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Case No. SC19-1250

SUPREME COURT OF FLORIDA

Robert Emerson, Et Al.,

Appellants/Cross-Appellees,

v.

Hillsborough County, Florida, Etc., Et Al.,

Appellees/Cross-Appellants.

On Appeal from the Circuit Court, Thirteenth Judicial Circuit,
in and for Hillsborough County, Florida
(Lower Tribunal Case No. 2019-CA-001382)

APPENDIX TO INITIAL BRIEF OF APPELLANT/CROSS-APPELLEE ROBERT EMERSON

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Howard Coker (Florida Bar #141540)
Chelsea Harris (Florida Bar #28368)
COKER LAW
136 East Bay Street
Jacksonville, Florida 32202
(904) 356-6071
hcc@cokerlaw.com
chr@cokerlaw.com

Derek T. Ho (pro hac vice # 93535)
Collin R. White (pro hac vice pending)
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
dho@kellogghansen.com
cwhite@kellogghansen.com

Counsel for Appellant/Cross-Appellee Robert Emerson

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

Case No.: **18-CA-11749**

Division: **K**

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiff, Stacy White (Commissioner White), in his official capacity as a county commissioner of Hillsborough County, by and through his undersigned attorneys, brings this action for declaratory judgment. In light of the recent passage of Article 11 of the Hillsborough County Charter, which creates and implements a local transportation surtax, Commissioner White is in doubt about his duties and obligations as a county commissioner because his duties and obligations under section 212.055(1), Florida Statutes (2018), which is that statute allowing a county to create such a surtax, appear to conflict with his duties and obligations as stated in Article 11. Commissioner White is therefore in doubt about the validity of Article 11. The Defendants

are named as parties because they have also been given duties, rights or obligations under Article 11.

INTRODUCTION

Section 212.055(1), Florida Statutes (2018), is the statute that authorizes a charter county to implement a 1% sales surtax to fund transportation projects. A county cannot create such a transportation surtax unless it is authorized by and is consistent with the requirements of section 212.055(1). An accurate copy of the opening paragraph of section 212.055 and section 212.055(1) is attached to this complaint as Exhibit A.

Article 11 of the Hillsborough County Charter, the "Surtax for Transportation Improvements," was recently submitted to the Hillsborough County voters by initiative petition and was approved by a majority of those voters. A true and accurate copy of Article 11 is attached to this complaint as Exhibit B.

Article 11 acknowledges that the local tax must be consistent with section 212.055(1). In section 11.02, it states, in part:

> Any other provisions of this Chapter to the contrary notwithstanding, **all proceeds from the Transportation Surtax,** including any interest earnings and bond proceeds generated therefrom, **shall be expended only as permitted by** this Article 11, **F.S. § 212.055(1)**, and in accordance with the purpose set forth in Section 11.01 above. (emphasis supplied).

Commissioner White is concerned because, despite the above-quoted acknowledgement, Article 11 appears to conflict with section 212.055(1) in many substantial ways. The total proceeds of this surtax are likely to exceed $9 billion. If Commissioner White acts, as a member of the Board of County Commissioners to implement this surtax, and Article 11 is later invalidated after taxes have been collected, the County will not have better roads; it will have a mess to clean up. The risk of a judicial determination that Article 11 is invalid after taxes have been collected is high

because any use of the proceeds that requires a bond validation proceeding under Chapter 75, Florida Statutes, should be dependent upon the validity of Article 11. Accordingly, he has concluded that he must obtain a legally binding determination of his duties and responsibilities at the inception of this planned tax in order to fulfill his oath of office.

The conflict between section 212.055(1) and Article 11 of the Charter is explained in detail in this complaint, but the central concerns are three-fold:

- Section 212.055(1) provides that the Board of County Commissions (BOCC) "shall" have the authority to allocate these proceeds. But for the entire 30-year period of taxation, Article 11 predetermines how the proceeds of this surtax must be distributed.

- Article 11 creates an "Independent Oversight Commission" (IOC) that is an unelected, unbonded, and unpaid committee of private citizens who are given substantial powers over this huge fund of surtax proceeds. The IOC is effectively given veto powers over decisions made by and projects approved by the BOCC. But Article VII, §1(e) of the Florida Constitution provides that the BOCC is the "governing body" of Hillsborough County. Commissioner White recognizes that constitutionally created Florida Courts have power to review and sometimes override decisions of the BOCC, but he is unaware of any Florida law that allows for an unelected committee to review and override the decisions of any Florida constitutional officer–including the members of the BOCC. Section 212.055(1) provides for no such committee and expressly gives the elected, bonded members of the BOCC the duty and responsibility to apply proceeds to uses that the BOCC deems appropriate.

- Article 11 places a substantial restriction on the BOCC that prevents it over the next 30 years from using a large percentage of the surtax proceeds for projects that add additional lanes to existing roads or that build new roads or streets – even if the members of the BOCC unanimously

agree that conditions at the time would warrant such expenditures. This restriction conflicts with section 212.055(1).

The ballot summary for Article 11 did not disclose these and other serious issues to the voters. As explained in this complaint, the ballot summary was legally insufficient.

Thus, Commissioner White, in order to fulfill his duties and responsibilities as a county commissioner, seeks a declaratory judgment that:

1. the restrictions in Article 11 on his statutory duties and responsibilities, as well as those of the other members of the BOCC, are in violation of Florida general law;

2. that the powers given to the IOC in Article 11 are not authorized by Florida general law and conflict with the statutory and constitutional duties of the BOCC, and

3. that the defects in both Article 11 and in the ballot summary presented to the voters at the election are such that the law of Florida requires this Court to declare Article 11 unlawful, invalid, and unenforceable.

JURISDICTION AND VENUE

1. This is an action for a declaratory judgment pursuant to section 86.011, Florida Statutes (2018). This Court has jurisdiction of the subject matter of this complaint.

2. Venue is proper in Hillsborough County to determine the duties and obligations of a member of the BOCC under the County Charter and the Laws of the State of Florida.

PARTIES

3. Commissioner White is a member of the Hillsborough County BOCC. He was first elected to that position in 2014, reelected in 2018, and his current term extends until 2022.

4. Defendant, Hillsborough County, is a charter county of the State of Florida, organized pursuant to Article VIII of the Constitution of the State of Florida. The charter under which it operates was recently amended to include Article 11.

5. The Hillsborough Area Regional Transit Authority (HART) is a transportation authority chartered pursuant to Chapter 163, Florida Statutes. In Article 11, HART is described as an "Agency" and is entitled to receive 45% of the surtax proceeds each year without the BOCC voting annually–or ever– to remit this amount.

6. The City of Tampa is a municipality located in Hillsborough County. In Article 11, Tampa is described as an "Agency," and it is entitled to a distribution of a portion of the tax proceeds each year under a "distribution formula." It is automatically entitled to this distribution without the BOCC ever voting to distribute any amount to it. It is entitled to this amount even in the absence of an interlocal agreement under Chapter 163.

7. The City of Temple Terrace is a municipality in Hillsborough County. In Article 11, the City of Temple Terrace is described as an "Agency" and it is entitled to a distribution of a portion of the tax proceeds each year under a "distribution formula." It is automatically entitled to this distribution without the BOCC ever voting to distribute any amount to it. It is entitled to this amount even in the absence of an interlocal agreement under Chapter 163.

8. Plant City is a municipality in Hillsborough County. In Article 11, Plant City is described as an "Agency," and it is entitled to a distribution of a portion of the tax proceeds each year under a "distribution formula." It is automatically entitled to this distribution without the BOCC ever voting to distribute any amount to it. It is entitled to this amount even in the absence of an interlocal agreement under Chapter 163.

9. The Hillsborough Metropolitan Planning Organization (MPO) is a transportation policy-making board created pursuant to section 339.175, Florida Statutes. In Article 11, MPO is not described as an "Agency," but it is nevertheless entitled to receive 1% of the surtax proceeds each year without the BOCC ever voting to distribute this amount.

10. Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County. The Clerk is named in her official capacity. The Clerk is responsible for receiving the proceeds of the surtax challenged in this Complaint from the Florida Department of Revenue and distributing those proceeds. Under the terms of Article 11, the Clerk is required to distribute funds to HART, and the several municipalities in predetermined proportions without any authorization from the BOCC. The Clerk apparently is required to obey the IOC if it orders a suspension of distributions to Agencies or overrides the BOCC. The Clerk is also required to select an attorney as a member of the IOC.

11. Bob Henriquez is the Property Appraiser of Hillsborough County. The Property Appraiser is named in his official capacity. The Property Appraiser is required to select a member of the IOC.

12. Doug Belden is the Tax Collector of Hillsborough County. The Tax Collector is named in his official capacity. The Tax Collector is required to select a member of the IOC.

13. The Florida Department of Revenue collects the proceeds of the surtax challenged in this Complaint and distributes those proceeds to the Clerk.

THE CREATION OF ARTICLE 11

14. Article 11 was not drafted and approved by attorneys representing Hillsborough County or the State of Florida. Its content was neither debated nor voted upon by the BOCC. Although pursuant to section 212.055(10), Florida Statutes, a "performance audit" for Article 11 was completed on September 5, 2018, it did not address the issues presented in this complaint. Article 11 has never been determined to satisfy the Laws and the Constitution of the State of Florida by any Court.

15. Article 11 was drafted by private citizens. This amendment to Hillsborough County's Charter was accomplished by "initiative" under Section 8.03 of the Charter. A true and accurate copy of Article 11, as presented on the "County Charter Amendment Petition Form" is attached hereto and incorporated herein as Exhibit B.

16. On November 6, 2018, the voters of Hillsborough County considered the adoption of this amendment. The ballot used the ballot title and ballot summary language provided in Exhibit B.

17. The ballot also contained a "financial impact statement" immediately following the ballot summary. The financial impact statement was required by section 8.03(3) of the Charter and section 101.161(1), Florida Statutes. An accurate copy of the entire information provided on the Official General Election Ballot for Hillsborough County for the November 6, 2018, election concerning Article 11, including both the ballot summary and the financial impact statement, is attached hereto as Exhibit C.

18. The Hillsborough County Canvassing Board's Official Results establish that this amendment was approved by 282,753 "yes" votes to 210,722 "no" votes. An accurate copy of the Official Results is attached hereto as Exhibit D.

COUNT 1

The Provisions of Article 11 Prevent The BOCC from Discharging its Statutory Duties and Responsibilities to Apply the Proceeds of the Surtax As the BOCC "Deems Appropriate."

19. Commissioner White repeats paragraphs 1 through 18 as if fully set forth herein.

20. Section 212.054(1), Florida Statutes, provides that: "[n]o general excise tax on sales shall be levied by the governing body of any county unless specifically authorized in s. 212.055."

21. The opening paragraph of section 212.055 and section 212.055(1) provides the authorization and requirements for a discretionary sales surtax to fund transportation spending.

22. Section 212.055(1)(d) specifies that "[p]roceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate[.]"

23. Article 11 prevents the BOCC from applying the proceeds of the surtax to as many or as few of the uses, and in whatever combination, the BOCC deems appropriate:

a. For a period of 30 years, section 11.05(2) mandates that 45% of the proceeds of the surtax, an amount that in total will likely exceed $4 billion, must be distributed annually to HART without any vote of the BOCC;

b. For a period of 30 years, section 11.05(1) mandates that 54% of the proceeds of the surtax must be distributed to Hillsborough County and the above-referenced municipalities based on a "distribution formula" and without any vote of the BOCC.

c. For a period of 30 years, section 11.05(3) mandates that 1% of the proceeds of the surtax, an amount that in total will likely exceed $90 million, must be distributed annually to the MPO without any vote of the BOCC.

d. For a period of 30 years, section 11.07(8) restricts the BOCC's statutory right to use a substantial percentage of the proceeds of the surtax to add additional lanes for automobile traffic to existing roads and to build new roads and streets.

24. In authorizing a local transportation surtax, the Legislature specified that the duly elected members of the BOCC, as the constitutional "governing body" of Hillsborough County must have the duty and the responsibility, when the BOCC deems it appropriate, to "remit" surtax proceeds to HART as a transportation authority. By creating a compulsory distribution of 45% of

the proceeds, Article 11 prevents the BOCC from exercising its judgment to fulfill its statutory duties and responsibilities established by the Legislature in the express text of section 212.055(1).

25. By creating compulsory distributions in set amounts to the municipalities and the MPO, Article 11 prevents the BOCC from exercising its judgment to fulfill its statutory duties and responsibilities established by the Legislature in section 212.055(1).

26. In authorizing a local transportation surtax, the Legislature specified that the duly elected members of the BOCC were entitled to apply the proceeds of the surtax to as many of the enumerated uses and in whatever combination the BOCC deemed appropriate. One of the enumerated uses in that statute is the use "by the county for the development, construction, operation, and maintenance of roads and bridges in the county." In creating a categorical prohibition on the use of substantial portions of the surtax to build additional lanes for automobile traffic and to build new roads and streets, Article 11 prevents the BOCC from exercising its judgment to fulfill its statutory duties and responsibilities established by the Legislature in the express text of section 212.055(1).

27. Section 11.07(6) of Article 11 permits inter-Agency distributions of certain proceeds, not including the proceeds distributed to HART. But the authority to make such an adjustment is given to the Agency. Thus, the BOCC is prevented from using its judgment to make these reallocations of the proceeds. It is merely given the authority to reduce the distribution to the County for the benefit one of the municipalities.

28. Section 11.07(9) of Article 11 permits reallocation of expenditure categories under section 11.07. But that power is vested only in the IOC, not in the BOCC.

Requested Relief

WHEREFORE, Commissioner White respectfully requests this Court enter a declaratory judgment:

a. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the mandatory distribution of surtax proceeds created in section 11.05 of the Charter is invalid and unenforceable;

b. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the prohibition on the use of proceeds for additional traffic lanes for automobile traffic and the prohibition on the use of proceeds for the creation of new roads and streets in section 11.07(8) of the Charter is invalid and unenforceable;

c. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the provisions in sections 11.07(6) and 11.07(9) giving redistribution powers to the IOC and the municipalities are invalid and unenforceable;

d. Declaring that any transportation surtax in Hillsborough County must provide the BOCC with the duties and responsibilities specified in section 212.055(1)(d) and that Article 11 does not so provide;

e. Declaring that the invalid portions of Article 11 described in the preceding subparagraphs are so central to Article 11– both as presented to the voters and as it is to be implemented for the next 30 years – that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11, and that Article 11 in its entirety is invalid and unenforceable, and

f. Declaring that Commissioner White has no lawful requirement, as a member of the BOCC, to deliberate or vote on measures to implement Article 11.

COUNT II

The Provisions of Article 11 Prevent the BOCC from Discharging its Statutory Duties and Responsibilities to Remit and Distribute Proceeds of the Surtax To HART and Other "Agencies" In Amounts It Determines To Be Appropriate

29. Commissioner White repeats paragraphs 1 through 18 as if fully set forth herein.

30. Section 11.04 of Article 11 requires the Clerk to receive the proceeds of the surtax from the Florida Department of Revenue and to distribute those proceeds to the "Agencies" within five business days of receipt.

31. The Clerk is required to distribute the proceeds in accordance with section 11.05, which contains the compulsory distributions discussed in Count I.

32. Under Article 11, the Clerk's duty to disperse the proceeds is automatic and not dependent on any authorizing vote of the BOCC at any time, much less annually.

33. Section 221.055(1)(d)(2) specifies that a transportation authority may receive funds if "remitted by the governing body of the county" when the BOCC is making its decisions as to what enumerated uses it "deems appropriate."

34. The Legislature restricted the decision to remit proceeds of the surtax to the duly elected members of the BOCC, as the constitutional "governing body" in Hillsborough County accountable to all local residents. Article 11 violates and conflicts with section 212.055(1).

Requested Relief

WHEREFORE, Commissioner White respectfully requests this Court enter a declaratory judgment:

a. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the distribution duties created for the Clerk in section 11.04, in the absence of any prior vote to distribute by Commissioner White and the other members of the BOCC, is invalid and unenforceable;

b. Declaring that the invalid portions of Article 11 described in the preceding subparagraph, independently and also coupled with those described in Count I are so central to Article 11– both as presented to the voters and as it is to be implemented for the next 30 years – that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11, and that Article 11 in its entirety is invalid and unenforceable, and

c. Declaring that Commissioner White has no lawful requirement, as a member of the BOCC, to deliberate or vote on measures to implement Article 11.

COUNT III

The Creation and Powers of the IOC Are Not Authorized by Any General Law and Are in Conflict With Section 212.055(1)

35. Commissioner White repeats paragraphs 1 through 18 as if fully set forth herein.

36. Section 212.055(1) makes no reference to an "Independent Oversight Committee." It provides no powers or authority to any such committee. It does not authorize a County to create such a committee or to delegate the BOCC's constitutional and statutory decision-making authority to such a committee. It gives no power of judicial or quasi-judicial review to any such committee, no matter the credentials of its unelected members.

37. Section 11.10 of Article 11 requires the creation of an "Independent Oversight Committee," which shall provide oversight "of the distribution and expenditure" of the proceeds of the surtax.

a. Each municipality is required to appoint at least one member of the IOC;

b. The Property Appraiser, the Tax Collector and the County Clerk are each required to appoint one member;

c. The Board of Directors of HART are required to appoint two members; and

d. The BOCC is required to appoint four members.

38. Section 11.10 requires the BOCC to appropriate County funds annually to pay for the administrative expenses of the IOC. These funds do not appear to come from the proceeds of the surtax because the surtax proceeds are mandated to be completely (100%) distributed by the provisions of section 11.05.

39. The IOC is expressly given certain "powers and duties," including the power to "approve Project Plans and approve and certify as to whether the projects therein comply with [Article 11]."

40. Section 11.06 of Article 11 discusses "Agency Project Plans." During the annual planning process, each project plan "must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee."

41. While section 212.055(1) vests the BOCC with the exclusive authority to use its judgment to make the decisions it deems appropriate for the annual use of the proceeds from the surtax, Article 11 removes the BOCC entirely from the approval process for the percentages—exceeding 50% of the proceeds—that are automatically distributed to HART and the municipalities.

42. While section 212.055(1) vests authority in the BOCC to make the decisions it deems appropriate for the annual use of the proceeds from the surtax, Section 11.06 requires that each project plan approved by the BOCC must also be approved by a majority vote of the IOC. Thus, the IOC can effectively veto a project that has been approved by the BOCC. The IOC can do so despite the fact that: (1) its existence is not authorized by the constitution or any statute, (2) a majority of its members are not selected by the BOCC, (3) its members are not elected or

otherwise accountable to the local residents, and (4) Article 11 creates no standards for the IOC to apply or obey in deciding to veto a project approved by the BOCC.

43. Sections 11.10(1) and 11.09 empowers the IOC, by a two-thirds vote, to determine that "an Agency has failed to comply with any term or condition of Article 11." If the Agency fails to correct the non-compliance, the IOC has the power to direct the Clerk to suspend distributions of proceeds to the Agency. Thus, the IOC is given the power to make findings of fact about the compliance of the Agencies with Article 11 and to enjoin constitutional officers from performing duties established by general law. These are powers of judicial review given by a county ordinance to a board of unelected private citizens in the absence of any provision in the Florida Constitution or Florida general law authorizing such power.

44. The provisions in Article 11 creating the IOC, funding the IOC, providing for the selection of its members, and extending extensive powers to the IOC are all without any authorization in section 212.055(1) and are in conflict with the authority granted to the BOCC by the Florida Constitution and by the Legislature in a duly enacted general law.

Requested Relief

WHEREFORE, Commissioner White respectfully requests this Court enter a declaratory judgment:

a. Declaring that section 11.10 of Article 11 of the Charter, by creating the IOC and authorizing it to perform duties of the BOCC, conflicts with section 212.055(1) and is invalid and unenforceable;

b. Declaring that section 11.09 of Article 11 of the Charter, by vesting unauthorized judicial power in the IOC, conflicts with general law including section 212.055(1) and is invalid and unenforceable;

c. Declaring that section 11.06 of Article 11 of the Charter, in requiring the BOCC to obtain the approval of the IOC before the BOCC can deem a project to be an acceptable use of the surtax proceeds and apply those proceeds to the project as a valid use, conflicts with section 212.055(1) and is invalid and unenforceable;

d. Declaring that the invalid portions of Article 11 described in the preceding subparagraph, independently and also coupled with those described in Counts I and II, are so central to Article 11 – both as presented to the voters and as it is to be implemented for the next 30 years – that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11, and that Article 11 in its entirety is invalid and unenforceable; and

e. Declaring that Commissioner White has no lawful requirement, as a member of the BOCC to deliberate or vote on measures to appoint members to the IOC or to provide County funds for the budget of the IOC.

COUNT IV

The Ballot Summary was Legally Insufficient and Did Not Provide the Voters with Fair Notice of the Contents of the Proposed Initiative

45. Commissioner White repeats paragraphs 1 through 18 as if fully set forth herein.

46. The ballot summary states:

> Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:
>
> Improve roads and bridges,
> Expand public transit options,
> Fix potholes,
> Enhance bus services,
> Relieve rush hour bottlenecks,
> Improve intersections, and
> Make walking and biking safer,

> By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

47. Additional language was added to the summary to explain its financial impact. That language states:

> A new 1% sales surtax is in addition to the current 7% sales tax and is estimated to raise $276 million annually and $552 million the first two calendar years. Revenues will be shared by Hillsborough Area Regional Transit Authority (HART); Metropolitan Planning Organization; and, using a population-based formula, by Hillsborough County Board of County Commissioners, City of Tampa, Plant City, and City of Temple Terrace.
> Expenditures will be governed by the Charter Amendment.

48. Although the sufficiency of the ballot summary should be tested alone, even considering both the ballot summary and the financial impact information together, this summary is misleading in at least four respects:

a. The summary does not tell voters that HART will always receive 45% of the proceeds of the surtax even if the BOCC thinks that percentage is too high or too low in any given year.

b. It expressly lists Brandon, Town ‘n’ County, and Sun City along with Tampa, Plant City and Temple Terrace, even though these communities are not municipalities, are not given a member on the IOC, and have no special part in the distribution formula. The residents of these communities have no rights that are any different from the voters in any other precinct of unincorporated Hillsborough County, such as precincts in Wimauma, Progress Village, or Lutz. But the voters were led to believe that they had special rights.

c. It lists many projects that might be funded with the surtax, but fails to mention the extreme 30-year limitation in section 11.07(8) preventing general purpose funds

from being used to add additional lanes for automobile traffic or to build new roads. Additional lanes and new roads are the types of projects that voters undoubtedly expected the new taxes to fund given that the first use of proceeds suggested by the summary is to "improve roads and bridges." These are projects that the BOCC has authority to fund under section 212.055(1), but Article 11 prevents the BOCC from exercising its discretion to fund these projects even if safety is the primary concern.

d. The creation and powers of the IOC are explained to the voters only with the ambiguous phrase "an audited trust fund with independent oversight." The IOC has oversight over far more than the "audited trust fund." The voters are not told that this committee can effectively veto projects approved by the county commission and the several city councils. Its extensive powers and the sizable budget required to staff and perform those powers are not mentioned.

49. Admittedly, the 75-word limitation applicable to the summary requires succinct wording, but the words selected confuse rather than inform the voter. Under the standards required for an adequate ballot summary for an initiative petition, the information provided to the voters was legally insufficient.

50. The ballot summary could have stated, for example:

> Should the County Charter be amended to enact a one-cent sales tax, levied for 30 years and placed in an audited trust account, to fund transportation improvements in Hillsborough County, Tampa, Plant City, and Temple Terrace, that are approved by an unelected, independent oversight committee – with 45% of the proceeds restricted for HART transit projects, 1% for planning, and 54% for general transportation projects, with limitations on projects adding lanes or creating new roads?

Perhaps the financial impact statement could have explained:

The budget for the independent oversight committee's staff will be included in the County's budget.

51. The ballot language in this case is defective for what it does say and for what it does not say. The fact that a majority of the voters approved the amendment when presented with this defective ballot language does not cure the error created by the language.

Requested Relief

WHEREFORE, Commissioner White respectfully requests this Court enter a declaratory judgment:

a. Declaring that the ballot language for Article 11 was legally insufficient and that, accordingly, Article 11 was not validly approved by the voters and is null and void.

b. Declaring that Commissioner White has no lawful requirement, as a member of the BOCC to deliberate or vote on measures to implement Article 11.

