

THE SECOND CASE ON THE DOCKET TODAY IS THE ADVISORY OPINION OF THE ATTORNEY GENERAL. COUNSEL, PLEASE STEP FORWARD. YOU MAY PROCEED WHEN YOU'RE READY.

>> GOOD MORNING, MAY IT PLEASE THE COURT, I'M ALLEN WINSOR ON BEHALF OF THE ATTORNEY GENERAL HERE TODAY ON THE ADVISORY OPINION REGARDING THE BALLOT OPINION ENTITLED LIMITS OR BARRIERS TO LOCAL SOLAR ELECTRIC SUPPLY.

THE SPONSOR OF THE INITIATIVE FILED A BRIEF IN FAVOR OF BALLOT PLACEMENT, AND MR. NABORS IS HERE TO PRESENT ARGUMENT ON BEHALF OF THOSE OPPOSING. THE PARTIES HAVE AGREED TO AN ALLOCATION OF TIME.

MR. RICHARD WILL PRESENT ARGUMENT ON BEHALF OF FOUR ELECTRIC PROVIDERS, MR. GRIMES ON BEHALF OF THE COOPERATIVES ASSOCIATION, AND I WILL PRESENT THE ARGUMENT OF THE ATTORNEY GENERAL FOLLOWED BY REBUTTAL, IF ANY.

WITH THE COURT'S PERMISSION, WE'LL BEGIN WITH MR. NABORS.

>> MAY IT PLEASE THE COURT, I'M BOB NABORS, I'M WITH NABORS, GIVLIN AND NICKERSON.

WE REPRESENT FLORIDIANS FOR SOLAR CHOICE, INC.

BILL GARNER, A LAWYER IN OUR FIRM, IS HERE WITH ME.

WE RESERVE A HALF HOUR OF OUR TIME FOR REBUTTAL.

THE-- ON PAGE 6 OF THEIR ANSWER BRIEF, THE MAJOR INVESTOR-OWNED UTILITIES DESCRIBE THE TEST FOR SINGLE-SUBJECT APPLIES AS FOLLOWS: THE TRUE TRUST OF SINGLE-SUBJECT COMPLIANCE IS WHETHER THE OPPONENTS CAN ARGUE A SINGLE SUBJECT THAT IS NARROW ENOUGH TO MEET THE SINGLE-SUBJECT RESTRICTION OF THIS COURT AND STILL ENCOMPASS ALL OF THE PROVISIONS OF THE PROPOSED AMENDMENT.

THE SINGLE SUBJECT IN FRONT OF THE COURT IS NECESSARY TO

ACHIEVE THE DOMINANT PURPOSE.
THE SINGLE SUBJECT, I'LL STATE
IN HONOR OF THE TEST THAT THE
INVESTOR-OWNED UTILITIES HAVE
ADVANCED, THE SINGLE SUBJECT IS
TO ESTABLISH A STATE POLICY TO
PROMOTE LOCAL, SMALL SCALE
SOLAR-GENERATED PRODUCTION OF
ELECTRICITY WHILE LIMITING AND
PREVENTING REGULATORY AND
ECONOMIC BARRIERS TO SOLAR
ELECTRIC GENERATION AND
CONSUMPTION AT THE SOLAR ENERGY
SITE OR ON CONTIGUOUS PROPERTY.
NO MORE, NO LESS.

IT IS A SMALL SCALE
ENCOURAGEMENT AND REMOVAL OF
LIMITATIONS OF REGULATORY
LIMITATIONS ON THE PRODUCTION
AND GENERATION AND SALE OF
LOCALLY-GENERATED SOLAR ENERGY.
IF YOU LOOK AT THE PROPOSAL
ITSELF, IT IS CONSISTENT WITH
THE PROVISION--

>> COULD YOU JUST-- MR. NABORS,
I JUST-- YOU SAID THREE THINGS.
I JUST WANT TO MAKE SURE.

THE TITLE SAYS "SUPPLY."

>> [INAUDIBLE]

>> YEAH.

THE TITLE SAYS "SUPPLY," SO
THERE'S NO BARRIER RIGHT NOW AND
NO REGULATION IF A HOMEOWNER
WANTS TO--

>> NO.

A HOMEOWNER CAN HAVE SOLAR
ENERGY FOR ITS OWN USE, AND ALSO
THERE'S A PROVISION OF TRANSFER
OF EXCESS POWER TO GENERATING OF
SUPPORTING UTILITY.

>> BUT THIS IS-- IT'S NOT JUST
SUPPLY, WHICH WOULD MEAN THE
SALE FROM SOMEBODY--

>> RIGHT.

>> SO THAT'S, BUT THAT'S THE
SINGLE SUBJECT.

>> WHAT IS, WHAT IS REALLY
CHILLED AND PREVENTED IN THE
REGULATORY ENVIRONMENT CURRENTLY
IS A SOLAR ENERGY DEVICE THAT A
PERSON WOULD HAVE.

THEY ARE NOT ALLOWED TO SELL
THAT TO ANYONE ELSE WITHOUT
FOLLOWING THE REGULATORY SCHEME
OF FLORIDA PUBLIC SERVICE

COMMISSION.

SO THE PURPOSE OF THIS IS TO ALLOW ON A SMALL SCALE BASIS, A LIMITED BASIS, THE ABILITY FOR A SOLAR ENERGY DEVICE TO BE SOLD TO EITHER OTHER USERS ON THE SAME PROPERTY OR CONTIGUOUS PROPERTY.

SO IT IS A FREEING OF THE REGULATORY ENVIRONMENT FOR SMALL SCALE SOLAR PRODUCTIONS AND THE SUPPLY OF IT TO A LIMITED GEOGRAPHIC AREA.

SO THAT'S THE PURPOSE, THAT'S THE SINGLE-SUBJECT PURPOSE OF THE AMENDMENT.

IT ISN'T THE PARADE OF HORRIBLES THAT YOU WOULD THINK FROM THE ANSWER BRIEF.

IT IS A LIMITED, SURGICALLY SINGLE SUBJECT THAT IS FOCUSED ON A SPECIFIC GEOGRAPHIC AREA AND A SPECIFIC WATTAGE.

IT IS NOT OPENED UP TO LARGE SCALE SOLAR ENERGY SUPPLY AND SALE.

IT IS LIMITED TO WHAT THE AMENDMENT SAYS ITSELF.

>> WHEN YOU SAID THAT IT BRINGS IT OUTSIDE THE SCOPE OF THE PSC, RIGHT?

>> UH-HUH.

>> DOES IT NOT ELIMINATE ENTIRELY?

>> WELL, IT--

>> [INAUDIBLE]

>> YEAH, THAT WAS PROBABLY TOO NARROW.

WHAT IT DOES, IT BASICALLY ELIMINATES WHAT IS REFERRED TO AS BARRIERS.

IF YOU LOOK AT IT, IT ELIMINATES THE GOVERNMENTAL REGULATION OF RATE, SERVICE OR TERRITORY. THAT'S IN THE FIRST SECTION.

SO THE RATES CHARGED, THE TERRITORY IS WITHIN THE BODY OF THE AMENDMENT, AND THE SERVICE WOULD NOT BE REGULATED BY ANY GOVERNMENTAL REGULATION.

SO IT ELIMINATES THAT FROM REGULATION.

>> WHAT I'M CONCERNED ABOUT IS THE VERY BEGINNING OF THE LANGUAGE SAYS "IT LIMITS OR

PREVENTS BARRIERS."
BUT IN ACTUALITY, IT'S
ELIMINATING, RIGHT?
>> WELL, IT-- IT DOESN'T
ELIMINATE ALL REGULATION.
IT ELIMINATES REGULATION WITHIN
THE CONTEXT OF WHAT IT DEALS
WITH.
>> DOES IT ELIMINATE ALL PSC
REGULATION?
>> IT-- NOT-- IT WOULDN'T
ELIMINATE, IT WOULD ELIMINATE
ALL PSC REGULATION AS TO RATES,
AS TO THE TERRITORY AND AS TO
THE SERVICE.
BUT PSC COULD STILL HAVE IN
TERMS OF IT COULD APPROVE RATES,
FOR EXAMPLE, OF THE ELECTRIC
PROVIDERS WHICH IT HAD
JURISDICTION OVER.
AND THOSE RATES COULD INCLUDE,
LIKE, A STAND-BY CHARGE AS LONG
AS THAT RATE WAS UNIFORMLY
APPLIED.
SO IT WOULDN'T BE, IT WOULDN'T
BE ABSOLUTELY EVERY COLLATERAL
POTENTIAL REGULATION, BUT THIS
IS THE GUTS OF WHAT THE PSC
DOES, THAT IS THE SERVICE, THE
TERRITORY AND THE RATES.
IT WOULD ELIMINATE THEIR
JURISDICTION OVER THIS
PARTICULAR SMALL SCALE--
>> IT WOULD?
>> YES, IT WOULD.
>> IT TAKES THEM OUT?
>> RIGHT.
OR ANY OTHER, OR LOCAL
GOVERNMENT THAT IS TRIED TO DO
THE SAME THING.
OR IT WOULD TAKE OUT ALSO, SAY
THE LEGISLATURE-- THE PSC IS A
FUNCTION OF THE LEGISLATURE.
IT COULD CHANGE IF THERE WAS IN
THE FUTURE A NEW REGULATORY
AGENCY UNDER A DIFFERENT NAME.
IT WOULD INSULATE A SMALL
ENERGY, SOLAR ENERGY ELECTRIC
PROVIDER FROM RATES, SERVICE AND
TERRITORIAL REGULATION.
>> SO HOW DOES THIS APPLY TO THE
SECOND PART OF THAT WHICH WOULD
BE LIMITS OR PREVENTS AN
ELECTRIC UTILITY FROM--
[INAUDIBLE]

>> WELL, WHAT IT DOES, IT ALSO INDICATES-- THAT'S THE OTHER PART OF THE REGULATION WHICH IS MV2.

