

# PUTTING THE SUN BACK INTO THE SUNSHINE STATE: HOW FLORIDA'S TRANSITION TO SOLAR POWER HAS BROUGHT THE STATE OUT OF THE SHADOWS CAST BY BIG OIL'S ENERGY- MONOPOLY

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## I. INTRODUCTION

*“The stone age came to an end, not for lack of stones, and the oil age will end, but not for lack of oil.”<sup>1</sup>*

—Sheikh Yamani OPEC co-founder and former Saudi Arabian oil minister.

At the end of the Stone Age, our ancestors discovered just how much more efficient it was to use bronze, rather than stone, to build their empires.<sup>2</sup> Their discovery propelled humankind into a new age, the Bronze Age.<sup>3</sup> Over 5300 later, we are still making new technological developments that continue to advance the human race into the future.<sup>4</sup> Today, we are discovering just how much more efficient it is to harness energy from renewable resources, like the sun, than it is to harness

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<sup>1</sup> Leon Bateman, *Energy Companies are Dead Already, They Just Haven't Realised It*, (Aug. 2, 2016) <http://reneweconomy.com.au/energy-companies-are-dead-already-they-just-havent-realised-it-97738/>.

<sup>2</sup> See Cristian Violatti, *Stone Age*, ANCIENT HISTORY ENCYCLOPEDIA LIMITED (July 18, 2014), [http://www.ancient.eu/Stone\\_Age/](http://www.ancient.eu/Stone_Age/) (“The Stone Age begins with the first production of stone implements and ends with the first use of bronze. Since the chronological limits of the Stone Age are based on technological development rather than actual date ranges, its length varies in different areas of the world. The earliest global date for the beginning of the Stone Age is 2.5 million years ago in Africa, and the earliest end date is about 3300 BCE, which is the beginning of Bronze Age in the Near East.”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

energy from fossil fuels.<sup>5</sup> Like our ancestors who helped transition the ancient world out of the Stone Age and into the Bronze Age, we are at the brink of ushering in a new “Renewable Energy Age”, to replace the older, “Fossil Fuel Energy Age.”<sup>6</sup>

For one, there has been an explosion of jobs created in the renewable energy sector.<sup>7</sup> During the February 7, 2017 Minnesota Public Radio (MPR) News Climate Cast podcast, *Wind Turbines Create Economic and Environmental Opportunities*, Kerri Miller discussed the growth in the renewable energy sector.<sup>8</sup> Miller noted how solar energy jobs have led the way, increasing over 20% last year in the United States.<sup>9</sup> Solar energy is growing at 12 times the rate of the economy overall.<sup>10</sup>

A guest featured during the MPR News Climate Cast podcast was Heidi Garrett.<sup>11</sup> Heidi Garrett briefly discussed a 2014 renewable

<sup>5</sup> Bateman, *supra* note 1.

<sup>6</sup> Violatti, *supra* note 2.

<sup>7</sup> See MPR News with Kerri Miller, *Climate Cast: Wind Turbines Create Economic and Environmental Opportunities*, MPR NEWS (last visited Mar. 17, 2017), [http://play.publicradio.org/default/d/podcast/minnesota/podcasts/climate\\_cast/2017/02/climate\\_wind\\_20170209\\_64.mp3](http://play.publicradio.org/default/d/podcast/minnesota/podcasts/climate_cast/2017/02/climate_wind_20170209_64.mp3) (As of today, at least 4 million workers are now employed in the renewable energy industry. Further, one in 50 new jobs created in the United States last year was in solar energy).

<sup>8</sup> *Id.*

<sup>9</sup> Environmental Defense Fund, *Now Hiring: The Growth of America's Clean Energy & Sustainability Jobs*, ENVIRONMENTAL DEFENSE FUND, 5 (Jan. 24, 2017), [http://edfclimatecorps.org/sites/edfclimatecorps.org/files/the\\_growth\\_of\\_americas\\_clean\\_energy\\_and\\_sustainability\\_jobs.pdf](http://edfclimatecorps.org/sites/edfclimatecorps.org/files/the_growth_of_americas_clean_energy_and_sustainability_jobs.pdf) (“Solar and wind jobs have grown at rates of about 20% annually in recent years and are each creating jobs at a rate 12 times faster than that of the rest of the U.S. economy.”).

<sup>10</sup> See *id.* at 8. (“Solar employment opportunities are currently growing at a rate 12 times faster than the rest of the U.S. economy.”).

<sup>11</sup> See The Conversation, *Heidi Garrett-Peltier*, THE CONVERSATION US, INC., (Sept. 16, 2016), <https://theconversation.com/profiles/heidi-garrett-peltier-302964>. (“Heidi Garrett-Peltier is an Assistant Research Professor in the Political Economy Research Institute at the University of Massachusetts, Amherst. Her research focuses on the employment impacts of public and private investments, particularly those that support the transition to a low-carbon economy. Through quantitative analysis and qualitative research, Heidi analyzes policies and programs to advance low-carbon transportation, energy efficiency, and renewable energy. She has written and contributed to a number of reports on the clean energy economy and is the author of the book, *Creating a Clean-Energy Economy: How Investments in Renewable Energy and Energy Efficiency Can Create Jobs in a Sustainable Economy*. Heidi has developed a quantitative methodology that has been used extensively by PERI and other researchers

energy/policy study, called “*Green Growth*,” conducted at the University of Massachusetts Amherst, by the Political Economy Research Institute (PERI).<sup>12</sup> In this study, researchers formulated a feasible solution for controlling climate change and expanding job opportunities in the United States. Garrett summarized the findings of study, stating, “for about 1.2% GDP, we could bring energy efficiency to a level where we are using about 30% less energy, we are quadrupling our renewable energy, we are bringing fossil fuels way down, and we are getting on track to bringing our emissions down 40% over 20 years.”<sup>13</sup>

Although pro-renewable energy efforts are as strong as they have ever been, these efforts are seldom met without challenge. Nationally acclaimed investigative journalist, Tim Dickinson, has recently written about one huge obstacle which stands in the way of progress for the renewable energy industry and technology; the big fossil fuel energy giants.<sup>14</sup> Industry giants, like Koch Industries, have become very

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to estimate the impacts of spending on various domestic programs, including infrastructure investments, military spending, clean energy, education and healthcare. She has served as a consultant with the U.S. Department of Energy, the United Nations Industrial Development Organization and various other organizations.”).

<sup>12</sup> Heidi Garrett-Peltier et. al, *Green Growth*, POLITICAL ECONOMY RESEARCH INSTITUTE CENTER FOR AMERICAN PROGRESS, 2 (Sept. 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/09/PERI.pdf>.

<sup>13</sup> See MPR News with Kerri Miller, *supra* note 7; see also *Green Growth*, *supra* note 12, at 11 (“The basics of the program are simple. It entails about \$200 billion of combined public and private investments in clean energy every year for 20 years. This is a massive amount of money, but it is only about 1.2 percent of current U.S. GDP.”).

<sup>14</sup> See Tim Dickinson, *Bio*, (Oct.17, 2012), <http://timdickinson.net/> (“Based in Portland, Oregon, Tim Dickinson has nearly two decades of experience writing and editing for national magazines. He is a Contributing Editor at Rolling Stone, where he has covered the National Affairs beat since 2004 and specializes in long form features, profiles, and investigative journalism. His reporting has been anthologized in The Best American Political Writing, featured on the NBC nightly news and the Today show, tweeted by @barackobama, excerpted by the Wall Street Journal, and splashed on the homepage of the Huffington Post. Previously, Dickinson was Articles Editor at Mother Jones, where he edited everything from cover stories to charticles. During his six-year tenure, Dickinson was a key member of the team awarded a National Magazine Award for General Excellence in 2001 and nominated again in 2003. He is co-author of Lie-by-Lie, a timeline of the Iraq war that was a 2007 National Magazine Award finalist for best Interactive Feature. Dickinson has been a regular guest on cable news, with appearances on MSNBC and CNN. His radio career includes two appearances on “Fresh Air.” Dickinson has debated politics and the future of journalism from Stanford to Zurich. Dickinson is a high honors graduate of Wesleyan University and an alumni(?) of the American Swiss Foundation’s Young Leaders Conference.”); see also

established within major economies all over the world.<sup>15</sup> Naturally, their power to influence global economies has also allowed them to develop power to influence politics.<sup>16</sup> These titans of the fossil fuel industry have recognized that the emergence of renewable energy, such as solar power, could undermine their establishment on all fronts.<sup>17</sup> Instead of trying to utilize their resources to adapt to the renewable energy industry, fossil fuel corporations have tried to undercut the renewable energy industry using their bureaucratic influence.