Dated: December 4, 2018

Respectfully submitted,

/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.
Florida Bar No: 197394
BANKER LOPEZ GASSLER P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33602
Telephone: (813) 221-1500
Fax No: (813) 222-3066
Email: caltenbernd@bankerlopez.com
Service Email: service-caltenbernd@bankerlopez.com

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway

EXHIBIT A

systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

(e) As used in this subsection, the term “on-demand transportation services” means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

COUNTY CHARTER AMENDMENT PETITION FORM

Note:

- *All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.*
- *Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]*
- *If all requested information on this form is not completed, the form will not be valid.*

Your Name_____

Please Print Name *as it appears on your Voter Information Card*

Your Address _____

City _____Zip _____County _____

☐ Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable)

Voter Registration Number _____ **or** Date of Birth _____

I am a registered voter of Hillsborough County, Florida and hereby petition the Supervisor of Elections to place the following proposed amendment to the Hillsborough County Charter on the ballot in the general election:

BALLOT TITLE: Funding for Countywide Transportation and Road Improvements by County Charter Amendment

BALLOT SUMMARY:

Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:

Improve roads and bridges,
Expand public transit options,
Fix potholes,
Enhance bus services,
Relieve rush hour bottlenecks,
Improve intersections, and
Make walking and biking safer,

By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

___ Yes
___ No

ARTICLE AND SECTION BEING CREATED OR AMENDED: Article 11

FULL TEXT OF THE PROPOSED COUNTY CHARTER AMENDMENT:

XI. SURTAX FOR TRANSPORTATION IMPROVEMENTS

Section 11.01. Purpose of Surtax. The purpose of the surtax levied in accordance with Section 11.02 below is to fund transportation improvements throughout Hillsborough County, including road and bridge improvements; the expansion of public transit options; fixing potholes; enhancing bus service; relieving rush hour bottlenecks; improving intersections; and making walking and biking safer. The proceeds of the surtax shall be distributed and disbursed in compliance with F.S. § 212.055(1) and in accordance with the provisions of this Article 11.

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EXHIBIT B

Section 11.02. Levy of One-Cent Surtax to Fund Transportation Improvements. There shall be levied throughout the incorporated and unincorporated areas of Hillsborough County an additional tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, Florida Statutes, and communications services as defined by Chapter 202, Florida Statutes, at the rate of one cent for each $1.00 of the sales price or actual value received, and for each fractional part of $1.00 of the sales price or actual value received (the "Transportation Surtax"). The Transportation Surtax shall be levied and imposed in accordance with F.S. §§ 212.054 and 212.055(1), the rules promulgated by the Florida Department of Revenue, and this Article 11. Any other provision of this Charter to the contrary notwithstanding, all proceeds from the Transportation Surtax, including any interest earnings and bond proceeds generated therefrom, shall be expended only as permitted by this Article 11, F.S. § 212.055(1), and in accordance with the purpose set forth in Section 11.01 above. For purposes of this Article 11, Hillsborough County, Florida (the "County"), each municipality, as defined in F.S. § 165.031, that is located in the County (the "Municipalities"), and the Hillsborough Area Regional Transit Authority or its successor ("HART") are each an "Agency" and collectively, the "Agencies." "Independent Oversight Committee" shall refer to the committee mandated and governed by Section 11.10 below.

Section 11.03. Duration of Transportation Surtax. The Transportation Surtax authorized by this Article 11 shall be effective commencing January 1, 2019, and shall remain in effect for a period of thirty (30) years.

Section 11.04. Duties of the Clerk. The Clerk of the Circuit Court of Hillsborough County, Florida (the "Clerk") shall receive the proceeds of the Transportation Surtax (the "Surtax Proceeds") from the Florida Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate account until disbursed in accordance with this Section 11.04 and the distribution allocations provided for in Section 11.05. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided in Section 11.05 shall be made to the Agencies by the Clerk within five (5) business days of the Clerk's receipt of Surtax Proceeds from the Florida Department of Revenue. Additionally, the Clerk shall provide, on behalf of the board of county commissioners, the notices to the Florida Department of Revenue required by F.S. §§ 212.054(7)(a) and (b), and any other notices that must be delivered to the Department of Revenue or the State of Florida as required by applicable law. The Clerk shall engage an independent accounting firm to conduct an annual, independent audit of the distribution and expenditure of all Surtax Proceeds, which shall be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining the Clerk's and each Agency's compliance with the provisions of this Article relating to the distribution and expenditure of Surtax Proceeds during such fiscal year. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds to the Clerk on an annual basis to permit the Clerk to carry out the annual audit of Surtax Proceeds described in this Section 11.04.

Section 11.05. Distribution of Surtax Proceeds. The Surtax Proceeds shall be deposited in a dedicated trust fund (the "Trust Fund") maintained by the Clerk and distributed in accordance with the following formula:

(1) General Purpose Portion. Fifty-four percent (54%) of the Surtax Proceeds (the "General Purpose Portion") shall be distributed to the County and to each Municipality in accordance with their relative populations as calculated utilizing the statutory formula provided in F.S. § 218.62 (the "Distribution Formula") and be expended by the County and each Municipality in accordance with Section 11.07. The County and each Municipality may elect to bond or otherwise encumber their respective distribution of the Surtax Proceeds allocated pursuant to this Section 11.05(1), and shall provide notice of such election to the other recipients of the General Purpose Portion at least ninety (90) days prior to issuing bonds.

(2) Transit Restricted Portion. Forty-five percent (45%) of the Surtax Proceeds (the "Transit Restricted Portion") shall be distributed to HART and be expended by HART in accordance with Section 11.08. Subject to compliance with applicable law and the charter of HART, HART may elect to directly, or through the County, bond or otherwise encumber the Transit Restricted Portion.

(3) Planning and Development Portion. One percent (1%) of the Surtax Proceeds (the "Planning and Development Portion") shall be distributed to the metropolitan planning organization described in F.S. § 339.175 whose jurisdiction includes Hillsborough County (the "MPO"). The Planning and Development Portion shall be expended by the MPO on planning and development purposes, including data collection, analysis, planning, and grant funding to assist the Agencies and the Independent Oversight Committee in carrying out the purpose set forth in Section 11.01.

Section 11.06. Agency Project Plans. No later than September 30th of each year, each Agency shall deliver to the Independent Oversight Committee a plan (a "Project Plan") setting forth the projects, including reasonable detail for each, on which such Agency will expend their distribution of the Surtax Proceeds for the following calendar year in accordance with the uses mandated by Sections 11.07 and 11.08 below. Each Project Plan must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee at a public hearing. No Agency may expend Surtax Proceeds for any purpose other than implementation of each of the projects set forth in such Agency's Project Plan, and each Agency shall diligently and prudently pursue implementation of each of the projects set forth in such Agency's Project Plan. If any Agency desires to amend its Project Plan after the Independent Oversight Committee has approved the same, the Independent

Continue to next page

Oversight Committee shall approve or disapprove (and state the basis therefore) the amended Project Plan within thirty (30) days of an Agency's request to amend.

Section 11.07. Uses of General Purpose Portion. For any Agency that the Clerk reasonably estimates will receive five percent (5%) or more of the Surtax Proceeds in a given calendar year, such Agency's share of the General Purpose Portion shall be expended by the Agencies for the planning, development, construction, operation, and maintenance of roads, bridges, sidewalks, intersections, and public transportation (which, for purposes of this Section, may include any technological innovations such as autonomous vehicles and related infrastructure), to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Maintenance and Vulnerability Reduction. At least twenty percent (20%) of the General Purpose Portion shall be expended on projects that: (i) improve, repair and maintain existing streets, roads, and bridges, including fixing potholes, or (ii) reduce congestion and transportation vulnerabilities.

(2) Congestion Reduction. At least twenty-six (26%) of the General Purpose Portion shall be expended to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections. Expenditures in the category described in this Section 11.07(2) may include projects that improve intersection capacity through the use of technology, the construction of new intersections, the redevelopment of existing intersections, and may include related infrastructure such as roundabouts and turn lanes. Projects described in the foregoing sentence do not constitute New Automobile Lane Capacity, as defined in Section 11.07(8) below.

(3) Transportation Safety Improvements. At least twenty-seven (27%) of the General Purpose Portion shall be expended to promote transportation safety improvements on existing streets, roads and bridges.

(4) Transportation Network Improvements. At least twelve (12%) of the General Purpose Portion shall be expended on bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network within any Agency's jurisdiction, and to the extent permitted by F.S. § 212.055(1).

(5) Remaining Funds. Any remaining portions of the General Purpose Portion shall be expended on any project to improve transportation in the applicable Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article.

(6) Inter-Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, the County and each Municipality may distribute any amount of its share of General Purpose Portion to any Agency (an "Agency Distribution"). For purposes of this Section, any Agency's share of the General Purpose Portion shall be reduced, or increased, by the amount of the Agency Distribution distributed, or received, as the case may be.

(7) Small Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, any Agency that receives five percent (5%) or less of the Surtax Proceeds in any given calendar year, on an annualized basis, is not required to expend its share of General Purpose Portion on the categories set forth in Section 11.07(1) through (5) above, and shall instead expend its distribution of the Surtax Proceeds on any purpose consistent with Section 11.01 and permitted by F.S. § 212.055(1).

(8) Limits on New Automobile Lane Capacity. Agencies are prohibited from expending any funds from the categories mandated by Section 11.07(1), (2) and (3) above on New Automobile Lane Capacity. For purposes of this Section 11.07(8), "New Automobile Lane Capacity" means projects that consist of (i) adding additional lanes for automobile traffic to existing roads or streets that are not related to intersection capacity improvement, or (ii) constructing new roads or streets.

(9) Reallocation of Expenditure Categories. Upon request by an Agency, which request must be approved by seventy-five percent (75%) of the Independent Oversight Committee, the General Purpose Portion expenditure allocations mandated in Sections 11.07(1) through (3) above may instead be expended on any project to improve transportation within such Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article if, in the opinion of the requesting Agency, any of the percentages set forth in Sections 11.07(1) through (3) exceed the amounts required to fulfill the purpose set forth therein.

Section 11.08. Uses of Transit Restricted Portion. The Transit Restricted Portion, and any Agency Distribution received by HART, shall be spent by HART for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the HART board of directors, to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Enhancing Bus Services. No less than forty-five percent (45%) of the Transit Restricted Portion shall be spent on bus services, including express, neighborhood, circulator, paratransit, and all other types of transit now or hereafter operated by

Continue to next page

HART. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(2) Expanding Public Transit Options. No less than thirty-five percent (35%) of the Transit Restricted Portion shall be spent on transit services that utilize exclusive transit right-of-way for at least seventy-five percent (75%) of the length of the applicable service. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; utilizing or extending existing fixed guideways and rights-of-way; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(3) Remaining Funds. Any remaining portions of the Transit Restricted Portion shall be spent on any project to improve public transportation permitted by F.S. § 212.055(1) or this Charter.

Section 11.09. Suspension of Distribution. In the event it is determined by a two-thirds majority of the Independent Oversight Committee that an Agency has failed to comply with any term or condition of this Article 11 and such Agency fails to correct such non-compliance within reasonable periods of time determined by the Independent Oversight Committee, but not more than ninety (90) days following written notice of such noncompliance, the Independent Oversight Committee may direct that distributions of the Surtax Proceeds to such Agency be suspended by the Clerk and held by the Clerk in the Trust Fund until such time as the Agency has cured the non-compliance, at which point distributions of the Surtax Proceeds to such Agency shall re-commence and any withheld Surtax Proceeds shall be distributed to the Agency.

The foregoing shall not apply to any portion of Surtax Proceeds encumbered by bond indebtedness pursuant to law; provided, however, that the financing instruments for such bond indebtedness include covenants requiring the Agency to comply with the terms and conditions of this Charter.

Section 11.10. Independent Oversight Committee. To ensure that the Transportation Surtax is successfully implemented, independent oversight of the distribution and expenditure of the Surtax Proceeds shall be provided by an Independent Oversight Committee, which shall be composed of Hillsborough County residents appointed by the following bodies: (i) four (4) individuals appointed by the board of county commissioners, and of which two are Experts (as defined below) in either transportation, planning, sustainability, engineering, or construction; (ii) one (1) from each Municipality, appointed by the mayor thereof; (iii) one (1) additional member from each Municipality for each 200,000 residents in such Municipality, appointed by the legislative body of that Municipality, based on population estimates published annually by the State of Florida; (iv) two (2) from HART, appointed by the HART board of directors; (v) one (1) attorney, who is a member by the Florida Bar, appointed by the Clerk; (vi) one (1) land use or real estate Expert appointed by the Hillsborough County Property Appraiser; and (vii) one (1) certified public accountant appointed by the Hillsborough County Tax Collector. No person then currently serving as an elected or appointed city, county, special district, state, or federal public office holder shall be eligible to serve as a member of the Independent Oversight Committee. Additionally, no member of the Independent Oversight Committee may be an employee of, independent contractor of, or otherwise be materially engaged for remuneration by any public or private recipient of Surtax Proceeds. Independent Oversight Committee members shall serve terms of three (3) years, without compensation, and each shall serve at the pleasure of the appointing body. The Independent Oversight Committee may make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with this Charter. The Independent Oversight Committee shall have only those powers and duties specifically vested in it by this Section 11.10. A majority of the members of the Independent Oversight Committee shall constitute a quorum, and the Independent Oversight Committee may conduct business only when a quorum is present. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds on an annual basis for the administrative expenses of the Independent Oversight Committee in an amount sufficient for the Independent Oversight Committee to fulfill its duties under this Article 11. For purposes of this Section 11.10, “Expert” means an individual who has at least seven years of experience in their respective subject matter area, and possesses professional accreditations or degrees that are typical of an expert in their respective subject matter area. The Independent Oversight Committee shall have the powers and duties set forth below:

(1) Review the results of the annual audit described in Section 11.04 and make findings as to whether the Clerk and each Agency has complied with the terms of this Article. Such findings shall include a determination as to whether Surtax Proceeds have been distributed as provided in this Article and whether the Surtax Proceeds have been expended in compliance with applicable state law, this Article, and any additional requirements that an Agency may have lawfully adopted.

(2) Approve Project Plans and approve and certify as to whether the projects therein comply with this Article.

(3) Prepare an annual report to the Clerk and each Agency presenting the results of the annual audit process and any findings made. The Independent Oversight Committee shall cause a summary of the annual report to be published in a local newspaper and ensure that the report and annual audit are available online and are delivered to every library located within the County for

Continue to next page

public review. The Independent Oversight Committee shall hold a public hearing on each audit and annual report and shall report the comments of the public to each Agency.

(4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and forward them to the appropriate Agency for consideration.

Section 11.11. Miscellaneous.
(1) Prohibited Uses. No Surtax Proceeds may be used for any of the following uses: (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports facility or any other facility not related to transportation; or (iii) any other use expressly prohibited by law.

(2) Severability. To the extent that any mandated expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of Surtax Proceeds, the funds allocated to such impermissible use shall be expended by the applicable Agency on any project to improve public transportation permitted by F.S § 212.055(1) and this Article.

(3) Supremacy. This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

_____ X_____

DATE OF SIGNATURE **SIGNATURE OF REGISTERED VOTER**

Initiative petition sponsored by All for Transportation, 610 S Boulevard, Tampa, FL 33606

If paid petitioner circulator is used:

Circulator's name: _____

Circulator's address: _____

_____

RETURN TO:
All for Transportation
610 S Boulevard
Tampa, FL 33606

For Official Use Only
Serial Number: _____
Date Approved: _____

Official General Election Ballot / Boleta Oficial de la Elección General
November 6, 2018 / 6 de noviembre 2018
Hillsborough County, Florida / Condado de Hillsborough, Florida

- Instructions: To vote, fill in the oval completely ● next to your choice. Use black ballpoint pen.
- If you make a mistake, ask for a new ballot. Do not cross out or your vote may not count.
- To vote for a candidate whose name is not printed on the ballot, fill in the oval, and write in the candidate's name on the blank line provided for a write-in candidate.

- Instrucciones: Para votar, rellene completamente ● el óvalo próximo a su selección. Use bolígrafo negro.
- Si comete un error, solicite una nueva boleta. No borre o realice otras marcas, o su voto puede no ser computado.
- Para votar por un candidato cuyo nombre no está impreso en la boleta, rellene el óvalo, y escriba el nombre del candidato en la linea en blanco que se provee para un candidato agregado.

RELEVANT PORTION OF EXHIBIT ON NEXT PAGE

EXHIBIT C

No. 2 Hillsborough County Referendum
N.° 2 Referéndum del Condado de Hillsborough

Funding for Countywide Transportation and Road Improvements by County Charter Amendment

Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:

Improve roads and bridges,
Expand public transit options,
Fix potholes,
Enhance bus services,
Relieve rush hour bottlenecks,
Improve intersections, and
Make walking and biking safer,

By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

A new 1% sales surtax is in addition to the current 7% sales tax and is estimated to raise $276 million annually and $552 million the first two calendar years. Revenues will be shared by Hillsborough Area Regional Transit Authority (HART); Metropolitan Planning Organization; and, using a population-based formula, by Hillsborough County Board of County Commissioners, City of Tampa, Plant City, and City of Temple Terrace. Expenditures will be governed by the Charter Amendment.

Financiamiento para mejoras de transporte y viales en todo el condado mediante enmienda a la Carta del Condado

¿Deben financiarse mejoras de transporte en toda la extensión del Condado de Hillsborough, incluidos los sitios de Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country y Sun City, mediante proyectos destinados a fines tales como:

Mejorar rutas y puentes;
Ampliar las opciones de tránsito público;
Arreglar baches;
Mejorar los servicios de los autobuses,
Aliviar los embotellamientos de las horas pico;
Mejorar las intersecciones; y
Aumentar la seguridad de peatones y ciclistas,

Por medio de una enmienda a la Carta del Condado con el fin de implementar un sobreimpuesto de un centavo sobre las ventas, recaudado durante 30 años y depositado en un fondo fiduciario auditado con supervisión independiente?

Un nuevo sobreimpuesto del 1% sobre las ventas se suma al actual impuesto del 7% sobre las ventas y se estima que recaude $276 millones anualmente y $552 millones durante los dos primeros años calendario. Las rentas se repartirán entre la Autoridad Regional del Tránsito del Área de Hillsborough (HART, por sus siglas en inglés); la Organización de Planificación Metropolitana; y, mediante la aplicación de una fórmula basada en la población, el Consejo de Comisionados del Condado de Hillsborough, City of Tampa, Plant City y City of Temple Terrace. Los gastos se regirán según lo establecido en la enmienda a la Carta.

- ○ Yes / Sí
- ○ No / No

NO. 12
CONSTITUTIONAL AMENDMENT
ARTICLE II, SECTION 8;
ARTICLE V, SECTION 13;
ARTICLE XII, NEW SECTION
LOBBYING AND ABUSE OF OFFICE BY PUBLIC OFFICERS

Expands current restrictions on lobbying for compensation by former public officers; creates restrictions on lobbying for compensation by serving public officers and former justices and judges; provides exceptions; prohibits abuse of a public position by public officers and employees to obtain a personal benefit.

Yes for Approval	360,619	votes
No for Rejection	137,300	votes

NO. 13
CONSTITUTIONAL AMENDMENT
ARTICLE X, NEW SECTION;
ARTICLE XII, NEW SECTION
ENDS DOG RACING

Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

Yes for Approval	334,200	votes
No for Rejection	172,389	votes

FUNDING FOR COUNTYWIDE TRANSPORTATION AND ROAD IMPROVEMENTS BY COUNTY CHARTER AMENDMENT

Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:
Improve roads and bridges,
Expand public transit options,
Fix potholes,
Enhance bus services,
Relieve rush hour bottlenecks,
Improve intersections, and
Make walking and biking safer,
By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?
A new 1% sales surtax is in addition to the current 7% sales tax and is estimated to raise $276 million annually and $552 million the first two calendar years. Revenues will be shared by Hillsborough Area Regional Transit Authority (HART); Metropolitan Planning Organization; and, using a
population-based formula, by Hillsborough County Board of County Commissioners, City of Tampa, Plant City, and City of Temple Terrace. Expenditures will be governed by the Charter Amendment.

Yes for Approval	282,753	votes
No for Rejection	210,722	votes

EXHIBIT D

A1.40

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a County Commissioner of Hillsborough County, Florida

Plaintiff,

v.

Case No.: 18-CA-11749
Division K

HILLSBOROUGH COUNTY, a charter county of the State of Florida, the HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; the CITY OF TAMPA; the CITY OF TEMPLE TERRACE; PLANT CITY; the HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

DEFENDANT DOUG BELDEN'S RESPONSE TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT

Defendant Doug Belden, in his official capacity as the Hillsborough County Tax Collector, hereby files his response to Plaintiff's Complaint for Declaratory Judgment, and states as follows:

1. As an independently elected constitutional officer, Mr. Belden takes no position with respect to the issues raised in Plaintiff's Complaint for Declaratory Judgment.

2. Mr. Belden stands ready to fully comply with the ruling of this Court.

Robert E. Brazel, Esquire
Chief Assistant County Attorney

Florida Bar No. 0866430
Office of the County Attorney
Post Office Box 1110
Tampa, Florida 33601-1110
(813) 272-5670 – Fax: (813) 272-5758
Attorney for Hillsborough County
Service Emails:
BrazelR@hillsboroughcounty.org
MatthewsL@hillsboroughcounty.org
JohnsonNi@hillsboroughcounty.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was provided, via the Court's Electronic Filing System, to email address(es) contained therein for the following on Dec. 7, 2018.

Chris W. Altenbernd, Esquire
Banker Lopez Gassler, P.A.
501 East Kennedy Boulevard, Suite 1700
Tampa, FL 33602
Counsel for Plaintiff

Alan S. Zimmet, Esquire
Nikki C. Day, Esquire
Elizabeth W. Nelberger, Esquire
Bryant Miller Olive, P.A.
201 N. Franklin Street, Suite 2700
Tampa, FL 33602
Counsel for Hillsborough County

William D. Shepherd, Esquire
601 E. Kennedy Boulevard, 15th Floor
Tampa, FL 33602
Counsel for Hillsborough County Property Appraiser

Robert E. Brazel, Esquire
Chief Assistant County Attorney

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity
as a county commissioner of
Hillsborough County, Florida

Plaintiff,

v.

Case No.: 18-011749
Division: K

HILLSBOROUGH COUNTY, a charter county Division:
of the State of Florida; The HILLSBOROUGH
AREA REGIONAL TRANSIT AUTHORITY;
The CITY OF TAMPA; The CITY OF TEMPLE
TERRACE; PLANT CITY; The HILLSBOROUGH
METROPOLITAN PLANNING ORGANIZATION;
PAT C. FRANK, in her official capacity as the Clerk
of the Circuit Court of Hillsborough County, Florida;
BOB HENRIQUEZ, in his official capacity as the
Hillsborough County Property Appraiser; DOUG
BELDEN, in his official capacity as the Hillsborough
County Tax Collector; and The FLORIDA
DEPARTMENT OF REVENUE,

Defendants.
_____/

HENRIQUEZ' ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Defendant, BOB HENRIQUEZ, as Property Appraiser hereby responds to Plaintiff's Complaint for Declaratory Judgement, and states as follows:

1. As an independently elected constitutional officer, Mr. Henriquez takes no position with respect to the issues raised in Plaintiff's Complaint for Declaratory Judgment.

2. Mr. Henriquez stands ready to fully comply with the ruling of this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was furnished via the court's electronic filing system to Chris W. Altenbernd, Esq. caltenbernd@bankerlopez.com, service-caltenbernd@bankerlopez.com, amercado@bankerlopez.com, Alan S. Zimmet, Esq.

azimmet@bmolaw.com, nakins@bmolaw.com, cmiller@bmolaw.com, Nikki C Day, Esq. nday@bmolaw.com, nakins@bmolaw.com, cmiller@bmolaw.com, Elizabeth W Neiberger, Esq. eneiberger@bmolaw.com, agarner@bmolaw.com, mtripodi@bmolaw.com, Cameron Clark, clarkc@hillsboroughcounty.org, Dale Kent Bohner, Esq. bohnerd@hillsclerk.com, David L. Smith, Esq. david.smith@gray-robinson.com, jane.larose@gray-robinson.com, Jerry M. Gewirtz, Esq. jerry.gewirtz@tampagov.net, kimber.spitsberg@tampagov.net, Kenneth Buchman, Esq. kbuchman@plantcitygov.com, kenbuchman@gmail.com, lyoung@plantcitygov.com, Michael H Rosen, Esq. RosenM@goHART.org, eservice@goHART.org, StewartC@goHART.org, Robert Brazel, Esq. brazelr@hillsboroughcounty.org, matthewsl@hillsboroughcounty.org, JohnsonNi@hillsboroughcounty.org, William Henry Stafford III, Esq. william.stafford@myfloridalegal.com, doris.brickhousehayes@myfloridalegal.com, tyler.dudley@myfloridalegal.com, this 18th day of December 2018.

/s/ William D. Shepherd
shepherdw@hcpafl.org
Florida Bar No. 938289
Attorney for BOB HENRIQUEZ
Hillsborough County Property Appraiser's Office
601 E. Kennedy Blvd.
County Center, 15th Floor
Tampa, FL 33602
Telephone: (813) 276-8890
Facsimile: (813) 276-2710
Primary E-Mail: eservice@hcpafl.org
Secondary E-Mail: gomezm@hcpafl.org

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

EXPEDITED HEARING REQUESTED

Case No. 18-CA-011749
Division: J

EMERGENCY MOTION FOR AN EXPEDITED CASE MANAGEMENT CONFERENCE

The Plaintiff, STACY WHITE, by and through his undersigned attorneys, moves this Court for an expedited case management conference. In support of this motion, the Plaintiff shows to this Court:

1. This case challenges the legality of the Hillsborough County transportation surtax that will take effect in January 2019. Although the Plaintiff is not seeking any preliminary injunction of the tax, and it does not appear that Hillsborough County will delay its implementation, it would be better to resolve this case faster rather than slower.