IT ALSO SAYS A UTILITY CANNOT HAVE A RATE STRUCTURE THAT IMPOSES ON A SOLAR ENERGY PROVIDER, COMMONLY USER OF THE SAME CLASS.

IN OTHER WORDS, IT'S OBVIOUS THAT--

>> SO THEY CAN'T, THIS WOULD PREVENT AN ELECTRIC UTILITY FROM CHARGING PEOPLE WHO HAVE SOLAR ENERGY ALSO FROM HAVING A HIGHER ELECTRICAL RATE THAN OTHER PEOPLE WHO ARE--

>> UNLESS IT COULD BE-- WELL, IT WOULD HAVE TO BE-- IT COULD NOT HAVE A RATE STRUCTURE THAT WOULD APPLY TO A SOLAR ENERGY PROVIDER.

UNDER THIS CASE THAT WAS NOT THE SAME TYPE OF RATE THAT WOULD APPLY UNIFORMLY THROUGH ALL OF ITS CUSTOMERS.

IT COULDN'T DISCRIMINATE, BASICALLY.

WHAT THE LANGUAGE SAYS, IT COULD NOT HAVE ANY SPECIAL RATE THAT ARE NOT IMPOSED ON OTHER CUSTOMERS IN THE SAME CLASS.

NOW, THERE'S BEEN A BIG ARGUMENT IN THE ANSWER BRIEF THAT THAT MEANS SOMEHOW A SHIFTING OF THE COST TO THE STAND-BY COST TO MAINTAIN THE GRID.

THAT DOESN'T MEAN THAT IT COULDN'T BE A STAND-BY TYPE CHARGE OR SOME KIND OF CHARGE IMPOSED ON EVERYONE WHO, BASICALLY, DOESN'T RELY TO A FULL EXTENT ON THE ELECTRIC PROVIDER.

THIS CANNOT DISCRIMINATE.

>> HERE'S MY-- I SEE THIS AS-- I DON'T SEE THIS AS SINGLE-SUBJECT PROBLEM, AND I KNOW THAT IT'S BEEN RAISED BECAUSE IT DOES SEEM THAT IT'S DEALING WITH SOLAR ENERGY.

BUT THE MANY, MANY BRIEFS POINT TO PARTS OF THE SUMMARY THAT THEY CLAIM ARE MISLEADING, AND THE FACT THAT WE'RE HAVING SOME

DIFFICULTY KNOWING IF COULD THE ELECTRIC UTILITY ACTUALLY CHARGE A HIGHER RATE, OR COULD THE PSC REGULATE SOME PART, OR COULD LOCAL GOVERNMENT DECIDE THAT THERE'S A SAFETY ISSUE, IS THAT-- WHAT I'M-- IS THAT SOMETHING THAT'S MISLEADING IN THE SUMMARY OR, LIKE MANY OF THESE AMENDMENTS WHICH MAY EITHER BE GOOD OR BAD PUBLIC POLICY, REALLY FOR THE DEBATE OF THOSE THAT ARE EITHER FOR OR AGAINST IT?

IN OTHER WORDS, THEY, CAN YOU ADDRESS SOME OF THE PARTS THAT THEY ARE SAYING ARE REALLY MISLEADING ABOUT THIS WHICH IS THAT IT SUGGESTS THAT THERE ARE BARRIERS AND THERE REALLY AREN'T BARRIERS OR SOME OF THOSE ARGUMENTS THAT THE BRIEFS HAVE RAISED?

SO IN OTHER WORDS, THE FACT THAT YOU MAY NOT KNOW FOR SURE CAN THE PSC DO THIS OR NOT, IS THAT A DEFICIT THEN IN THE BALLOT SUMMARY?

>> WELL, LET ME, LET'S LOOK AT THE LANGUAGE ITSELF ON THE BALLOT SUMMARY.

THAT'S WHAT THE VOTER WILL HAVE. THE VOTER WILL HAVE THE BENEFIT OF THE PUBLIC DEBATE OF THOSE IN FAVOR OF IT.

OFTEN WHEN THE VOTER GOES INTO THE BALLOT, ALL THEY WILL SEE IS THE BALLOT SUMMARY.

THAT'S WHAT THEY'LL HAVE IN FRONT OF THEM.

THIS COURT HAS OFTEN SAID WHAT DOES THE BALLOT SUMMARY SAY. AND HERE THE BALLOT SUMMARY HAS FOUR COMPONENTS.

THE FIRST THING IT SAYS, IT LIMITS OR PREVENTS GOVERNMENT AND ELECTRIC UTILITY-IMPOSED BARRIERS TO SUPPLYING SOLAR ENERGY.

NEXT SENTENCE THE VOTER WOULD SAY WHAT IS A LOCAL ENERGY SOLAR SUPPLY?

NEXT SENTENCE SAYS LOCAL SOLAR ENERGY SUPPLY IS SOLAR-GENERATED FROM A FACILITY RATED UP TO TWO

MEGAWATTS TO CUSTOMERS AT THE
SAME OR CONTIGUOUS FACILITY.
TELLS THEM WHAT IT IS.
THE THIRD COMPONENT OF THE
BALLOT LANGUAGE IS, IT DESCRIBES
WHAT BARRIERS ARE.
THE VOTER WOULD SAY WHAT DOES IT
MEAN BY "BARRIERS" AND THEY
WOULD READ THE THIRD SEASONS OF
THE BALLOT SUMMARY.
INCLUDING GOVERNMENTAL
REGULATION OF LOCAL SOLAR ENERGY
SUPPLIER GRADE, SERVICE AND
TERRITORY.

OKAY, WHAT OTHER BARRIERS?
AND UNFAVORABLE UTILITY RATES,
CHARGES AND TERMS OF SERVICE
IMPOSED ON LOCAL SOLAR ENERGY
CUSTOMERS.

IT TELLS THE VOTER WHAT THEY'RE
VOTING ON.

THIS COURT HAS RECOGNIZED OFTEN
THAT IN 75 WORDS YOU CAN'T
DISCUSS THE ENTIRE CLIMATE
THAT'S GOING TO BE INVOLVED
IN--

>> I WANT TO ASK YOU A QUESTION
ABOUT THE LIMITING OR
PREVENTING.

IN THE BARRIERS THAT ARE
REFERRED TO THERE IN THE BALLOT
SUMMARY, WHICH OF THOSE BARRIERS
ARE LIMITED AS OPPOSED TO
PREVENTED?

>> WELL, I GUESS--

>> ARE ANY OF THEM LIMITED?

ARE ALL THOSE THAT ARE
SPECIFICALLY ENUMERATED HERE
ACTUALLY PREVENTED?

>> WELL, I WOULD SAY THAT RATES
ARE NOT TOTALLY PREVENTED.

IT SAYS THERE COULD BE RATED
DEALING WITH STAND-BY CHARGES.

>> BUT RATES AS MODIFIED BY
UNFAVORABLE.

IT DEFINITELY PREVENTS
UNFAVORABLE RATES, DOESN'T IT?

>> WELL, I MEAN--

>> I'M ASSUMING THAT "PREVENTS"
IS THE SAME AS "PROHIBITS."

>> WELL, YOU COULDN'T SAY
"PROHIBIT RATES" BECAUSE THERE
MIGHT BE SOME RATES.

IF YOU'RE ACTUALLY ASKING ME IS
THE LANGUAGE TOO SOFT AND IT'S

NOT HARD, THAT SHOULD HAVE SAID
PREVENTING, YOU KNOW, YOU
COULD-- IF I SAID--

>> MY ONLY QUESTION WAS IS THERE
ANYTHING LISTED HERE AMONG THE
BARRIERS THAT WOULD BE LIMITED
AS OPPOSED TO PREVENTED?

