION OF BACKUP POWER AND THE LEGAL DEFINITION OF BACKUP POWER.

AND THAT'S DECEPTIVE.

WHY IT'S DECEPTIVE IS BECAUSE WHAT YOU'RE ACTUALLY GETTING HERE IS CONSTITUTIONALIZING THE EXISTING RIGHTS THAT I ARTICULATED BEFORE WHICH IS IT'S A WIDELY POPULAR THING, SOLAR'S A WIDELY POPULAR THING, AND PEOPLE WANT IT.

SO JUST LIKE EVANS, THEY'RE GETTING LURED INTO THINKING THEY'RE GETTING SOMETHING BIG AND NEW BUT, IN FACT, THEY'RE GETTING RESTRICTIONS.

SO, AND LET ME TURN TO THE P.W. VENTURES ISSUE.

>> LET ME JUST GO BACK TO THAT THOUGH--

>> GO AHEAD.

>> AS FAR AS WHETHER IT'S SAYING ONE THING AND IT'S GOING TO MAKE PEOPLE THAT WANT SOLAR ENERGY TO THINK SOMETHING DIFFERENT.

YOU WOULD AGREE THAT WE READ THE BALLOT TITLE IN CONJUNCTION WITH THE BALLOT SUMMARY.

SO IF THE BATTLE-- THE BALLOT TITLE SAYS RIGHTS REGARDING SOLAR ENERGY CHOICE BUT THEN THE SUMMARY SAYS, WELL, YES, YOU HAVE THIS RIGHT TO OWN IT INDIVIDUALLY, BUT YOU ALSO, THERE'S THE ABILITY TO REGULATE IT, DON'T YOU BY READING IT TOGETHER REALIZE THAT THIS IS NOT A PRO-SOLAR ENERGY AMENDMENT?

>> I DON'T THINK SO AT ALL FOR TWO REASONS.

FIRST OF ALL, IT ACTS AS IF IT'S ESTABLISHING A NEW CONSTITUTIONAL RIGHT WHICH IT DOESN'T, WHICH WE TALKED ABOUT A MOMENT AGO.

BUT SECONDLY, WHAT IT DOES, IT CREATES AN ILLUSION.

BECAUSE WHEN YOU SEE THE TERM "SUBSIDY FOR BACKUP POWER," PEOPLE WOULD THINK A CHECK OR A TAX CREDIT OR SOMETHING OF THAT CHARACTER FOR A GENERATOR.

AND THAT'S NOT WHAT IT IS AT ALL.

THAT'S A COMPLETE DEPARTURE FROM SOLAR ENERGY CHOICE.

IT'S ACTING LIKE IT'S A TRIVIAL Y'ALL LIMITATION, BUT IT'S A HUGE LIMITATION.

>> COULD YOU EXPLAIN THAT AGAIN? BECAUSE YOU WENT PAST ME ON THAT.

>> WELL, IT SOUNDS LIKE YOU'RE CREATING A NEW, ESTABLISHING A NEW CONSTITUTIONAL RIGHT WHERE YOU ALREADY HAVE A WHOLE--

>> RIGHT, NO, THE SECOND PART ABOUT SUBSIDIZING.

>> WELL, SO WHAT A COMMON VOTER

WOULD SEE WHEN THEY SEE THE WORD  
"SUBSIDIZE" IS A CHECK OR A TAX  
CREDIT--

>> DID YOU SAY A CHECK OR CASH  
CREDIT.

>> TAX CREDIT.

>> TAX CREDIT.

>> MAYBE A PROP SUBSIDY OR  
SOMETHING LIKE THAT.

BUT WHAT ACTUALLY HAPPENS IN THE  
AMENDMENT THE WAY THEY DEFINE IT  
IS THAT IF YOU HAVE THE SAME  
ELECTRIC RATE FOR SOLAR AND  
NONSOLAR, THAT'S A SUBSIDY.  
AND FOR-- IN NO REASONABLE  
VOTER WOULD THINK THAT CHARGING  
THE SAME RATE FOR SOLAR AND  
NONSOLAR USERS IS A SUBSIDY.  
AND, INDEED, THE CONTROLLING LAW  
THAT YOU'RE ENTITLED TO THE SAME  
RATE.