2. The first three counts in the complaint seek declarations that certain provisions in Article 11 of the County Charter conflict with section 212.055(1), the Florida statute that authorizes the County to impose the tax.

3. There should be no disagreement among the parties that the charter of a home rule county cannot conflict with state law. See Section 2.01 of the Hillsborough County Charter; Art. 8, § 1, Fla. Const.; *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So.3d 880, 888 (Fla. 2010) (The test of conflict between a local government enactment and state law is whether one must violate one provision in order to comply with the other. A conflict exists when two legislative enactments cannot co-exist).

4. Thus, the first issue addressed in Counts I through III is whether Article 11 is legally inconsistent with a state law. That should be a relatively straightforward decision for the Court to make at a hearing that should require little or no evidence.

5. The Plaintiff believes that this could be resolved by an expedited motion for summary judgment if the parties can cooperate in the process.

6. The Plaintiff also believes that one or more motions will be filed to intervene or to participate as amicus in this proceeding. This Court should resolve those issues as soon as possible.

7. The Plaintiff suggests that an expedited case management hearing would assist in this process. The Plaintiff would be willing to appear for such a hearing on short notice and, if useful, at a time after normal business hours.

8. While seeking to resolve these issues as expeditiously as possible, the undersigned attorney discloses that he has a prepaid trip to New Zealand to celebrate an anniversary with his wife between January 14, 2019 and February 4, 2019.

Respectfully submitted,
/s/ Chris W. Altenbernd
Chris W. Altenbernd, Esq.
Florida Bar No: 197394
BANKER LOPEZ GASSLER P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33602
Telephone: (813) 221-1500
Fax No: (813) 222-3066
Email: caltenbernd@bankerlopez.com
Service Email: service-caltenbernd@bankerlopez.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served via the State of Florida's E-Filing Portal on this 19th day of December, 2018 to:

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Email: azimmet@bmolaw.com
Email: nday@bmolaw.com
Email: eneiberger@bmolaw.com
Email: nakins@bmolaw.com
Email: cmiller@bmolaw.com
Email: agarnder@bmolaw.com
Attorneys for Hillsborough County

Kenneth Buchman, Esq.
City Attorney for Plant City
302 W. Reynolds St.
Plant City, FL 33566
Email: kbuchman@plantcity.gov
Email: kbuch@tampabay.rr.com
Email: lyoung@plantcitygov.com
Attorney for Plant City

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
Email: shepherw@hcpafl.org
Attorney for Hillsborough County Property Appraiser

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Email: bohnerd@hillsclerk.com
Attorney for Pat Frank, Clerk of the Circuit Court

Robert E. Brazel, Esq.
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601
Email: brazelr@hillsboroughcounty.org
Email: matthewsl@hillsboroughcounty.org
Email: johnsonni@hillsboroughcounty.org

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com

Attorney for Doug Belden, Hillsborough County Tax Collector

Email: rjohnson@gray-robinson.com
Email: Julia.mandell@gray-robinson.com
Attorneys for HART

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
Email: clarkc@hillsboroughcounty.org
Attorney for Hillsborough MPO

Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602
Email: jerry.gewirtz@tampagov.net
Email: david.harvey@tampagov.net
Email: Kimber.spitsberg@tampagov.net
Email: erin.bradley@tampagov.net
Attorneys for City of Tampa

William H. Stafford, III
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399
Email: William.stafford@myfloridalegal.com
Attorney for Florida Dep't of Revenue

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, IN HIS OFFICIAL CAPACITY AS A COUNTY COMMISSIONER OF HILLSBOROUGH COUNTY, FLORIDA, Plaintiff, v. HILLSBOROUGH COUNTY, A CHARTER COUNTY OF THE STATE OF FLORIDA; THE HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; THE CITY OF TAMPA; THE CITY OF TEMPLE TERRACE; PLANT CITY; THE HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, IN HER OFFICIAL CAPACITY AS THE CLERK OF THE CIRCUIT COURT OF HILLSBOROUGH COUNTY, FLORIDA; BOB HENRIQUEZ, IN HIS OFFICIAL CAPACITY AS THE HILLSBOROUGH COUNTY PROPERTY APPRAISER; DOUG BELDEN, IN HIS OFFICIAL CAPACITY AS THE HILLSBOROUGH COUNTY TAX COLLECTOR; AND THE FLORIDA DEPARTMENT OF REVENUE, Defendants,	Case No.: 18-CA-11749 Division: J

ANSWER OF PAT FRANK, COMPTROLLER FOR HILLSBOROUGH COUNTY, FLORIDA

COMES NOW Pat Frank, Clerk of the Circuit Court and Comptroller for Hillsborough County, Florida ("Clerk" or "Comptroller") and in answer to the Complaint for Declaratory Judgment states:

i. The duties described in paragraph 10 of the Complaint are the constitutional duties of the Clerk acting as Hillsborough County Comptroller, and not as Clerk of the Circuit Court. Pat Frank answers the Complaint in her capacity as Comptroller and not as the Clerk of the Circuit Court. However, because the pleadings and exhibits refer to Pat Frank as the "Clerk", that designation may be used interchangeably with the designation "Comptroller".

ii. There are approximately three pages of unnumbered statements that precede the allegations of Jurisdiction and Venue on page 4 of the Complaint. These statements are not incorporated into any allegations of Jurisdiction, Venue, Parties or any of the four Counts of the Complaint for Declaratory Judgment. As such they are not consistent with the requirements of Rule 1.110(b), are extraneous to the requested relief, require no response from the Comptroller and cannot be considered by the court.

JURISDICTION AND VENUE

1. Deny that Plaintiff has alleged sufficient grounds for this court's jurisdiction.
2. Admit that venue is proper in Hillsborough County, if the court has jurisdiction.

PARTIES

3. Admit.
4. Admit.
5. Admit. Article 11 of the Hillsborough County Charter speaks for itself.
6. Admit that Tampa is a municipality in Hillsborough County Florida. Article 11 speaks for itself. Deny the remaining allegations.
7. Admit that The City of Temple Terrace is a municipality in Hillsborough County. Article 11 speaks for itself. Deny the remaining allegations.
8. Admit that Plant City is a municipality in Hillsborough County. Article 11 speaks for itself. Deny the remaining allegations.

9. Admit that the Hillsborough County Metropolitan Planning Organization (MPO) is a transportation policy-making board created pursuant to section 339.175, Florida Statutes. Article 11 speaks for itself. Deny the remaining allegations.
10. Admit that Pat Frank is the Clerk of the Circuit Count and Comptroller for Hillsborough County and that Pat Frank is named in her official capacity. Article 11 speaks for itself. Deny that the duties in Article 11 are as the "Clerk". The duties described in Article 11 are as the Comptroller for Hillsborough County. All other allegations are denied.
11. Admit.
12. Admit.
13. Admit.

THE CREATION OF ARTICLE 11

14. Without knowledge as to the allegations in paragraph 14 and demand strict proof thereof.
15. Without knowledge as to the allegations in paragraph 15 and demand strict proof thereof. Admit that Exhibit "B" is an accurate copy of Article 11.
16. Without knowledge as to the allegations in paragraph 16 and demand strict proof thereof.
17. Without knowledge as to the allegations in paragraph 17 and demand strict proof thereof.
18. Without knowledge as to the allegations in paragraph 18 and demand strict proof thereof.

COUNT I

19. The Comptroller realleges her answers to paragraphs 1-18 above.
20. Denied. Sections 212.054 and 212.055 Florida Statutes speak for themselves.
21. Denied. Section 212.055 Florida Statutes speaks for itself.
22. Denied. Section 212.055 Florida Statutes speaks for itself.
23. Denied. Article 11 speaks for itself.
24. Denied. Article 11 speaks for itself.
25. Denied. Article 11 speaks for itself.
26. Denied. Article 11 speaks for itself.
27. Denied. Article 11 speaks for itself.

28. Denied. Article 11 speaks for itself.

WHEREFORE, the Comptroller states that Plaintiff is not entitled to any of the relief requested in Count I.

COUNT II

29. The Comptroller realleges her answers to paragraphs 1-18 above.
30. Denied. Article 11 speaks for itself.
31. Denied. Article 11 speaks for itself.
32. Denied. Article 11 speaks for itself.
33. Denied. Section 212.055 Florida Statutes speaks for itself.
34. Denied. Section 212.055 Florida Statutes speaks for itself.

WHEREFORE, the Comptroller states that Plaintiff is not entitled to any of the relief requested in Count II.

COUNT III

35. The Comptroller realleges her answers to paragraphs 1-18 above.
36. Denied. Section 212.055 Florida Statutes speaks for itself.
37. Denied. Article 11 speaks for itself.
38. Denied. Article 11 speaks for itself.
39. Denied. Article 11 speaks for itself.
40. Denied. Article 11 speaks for itself.
41. Denied. Section 212.055 Florida Statutes and Article 11 speak for themselves.
42. Denied. Section 212.055 Florida Statutes and Article 11 speak for themselves.
43. Denied. Article 11 speaks for itself.
44. Denied. Section 212.055 and Article 11 speak for themselves.

WHEREFORE, the Comptroller states that Plaintiff is not entitled to any of the relief requested in Count III.

COUNT IV

45. The Comptroller realleges her answers to paragraphs 1-18 above.
46. Denied. The ballot summary speaks for itself.
47. Denied. The ballot summary speaks for itself.
48. Denied. The ballot summary speaks for itself.
49. Denied.
50. Admit that the ballot summary could have stated many things but deny that this conjecture is a relevant allegation and is therefore denied.
51. Denied.

WHEREFORE, the Comptroller states that Plaintiff is not entitled to any of the relief requested in Count III.

GENERAL DEFENSE

52. The Comptroller is confident that the Article 11 charter amendment, initiated by the citizens' initiative procedure and approved by a majority of the qualified voters of Hillsborough County, was (1) proper and gives adequate direction to the Comptroller to perform the Comptroller duties identified in Article 11 and (2) is not inconsistent with section 212.055(1), Florida Statutes (2018). In further answer to paragraphs 1-51 above, the Comptroller states that Hillsborough County is a charter county with the power of local self-government as authorized by Article VIII, section 1(g) of the Florida Constitution. Article VIII, section i(g) provides that charter county home rule powers of local self-government may "not be inconsistent with general law or with special law approved by vote of the electors."
53. The citizens of Hillsborough County adopted three methods for amending the county charter in Article VIII of the Charter. Section 8.01 permits a charter amendment initiated by the Board of County Commissioners. Section 8.02 permits a charter amendment initiated by the Charter Review Board. Section 8.03 permits a charter amendment by an initiative of the people. The Hillsborough County Charter contains no intrinsic limitations on the type of charter amendments that may be initiated by citizens under section 8.03.

54. Section 212.055 (1), Florida Statutes, one of the codified general laws of Florida is a grant of authority to charter counties to adopt a regional transportation system surtax. Subsection (1)(a) requires that the levy of a discretionary sales tax must be approved by a majority of the electorate of the county [if adopted by other than a charter amendment] or by charter amendment approved by a majority vote of the electorate of the county. Subsection (1)(a) requires voter approval of the adoption of the discretionary sales tax irrespective of how the discretionary sales tax is initiated. Subsection (1)(b) permits a tax rate up to one percent and subsection (1)(c) requires that the proposal to adopt the discretionary sales tax to be placed on the ballot. Subsection (1)(d) enumerates a list of permitted uses for which the proceeds from the surtax may be applied to fund, which fulfills the requirement in the preamble to section 212.055(1). Finally, subsection (1)(e) defines the term "on demand transportation services". Section 212.055(1) does not address and is silent as to the process of how a charter amendment adopting the surtax is initiated. While section 212.055(1) contains defined substantive and procedural requirements for the adoption of the transportation surtax, none of those requirements expressly prohibit or restrict the citizens of Hillsborough County's right to initiate the transportation surtax under Hillsborough County Charter section 8.03, the citizen initiative charter amendment process.
55. The language in subsection 212.055(1)(d)(4) clarifies that the surtax proceeds may be used for as many or as few of the permitted uses enumerated in subsection (1)(d)(1-4) "**in whatever combination the county commission deems appropriate"**. This language addresses and clarifies the right of the county commission to identify as many or as few of the defined transportation uses in subsection (1)(d) if a county commission initiates the process to adopt the transportation surtax charter amendment. This language does not address the process of how a county charter amendment is initiated. This language does not expressly restrict the right of the Charter Review Board under Charter section 8.02 or the right of qualified voters by citizen initiative under Charter section 8.03 to initiate a transportation surtax charter amendment in Hillsborough County. To the contrary, the Florida legislature clearly delegated the approval of a county charter amendment to a majority of the qualified voters of the county in section 125.64(2), Florida Statutes, but this codified general law does not address how a charter amendment is initiated. Section 125.64(2) states in part, "*The charter shall provide a method for submitting future charter*

revisions and amendments to the electors of the county." Again, there is no language in section 212.055(1) that addresses how a proposed charter amendment is initiated but it expressly requires the approval of a majority of qualified voters in Hillsborough County. Section 8 of the Hillsborough County Charter is consistent with this legislative directive of section 125.64(2) Florida Statutes as well as Article VIII of the Florida Constitution. If the Florida legislature wanted to prohibit the adoption of a transportation surtax charter amendment through a citizens' initiative process, the legislature would have expressly stated that in a general law.

56. Also, a careful review of each subsection of Article 11 discloses that it is not restricted by any part of section 212.055 Florida Statutes. General laws that restrict the constitutionally permissive broad powers of county home rule are just that- restrictions. There is no constitutional requirement in Article VIII, section (1)(g) that a general law must authorize a particular county home rule power, as suggested by Plaintiff. If the Board of County Commissioners of Hillsborough County wanted to restrict the right of citizens to initiate a transportation surtax charter amendment, the Board could have submitted such a proposed restriction as an amendment to section 8 of the Charter. Such a restriction does not exist.
57. The Florida Supreme Court's ruling in *Telli v. Broward County*, 94 So.3d 504 (Fla. 2012)is applicable and controls. The *Telli* case addressed the right of a county under a home rule charter to establish term limits for county constitutional officers. The issue in *Telli* was whether or not the home rule power of a charter county could be limited by restraints implied by constitutional language but not by express language in the constitution. In overturning a line of cases that authorized the restriction of county home rule power based on implied constitutional restraints, the Florida Supreme Court first recognized the broad home rule power granted to charter counties by the Florida Constitution, then looked to determine if the exercise of power under the charter was inconsistent with any general law or the constitution. The inconsistency between a charter county's attempt to exercise home rule power and a general law must be based only on express language in the general law that precludes the exercise of home rule power and may not by implied from other language in the general law. Plaintiff's position is premised on the implication that the words "**in whatever combination the county commission deems appropriate"** prohibit the right of citizens to initiate a transportation surtax charter amendment. That position fails the clear

direction of *Telli* – the restriction on broad home rule power of charter counties must be clearly expressed in the general law and may not be implied from other language.

58. While perhaps Plaintiff did not want Hillsborough County to adopt the surtax and may not be happy with the results of the Article 11 charter amendment, the citizens properly exercised their right to first initiate and then approve the transportation surtax charter amendment. Article 11 of the Hillsborough County Charter is valid and not inconsistent with section 212.055 Florida Statutes and the Comptroller is prepared to discharge her duties under Article 11 as it was adopted by a majority of the qualified voters of Hillsborough County.

AFFIRMATIVE DEFENSE

The court lacks subject matter jurisdiction to render a Declaratory Judgment.

The Hillsborough County Charter was amended through a citizen initiative charter amendment procedure authorized by section 8.03 of the Hillsborough County Charter. The voters who approved this amendment are not parties before this court. Plaintiff has only joined as parties the county, the municipalities in Hillsborough County, the agencies defined in Article 11 and the county constitutional officers identified in Article 11, all of whom have a procedural role in the Article 11 process. There are no allegations that any of the defendants have an adverse interest to Plaintiff, who is one of seven members of the Hillsborough County Board of County Commissioners. Specifically, none of the defendants have an antagonistic interest as to the legal sufficiency of the Ballot Summary in Count IV. Just because Plaintiff is uncertain about his duties as a county commissioner under the new Article 11 but the Comptroller is clear as to her duties under the new Article 11 does not create the requisite antagonistic positions between Plaintiff and the Comptroller that must exist to support the declaratory judgment action. The citizens of Hillsborough County who proposed and approved the charter amendment are not before this court and cannot provide "an antagonistic position" that the adoption of Article 11 was a proper exercise of the charter amendment process under the home rule powers of Hillsborough County. Without joining the citizens who amended the Charter and who have an adversarial interest to Plaintiff, the Complaint and particularly Count IV of the

Complaint is reduced to a request for an advisory opinion from this court, and as such the court lacks jurisdiction to render an advisory opinion to Plaintiff.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the following, by regular U.S. mail or by email through the ePortal, on this 19th day of December, 2018:

Chris W. Altenbernd, Esq.
Banker Lopez Gassler, PA
501 E. Kennedy Blvd., Suite 1700
Tampa, Florida 33602
caltenbernd@bankerlopez.com
service-caltenbernd@bankerlopez.com
Attorney for Plaintiff

Robert E. Brazel, Esq.
Hillsborough Co. Attorney's Office
601 E. Kennedy Blvd., 27th Floor
Tampa, Florida 33602
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
Attorney for Defendant Doug Belden in His Official Capacity as the Hillsborough Co. Tax Collector

Alan S. Zimmet, Esq.
Bryant Miller Olive PA
201 N. Franklin St., Suite 2700
Tampa, Florida 33602
azimmet@bmolaw.com
nakins@bmolaw.com
Attorney for Defendant Hillsborough Co.

Kenneth W. Buchman, Esq.
302 W. Reynolds St.
Plant City, Florida 33563
kbuchman@plantcitygov.com
kenbuchman@gmail.com
Attorney for Defendant Plant City

William D. Shepherd, Esq.
601 E. Kennedy Blvd., 15th Floor
Tampa, Florida 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
Attorney for Defendant Bob Henriquez in His Official Capacity as Hillsborough County Property Appraiser

Jerry M. Gewirtz, Esq.
Office of the City Attorney
315 E. Kennedy Blvd., 5th Floor
Tampa, Florida 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
Attorney for Defendant City of Tampa

Robert E. Johnson, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
rjohnson@gray-robinson.com
Valerie.Taylor@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

David L. Smith, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
david.smith@gray-robinson.com
jane.larose@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

William H. Stafford III, Esq.
Senior Assistant Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
william.stafford@myfloridalegal.com
doris.brickhousehayes@myfloridalegal.com
Attorney for Defendant Florida Dept. of Revenue

Cameron Clark, Esq.
Hillsborough Co. Attorney's Office
P.O. Box 1110
Tampa, Florida 33601
clarkc@hillsboroughcounty.org
Attorney for Hillsborough Metropolitan Planning Organization

City of Temple Terrace
11250 North 56th St.
Temple Terrace, Florida 33617

/s/ Dale K. Bohner
Dale K. Bohner, Esquire
601 E. Kennedy Boulevard, 13th Floor
P.O. Box 1110
Tampa, Florida 33601
(813) 307-7015
bohnerd@hillsclerk.com
Florida Bar Number: 0145875
Attorney for the Clerk of the Circuit Court

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

EXPEDITED HEARING REQUESTED

Case No. 18-CA-011749
Division: J

MOTION TO INTERVENE
BY KEEP HILLSBOROUGH MOVING, INC. AND ALL FOR TRANSPORTATION

Keep Hillsborough Moving, Inc. and its connected political committee, All for Transportation (the "Intervenors"), move to intervene as defendants. Fla. R. Civ. P. 1.230.

Dissatisfied with the results of the most recent election, County Commissioner Stacy White filed this lawsuit to invalidate Article 11, a citizen-sponsored and voter-approved amendment to the Hillsborough County Charter. The Intervenors are responsible for Article 11. Their principals drafted Article 11, raised money, formed a political committee to sponsor the initiative, and collected over 77,000 signatures to place it on the ballot. *See generally* **Exhibit 1** (Affidavit of Tyler Hudson).

As the sponsors of Article 11, the Intervenors have unique interests in defending it. Since ballot sponsors regularly participate—through intervention, if necessary—in litigation seeking to invalidate their initiatives, the Intervenors should be allowed to intervene. *See Elected Cnty. Mayor Political Comm., Inc. v. Shirk*, 989 So. 2d 1267, 1272 (Fla. 2d DCA 2008). This lawsuit seeks extraordinary relief: overturning the will of the people embodied in Article 11. The Intervenors' participation gives the people an uncompromising voice.

The tax enacted by Article 11 goes into effect on January 1, 2019, and the lawsuit itself already threatens to delay implementation of transportation projects funded by its proceeds. Accordingly, the Intervenors respectfully request an expedited hearing.

I. INTRODUCTION

A. Keep Hillsborough Moving & All For Transportation.

Keep Hillsborough Moving, Inc. is a Florida non-profit dedicated to educating the public about transportation issues and funding in Hillsborough County. **Exhibit 2**. To promote a ballot initiative on transportation, its principals organized a political committee[1] called All for Transportation.[2] Acting through All for Transportation (as required by Florida law), the Intervenors' principals drafted Article 11, its ballot summary, and a County Charter Amendment Petition Form before submitting the petition form to the Supervisor of Elections for approval. (Compl. Exh. B at 1–5, 7; Hudson Aff. ¶¶ 13–15.) The Intervenors then coordinated a six-week

[1] A "political committee" is "[t]he sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors." § 106.011(16)(a)(2), Fla. Stat. This definition also applies to sponsors of initiatives to amend county or municipal charters. *Shirk*, 989 So. 2d at 1273.

Forming a political committee like All for Transportation is required by the Hillsborough County Charter and state law to advance a ballot initiative. *See* **Exhibit 3** (Hillsborough County Charter) § 8.03(3); §§ 100.371(3), 101.161(2), Fla. Stat. To place a citizen-driven initiative on the ballot, the sponsoring political committee must prepare and submit the text of the proposed amendment to the Supervisor of Elections. §§ 100.371(3), 101.161(2), Fla. Stat. Once approved, the political committee must collect a certain number of signatures for the proposal to appear on the ballot. (Charter § 8.03(1).) If successful, the petition is again submitted to the Supervisor of Elections, who places the amendment on the ballot. (*Id.* § 8.03(2)(b).)

[2] *See* **Exhibit 4**.

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petition drive, collecting over 77,000 signatures. (Hudson Aff. ¶¶ 16–18.) The signed petitions were submitted to the Supervisor of Elections, who certified 50,705 valid signatures and placed Article 11 on the November 2018 ballot. (*Id.* ¶¶ 18, 19, 21.)

Hillsborough County citizens voted overwhelmingly to adopt Article 11. (*Id.* ¶ 23.) With 57.3% of the vote, the initiative passed in every city in Hillsborough County and in Unincorporated Hillsborough County.[3] (*Id.* ¶¶ 23, 24.) The initiative also passed in every County Commission district, even Commissioner White's.[4] (*Id.* ¶ 24.)

Even after passage, the Intervenors remain invested in Article 11. They advocate for the implementation of Article 11 and for citizen participation in County transportation policy. (*Id.* ¶ 28.) The Intervenors' desire to participate in this lawsuit is part of that continuing mission. (*See id.*)

B. Article 11.

Counties may amend their charters to adopt a transportation surtax through a county-wide referendum. § 212.055(1)(a), Fla. Stat. (2018). The Hillsborough County Charter vests this power "in the people." (Charter § 8.03.) Article 11 is a citizen-driven amendment to the Hillsborough County Charter titled, "Surtax for Transportation Improvements." (Compl. at 2, Exh. B at 1.) It implements a thirty-year, one-cent sales tax to fund transportation improvements throughout Hillsborough County. (Compl. at 2.) Commissioner White puts three features of Article 11 at issue:

[3] Voters approved the referendum in every city in Hillsborough County and Unincorporated Hillsborough County. Approximate results: Tampa: 63%; Temple Terrace: 64%; Plant City: 54%; and Unincorporated Hillsborough County: 55%. *See* Election Results, https://enr.electionsfl.org/HIL/1974/Precincts/20210/?view=graphical. The Court may take judicial notice of the certified election results. § 90.202(12), Fla. Stat.; *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1307 n.36 (S.D. Fla. 2002).

[4] Approximate results: District 1: 57%; District 2: 53%; District 3: 67%; and District 4: 52%. *See* Election Results, *supra* note 3.

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Section 11.05 describes how the Hillsborough County Clerk apportions the tax proceeds to various entities. (Compl. Exh. B at 2, §§ 11.05(1)–(3).)

Section 11.07 places limitations on how those entities can use the proceeds. Of particular concern to Commissioner White is § 11.07(8), which prohibits the entities from using funds to construct new roads or add lanes to existing roads. (*Id.* § 11.07(8).)