AND WHEN I LOOK AT IT AND I
COMPARE THE SUMMARY WITH WHAT'S
BACK IN THE ACTUAL TEXT OF THE
INITIATIVE, I CAN'T SEE ANYTHING
THAT'S ACTUALLY JUST LIMITED
THAT'S ON THE LIST HERE.

>> WELL, I MEAN, I GUESS THE
QUESTION YOU HAVE TO ASK
OURSELVES IS, IS-- WOULD THE
VOTER BE MISLED AS TO WHAT'S
GOING ON IN THIS AMENDMENT BY
THAT TERM.

I MEAN, YOU HAVE-- THE VOTER
WOULD READ AND KNOW THAT
WHATEVER THE RATE REGULATIONS
ARE, THEY'RE GOING TO BE EITHER
REMOVED, LIMITED OR WHATEVER THE
TERM WOULD BE.

THE VOTER KNOWS WHAT THEY'RE
VOTING ON ON THIS AMENDMENT.
A FAIR READING OF THIS LANGUAGE
WOULD INFORM THE VOTERS WHAT
IT'S DOING.

NOW, COULD WE HAVE SAID, COULD
WE HAVE SAID PREVENTING,
PREVENTING, YOU KNOW, PREVENTING
ALL RATES?

WE'VE GOT A 75-WORD LIMIT.

ALSO THAT'S NOT ENTIRELY
ACCURATE.

THERE COULD BE SOME RATES.
THERE MUST NOT BE A BARRIER.
THERE COULD BE SOME--

>> [INAUDIBLE]

>> HUH?

>> IT DOESN'T ALLOW WHAT YOU
CHARACTERIZE AS UNFAVORABLE
RATES.

>> WELL, THE TERM "RATE, SERVICE
AND TERRITORY"'S IN THE SECOND
SENTENCE.

>> LET ME ASK YOU ANOTHER
QUESTION.

>> YEAH.

>> WHAT PROVISION IN THE
INITIATIVE ACTUALLY ADDRESSES
THE ZONING POWERS OF LOCAL
GOVERNMENT?

DOES THAT COME IN THE REFERENCE TO TERRITORY, OR IS THAT SOMEWHERE ELSE?

>> WELL, THE ZONING POWER IS IN THE AMENDMENT ITSELF, THE ZONING POWER IS AN EXERCISE OF THE POLICE POWERS FOR REGULATORY POWER OF LOCAL GOVERNMENT. AND THE PROVISION MAKES IT CLEAR THAT IT HAS TO POLICE POWERS. IT DOES NOT ELIMINATE POLICE POWERS EXCEPT TO THE EXTENT THEY PROHIBIT--

>> WHAT DOES THIS TALK ABOUT TERRITORY MEAN? THAT DOESN'T HAVE ANYTHING TO DO WITH ZONING?

>> NO.

>> WELL, OKAY.

WHERE, WHERE IN THE, WHERE IN THE BALLOT SUMMARY DOES, WOULD THE VOTER GET ANY IDEA THAT THE AUTHORITY OF LOCAL GOVERNMENTS TO IMPOSE ZONING REGULATIONS IS GOING TO BE AFFECTED?

>> IS GOING TO BE AFFECTED?

WELL, IT--

>> IS THERE ANYTHING IN THE BALLOT SUMMARY ABOUT ZONING AT ALL?

>> NO, THERE ISN'T.

>> IS THAT, IS THAT A PROBLEM? ISN'T THAT A PRETTY SIGNIFICANT, ISN'T THAT A PRETTY SUBSTANTIAL--

>> WELL, CURRENTLY, YOU KNOW, CURRENTLY THE CURRENT LAW IS IT'S NOT A CONSTITUTIONAL AMENDMENT, CURRENT LAW PROHIBITS ANY DISCRIMINATORY ZONING THAT RESULTS IN THE PROHIBITION OF SOLAR ENERGY OR ANY OTHER ALTERNATIVE ENERGY SOURCE. THE ZONE, THE POLICE POWER IS ONLY AFFECTED AND IS A CAUSE IN HERE WHICH IS AN OVERLY CAUTIOUS CLAUSE IN THE BODY OF THE AMENDMENT WHICH INDICATES THAT IT DOES, IN EFFECT, THAT POLICE POWER MAY PROHIBIT SOLAR ENERGY GENERATION AND SALE. IT MAY PROHIBIT THAT. SO THE ZONING WOULD SURVIVE. THE ZONING WOULD SURVIVE, AND ANY EFFECT ON IT WOULD BE DE

MINIMIS ONLY IF IT RESULTED IN
THE PROHIBITION.
WOULD IT BE HELPFUL IF THERE WAS
ANOTHER SENTENCE IN THE 75
WORDS?

DEPENDS ON THE PICK-AND-CHOOSE
YOU HAVE TO MAKE.

>> I'M TRYING TO UNDERSTAND
THIS.

IF SOMEBODY WANTS TO PUT AN
ARRAY, A SOLAR POWER ARRAY ON A
FIVE-ACRE TRACT, I MEAN, IS THAT
THE SORT OF THING-- THAT'S
ADJACENT TO ANOTHER TRACT OF
LAND THAT WOULD BE WHERE THERE'S
A FACILITY THAT WOULD BE SERVED
BY THE SOLAR POWER GENERATED ON
THE ADJACENT TRACT, THEY CAN PUT
IT THERE.

AND THERE'S NOTHING LOCAL
GOVERNMENT CAN DO ABOUT THAT,
RIGHT?

>> THEY CAN'T PROHIBIT IT FROM
BEING PLACED THERE.

THEY COULD PUT REGULATIONS ON
SCREENAGE AND COVERAGE AND DO
ALL-- WE CITED A CASE, AN
ORMOND BEACH CASE, WHICH DEALT
WITH A STATUTE DEALING, IN THIS
CASE IT DEALT WITH WINDMILLS.

THERE'S A STATE STATUTE THAT
SAYS YOU CANNOT HAVE ZONING
REGULATIONS THAT PROHIBIT
ALTERNATIVE ENERGY DEVICES.

AND THE QUESTION THERE WAS THE
HEIGHT AND THE LOCATION OF THE
SOLAR ENERGY.

THE COURT SAID YOU COULD DO THAT
BECAUSE THEY COULDN'T PROHIBIT
IT.

THERE'S A WHOLE RANGE OF
ACTIVITY LOCAL GOVERNMENTS CAN
DO AS LONG AS THEY DON'T
PROHIBIT THE ACTIVITY THAT THE
SINGLE PURPOSE OF THE AMENDMENT
IS ENCOURAGING.

THEY CAN'T PROHIBIT THAT.

BUT THE AMENDMENT ITSELF IS
SURGICALLY CLEAR AS TO WHAT ITS
ROLE IS ON THE POLICE POWER.
THE FACT THAT IT DOES NOT AFFECT
THE POLICE POWER UNLESS THE
POLICE POWER IS A PROHIBITION ON
THE SINGLE SUBJECT THAT'S BEING
ADVANCED.

SO I WOULD ARGUE ON THE USE OF
THE WORD "BARRIER," JUSTICE
PARIENTE.

COULD THERE BE ANOTHER WORD
CHOSEN THAN BARRIER?

IT IS A BARRIER.

IT IS THE EXISTENCE OF THE
CURRENT REGULATORY ENVIRONMENT
PREVENTS THIS ACTIVITY FROM
OCCURRING, SO IT'S A BARRIER.

I MEAN, IT'S-- I THINK THAT YOU
HAVE TO ASK YOURSELF IF YOU'RE A
VOTER WALKING BLINDLY INTO THE
BALLOT NOT HAVING THE ADVANTAGE
OF THINKING ABOUT THIS AND YOU
READ THE BALLOT LANGUAGE, ARE
YOU BEING INFORMED AS TO WHAT
YOU'RE VOTING ON?

I THINK IT'S CLEAR THAT YOU ARE
IF YOU LOOK AT THE COMPONENTS IN
THE BALLOT LANGUAGE.

IT IS DIRECT, IT TELLS WHAT A
LOCAL SOLAR ENERGY SUPPLIER IS,
IT DESCRIBES WHAT THE BARRIERS
ARE, AND IT INDICATES THAT
THAT'S THE DOMINANT PURPOSE.
SO THE THING THAT WE'VE ALWAYS,
TO ME, GOT TO KEEP IN MIND IS,
IS THAT--

[INAUDIBLE]

DECIDE WHETHER SOMETHING WILL BE
NOT BEFORE THE VOTERS.

AND IT'S A DEFERRAL STANDARD.

IF THE COURT SHOULD DEFER, IS
THERE A PLACE FOR THE VOTERS
UNLESS IT'S CLEARLY AMBIGUOUS OR
MISLEADING.

AND IT'S HARD FOR ME TO MAKE THE
ARGUMENT THAT IN A 75-WORD LIMIT
THAT THERE'S ANYTHING MISLEADING
ABOUT THIS BALLOT LANGUAGE.