SO WHAT IT'S DOING IS IT'S NOT  
SUGGESTING, IT'S NOT INDICATING  
THAT YOU'RE SUBSIDIZING  
SOMETHING LIKE A BACKUP  
GENERATOR IS WHAT IT LOOKS LIKE.  
WHAT YOU'RE ACTUALLY DOING IS  
ADVOCATING REPEAL OF THE RIGHT  
OF SOLAR USERS TO HAVE THE SAME  
RATE.

>> SO YOU'RE SAYING THAT THIS  
WOULD ALLOW THE ELECTRIC  
UTILITIES TO CHARGE MORE FOR THE  
ELECTRIC POWER THAT HAY USE.

>> NO.

IT DOES NOT ALLOW ANYTHING.  
IT SIMPLY, IT'S SIMPLY AN  
ENFORCEMENT OF THE POWERS, THE  
ABILITIES OF GOVERNMENTS TO  
AVOID SUBSIDIES BY NONUSERS OF  
USERS.

>> BUT COULDN'T THE, I MEAN, YOU  
SAY THAT SOLAR USERS AND THOSE  
OF TRADITIONAL ELECTRIC POWER  
HAVE TO BE GIVEN THE SAME RATE,  
CORRECT?

>> THAT IS CONTROLLING LAW.

>> THAT IS THE-- BUT COULDN'T  
THAT BE CHANGED EVEN WITHOUT  
THIS KIND OF AMENDMENT?



>> THAT'S RIGHT.  
IT COULD, ACTUALLY, BE CHANGED.  
IT WOULD BE A SEA CHANGE.  
IT WOULD BE A SEA CHANGE IN HOW  
SOLAR IS DEALT WITH HERE ON A  
SEA CHANGE ADVERSE TO SOLAR.  
AND WHAT, WHAT'S GOING ON HERE  
IS THEY'RE SAYING YOU RETAIN THE  
ABILITIES TO GET RID OF NET  
METERING.

IT DOESN'T SAY THAT, FIRST, IT  
DOESN'T SAY YOU ARE RETAINING  
THE ABILITIES TO GET RID OF NET  
METERING OR THE RULE THAT SOLAR  
GETS, PAYS THE SAME AS NONSOLAR.

>> DO ALL USERS OF ELECTRICITY  
IN FLORIDA PAY THE IDENTICAL  
RATE?

>> WELL, NO.

NO.

>> WELL, I MEAN, THAT'S JUST  
WHAT YOU CARING-- ARGUED AND  
MADE A STATEMENT TO THIS COURT  
ON.

YOU SAID ALL RATE USERS, ALL  
USERS PAY THE SAME RATE.

>> NO, I DON'T MEAN THAT.

IF I SAID THAT, I WAS INCORRECT.  
WHAT I MEAN--

>> SO WHAT WE DO HAVE IS  
DIFFERENT RATES FOR DIFFERENT  
CATEGORIES OF USERS IN FLORIDA.

>> ABSOLUTELY.

THAT'S CONTROLLING LAW.

>> AND WHATEVER IT IS, IT IS.  
AND THAT'S A RECOGNITION BUILT  
INTO THE SYSTEM FOR MAKING RATES  
EQUITABLE AND NOT DISCRIMINATORY  
IN SOME FASHION.

>> WELL, ACTUALLY--

>> WELL, I MEAN, THAT'S THE  
BASIS FOR IT.

>> WELL, LET ME BE CLEAR WHAT  
THE LAW IS, NOT WHAT THE THEORY  
IS.

THE LAW IS THAT YOU CANNOT  
CHARGE MORE FOR SOLAR USERS.  
THAT IS CHAPTER 25, 6.065, SUB  
4E, A PROHIBITION.  
AND THAT PROHIBITION IS PROPOSED

TO BE LIFTED.