Fortunately, the growth of the renewable energy industry is dictated by the market.<sup>18</sup> This point was echoed by Chris Farrell, another guest featured during the MPR Climate Cast Podcast.<sup>19</sup> Farrell noted that there are numerous examples showing that real money is coming into the renewable energy industry, so the market demand is there.<sup>20</sup> According

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Tim Dickinson, *The Koch Brothers' Dirty War on Solar Power*, ROLLING STONE 1, 21 (Feb. 11, 2016), <http://www.rollingstone.com/politics/news/the-koch-brothers-dirty-war-on-solar-power-20160211>.

<sup>15</sup> *Id.*

<sup>16</sup> See Tim Dickinson, *Inside the Koch Brothers' Toxic Empire*, ROLLING STONE (Sept. 24, 2014), <http://www.rollingstone.com/politics/news/inside-the-koch-brothers-toxic-empire-20140924>

(“Charles and David Koch are worth more than \$40 billion each. The Koch brothers have used their extreme financial power to corner the market of Republican politicians, buying out their political influence. For example, they have helped to fund the Tea Party and continue to power today’s GOP. “Koch-affiliated organizations raised some \$400 million during the 2012 election, and aimed to spend another \$290 million to elect Republicans in the [2014] midterms.” For example, in 2014, “Koch-backed entities [sic] bought 44,000 political ads to boost Republican efforts to take back the Senate.””).

<sup>17</sup> See Dickinson, *The Koch Brothers' Dirty War on Solar Power*, *supra* note 14.

<sup>18</sup> See MPR News with Kerri Miller, *supra* note 7.

<sup>19</sup> *Id.*; see also Chris Farrell, *About*, (July 16, 2014), <http://www.chrisfarrellblog.com/about-2> (Farrell is currently senior economics contributor at Marketplace, American Public Media’s nationally syndicated public radio business and personal finance programs. He is also an economics commentator for Minnesota Public Radio, a contributor to Bloomberg Businessweek, the Minneapolis Star Tribune, Next Avenue, Money.com and other media outlets.).

<sup>20</sup> See MPR News with Kerri Miller, *supra* note 7; see also Kerry A. Dolan, *Richest Green Billionaires 2012*, FORBES (Apr. 20, 2012), <https://www.forbes.com/sites/suntrust/2017/02/28/3-countries-to-do-business-in-now/#3b92c1b6f6d1> (“The brainy entrepreneur’s [Elon Musk] stake in electric car producer Tesla—which he cofounded and of which he is chairman and CEO—is worth around \$1 billion. His 25% stake in solar panel installer SolarCity is currently worth around \$200 million, based on the company’s most recent fundraising. SolarCity is

to Farrell, public policy can either slow the growth of the renewable energy industry, or accelerate it; it will not be able to stop this trend.<sup>21</sup>

As the development of renewable energy technology and markets continue to evolve, it is important to recognize and confront the challenges that this industry will face. In Part II of this article, the challenges of solar energy industry's development, specifically in Florida, will be discussed. In Part III, the future of Florida's solar energy industry will be examined through the lenses of public and private policies. Part III will also propose some suggestions and policy considerations that can help to accelerate the growth of solar energy in Florida as well as the growth of the renewable energy industry on a national scale. Finally, Part IV will wrap everything up, highlighting the importance of transitioning humankind into a new, modern world, powered by renewable energy.

## II. BIG OIL'S FINAL, YET FUTILE, EFFORT TO CONTROL THE FLORIDA ENERGY SECTOR MONOPOLY

With a nickname like "The Sunshine State," it should not be a surprise to know that Florida is ranked as the third-best rooftop solar potential in the United States.<sup>22</sup> However, measured in terms of solar energy production, Florida is ranked merely 16<sup>th</sup> in the country.<sup>23</sup> New York, New Jersey and Massachusetts have outpaced Florida's solar energy production rate.<sup>24</sup> According to former Florida Governor Charlie Crist, this reality is "absolutely absurd," as these statistics "[defy] logic."<sup>25</sup> To account for this anomaly, the recent history of solar energy in Florida provides some clarity.

### *A. Investor-Owned Utilities*

Some of the biggest opponents to Florida's solar energy production are known as investor-owned utilities (IOUs).<sup>26</sup> In Florida, IOUs "reap massive profits from natural gas and coal, . . . wield outsize political

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expected to file for a public offering very soon. Musk joins this green billionaire list for the first time; a year ago, he was not a billionaire.").

<sup>21</sup> *Id.*

<sup>22</sup> Dickinson, *supra* note 14, at 3.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 3-4.

power in the state capital of Tallahassee, and flex it to protect their absolute monopoly on electricity sales.”<sup>27</sup>

In December of 2015, Florida’s state-owned electric utilities funded a deceptive campaign, which annihilated a citizen-initiative to introduce solar energy competition through the 2016 ballot.<sup>28</sup> At the forefront of the citizen-initiative was Stephen Smith, Director of the Southern Alliance for Clean Energy.<sup>29</sup> Commenting on the December 2015 defeat, he stated, “[w]hen your opponents have no ethical foundation, have unlimited resources and are willing to say and do anything to defeat you, . . . it’s a tough hurdle to overcome.”<sup>30</sup>

Understanding why these IOUs went to great lengths to crush the potential solar power competition can best be explained by framing the three-part threat within this emerging industry.<sup>31</sup> First, when homeowners decide to opt out of traditional energy contracts to install their own solar panels, the demand for energy produced at power plants diminishes. IOUs knew that there would be fewer chances for investor profit, as utility companies would be forced to build fewer power plants.<sup>32</sup> The second threat arises from the significant reduction of electricity purchased from current power grids by solar powered homes.<sup>33</sup> As the number of solar powered homes rise, the amount of recurring profits from grid-energy sales diminishes.<sup>34</sup> The third threat arises from the state’s “net metering” laws.<sup>35</sup> Under “net metering” laws, the majority of traditional utility companies are required to pay producers of solar energy, including solar-powered homeowners, for the extra solar energy they feed onto power grids.<sup>36</sup> In essence, net metering can cut off an IOU’s source of profit (consumers of fossil fuel energy) and transform that source of profit into a business that an IOU would have to compete with.

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 4-5.

<sup>32</sup> *Id.* at 5.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Fla. Stat. Ann. § 366.91 (West 2010) (“Net metering” means a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer’s electricity consumption on site.”).

<sup>36</sup> *Id.*; see also Dickinson, *supra* note 14, at 5.

As IOUs continued their crusade to retain monopolized control on the Florida energy sector, they embarked on a very deceitful path, which attempts to squash the emerging, competitive threat of solar energy.