IT MAY NOT BE WISE, THE
UTILITIES OBVIOUSLY DON'T LIKE
IT.

IT MAY BE THE END OF REGULATORY
ENVIRONMENT AS WE KNOW IT.

IT'S NOT.

IT'S LIMITED, IT'S SURGICAL.

IT DEALS WITH A WATTAGE THAT IS
FOR THE NET METERING RULE.

IT'S A KNOWN COMMODITY.

THE GEOGRAPHIC AREA IS SPECIFIC,
THE VOTER'S TOLD THAT.

SO IT'S HARD FOR ME TO SEE HOW
UNDER THE BAR THAT WE'VE GOT TO

CROSS IT IS PERCEIVED THAT YOU
WOULDN'T LET THE VOTERS SEE
THIS.

THERE WILL BE INTERPRETATIONS OF
THIS.

THERE WILL BE INTERPRETATIONS OF
POLICE POWER.

BUT YOU CANNOT HAVE ALL OF THOSE
DEALT WITH IN A CONSTITUTIONAL
AMENDMENT.

BUT THERE IS A BODY OF LAW THAT
GIVES GUIDANCE IN THIS
INTERPRETATION.

AS I SAID, THE ORMOND BEACH CASE
ON ZONING, AND THERE ARE OTHER
CASES AS WELL.

I'D LIKE TO RESERVE MY TIME FOR
REBUTTAL.

>> MAY IT PLEASE THE COURT, I'M
BARRY RICHARD, AND I AM
REPRESENTING FLORIDA POWER AND
LIGHT, DUKE ENERGY, GULF POWER
AND TAMPA ELECTRIC.

I'D LIKE TO ADDRESS BOTH THE
BALLOT SUMMARY AND THE
SINGLE-SUBJECT PROVISIONS.

WE BELIEVE THAT THIS INITIATIVE
VIOLATES BOTH IN SIGNIFICANT
WAYS.

FIRST OF ALL, WITH RESPECT TO
THE BALLOT SUMMARY THIS
INITIATIVE STRIPS BOTH STATE AND
LOCAL GOVERNMENT FOR THE FIRST
TIME OF THE ABILITY TO REGULATE
RATES, TERRITORY AND SERVICE OF
AN HISTORICALLY
HEAVILY-REGULATED INDUSTRY, A
SIGNIFICANT AND POSSIBLY
INCREASING PORTION OF THAT
INDUSTRY, AND THIS SUMMARY
DOESN'T CONVEY THAT.

IT DOES JUST THE OPPOSITE.

IT CONVEYS THE IMPRESSION TO THE
VOTER THAT THIS IS A MINIMAL
IMPOSITION ON A SMALL SEGMENT OF
AN INDUSTRY.

IN PARTICULAR--

>> WELL, BUT YOU TALKED ABOUT
THE REGULATION OF RATE SERVICE
AND TERRITORY, I THINK.

IT SPECIFICALLY DOES REFER TO
THAT WHEN IT DESCRIBES, WHEN IT
DEFINES "BARRIERS," DOESN'T IT?

>> IT DOES.

HOWEVER, THERE ARE SEVERAL

THINGS WRONG WITH IT.
ONE OF THEM IS WHAT I SAID,
WHICH IS THAT IT FAILS TO CONVEY
THE FACT THAT IT DOESN'T SIMPLY
LIMIT THINGS, IT STRIPS TWO
LEVELS OF GOVERNMENT ENTIRELY
CONSTITUTIONALLY OF THE POWER TO
REGULATE.

THIS SIGNIFICANT SEGMENT AND
GROWING SEGMENT OF AN INDUSTRY
IN WHICH THE CONSTITUTION HAS
LEFT IT TO THE LEGISLATURE AND
TO SOME EXTENT TO LOCAL
GOVERNMENT TO MAINTAIN AN
INTEGRATED, BALANCED, FAIR AND
SAFE SYSTEM THAT'S IMPORTANT TO
EVERY CITIZEN AND EVERY BUSINESS
IN THE STATE.

>> BUT THAT'S-- IT SEEMS TO ME
THAT WHAT YOU'RE ARGUING IS WHY
THE VOTER SHOULDN'T APPROVE IT.
IT DEFINES-- AND, AGAIN, YOU
SAY IT'S A SIGNIFICANT
PERCENTAGE, BUT IT TALKS ABOUT A
CERTAIN AMOUNT OF POWER.
THE AMOUNT IS IN THESE BALLOT
SUMMARIES.

WHAT, HOW MUCH IS IT?
TWO--

>> TWO MEGAWATTS.

>> AND IT TALKS ABOUT CONTIGUOUS
OR ON THE PROPERTY SUPPLYING IT.
WHETHER IT WILL UPEND THE ENTIRE
POWER STRUCTURE, YOU KNOW, THE
ELECTRIC POWER STRUCTURE IN
FLORIDA OR NOT SEEMS TO BE THAT
IT'S TO THE MERITS OF THE
PROPOSAL, NOT THAT IT'S
MISLEADING.

SO COULD YOU ADDRESS HOW IT'S,
HOW IT'S MISLEADING.

>> I'LL GIVE YOU THREE SPECIFIC
EXAMPLES OF HOW IT'S MISLEADING.

>> I MEAN, AGAIN, I UNDERSTAND
THE POWER COMPANIES DON'T LIKE
IT, BUT THAT'S DIFFERENT-- WE
WOULD AGREE JUST LIKE IN MEDICAL
MARIJUANA THAT PEOPLE DIDN'T
LIKE IT, BUT-- AND THE VOTERS
TURNED IT DOWN.

YOU AGREE OUR JOB IS JUST TO
DECIDE WHETHER THE VOTERS CAN
CAST AN INTELLIGENT VOTE BASED
ON THIS BALLOT SUMMARY AND
TITLE, CORRECT?

THAT'S THE SCOPE OF OUR REVIEW.

>> YES.

AND I THINK IT'S FAIR TO SAY THAT THE UTILITIES THAT I REPRESENT DON'T LIKE THIS PARTICULAR INITIATIVE, NOT THAT THEY DON'T LIKE SOLAR POWER.

SECOND, I'LL GIVE YOU--

>> WOULD THIS INCLUDE YOUR CLIENT-- PRECLUDE YOUR CLIENTS FROM SETTING UP THEIR OWN LOCAL SOLAR-POWERED ENTITIES OR SUBDIVISIONS?

THEY WOULD BE ABLE TO DO THIS ALSO, WOULDN'T THEY?

>> I BELIEVE THEY WOULD, ALTHOUGH I WILL SAY THAT THE INITIATIVE IS AMBIGUOUS IN THAT RESPECT.

BUT I BELIEVE THAT THEY WOULD BE ABLE TO.

OKAY, HERE'S WHERE IT'S AMBIGUOUS.

IT CAN BE ARGUED UNDER THIS AMENDMENT THAT TO THE EXTENT THAT THE ELECTRIC UTILITIES BY ENTERING INTO THIS SUB-TWO MEGAWATT FIELD, HAVE CREATED A BARRIER TO THE SOLAR PROVIDERS THAT THIS DEALS WITH, THAT THAT'S A VIOLATION.

I'M NOT SAYING THAT THAT'S WHAT IT SAYS, BUT IT'S AMBIGUOUS IN THAT RESPECT.

SO IN ANSWERING YOUR QUESTION, I DO NOT BELIEVE IT WOULD KEEP THEM FROM ENTERING THIS AREA. BUT IT IS AMBIGUOUS TO.

TO GET BACK TO JUSTICE

PARIENTE'S QUESTION, I SAID THAT THERE ARE SEVERAL WAYS THAT I THINK THAT IT'S MISLEADING.

THE FIRST IS ONE I ALREADY MENTIONED WHICH IS I THINK IT FAILS TO ADEQUATELY CONVEY TO THE EXTENT TO WHICH IT STRIPS BOTH STATE AND LOCAL GOVERNMENT OF THEIR POWERS.

SECOND, IT CLEARLY STATES THAT IT IS REMOVING BARRIERS TO THE IMPLEMENTATION OF SOLAR POWER, AND IT SAYS IT'S REMOVING IT FIRST BY GOVERNMENT AGENCIES, DESPITE THE FACT THAT DEMONSTRABLY THERE IS NO

PROVISION IN FLORIDA LAW, NOR IS THERE ANY INDICATION THAT GOVERNMENT AGENCIES HAVE BEEN CREATING IMPEDIMENTS.

JUST THE OPPOSITE.

AS WE NOTED IN OUR BRIEF, WE HAVE TWO STATUTES THAT SPECIFICALLY ADDRESS THIS, SECTION 288.041 WHICH ENCOURAGES THE IMPLEMENTATION OF SOLAR POWER AND EVEN MORE IMPORTANTLY SECTION 163.04 WHICH EXPRESSLY PROHIBITS GOVERNMENT AGENCIES FROM DOING ANYTHING THAT HAS THE EFFECT OF PROHIBITING THE IMPLEMENTATION OF SOLAR POWER BY ANYONE.