Section 11.10 creates an Independent Oversight Committee (IOC). Without power to spend tax proceeds, the IOC provides general oversight of tax proceeds and their use. (*Id.* §§ 11.06, 11.07(9), 11.09, 11.10.) Article 11 requires the County Commission to fund the IOC, which has a diverse membership appointed by the County Commission, municipalities, HART, the Clerk, the Property Appraiser, and the Tax Collector. (*Id.*)

C. The Complaint for Declaratory Judgment.

County Commissioner Stacy White brought this lawsuit against the political subdivisions, municipalities, agencies, and county officials affected by Article 11. Very generally, he alleges (1) Article 11 conflicts with state law, (2) Article 11 improperly infringes on the County Commission's discretion to apportion tax revenue, (3) the ballot summary for Article 11 was misleading, and (4) none of the offending provisions are severable. (Compl. ¶¶ 28(e), 34(b), 44(d).) In total, the Complaint requests sixteen declarations, all of which seek the invalidation of Article 11. (*Id.* ¶¶ 28, 34, 44, 51.)

Keep Hillsborough Moving and All for Transportation now move to intervene. They are in a unique position to defend the language they drafted and the citizen-driven initiative they espoused.

II. STANDARD

Anyone claiming an interest in pending litigation can move to intervene. Fla. R. Civ. P. 1.230. Intervention is allowed liberally, with some boundaries. *Nat'l Wildlife Fed'n Inc. v. Glisson*, 531 So. 2d 996, 998 (Fla. 1st DCA 1988) (citing *Miracle House Corp. v. Haige*, 96 So. 2d 417 (Fla. 1957)); *see Houston Specialty Ins. Co. v. Vaughn*, Case No. 2D17-2713, ___ So. 3d ___, 2018 WL 3795785, at *2 (Fla. 2d DCA Aug. 10, 2018).

First, the moving party must assert an interest "appropriate to support intervention." *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992). The intervenor should hold an interest "in the matter in litigation," which is "of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." *Id.* (quoting *Morgareidge v. Howey*, 78 So. 14, 15 (Fla. 1918)). The "direct and immediate" requirement is often the crux of an intervention analysis—it tests whether the intervenor is the proper party to raise the asserted interest. *See Morgareidge*, 78 So. at 15; *Y.H. v. F.L.H.*, 784 So. 2d 565, 568–69 (Fla. 1st DCA 2001).

Second, if the intervenor demonstrates an interest warranting intervention, the trial court exercises its "sound discretion" and decides whether to permit intervention. *Carlisle*, 593 So. 2d at 507. For this second stage, the court considers "the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance." *Id.* at 507–08.

If intervention is allowed, the trial court must then "determine the parameters of the intervention" and limit the scope "to the extent necessary to protect the interests of all parties." *Genauer v. Downey & Downey, P.A.*, 190 So. 3d 131, 135 (Fla. 4th DCA 2016).

The intervention inquiry is a flexible one. *United States v. Perry Cnty. Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978).[5] It should focus on the facts and circumstances of each request, measured by practicality, not technicality. *Id.* The intervention rule allows courts to dispose of lawsuits efficiently by involving as many apparently concerned persons as due process allows. *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

III. ANALYSIS

As its drafter and statutory sponsor, the Intervenors have unique and motivating interests in Article 11 surviving this lawsuit. The five *Carlisle* factors also favor intervention. In particular, the Intervenors will not raise new issues. And they may be the only parties with incentive and motivation to comprehensively defend every aspect of Article 11. The Intervenors are the only entities that can adequately represent the will of all 282,753 yea voters.

A. The Intervenors' Interests Support Intervention.

1. The Intervenors Have Unique and Motivating Interests Supporting Intervention.

The Intervenors' interests are "appropriate to support intervention." *Carlisle*, 593 So. 2d at 507. They arise from "the matter in litigation" and are "of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." *Id.* (quoting *Morgareidge*, 78 So. at 15). The Intervenors have at least five qualifying interests.

[5] Rule 1.230 was derived from the predecessor to current Federal Rule of Civil Procedure 24. Fla. R. Civ. P. 1.230 *author's cmt.* (1967). Federal decisions on intervention should therefore be treated as persuasive authority interpreting a similar rule. *Cf. Inphynet Contracting Servs., Inc. v. Matthews*, 196 So. 3d 449, 457 (Fla. 4th DCA 2016) ("Because Florida's class action rule is based on Federal Rule of Civil Procedure 23, Florida courts may generally look to federal cases as persuasive authority . . . ."); *Litvak v. Scylla Props., LLC*, 946 So. 2d 1165, 1173 (Fla. 1st DCA 2006) (citing to the Advisory Committee Notes of the 1966 federal intervention rule).

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a. Interest 1: The survival of Article 11.

The Intervenors will lose if Commissioner White succeeds. Their entire animating purpose would be gutted if Article 11 were struck down. (*See* Hudson Aff. ¶¶ 8–9, 13, 26.) Without intervention, the Intervenors would be powerless to defend or revive Article 11 after this suit. The "direct and immediate character" of this interest is highlighted by Commissioner White's final claim, which challenges the ballot summary as misleading. (Compl. ¶¶ 48–51.) The Intervenors drafted the ballot summary, acquiring an incomparable interest in its viability. (Hudson Aff. ¶¶ 13–14.) Had Commissioner White brought this suit in a timely fashion, before the election, the Intervenors would have found themselves defending the language. Commissioner White's delay in bringing this lawsuit does not somehow diminish the Intervenors' "direct and immediate" interest in protecting the language they drafted. *Carlisle*, 593 So. 2d at 507.

b. Interest 2: Defending the distribution formula, as a whole.

Each Defendant has a different interest in the allocation formula for tax proceeds and uses allowed by sections 11.05 and 11.07. The County, the municipalities, HART, and the MPO can defend their respective portion of the allocation and their own allowed uses. Other defendants who do not receive tax proceeds may be uninterested in defending the formula. (The Tax Collector has already indicated that he "takes no position" in this lawsuit.[6]) The Intervenors, however, have an interest in defending the allocation rubric as a whole. (*See* Hudson Aff. ¶ 28.)

[6] Defendant Doug Belden's Amended Response to Plaintiff's Complaint for Declaratory Judgment, Filing # 81825830 ¶ 1 (Dec. 7, 2018).

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c. Interest 3: Defending the IOC, as a whole.

Similarly, each Defendant appoints members to the IOC under section 11.10. Again, those Defendants are best situated to defend their appointments. But, the Intervenors are interested in defending the existence and composition of the IOC as a whole.

d. Interest 4: Severability.

Should a severability analysis be required in this litigation, the Intervenors have a unique interest and position. Other defendants and entities may acquiesce to severance of certain Article 11 provisions. The Intervenors, on the other hand, have a consistent interest: preserving as much of Article 11 as possible.

e. Interest 5: Defending the will of the voters.

Though government entities are often capable of representing voters' perspectives, that may not be true here. *See Defenders of Wildlife v. N.C. Dep't of Transp.*, 281 F.R.D. 264, 269 (E.D.N.C. 2012) (allowing utility to intervene when citizens' interests were not adequately represented by government entities and related officials). A member of the County Commission—charged with representing the citizens of Hillsborough County—has challenged the adoption of a citizen-drafted and voter-approved ballot initiative. The Defendants have structural interests in the outcome of the litigation that may benefit voters, but the people deserve a unique voice. The Intervenors have interests in representing the people and protecting the entire amendment as adopted. (*See* Hudson Aff. ¶ 27.)

2. The Intervenors' Interests Are at Issue in the Lawsuit.

The Intervenors' primary interest is the survival of Article 11. Commissioner White's lawsuit seeks to invalidate Article 11, so that interest is already at issue.

The Declaratory Judgment Act creates another interest. When declaratory relief is sought, "all persons" who "have or claim any interest which would be affected by the declaration" "may

be made parties" to the lawsuit. § 86.091, Fla. Stat. In other words, "[a]ll persons having an interest in the subject matter" of a declaratory judgment action "should be before the court." *Jacobs & Goodman, P.A. v. McLin et al., P.A.*, 582 So. 2d 98, 100 (Fla. 5th DCA 1991). The Intervenors claim several interests that would be affected by the declarations sought, so they should be made a party under § 86.091. *Accord id.*

3. The Intervenors Are the Proper Parties to Raise the Interests.

It's unusual that the Intervenors are not already defendants. Sponsors of contested ballot initiatives are usually parties in the resulting lawsuit. *See, e.g.*, *Roberts v. Brown*, 43 So. 3d 673, 676 (Fla. 2010); *Cook v. City of Jacksonville*, 823 So. 2d 86, 89 (Fla. 2002); *Let Miami Beach Decide v. City of Miami Beach*, 120 So. 3d 1282, 1287 (Fla. 3d DCA 2013); *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18, 20 (Fla. 4th DCA 2012); *Citizens for Term Limits & Accountability, Inc. v. Lyons*, 995 So. 2d 1051, 1052–53 (Fla. 1st DCA 2008).

When omitted, they are allowed to intervene. *Shirk*, 989 So. 2d at 1272. Ten years ago, Judge Arnold allowed the Elected County Mayor Political Committee to intervene when a private citizen sought to invalidate a measure to amend the Hillsborough County Charter. *Id.* In another example, Sixth Circuit Judge Downey permitted the political committee Eight is Enough in Pinellas and its chairman to intervene in a lawsuit seeking to invalidate a measure to amend the Pinellas County Charter. *See Cook v. City of Jacksonville*, 823 So. 2d 86, 89 (Fla. 2002).[7] Other courts regularly allow ballot initiative sponsors to intervene as a matter of right, even after the initiative passes. *See, e.g.*, *Cal. Teachers Ass'n v. Davis*, 64 F. Supp. 2d 945, 949 (C.D. Cal. 1999) (allowing initiative's co-author to intervene); *Bates v. Jones*, 904 F. Supp. 1080, 1086 (N.D. Cal. 1995) ("The individualized interest of official proponents of ballot initiatives in

[7] Receded from on other grounds, *Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012).

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defending the validity of the enactment they sponsored is sufficient to support intervention as of right.").[8]

Let Miami Beach Decide did not involve an intervention, but the plaintiff alleged that the ballot initiative sponsor had "an actual present, adverse and antagonistic interest in the subject matter of this lawsuit." 120 So. 3d at 1287. The Intervenors have the same "present, adverse and antagonistic interest in the subject matter of" Commissioner White's lawsuit. They are interested in, and dedicated to, wholesale preservation of Article 11 against all challenges. These interests are unique to the Intervenors, and recent ballot initiative litigation demonstrates that the Intervenors, as the statutory ballot initiative sponsors, are the right parties to intervene.

B. The Trial Court Should Exercise Its Discretion to Allow Intervention under the *Carlisle* Factors and Other Relevant Circumstances.

The *Carlisle* factors also counsel in favor of intervention. *See* 593 So. 2d at 508. The entire purpose of the Intervenors forming All for Transportation was to advocate for Article 11—its invalidation through this lawsuit would be fundamentally devastating. And the Intervenors have no intention to delay or disrupt the proceedings, nor do they intend to inject any new issues or claims. To the contrary, they have an interest in expediting the proceedings. This militates strongly in favor of intervention. *See Hartford Fire Ins. Co. v. Sch. Bd. of Dade Cnty.*, 661 So. 2d 111, 112 (Fla. 3d DCA 1995) ("Where the litigation is still in the pleading stage, and the intervenors assure the court that their participation will not delay or disrupt the proceedings, it is an abuse of discretion to deny the motion to intervene.").

[8] *See also Mukilteo Citizens for Simple Gov't v. City of Mukilteo*, 272 P.3d 227, 230 (Wash. 2012) ("The initiative's sponsors were permitted to intervene in the action."); *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (allowing public interest group to intervene because of its "significant protectable interest" in defending ballot measure it had supported); *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 912–16 (Alaska 2000) (holding initiative sponsors were entitled to intervene as a matter of right in suit challenging ballot initiative); *Stilley v. Henson*, 28 S.W.3d 274, 276 (Ark. 2000) (recognizing the sponsor of the initiative petition was allowed to intervene); *Wash. State Bldg. & Constr. Trades Council, AFL-CIO v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982) ("[T]he public interest group that sponsored the initiative, was entitled to intervention as a matter of right under [federal] Rule 24(a).").

The final *Carlisle* factor is "any other relevant circumstance." *Carlisle*, 593 So. 2d at 508. The most pertinent circumstance is the Intervenors' outsized role in the drafting, submission, and passage of Article 11. Another "relevant circumstance" to consider is the will of the voters. If All for Transportation is not allowed to intervene, there is no guarantee that the other Defendants—all with unique interests—will protect Article 11 consonant with the will of the people. That should be a paramount goal of this proceeding. *See In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 597 (Fla. 2012); *Adv. Op. to Gov. -- 1996 Amendment 5 (Everglades)*, 706 So. 2d 278, 282 (Fla. 1997) ("We believe the voters adopted Amendment 5 to effect a change, and [a certain construction of the amendment] would effect no change, nullify the Amendment, and frustrate the will of the people.").

IV. CONCLUSION

The Intervenors possess unique, identifiable, outsized interests in the survival of Article 11 and therefore the outcome of this litigation. The Court should grant the motion to intervene and allow them to participate fully as party defendants.

WHEREFORE, Intervenors Keep Hillsborough Moving, Inc. and All for Transportation request that the court:

(1) Hold an expedited hearing on their Motion to Intervene;

(2) Grant their Motion to Intervene;

(3) Allow them to intervene and participate in this lawsuit as full party defendants; and

(4) Grant them 20 days from the date of the order allowing intervention to respond to the Complaint for Declaratory Relief.

ADMINISTRATIVE ORDER S-2017-070 CERTIFICATE

Undersigned counsel certifies that counsel for the Intervenors have conferred with all parties in a good faith effort to resolve the issues raised in this motion. Defendants The City of Tampa, the City of Temple Terrace, Plant City, the Hillsborough Area Regional Transit Authority, Pat C. Frank, and Bob Henriquez agree to the requested relief. Defendants Hillsborough County, Doug Belden, and the Florida Department of Revenue take no position on the motion.

Defendant Hillsborough Metropolitan Planning Organization has not responded to inquiries concerning their position on the motion.

Plaintiff Stacy White agrees to the requested relief as to Count IV. Plaintiff does not agree to the request relief as to Counts I through III.

Respectfully submitted,

/s/ *Benjamin H. Hill, III*
Benjamin H. Hill, III, Esq. (FBN 94585)
Robert A. Shimberg, Esq. (FBN 816043)
J. Logan Murphy, Esq. (FBN 72241)
Hill Ward & Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Tel. (813) 221-3900
Fax (813) 221-2900
ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com

/s/ *Barry S. Richard*
Barry S. Richard, Esq. (FBN 105599)
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Tel. (850) 426-8503
Fax (850) 681-0207
richardb@gtlaw.com

Attorneys for Keep Hillsborough Moving, Inc. and All for Transportation

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of December, 2018, I electronically filed the foregoing with the Clerk of Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to all counsel of record.

/s/ *Benjamin H. Hill, III*
Attorney

11966060v1

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity
as a county commissioner of
Hillsborough County, Florida,

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants.

Case No. 18-CA-011749
Division: K

_____/

AFFIDAVIT OF TYLER HUDSON

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared TYLER HUDSON, who, after being duly sworn, deposes and says of his own personal knowledge:

1. My name is Tyler Hudson. I am over the age of eighteen (18) and otherwise competent to execute this Affidavit.

2. I make this affidavit of my own personal knowledge.

Exhibit 1

3. I reside in Hillsborough County, Florida, and have resided in Hillsborough County at all times relevant to this lawsuit.

4. I currently serve as President, Director, and registered agent of Keep Hillsborough Moving, Inc., a Florida not for profit corporation, and as Chair of All for Transportation, a Florida Political Committee.

5. In addition to myself, the Directors of Keep Hillsborough Moving, Inc. are Christina Barker, Janet Scherberger, and Robert I. Watkins. Nancy H. Watkins is the Treasurer of Keep Hillsborough Moving, Inc.

6. Keep Hillsborough Moving, Inc. is an active not for profit corporation located at 610 S. Boulevard, Tampa, Florida 33606.

7. I caused Articles of Incorporation for Keep Hillsborough Moving, Inc. to be filed with the Florida Secretary of State on June 8, 2018, establishing the corporate entity, and amended articles to be filed on June 26, 2018 and December 10, 2018.

8. The principals of Keep Hillsborough Moving, Inc. formed the not for profit corporation for the purpose of educating the public on issues related to transportation and transportation funding in Hillsborough County, to advocate for legislation and public policy furthering those goals, and to serve as a core organization bringing together citizens and representatives of other organizations with the common goal of advocating for transportation funding in Hillsborough County, which its principals have been engaged in for many years.

9. Keep Hillsborough Moving, Inc. conducted fundraising activities, and employed staff, consultants, and attorneys for the purpose of supporting a citizen-driven ballot initiative to amend the Hillsborough County Charter by adopting a new article, Article 11, titled “Surtax for Transportation Improvements.”

10. On June 8, 2018, Keep Hillsborough Moving, Inc. formed the political committee All for Transportation in accordance with section 106.03, *Florida Statutes* (2018).

11. I executed a Statement of Organization of Political Committee on behalf of Keep Hillsborough Moving, Inc., establishing All for Transportation, which was received by the Hillsborough County Supervisor of Elections on June 11, 2018. Keep Hillsborough Moving, Inc., is a connected organization to All for Transportation.

12. I am the Chair of All for Transportation. Nancy H. Watkins is its Treasurer and registered agent, and Robert I. Watkins is the Deputy Treasurer of All for Transportation.

13. Keep Hillsborough Moving, Inc. formed All for Transportation to prepare and advance a citizen-driven ballot initiative to amend the Hillsborough County Charter, to collect signatures of registered electors in Hillsborough County who supported the initiative, and to advocate for approval of the referendum adopting Article 11.

14. All for Transportation prepared the petition and submitted it to the Hillsborough County Supervisor of Elections via email on June 14, 2018, seeking a start date for its signature collection drive. The petition submitted to the Supervisor of Elections included the proposed language of Article 11 and the proposed ballot summary.

15. On June 15, 2018, in a letter addressed to myself on behalf of All for Transportation, the Hillsborough County Supervisor of Elections provided All for Transportation with official certification, pursuant to Section 8.03 of the Hillsborough County Charter, that the beginning date of its petition drive would be June 15, 2018, and that all signed petitions were required to be returned to the Supervisor of Elections for verification no later than 5:00 PM on July 27, 2018.

16. Following receipt of the certification letter from the Hillsborough County Supervisor of Elections, All for Transportation began collecting signatures through hundreds of volunteers complimented by paid collection efforts.

17. The petition All for Transportation presented to the registered electors of Hillsborough County seeking their support for the initiative included the entire proposed language of Article 11 and the proposed ballot summary.

18. By the July 27, 2018 deadline, All for Transportation had presented the Supervisor of Elections with more than 77,000 petitions signed by registered electors of Hillsborough County. Of the petitions presented, 50,705 were ultimately deemed valid.

19. On August 8, 2018, in a letter addressed to then Hillsborough County Commission Chair Sandra Murman, the Hillsborough County Supervisor of Elections provided the Commission with certification, pursuant to Section 8.03 of the Hillsborough County Charter, that All for Transportation had met the requirements with regard to the total number of valid signatures and apportionment among the County Commission districts, and informed the Commission that the proposed charter amendment and ballot summary would be placed on the November general election ballot.

20. On September 5, 2018, in accordance with the requirements of section 212.055(10), *Florida Statutes* (2018), a performance audit of Hillsborough County and Hillsborough Area Regional Transit Authority was submitted to Mr. Michael Merrill, County Administrator for Hillsborough County by the accounting firm of McConnell & Jones, LLP. The accounting firm was selected by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

21. The proposed charter amendment was included on the 2018 General Election ballot as Hillsborough County Referendum Number 2.

22. The General Election was held November 6, 2018, three months after the County Commission received the certification letter from the Supervisor of Elections. Early voting in Hillsborough County occurred between October 22, 2018 and November 4, 2018.

23. Hillsborough County Referendum Number 2 was approved by the citizens of Hillsborough County with 57.3% of the vote, totaling 282,753 votes cast in support.

24. All for Transportation analyzed the precinct by precinct election results on November 7, 2018 and concluded that the referendum had been approved in every city in Hillsborough County (approximate results: Tampa: 63%, Temple Terrace 64%, and Plant City 54%), and in the unincorporated county (54.6%), and concluded that the referendum had been approved in every county commission district (approximate results: District 1: 57%, District 2: 53%, District 3: 67%, and District 4: 52%).

25. The official election results of the November 6, 2018 general election were certified by the Hillsborough county Supervisor of Elections on November 18, 2018.

26. From the time of its formation, All for Transportation expended significant sums on a variety of paid campaign communications and community outreach, sent millions of direct mail pieces to the registered electors of Hillsborough County, knocked on tens-of-thousands of doors and made thousands more phone calls urging the registered electors of Hillsborough County to approve the citizen-driven ballot initiative adopting Article 11, produced hundreds of digital advertisements, engaged in a robust canvasing program to turn out supportive voters, and employed four full time employees. All of these efforts were directed toward advocating for approval of the referendum adopting Article 11.

27. All for Transportation remains an active political committee.

28. Keep Hillsborough Moving, Inc. continues to advocate for the expeditious implementation of Article 11 as adopted by the citizens of Hillsborough County, continues to advocate for citizen participation in the area of transportation policy, and continues to advocate for citizen participation in a transportation appropriation process that is consistent with the allocation of surtax funds set forth in Article 11.

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FURTHER AFFIANT SAYETH NOT.

TYLER HUDSON

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Tyler Hudson who is personally known to me or who produced _____ as identification and who executed the foregoing Affidavit and acknowledged before me that he voluntarily executed the same, and who did take an oath.

SWORN TO AND SUBSCRIBED before me this 18th day of December, 2018.

DEVA ARTHUR
MY COMMISSION # GG 138746
EXPIRES: December 28, 2021
Bonded Thru Notary Public Underwriters

(Notary Public Signature)

Notary Public: Deva Arthur

My commission expires _____

FLORIDA DEPARTMENT OF STATE
Division of Corporations

June 27, 2018

JENNIFER S BLOHM
P.O. BOX 1547
TALLAHASSEE, FL 32302

Re: Document Number N18000006394

The Amended and Restated Articles of Incorporation for KEEP HILLSBOROUGH MOVING, INC., a Florida corporation, were filed on June 26, 2018.

The certification you requested is enclosed.

Should you have any questions concerning this matter, please telephone (850) 245-6050, the Amendment Filing Section.

Tracy L Lemieux
Regulatory Specialist II
Division of Corporations

Letter Number: 718A00013374

Exhibit 2

State of Florida

Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on June 26, 2018, for KEEP HILLSBOROUGH MOVING, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N18000006394.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this the
Twenty-seventh day of June, 2018

Ken Detzner
Secretary of State

CR2EO22 (1-11)

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

KEEP HILLSBOROUGH MOVING, INC.

Pursuant to sections 617.1006 and 617.1007, Florida Statutes, Keep Hillsborough Moving, Inc. (Document Number N18000006394) adopts the following amended and restated articles of incorporation and states as follows:

ARTICLE I
Name, Principal Place of Business and Mailing Address

The name of the corporation is "Keep Hillsborough Moving, Inc." The initial principal place of business and mailing address are: 610 South Boulevard, Tampa, FL 33606.

ARTICLE II
Duration

The period of the duration of this corporation shall be perpetual unless dissolved in accordance with Florida law. Corporate existence shall commence upon filing with the Secretary of State.

ARTICLE III
Purposes

The purposes for which this corporation is created and maintained shall be exclusively for the promotion of social welfare and no activities which are not permitted by an organization exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code, as amended, shall be permitted.

The corporation shall have the following specific powers:

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

(1) To educate the public about transportation issues and the need for transportation funding in Hillsborough County, Florida, and, to advocate for legislation and policies which will further the corporation's stated goals;

(2) To serve as a core organization to bring together citizens and representatives of other organizations which have the common goals stated above;

(3) To conduct fundraising activities for the production of revenues adequate to carry out the purposes of the corporation;

(4) To employ staff, consultants, attorneys and accountants to ensure that all regulatory provisions are abided and the corporation's goals are achieved;

(5) To exercise powers permitted by Florida law for a corporation not for profit;

(6) To conduct such other related activities permitted to be conducted by an organization exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code, as amended.

ARTICLE IV
Restrictions

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors, officers, or other private persons; provided, however, the corporation shall be authorized and empowered to pay reasonable compensation for services rendered by directors, officers, members and other private citizens and to make payments and distributions in furtherance of the purposes set forth in Article III, hereof and to pay or reimburse the reasonable expenses of fundraising or incurred in carrying out the objectives of the corporation.

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ARTICLE V
Members

The corporation shall have no members.

ARTICLE VI
Resident Office and Agent

The street address and city of the registered office of the corporation is:

131 North Gadsden Street
Tallahassee, Florida 32301

The name of the initial registered agent at such address is Jennifer S. Blohm.

ARTICLE VII
Board of Directors

The number of persons constituting the Board of Directors of the corporation shall be established in the by-laws, but shall not be less than three (3). The by-laws shall provide the process for the selection of Directors; provided, however, the initial Directors of the corporation shall be:

Tyler Hudson, Chair
610 South Boulevard
Tampa, Florida 33606

Robert Watkins
610 South Boulevard
Tampa, Florida 33606

Janet Scherberger
610 South Boulevard
Tampa, Florida 33606

There shall be no limit on the number of terms a Board member may serve unless provided otherwise in the by-laws. The term of office of Board members shall be stated in the by-laws. The Board of Directors may authorize reimbursement of expenses incurred by Board

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members in conjunction with the corporation's business or other approved activities directly related to the corporation's purposes.