AND I THINK IN UNDERLYING YOUR QUESTION IS I THINK THE QUESTION IS, WELL, IF ALL IT'S DOING IS SIMPLY RESTATING THE EXISTING POWERS, IT REALLY IS MORE THAN THAT.

BECAUSE WHAT IT IS, IT'S AN ENDORSEMENT, IT'S A CONSTITUTIONAL ENDORSEMENT OF THE PROPOSITION THAT THE GOVERNMENT, THAT THE GOVERNMENT SHOULD CONSIDER THE EQUAL RATE PRINCIPLE IN 4E AS BEING A SUBSIDY.

NO REASONABLE PERSON WOULD THINK EQUAL RATES IS A SUBSIDY.

NO ONE WOULD THINK THAT.

AND SO THAT'S AN ILLUSION.

AND YOU CAN'T START WITH THE PROPOSITION THAT WHEN YOU HAVE A CONSTITUTIONAL MANDATE, I MEAN, A CONSTITUTIONAL SUGGESTION OF THAT SORT, THAT THIS-- REALLY THAT THE NET METERING RULE AND THE EQUAL RATE RULE SHOULD BE REPEALED, THAT IT WOULD BE DISREGARDED.

THE TEST CAN'T BE WHETHER IT IS LIKELY THAT THE RESULTS SOUGHT BY THE MANDATE WILL COME TO PASS.

THE STANDARD HAS TO BE ARE YOU MISLEADING THE VOTERS ABOUT WHAT THEY'RE ENDORSING.

AND, INDEED, HOW EFFECTIVE IS IT LIKELY TO BE?

OUR COLLEAGUES AT THE UTILITIES IN THEIR INITIAL BRIEF AT PAGE 4 SPECIFICALLY STATED THIS IS A CONSTITUTIONAL MANDATE.

I THINK IT IS A FAIR READING OF IT, THAT THERE IS A HOPE OR PERHAPS AN EXPECTATION THAT THE LAW WILL CHANGE AS A CONSEQUENCE OF THIS TO GET RID OF THE EQUAL RATES FOR SOLAR AND THE NET METERING.

AND THAT IS COMPLETELY INVISIBLE

IN THIS SUMMARY.

THAT'S WHY IT'S DECEPTIVE.

THANK YOU, YOUR HONOR.

>> THE, AS JUSTICE PARIENTE CLARIFIED, YOU HAVE TO READ THE TITLE AND THE SUMMARY TOGETHER, NOT SEPARATELY.

AND TAKING THE TITLE AND THE SUMMARY, READING THEM TOGETHER YOU, THE VOTER GETS THE DISTINCT IMPRESSION OF WHAT THE AMENDMENT IS ABOUT.

BECAUSE THE SUMMARY VIRTUALLY QUOTES VERBATIM WHAT THE AMENDMENT IS.

>> WITH BUT I CAN'T-- I GUESS MY FRUSTRATION IS I CAN'T FIGURE OUT WHAT IT'S ABOUT.

I MEAN, I'M TRYING TO NOT LOOK AT WHO'S PROPOSING IT AND WHO'S OPPOSING IT, JUST TAKING IT FAIR.

THE LAST STATEMENT THAT MR. GUEST MADE WAS THAT RIGHT NOW THERE ARE EQUAL RATES FOR ELECTRICAL CONSUMERS AND THOSE THAT ONLY USE THE ELECTRICAL UTILITY, POWER LESS OFTEN. IS HE CORRECT THAT THIS, UNDER THIS CONSTITUTIONAL AMENDMENT THAT COULD BE ELIMINATED BECAUSE IT COULD BE CONSIDERED TO BE A SUBSIDY?

>> IT COULD BE CONSIDERED TO BE A SUBSIDY, BUT IT DOESN'T HAVE TO BE CONSIDERED A SUBSIDY.