>> BUT THIS ONLY LIMITS IT. IT DOESN'T-- IT SAYS TO RAISE CHARGES OR TERMS OF SERVICE. SO IT'S NOT THAT IT SAYS THAT THEIR POLICY OF THE STATE IS TO PREVENT THE DEVELOPMENT OF SOLAR ELECTRICITY, BUT AS THE-- I DON'T KNOW IF IT'S IN THE PETITION OR IN THEIR ANSWER BRIEF.

I MEAN, RIGHT NOW IN THIS STATE THERE ARE APPARENTLY 6600 SOLAR ELECTRICITY-- SOLAR ELECTRICITY WHEREAS NEW JERSEY HAS 30,000. I MEAN, IN OTHER WORDS, THE FACT THAT WE ARE WHETHER IT'S THE STATES ENCOURAGING OR DISCOURAGING, THIS DEALS WITH REMOVING BARRIERS TO RATES, CHARGES OR TERMS OF SERVICE. IT DOESN'T TALK ANYTHING ABOUT THE, YEAH, THE POLICY OF THE STATE SHALL BE.

SO I DON'T, AGAIN, SEE HOW THAT'S MISLEADING.

>> WHAT THIS SAYS TO THE VOTER IS THERE ARE BARRIERS, AND WE NEED THIS AMENDMENT TO REMOVE THEM.

WHAT'S THE BASIS FOR THAT CONCEPT THAT THERE ARE BARRIERS?

>> BUT THE REFERENCE HERE TO SOLAR, TO LOCAL SOLAR ELECTRICITY IS A TERM OF ART. IT IS DEFINED IN A PARTICULAR WAY WHICH REFERS TO THIRD PARTY SUPPLY.

ISN'T THAT CORRECT?

>> THAT'S CORRECT.

>> SO THIS ARGUMENT YOU'RE MAKING ABOUT THERE NOT BEING BARRIERS TO THESE SOURCES OF SOLAR ELECTRICITY, THEY'RE NOT THIRD PARTY SUPPLIERS, THAT'S KIND OF BESIDE THE POINT BECAUSE THIS IS FOCUSED ON THIRD PARTY SUPPLY.

AND ANYBODY READING THIS AND PAYING ATTENTION TO THE BALLOT SUMMARY IS GOING TO UNDERSTAND THAT IT'S TALKING ABOUT THIRD PARTY SUPPLY.

AND I THINK THAT PARTICULARLY WHEN THE WORD "CUSTOMERS" IS IN THERE.

IF WE'VE GOT A CUSTOMER, YOU'VE GOT A RELATIONSHIP BETWEEN, IN WHICH SOMEONE, ONE ENTITY IS SELLING TO SOMEONE ELSE, ISN'T THAT CORRECT?

>> THAT'S CORRECT.

BUT HERE'S THE PROBLEM.

THIS COURT HAS TOLD US THIS AT LEAST TWO CASES, EVANS V. FIRESTONE AND SAVE OUR EVERGLADES, THAT A SUMMARY CANNOT SUGGEST TO THE VOTERS THAT THERE IS A PROBLEM WHEN THERE'S NO BASIS FOR THAT SUGGESTION.

IN EVANS WHAT THE SUMMARY DID IS IT SAID THAT IT INSURES CITIZENS' RIGHTS AND CIVIL ACTIONS.

AND THIS COURT SAID CITIZENS ARE ALREADY INSURED RIGHTS AND CIVIL ACTIONS BOTH JUDICIALLY AND BY STATUTE, AND ALL YOU'RE DOING IS CONSTITUTIONALIZING IT.

AND IF THAT'S ALL YOU'RE DOING, YOU HAVE TO TELL THE VOTERS THAT.

YOU CAN'T MAKE THE VOTERS BELIEVE THAT THERE'S A PROBLEM WHEN YOU HAVE NO BASIS FOR SAYING IT.

HERE THIS SUMMARY CLEARLY CONVEYS TO THE VOTERS THAT THERE'S A PROBLEM HERE.

WE NEED TO ELIMINATE BARRIERS, AND THERE'S NO EVIDENCE THOSE BARRIERS EXIST, BUT THERE IS CLEARLY STATUTORY PROVISIONS

THAT SUGGEST JUST THE OPPOSITE.
>> WELL, BUT THERE ARE BARRIERS
TO WHAT IS CLEARLY DEFINED HERE
AS LOCAL SOLAR ELECTRICITY
SUPPLY.

>> WELL, WHAT-- ON WHAT BASIS
DO WE SAY THAT THERE ARE
BARRIERS?

>> WHAT AM I MISSING?
I'M TRYING TO FOLLOW HERE.

[LAUGHTER]

>> THERE'S NOTHING IN THE
RECORD, CERTAINLY, AND THERE'S
NOTHING IN THE LAW TO SUGGEST
THAT THE SPECIFIC BARRIERS THAT
THEY'RE SUGGESTING EXIST, IN
FACT, EXIST.

ALL THEY'RE DOING IS
CONSTITUTIONALIZING A POLICY
HERE.

>> SO YOU'RE SAYING THEY COULD
DO WHAT THEY WANT TO DO THROUGH
THIS AMENDMENT WITHOUT THE
AMENDMENT.

THAT WOULD BE UNUSUAL FOR PEOPLE
TO COME TO PASS AN AMENDMENT.
MAYBE SO, I DON'T--

>> NO.

I'M SAYING THEY COULD DO IT, BUT
THEY HAVE TO TELL THE VOTERS,
JUST AS IN EVANS, WHAT THEY'RE
DOING.

>> NO, I THINK THE QUESTION--
THE QUESTION IS, YOU'RE
SUGGESTING THAT PRESENTLY THERE
CAN BE THE SALE BY A LOCAL THIRD
PARTY SUPPLIER WITHOUT HAVING TO
BE SUBJECT TO THE PSC.

THAT'S NOT, THAT'S NOT THE CASE,
CORRECT?

ANYONE THAT IS A SUPPLIER OF
ELECTRICITY, SOLAR ELECTRICITY,
IS SUBJECT TO THE CONTROL, THE
RATE AND THE STRUCTURE OF THE
PSC, CORRECT?

>> YES.

BUT THERE'S NO EVIDENCE THAT PSC
IS IMPOSING BARRIERS AT THE
CURRENT TIME, AND THIS DOES NOT
TELL VOTERS THAT IT IS STRIPPING
THE ENTIRE STATE GOVERNMENT OF A
POWER THAT IT HAS ALWAYS HAD.
WITH THE COURT'S PERMISSION, I'D
LIKE TO-- I'VE GOT JUST TWO AND
A HALF MINUTES LEFT, AND I'D

LIKE TO GO ON, IF YOU DON'T
MIND, YOUR HONOR.
OBVIOUSLY, IT'S WHATEVER THE
COURT WANTS.

I'D LIKE TO GO ON TO THE
SINGLE-SUBJECT ISSUE.
IN HEALTH CARE PROVIDERS, THIS
COURT GAVE US A BRIGHT LINE
PROPOSITION WITH RESPECT TO
SINGLE SUBJECT.

IN HEALTH CARE PROVIDERS, THE
PETITION PROVIDED THAT THE
SELECTION OF A HEALTH CARE
PROVIDER COULD NOT BE RESTRICTED
EITHER BY LAW OR CONTRACT.

AND THIS COURT SAID THE PROPOSED
AMENDMENT COMBINES 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, AND IT SAID IN THAT CASE
YOU JUST CAN'T DO THAT.

AND THAT MAKES SENSE WHEN YOU
CONSIDER THE FACT THAT THIS
COURT HAS TIME AND AGAIN SAID
THAT THE UNDERLYING BASIS FOR
THE SINGLE-SUBJECT REQUIREMENT
IS THE AVOIDANCE OF LOG ROLLING.
CLEARLY, YOU HAVE LOG ROLLING
WHEN YOU ARE REGULATING BOTH
GOVERNMENT AGENCIES AND PRIVATE
CONTRACTS.

A VOTER THAT WOULD LIKE TO SEE
LIMITATIONS ON PRIVATE UTILITIES
WOULD NOT NECESSARILY WANT TO
SEE LIMITATIONS ON THE ABILITY
OF THE LEGISLATURE AND THE PSC
TO REGULATE THAT AREA.

THAT'S LOG ROLLING.

>> YOU'RE SAYING THE
SINGLE-SUBJECT VIOLATION HERE IS
THAT IT PERTAINS, IT IS
APPLICABLE, LIMITS OR PREVENTS,
BOTH THE GOVERNMENT AND YOUR
UTILITY COMPANIES FROM DOING
THINGS, AND THAT'S THE DUAL
SUBJECT HERE?

