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# 2016 FLORIDA AMENDMENT GUIDE

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**A**s November 8, 2016 quickly approaches, Floridians are preparing to cast their collective votes to decide who will best represent the timeless constitutional ideals of limited government, free-markets and individual liberty. However, there is one lesser-regarded, but equally important, section of the ballot many will, to their disadvantage, either skim or avoid altogether: ballot initiatives and constitutional amendments.

Ballot initiatives and proposed constitutional amendments play a crucial (some would argue even an outsized) role in the governance of the State of Florida. It is imperative that proposed amendments are analyzed and evaluated by voters for both their impact and their place in the Constitution.

Under Article XI, there are six mechanisms for amending Florida's Constitution (more than any other state). Of these six, two are the most common processes. The first is executed by the Florida Legislature. The second is driven by Floridians themselves. No matter the process by which the proposed initiative or amendment is placed on the ballot, it must pass with at least 60 percent of the voting electorate to become a part of Florida's Constitution.

Under Section I of Article XI, it reads the procedure the Florida Legislative Branch must take in order to place a proposed amendment on the ballot; "Amendment of a section... may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature."

In short, 60 percent of both the Florida House of Representatives and Florida Senate must agree to put the proposed amendment on the ballot.

The other common process by which a proposed amendment is placed on the ballot is through citizen initiative. Under Section III, the power to amend any portions or portion of the Florida Constitution by initiative is specifically reserved for the people, "provided that, any such revision or amendment... shall embrace but one subject and matter directly connected therewith." The necessary number of required signatures on the initiative must equal eight percent of the voting electorate of the last presidential election. Meaning, for 2016 citizen ballot initiatives, more than 683,000 signatures must be gathered, submitted, and verified. Once 10 percent of the necessary signatures have been collected, the Attorney General's office petitions the Florida Supreme Court for an advisory opinion on whether the ballot initiative satisfies the single subject rule and appropriateness of the title and subject of the ballot initiative.

Section I and III are only two means whereby proposed amendments and initiatives are placed on the ballot. Although different, these two Sections provide for transparent governance for all citizens in Florida to be engaged in the political process. On August 30, Floridians will have the chance to vote on Amendment 4. On November 8th, the remaining Amendments (1, 2, 3, and 5) will be on the ballot. The following is an analysis of each of the amendments that will be voted on in 2016.



## AMENDMENT 1

### Rights and Electricity Consumers Regarding Solar Energy Choice

**REFERENCE:** Adds Section 29 to Article X as follows

**BALLOT LANGUAGE:** “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. State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, 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.”

**IN BRIEF:** Through adding Section 29 to Article X of the Constitution, solar choice will be deemed a Constitutional right for citizens. Amendment 1 also protects rate payers, who decide to not install solar equipment on their homes, from subsidizing the cost of electricity to those who do in times of backup power or grid access.

**ANALYSIS:** With the passage of Amendment 1, Section 29 under Article X would take effect immediately, cementing a Constitutional right to own or lease solar equipment. Introduced by Consumers for Smart Solar, supporters are campaigning for “Yes On 1 For The Sun,” touting that passage of the Amendment fosters citizens’ rights and protections while increasing solar energy. The initiative stems from proponents wishing to protect consumers’ rights to own or lease solar equipment. However, such an initiative can be traced back to 2008. Over a period of six years the Public Service Commission notes there has been an increase in customer-owned solar generation from 577 in 2008 to 8,546 in 2014; an increase of 1,300 percent. With the passage of the Amendment, proponents

project that consumers would increase solar output while protecting those who choose to not install solar energy.

The language in the Amendment clearly defines terms used in distinguishing electric grid from electric utility noting electric grid is defined as “the interconnected electrical network, consisting of power plants and other generating facilities...” while electric utility is defined as “any municipal electric utility, investor-owned electric utility, or real electric cooperative...”

**PRO:** The passing of Amendment 1 would effectively contribute to the following: it would establish the right of an individual to own or lease solar equipment to generate electric power for their own personal use. It would also retain state and local government ability to protect consumer rights and public health by protecting rate payers from subsidizing cost during times of low or no backup power. The twofold result promotes solar equipment use while also not punishing those who choose to stay with their traditional utility provider. Financially, the passage of the Amendment upholds fiscal responsibility. The Financial Impact Estimating Conference projects “the amendment is not expected to result in an increase or decrease in any revenues or costs to state and local governments.” The Conference also notes “the proposed amendment will not require any change in current or anticipated state and local regulation or taxation of solar energy in Florida.” The results of the finding by the Conference strengthen the case for those in favor of the Amendment and show consumers will retain the choice of utility and not be punished by regulations or higher taxes whether rate payers choose to install solar equipment or not.