Nothing herein shall be construed to preclude any Director from serving the corporation in any other capacity and receiving additional compensation therefore.

The by-laws may provide for an Executive Committee of the Board. The Board of Directors may establish other committees as may from time to time be determined necessary and appoint the membership on such committees.

ARTICLE VIII
Officers

The corporation shall have at least the following Officers – President and Treasurer – and such other Officers as may be provided for in the by-laws. The manner of selection of Officers also shall be provided for in the by-laws; provided, however, the initial officers shall be:

Tyler Hudson, President
610 South Boulevard
Tampa, Florida 33606

Nancy Watkins, Treasurer
610 South Boulevard
Tampa, Florida 33606

ARTICLE IX
Indemnification of Officers and Directors

Officers and Directors shall be indemnified by the corporation against all expenses and liabilities, including attorney's fees, including any incurred in appellate proceedings, reasonably incurred in connection with any proceeding or settlement thereof in which they may become involved by reason of holding such office as provided in the by-laws. The corporation may purchase and maintain insurance on behalf of all Officers and Directors against any such liability

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Department of State, Division of Corporations. The corporation has no members entitled to vote on the amendment.

IN WITNESS WHEREOF, I submit this document and affirm that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided in Section 817.155, Florida Statutes.

DATED this 21 day of June, 2018.

TYLER HUDSON
CHAIRMAN

Hillsborough County Florida

Home Rule Charter

Approved by Hillsborough County Voters
September 1983

Amended by Hillsborough County Voters
November 2002, 2004, and 2012

HCFLGov.NET

Exhibit 3

P.O. Box 1110, Tampa, FL 33601
Phone: (813) 276-2640

Published 5/2017

Introduction

Attempts to institute home rule government in Hillsborough County date back to the 1950s. But it took years of study, two unsuccessful referenda on consolidation charters, and involvement by the local Legislative Delegation, county residents, and the Board of County Commissioners before Hillsborough County finally changed its form of government through a Home Rule Charter.

The efforts culminated in July 1983, when County Commissioners adopted an ordinance proposing a Home Rule Charter for the County and voters approved the ordinance in a countywide referendum held in September 1983. Because the Charter provided for a change in the elected officials who would govern the County – from five county commissioners elected at-large to seven commissioners, with four to be elected from single-member districts and three to be elected countywide – the County was required to submit the plan to the U.S. Attorney General for preclearance under the Voting Rights Act. Implementation of the Charter, set for November 1984, was delayed when the U.S. Attorney General officially lodged objections shortly before a scheduled primary election.

Additionally, plaintiffs in a then-pending lawsuit against the County and City of Tampa in federal district court sought to enjoin the election of county commissioners because the "4-3 plan" of four single-member districts and three at-large districts had not received preclearance. The district court granted the injunction and prohibited the election of county commissioners. However, the County asked the Attorney General to reconsider his objections to the election plan.

Upon consideration of the Charter and its 4-3 election plan, the Attorney General withdrew his objections. The district subsequently withdrew its bar to the election of commissioners, clearing the way for elections to be held. The first commissioners elected under the Charter took office and Charter government went into effect on May 28, 1985.

On November 5, 2002, voters approved amending the Charter to incorporate a County Internal Performance Auditor. The proposal of the 2000-01 Charter Review Board, this amendment became effective on November 19, 2002, and has been precleared by the U.S. Attorney General.

In February 2004, County Commissioners adopted Hillsborough County Ordinance 04-9 proposing an amendment to the Charter. This amendment redrafted Section 6, changing the selection and supervision of the County Attorney from the County Administrator to the Board of County Commissioners. This amendment was approved by the voters on November 2, 2004, and became effective upon adoption. The proposal was precleared by the U.S. Attorney General.

Charter-At-A-Glance

- Responsibilities of the executive branch (County Administrator) and legislative branch (County Commission) are specified, and neither branch is to exercise powers pertaining to the other branch.
- There are seven members of the County Commission; four are from single-member districts, and three are elected countywide. Every elector of the County may vote for a majority of the commissioners: the commissioner representing the elector's district, and thee commissioners elected at large.
- Terms of County Commissioners are staggered.
- The Charter does not affect any court, any constitutional office, district school board or any municipality.
- Special laws enacted by the Florida Legislature may be affective in Hillsborough County without approval by the County electors if they relate to: civil service, aviation, the port, sports, transportation, hospitals, planning, environment, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts.
- There are provisions for recall of elected officials.
- There is a provision for a Charter Review Board to be appointed by the County Commission two years after the implementation and every five years thereafter. The Charter Review Board is empowered to conduct a study of County government and propose amendments to the charter.
- Amendments also may be proposed by the County Commission by ordinance adopted by five commissioners, or by initiative.
- No amendment may be effective unless it is approved by a majority vote of the electors of the County.

Preamble

We, the people of Hillsborough County, Florida, in order to attain greater local self- determination, to exercise more control over our own destiny, to create a more responsible and effective government, and to guarantee equal civil and political rights to all, do avail ourselves of the opportunity afforded by the Florida Constitution to become a chartered county and do hereby ordain and establish by this Home Rule Charter a new form of government of and for Hillsborough County.

I. Creation

Section 1.01 Chartered County.
The county government for Hillsborough County shall be that of a chartered county under Section I, Article VIII of the Florida Constitution pursuant to which this Charter is adopted. Its boundaries are as provided by law. This is not a charter for consolidation of county and municipal governments in Hillsborough County, but solely a charter for the county government, and it is the intent of the people that it be so interpreted.

Section 1.02 Extent.
As used in this Charter, the term "the county government" means the government of Hillsborough County, but such term does not include and this Charter does not affect any court; any constitutional officer, as defined in Section I (d) of Article VIII, Florida Constitution: clerk of the circuit court, property appraiser, tax collector, sheriff or supervisor of elections; district school board; any municipality, whether created or enlarged before or after the adoption of this Charter; or any governmental body which has jurisdiction extending beyond the boundaries of Hillsborough County, and the relationship of the county government to them shall be the same as it would have been if this Charter had not been adopted.

II. Powers

Section 2.01. Powers.
The county government shall have all powers of local self government not inconsistent with general law; special law approved by the vote of the electors of Hillsborough County; special law relating to civil service, aviation, the port, sports, transportation, hospitals, planning, environment, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts, which laws may be effective as to Hillsborough County without approval by vote of the electors; or this Charter.

III. Separation of Powers.

Section 3.01. Separation of Legislative and Executive Powers.
The power of the county government shall be divided between legislative and executive branches. No person belonging to one branch shall exercise any powers appertaining to the other branch unless expressly provided herein.

IV. Legislative Branch

Section 4.01.
All legislative responsibilities and powers of local self-government of the county not inconsistent with this Charter shall be assigned to and vested in the board of county commissioners.

Section 4.02. Board of County Commissioners.
The board of county commissioners shall consist of seven commissioners, each of whom shall be elected from one of seven districts and each of whom shall be entitled to have other employment which does not prevent the member from having the time to discharge the duties of a commissioner. Prior to voting on any matter of county business, any commissioner having a conflict of interest shall declare that conflict to the board.

Section 4.03. Districts.
The territory of three districts shall embrace the entire territory of the county and be designated as districts 5, 6 and 7 respectively. The territory of four districts shall be established by dividing all of the county into four separate areas, designated as districts 1 through 4 respectively, as nearly equal in population as practicable.

Section 4.04. Residency Requirement and Limit on Terms.
Each candidate for a seat on the board of county commissioners shall be a citizen of the United States of America, a registered voter of the district for which the candidate qualifies, and a resident of Hillsborough County. No person who has, or but for resignation could have, served as a commission member from districts 1 through 4 for more than six years in two consecutive terms shall be elected as commission member from districts 1 through 4 for the next succeeding term, and no person who has, or but for resignation would have, served as a commission member from districts 5 through 7 for more than six years in two consecutive terms shall be elected as commission member from districts 5 through 7 for the next succeeding term.

Section 4.05. Election and Term of Office.
Except as provided herein, all elections for the board of county commissioners shall be as provided for county commissioners in non-charter counties. Each commissioner shall be elected by the electors residing in the district for which the commissioner qualifies. Each commissioner shall be elected for a term of four years, except as provided for initial commissioners in the transition article and

except that, in order to reflect population shifts between decennial censuses as quickly as possible, in 1990 and every ten years thereafter the commissioners to be elected from districts I and 3 shall be elected for terms of two years, and in 1992 and every ten years thereafter the commissioners to be elected from districts 2 and 4 shall be elected for terms of two years. Terms of office shall commence on the second Tuesday following the general election at which the commissioner was elected.

Section 4.06. Reapportionment.

Within 120 days after the certification of the federal decennial census, the board of county commissioners shall reapportion districts 1 through 4. Before doing so, the board of county commissioners shall cause an accurate description of the proposed new boundaries of such districts to be entered upon its minutes and a certified copy thereof to be published once each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation published in the county and via electronic media. The notice shall include the date of the meeting at which the board shall consider such boundaries and take testimony from the public regarding boundary changes. Proof of such publication shall be entered on the minutes of the board. The publication of the notice shall be for information only and shall not be jurisdictional. Should the board of county commissioners desire to make substantial changes to the proposed boundaries that were initially advertised and considered at the public meeting, the board of county commissioners shall hold an additional meeting to consider such new boundaries within 28 days of the first meeting and shall cause an accurate description of the new proposed districts to be advertised once each week for two weeks in a newspaper of general circulation and via electronic media. Whenever the boundaries of the existing districts are changed, the board shall cause its clerk to furnish the Department of State with a certified copy of its minutes, reflecting the description of the boundaries of the district, as changed.

Section 4.07. Compensation.

Salaries of all commission members shall be as provided by ordinance at 75 percent or higher of the salary which would have been provided by general law had this Charter not been adopted. Such salary shall constitute full compensation for all services and expenses provided that commissioners may be reimbursed for mileage while traveling on commission business within Hillsborough County and for travel expenses when traveling outside of Hillsborough County on official business, in accordance with general law. The chairman shall receive additional remuneration in an amount often percent of the basic salary for the period of time such person serves as chairman of the commission.

Section 4.08. Enactment of Ordinances and Resolutions.

The commission may take official action only by the adoption of ordinances, resolutions, or motions. Unless otherwise provided herein, all ordinances, rules and resolutions shall be adopted by at least 4 affirmative votes, and all motions shall be adopted by majority vote of the members present. A majority of the full commission shall constitute a quorum to conduct business.

Section 4.09. Conflict with Municipal Ordinances.

In the event of a conflict between a county ordinance and a municipal ordinance, the municipal ordinance shall prevail within the municipality regardless of whether the municipal ordinance was adopted or enacted before or after the county ordinance.

Section 4.10. County Internal Auditor.

(1) To advise the board of county commissioners and assist the board of county commissioners in conducting continuing studies of the operation of county programs and services, there shall be a county internal auditor.

(2) The county internal auditor shall be appointed by five (5) affirmative votes of the board of county commissioners. The board of county commissioners, at any time, may remove the county internal auditor with five (5) affirmative votes. The county internal auditor shall be responsible directly to the board of county commissioners. The county internal auditor need not be a resident of Hillsborough County at the time of appointment, but shall become a resident of Hillsborough County within a reasonable period of time and remain a resident of Hillsborough County while in office.

(3) The county internal auditor shall be a certified public accountant holding an active license to practice public accountancy in the State of Florida, and/or shall be qualified by education and experience in governmental accounting, internal auditing practice, and fiscal controls. The county internal auditor shall not engage in any other business or occupation. The compensation of the county internal auditor shall be fixed by the board of county commissioners at a level which is commensurate with the requirements of the position. The county internal auditor's compensation, including severance pay, may be set by contract.

(4) The board of county commissioners shall bi-annually establish an audit committee of 3 to 5 members who shall be selected by the board of county commissioners from among qualified applicants from the public and who shall meet without compensation from time to time for the purpose of making internal audit program recommendations to the board of county commissioners. The board of county commissioners shall annually, after receiving recommendations from the audit committee, give direction to the county internal auditor. The Hillsborough County internal auditor's work may include audits of all aspects of this Charter Government and its offices and its officials with written audit reports submitted to both the board of county commissioners and the county administrator. To the extent it is reasonable, the County internal auditor's work shall comply with professional standards for internal auditing. To the degree necessary to fulfill the responsibilities directed by the board, the auditor shall have free and unrestricted access to Charter government employees, officials, records, and reports and where appropriate, may require all divisions, offices, and officials of the Charter government to provide all oral and written reports and to produce documents, files and other records.

(5) The county internal auditor shall hire, on either a full-time or part-time basis, and may remove assistants. The number and qualifications of assistants shall be provided by the board of county commissioners. The county internal auditor may also be authorized by the board of

county commissioners to hire outside expertise as may be deemed necessary. The county internal auditor's budget shall be set by the board of county commissioners.

(6) The office of county internal auditor shall be deemed vacant if the incumbent: takes up residence outside of Hillsborough County; dies; resigns; or is removed by five (5) affirmative votes of the board of county commissioners. A vacancy in the office of the county internal auditor shall be filled in the same manner as the original appointment.

(7) The county internal auditor shall not hold any political office nor take part in any political activity other than voting.

V. Executive Branch County Administrator

Section 5.01. County Administrator.
The executive responsibilities and powers of local self government of the county not inconsistent with this Charter shall be assigned to and vested in the county administrator. One or more assistant county administrators may be appointed by the county administrator with the advice and consent of the board and shall serve at the pleasure of the county administrator.

Section 5.02. Administrative Organization.
All functions of the executive branch shall be allotted among not more than ten divisions or of fines. Each division or office shall be administered by a division or office head in accordance with the administrative code. Each division or office head shall be appointed by the county administrator with the advice and consent of the board and shall serve at the pleasure of the county administrator. Each division or office head shall report to and be responsible to the county administrator or designated assistant county administrator. The county administrator may, as allowed by ordinance, require one division or office to undertake a task of another division or office on a temporary basis or until the board provides otherwise.

Section 5.03. County Administrator: Qualifications, Appointment, Compensation.

(1) The county administrator shall be a full-time officer who holds a masters degree in public administration, management, or related field and shall have three years of executive or management experience in public administration. The county administrator shall be appointed by an affirmative vote of not less than five members of the Board of County Commissioners and may be removed at any time by an affirmative vote of not less than five members of the board or upon the affirmative vote of 4 members at each of 2 regular meetings not less than 13 days apart and no more than 28 days apart. The administrator need not be a resident of the county at the time of appointment, but shall within a reasonable time become and remain while in office a resident of the county. The county administrator shall not engage in any other business or occupation.

(2) The compensation of the administrator shall be fixed by the Board of County Commissioners by ordinance at a level which is commensurate with the requirements of the position. The

county administrator's compensation, including severance pay, may be set by contract if allowed by and pursuant to ordinance.

(3) The office of county administrator shall be deemed vacant if the incumbent: takes up residence outside the county; is by death, illness, or other casualty unable to continue to perform the duties of his office; resigns; or is removed by the board of county commissioners in the manner prescribed in Section 5 .03(1). A vacancy in the office shall be filled in the same manner as the original appointment. The board of county commissioners may appoint an interim administrator in the case of vacancy, temporary absence, or disability of the present administrator until a successor has been appointed and qualified or the administrator returns.

Section 5.04. Political Activity by Administrator.

The county administrator shall not hold any political office nor take part in any political activity other than voting.

Section 5.05. Performance Bond.

The county administrator shall be required to post a performance bond in accordance with general law.

VI. County Attorney

Section 6.01. Legal affairs.

The legal affairs of the County shall be assigned to and vested in the Office of the County Attorney. The office will consist of the County Attorney who shall be head of the office together with such chief assistants and other assistant county attorneys and legal support personnel as may from time to time be required subject only to budget determinations of the Board of County Commissioners. All attorneys and employees of the office shall serve at the pleasure of the County Attorney.

Section 6.02. County attorney duties.

(1) The County Attorney shall be responsible for representing, and is hereby authorized to represent, the Board as its County Attorney. The County Attorney shall provide legal services, including management and participation in all litigation and other such legal services, required to protect the interests of the County; and shall render legal advice and perform other legal and administrative responsibilities as described elsewhere herein to the Board and to all other departments and agencies of County government that the Board from time to time authorizes and directs.

(2) The duties, responsibilities and authority of the County Attorney shall include, without limitation: (a) providing legal advice and counsel to, and legal representation of, the Board, the County Administrator and the departments, agencies and officers of the County on all matters pertaining to the business of the County or in connection with the duties of the department, agency or office; (b) coordinating with the County Administrator and various departments and offices under his jurisdiction regarding all matters affecting and implicating overall County administration, including, without limitation, budgetary, personnel and

procurement matters; (c) advising and providing recommendations to the Board regarding the need for the selection of any special counsel to be retained to provide legal representation in specified matter; and (d) supervising, monitoring and coordinating, as appropriate, the representation services and work of outside attorneys employed pursuant to Subsection (c) above.

(3) Upon direction of the Board and with the consent of the County Attorney, the County Attorney's Office may provide legal advice and counsel to and representation of one or more of the County officers created under Section 1(d) of Article VIII of The Florida Constitution or any other state or local governmental office, unit or entity serving the County's interest and welfare and as may be authorized by law or interlocal agreement. At the request of the Board of County Commissioners, the County Attorney is hereby authorized to represent the Board of County Commissioners when it is acting as any other separate agency or legal entity consisting of the Hillsborough County Board of County Commissioners. The responsibility and authority of the County Attorney when serving as attorney in these matters shall include, but not be limited to, those duties and responsibilities as herein set out for the County Attorney.

(4) Nothing herein contained shall be construed as requiring the attorney to render legal services in any particular circumstance where, in the professional discretion and judgment of the attorney, the rendering of such legal services would violate the provisions of the Code of Professional Responsibility of the Florida Bar or create a direct conflict of interest between the County and attorney.

Section 6.03. County attorney qualifications, appointment, compensation.

(1) The County Attorney shall be and remain a member of The Florida Bar and shall have had at least five (5) years experience in Local Government Law or equivalent and such other experience as determined by the Board. The County Attorney need not be a resident at the time of appointment but shall within a reasonable time become and remain a resident of the County and remain so while in office. The County Attorney shall be a full time employee of the County and shall not otherwise engage in the practice of law except as may be authorized by the Board. The County Attorney shall be appointed by an affirmative vote of not less than five (5) members of the Board of County Commissioners and may be removed at any time by an affirmative vote of not less that five (5) members of the Board or upon the affirmative vote of four (4) members at each of two (2) regular meetings not less than thirteen (13) days apart and no more than twenty-eight (28) days apart.

(2) The compensation of the County Attorney, including severance pay and other benefits, shall be fixed by contract, ordinance or resolution as determined by the Board at a level commensurate with the requirements of the position.

(3) The Office of the County Attorney shall be deemed vacant if the incumbent is removed, resigns, moves his residence from the County or is, by death, illness or other casualty, unable to continue in office. In the case of temporary vacancy or absence or disability, until a successor has been appointed or the County Attorney returns, the Chief Assistant County Attorney or other Assistant Attorney designated by the County Attorney shall serve as the County Attorney upon approval of the Board.

Section 6.04 Special attorneys; bond counsel; disclosure counsel.

(1) Special attorneys may be employed by the Board of County Commissioners upon the recommendation of the County Attorney regarding the need for the selection of any special counsel to provide legal representation in specified matters.

(2) Bond and disclosure counsel shall be selected by the Board of County Commissioners from a list of not less than three (3) qualified respondents to publicly noticed solicitations for bond and disclosure counsel and upon the recommendation of the County Administrator and County Attorney.

Section 6.05 Political activity by County Attorney.

The County Attorney shall not hold any political office nor take part in any political activity other than voting.

VII. Administrative Code

Section 7.01. Purpose of Administrative Code.

The board of county commissioners shall enact and amend by ordinance an administrative code organizing the administration of the county government into divisions and offices and setting forth the duties, responsibilities, and powers of the county administrator, any assistant county administrators, if any, and divisions and offices of the county government not in conflict with the provisions of this Charter. It shall be the responsibility of the county administrator to compile, publish, and disseminate the administrative code, and to recommend revisions thereof in a continuing program to provide greater efficiency and economy in the operation of government.

Section 7.02. Initial Code.

Within ninety (90) days after the first organizational meeting of the board under this Charter, the county administrator shall submit a proposed administrative code to the board of county commissioners. The board of county commissioners shall adopt the proposed code, as submitted or amended, within three (3) months after the date submitted. If not adopted within three (3) months, the code, as proposed by the administrator, shall govern the operations of the county administrator, divisions and offices until such time as one may be adopted formally by the board of county commissioners.

VIII. Amendments To Charter

Section 8.01. By the Board of County Commissioners.

The board of county commissioners may propose amendments to this Charter by ordinance approved by at least five (5) members.

Section 8.02. Charter Review Board.

Within two years after the effective date of this Charter and every five years thereafter, the board of county commissioners shall appoint a charter review board consisting of fourteen (14) electors of the county. Each commissioner shall appoint two members of the charter review board who shall be electors in that commissioner's district, and none of whom may be an elected official. Members of the charter review board shall serve for a term of one year without compensation. Such board shall be empowered to conduct a comprehensive study of any or all phases of county government. The board of county commissioners shall provide such professional, technical, and clerical assistance as may be reasonably required by the charter review board upon submission of an appropriately documented request by the charter review board. The charter review board shall, after two public hearings and upon approval of two thirds of its members, file any proposed amendments to the Charter, if any, with the supervisor of elections who shall provide for a vote on it pursuant to Section 8.04.

Section 8.03. Initiative.

The power to propose amendments to this Charter by initiative is vested in the people:

(1) The power may be invoked by filing with the supervisor of elections a petition containing a copy of the proposed Charter amendment. Each petition must be circulated in each numbered board district and must be signed by a number of electors in each of one-half of districts 1 through 4 and of the county as a whole equal to eight percent of the votes cast in each of such districts and the county as whole in the last preceding election in which a president or presidential electors were chosen. The address of each signer, and date of each signature, must appear on the petition. Each petition shall embrace but one subject and matter properly connected therewith. A date certain must be designated to and certified by the supervisor of elections as the beginning date of any petition drive, and said drive shall terminate six months after that date. In the event sufficient signatures are not acquired during that six-month period, the petition drive shall be rendered null and void and none of the signatures may be carried over onto another identical or similar petition.

(2) The petition shall be filed with the supervisor of elections who shall, within a period of not more than thirty (30) days, determine whether the petition contains the required valid signatures. The supervisor shall be paid the sum specified by general law by the persons or committee seeking verification.

a) If it is determined that the petition does not contain the required signatures, the supervisor shall so certify to the board of county commissioners and the petition drive shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

b) If it is determined that the petition has the required signatures, the supervisor shall so certify to the board of county commissioners and place the amendment on the ballot.

(3) All other procedures shall be as provided by general law for constitutional amendments with the supervisor of elections performing the duties of the secretary of state.

Section 8.04. Elections and Notice.

All elections shall be held and conducted pursuant to the provisions of general law except as otherwise provided in this Charter. Charter amendments by ordinance shall be voted on at special elections or regular elections as the board of county commissioners chooses. Charter review and initiative amendments shall be voted on at the next regular general election. Amendments shall become effective upon approval by a majority vote of the electors voting at the next scheduled countywide election or special referendum election.

Section 8.05. Financial Impact Statement for All Proposed County Charter Amendments and Countywide Referenda.

The board of county commissioners shall require by ordinance that for all County elections, a separate financial impact statement, not exceeding seventy-five words, including a two-year estimate of the increase or decrease in revenues or costs to the county resulting from approval of all proposed county Charter amendments and all other proposed countywide referenda unrelated to a county Charter amendment, be prepared by the county budget director and placed on the ballot immediately following the ballot question.

IX. General Provisions

Section 9.01. Limitation on State Law.

No law passed by the state legislature shall be effective as to the county government:

(a) Unless it is approved at referendum, or

(b) Except to the extent,

(1) the Florida Constitution or this Charter requires that it be effective, or

(2) it permits this county government to grant powers to, receive powers from, or combine powers with other governmental entities, or

(3) it solely affects (i) Tax authorization not inconsistent with this Charter or (ii) the relations of this county government to any governmental body which has jurisdiction extending beyond the boundary of Hillsborough County, or

(4) it is authorized under Section 2.01.

Section 9.02. Construction of the Charter.
It is the intent of the electorate in adopting this Charter that this Charter shall be liberally construed to achieve the objectives of local home rule and separation of branches as set forth herein.

Section 9.03. Code of Ethics.
The code of ethics for public officers and employees and the penalties for violation thereof as provided by general law or more restrictive ordinance, if any, shall be applicable to all employees and office holders of this county government.

Section 9.04. Political Activities.
Political activities of officers and employees of the county government shall be governed and controlled by general law except as provided herein and except that the county administrator's assistants and division and office heads, the county internal performance auditor, the county internal performance auditor's assistants, and the county attorney and his assistants, shall not hold any political office nor take part in any political activity relating to county commission elections, other than voting.