>> THAT IS ONE OF THEM.

>> OKAY.

WHAT'S THE OTHER ONE?

>> THE OTHER ONE IS THAT IT
SUBSTANTIALLY ALTERS THE

FUNCTIONS OF BOTH STATE AND LOCAL GOVERNMENT.

IT'S NOT EVEN DISPUTED THAT IT ALTERS THE FUNCTIONS OF THE LEGISLATURE AND THE PSC.

BUT THE OTHER THING THAT IT DOES IS IT CHANGES A CONSTITUTIONAL PROVISION THAT WE'VE HAD SINCE 1968 THAT GIVES HOME RULE POWERS TO THE MUNICIPALITIES PERMANENTLY UNLESS THIS CONSTITUTION IS AMENDED AGAIN.

SO IT CLEARLY IS HAVING A SUBSTANTIAL IMPACT UPON THE FUNCTION OF TWO LEVELS OF GOVERNMENT.

BUT IF I CAN GO BACK TO THE FIRST ONE ONCE AGAIN, IT'S NOT ONLY THAT A GIVEN VOTER MAY THINK WE SHOULD REGULATE GOVERNMENT AGENCIES AND NOT PRIVATE ENTITIES OR VICE VERSA. THERE ARE UNDOUBTEDLY VOTERS OUT THERE WHO BELIEVE THAT THE PROPER FUNCTION OF CONSTITUTION IS TO DEFINE THE POWERS AND LIMITATIONS OF GOVERNMENT AND NOT TO REGULATE PRIVATE INDIVIDUALS, PARTICULARLY IN THE COMMERCIAL SPHERE.

THAT PERSON IS FORCED TO VOTE FOR ONE THAT THEY FEEL STRONGLY ABOUT NOT HAVING IN ORDER TO HAVE THE OTHER ONE.

I SUGGEST TO THE COURT THAT IF THIS DOES NOT VIOLATE THE SINGLE-SUBJECT REQUIREMENT, WE HAVE SIGNIFICANTLY DEVALUED THE MEANING OF THE SINGLE-SUBJECT REQUIREMENT IN ADDITION TO REVERSING THE PROVISION OF THIS COURT IN SEVERAL EARLIER CASES. THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS STEPHEN GRIMES.

I REPRESENT THE FLORIDA ELECTRIC COOPERATIVES ASSOCIATION WHICH IS A GROUP OF CUSTOMER-OWNED ELECTRIC COOPERATIVES THAT SUPPLY ELECTRICITY, INCLUDING SOLAR, TO MOSTLY RURAL CUSTOMERS THROUGHOUT THE STATE.

WHILE THE COOPERATIVES ARE CUSTOMER-OWNED, THEY'RE STILL

ELECTRIC UTILITIES UNDER FLORIDA
LAW.

AT THE OUTSET, I WANT TO POINT
OUT THAT IT HASN'T BEEN
DISCUSSED HERE, BUT ONE OF THE
MOST EGREGIOUS PROBLEMS WITH THE
BALLOT SUMMARY, IT FAILS TO
ADVISE THE VOTER THAT THE SMALL
ELECTRIC, SOLAR SUPPLIER CAN
TOTALLY IGNORE HEALTH SAFETY OF
REGULATIONS AND BUILDING CODE
REGULATIONS IF IT WOULD HAVE THE
EFFECT OF PROHIBITING OF THE
GOING FORWARD WITH THE SOLAR
SUPPLY.

WELL, THE VOTERS CERTAINLY WERE
ENTITLED TO KNOW THIS.

THEY-- THAT WOULD MEAN THAT IF
A PARTICULAR BUILDING CODE OR
SAFETY REGULATION, COST OF
COMPLYING WITH THAT WOULD BE
FINANCIALLY UNFEASIBLE, THEY
COULD IGNORE IT.

SURELY, THAT NEEDS TO BE TOLD TO
THE VOTERS.

NOW, THEY COULD HAVE DONE THAT
IN A SINGLE SENTENCE IN PLACE OF
ONE OF THEIR BARRIER LINES.

BUT WHY DIDN'T THEY WANT-- WHY
DIDN'T THEY DO THAT?

WELL, THEY DIDN'T WANT THE
VOTERS TO KNOW ABOUT IT.

>> MR. GRIMES, THE JURISPRUDENCE
COMING OUT OF THIS COURT HAS
CLEARLY RECOGNIZED THAT YOU
CERTAINLY CAN'T IN ALL BALLOT
SUMMARIES TOUCH ON EVERY ASPECT
THAT'S GOING TO BE IMPACTED.

I MEAN, THAT MAKES SENSE.

WHERE'S THE LINE?

WHAT'S THE TEST?

HOW MANY OF THESE THINGS DO YOU
HAVE TO MENTION?

WHERE DOES THAT RESTRICTION
STOP?

>> WELL--

>> IS THIS JUST A TOUCHY-FEELY
SUBJECT, OR DO WE HAVE-- WHAT
WOULD YOUR GUIDELINE BE WITH
REGARD TO--

>> THAT DEPENDS HOW SIGNIFICANT,
YOU'D JUST HAVE TO PUT IN WITHIN
THE 75 WORDS THE MOST
SIGNIFICANT, AND I SUBMIT THAT
THIS IS ONE OF, THIS IS THE MOST

SIGNIFICANT.

BUT--

>> HAVE WE USED THAT PHRASEOLOGY TO YOUR RECOLLECTION IN ANY OF OUR CASES, THAT YOU HAVE TO MENTION THE MOST SIGNIFICANT, OR HAVE WE SET FORTH WHAT THAT--

>> I HONESTLY THINK THAT COMMON SENSE WOULD DICTATE THE MOST IMPORTANT FEATURE YOU WOULD WANT TO HAVE IN THERE.

BUT WHILE I HAVE MY TIME, I ALSO WANT TO RECOMMEND-- POINT OUT HOW THIS INITIATIVE AFFECTS THE COOPERATIVES.

BECAUSE OF THEIR SMALL CUSTOMER BASE AND MORE LIMITED RESOURCES, COOPERATIVES TEND DELIVER SOLAR TO THE, FROM FACILITIES OF LESS THAN TWO MEGAWATTS.

AND IN OUR FIRST BRIEF, WE POINTED OUT THAT COOPERATIVES WOULD APPEAR TO BE ACTING AS LOCAL SOLAR SUPPLIERS BECAUSE IT'S BROADLY DEFINED AS ANY PERSON WHO SUPPLIES ELECTRICITY TO NEARBY CUSTOMERS FROM A SOLAR FACILITY OF TWO MEGAWATTS OR LESS.

BUT, HOWEVER, BECAUSE THE INITIATIVE ALSO STATES THAT AN ELECTRIC UTILITY CAN'T BE AN LSES, QUESTION IS RAISED WHETHER THIS WOULD PROHIBIT COOPERATIVES FROM PROVIDING SOLAR ELECTRICITY FROM ITS SUB-TWO MEGAWATT FACILITIES.

THE KEYS ELECTRIC COMPANY RIGHT NOW A COOPERATIVE IS DOING THAT NOW.

THIS WAS RAISED ALSO BY THE ORLANDO UTILITIES COMMISSION WITHOUT RESPONDING DIRECTLY TO THAT CONCERN ON PAGE 41 OF ITS ANSWER BRIEF.

THE SPONSOR SAID ONE EFFECT OF THE AMENDMENT IS TO PREVENT TRADITIONAL ELECTRIC UTILITIES FROM ACTING AS LSES PROVIDERS. WELL, THE AMENDMENT IS AMBIGUOUS.

BUT IF THIS MEANS THAT COOPERATIVES WOULD BE DEPRIVED OF PROVIDING SOLAR TO ITS SUB-TWO MEGAWATT CUSTOMERS, THEN

CONTRARY TO BALLOT SUMMARY,
THAT'S CREATING, THEY'RE
CREATING A BARRIER RATHER THAN
ELIMINATING IT.

>> MR. GRIMES, IT SEEMS LIKE
THE, THESE FOLKS WOULD BE
IMPACTED BY THIS CONSTITUTIONAL
AMENDMENT, BUT YOUR CLIENTS,
THESE CO-OPS, WOULD BE SPECIALLY
REGULATED BY THE PSC AND
AUTHORIZED TO DO WHATEVER IT IS
THAT ENTITY AUTHORIZES THEM TO
DO, RIGHT?

SO IT WOULD--

>> THEY'RE REGULATED BY THE PSC.

>> RIGHT.

SO THEIR AUTHORIZATION TO
CONTINUE PROVIDING THE
ELECTRICITY WOULD COME FROM
THAT, AND THAT PIECE DOES NOT
SEEM TO BE ADVERSELY IMPACTED
HERE.