The passage of the Amendment also takes use of the need to increase solar utility for the sake of renewable energy. Renewable energy from the sun benefits those who wish to protect other vital resources while simultaneously protecting the environment. It also benefits those who wish

to develop a more competitive market for solar equipment. This two-pronged benefit provides an opportunity for groups to further innovate resources that enhance a competitive market for future businesses and prospective consumers.

**CON:** Those who oppose the Amendment will claim the passage will create an environment not conducive to free markets saying the Amendment does not provide a mechanism for third party sales generated from consumers. However, that provision is a policy solution that can and should be handled by the Florida Legislature.

## AMENDMENT 2

### Use of Marijuana for Debilitating Medical Conditions

**REFERENCE:** Article X; adds Section 29

**BALLOT LANGUAGE:** “The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law... A physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section.”

**IN BRIEF:** The ballot measure authorizes the medicinal use of marijuana for patients with debilitating medical conditions and other debilitating medical conditions of the same kind or class as dictated by a licensed Florida physician who deems the use of marijuana outweighs the potential health risks associated with the patient’s illness. The measure also permits caregivers to assist the use of marijuana to those who are unable to use it themselves. The proposed Amendment calls on the Department of Health to register and regulate centers that produce and distribute marijuana for

medical purposes and shall issue identification cards to patients and caregivers.

**ANALYSIS:** Being touted as valuable medical treatment, Amendment 2 provides for the legalization and cultivation of medical marijuana for debilitating illnesses as prescribed by a licensed Florida physician. Backed by United for Care, Attorney John Morgan, and the Florida Democratic Party, Amendment 2 has a large coalition promoting it. In 2014, a similar ballot measure called for the legalization of medical marijuana, but failed to reach the 60 percent threshold needed to pass. Proponents, this time, have narrowed numerous definitions in order to appease those who claimed the 2014 Amendment language was too vague. Under the definitions provision, “Debilitating Medical Conditions” has been narrowed to include conditions “of the same kind or class as or comparable to those enumerated...” The 2016 ballot measure also addresses concerns in regards to physician negligence. Under the “Limitations” provision of the proposed Amendment, “[n]othing in this section shall affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, MMTC, or its agents or employees.” The Amendment also provides the Legislature to enact laws consistent with the Amendment, leaving open the potential for further regulations or appropriations deemed necessary by the legislature. Finally, if any court of competent jurisdiction deems any provision or section invalid, the proposed Amendment notes any and all remaining sections shall remain intact to the fullest extent possible.

**PRO:** Through passage by vote of the people, the Amendment is allowing the electorate to play a firsthand, direct role in the direction of healthcare in the state. There is little doubt that younger generations feel more compelled the vote on the legalization of medical marijuana. This Amendment gives millennials the motivation to become more

involved in the political and grassroots process. Proponents of the Amendment note “marijuana’s medical value.” They argue available prescription drug medicines often carry far more serious side effects than marijuana. Nausea, appetite loss, pain, and anxiety are common side effects that can be mitigated by the use of medical marijuana. They also indicate medical marijuana is a better substitute for those who are not able to take pills by vaporizing the drug. Finally, morphine and other methamphetamine are all legal medical remedies. Those supporting the Amendment argue medical marijuana should also be included noting it has a much lower dependency rate and has never recorded an overdose.

**CON:** Opponents of Amendment 2 argue two possible negative impacts associated with the passage of this ballot initiative. The first involves enacting a Constitutional Amendment that directly contradicts federal law prohibiting any use of marijuana, recreationally or medicinally. This is regardless of the fact 25 other states including the District of Columbia and Guam have enacted similar legislation and constitutional amendments. This is also coupled with a pressing question; Is the need for medical marijuana pressing enough that it rises to the level where it should be added in a constitution? Constitutions are founding documents meant to articulate the overall governing foundation for a state. In Florida’s Constitution, this is reflected in the clause “in order to secure its benefits, perfect our government, insure domestic tranquility, [and to] maintain public order.” Those opposed to the initiative would argue that the legalization of medical marijuana is a matter to be taken up by the Florida Legislature to debate and vote on, not a measure to be added to the State Constitution. The second negative consequence opponents argue the Amendment could create is fiscal instability. Opponents claim, based on Florida’s patient needs, that the number of marijuana treatment centers could top 1,993; more than Walmart and Walgreens stores combined. The Financial Impact