Section 9.05. Severability.
It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.

Section 9.06. Vacancies.
Vacancies in commission districts shall be deemed to exist and be filled in accordance with the Constitution and Laws of Florida.

Section 9.07. Public Meetings.
Meetings of the board of county commissioners and other boards shall be held and conducted as provided by general law and rules of the board not inconsistent therewith.

Section 9.08. Recall.
The people shall have the power to recall elected officials by recall election initiated, called, held and conducted as provided by general law for chartered counties.

Section 9.09. Planning.
There shall be for Hillsborough County and its municipalities a single local planning agency created by such special law or laws which need not be approved by a referendum. It shall have responsibility for comprehensive planning and related activities as are committed to it by general law or applicable special laws.

Section 9.10. Environmental Protection.
There shall be for Hillsborough County and its municipalities a single local environmental protection commission created by such special law or laws which need not be approved by referendum.

Section 9.11 Discrimination Prohibited.
To be consistent with federal and state constitutions, laws, rules, and regulations, the county government shall not deprive any person of any right because of race, sex, age, national origin, religion, disability, or political affiliation. The administrative code shall provide adequate means for protecting these rights, including equal opportunity assurances.

Section 9.12. Lowering of Salaries.
The salaries of commissioners and the county administrator may be lowered to the extent allowed by general law.

X. Transition And Schedule

Section 10.01. Offices and Officers of Former Government.
Unless otherwise provided by this Charter, all offices, officials, boards, commissions, and agencies of the former government shall continue to perform their respective duties and functions until such minimum time allowed for the adoption of an administrative code pursuant to Section 7.02. At said time, said duties and functions shall be performed in accordance with the administrative code.

Section 10.02. Interim County-Wide Districts.
The commissioners elected countrywide in the year 1982 shall immediately become commissioners from districts 5 and 7 respectively and stand for initial election [in] 1986.

Section 10.03. Initial Commissioners.
By November 15, 1983, the board of county commissioners shall establish the apportionment of districts 1 through 4 under procedures provided in Section 4.06 and using the 1980 federal decennial census population figures. At the 1984 general elections commissioners from districts I through 4 and district 6 shall be elected, with the terms of the new commissioners from districts I and 3 to be for two years only and the terms of commissioners from districts 2, 4 and 6 to be for four years. The commissioners from districts 2 and 4 as drawn in 1981, who were elected by county-wide vote in 1982, shall serve as the commissioners from districts 5 and 7 respectively until the second Tuesday following the 1986 general election, but if either is not in office at the beginning of qualification in 1984, then a commissioner for new district 5 or 7, as the case may be, shall be elected in the initial election for a term of 2 years.

Section 10.04. Effective Date of Government.
County government shall go into force and effect when the commissioners elected at the 1984 general election take office.

Section 10.05. Preservation of Existing Government.
All provisions of the laws or parts thereof rendered ineffective as to the county government

by Section 9.01, which are not inconsistent with this Charter shall become ordinances of this government subject to modification or repeal as are other ordinances; however, they shall stand repealed as of November 15, 1985.

Section 10.06. Preservation of Existing Ordinances.

All ordinances, codes, rules, regulations and resolutions of the county of Hillsborough or any of its agencies which are not inconsistent with this Charter, shall become ordinances, rules, regulations of the county government subject to modification or repeal as are other ordinances.

Section 10.07. Rights Reserved.

(a) Obligations Honored. All lawful rights and obligations, of whatever kind or nature in existence on the date this Charter is approved by the electors, of the local government becoming a part of the county government on the one hand, and any person, firm, corporation, other government or agency on the other hand, shall become the rights and obligations of the county government.

(b) No Enlargement of Obligations. All such rights and obligations shall be limited to the area, or funds, which would have been subject to such rights or obligations if this Charter had not been adopted.

Section 10.08. Classified Employees and Officers.

All employees in the classified service and officers of the county shall be transferred to the division, office, or agency to which the functions, powers, and duties in which they were engaged upon the effective date of this Charter are allocated under this Charter. Such transfer shall be without examination or diminution of existing compensation, pension, or retirement rights, privileges, or obligations of any such officers or employee. The adoption of any subsequent classified service plan shall not adversely affect the tenure, pension, seniority, or promotional rights of any county officer or employee in the classified service when this Charter is adopted.

STATEMENT OF ORGANIZATION OF POLITICAL COMMITTEE

(PLEASE TYPE)

OFFICE USE ONLY

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JUN 11 2018

1. Full Name of Committee
All for Transportation

Telephone
813-254-3369

Mailing Address (include city, state and zip code)
610 S. Boulevard
Tampa, FL 33606

Street Address (include city, state and zip code)
610 S. Boulevard
Tampa, FL 33606

2. Affiliated or Connected Organizations (includes other committees of continuous existence and political committees)

Name of Affiliated or Connected Organization	Mailing Address	Relationship
Keep Hillsborough Moving, Inc.	610 S. Boulevard Tampa, FL 33606	Connected

3. Area, Scope and Jurisdiction of the Committee
Countrywide committee to engage in activity related to transportation policy.

4. Nature of Organization or Organization's Special Interest (e.g., medical, legal, education, etc.)
Transportation

5. Identify by Name, Address and Position, the Custodian of Books and Accounts (include treasurer's name)

Full Name	Mailing Address	Committee Title or Position
Nancy H. Watkins	610 S. Boulevard Tampa, FL 33606	Treasurer

Exhibit 4

DS-DE 5 (Rev. 06/11) – Rule 1S-2.017

(continued on reverse side)

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6. List by Name, Address and Position, Other Principal Officers, Including Officers and Members of the Finance Committee, If Any (include chairman's name)

Full Name	Mailing Address	Committee Title or Position
Tyler Hudson	610 S. Boulevard Tampa, FL 33606	Chair
Robert I. Watkins	610 S. Boulevard Tampa, FL 33606	Deputy Treasurer

7. List by Name, Address, Office Sought and Party Affiliation Each Candidate or Other Individual that this Committee is Supporting (if none, please indicate)

Full Name	Mailing Address	Office Sought	Party
N/A			

8. List Any Issues this Committee is Supporting: To be determined

List Any Issues this Committee is Opposing: To be determined

9. If this Committee is Supporting the Entire Ticket of a Party, Give Name of Party

n/a

10. In the Event of Dissolution, What Disposition will be Made of Residual Funds?

Contribute to 501c4 and 501c3 organizations or as otherwise permitted by law.

11. List all Banks, Safety Deposit Boxes, or Other Depositories Used for Committee Funds

Name of Bank or Depository & Account Number	Mailing Address
The Bank of Tampa	601 Bayshore Blvd. Tampa, FL 33606

12. List all Reports Required to be Filed by this Committee with Federal Officials and the Names, Addresses and Positions of Such Officials, If Any

Report Title	Dates Required to be Filed	Name & Position of Official	Mailing Address
Form 8976 Form 990	Upon formation May 15 of each year	For all: Internal Revenue Service Center	For all: Ogden, UT 84201

STATE OF Florida Hillsborough COUNTY

I, Tyler Hudson, certify that the information in this Statement of Organization is complete, true and correct.

X _____ 06/07/2018

Signature of Chairman of Political Committee Date

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.

_____/

CASE NO.: 2018-CA-011749
DIVISION: J

DEFENDANT HILLSBOROUGH COUNTY'S
ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Hillsborough County ("County"), submits this answer and affirmative defenses to the Complaint for Declaratory Judgment filed by Plaintiff, Stacy White, on December 3, 2018.

Answer

As to the introductory paragraphs of the complaint, starting with the unnumbered paragraph beginning on the first page of the complaint directly below the heading "Complaint for Declaratory Judgment," and continuing through to the paragraph immediately preceding the heading "Jurisdiction and Venue" on page 4 of the complaint, no response is required. These

paragraphs are introductory paragraphs which consist of legal argument and which are not a part of the factual allegations of the complaint and are not incorporated into any count by reference. To the extent a response to these paragraphs is deemed required, they are denied.

Jurisdiction and Venue

1. In response to paragraph 1 of the complaint, the County admits that the complaint asserts claims for declaratory judgment under section 86.011, Florida, Statutes. Otherwise, denied.

2. In response to paragraph 2 of the complaint, the County admits that Hillsborough County, Florida, is the proper venue for this action. Otherwise, denied.

Parties

3. The County admits the allegations in paragraph 3 of the complaint.

4. The County admits the allegations in paragraph 4 of the complaint.

5. In response to the first sentence of paragraph 5 of the complaint, the County admits that the entity legally named the Hillsborough Transit Authority, is a transportation authority created and existing under chapter 163, Florida Statutes, which is sometimes referred to as the "Hillsborough Area Regional Authority" or "HART." As to the second sentence of paragraph 5, this sentence characterizes the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to the second sentence is required.

6. In response to the first sentence in paragraph 6, the County admits that the City of Tampa is a municipality located in Hillsborough County. As to the remainder of paragraph 6, such allegations are characterizations of the contents and meaning of the Article 11 of the county

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charter, a written document which speaks for itself. Thus, no response to these allegations is required.

7. In response to the first sentence in paragraph 7, the County admits that the City of Temple Terrace is a municipality located in Hillsborough County. As to the remainder of paragraph 7, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

8. In response to the first sentence in paragraph 8, the County admits that Plant City is a municipality located in Hillsborough County. As to the remainder of paragraph 8, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

9. In response to the first sentence in paragraph 9, the County admits that the Hillsborough Metropolitan Planning Organization (MPO) is a metropolitan planning organization created and existing pursuant to section 339.017, Florida Statutes. As to the remainder of paragraph 9, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

10. In response to the first two sentences in paragraph 10, the County admits that Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County and named as a defendant in this lawsuit in her official capacity. As to the remainder of paragraph 10, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

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11. In response to the first two sentences in paragraph 11, the County admits that Bob Henriquez is the Property Appraiser of Hillsborough County and named as a defendant in this lawsuit in his official capacity. As to third sentence of paragraph 11, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

12. In response to the first two sentences in paragraph 12, the County admits that Doug Belden is the Tax Collector of Hillsborough County and named as a defendant in this lawsuit in his official capacity. As to third sentence of paragraph 12, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

13. The County admits the allegations in paragraph 13.

The Creation of Article 11

14. In response to the allegations contained in paragraph 14, the County admits that the charter amendment contained in Article 11 was not drafted or approved by attorneys for the County, and that it was not approved, voted upon, or adopted by the BOCC prior to the referendum election. As to the allegations in the second and third sentences of paragraph 14, the County lacks sufficient information or knowledge to form a belief of such allegations, and therefore denies the same.

15. The County admits the allegations contained in paragraph 15. The County admits that Exhibit B appears to be a true and accurate copy of the "County Charter Amendment Petition Form" for Article 11.

16. In response to the first sentence of paragraph 16, the County admits that on November 6, 2018, the voters of the County voted in favor of the ballot measure for the charter

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amendment in Article 11 of the County's charter. As to the second sentence in paragraph 16, no response is required as it characterizes the contents of Exhibit B, a written document that speaks for itself. In the event a response is deemed required, such allegations are denied.

17. The County admits the allegations in the second sentence of paragraph 17. The County admits that the document attached as Exhibit C appears to be a true and accurate copy of the Official General Election Ballot for Hillsborough County for the November 6, 2018, election with respect to Article 11. As to the remaining allegations in paragraph 17, no response is required because such allegations characterize the contents of Exhibit C, a written document that speaks for itself. In the event a response is deemed required, such allegations are denied.

18. The County admits the allegations in paragraph 18. The County admits that Exhibit D appears to be a true and accurate copy of the Official Results of the November 6, 2018, election with respect to Article 11.

COUNT 1

The Provisions of Article 11 Prevent The BOCC from Discharging its Statutory Duties and Responsibilities to Apply the Proceeds of the Surtax as the BOCC "Deems Appropriate."

19. In response to paragraph 19, the County repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

20. In response to paragraph 20, the County admits that the quoted language appears in section 212.054(1), Florida Statutes.

21. As to paragraph 21, no response is required because it characterizes the contents and meaning of the opening paragraph of section 212.055 and section 212.055(1), Florida Statutes, the text of which statutory provisions speak for themselves. In the event a response is deemed required, such allegations are denied.

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22. In response to paragraph 22, the County admits that the quoted language appears in section 212.055(1)(d), Florida Statutes.

23. As to paragraph 23 (including subparagraphs a-d), no response is required because this paragraph characterizes the contents and meaning, and sets forth the Plaintiff's argument as to the legal interpretation and effect, of Article 11. To the extent a response is required to any of the allegations of paragraph 23 (including subparagraphs a-d), those allegations are denied.

24. As to paragraph 24, the County admits that the BOCC is the governing body of the County. As to all other allegations in paragraph 24, no response is required because such allegations characterize the contents and meaning, and sets forth the Plaintiff's argument as to the legal interpretation and effect, of Article 11 and unspecified statutes. In the event a response is deemed required, such allegations are denied.

25. As to paragraph 25, no response is required because such allegations constitute conclusions of law. In the event a response is deemed required, such allegations are denied.

26. As to the second sentence in paragraph 26, the County admits that the language quoted in this sentence appears in section 212.055(1), Florida Statutes. As to all other allegations in paragraph 26, no response is required because such allegations characterize the contents and meaning, of Article 11 and section 212.055(1), and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

27. As to paragraph 27, no response is required because such allegations characterize the contents and meaning, of Section 11.07(6) of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

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28. As to paragraph 28, no response is required because such allegations characterize the contents and meaning, of Section 11.07(9) of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

Requested Relief

The County denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-f) on page 10 of the complaint.

COUNT II

The Provisions of Article 11 Prevent the BOCC from Discharging its Statutory Duties and Responsibilities to Remit and Distribute Proceeds of the Surtax to HART and Other "Agencies" In Amends it Determines To Be Appropriate

29. In response to paragraph 29, the County repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

30. As to paragraph 30, no response is required because such allegations characterize the contents, meaning, and effect of Section 11.04 of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

31. As to paragraph 31, no response is required because such allegations characterize the contents, meaning, and effect of Section 11.05 of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

32. As to paragraph 32, no response is required because such allegations characterize the contents, meaning, and effect of Article 11, which speaks for itself. In the event a response is deemed required, such allegations are denied.

33. As to paragraph 33, the County admits that the quoted language appears in section 212.055(1)(d)(2), Florida Statutes. As to the remainder of paragraph 33, no response is required

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because it characterizes the contents of this statutory provision, which speaks for itself. In the event a response is deemed required, such allegations are denied.

34. As to paragraph 34, the County admits that the BOCC is the governing body of the County. Otherwise, denied.

Requested Relief

The County denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-c) on pages 11-12 of the complaint.

COUNT III

The Creation and Powers of the IOC Are Not Authorized by Any General Law and Are in Conflict With Section 212.055(1)

35. In response to paragraph 35, the County repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

36. As to the first sentence in paragraph 36, the County admits that section 212.055(1), Florida Statutes, does not reference an "Independent Oversight Committee." As to the remainder of paragraph 36, such allegations constitute conclusions of law to which no response is required. To the extent a response is deemed required, such allegations are denied.

37. As to paragraph 37 (including subparagraphs a-d), no response is required as such allegations characterize the contents and meaning of Section 11.10 of Article 11, a writing which speaks for itself. In the event a response is deemed required, such allegations are denied.

38. As to paragraph 37 (including subparagraphs a-d), no response is required as such allegations characterize the contents and meaning of Section 11.10 of Article 11, a writing which speaks for itself. In the event a response is deemed required, such allegations are denied.

39. As to paragraph 39, the County admits that the quoted language appears in Article 11.

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40. As to paragraph 40, the County admits that the quoted language appears in Article 11. Otherwise, denied.

41. The County denies the allegations in paragraph 41.

42. As to paragraph 42, no response is required as such allegations characterize the contents and meaning of section 212.055(1), Florida Statutes, and Section 11.06, which speak for themselves, and set forth conclusions of law. To the extent a response is deemed required, such allegations are denied.

43. As to paragraph 43, no response is required as such allegations characterize the contents and meaning of Article 11, which speaks for itself, and sets forth conclusions of law. To the extent a response is deemed required, such allegations are denied.

44. As to paragraph 44 no response is required as such allegations characterize the contents and meaning of Article 11 and section 212.055(1), Florida Statutes, which speak for themselves, and set forth conclusions of law. To the extent a response is deemed required, such allegations are denied.

Requested Relief

The County denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-e) on pages 14-15 of the complaint.

COUNT IV

The Ballot Summary was Legally Insufficient and Did Not Provide the Voters with Fair Notice of the Contents of the Proposed Initiative

45. In response to paragraph 45, the County repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

46. In response to paragraph 46, the County admits that the quoted language was contained in the ballot summary for Article 11.

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47. In response to paragraph 47, the County admits that the quoted language was contained in the ballot summary for Article 11.

48. The County denies the allegations in paragraph 48 (including subparagraphs a-d).

49. The County denies the allegations in paragraph 49.

50. As to paragraph 50, such paragraph does not consist of allegations regarding present or past fact; rather, sets forth language that, according to the Plaintiff, hypothetically could have constituted the ballot language for Article 11. Such hypothetical ballot language also consists of the Plaintiff's conclusion of law. Thus, no response to paragraph 49 is required. To the extent a response is deemed required, such allegations are denied.

51. The County denies the allegations in paragraph 51.

Requested Relief

The County denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-b) on page 18 of the complaint.

Affirmative Defenses

1. **Lack of Standing (Official Capacity).** The Plaintiff has filed this lawsuit in his official capacity as a sitting County Commissioner of Hillsborough County. The Plaintiff lacks standing to bring this action in such capacity. County Commissioners, when acting in their official capacity, are required to sue in the name of the county of which they are commissioners. § 125.15, Fla. Stat. Taking action in the name of the County requires a majority vote of the Board of County Commissioners, which has not occurred. Moreover, the County does not have capacity to sue itself. Therefore, the Plaintiff lacks standing to single-handedly bring this lawsuit in his official capacity as a county commissioner.

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2. **Lack of Standing (Individual Capacity).** The Plaintiff lacks standing to maintain this lawsuit in his individual capacity. The Plaintiff claims the right or status at issue in this declaratory action is the right or status to vote on the surtax as a member of the Board of County Commissioners. Private citizens cannot sue to enforce rights held by the Board of County Commissioners. Additionally, the Plaintiff has not demonstrated special injury, adverse effect, or any other facts conferring standing to sue for declaratory relief in his individual capacity.

3. **Laches.** As a sitting county commissioner, the Plaintiff has been heavily involved in this political process and has had full knowledge of the initiative petition and ballot language far in advance of the election. However, the Plaintiff waited over four weeks after the voters approved the referendum before filing suit. He also waited until a little less than one month before the surtax levy is to take effect before filing this lawsuit. Therefore, Plaintiff's claims are barred by the doctrine of laches.

4. **Ripeness.** The Plaintiff fails to state a cause of action upon which declaratory relief can be granted. A declaratory action requires that the case in controversy be a present, real controversy – not merely a request for legal opinion or advice. The Plaintiff is essentially asking for a legal opinion on whether or not he can vote on certain measures as a sitting county commissioner – but instead of asking for this opinion from legal counsel to the County, the Plaintiff is asking for this legal opinion from the courts. This fails to state a case and controversy ripe for judicial action.

5. **Breach of Oath of Office.** The Plaintiff, as a sitting county commissioner, is required to uphold the County Charter. Therefore, unlike other private citizens, the Plaintiff cannot sue to challenge the County Charter without violating his oath of office.

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6. **Severability (express severability provision in Article 11 and/or court's inherent authority under severability doctrine).** In the event any language or provision(s) in Article 11 is found to be invalid, the invalidity of such language or provisions(s) is not a basis for invalidating Article 11 in its entirety. Under the severability provision in Article 11 (Section 11.11(2)) and/or the judicial doctrine of severability, the offending language should be severed and the remainder of Article 11 should stand.

7. **Supremacy Provision.** Under the supremacy provision of Article 11 (Section 11.11(3)), State law prevails in the event of any conflict with any language or provisions(s) in Article 11. Thus, if any language or provisions(s) of Article 11 are determined to be in conflict with State law, only the conflicting language or provisions(s) of Article 11 should be declared invalid and the remainder of Article 11 should stand.

For these reasons, the County requests that the Court enter judgment in its favor and against the Plaintiff with respect to all claims in the complaint, award the County its litigation costs as the prevailing party, and grant the County such further relief deemed just and appropriate.

Respectfully submitted on December 21, 2018.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.
Fla. Bar No. 349615
NIKKI C. DAY, B.C.S.
Fla. Bar No. 77551
ELIZABETH W. NEIBERGER, ESQ.
Fla. Bar No. 70102
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
(813) 273-6677
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agardner@bmolaw.com
Attorneys for Hillsborough County

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CERTIFICATE OF SERVICE

I certify that, on December 21, 2018, this document was filed electronically with the Clerk of Court through the Florida Courts e-Filing Portal and a copy was served by email on the persons listed on the Service List below.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.

Service List

Attorney for Plaintiff Chris W. Altenbernd, Esq. Banker Lopez Gassler, P.A. 501 E. Kennedy Boulevard, Suite 1700 Tampa, FL 33602 Service-caltenbernd@bankerlopez.com caltenbernd@bankerlopez.com amercado@bankerlopez.com	**Attorney for Plant City** Kenneth W. Buchman, Esq. 302 W. Reynolds Street Plant City, FL 33566 kbuchman@plantcitygov.com kenbuchman@gmail.com lyoung@plantcitygov.com
Attorney for Hillsborough Area Regional Transit Authority David L. Smith, Esq. Robert E. Johnson, Esq. Julia C. Mandell, Esq. Gray Robinson, P.A. 401 E. Jackson Street, Suite 2700 Tampa, FL 33602 David.smith@gray-robinson.com Jane.larose@gray-robinson.com rjohnson@gray-robinson.com Valerie.taylor@gray-robinson.com Julia.mandell@gray-robinson.com	**Attorney for the City of Tampa** Jerry M. Gewirtz, Esq. David Harvey, Esq. City Attorney's Office 315 E. Kennedy Boulevard, 5th Floor Tampa, FL 33602 Jerry.gewirtz@tampagov.net Kimber.spitsberg@tampagov.net David.harvey@tampagov.net Erin.bradley@tampagov.net
Attorney for Florida Department of Revenue William H. Stafford, III, Esq. Senior Assistant Attorney General Office of the Attorney General State Programs Bureau PL-01, The Capitol Tallahassee, FL 32399 William.stafford@myfloridalegal.com Doris.brickhousehayes@myfloridalegal.com Tyler.dudley@myfloridalegal.com	**Attorney for Pat C. Frank** Dale K. Bohner, Esq. 601 E. Kennedy Boulevard 13th Floor Tampa, FL 33602 813-307-7015 bohnerd@hillsclerk.com holly.seidel@hillsclerk.com

Attorney for Bob Henriquez Will Shepherd, Esq. Hillsborough County Property Appraiser 601 E. Kennedy Boulevard, 15th Floor Tampa, FL 33602 shepherdw@hcpafl.org gomezm@hcpafl.org eservice@hcpafl.org	**Attorney for Doug Belden** Robert E. Brazel, Esq. Office of the County Attorney Post Office Box 1110 Tampa, FL 33601 brazelr@hillsboroughcounty.org matthewsl@hillsboroughcounty.org johnsonni@hillsboroughcounty.org
Attorneys for All for Transportation and Keep Hillsborough Moving, Inc. (Intervenors) Benjamin H. Hill, III, Esq. Robert A. Shimberg, Esq. J. Logan Murphy, Esq. Hill Ward & Henderson, P.A. 101 E. Kennedy Boulevard, Suite 3700 Tampa, FL 33602 Ben.hill@hwhlaw.com Robert.shimberg@hwhlaw.com Logan.murphy@hwhlaw.com	Barry S. Richard, Esq. Greenberg Traurig, P.A. 101 E. College Avenue Tallahassee, FL 32301 richardb@gtlaw.com
Hillsborough Metropolitan Planning Organization c/o Cameron Clark, Esq. Hillsborough County Attorney's Office Post Office Box 1110 Tampa, FL 33601 clarkc@hillsboroughcounty.org	**City of Temple Terrace** Pam Cichon, Esq. 11250 N. 56th Street Temple Terrace, FL 33617 pcichon@templeterrace.com

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

Case No.: 18-CA-11749

Division: K

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

DEFENDANT HILLSBOROUGH TRANSIT AUTHORITY'S
ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Hillsborough Transit Authority ("**HART**"), by and through its undersigned attorneys, files this its Answer and Affirmative Defenses ("**Answer**") to Plaintiff's ("**Plaintiff**") Complaint for Declaratory Judgment ("**Complaint**").

ANSWER

COMPLAINT INTRODUCTORY PARAGRAPHS

Plaintiff makes a series of assertions, page 1 through page 4 of the Complaint, which are neither accurate nor apposite to the matters at issue. Specifically, the Plaintiff cannot bring this

action in his official capacity as a County Commissioner because the County Commission has taken no action approving same and there is no authority for him to do so otherwise. The provisions of section 212.055(1), Florida Statutes 2018 (the "**Transit Surtax Statute**") do not conflict with Article 11 amending the Hillsborough County Charter ("**Article 11**") and there is no doubt or possible doubt regarding the actions that are appropriate under the Transit Surtax Statute in implementing Article 11.