BUT I DO WONDER-- YOU CAN
ADDRESS THAT, BUT I ALSO DO
WONDER THE IMPACT OF WHAT THIS
MAY HAVE ON YOUR CLIENTS'
ABILITIES TO CONTINUE TO PROVIDE
ELECTRICITY.

WOULD IT SOMEHOW IMPAIR THEIR
ABILITY TO ACTUALLY PROVIDE
SERVICES TO RURAL OR SMALL
SERVICE AREAS?

>> IT WOULD DEPEND ON HOW YOU
INTERPRET THIS AMENDMENT, AND I
SUBMIT THAT IT'S AMBIGUOUS.

IT COULD BE A REASONABLE
INTERPRETATION, AS YOU SUGGEST,
THAT THEY JUST CONTINUE TO
OPERATE UNDER THE AUTHORITY OF
THE PUBLIC SERVICE COMMISSION.
BUT ON THE OTHER HAND, IT COULD
BE ALSO INTERPRETED AS I TRIED
TO EXPLAIN BEFORE THAT THEY
WOULD BE PREVENTED COMPLETELY
FROM DOING IT.

>> PREVENTED FROM SUPPLYING
ELECTRICITY IN THE MANNER--
>> SOLAR--

>>-- THAT THEY ARE NOW?

>> WELL, SOLAR TO ITS SUB-TWO
MEGAWATT CUSTOMERS.

>> AND WHAT LANGUAGE DO YOU SAY
IS IN HERE THAT WOULD SAY THAT?
I'M, BECAUSE I'M-- WHAT
LANGUAGE IS IN HERE THAT WOULD

SAY THAT?

>> ONLY BECAUSE IT DEFINES A COOPERATIVE WOULD COME WITHIN THE DEFINITION OF WHAT A SOLAR SUPPLIER IS, BUT IT SAYS AN ELECTRIC UTILITY CAN'T BE A SOLAR OPERATOR.

IF-- I SUGGEST THAT IF THE COURT FEELS THAT THIS DOES NOT CONCERN-- AND WE WOULD STILL BE ABLE TO OPERATE UNDER THE PSC, THERE ARE A LOT OF REASONS WHY THIS AMENDMENT SHOULD BE STRICKEN.

BUT IF BY CHANCE YOU ALL GO AHEAD AND CHOOSE TO ALLOW IT TO BE PUT ON THE BALLOT, AT THE VERY LEAST IT WOULD BE HELPFUL TO THE COOPERATIVES IF YOU WOULD SAY SO IN YOUR OPINION.

>> BEFORE YOU SIT DOWN LET ME ASK ONE FOLLOW-UP QUESTION. IS THERE ANYTHING IN THE SUMMARY THAT IS NOT DISCUSSED OR INDICATED IN HERE THAT THIS WOULD CAUSE SOME KIND OF ADVERSE IMPACT UPON YOUR CLIENTS THAT'S NOT SPECIFICALLY MENTIONED IN HERE OTHER THAN WHAT YOU'VE ALREADY DESCRIBED?

>> OTHER THAN THAT, NO.

>> OKAY.

>> THANK YOU.

[INAUDIBLE CONVERSATIONS]

>> YOU'LL GET YOUR TURN.

[LAUGHTER]

>> GOOD MORNING.

VOTERS DESERVE TO UNDERSTAND WHAT AMENDMENT DOES, AND THIS BALLOT SUMMARY DOES NOT MAKE THAT CLEAR.

THE GOAL OF THIS AMENDMENT IS TO PROHIBIT THE PSC FROM REGULATING SMALL-SCALE SOLAR ELECTRIC PROVIDERS AS AN ELECTRIC UTILITY.

WE KNOW THAT'S THE PURPOSE BECAUSE THAT'S WHAT THE SPONSOR SAID WAS THE PURPOSE TO THE FINANCIAL ESTIMATING COMMISSION. UNDER TODAY'S LAW ANY PRIVATE COMPANY THAT'S IN THE BUSINESS OF SELLING ELECTRICITY IS AN ELECTRIC UTILITY, AND IT'S REGULATED BY THE PSC AND

SUBSTANTIALLY REGULATED BY THE
PSC.

>> SEE NOW, TO ME, YOU'VE GIVEN
THE BEST REASON WHY THIS MIGHT
BE REALLY BAD POLICY FOR THE
STATE OR THE VOTERS.

BUT IT'S, IF THAT'S WHAT IT'S
AIMING TO DO SEEMS PRETTY CLEAR.
SO IN TERMS OF THAT, HOW DO YOU,
HOW DO YOU TAKE THAT AND SAY
IT'S A SINGLE-SUBJECT VIOLATION
WHEN IT'S PRETTY CLEAR THAT THIS
IS GOING TO PREVENT IN THIS TYPE
OF SOLAR ELECTRIC SUPPLIER FROM
BEING REGULATED BY GOVERNMENT?

>> THERE'S NOTHING, THERE'S NOT
A WORD IN THIS BALLOT SUMMARY
ABOUT THE EXISTING PSC
REGULATION.

THERE'S NOT A WORD ABOUT THE
FACT THAT THESE COMPANIES UNDER
TODAY'S LAW WOULD BE CONSIDERED
UTILITIES.

AND, IN FACT, WHAT THEY SAY IS
THE WAY THEY DESCRIBE THEIR OWN
BUSINESS IN THE BALLOT SUMMARY
IS THAT THIS IS THE NON-UTILITY
SUPPLY OF ELECTRICITY, AND IT'S
NOT.

IT IS-- IT WILL BE ONLY BECAUSE
THE AMENDMENT CHANGES THE
DEFINITION OF UTILITY.

AND THAT'S NOWHERE IN THE
SUMMARY.

NOW UTILITIES, TO SOME PEOPLE,
MAY BE A PEJORATIVE.

SO PERHAPS THEY'RE TRYING TO
SUGGEST, OH, WE'RE NOT TALKING
ABOUT UTILITY PROVIDERS TO DO
SOMETHING UNREGULATED HERE.

PERHAPS VOTERS DON'T WANT
UNREGULATED UTILITY PROVIDERS--

>> IN THIS CONTEXT WE'RE TALKING
ABOUT PUBLIC UTILITIES.

I THINK WHEN YOU TALK ABOUT
ELECTRIC UTILITY, YOU THINK
ABOUT PUBLIC UTILITIES, AND YOU
TYPICALLY THINK ABOUT A
MONOPOLY.

THAT'S NOT A PEJORATIVE TERM,
THAT'S JUST A REALITY.

AND THE REALITIES ARE THAT
BECAUSE OF THE WAY THESE
FACILITIES WORK, YOU REALLY HAVE
TO HAVE MONOPOLIES FOR CERTAIN

TYPES OF POWER.

BUT, SO I DON'T KNOW THAT
REFERRING TO THESE FACILITIES AS
NON-UTILITY IS REALLY
MISLEADING, IT'S JUST BASED ON
IN THIS DISTINCTION BETWEEN THE
TYPICAL PUBLIC UTILITY WHICH IS
A MONOPOLY AND THIS PROVIDE,
THIS SORT OF PROVIDER THAT'S NOT
A MONOPOLY.

>> THIS COURT HELD IN PW
VENTURES THAT ANYBODY WHO SELLS
ELECTRICITY WHETHER THEY'RE A
MONOPOLY OR NOT AND A PROVIDER
THAT WAS AT ISSUE WAS NOT A
MONOPOLY, IT WAS COMPETING
AGAINST THE MONOPOLY THAT HAD
THE-- AND THE COURT FOUND THAT
UNDER FLORIDA LAW THAT WAS A
UTILITY.

AND IF IT WAS GOING TO OPERATE
THAT WAY--

>> WELL, AND I KNOW YOU MADE
THAT POINT, AND I THINK THAT'S A
GOOD POINT.

BUT WHEN WE'RE LOOKING AT THIS
AND WHAT THE VOTERS ARE GOING TO
UNDERSTAND BY THIS, DO WE-- ARE
WE REALLY BOUND TO TRANSFER A
TERM OF ART FROM THE STATUTORY
CONTEXT AND THE WAY UTILITY HAS
BEEN INTERPRETED IN THE CONTEXT
OF THAT STATUTE OVER HERE AND
SAY THAT THAT CREATES AN
AMBIGUITY?

>> WELL, TWO RESPONSES.

ONE, THE STATUS OF FLORIDA LAW
AS IT STANDS TODAY IS RELEVANT
BUT, TWO, I THINK THAT PEOPLE DO
UNDERSTAND A UTILITY AS A SELLER
OF UTILITY SERVICES.

I THINK WHEN PEOPLE THINK OF A
UTILITY, THAT'S WHAT THEY THINK
THINK OF.

AND I THINK THE CHOICE OF THE
TERM, NON-UTILITY, WAS DESIGNED
TO ADDRESS THAT.

AND THERE ARE OTHER EXAMPLES IN
THIS BALLOT SUMMARY WHERE THEY
USE IMPROPER.