*B. Amendment I—The “Smart Solar” Amendment*

On March 31, 2016, the Florida Supreme Court issued its advisory opinion, and ultimately approved “a proposed citizen initiative amendment to the Florida Constitution titled “Rights of Electricity Consumers Regarding Solar Energy Choice.”<sup>37</sup> Also known as “Amendment I,” this proposed ballot initiative purported to strengthen the legal rights of homeowners with rooftop solar panels.<sup>38</sup> To many citizens, Amendment I seemed like a great, eco-friendly measure to advance the integration of the solar energy industry in Florida.<sup>39</sup> The initial optimism over Amendment I was especially strengthened by the identity of the proposed amendment’s sponsor, Consumers for Smart Solar, Inc.<sup>40</sup> Propelling on the popularity of the environmentally friendly names of the amendment and its sponsor, Amendment I was able to garner just enough support grabbing 700,000 signatures, to qualify for a vote on the November 2016 ballot.<sup>41</sup>

However, it did not take very long for critics to pull back the veil of deception that shrouded the substance of Amendment I and the identity of Consumers for Smart Solar, Inc. Justice Pariente’s dissent in the March 2016 advisory opinion was the first to shed light on this issue.<sup>42</sup> At the beginning of her dissent, she stated, “[l]et the pro-solar energy consumers beware. Masquerading as a pro-solar energy initiative, this proposed constitutional amendment, supported by some of Florida’s major investor-owned electric utility companies, actually seeks to

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<sup>37</sup> Op. Atty. Gen. re Rights of Elec. Consumers regarding Solar Energy Choice, 188 So. 3d 822, 825 (Fla. 2016).

<sup>38</sup> Tim McDonnell, *Are Big Power Companies Pulling a Fast One on Florida Voters?*, MOTHER JONES (Mar. 7, 2016), <http://m.motherjones.com/environment/2016/03/florida-solar-amendment-utility-companies-electricity>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *See* Op. Att’y Gen. re Rights of Elec. Consumers regarding Solar Energy Choice, 118 So. 3d at 825.

<sup>42</sup> *Id.* at 833-34.

constitutionalize the status quo.”<sup>43</sup> The damaging implications of Amendment I were also revealed in a legal brief submitted by the environmental group, known as Earthjustice.<sup>44</sup> Despite the backlash and criticism of Amendment I, such as those made by Earthjustice or Justice Pariente, these kinds of statements and releases may not have been effective in educating all Florida voters about the deceptive nature of this amendment.

The ineffectiveness of efforts to expose Amendment I, were amplified by the actual language used on the ballot.<sup>45</sup> Consider the first sentence used in the Ballot Summary: “This amendment establishes a right under Florida’s constitution for consumers to own or lease solar equipment installed on their property to generate electricity for their own use.”<sup>46</sup> By using language that appears to establish solar energy as constitutional “right” in Florida, it is easy to see how voters could be baited into supporting this amendment.<sup>47</sup> Fortunately for these voters, the blatant intentions of Amendment I support groups, such as Consumers for Smart Solar, Inc., were revealed publicly, right before the November 2016 election.

On October 18, 2016, three weeks prior to election day, an audio recording of a speech advised by Sal Nuzzo at the State

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<sup>43</sup> See *id.* (Justice Pariente commented further about Amendment I’s deception, stating, “[t]he ballot title is affirmatively misleading by its focus on “Solar Energy Choice,” when no real choice exists for those who favor expansion of solar energy. The ballot language is further defective for purporting to grant rights to solar energy consumers that are illusory; and failing, as required, to clearly and unambiguously set forth the chief purpose of the proposed amendment—to maintain the status quo favoring the very electric utilities who are the proponents of this amendment.”).

<sup>44</sup> See Initial Brief for Interested Parties, at 1, Advisory Opinion to Atty. Gen. re Rights of Elec. Consumers regarding Solar Energy Choice, 188 So. 3d 822 (Fla. 2016) WL 229058 (“If passed by the voters, the utility-sponsored amendment would be a constitutional endorsement of the idea that rooftop solar users should pay higher utility bills than other customers. Solar users could end up paying twice as much as other customers pay to buy power from the utilities. This utility-sponsored amendment pretends to be pro-solar but is actually a disguised attempt to derail rooftop solar in Florida.”).

<sup>45</sup> See Consumers for Smart Solar, *Proposed Constitutional Amendments to be voted on November 8, 2016*, FLORIDA DEPARTMENT OF STATE DIVISION OF ELECTIONS, (Nov. 8, 2016) <http://dos.elections.myflorida.com/initiatives/fulltext/pdf/64817-1.pdf>.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

Energy/Environment Leadership Summit was leaked to the public.<sup>48</sup> As Vice President of the James Madison Institute (JMI), a Florida-based policy think tank, Nuzzo's speech detailed how Consumers for Smart Solar, Inc. approached JMI, requesting their help with the preparation of a political campaign for Amendment I.<sup>49</sup> Nuzzo recounted what initially prompted Consumers for Smart Solar to solicit assistance from JMI, stating the following: "Amendment 1 proponents approached JMI when Floridians for Solar Choice, which opposed Amendment 1, started an initiative petition drive to put an amendment on the ballot designed to make solar production a right, prevent fees on solar producers, and boost the financial incentive for third-party solar energy providers."<sup>50</sup>

Discussing how JMI helped Consumers for Smart Solar with gathering the necessary research to strategically construct a utility-backed solar amendment, Nuzzo stated:

. . . [C]onsumers for Smart Solar came to JMI and said you guys are the adults in the room, you're the ones that have access to the research, to the scholars, to the SPN, to a lot of the national organizations, we need some help because not only are they going to get the 700,000 signatures to get it on the ballot, it's actually polling in the 70 percent range[.]<sup>51</sup>

Later in his speech, Nuzzo discussed how JMI helped Consumers for Smart Solar conceive the deceptive strategy to create and finance Amendment 1, which would eventually be employed by the state's largest utilities.<sup>52</sup>

As you guys look at policy in your state, or constitutional ballot initiatives in your state, remember this: Solar polls very well. To the degree that we can use a little bit of political jiu-jitsu and take what they're kind of pinning us on and use it to our benefit either in

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<sup>48</sup> EXPOSEDbyCMD, *An Incredibly Savvy Maneuver*, SOUND CLOUD (Oct. 21, 2016), <https://soundcloud.com/cmd-sourcewatch/an-incredibly-savvy-maneuver>.

<sup>49</sup> Mary Ellen Klas, *Insider Reveals Deceptive Strategy Behind Florida's Solar Amendment*, MIAMI HERALD (Oct. 18, 2016, 5:25 PM), <http://www.miamiherald.com/news/politics-government/election/article109017387.html>.

<sup>50</sup> Mary Ellen Klas, *Florida think Tank Says it 'Misspoke' About Secret Solar Ballot Strategy*, MIAMI HERALD (Oct. 19, 2016, 3:10 PM), <http://www.miamiherald.com/news/politics-government/election/article109198712.html>.

<sup>51</sup> *Id.*

<sup>52</sup> Klas, *supra* note 49.

policy, in legislation or in constitutional referendums — if that’s the direction you want to take — use the language of promoting solar, and kind of, kind of put in these protections for consumers that choose not to install rooftop.”<sup>53</sup>

That scheme described by Nuzzo can be essentially boiled down to three basic steps: First, the proponents of Amendment 1 (Consumers for Smart Solar) and JMI analyzed various sources of statistical data and research, regarding to current voting trends among Floridian voters. Once enough data had been analyzed, the resulting numbers revealed some particular voting trends among Floridians.<sup>54</sup> Ultimately, the research revealed a particularly strong, unanimous trend among voters; a unanimous public approval for the implementation of new solar energy initiatives.<sup>55</sup>

After analyzing the data, Consumers for Smart Solar and JMI knew that voters would not favor an initiative purporting to protect big oil’s monopolized control of Florida’s energy market. Unfortunately, this was the collective and greedy goal shared by big oil companies, which sponsored groups like Consumers for Smart Solar and JMI. To make matters worse, these big oil companies interpreted the emergence of the solar energy industry and solar technology, as imminent threats to their dominance over Florida’s energy market. The combination of greed and fear, fuels big oil’s opposition to solar energy in Florida, it is no surprise that they quickly resorted to such mendacious, deceptive tactics—*creating a bill that looked pro-solar but actually fooled voters into voting for a bill that would undermine the solar energy transition in Florida, via the state constitution* in their attempt—to maintain market control.