Estimating Conference also notes, based on other states’ experiences, “the Department of Health estimates that it will incur \$2.7 million in annual costs for its regulatory responsibilities, upon full implementation.” More costs will also be produced as the Conference indicates the Departments of Highway Safety and Motor Vehicles, Law Enforcement, and the Sheriffs Association expect additional law enforcement costs based on the experience of other states with similar laws. The ultimate number of these costs, the Conference claims, cannot be fully determined. Proponents of the Amendment will refer to the possible revenue of taxation the Amendment will raise. However, due to unknown costs regarding the need for extra law enforcement coupled with any additional regulatory costs, there are too many variables to adequately gauge the possible net revenue raised in taxation.

### Amendment 3

#### Tax Exemption for Totally and Permanently Disabled First Responders

**REFERENCE:** Amend Section 6 of Article VII; Add New Section to Article XII

**BALLOT LANGUAGE:** “A joint resolution proposing an amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution to authorize a first responder, who is totally and permanently disabled as a result of an injury sustained in the line of duty, to receive relief from ad valorem taxes assessed on homestead property, if authorized by general law, and to provide an effective date.”

**IN BRIEF:** Amendment 3 amends a portion of Section 6 where disabled first responders who sustained permanent disabled injury can receive a property tax exemption. Prior, only widowed spouses could receive such an exemption.



**ANALYSIS:** Amendment 3 is one of three proposed ballot measures brought upon by the Florida Legislature. The bill was sponsored by Representative Larry Metz (R-32). On the House Floor, Amendment 3, or as it was known then, HB 1009, passed unanimously in both chambers with 114 Yea votes in the House and 39 Yea votes in the Senate, finding ample support from both Republicans and Democrats. Because the proposed measure would alter tax revenues and rates, the Legislature must put the proposed bill on the ballot in either the general election or special election. This is specifically referenced in Article XI Section 7, “no new State tax or fee shall be imposed on or after November 8, 1994 by any amendment to this constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered... This section shall apply to proposed constitutional amendments relating to State taxes or fees which appear on the November 8, 1994 ballot, or later ballots, and any such proposed amendment which fails to gain the two-thirds vote required hereby shall be null, void and without effect.” Because this amendment would apply to existing revenue streams as opposed to a “new tax or fee” the threshold for approval would be 60 percent.

**PRO:** Those supporting this amendment would make the case that it is imperative to recognize the sacrifice our first responders give in the line of duty protecting our liberties and way of life. The State of Florida and its citizens are, by the very nature of the services performed by first responders, forever in debt for the sacrifice so many men and women make. One mechanism that our state can collectively express our appreciation is through the passage of Amendment 3, granting property tax relief. Following such a traumatic experience in the service of our state, it is argued by those supporting the amendment that Florida should repay that debt through passage of this amendment.

**CON:** Opponents of Amendment 3 will argue the establishment of a tax exemption for one’s property separates taxpayers based simply on occupation. Opponents claim all taxpayers should be treated consistently and objectively with respect to taxation. With respect to a concept such as property tax rates and exemptions – the better solution would be to have rates set at as low as possible for all taxpayers, rather than disparate treatment dependent upon job categories.

## Amendment 4

### Solar Devices or Renewable Energy Source Devices; Exemption from Certain Taxation and Assessment

**REFERENCE:** Amend Section 3 and 4 of Article VII and create Section of Article XII

**BALLOT LANGUAGE:** “A joint resolution proposing amendments to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to authorize the Legislature, by general law, to exempt from ad valorem taxation the assessed value of solar devices or renewable energy source devices that are subject to tangible personal property tax, to authorize the Legislature, by general law, to prohibit the consideration of the installation of such devices in determining the assessed value of residential and nonresidential real property for the purpose of ad valorem taxation, and to provide effective and expiration dates.”

**IN BRIEF:** Through Amendment 4, Sections 3 and 4 of Article VII would be altered to permit the Florida Legislature to exempt taxation on solar and renewable energy devices that would otherwise fall under the tangible property tax bracket. As a result, Amendment 4 would allow Florida businesses to invest more in their solar-related products and services to provide to Floridians.