The introductory paragraphs incorrectly understands: (i) the provisions of the Transit Surtax Statute; (ii) the amendment process for the Hillsborough County Charter; (iii) the application of County home rule in amending its own Charter; and (iv) the statutory process for implementing the Transportation Surtax adopted by referendum ("**Referendum**"). Moreover, the introductory paragraphs are not incorporated into any Counts of the Complaint. They are not consistent with Fla. R. Civ. Pro. 1.110(b) and should be stricken. All of those provisions or assertions not struck are hereby denied.

In response to the correspondingly numbered paragraphs of the Complaint HART answers as follows:

JURISDICTION AND VENUE

1. Admitted Plaintiff asserts a claim for declaratory action, otherwise denied.

2. Admitted that Hillsborough County would be the proper venue for this action, if the Court had jurisdiction to entertain it; however, the Court does not have such jurisdiction, therefore denied.

PARTIES

3. Admitted.

4. Admitted.

5. The correct name is Hillsborough Transit Authority. Admitted HART is an authorized regional transportation authority under Chapter 163. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

6. Admitted City of Tampa is a municipality located in Hillsborough County. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

7. Admitted that the City of Temple Terrace is a municipality located in Hillsborough County. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

8. Admitted that Plant City is a municipality located in Hillsborough County. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

9. Admitted the MPO is so formed. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

10. Admitted that Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County responsible in her capacity as Hillsborough County Comptroller for receiving the proceeds of the surtax. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

11. Admitted that Bob Henriquez is the Property Appraiser of Hillsborough County and a named defendant. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

12. Admitted that Doug Belden is the Tax Collector of Hillsborough County and a named defendant. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

13. Admitted.

THE CREATION OF ARTICLE 11

14. Admitted that Article 11 was not drafted by Hillsborough County Attorneys and and that the BOCC has not yet taken any action to implement Article 11, as such action is contemplated in the Transit Surtax Statute. Any allegations inconsistent with the same are therefore denied.

15. Admitted.

16. Admitted the voters of Hillsborough County did vote to approve Article 11. The balance of the paragraph characterizes the meaning of Article 11 which is a written document that speaks for itself. Any allegations inconsistent with the same are therefore denied.

17. Admitted that the allegations in the first sentence of paragraph 17 are accurate and that the document attached as Exhibit C appears to be a true and accurate copy of the Official General Election Ballot. The remaining allegations characterize the content of Exhibit C, which is a written document which speaks for itself. Any allegations inconsistent with the same are therefore denied.

18. Admitted that the Hillsborough County Canvassing Board Official Results showed the Referendum passed. Admitted that Exhibit D appears to be a true and accurate copy of the Official Results. Otherwise Exhibit D is a written document which speaks for itself. Any allegations inconsistent with the same are therefore denied.

COUNT I

19. Defendant HART repeats its answers to paragraphs 1 through 18 above as if fully set forth herein.

20. The referenced language of Chapter 212.054(1) speaks for itself. Any allegations inconsistent with the same are therefore denied.

21. The referenced language of Chapters 212.055 and 212.055(1) speaks for itself. Any allegations inconsistent with the same are therefore denied.

22. The referenced language of Chapter 212.055(1)(d) speaks for itself. Any allegations inconsistent with the same are therefore denied.

23. Denied.

24. Admitted that the BOCC is the governing body for Hillsborough County. Otherwise denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

COUNT II

29. Defendant HART repeats its answers to paragraphs 1 through 18 above as if fully set forth herein.

30. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

31. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

32. Denied.

33. Denied.

34. The statutory language speaks for itself. Any allegations inconsistent with the same are therefore denied.

COUNT III

35. Defendant HART repeats its answers to paragraphs 1 through 18 above as if more fully set forth herein.

36. The statutory language speaks for itself. Any allegations inconsistent with the same are therefore denied.

37. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

38. The language of Section 11.10 speaks for itself. Any allegations inconsistent with the same are therefore denied.

39. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

40. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

41. The language of Article 11 and Section 212.055(1) speaks for itself. Any allegations inconsistent with the same are therefore denied.

42. Denied.

43. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

44. The language of Article 11 and Section 212.055(1) speaks for itself. Any allegations inconsistent with the same are therefore denied.

COUNT IV

45. Defendant HART repeats its responses to paragraphs 1 through 18 above as if fully set forth herein.

46. The language of the ballot summary speaks for itself. Any allegations inconsistent with the same are therefore denied.

47. The language of the financial impact of the ballot measure speaks for itself. Any allegations inconsistent with the same are therefore denied.

48. Denied.

49. Denied.

50. Denied.

51. The language of the ballot speaks for itself. Any allegations inconsistent with the same are therefore denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Prematurity

Among other things, Hillsborough County has yet to determine what action to take in implementing Article 11; and such implementing action is clearly contemplated by the Transit Surtax Statute. Specifically, Section 212.055(1)(d)4 provides that the county may implement Article 11 "pursuant to an interlocal agreement entered into pursuant to Chapter 163." The

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county has not yet taken any action on the creation of interlocal agreements, but has it scheduled for its agenda in January.

Second Affirmative Defense

Failures to State a Cause of Action – Case or Controversy

The Referendum meets the requirements of the citizen-initiated amendment process to amend the Hillsborough County Charter. Section 8.03 permits a Charter Amendment by an initiative of the people. The Hillsborough County Charter contains no limitations on the type of Charter Amendments that may be initiated by citizens under Section 8.03. The County via Charter Amendment has the authority pursuant to its home rule powers to submit Article 11 to the electorate for a referendum and to implement the provisions of such an approved referendum consistent with Section 212.055, Florida Statutes (2018). *See Telli v. Broward County,* 94 So. 3d 504 (Fla. 2012). The Transit Surtax Statute provides the "authorization for imposition of a discretionary sales surtax" and a process to implement it.

Specifically, Section 212.055(1)(d)4 provides that the county may implement Article 11 "pursuant to an interlocal agreement entered into pursuant to Chapter 163." The county has not yet taken any action on the creation of interlocal agreements, but has it scheduled for its agenda in January. Accordingly, Plaintiff, acting as a lone county commissioner, has not and cannot show that the BOCC (or any other Defendant) has failed or will fail to comply with the requirements Section 212.055(1)(d). Plaintiff has not and cannot show that the BOCC, as the governing body for Hillsborough County, does not or will not "deem appropriate" the distribution of the transportation surtax provided for in Article 11. Plaintiff has not and cannot show that the BOCC, as the governing body for Hillsborough County, does not seek to implement the Independent Oversite Committee provision in Article 11.10 in a manner that is not consonant with the Transportation Surtax Statute. Until such time that BOCC, as the

governing body of Hillsborough County, takes an action to implement Article 11, there exists no case or controversy under which Plaintiff can be in doubt.

Third Affirmative Defense

Failure to State A Cause of Action – No Authority to Bring Action in Plaintiff's Official Capacity as a Sitting BOCC member

Plaintiff has not and cannot state a cause of action for declaratory judgement for which relief can be granted. Plaintiff, a sitting member of the BOCC, has brought this action in his own name in his official capacity as a member of the BOCC. Fla. Stat. Section 125.15, states as follows: "The county commissioners shall sue and be sued in the name of the county of which they are commissioners." Plaintiff, as an individual commissioner, does not have the authority to bring an action in his official capacity as a county commissioner pursuant to Florida Statutes or the Hillsborough County Charter. See *Erickson v. Board of County Commissioners of Sarasota County*, 212 So. 2d 340 (Fla. 2d DCA 1968); *Ricker et al., Duval County Com'rs*, 70 Fla. 614 (1916). Pursuant to the Hillsborough County Charter, a vote of the BOCC would have been required to direct the Hillsborough County Attorney to proceed forward with any litigation on behalf of the Hillsborough County[1]. Plaintiff has not alleged that he has obtained any advice from the Hillsborough County Attorney, who pursuant to Article 6 of the Hillsborough County Charter, is vested with authority over all legal affairs of Hillsborough County and is responsible to provide legal advice and counsel to the BOCC and elected Commissioners.

[1] It is important to note that, given that Plaintiff has brought this action in his official capacity as a BOCC commissioner, the Hillsborough County Attorney under an abundance of caution has recused her office from this litigation.

Fourth Affirmative Defense

Ripeness

Plaintiff has not and cannot state a cause of action upon which relief can be granted as Plaintiff's case is not ripe for review by this Court. Plaintiff has not and cannot show that the governing body for Hillsborough County, the BOCC will not take appropriate action to implement Article 11 and Fla. Stat. Section 212.055(1).

Fifth Affirmative Defense

Improper Legal Advice

Instead of requesting legal advice and counsel from the Hillsborough County Attorney, Plaintiff is seeking such legal advice from this Court. This Court lacks jurisdiction to provide advisory opinions and/or legal advice to Plaintiff.

Sixth Affirmative Defense

Waiver and/or Estoppel

Plaintiff's claims are barred by the doctrines of waiver and/or estoppel. On information and belief on August 2018, the Supervisor of Elections certified to the BOCC via letter to the BOCC Chairman that Article 11 had met the requirements of Hillsborough County Charter Sec. 8.03 for inclusion on the November 6, 2018 general election ballot[2]. This certification also included the ballot language and the language of the amendment.[3] Plaintiff, who brought this case in his own name in his official capacity as a member of the BOCC, was a sitting Commissioner when this certification was provided. Plaintiff had full knowledge of the initiative

[2] Hillsborough County Charter Sec. 8.03 (2)(b) states: "(b) If it is determined that the petition has the required signatures, the supervisor shall so certify to the board of county commissioners and place the amendment on the ballot.

[3] The BOCC, by not objecting to that finding, effectively approved the ballot language and any right by Plaintiff to bring an action on behalf of Hillsborough County has been waived.

petition, the ballot language and the proposed language in Article 11 far in advance of its passage. Plaintiff failed to take any action, whether it was to request a legal opinion of the Hillsborough County Attorney or to bring legal action prior to the referendum election to raise the issues he has raised within his Complaint. Defendants relied upon Plaintiff's inaction. Plaintiff therefore waived his right to bring this action and/or is estopped from bringing this action at this late date. By waiting to bring this action, Plaintiff has caused the potential for chaos and now seeks to capitalize on those exigent circumstances by obtaining an expedited review process.

Seventh Affirmative Defense

Laches

Plaintiff's claims are barred by the doctrine of Laches. Plaintiff had full knowledge of the initiative petition, the ballot language and the proposed language in Article 11 far in advance of its passage. Plaintiff failed to take any action. Plaintiff waited over four weeks after the voters approved the Referendum before filing suite. Additionally, Plaintiff waited to file suit less than a month before the surtax was to take effect.

Eighth Affirmative Defense

Severability

Plaintiff argues that all of Article 11 is invalid and that the provisions which he has challenged cannot be severed from Article 11. The severability clause of Article 11, however, suggests otherwise. It states as follows:

> To the extent any mandatory expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be impermissible use of tax proceeds, the funds allocated to such impermissible use shall be expended by the applicable agency to improve public transportation permitted by Florida Statutes Section 212.055(1) and this Article.

In addition, Hillsborough County Charter Sec. 9.5 has a general severability clause, which provides:

> **Severability**. It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.

In the event that this Court determines that any of the provisions of Article 11, about which Plaintiff complains, do not comply with Florida Statutes, then inherent within the provisions of Article 11 and within Section 9.5 of the Hillsborough County Charter is the authority to sever any offending provisions. Plaintiff does not raise any issue with respect to Section 11.02 which provides for the **levy** of the surtax. In his Complaint, Plaintiff only raises issues with the distribution of the surtax proceeds alleged restrictions on use of the proceeds and with the independent oversight committee. For the same reasons indicated above, since the BOCC has yet to take any action implementing Article 11, it is unclear whether any provisions of Article 11 would be problematic and what, if any, judicial action would be necessary. That is, the implementing action by the BOCC is precisely intended to address the issue of the distribution of the proceeds of the surtax. The validity of the levy in the abstract is not at issue under the allegations of the Complaint.

Plaintiff fails to allege and cannot allege how, if he prevails on his argument, that the offending provisions are so inherent to the levy of the tax that they cannot be severed. Therefore, Plaintiff has not and cannot show that he can receive the relief requested; i.e. a finding by this Court that the entirety of Article 11 is invalid.

Ninth Affirmative Defense

Supremacy Provision

The Plaintiff cannot show that there is a contradiction between the provisions of the Transit Surtax Statute and Article 11 because Article 11 is, by its own terms, specifically subordinate to the provisions of the Transit Surtax Statute. Specifically, Section 11.11 (3) provides a supremacy clause as follows:

> This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

In the event that this Court determines that any of the provisions of Article 11, of which Plaintiff complains, do not comply with the Transit Surtax Statute, then inherent within the provisions of the Charter Amendment is the statement that the provisions of the Florida Statute prevail. Again, for the reasons recited above, the BOCC has yet to complete its implementing actions as a full county commission and therefore none of the arguments made by Plaintiff are ripe or relevant and the Complaint in essence seeks an advisory opinion rather than a declaratory judgement and is improper.

Tenth Affirmative Defense

Standing

Plaintiff has not and cannot show that he has standing to bring this action either in his official capacity as a member of the Board of County Commissioners or as a taxpayer in his individual capacity. As stated in the Third Affirmative Defense above, nothing within the Hillsborough County Charter nor within Florida Statutes Chapter 125 grants authority for Plaintiff to bring a lawsuit in his official capacity as a member of the BOCC. In addition, Plaintiff lacks standing to bring this lawsuit in his individual capacity. Plaintiff has failed to demonstrate any special injury, adverse effect or other facts which could confer standing in his

individual capacity as a taxpayer. In addition, there is no cause of action which exists for a private citizen to sue to enforce rights of the BOCC.

GRAYROBINSON, P.A.

/s/ *David L. Smith*
DAVID L. SMITH, ESQUIRE
Florida Bar No. 302139
david.smith@gray-robinson.com
jane.larose@gray-robinson.com
JULIA C. MANDELL, ESQUIRE
Florida Bar No. 81442
julia.mandell@gray-robinson.com
jane.larose@gray-robinson.com
ROBERT E. JOHNSON, ESQUIRE
Florida Bar No. 342955
robert.johnson@gray-robinson.com
valerie.taylor@gray-robinson.com
401 E. Jackson Street, Suite 2700
Tampa, FL 33602-5841
Telephone: (813) 273-5000
Facsimile: (813) 273-5145
Attorneys for Hillsborough Area Regional Transit Authority

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of this Court by using the Florida Courts' E-Filing Portal system which will provide service via electronic mail to all registered participants listed below on December 27, 2018.

Chris W. Altenbernd, Esquire
Banker Lopez Gassier, P.A.
501 E. Kennedy Blvd., Suite 1700
Tampa, FL 33602
caltenbernd@bankerlopez.com
service-caltenbernd@bankerlopez.com
Counsel for Plaintiff

Alan S. Zimmet, Esquire
Nikki C. Day, Esquire
Elizabeth W. Nelberger, Esquire
Bryan Miller Olive, P.A.
201 N. Franklin Street, Suite 2700
Tampa, Florida 33602
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agarner@bmolaw.com
Counsel for Hillsborough County

William D. Shepherd, Esquire
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
shepherdw@hcpafl.org
Counsel for Bob Henriquez in his official capacity as the Hillsborough County Property Appraiser

Robert E. Brazel, Esquire
Chief Assistant County Attorney
Office of the County Attorney
P.O. Box 1110
Tampa, Florida 33601-1110
Attorney for Doug Belden, Hillsborough County Tax Collector
BrazelR@hillsboroughcounty.org
MatthewsL@hillsboroughcounty.org
JohnsonNi@hillsboroughcounty.org

Benjamin H. Hill, III, Esquire
Robert A. Shimberg, Esquire
J. Logan Murphy, Esquire
Hill Ward & Henderson, P.A.
101 E. Kennedy Boulevard, Suite 3700
Tampa, FL 33602
Ben.hill@hwhlaw.com
Robert.shimberg@hwhlaw.com
Logan.murphy@hwhlaw.com

Barry S. Richard, Esquire
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
richardb@gtlaw.com
Attorneys for Keep Hillsborough Moving, Inc. and All for Transportation

/s/ David L. Smith
Attorney

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

Case No.: 18-CA-11749

Division: J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

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AGREED ORDER ON MOTION TO INTERVENE

KEEP HILLSBOROUGH MOVING, INC., and ALL FOR TRANSPORTATION filed a motion to intervene as defendants. At a hearing on December 21, 2018, it was agreed that they could appear as defendants for purposes of Count IV. This Court scheduled a hearing for January 4, 2019, to determine whether they should be allowed full party status for Counts I through III. The PLAINTIFF and KEEP HILLSBOROUGH MOVING, INC., and ALL FOR TRANSPORTATION now agree that this Court should permit their participation as full parties for all counts. There is no objection to this intervention by any other party.

ACCORDINGLY, this Court grants the motion of KEEP HILLSBOROUGH MOVING, INC., and ALL FOR TRANSPORTATION to intervene as defendants for all counts of the

complaint. They shall have twenty days from the date of this order in which to file a response to the complaint.

DONE AND ORDERED in Chambers in Hillsborough County, Florida on Jan 4, 2019.

Rex Barbas
Circuit Court Judge

Cc: *Parties of Record*

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

Case No.: 18-CA-11749

Division: J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

ORDER ON CASE MANAGEMENT CONFERENCE

This Court scheduled a case management conference on an expedited basis, which occurred at 10:00 a.m. on December 21, 2018. Counsel for all parties, except for the Property Appraiser and the Tax Collector attended, as did counsel for the intervener, Keep Hillsborough Moving, Inc. and All for Transportation. At the hearing, this Court ruled as follows:

1. The motion of Keep Hillsborough Moving, Inc., and All for Transportation to intervene as full parties is granted as to Count IV. Whether they shall be allowed to appear as amicus curiae or as full parties for Counts I through III shall be resolved at a hearing on Friday, January 4, 2019 at 1:30 p.m.

2. Several parties have requested extensions of time in which to answer or otherwise respond. The Plaintiff does not object to extensions and has agreed to enter no default against any party in this action. The parties are encouraged to respond as expeditiously as feasible.

3. The Metropolitan Planning Organization must meet in January before it can arrange representation. They are not required to have an attorney file a formal appearance or a response until after those arrangements have been made.

4. The Court encourages the parties to stipulate to as many facts as possible for the quick resolution of this case. At the hearing on January 4, 2019, the Court will discuss the discovery all parties anticipate undertaking, as well as any motions to dismiss that are filed. Any party wishing to file a motion to dismiss should endeavor to file such a motion at least a few days prior to January 4, 2019 so that the Court can consider all motions to dismiss at that time.

5. This Court intends to make hearing time available to hear cross-motions for summary judgment at the end of March or early April, 2019.

DONE AND ORDERED in Chambers in Hillsborough County, Florida on _____.

18-CA-011749 1/7/2019 11:05:43 AM

18-CA-011749 1/7/2019 11:05:43 AM

Rex Barbas
Circuit Court Judge

Cc: *Parties of Record*

01/07/2019 11:05:54 AM Electronically Filed: Hillsborough County/13th Judicial Circuit. **Page 2**

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,
Plaintiff,
v.

Case No. 2018-CA-011749

Division J

HILLSBOROUGH COUNTY, a charter county of the State of Florida, *et al.*,
Defendants.
_____/

DEFENDANT HILLSBOROUGH COUNTY'S
FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF

Defendant, HILLSBOROUGH COUNTY, serves this first request for admissions to be answered by Plaintiff, STACY WHITE, under oath in the time and manner required by Fla. R. Civ. P. 1.370 and any applicable discovery order entered by the court in this action.

Definitions

For purposes of this request for admissions, the following terms shall have the following meanings:

A. The term "action" means this lawsuit, *Stacy White v. Hillsborough County, et al.*, Case No. 2018-CA-011749 (Fla. 13th Cir. Ct., Hillsborough Cnty.).

B. "County" means Hillsborough County, a charter county of the State of Florida, and all of its officers, employees, principals, owners, agents, representatives, and all other persons acting at its direction or on its behalf.

C. The terms "Plaintiff," "you," and "your," mean Stacy White, the person to whom these interrogatories are addressed, his agents, representatives, and all other persons acting at his direction or on his behalf.

D. The term "complaint" means the Complaint for Declaratory Judgment you filed in this action on December 3, 2018.

E. "Article 11" means Article 11 of the Hillsborough County Charter, titled "Surtax for Transportation Improvements," approved by the County's voters at the general election held November 6, 2018, and which is the amendment to the Hillsborough County Charter that is the subject of your complaint in this action.

F. "Charter" means the Hillsborough County Charter.

G. The term "documents" includes electronically stored information, writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, which are in your possession, custody, or control.

H. The term "person" means any natural person, corporation, partnership, company, sole proprietorship, association, institute, joint venture, firm, governmental body, or other legal entity, whether privately or publicly owned or controlled, for profit or not-for-profit, or partially or fully government owned or controlled.

Requests for Admission

1. Admit that you had actual knowledge that the proposal to amend the Charter to create Article 11 would be included on the ballot for the November 6, 2018, general election in the County on or before September 1, 2018.

   Response:

2. Admit that you had read the ballot summary for the proposal to amend the Charter to create Article 11 that would be included on the ballot for the November 6, 2018, general election in the County, prior to November 6, 2018.

   Response:

3. Admit that the Board of County Commissioners of Hillsborough County has not authorized you to file this lawsuit.

   Response:

4. Admit that there is no provision of the Charter or the Hillsborough County Code of Ordinances which states that a single member of the Board of County Commissioners of Hillsborough County is authorized to file a lawsuit on behalf of the County.

   Response:

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5. Admit that upon taking your seat as a member of the Board of County Commissioners of Hillsborough County you took the oath of office provided by Article II, section 5(b) of the Florida Constitution.

   Response:

6. Admit that you are presently bound by the oath of office provided by Article II, section 5(b) of the Florida Constitution.

   Response:

7. Admit that after certification on or about August 8, 2018, by the Hillsborough County Supervisor of Elections that All for Transportation had met the requirements to place the proposed charter amendment on the November 6, 2018, ballot, there was a robust campaign and community outreach to the voters of Hillsborough County by those in favor of Article 11 and those opposed to Article 11; the campaign and community outreach included many direct mail pieces, phone calls, and other methods of reaching out to the voters.

   Response:

8. Admit that after certification on or about August 8, 2018, by the Hillsborough County Supervisor of Elections that All for Transportation had met the requirements to place the proposed charter amendment on the November 6, 2018, ballot, there was substantial media coverage regarding Article 11.

   Response:

Respectfully submitted on January 8, 2019.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.
Fla. Bar No. 349615
NIKKI C. DAY, B.C.S.
Fla. Bar No. 77551
ELIZABETH W. NEIBERGER, ESQ.
Fla. Bar No. 70102
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
(813) 273-6677
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agardner@bmolaw.com
Attorneys for Hillsborough County

1/8/2019 9:22 AM Electronically Filed: Hillsborough County/13th Judicial Circuit Page 3

CERTIFICATE OF SERVICE

I CERTIFY that on January 8, 2019, a copy hereof has been filed electronically with the Clerk of Court via the Florida E-Filing Portal, which will provide an electronic copy to all parties on the Service List below:

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.