The second step of Amendment 1’s implementation scheme was to use, what Nuzzo referred to as, “political jiu-jitsu.”<sup>56</sup> The core goal of the “political jiu-jitsu” scheme was to harness the voter-popularity of solar energy and deceive voters into thinking that the proposed legislation was, in fact, a pro-solar energy initiative. To accomplish this

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* (Nuzzo described these trends to his audience at the State Energy/Environment Leadership Summit, stating: “As you guys look at policy in your state, or constitutional ballot initiatives in your state, remember this: Solar polls very well.”).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

task, the drafters of Amendment I were extremely meticulous when selecting the particular language and rhetoric that were used within the bill itself. One example, , can be seen in Amendment I’s ballot title.<sup>57</sup> At a quick glance it is easy to see how the large boldface title, “**Rights of Consumers Regarding Solar Energy Choice,**” might dupe a voter into voting in favor of the amendment.<sup>58</sup> Even if a voter decides to carefully read and inspect the amendment, it repeatedly states that it is establishing a constitutional right for Floridians to use solar energy.<sup>59</sup> Although this type of rhetoric appears to be pro-solar energy, the drafters deceptively embedded several statements within the text, which would have had serious ramifications for solar energy users if the amendment had won the necessary votes to become law.<sup>60</sup>

If the amendment had become law, those people deciding not to use solar energy would be constitutionally protected from having to bear the cost of subsidizing backup power and grid access to those people who *do* decide to use solar energy.<sup>61</sup> In theory, this concept seems to appear to be a reasonable, fair policy. Ironically, this concept victimizes solar energy users. Amendment I would have altered the current law, Florida Statute §366.91, which mandates power companies to bear that subsidization and grid access cost.<sup>62</sup> Instead, Amendment 1 would have made it so neither consumers, nor companies would have had to bear the

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<sup>57</sup> See Consumers for Smart Solar, *supra* note 45.

<sup>58</sup> *Id.*

<sup>59</sup> See *id.* (The ballot summary used following language: “**BALLOT SUMMARY:** This amendment establishes a right under Florida’s constitution for consumers to own or lease solar equipment installed on their property to generate electricity for their own us[e] . . .”).

<sup>60</sup> See *id.* (The ballot summary also contained the following statement: “. . .[S]tate and local governments shall retain their abilities to protect consumer rights and public health and safety, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”).

<sup>61</sup> See Neville Williams, *Guest Commentary: Support Solar in Florida? Then Vote ‘No’ On Solar Amendment*, NAPLES DAILY NEWS (June 1, 2016), <http://archive.naplesnews.com/opinion/perspectives/guest-commentary-support-solar-in-florida-then-vote-no-on-solar-amendment-3384f366-78ba-4fa1-e053-01-381427701.html> (“Here’s what Amendment No. 1 would do, if passed: Under the guise of stating that consumers will have the constitutional right to own or lease solar [they already have the right], the amendment would allow state and local government to impose all manner of fees and regulations on solar users to prevent ‘consumers who do not choose to install solar’ from subsidizing the ‘backup power and grid access to those who do.’ This is complete nonsense.”).

<sup>62</sup> See Fla. Stat. Ann. § 366.91 (West 2010).

cost.<sup>63</sup> To account for the subsidy cost avoided by non-solar energy users, the amendment would have given state and local governments the ability to levy all types of fees and regulations upon solar energy users instead.<sup>64</sup> In practice, Amendment 1 would have made it extremely and unreasonably expensive for Floridians to switch over to solar power. This would have left Floridians with no other feasible choice, other than continuing to purchase energy from the big oil and fossil fuel companies; *the same companies that financed and supported the Amendment 1 in the first place.*

Another powerful implication of Amendment I was its failure to legalize one of the best ways of overcoming a major obstacle for homeowners seeking rooftop solar energy.<sup>65</sup> This obstacle (a high, upfront expense of buying and installing rooftop solar panels) was explained by Tim Dickinson in his recent *Rolling Stone* article.<sup>66</sup>

Key policies that have spurred a rooftop solar revolution elsewhere in America are absent or actually illegal in Florida. Unlike the majority of states, even Texas, Florida has no mandate to generate any portion of its electricity from renewable power. Worse, the state's restrictive monopoly utility law forbids anyone but the power companies from buying and selling electricity. Landlords cannot sell power from solar panels to tenants. Popular solar leasing programs like those offered by SolarCity and Sunrun are outlawed. Rooftop solar is limited to those who can afford the upfront expense; as a result, fewer than 9,000 Florida homes have panels installed.<sup>67</sup>

“In Florida, only electric utilities have the right to sell electricity to homeowners; you can buy or lease your own solar panels, but you can't arrange to buy power from a third-party solar contractor.”<sup>68</sup> Amendment I was subtle, addressing the topic of these popular solar leasing programs, known as “third-party ownerships.” It ensured these programs remained illegal in Florida.<sup>69</sup>

In a third-party ownership, a solar energy contractor, like SolarCity, will go to someone's home, install solar panels on the roof for free, and

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<sup>63</sup> See Consumers for Smart Solar, *supra* note 45.

<sup>64</sup> *Id.*

<sup>65</sup> See McDonnell, *supra* note 38.

<sup>66</sup> See Dickinson, *supra* note 41.

<sup>67</sup> *Id.*

<sup>68</sup> See McDonnell, *supra* note 38.

<sup>69</sup> *Id.*

sells the electricity produced by the panels to the homeowner at a cost that is much cheaper than the cost of buying electricity from the power grid.<sup>70</sup> Although the solar energy contractor will retain ownership of the solar panels it installs, the contractor will also maintain the integrity of the panels throughout the lease.<sup>71</sup> The three-fold benefit for the homeowner is the avoidance of the high installation or ownership cost of solar panels, avoidance of the panels' maintenance cost, and an overall reduction to monthly energy bills.<sup>72</sup>

These hypotheses, regarding the real-world implications if Amendment I had been enacted, were not merely advanced through the arguments of Amendment I's opponents. At another point during Nuzzo's infamous speech, he gloated about this manipulative strategy behind Amendment I and the long-term goals, which the proposed legislation set out to achieve. He stated that the amendment was "[a]n incredibly savvy maneuver [which] would completely negate anything the pro-solar interests would try to do either legislatively or constitutionally down the road."<sup>73</sup>

Once the drafters of Amendment I had completely finished their construction of this piece of legislation, it was time for the execution of the final step of Amendment I's scheme; *voter-enactment of Amendment I, via the November 2016 ballot*. However, efforts to meet the voting requisite for enacting Amendment I into law were ultimately thwarted by the amendment's opponents.<sup>74</sup>

During the final few weeks prior to the November 2016 ballot, and with very little time to spare, the corruption and deception behind Amendment I, were sufficiently brought into the public spotlight.<sup>75</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Mary Ellen Klas, *Insider Reveals Deceptive Strategy Behind Florida's Solar Amendment*, *supra* note 49.

<sup>74</sup> See FL Dept. of St. Div. of Elections, *2016 General Election November 8, 2016 Official Election Results* (Nov. 8, 2016), <http://enight.elections.myflorida.com/Constitutional/Amendment.aspx> (For a constitutional amendment to be approved in Florida, it must win a supermajority vote of 60 percent of those voting on the question, according to Section 5 of Article XI. This requirement was established via Amendment 3 in 2006).