>> WELL, WHAT IS THE SUBSIDY THAT THIS IS PROHIBITING?

>> WELL, FOR EXAMPLE-- WELL, THERE IS NO SUBSIDY THAT THIS IS PROHIBITING.

THIS IS ALLOWING THE LEGISLATURE AND LOCAL GOVERNMENTS, THE PSC, TO RETAIN THEIR ABILITIES TO INSURE THAT THERE ARE NO SUBSIDIES.

THE LEGISLATURE AND THE PSC COULD DETERMINE THE DAY AFTER THIS AMENDMENT THAT CURRENTLY THERE ARE NO SUBSIDIES.

THAT IS THE REALM--

>> BUT WHAT IS THE SUBSIDY?  
IS IT THAT-- AGAIN, THEY'RE  
PAYING THE SAME AMOUNT-- IF  
THEY'RE PAYING THE SAME AMOUNT,  
THAN ARE THOSE THAT USE ONLY  
ELECTRIC POWER SUBSIDIZING THOSE  
THAT ARE USING A COMBINATION?  
I MEAN, THAT'S--

>> THERE'S NOTHING IN THIS  
AMENDMENT THAT SAYS ONE WAY OR  
THE OTHER WHETHER THAT'S THE  
CASE.  
THAT'S LEFT TO THE LEGISLATURE.  
>> BUT WHY IS THAT EVEN IN  
THERE?

I GUESS THE QUESTION IS--  
>> BECAUSE THE FIXED COSTS OF  
PROVIDING THE ELECTRICITY GRID  
AS IN P.W. VENTURES, THERE ARE  
CERTAIN FIXED COSTS THAT THAT'S  
WHY WE HAVE MONOPOLIES FOR  
ELECTRICITY, BECAUSE OF THE HUGE  
COSTS OF IMPLEMENTING THE GRID  
AND THE FIXED COSTS OF THAT GRID  
REGARDLESS OF WHETHER ANY  
PARTICULAR USER USES, YOU KNOW,  
THREE MEGAWATTS OR .1 MEGAWATTS  
PER MONTH.

THERE ARE CERTAIN FIXED COSTS.  
>> SO ISN'T THIS SOLAR THING AN  
EFFORT TO SAVE COSTS OF  
ELECTRICITY?

>> YES.

>> OKAY.

THAT'S THE WHOLE PURPOSE OF IT.  
SO IF I INSULATE MY ATTIC AND I  
SAVE 20%, AM I RECEIVING A  
SUBSIDY?

>> NO.

>> WHY IS THIS DIFFERENT?

>> IT MAY NOT BE DIFFERENT.

THAT'S THE WHOLE POINT.

IT MAY NOT BE DIFFERENT.

THAT'S UP TO THE PSC TO  
DETERMINE BECAUSE THERE ARE MANY  
COMPLICATING FACTORS IN  
DETERMINING WHETHER A SUBSIDY  
EXISTS.

THIS IS NOT A JUDGMENT ONE WAY

OR THE OTHER WHETHER THERE IS A  
SUBSIDY.

IT'S ONLY A CLARIFICATION THAT  
DESPITE THE FACT THAT THERE'S A  
RIGHT, THAT DOESN'T PREVENT THE  
LEGISLATURE OR THE PSC--

>> SO THERE IS NO SUBSIDY  
CURRENTLY.

>> I DON'T THINK THERE IS, NO.

>> BUT THERE MIGHT BE ONE IN THE  
FUTURE.

>> THERE MIGHT BE ONE IN THE  
FUTURE, YES.

>> I GUESS THE PROBLEM WITH YOU  
SUBSIDIZE, WHEN WE TALKED ABOUT  
WHEN YOU FIRST CAME UP HERE, IS  
ONE OF THE ONLY TERMS OR THE  
ONLY TERM THAT'S NOT DEFINED.

YOU SAY IT'S COMMONLY  
UNDERSTOOD.