**ANALYSIS:** Amendment 4 is one of three proposed Constitutional Amendments that was put forth by the Florida Legislature. However, unlike its Legislative counterparts, Amendment 4 is scheduled to be voted on August 30th, Florida's primary. Amendment 4 was sponsored by Florida State Senator Jeff Brandes (R-22) and Representatives Ray Rodrigues (R-76) and Lori Berman (D-90). The bill received substantial bipartisan passing both chambers unanimously. The proposed amendment is also receiving support from a number of state leaders and elected officials. Unlike other proposed amendments, Amendment 4 is also receiving support from congressional candidates. State organizations, such as Floridians for Solar Choice, Southern Alliance for Clean Energy, and the Florida Chamber of Commerce are all supporting the initiative.

It is important to note that this amendment will cover a period of 20 years, should it be approved. The exemption will take effect on January 1, 2018 and will sunset on December 31, 2037 (unless otherwise amended in subsequent years).

**PRO:** Florida is famous for its moniker as the "Sunshine State," and those in support of the amendment make the case that approval will give property owners the opportunity to install solar devices and contribute to the growth of renewable energy in Florida without the burden of additional taxes being placed on their property. Those in favor of the Amendment maintain the impact will also allow businesses (at least those that own property) to invest in solar installations, which will have several indirect benefits for consumers, tourists, and others throughout the state.

**CON:** Those opposing the ballot measure claim property subject to taxation should be treated consistently and objectively. With respect to a concept such as property tax rates and exemptions – the better solution would be to have rates set at as low as possible for all taxpayers, rather than disparate treatment. Installing solar panels is an

expensive project, and consequently, the benefits of the tax exemption would be felt for the most part by the wealthiest property owners, creating more of a regressive effect on the property tax system.

## Amendment 5

### Homestead Tax Exemption for Certain Senior, Low-Income, Long-Term Residents; Determination of Just Value

**REFERENCE:** Amend Article VII, Section 6 & Article XII

**BALLOT LANGUAGE:** "A joint resolution proposing an amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution to revise the homestead tax exemption that may be granted by counties or municipalities, if authorized by general law, for the assessed value of property with a just value less than \$250,000 and owned by persons age 65 or older who meet certain residence and income requirements to specify that just value shall be determined in the first tax year that the owner applies and is eligible for the exemption and to provide retroactive applicability and an effective date."

**IN BRIEF:** The proposed Amendment would empower counties and municipalities to grant homestead tax exemptions to home owners age 65 or older. Residents would also be required to meet certain income requirements to show just value in determining tax exemption status. If passed, the Amendment would take effect January 1st, 2017.

**ANALYSIS:** Amendment 5, like Amendment 3, is one of the proposed Constitutional Amendments brought forth by the Florida Legislature. Introduced in the House in October 2015, the bill passed through both chambers unanimously. Introduced by Representative Bryan Avila (R-111) this past October, HB275, worked its way through several committees

before being passed unanimously by the House and Senate, 113 and 39 Yea votes respectively. The bill was filed and approved by the Secretary of State in March 2016 to appear on this fall's general election ballot.

**PRO:** The passage of Amendment 5 would, under general law, empower counties and municipalities to grant a tax exemption to home owners ages 65 or older who's home value does not exceed \$250,000, income does not surpass \$20,000, and who's time in residence is longer than 25 years in the home. This would provide for lower income senior citizens, who (typically) no longer have the ability to work 40 hours a week, to receive a tax break and keep more of their own money for their personal needs, whether that be for necessary medicine, healthcare, or time with grandchildren on the weekends. The second positive impact the passing of the Amendment would bring is a tax rebate for public schools. Most senior citizens do not utilize the public school system and as such, this property tax relief would act as a rebate for those citizens.






**CON:** Opponents of the Amendment claim property tax relief for certain citizens, regardless of age, separates rate payers unfairly based simply on age and length of occupation in the home. Opponents claim all taxpayers should be treated consistently and objectively with respect to taxation. With respect to a concept such as property tax rates and exemptions – the better solution would be to have rates set at as low as possible for all taxpayers, rather than disparate treatment dependent upon categories such as age, income, and length of time residing in a home.

**V**oting is, for many, not just a right but a solemn obligation of the citizens of our Republic. Carrying out this right does not mandate that one become informed on candidates, amendments, or issues – but doing so strengthens our state and our country. Ballot amendments can be, and have historically been, one of the most confusing aspects of Florida's voting process. While learning about each of the amendments requires an investment of time and energy, it is an energy spent in the service of our state. Stay informed Floridians, and we thank you for continuing to look to The James Madison Institute as a trusted resource now and in the future.



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