<sup>75</sup> See Jennifer Rennicks, *Deception Unmasked as Utilities Pour Additional \$3.5 Million Into Florida's Amendment 1*, FLORIDIANS FOR SOLAR CHOICE, INC. (Oct. 31, 2016), <http://www.flsolarchoice.org/deception-unmasked-as-utilities-pour-additional-3-5-million-into-floridas-amendment-1/> ("It should now be clear to all that Amendment 1

Floridians for Solar Choice, the opposing coalition against Amendment I, had to make sure that the proposed legislation did not garner enough votes to satisfy the sixty percent-supermajority requirement for constitutional amendments.<sup>76</sup>

Lacking the massive funds that advanced the campaign for Amendment I, Floridians for Solar Choice utilized the most basic outlets, such as social media and small signs, to educate voters about the amendment. Voters were then made aware that Amendment I was designed by fossil fuel giants, whom sought to secure their energy monopolies in Florida. Voters were further informed that if these big corporations secure their control of Florida's energy market, it would come at the ultimate expense of the environment, via state-wide consumption of carbon-emitting fossil fuels. As a result, voters were exposed to the guiding principle behind those dishonest tactics, which was intentionally employed by the advocates of Amendment I; *deceitfully obtaining voter support by shrouding Amendment I under a veil of pro-solar energy language and rhetoric.*

It was no surprise that the sponsor of Amendment I was just as crooked as the substance of the amendment itself. Tracing the sponsorship money behind Amendment I revealed the true identity of Consumers for Smart Solar, Inc.; the state's most powerful IOUs.<sup>77</sup> Amendment I received more than twenty-five million dollars from IOUs.<sup>78</sup> One group that has received \$15,000,000 from the Koch Brothers' donor network, known as 60 Plus, donated one million dollars

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is a manipulatively-designed tool for the utility industry to continue to dominate the energy market in Florida. There is no other reason to dedicate roughly \$25 million in an attempt to pass this anti-consumer, anti-solar, anti-free market amendment. VOTE NO ON 1,' said Tory Perfetti, Chairman of Floridians for Solar Choice.”).

<sup>76</sup> See Jennifer Rennicks, *BREAKING: Sunshine State Voters Reject Anti-Solar Amendment 1*, FLORIDIANS FOR SOLAR CHOICE, INC. (Nov. 8, 2016), <http://www.flsolarchoice.org/breaking-sunshine-state-voters-reject-anti-solar-amendment-1/>

(“In a true David and Goliath battle, a diverse grassroots coalition of more than 200 organizations, solar companies, elected officials and thousands of concerned citizens worked to defeat the deceptive utility-backed amendment. Amendment 1 opponents feel that a significant percentage of the ‘yes’ voters felt they were tricked once they understood the true nature of the ballot measure. Constitutional amendments in Florida require 60 percent support to pass.”).

<sup>77</sup> See Dickinson, *supra* note 14, at 4.

<sup>78</sup> *Id.*

to Amendment I's campaign.<sup>79</sup> Another group, The National Black Chamber of Commerce (NBCC), who has been funded by major fossil fuel giants, including Exxon, Koch Industries and Gulf Power, contributed one hundred thousand dollars to the campaign as well.<sup>80</sup>

At last, the true elements characterizing Amendment I had finally been revealed. Amendment I was no longer seen as an environmentally friendly, pro-solar energy initiative. Rather, it was a deceptive attempt made by fossil fuel corporations seeking to secure their financial dominance in Florida, even if it costs the health of our environment.

Finally, on November 8, 2016, The Florida Solar Energy Subsidies and Personal Solar Use Initiative (Amendment 1), was defeated.<sup>81</sup> The ballot results returned a total of 4,418,788 votes (49.21%) opposing the amendment and 4,560,682 votes (50.79%) in favor of it, about 9% short of the required amount for it to be passed into law.<sup>82</sup>

### III. FLORIDA'S BRIGHT, SOLAR-POWERD FUTURE

With Amendment I's defeat, the future of fossil fuel-based IOUs' monopoly over Florida's energy industry looks grim, while the future of the solar energy industry in Florida looks very bright.<sup>83</sup> In the months following Florida's 2016 election results, the state's solar energy industry has continued to generate buzz within news headlines.<sup>84</sup>

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> See Bendelman, *Why Florida's Monopoly Utilities are Trying to Stop Customer-Owned Solar* (Dec. 20, 2016), <http://www.flsun.org/2016/12/20/why-floridas-monopoly-utilities-are-trying-to-stop-customer-owned-solar/>

("Customer-owned, 'rooftop' solar reduces revenue to utility shareholders by reducing demand for their products [electricity and power infrastructure]. This is particularly concerning to utilities since they have seen overall growth in electric demand remain flat and even decline since 2009. This flat demand is due to energy efficiency and decreased industrial activity. Solar is poised to lower electricity demand from utilities further. So, utilities are trying to hold on to their profit margins by blocking solar's growth. Because of this, we can expect to see more attempts, like Amendment 1, by utilities to make it harder for us to go solar.").

<sup>84</sup> See SolarCity, *Statement from SolarCity Chief Executive Officer Lyndon Rive on Defeat of Florida's Amendment 1*, PR NEWswire ASSOCIATION LLC. (Nov. 8, 2016, 22:31 AM), <http://www.prnewswire.com/news-releases/statement-from-solarcity-chief-executive-officer-lyndon-rive-on-defeat-of-floridas-amendment-1-300359610.html>

(When the Florida voting results came out during the late hours of November 8, 2016, SolarCity CEO, Lyndon Rive, issued a very gracious statement to voters:

Florida's solar energy sector has seen rapid growth and promotion through two main avenues. The first consists of Florida's adoption of pro-solar energy, public policies and the second consists of a number of corporate investments within development of solar energy production infrastructure.

*A. The Promotion of Solar Energy—Florida's Public Policies*

The defeat of Amendment I opened-up several avenues for the state to develop new energy policies to advance the solar energy industry in Florida.

i. Rights to Solar Energy in Florida (the P.W. Ventures case and FL. Stat. 366.02(1))

With resistive efforts against solar energy beginning to subside, pro-solar energy activists could now focus on a different obstacle, hindering the practicality of solar power for majority of Florida homeowners. This obstacle, the large upfront cost of installation and ownership of solar panels, was briefly discussed in the prior section. One of the main solutions to this obstacle, 3<sup>rd</sup> party ownership, was also explained at length in that prior section. Building upon that concept, application of 3<sup>rd</sup> party ownership, particularly in Florida, presents a unique legal problem.

Under Florida Statute § 366.02(1), the right to sell electricity to the public is solely reserved for approved and regulated electric utility companies.<sup>85</sup> In 1988, this rule of law was further clarified and affirmed

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“Congratulations to the people of Florida for rejecting Amendment 1 and protecting the state's solar future. For too long Florida has been the sleeping giant of the solar industry. Today, the public took historic action to choose a future powered by solar energy, as Floridians from all walks of life wisely saw through the utilities' \$26 million deceptive campaign. By voting No on Amendment 1, Floridians have affirmed individuals' right to generate their own solar power, which is cleaner and will create local jobs that cannot be outsourced.”)

<sup>85</sup> See Fla. Stat. Ann. § 366.91(1) (West 2010) (“Public utility” means every person, corporation, partnership, association, or other \*283 legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state. . .); see also John Fitzgerald Weaver, *Tesla Giving Up Residential Solar Leasing to be in the Florida 'Sunshine' Market – and it Might be the Company's Future*, ELECTRECK (Dec. 2, 2016),

by Florida's Supreme Court in *PW Ventures, Inc. v. Nichols*, by defining what constitutes a "public utility."<sup>86</sup> Although this wrinkle in Florida's law seems like a dead-end for those seeking to avoid the high upfront costs associated with solar energy, there is a silver lining.

ii. Gov't Initiatives/Policies to Help Promote Solar Energy (AESP and S.A.V.E.)

The U.S. government has stepped up on behalf of qualifying Americans seeking to transition their energy reliance over to solar power.<sup>87</sup> This federal program is known as the Alternative Energy Solar Project (ASEP).<sup>88</sup> ASEP uses money raised by private investors and government incentives to assist middle-class Americans who cannot afford the stiff, initial costs of purchasing and installing solar panels on their homes.<sup>89</sup> For qualifying homeowners under the program ASEP bears the entire cost of installing the solar panels on top of the homeowner's roof.<sup>90</sup> To sweeten the deal, those homeowners will also benefit from paying a cheaper price (*compared to the rates of traditional, fossil-fuel-generated electricity*) for the electricity generated by the panels on their roofs.<sup>91</sup>

In addition to those services, the Alternative Energy Solar Project also works for the Solar Affordable Verified Establishment (S.A.V.E.) project, under the title of promotional manger.<sup>92</sup> S.A.V.E. is one of the

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<https://electrek.co/2016/12/02/tesla-giving-up-residential-solar-leasing-to-be-in-the-florida-sunshine-market-and-it-might-be-the-companies-future/>.