BUT I DO THINK OF A SUBSIDY AS A  
TAX CREDIT, WHAT HAPPENED, YOU  
KNOW, THOSE FARMERS IN THE  
MIDWEST THAT GET SUBSIDIES FOR  
THEIR CROPS, THOSE THAT ARE ON  
FIXED INCOMES AND GET FOOD  
STAMPS, THEY'RE SUBSIDIES.  
THIS ISN'T-- BUT, NO, THAT'S  
NOT WHAT THIS SUBSIDY MEANS.  
AND YET IT'S--

>> YOU HAVE TO TAKE--

>>-- YOU SAY, WELL, EVERYONE  
UNDERSTANDS WHAT IT MEANS.

>> YOU HAVE TO TAKE IT IN THE  
CONTEXT OF WHAT THE AMENDMENT  
SAYS.

IT DOESN'T SAY SUBSIDIZED IN  
ISOLATION FROM THE REST OF THE  
AMENDMENT.

IT SAYS SO THAT THE CONSUMERS  
WHO DO NOT USE SOLAR ENERGY DO  
NOT SUB CITY TEASE THOSE WHO DO.

>> I GUESS, AGAIN, IT GOES BACK  
TO THIS: RIGHT NOW BECAUSE THE  
SOLAR ENERGY CONSUMER GETS THE  
ELECTRICAL POWER AT THE SAME  
RATE, THE ARGUMENT IS THAT SINCE  
I, WHO DO NOT HAVE SOLAR ENERGY,  
I PAY THE SAME RATE, I AM-- IF  
THE RATES GO UP BECAUSE THERE'S

MORE PEOPLE USING SEW-- I'M GOING TO BE SUBSIDIZING THOSE THAT ARE USING SOLAR ENERGY. AND THAT'S--

>> THOSE ARE DEBATES THAT ARE TALKED ABOUT NOW IN THE PSC REGARDING THE REGULATION OF RATES.

THOSE ARE DEBATES THAT WILL CONTINUE.

THE OPPONENTS ARE READING TOO MUCH INTO THIS SIMPLE AMENDMENT TO SAY THAT THERE'S A PARADE OF HORRIBLES, AND THEY'RE SUDDENLY CHANGING EVERYTHING.

>> WOULD YOU BLAME THEM CONSIDERING WHO IS SUPPORTING THE AMENDMENT?

>> I DON'T NECESSARILY BLAME THEM--

>> I MEAN, HONEST, I MEAN, REALLY, WE'RE IN THE REAL WORLD HERE.

>> THE COURT, LOOKS AT IT OBJECTIVELY AND LOOKING AT THE SIMPLE TITLE AND SUMMARY AND THE SIMPLE AMENDMENT, SHOULD COME TO THE SIMPLE CONCLUSION THAT THIS JUST LEAVES IT FOR ANOTHER DAY. ALL OF THESE POLICY CHOICES ARE LEFT FOR ANOTHER DAY.

THE ONLY THING IT DOESN'T DO IS ENSHRINE THE LACK OF A POLICY CHOICE INTO THE CONSTITUTION AS THEIR AMENDMENT WOULD HAVE DONE. AND THAT'S WHY THIS AMENDMENT IS SO SIMPLE AND DIRECT.

IT JUST SAYS, LOOK, WE'RE NOT HERE TO MAKE THOSE POLICY DECISIONS, WE'RE HERE TO INSURE THAT YOU HAVE THE RIGHT TO USE SOLAR EQUIPMENT ON YOUR PROPERTY AND THAT JUST BECAUSE YOU HAVE THAT RIGHT, IT DOESN'T MEAN IT CAN'T BE REGULATED.

>> BUT ISN'T-- AND I DID SAY YOU READ THE TWO TOGETHER. BUT THIS IS, WHAT, EIGHT WORDS, AND IT USES THE WORD "RIGHTS."

>> AND IT SAYS "REGARDING SOLAR

CHOICE."

NOT TO SOLAR CHOICE.