NO ONE IS IN TERM OF UNFAVORABLE
ANYTHING, AND THE WORD DOESN'T
APPEAR IN THE TEXT OF THE
SUMMARY ITSELF.

YOU HAVE VOTERS WHO ARE ASKED

WOULD YOU LIKE TO-- AND, IN FACT, YOU KNOW, THERE'S NO MENTION OF THAT AT ALL IN THE BALLOT SUMMARY.

THE OTHER THING THAT THE BALLOT SUMMARY DOES IS IT DOESN'T EVEN ACKNOWLEDGE THAT THIS IS EXCLUSIVELY ABOUT SELLERS OF ELECTRIC UTILITIES.

IT TALKS GENERALLY ABOUT ELECTRICITY SUPPLY.

IF YOU LOOK AT THE TITLE OF THE AMENDMENT, WHICH WOULD BE IN THE CONSTITUTION IF THIS WERE ADOPTED BUT IS NOWHERE IN THE BALLOT SUMMARY, IT SAYS THE TITLE IS PURCHASE AND SALE OF SOLAR ELECTRICITY.

IF YOU'RE NOT TALKING ABOUT THE PURCHASE AND SALE, IF YOU'RE TALKING ABOUT SOMEONE WHO HAS SOLAR PANELS ON HIS OWN ROOF OR HIS OWN BUSINESS, THAT HAS NOTHING TO DO WITH THIS AMENDMENT.

THIS WON'T CHANGE THAT AT ALL, AND THE--

>> DOESN'T THE REFERENCE TO "CUSTOMERS" IN THE TEXT OF THE BALLOT SUMMARY, AS I POINTED OUT EARLIER, DOESN'T THAT UNDERMINE THAT ARGUMENT?

>> I DON'T THINK SO, YOUR HONOR. BECAUSE WHEN YOU'RE TALKING ABOUT CUSTOMERS, THESE WILL BE CUSTOMERS OF PUBLIC UTILITIES. THIS IS SUPPLEMENTING THE ELECTRICITY PROVIDED TO THOSE CUSTOMERS.

SO, YOU KNOW, YOU'RE USING THE WORD "SUPPLY" INSTEAD OF "SALE." YOU'RE TALKING ABOUT GENERALLY BARRIERS TO THE SUPPLY, AND I THINK THAT WHEN A VOTER READS THAT, HE OR SHE IS GOING TO BE THINKING ABOUT WHAT MOST PEOPLE THINK ABOUT WITH LOCAL SOLAR SUPPLY WHICH INCLUDES SOLAR PANELS ON SOMEONE'S HOME.

>> BUT IT'S, THESE ARE CUSTOMERS OF A LOCAL SOLAR ELECTRICITY RELATED TO THE LOCAL SOLAR ELECTRICITY SUPPLY.

IT'S NOT REFERRING TO A CUSTOMER OF A PUBLIC UTILITY.

>> IT JUST SAYS "TO CUSTOMERS."
IT'S NOT CLEAR-- IT DOESN'T SAY
THESE ARE CUSTOMERS OF A LOCAL
SOLAR ELECTRICITY PROVIDER--
>> FROM A FACILITY, FROM A
FACILITY RATED UP TO TWO
MEGAWATTS--
>> "FACILITY" IS THE EQUIPMENT.
BECAUSE THIS VIOLATES THE
SINGLE-SUBJECT RULE AND BECAUSE
IT DOES NOT PROVIDE VOTERS WITH
FAIR NOTICE OF WHAT IT REALLY
DOES, WE WOULD ASK THE COURT
REMOVE IT FROM THE BALLOT.
IF THE COURT HAS NO OTHER
QUESTIONS, I'LL--
>> THE PW VENTURES CASE CITED IN
THE BRIEFS AS WELL, PW VENTURES
CASE, THAT CASE IS EXACTLY WHY
THE LOCAL SOLAR ENERGY SUPPLIERS
NEED THIS AMENDMENT, BECAUSE
THAT CASE STANDS WITH THE
PROPOSITION THAT A SINGLE SALE
TO A SINGLE PERSON REQUIRES
REGULATION.
AND SO THE ENTIRE REGULATORY
STRUCTURE IS DESIGNED TO CREATE
BARRIERS FOR LOCAL SOLAR ENERGY
SUPPLIER WHICH IS A TERM OF ART.
IT IS A LIMITED, LIMITED ENTITY,
LIMITED IN LOCATION, LIMITED IN
TERMS OF AMOUNT.
AND SO YOU'VE DESCRIBED
BARRIERS, ARE BARRIERS FOR THAT
SUPPLIER TO FUNCTION BASED UPON
THE EXISTING REGULATORY
ENVIRONMENT.
THE--
>> WELL, I MEAN, I GUESS THE
QUESTION IS-- AND IT'S ALWAYS
HARD TO SECOND GUESS THIS-- BUT
IF THE AMENDMENT SAID IT IS
REMOVING THE ABILITY OF
GOVERNMENT TO REGULATE RATES,
THE THREE TERMS THAT ARE IN
THERE, OF LOCAL SOLAR SUPPLIERS,
SOLAR ELECTRIC SUPPLIERS, WHY
WOULD-- DOESN'T-- IS THAT WHAT
IT DOES?
>> WELL, I THINK THE--
>> I MEAN, DOES IT DO THAT?
>> I THINK THE BALLOT SUMMARY--
>> NO, BUT I'M ASKING YOU IN A
LINE, IS THAT WHAT IT DOES?
>> YOU SAY IT AGAIN?

>> NO.
[LAUGHTER]
>> OKAY.
>> BECAUSE I-- ONLY BECAUSE--
[LAUGHTER]
>> I WOULD SAY IT DOES WHAT IT
SAYS IT DOES.
>> WELL, THEY'RE SAYING IT'S
TALKING ABOUT UNFAVORABLE RATES
AND THAT THERE AREN'T
UNFAVORABLE RATES NOW.
IT'S-- THE RATE IS WHATEVER THE
PSC SAYS, AND IT'S NOT
DISCRIMINATING AGAINST SUPPLIERS
OF SOLAR ELECTRICITY.
>> WELL, I THINK YOU HAVE TO
READ IN THE CONTEXT OF THE WHOLE
BALLOT LANGUAGE.
IT OBVIOUSLY MEANS UNFAVORABLE
IF--
>> WELL, I DON'T KNOW IF IT'S
OBVIOUS.
THAT'S THE ISSUE.
"UNFAVORABLE" DOES SOUND LIKE
THEY'RE DISCRIMINATING AND--
>> IT SAYS "UNFAVORABLE," IT
SAYS "ELECTRIC UTILITY RATES
IMPOSED ON LOCAL SOLAR ENERGY
CUSTOMERS," SO IT'S WITHIN THE
CONTEXT OF WHAT'S TRYING TO BE
ACHIEVED HERE.
>> CAN YOU-- YOU'RE OUT OF
TIME, BUT I WANT-- THE HEALTH
CARE, THIS ISSUE OF HOW BROAD
SINGLE SUBJECT IS, I THINK WE
HAVE IN OUR JURISPRUDENCE OVER
THE YEARS SORT OF SOMETIMES
MAYBE EXPANDED IT IN WAYS THAT
WERE NOT INTENDED ORIGINALLY.
BUT HOW DOES HEALTH CARE, THE
1998 CASE--
>> HEALTH CARE PROVIDERS IS A
CASE IN LAW RULING.
THE FACT THAT IT DEALT WITH
PRIVATE CONTRACTS AND PUBLIC
CONTRACTS AND LOG ROLLING, THE
VOTER HAD TO CHOOSE.
HERE THAT'S NOT THE CASE.
IF THE--
>> JURISPRUDENCE COME INTO THE
RUBRIC OF SINGLE SUBJECT?
>> WELL, SINGLE SUBJECT--
>> JURISPRUDENCE SAID IF THERE'S
LOG ROLLING, IT SOMEHOW VIOLATES
THE SINGLE SUBJECT.

>> RIGHT--
>> EVEN THOUGH THE LOG ROLLING
MAY RELATE TO THINGS THAT ARE
INTRICATELY RELATED.
>> SINGLE SUBJECT HAS TWO.
ONE IS IT PROHIBITS LOG ROLLING.
IT ALSO PROHIBITS MULTIPLE
SUBJECTS, FUNCTIONS OF MULTIPLE
PROVISIONS OF GOVERNMENT.
>> BUT THE TEXTURAL PART OF ALL
OF THAT IS THE SINGLE-SUBJECT--
>> DOES THE VOTER KNOW WHAT
THEY'RE VOTING ON, AND THAT'S,
ESSENTIALLY, THAT'S THE PROBLEM
OF LOG ROLLING, IS IT CLEAR WHAT
THE VOTER IS VOTING ON.
THANK YOU VERY MUCH.
>> GENTLEMEN, THANK YOU FOR YOUR
ARGUMENTS.