<sup>86</sup> See *P.W. Ventures, Inc. v. Nichols*, 533 So. 2d 281, 283 (Fla. 1988) (The holding of this case clarifies that the words, "to the public," under Florida's legal definition of "public utility," includes two party consumption-based PPAs and that PPA providers are governed as public utilities).

<sup>87</sup> See Spencer R., *Middle-Class Families Are Set To Receive Solar Panels With No Upfront Costs In The U.S.* (Jan. 12, 2017), <http://greenenergychronicles.com/solar>.

<sup>88</sup> See *id.* ("According to recent news, the plan is to use the rebates set aside for solar and the money raised by companies who want to lower the per ton of carbon dioxide emitted.").

<sup>89</sup> See *id.* (This front-end cost that is associated with transitioning a home off of its normal electricity supply, over to solar power, roughly amounts to \$32,000).

<sup>90</sup> *Id.*; see also Alternative Solar Energy Project, *It's Time to Change!*, (Sept. 30, 2014), <http://aesproject.org/> ("We estimate that those families who sign up and qualify could save up to \$2400 a year.").

<sup>91</sup> *Id.*

<sup>92</sup> Spencer R., *supra* note 87.; see also Alternative Solar Energy Project, *S.A.V.E. – THE U.S.*, (Sept. 30, 2014), <http://aesproject.org/s-a-v-e/>.

U.S.'s earliest, "dedicated solar repayment system for middle class families."<sup>93</sup> S.A.V.E. is funded by private investors, through the Private Utilities Commission, which also provides free, rooftop installation of solar panels, for qualified homeowners.<sup>94</sup> In addition to bearing the costs of panel installation, S.A.V.E. also covers the maintenance, or service costs, associated with keeping the panels in good-working condition.<sup>95</sup> The one main contingency to receive these benefits from S.A.V.E., other than qualifying as a "middle class family," is that the homeowner does not actually retain personal ownership of the panels installed on his or her home.<sup>96</sup>

### iii. Solar Tax Benefits for Floridians (Amendment 4)

Although Amendment I garnered significant attention from the media and the public due to its notoriety during Florida's November 2016 elections, there was another significant solar energy amendment on Florida's August 2016 ballots.<sup>97</sup> Under the title, "The Florida Property Tax Exemptions for Renewable Energy Equipment Amendment," or

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<sup>93</sup> *Id.*

<sup>94</sup> *See* Solar Energy Project, *S.A.V.E. – THE U.S.*, *supra* note 92.

<sup>95</sup> *See* Spencer R., *supra* note 87. (For homeowners who ultimately want to obtain personal ownership of the panels provided to them, S.A.V.E. also has several programs which allow those homeowners to buy the panels, even without having to bear any money-out-of-pocket expenses).

<sup>96</sup> *Id.*

<sup>97</sup> *See* Ballotpedia State Desk, *Florida Property Tax Exemptions for Renewable Energy Equipment, Amendment 4*, BALLOTPEDIA (Aug. 30, 2016), [https://ballotpedia.org/Florida\\_Property\\_Tax\\_Exemptions\\_for\\_Renewable\\_Energy\\_Equipment,\\_Amendment\\_4\\_\(August\\_2016\)](https://ballotpedia.org/Florida_Property_Tax_Exemptions_for_Renewable_Energy_Equipment,_Amendment_4_(August_2016)) (Essentially, Amendment 4 provides new ad valorem tax exemptions for "solar power and other renewable energy equipment included in home, commercial, and industrial property values that would otherwise fall under the tangible property tax bracket."); *see also* Florida Department of State Division of Elections, *Proposed Constitutional Amendment to Be Voted on August 30, 2016*, FLORIDA DEPARTMENT OF STATE, 5 (Sept. 15, 2016), <http://dos.myflorida.com/media/696213/constitutional-amendments-2016-primary-english-booklet.pdf> (A brief description of Amendment 4 read as follows: "Proposing an amendment to the State Constitution to authorize the Legislature, by general law, to exempt from ad valorem taxation the assessed value of solar or renewable energy source devices subject to tangible personal property tax, and to authorize the Legislature, by general law, to prohibit consideration of such devices in assessing the value of real property for ad valorem taxation purposes. This amendment takes effect January 1, 2018, and expires on December 31, 2037.").

better known as “Amendment 4,” this bill quietly won the required supermajority vote for constitutional approval in Florida.<sup>98</sup>

Unlike Amendment 1, this bill was not designed to thwart Floridians at the ballots. Rather, Amendment 4 was designed to extend existing tax exemptions, for “renewable energy source installations on residential properties,” to owners of business and commercial property in Florida.<sup>99</sup> Those tax exemptions were already 36 years-old before Amendment 4 was approved in 2016.<sup>100</sup> During the 1980 election, Florida voters approved these ad valorem tax exemptions by voting for a ballot measure titled “The Florida Renewable Energy Tax Exemption Amendment,” or “Amendment 1.”<sup>101</sup> This amendment provided for an ad valorem tax exemption “for a renewable energy source device and real property on which a renewable energy source device is installed.”<sup>102</sup> Although the language used in both the 1980-Amendment 1 and Amendment 4 appear very similar facially, 1980-Amendment 1 lacked any provisions providing, tax exemptions for business and commercial properties.<sup>103</sup>

Mirroring other pro-solar government initiatives, such as AESP or S.A.V.E., the Floridians 4 Lower Energy Costs PAC campaigned for Amendment 4 as an effort to help promote the state’s transition over to solar power.<sup>104</sup> As part of that campaign, Floridians 4 Lower Energy Costs PAC elaborated upon how Amendment 4 would help to usher Florida’s solar- power transition by giving businesses the right to benefit

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<sup>98</sup> See WPBF 25 West Palm Beach, *Florida-Summary Vote Results*, HEARST TELEVISION INC. (Aug. 31, 2016), [http://hosted.ap.org/dynamic/files/elections/2016/by\\_state/FL\\_Page\\_0830.html?SITE=WPBFTVELN&SECTION=POLITICS](http://hosted.ap.org/dynamic/files/elections/2016/by_state/FL_Page_0830.html?SITE=WPBFTVELN&SECTION=POLITICS) (Amendment 4 or the “Solar Device Tax Exemption - Ballot Issue Exempt Solar Tax” received 1,970,463 votes in favor of the bill and a mere 743,332 votes in opposition to it. To put those numbers into perspective, a whopping 73% of Florida voters supported Amendment 4 during Florida’s Primary Election on August 30, 2016).

<sup>99</sup> Ballotpedia State Desk, *Florida Renewable Energy Tax Exemption, Amendment 1* (October 1980) BALLOTPEDIA (Oct. 7, 1980), [https://ballotpedia.org/Florida\\_Renewable\\_Energy\\_Tax\\_Exemption,\\_Amendment\\_1\\_\(Oct.\\_1980\)](https://ballotpedia.org/Florida_Renewable_Energy_Tax_Exemption,_Amendment_1_(Oct._1980)).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> See Florida Constitution Revision Commission, *Amendments, Election of 10-7-80*, (Jul. 2, 1980), <http://fall.fsulawrc.com/crc/conhist/1980amen-oct.html>.