>> WOULDN'T IT BE REALLY TO SAY RIGHTS OF ALL ELECTRICAL CONSUMERS REGARDING SOLAR ENERGY?

I MEAN, BECAUSE THERE'S NO-- THE CHOICE IS, THAT'S THE--

>> IT'S REGARDING THE CHOICE. SO IT'S PROTECTING, WHEN PEOPLE EXERCISE THE CHOICE TO USE SOLAR ENERGY, IT'S PROTECTING THEM AS WELL AS THE NONCONSUMERS OF SOLAR ENERGY.

>> SO THIS SHOULD PASS WITH 100%, EVERYBODY SHOULD WANT THIS WHETHER I'M FOR OR AGAINST SOLAR ENERGY, I WOULD WANT THIS AMENDMENT.

>> I WOULD THINK SO, YES. WE'RE TRYING TO READ TOO MUCH INTO IT TO SAY THAT IT'S ANTI-SOLAR, IT'S NOT.

THE OTHER POINT I WOULD LIKE TO MAKE IS THAT UNLIKE EVANS V. FIRESTONE, WHICH MR. NABORS CITED REPEATEDLY IN HIS ARGUMENT, THIS AMENDMENT SPECIFICALLY STATES THAT IT'LL CREATE A RIGHT IN FLORIDA'S CONSTITUTION.

SO IT'S DIFFERENT FROM EVANS V. FIRESTONE AND OTHER CASES WHERE IT DID NOT, THE AMENDMENT DID NOT EXPLAIN THAT IT WAS ELEVATING A STATUTORY RIGHT TO A CONSTITUTIONAL LEVEL.

BUT ALSO THERE IS NO STATUTORY RIGHT TO USE AND LEASE SOLAR EQUIPMENT RIGHT NOW.

THERE'S NO STATUTE THAT SAYS THAT.

16 3 .04 ONLY PROHIBITS LOCAL GOVERNMENTS FROM OUTLAWING THE INSTALLATION OF SOLAR EQUIPMENT. IT DOESN'T PROHIBIT THE LEGISLATURE OR THE PSC FROM DOING ANYTHING.

SO THERE IS NO STATUTORY RIGHT RIGHT NOW, TO ANSWER JUSTICE

QUINCE'S QUESTION, TO USE SOLAR EQUIPMENT, TO OWN AND LEASE SOLAR EQUIPMENT.

THAT RIGHT DOES NOT CURRENTLY EXIST UNDER FLORIDA STATUTES.

>> IT'S NOT UNDER FLORIDA STATUTE, BUT IT'S YOU WOULD-- IT'S UNDERSTOOD THAT YOU HAVE THE RIGHT TO BUY THAT KIND OF PROPERTY, CORRECT?

>> IT'S BEEN ONGOING, AND IT HASN'T BEEN OUTLAWED, BUT THERE'S NO RIGHT TO IT IN THE STATUTES.

>> BUT THE LEGISLATURE SAID THAT LOCAL PEOPLE CAN'T PROHIBIT THAT, DOESN'T THAT SORT OF IMPLICITLY GIVE THEM A RIGHT TO BUY IT?

>> IT DOESN'T PROHIBIT THE LEGISLATURE FROM PROHIBITING IT, AND IT DOESN'T PROHIBIT THE LOCAL GOVERNMENTS FROM--

>> BUT I THOUGHT YOU SAID THE LOCAL GOVERNMENT CAN'T PROHIBIT IT.

AREN'T THEY IMPLICITLY SAYING IT'S OKAY TO BUY PANELS?

>> YES, BUT IT DOESN'T GO AS FAR AS SAYING THAT YOU HAVE A RIGHT TO OWN AND LEASE THE SOLAR EQUIPMENT.

YOU MAYBE HAVE THE RIGHT TO INSTALL IT, LEASE IT AND NOT OWN IT, THIS GOES FARTHER THAN WHAT THE STATUTE SAYS.

>> THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS. COURT'S IN RECESSION.