<sup>103</sup> *Id.*

<sup>104</sup> Floridians 4 Lower Energy Costs PAC, *Sign The Pledge To Vote Yes On Amendment 4*, (Jun. 24, 2016), <http://act.progressflorida.org/signup/amd4/>.

from the same tax exemption which was already established for Floridian residential properties.<sup>105</sup> As part of a fact sheet, issued to educate voters about Amendment 4, Floridians 4 Lower Energy Costs PAC stated:

Amendment 4 will encourage solar companies to move into Florida, creating new jobs that support the local economy. The solar industry is creating jobs 20 times faster than the overall economy. The vast majority of those jobs are living-wage opportunities that cannot be outsourced, keeping energy dollars right here at home. It's a win-win for the whole state.<sup>106</sup>

As we know, the campaign proved to be a huge success based on the results of the August 2016 election.<sup>107</sup> Amendment 4's new tax exemptions will run for 20 years, beginning on January 1, 2018 until December 31, 2037.<sup>108</sup> If the passage of Amendment 4 could be considered as the "figurative cake" for solar energy enthusiasts, the "icing" would be the rapid fulfillment of Floridians 4 Lower Energy Costs PAC's campaign promises. Specifically, their promises regarding Amendment 4's ability to facilitate enormous rates of job creation, within the solar industry.<sup>109</sup>

#### iv. The Idea of a Carbon Tax

Another idea for promoting the fossil fuel-to-renewable energy transition, on a national scale, is the implementation of a tax on carbon.<sup>110</sup> The Carbon Tax Center (CTC) described what a carbon tax is:

A carbon tax is a fee for making users of fossil fuels pay for climate damage their fuel use imposes by releasing carbon dioxide into the atmosphere, and for motivating switches to clean energy. Because

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<sup>105</sup> Floridians 4 Lower Energy Costs PAC, *Yes 4 Solar Fact Sheet*, (June 24, 2016), <https://s3.amazonaws.com/s3.progressflorida.org/images/yeson4-facts.pdf>.

<sup>106</sup> *Id.*

<sup>107</sup> See WPBF 25 West Palm Beach, *supra* note 98.

<sup>108</sup> Art. XII, § 34, Fla. Const.

<sup>109</sup> See Kera Mashek, *Solar Industry Booming in Florida*, SCRIPPS MEDIA, INC. (Feb. 7, 2017, 5:47 PM), <http://www.abcactionnews.com/news/region-tampa/solar-industry-booming-in-florida> ("A new study finds Florida is leading the nation in creating new jobs in solar energy.").

<sup>110</sup> See Carbon Tax Center, *What's a Carbon Tax?* CARBON TAX CENTER (Dec. 26, 2016), <https://www.carbontax.org/whats-a-carbon-tax/>.

CO<sub>2</sub> is released in strict proportion to the fuel's carbon content, the carbon tax can be levied "upstream" on the fuel itself when it is extracted from the ground or imported into the U.S.<sup>111</sup>

The idea behind imposing a carbon tax is that corporations will opt to implement new, renewable energy infrastructures that will not subject their revenue to this tax.<sup>112</sup> This concept, that the market demand for renewable energy would naturally increase in response to a carbon tax, was reiterated by Chris Farrell during the MPR News with Kerri Miller.<sup>113</sup>

One argument is that the current White House Administration stands directly in opposition to such a tax, making this idea nearly impossible to implement.<sup>114</sup> However, when current Secretary of State, Rex Tillerson, was CEO of Exxon Mobile, he said he was in favor of a carbon tax.<sup>115</sup> Another positive aspect about a carbon tax, according to Tillerson, was that it would not increase the size of the government.<sup>116</sup>

These pro-solar energy programs/policies, implemented on state and federal levels, are conducive for the fossil fuel-to-renewable energy transition. However, the results of these initiatives will likely be more visible, once they have been operating in place for at least several years. On the other hand, a number of pro-solar energy programs/policies implemented on the private level are having significant, visible impact right now.

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<sup>111</sup> *Id.*

<sup>112</sup> *See* MPR News with Kerri Miller, *supra* note 7.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *See* Robinson Meyer, *Rex Tillerson Says Climate Change Is Real, but*, THE ATLANTIC, (Jan. 11, 2017), <https://www.theatlantic.com/science/archive/2017/01/rex-tillerson-climate-change/512843/> (On Wednesday, January 11 2017, Tillerson clarified his support for a carbon tax, which he described as "[a] more direct, a more transparent, and a more effective approach," for promoting the national transition to renewable energy reliance. He also stated that "[I]t replaces the hodgepodge of approaches we have today, which are scattered. Some of which are through mandates, some of which are well-intended, but ineffective incentives.").

<sup>116</sup> *See id.* (Tillerson stated, "[i]f a carbon tax is put in place, it has to be revenue-neutral. All the revenues have to go back out to the economy through reduced employee payroll taxes. . . This is simply a mechanism to incentivize choices that people are making. It's not a revenue-raiser.").

*B. New Solar Power Initiatives of Private Corporations in Florida*

On February 7, 2017, the nonprofit solar advocacy group, known as the Solar Foundation, released their latest report, titled, *The National Solar Jobs Census 2016*.<sup>117</sup> This report details the current employment, trends, and projected growth in the U.S. solar industry.<sup>118</sup> Overall, *The Solar Jobs Census 2016* revealed booming trends in solar employment rates across the United States.<sup>119</sup> The data from 2016 alone showed that the solar industry is growing at an astounding rate, “adding workers at a rate nearly 17 times faster than the overall economy and accounting for 2% of all jobs created in the U.S. over the past year.”<sup>120</sup> The report also showed that “solar jobs increased in 44 of the 50 states in 2016,” giving credence to the claim that solar employment rates are truly a national phenomenon.<sup>121</sup> Given the highly beneficial business implications of Amendment 4’s approval in August 2016, coupled with voters’ rejection of Amendment 1 in November 2016, Florida proved to be one of the top five states in terms of facilitating the growth of the solar industry.<sup>122</sup>

i. Solar Energy Demand’s Impact on Florida Businesses

A great example of how solar energy implementation has grown in Florida can be found in Tampa, at the First Housing building, where Solar Energy Management customized and installed over 400 solar panels have been installed on the roof of the building and on the company’s carports.<sup>123</sup> These new solar panels have reduced First

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<sup>117</sup> See The Solar Foundation, *National Solar Jobs Census 2016*, (Feb. 7 2017), <http://www.thesolarfoundation.org/national/> (“The National Solar Jobs Census is the most credible, annual review of the solar energy workforce in the United States.”).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Solar Accounts for 1 in 50 New U.S. Jobs in 2016*, THE SOLAR FOUNDATION (Feb. 7, 2017), <http://www.thesolarfoundation.org/solar-accounts-1-50-new-u-s-jobs-2016/>.

<sup>122</sup> See *id.* (“The state with the highest total number of solar jobs in 2016 was California, followed by Massachusetts, Texas, Nevada, and Florida.”); see also *National Solar Jobs Census 2016*, *supra* note 120 at 49-50.

<sup>123</sup> See Kera Mashek, *Solar Industry Booming in Florida*, SCRIPPS MEDIA, INC. (Feb. 7, 2017 5:47 PM), <http://www.abcactionnews.com/news/region-tampa/solar-industry-booming-in-florida>.

Housing's utility bill, "from \$65,000 a year down to less than \$3,000," according to First Housing's President and CEO, Doug McCree.<sup>124</sup>

Florida's swelling demand for solar energy is being driven by both lower costs of solar panels and by "generous federal incentives of up to 30 percent tax credits."<sup>125</sup> Scott McIntyre, CEO of Solar Energy Management, commented about how this demand has impacted the influx of business and job creation for Solar Energy Management, stating "[w]e've seen a quadrupling of our revenues and a quadrupling of our hiring of people."<sup>126</sup>

Solar energy's impact upon businesses, like the example exhibited by Solar Energy Management, is reflective of a state-wide surge in demand for solar energy across Florida.<sup>127</sup> One of the most illustrative facts that puts this demand into perspective is that from 2015 to 2016, the number of solar jobs, in Florida, have increased 26 percent.<sup>128</sup> These statistics from Florida contributed on a national-scale to those promising findings published in *The Solar Jobs Census 2016*.<sup>129</sup>

Commenting on the stellar results of *The Solar Jobs Census 2016*, Andrea Luecke, President and Executive Director of The Solar Foundation stated, "[w]ith a near tripling of solar jobs since 2010, the solar industry is an American success story that has created hundreds of thousands of well-paying jobs."<sup>130</sup> Luecke went on to further explain why these statistics looked so good in 2016:

In 2016, we saw a dramatic increase in the solar workforce across the nation, thanks to a rapid decrease in the cost of solar panels and unprecedented consumer demand for solar installations. More than ever, it's clear that solar energy is a low-cost, reliable, super-

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See Kathleen Lavine, *Job Numbers Jump in Florida's Solar Sector*, AMERICAN CITY BUSINESS JOURNALS, (Feb. 9, 2017, 6:28 AM), <http://www.bizjournals.com/southflorida/news/2017/02/09/job-numbers-jump-in-floridas-solar-sector.html>.

<sup>128</sup> See *id.* ("Florida had 8,260 jobs in the solar power sector, up 26 percent from the end of 2015, according to the 2016 National Solar Jobs Census, the seventh annual jobs report from The Solar Foundation. The report, released Tuesday, counted 260,077 people working in the sector nationally, up 25 percent from 2015. It's the biggest jump the Foundation recorded in the seven years it's tracked employment in the sector.").

<sup>129</sup> See The Solar Foundation, *Solar Accounts for 1 in 50 New U.S. Jobs in 2016*, *supra* note 121.

<sup>130</sup> *Id.*

abundant American energy source that is driving economic growth, strengthening businesses, and making our cities smarter and more resilient.<sup>131</sup>

Looking at the solar industry's growth rates from a much broader perspective, the trends reflected by The Solar Foundation's long-term research, revealed that "solar industry employment has grown by 178% since 2010, resulting in over 166,575 new domestic living-wage jobs."<sup>132</sup>

#### ii. Actual Corporate. Investments in Building Solar Infrastructure

As the demand for solar energy continues to propel job creation and business investments, on both state and nation-wide scales, more and more energy-producing companies have decided to capitalize on that demand.<sup>133</sup> One of the most indicative signs of solar energy's optimistic, Floridian future occurred on December 1, 2016, in the form of a blog-announcement from SolarCity:<sup>134</sup>

This morning we announced residential solar service in Florida, something we've wanted to announce for a long time. Though the "Sunshine State" doesn't get quite as much sun as the southwestern U.S., it consistently ranks among the nation's ten sunniest states (the Orlando area, where we're initially launching service, enjoys more than 230 sunny days each year). Today's announcement was made possible when the citizens of Florida rejected the anti-solar Amendment 1, which would have made it easier for utilities to add fees to make solar more expensive for customers. The Amendment was disguised as pro-solar policy in what amounted to a cynical attempt by solar opponents to slow down solar development in the state. Thanks to this vote, solar customers in Florida will continue to receive full retail credit for any excess solar electricity they provide to the grid when they aren't at home. SolarCity will initially serve customers of Duke Energy and Orlando Utilities Commission in the greater Orlando area from a local installation center in Clermont, and plans to expand to additional areas of the state in the coming months.

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Solar City, *The Sunshine State*, SOLAR CITY BLOG (Dec. 1, 2016), <http://blog.solarcity.com/the-sunshine-state/>.

<sup>134</sup> *Id.*

Orlando-area homeowners that are interested in finding out more can request a free quote, or if they prefer, purchase a system online.<sup>135</sup>

Unlike most of the Florida-located IOUs and fossil fuel companies, which expended substantial amounts of time and capital to support Amendment I, one other energy company decided to focus its resources on another project. While other energy companies remained stagnant, looking to exploit energy consumption habits of the past, Florida Power & Light Co., not only envisioned the future of Florida's energy consumption habits, but they also invested in it.

According to Solar Energy Industries Association's (SEIA) data report, regarding Florida's solar energy statistics as of September 9, 2016, the amount of solar energy installed within the state amount to a total of 312 megawatts.<sup>136</sup> With this amount of solar energy the state was only capable of powering a mere 36,000 homes.<sup>137</sup> Amazingly, on December 31, 2016, shortly after SEIA's data report was published, Florida Power & Light Co. announced that they had just "connected three new 74.5-megawatt solar power plants to the energy grid."<sup>138</sup> These 3 plants account for a total of 225 megawatts of solar energy in Florida, in addition to the 312 megawatts reported by SEIA.<sup>139</sup> In less than 4 months time, FPL, through its investment in solar power, generated enough energy to power 60,000 homes within Florida.<sup>140</sup> Not only did FPL reveal the addition of these 3 new plants, which almost doubled the state's capacity power homes with solar energy, they also announced that 4 more plants are in the works for 2017.<sup>141</sup>

President and CEO of FPL, Eric Silagy stated that ". . . investing strategically in affordable, clean energy, [sic] continue[s] to improve the

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<sup>135</sup> *Id.*

<sup>136</sup> See Solar Energy Industries Association, *Solar Spotlight: Florida*, (Sept. 9, 2016),

[http://www.seia.org/sites/default/files/FL%20State%20Fact%20Sheet\\_9.9.2016.pdf](http://www.seia.org/sites/default/files/FL%20State%20Fact%20Sheet_9.9.2016.pdf) ("The 312 MW of solar energy currently installed in Florida ranks the state 15th in the country in installed solar capacity. Of this capacity, 59 MW are residential, 84 MW are commercial, 94 MW are utility-scale and 75 MW are from concentrating solar power. There is enough solar energy installed in the state to power 36,000 homes.").

<sup>137</sup> *Id.*

<sup>138</sup> Ron Hurtibise, *Florida Power & Light Flips the Switch On Three Solar Energy Plants*, SUN SENTINEL (Jan. 13, 2017, 6:40 PM), <http://www.sun-sentinel.com/business/fl-fpl-completes-solar-plants-20170113-story.html>.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

efficiency of our system, reduce fuel consumption, lower emissions and help keep costs down for our customers over the long term.”<sup>142</sup> Silagy also made several remarks regarding just how radically different solar energy production is from producing energy using fossil fuels (with regards to its environmental impact).<sup>143</sup> “When the sun rises at one of our solar plants, thousands of homes and businesses are powered with cost-effective, zero-emissions energy. We believe in advancing solar affordably and responsibly for our customers and our state, and the coming years will be a game-changing time for solar in Florida.”<sup>144</sup>

By employing similar principles to those which guided FPL’s vision of the future, state-wide energy consumption habits, lawmakers and policy experts will be able to swiftly guide Floridians during their statewide transition of adopting environmentally-friendly energy consumption habits.<sup>145</sup>

#### IV. CONCLUSION

The defeat of Amendment I, the existence of a number of current federal incentive programs, and recent private investments in solar energy production projects are all extremely helpful in promoting Florida’s shift to becoming a solar powered state. However, lawmakers and policy experts can help ensure that Florida swiftly transitions away from its long-term reliance of fossil fuels, implementing solar energy as the state’s new main source of energy. This goal can be accomplished by continuing to improve upon two main areas of focus in Florida. The first area, public policy, can be improved upon by developing more pro-solar energy policies that are conducive, for both the public businesses and homeowners. The second area, the corporate sector, can be improved upon by making Florida a more conducive marketplace for private energy companies that are investing in the development of infrastructure required for large-scale solar energy production.

Ultimately, Florida’s shift, from relying on fossil-fuels to renewable energy sources, is inevitable. Furthermore, the superior

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<sup>142</sup> Peter Schorsch, *Florida Power & Light Brings 3 Solar Plants Online, 4 More Planned for 2017*, SAINT PETERS BLOG (Jan. 15, 2017), <http://saintpetersblog.com/florida-power-light-brings-3-solar-plants-online-4-planned-2017/>.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

efficiency of harnessing clean, renewable energy from the sun, rather than harnessing energy from fossil fuels, is undeniable. As we literally and figuratively put the Sun back into the Sunshine State, we can continue to create a radiantly bright future for Florida's economy and environment.