SERVICE LIST

Attorney for Plaintiff: Chris W. Altenbernd, Esq. Banker Lopez Gassler, P.A. 501 E. Kennedy Boulevard, Suite 1700 Tampa, FL 33602 Service-caltenbernd@bankerlopez.com caltenbernd@bankerlopez.com amercado@bankerlopez.com	**Attorney for the City of Tampa** Jerry M. Gewirtz, Esq. David Harvey, Esq. City Attorney's Office 315 E. Kennedy Boulevard, 5th Floor Tampa, FL 33602 Jerry.gewirtz@tampagov.net Kimber.spitsberg@tampagov.net David.harvey@tampagov.net Erin.bradley@tampagov.net
Attorney for Hillsborough Area Regional Transit Authority David L. Smith, Esq. Robert E. Johnson, Esq. Julia C. Mandell, Esq. Gray Robinson, P.A. 401 E. Jackson Street, Suite 2700 Tampa, FL 33602 David.smith@gray-robinson.com Jane.larose@gray-robinson.com rjohnson@gray-robinson.com Valerie.taylor@gray-robinson.com Julia.mandell@gray-robinson.com	**Attorney for Florida Dept of Revenue** William H. Stafford, III, Esq. Senior Assistant Attorney General Office of the Attorney General State Programs Bureau PL-01, The Capitol Tallahassee, FL 32399 William.stafford@myfloridalegal.com Doris.brickhousehayes@myfloridalegal.com Tyler.dudley@myfloridalegal.com
Attorney for the City of Temple Terrace Pamela D. Cichon, Esq. 11250 N. 56th Street Temple Terrace, FL 33617 pcichon@templeterrace.com	**Attorney for Plant City** Kenneth W. Buchman, Esq. 302 W. Reynolds Street Plant City, FL 33566 kbuchman@plantcitygov.com kenbuchman@gmail.com lyoung@plantcitygov.com

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Attorney for Hillsborough Metropolitan Planning Organization Cameron S. Clark, Esq. 601 E. Kennedy Boulevard, 27th Floor Tampa, FL 33602 clarkc@hillboroughcounty.org	**Attorney for Pat C. Frank** Dale K. Bohner, Esq. 601 E. Kennedy Boulevard, 13th Floor Tampa, FL 33602 bohnerd@hillsclerk.com holly.seidel@hillsclerk.com
Attorney for Bob Henriquez Will Shepherd, Esq. Hillsborough County Property Appraiser 601 E. Kennedy Boulevard, 15th Floor Tampa, FL 33602 shepherdw@hcpafl.org gomezm@hcpafl.org eservice@hcpafl.org	**Attorney for Doug Belden** Robert E. Brazel, Esq. Office of the County Attorney Post Office Box 1110 Tampa, FL 33601 brazelr@hillsboroughcounty.org matthewsl@hillsboroughcounty.org johnsonni@hillsboroughcounty.org
Attorney for Keep Hillsborough Moving, Inc. and All for Transportation (Intervenors) Benjamin H. Hill, III, Esq. Robert A. Shimberg, Esq. J. Logan Murphy, Esq. Hill Ward Henderson, P.A. 101 E. Kennedy Boulevard, Suite 3700 Tampa, FL 33602 Ben.hill@hwhlaw.com Robert.shimberg@hwhlaw.com Logan.murphy@hwhlaw.com dwhitworth@hwhlaw.com regina.bigness@hwhlaw.com tina.mcdonald@hwhlaw.com	Barry S. Richard, Esq. Greenberg Traurig, P.A. 101 E. College Avenue Tallahassee, FL 32301 richardb@gtlaw.com trammellc@gtlaw.com flservice@gtlaw.com

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

v.

CASE NO.: 2018-CA-011749
DIVISION: J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

SCHEDULING ORDER FOLLOWING CASE MANAGEMENT CONFERENCE

THIS MATTER having come before the Court on January 4, 2019, at a Case Management Conference, and the Court, having discussed the matter with counsel, and being otherwise fully advised in the premises:

It is **ORDERED** and **ADJUDGED** that:

1. A hearing shall be scheduled on March 14, 2019, at 2:30 p.m.. At that time, the Court will hear all pending motions, excluding motions for summary judgment.

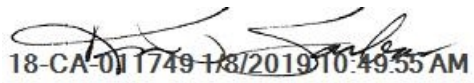
2. A hearing shall be scheduled on May 3, 2019, at 1:30 p.m. for three hours at which time the Court will hear the parties' motions for summary judgment.

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3. All motions for summary judgment shall be filed by April 5, 2019.

4. All responses to motions for summary judgment shall be filed by April 22, 2019.

DONE AND ORDERED this _____ day of January, 2019, in chambers at Tampa, Hillsborough County, Florida.



18-CA-011749 1/8/2019 10:49:55 AM

REX BARBAS
Circuit Court Judge

Copies furnished to:
Parties of Record

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE,

Plaintiff,

v. Case No. 2018 CA 11749

HILLSBOROUGH COUNTY, et al.,

Defendants.
_____/

ANSWER OF THE DEPARTMENT OF REVENUE

Defendant Florida Department of Revenue ("Department") hereby answers the Complaint as follows:

Jurisdiction and Venue

1. The Department admits that this purports to be an action for declaratory judgment pursuant to section 86.011, Florida Statutes. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 1 to either admit or deny them.

2. The Department admits that Hillsborough County, Florida, is the proper venue for this action. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 2 to either admit or deny them.

Parties

3. The Department admits the allegations set forth in paragraph 3.

4. The Department admits the allegations set forth in paragraph 4.

5. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 5 to either admit or deny them.

6. The Department admits that the City of Tampa is a municipality in Hillsborough County, Florida. The Department further states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 6 to either admit or deny them.

7. The Department admits that the City of Temple Terrace is a municipality in Hillsborough County, Florida. The Department further states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 7 to either admit or deny them.

8. The Department admits that Plant City is a municipality in Hillsborough County, Florida. The Department further states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 8 to either admit or deny them.

9. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 9 to either admit or deny them.

10. The Department admits that Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County, Florida and is named in her official capacity. The Department further states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 10 to either admit or deny them.

11. The Department admits that Bob Henriquez is the Property Appraiser of Hillsborough County, Florida and is named in his official capacity. The Department further states that Article 11 of the Hillsborough County Charter speaks for itself.

12. The Department admits that Doug Belden is the Tax Collector Appraiser of Hillsborough County, Florida and is named in his official capacity. The Department further states that Article 11 of the Hillsborough County Charter speaks for itself.

13. The Department admits the allegations set forth in paragraph 13.

The Creation of Article 11

14. The Department is without sufficient knowledge of the allegations set forth in paragraph 14 to either admit or deny them.

15. The Department is without sufficient knowledge of the allegations of paragraph 15 to either admit or deny them.

16. The Department is without sufficient knowledge of the allegations of paragraph 16 to either admit or deny them.

17. The Department is without sufficient knowledge of the allegations of paragraph 17 to either admit or deny them.

18. The Department is without sufficient knowledge of the allegations of paragraph 18 to either admit or deny them.

Count I

19. The Department restates, adopts, and incorporates by reference its above responses to the allegations of paragraphs 1 through 18 of the Complaint as though fully set forth herein.

20. The Department states that section 212.054(1), Florida Statutes, speaks for itself.

21. The Department states that section 212.055, Florida Statutes, speaks for itself.

22. The Department states that section 212.055(1)(d), Florida Statutes, speaks for itself.

23. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 23 to either admit or deny them.

24. The Department states that section 212.055, Florida Statutes, and Article 11 of the Hillsborough County Charter speak for themselves. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 24 to either admit or deny them.

25. The Department is without sufficient knowledge of the allegations of paragraph 25 to either admit or deny them.

26. The Department states that section 212.055, Florida Statutes, and Article 11 of the Hillsborough County Charter speak for themselves. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 26 to either admit or deny them.

27. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 27 to either admit or deny them.

28. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 28 to either admit or deny them.

Requested Relief

The Department is without sufficient knowledge of the allegations of the Complaint to either admit or deny that Plaintiff is entitled to the relief he requests. Section 212.054, Florida Statutes, requires the Department to administer, collect, and enforce tax authorized under section 212.055, Florida Statutes, which includes charter counties. The proceeds of any discretionary sales surtax the Department receives are returned to the county, less the cost of administration. Article 11 of the amended Hillsborough County Charter states that the Clerk of the Circuit Court of Hillsborough County, Florida shall receive the proceeds of the Transportation Surtax from the Department (§ 11.04).

Count II

29. The Department restates, adopts, and incorporates by reference its above responses to the allegations of paragraphs 1 through 18 of the Complaint as though fully set forth herein.

30. The Department states that Article 11 of the Hillsborough County Charter speaks for itself.

31. The Department states that Article 11 of the Hillsborough County Charter speaks for itself.

32. The Department states that Article 11 of the Hillsborough County Charter speaks for itself.

33. The Department states that section 221.055, Florida Statutes, speaks for itself.

34. The Department states that section 212.055, Florida Statutes, and Article 11 of the Hillsborough County Charter speak for themselves. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 34 to either admit or deny them.

Requested Relief

The Department is without sufficient knowledge of the allegations of the Complaint to either admit or deny that Plaintiff is entitled to the relief he requests. Section 212.054, Florida Statutes, requires the Department to administer, collect, and enforce tax authorized under section 212.055, Florida Statutes, which includes charter counties. The proceeds of any discretionary sales surtax the Department receives are returned to the county, less the cost of administration. Article 11 of the amended Hillsborough County Charter states that the Clerk of the Circuit Court of Hillsborough County, Florida shall receive the proceeds of the Transportation Surtax from the Department (§ 11.04).

Count III

35. The Department restates, adopts, and incorporates by reference its above responses to the allegations of paragraphs 1 through 18 of the Complaint as though fully set forth herein.

36. The Department states that section 212.055, Florida Statutes, speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 36 to either admit or deny them.

37. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 37 to either admit or deny them.

38. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 38 to either admit or deny them.

39. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 39 to either admit or deny them.

40. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 40 to either admit or deny them.

41. The Department states that section 212.055, Florida Statutes, and Article 11 of the Hillsborough County Charter speak for themselves. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 41 to either admit or deny them.

42. The Department states that section 212.055, Florida Statutes, and Article 11 of the Hillsborough County Charter speak for themselves. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 42 to either admit or deny them.

43. The Department states that Article 11 of the Hillsborough County Charter speaks for itself. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 43 to either admit or deny them.

44. The Department states that section 212.055, Florida Statutes, and Article 11 of the Hillsborough County Charter speak for themselves. The Department is without sufficient knowledge of the remaining allegations set forth in paragraph 44 to either admit or deny them.

Requested Relief

The Department is without sufficient knowledge of the allegations of the Complaint to either admit or deny that Plaintiff is entitled to the relief he requests. Section 212.054, Florida Statutes, requires the Department to administer, collect, and enforce tax authorized under section 212.055, Florida Statutes, which includes charter counties. The proceeds of any discretionary sales surtax the Department receives are returned to the county, less the cost of administration. Article 11 of the amended Hillsborough County Charter states that the Clerk of the Circuit Court of

Hillsborough County, Florida shall receive the proceeds of the Transportation Surtax from the Department (§ 11.04).

Count IV

45. The Department restates, adopts, and incorporates by reference its above responses to the allegations of paragraphs 1 through 18 of the Complaint as though fully set forth herein.

46. The Department states that the ballot summary speaks for itself.

47. The Department states that the ballot summary speaks for itself.

48. The Department is without sufficient knowledge of the allegations set forth in paragraph 48 to either admit or deny them.

49. The Department is without sufficient knowledge of the allegations of paragraph 49 to either admit or deny them.

50. The Department is without sufficient knowledge of the allegations of paragraph 50 to either admit or deny them.

51. The Department is without sufficient knowledge of the allegations of paragraph 51 to either admit or deny them.

Requested Relief

The Department is without sufficient knowledge of the allegations of the Complaint to either admit or deny that Plaintiff is entitled to the relief he requests. Section 212.054, Florida Statutes, requires the Department to administer, collect,

and enforce tax authorized under section 212.055, Florida Statutes, which includes charter counties. The proceeds of any discretionary sales surtax the Department receives are returned to the county, less the cost of administration. Article 11 of the amended Hillsborough County Charter states that the Clerk of the Circuit Court of Hillsborough County, Florida shall receive the proceeds of the Transportation Surtax from the Department (§ 11.04).

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ William H. Stafford III
WILLIAM H. STAFFORD III
Florida Bar No. 70394
Senior Assistant Attorney General
Office of the Attorney General
State Programs Bureau
PL-01, The Capitol
Tallahassee, FL 32399-1050
(850) 414-3785 (telephone)
(850) 413-7555 (facsimile)
Counsel for the Department
william.stafford@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Florida Rule of Judicial Administration 2.516, the foregoing document was filed via the Florida Court's E-Filing Portal on January 9, 2019, and thereby served upon the following:

Chris Altenbernd, Esq.
Banker Lopez Gassler, P.A.,
501 East Kennedy Boulevard
Suite 1700,
Tampa, Florida 33602.
caltenbernd@bankerlopez.com.
Counsel for Plaintiff

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agarner@bmolaw.com
Counsel for Hillsborough County

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
bohnerd@hillsclerk.com
Counsel for Pat Frank

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
shepherw@hcpafl.org
Counsel for Hillsborough County Property Appraiser

Robert E. Brazel, Esq.
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
johnsonni@hillsboroughcounty.org
Counsel for Doug Belden, Hillsborough County Tax Collector

Kenneth Buchman, Esq.
City Attorney for Plant City
302 W. Reynolds St.
Plant City, FL 33566
kbuchman@plantcity.gov
kbuch@tampabay.rr.com
lyoung@plantcitygov.com
Counsel for Plant City

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, FL 33602
david.smith@gray-robinson.com
rjohnson@gray-robinson.com
julia.mandell@gray-robinson.com
valerie.taylor@gray-robinson.com
Counsel for HART

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
clarkc@hillsboroughcounty.org
Counsel for Hillsborough MPO

Pamela D. Cichon, Esq.
City of Temple Terrace
11250 N. 56th St.
Temple Terrace, FL 33617
pcichon@templeterrace.com
Counsel for City of Temple Terrace

Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602
jerry.gewirtz@tampagov.net
david.harvey@tampagov.net
kimber.spitsberg@tampagov.net
erin.bradley@tampagov.net
Counsel for City of Tampa

/s/ William H. Stafford III
WILLIAM H. STAFFORD III

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,
Plaintiff,
v.

Case No. 2018-CA-011749

Division J

HILLSBOROUGH COUNTY, a charter county of the State of Florida, *et al.*,
Defendants.
_____/

DEFENDANT HILLSBOROUGH COUNTY'S
SECOND REQUEST FOR ADMISSIONS TO PLAINTIFF

Defendant, HILLSBOROUGH COUNTY, serves this second request for admissions to be answered by Plaintiff, STACY WHITE, under oath in the time and manner required by Fla. R. Civ. P. 1.370 and any applicable discovery order entered by the court in this action.

Definitions

For purposes of this request for admissions, the following terms shall have the following meanings:

A. The term "action" means this lawsuit, *Stacy White v. Hillsborough County, et al.*, Case No. 2018-CA-011749 (Fla. 13th Cir. Ct., Hillsborough Cnty.).

B. "County" means Hillsborough County, a charter county of the State of Florida, and all of its officers, employees, principals, owners, agents, representatives, and all other persons acting at its direction or on its behalf.

C. The terms "Plaintiff," "you," and "your," mean Stacy White, the person to whom these interrogatories are addressed, his agents, representatives, and all other persons acting at his direction or on his behalf.

D. The term "complaint" means the Complaint for Declaratory Judgment you filed in this action on December 3, 2018.

E. "Article 11" means Article 11 of the Hillsborough County Charter, titled "Surtax for Transportation Improvements," approved by the County's voters at the general election held November 6, 2018, and which is the amendment to the Hillsborough County Charter that is the subject of your complaint in this action.

F. "County Charter" means the Hillsborough County Charter.

G. The term "documents" includes electronically stored information, writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, which are in your possession, custody, or control.

H. The term "HART" means the Hillsborough Area Regional Transportation Authority or its successor.

I. The term "person" means any natural person, corporation, partnership, company, sole proprietorship, association, institute, joint venture, firm, governmental body, or other legal entity, whether privately or publicly owned or controlled, for profit or not-for-profit, or partially or fully government owned or controlled.

J. The term "Surtax Proceeds" means the funds generated by the Transportation Surtax, as defined in and pursuant to Section 11.02 of the County Charter.

Requests for Admission

1. Admit that the use of the Surtax Proceeds on projects that improve, repair and maintain existing streets, roads and bridges, including fixing potholes as set forth in Section 11.07(1) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

2. Admit that the use of the Surtax Proceeds on projects that reduce congestion and transportation vulnerabilities as set forth in Section 11.07(1) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

3. Admit that the use of the Surtax Proceeds to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections as set forth and further described in Section 11.07(2) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

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4. Admit that the use of the Surtax Proceeds to promote transportation safety improvements on existing streets, roads and bridges as set forth in Section 11.07(3) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

5. Admit that the use of the Surtax Proceeds for bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network as set forth and further described in Section 11.07(4) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

6. Admit that the use of the Surtax Proceeds on projects to improve transportation to the extent permitted by Section 212.055(1), Florida Statutes, as set forth in Section 11.07(5) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

7. Admit that the use of the Surtax Proceeds for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the Hart board of directors, to the extent permitted by Section 212.055(1), Florida Statutes, as set forth in Section 11.08 of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

8. Admit that the use of the Surtax Proceeds on bus service, including express, neighborhood, circulator, paratransit and all other types of transit now or hereafter operated by HART as set forth and more fully described in Section 11.08(1) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

   Response:

9. Admit that the use of the Surtax Proceeds on transit services that utilize exclusive transit right-of-way for at least seventy-five percent of the length of the applicable service as set forth and more fully described in Section 11.08(2) of the County Charter, is permitted under Section 212.055(1), Florida Statutes.

   Response:

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10. Admit that the use of the Surtax Proceeds on any project to improve public transportation permitted by Section 212.055(1), Florida Statutes, or the County Charter as set forth and more fully described in Section 11.08(3) of the County Charter, is permitted under Section 212.055(1), Florida Statutes.

    Response:

11. Admit that the use of the Surtax Proceeds for planning and development purposes, including data collection, analysis, planning, and grant funding to assist the agencies receiving the Surtax Proceeds and the Independent Oversight Committee in carrying out the purposes set forth in Section 11.01 of the County Charter, as set forth and more fully described in Section 11.05(3) of the County Charter, is permitted under Section 212.055(1), Florida Statutes.

    Response:

Respectfully submitted on January 10, 2019.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.
Fla. Bar No. 349615
NIKKI C. DAY, B.C.S.
Fla. Bar No. 77551
ELIZABETH W. NEIBERGER, ESQ.
Fla. Bar No. 70102
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
(813) 273-6677
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agardner@bmolaw.com
Attorneys for Hillsborough County

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CERTIFICATE OF SERVICE

I CERTIFY that on January 10, 2019, a copy hereof has been filed electronically with the Clerk of Court via the Florida E-Filing Portal, which will provide an electronic copy to all parties on the Service List below:

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.

SERVICE LIST

Attorney for Plaintiff: Chris W. Altenbernd, Esq. Banker Lopez Gassler, P.A. 501 E. Kennedy Boulevard, Suite 1700 Tampa, FL 33602 Service-caltenbernd@bankerlopez.com caltenbernd@bankerlopez.com amercado@bankerlopez.com	**Attorney for the City of Tampa** Jerry M. Gewirtz, Esq. David Harvey, Esq. City Attorney's Office 315 E. Kennedy Boulevard, 5th Floor Tampa, FL 33602 Jerry.gewirtz@tampagov.net Kimber.spitsberg@tampagov.net David.harvey@tampagov.net Erin.bradley@tampagov.net
Attorney for Hillsborough Area Regional Transit Authority David L. Smith, Esq. Robert E. Johnson, Esq. Julia C. Mandell, Esq. Gray Robinson, P.A. 401 E. Jackson Street, Suite 2700 Tampa, FL 33602 David.smith@gray-robinson.com Jane.larose@gray-robinson.com rjohnson@gray-robinson.com Valerie.taylor@gray-robinson.com Julia.mandell@gray-robinson.com	**Attorney for Florida Dept of Revenue** William H. Stafford, III, Esq. Senior Assistant Attorney General Office of the Attorney General State Programs Bureau PL-01, The Capitol Tallahassee, FL 32399 William.stafford@myfloridalegal.com Doris.brickhousehayes@myfloridalegal.com Tyler.dudley@myfloridalegal.com
Attorney for the City of Temple Terrace Pamela D. Cichon, Esq. 11250 N. 56th Street Temple Terrace, FL 33617 pcichon@templeterrace.com	**Attorney for Plant City** Kenneth W. Buchman, Esq. 302 W. Reynolds Street Plant City, FL 33566 kbuchman@plantcitygov.com kenbuchman@gmail.com lyoung@plantcitygov.com

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Attorney for Hillsborough Metropolitan Planning Organization Cameron S. Clark, Esq. 601 E. Kennedy Boulevard, 27th Floor Tampa, FL 33602 clarkc@hillboroughcounty.org	**Attorney for Pat C. Frank** Dale K. Bohner, Esq. 601 E. Kennedy Boulevard, 13th Floor Tampa, FL 33602 bohnerd@hillsclerk.com holly.seidel@hillsclerk.com
Attorney for Bob Henriquez Will Shepherd, Esq. Hillsborough County Property Appraiser 601 E. Kennedy Boulevard, 15th Floor Tampa, FL 33602 shepherdw@hcpafl.org gomezm@hcpafl.org eservice@hcpafl.org	**Attorney for Doug Belden** Robert E. Brazel, Esq. Office of the County Attorney Post Office Box 1110 Tampa, FL 33601 brazelr@hillsboroughcounty.org matthewsl@hillsboroughcounty.org johnsonni@hillsboroughcounty.org
Attorney for Keep Hillsborough Moving, Inc. and All for Transportation (Intervenors) Benjamin H. Hill, III, Esq. Robert A. Shimberg, Esq. J. Logan Murphy, Esq. Hill Ward Henderson, P.A. 101 E. Kennedy Boulevard, Suite 3700 Tampa, FL 33602 Ben.hill@hwhlaw.com Robert.shimberg@hwhlaw.com Logan.murphy@hwhlaw.com dwhitworth@hwhlaw.com regina.bigness@hwhlaw.com tina.mcdonald@hwhlaw.com	Barry S. Richard, Esq. Greenberg Traurig, P.A. 101 E. College Avenue Tallahassee, FL 32301 richardb@gtlaw.com trammellc@gtlaw.com flservice@gtlaw.com

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity
as a county commissioner of
Hillsborough County, Florida

Plaintiff,

v. Case No. 18-CA-11749

Division: K

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

DEFENDANT CITY OF PLANT CITY'S
ANSWER AND AFFIRMATIVE DEFENSES

Defendant, City of Plant City ("City"), submits this answer and affirmative defenses to the Complaint for Declaratory Judgment filed by Plaintiff, Stacy White, on December 3, 2018 and states:

Answer

Introduction

There are approximately three pages of unnumbered statements that precede the allegations of Jurisdiction and Venue of page 4 of the Complaint. The statements are not incorporated into any of the allegations of Jurisdiction, Venue, Parties or any of the four Counts of the Complaint for Declaratory Judgment. As such they are not consistent with the requirements of Rule 1.110(b), RCP, are extraneous to the requested relief, and should be stricken. To the extent any of the assertions in the introduction are not stricken, they are hereby denied.

Jurisdiction and Venue

1. Admitted that that the complaint asserts a claim for declaratory judgment under Section 86.0111, Florida Statutes. Otherwise, denied.

2. Admitted that Hillsborough County, Florida is the proper venue for this action, if the Court has jurisdiction. Otherwise, denied.

Parties

3. Admitted.

4. Admitted.

5. Admitted as to first sentence, except that the correct name is Hillsborough Transit Authority. As to the second sentence, the sentence

characterizes the contents and meaning of the Article 11 of the County Charter, which speaks for itself. Any allegations inconsistent with the same are therefore denied.

6. Admitted as to first sentence. Denied as to the remaining allegations. Article 11 speaks for itself.

7. Admitted as to first sentence. Denied as to the remaining allegations. Article 11 speaks for itself.

8. The complaint refers to the City of Plant City as "Plant City." As used in the complaint for "City of Tampa" and "City of Temple Terrace", the correct name of the Defendant is "City of Plant City." City of Plant City is a municipality located in Hillsborough County. Denied as to the remaining allegations. Article 11 speaks for itself.

9. Admitted as to first and second sentences. Denied as to the remaining allegations. Article 11 speaks for itself.

10. Admitted that Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County responsible in her capacity as Hillsborough County Comptroller for receiving the proceeds of the surtax. as to first and second sentences. Denied as to the remaining allegations. Article 11 speaks for itself.

11. Admitted as to first and second sentences. Denied as to the remaining allegations. Article 11 speaks for itself.

12. Admitted as to first and second sentences. Denied as to the remaining allegations. Article 11 speaks for itself.

13. Admitted.

The Creation of Article 11

14. Without knowledge.

15. Without knowledge as to the first sentence. Admitted as to second and third sentences.

16. Admitted that on November 6, 2018, the voters of the County voted in favor of the ballot measure for the charter amendment in Article 11 of the County's charter. Admitted that Exhibit B is an accurate copy of Article 11.

17. Admitted as to the first sentence. Admitted that Exhibit C appears to be an accurate copy of the Official General Election Ballot. The remaining allegations characterize the content of Exhibit C, which speaks for itself. Any allegations inconsistent with the same are therefore denied.

18. Admitted that the Hillsborough County Canvassing Board Official Results showed the Referendum passed. Admitted that Exhibit D appears to be an accurate copy of the Official Results. Otherwise, Exhibit D speaks for itself. Any allegations inconsistent with the same are therefore denied.

COUNT I

19. City repeats its answers to paragraphs 1-18 above.

20. The referenced language of Section 212.054(1), Florida Statutes speaks for itself. Any allegations inconsistent with the same are hereby denied.

21. The referenced language of Sections 212.055 and 212.055(1), Florida Statutes, speak for themselves. Any allegations inconsistent with the same are hereby denied.

22. The referenced language of Section 212.055(1)(d), Florida Statutes speaks for itself. Any allegations inconsistent with the same are hereby denied.

23. Denied. Article 11 speaks for itself.

24. Denied. Article 11 speaks for itself.

25. Denied. Article 11 speaks for itself.

26. Denied. Article 11 speaks for itself.

27. Denied. Article 11 speaks for itself.

28. Denied. Article 11 speaks for itself.

Wherefore, the City denies Plaintiff is entitled to the relief requested in Count I.

COUNT II

29. City repeats its answers to paragraphs 1-18 above.

30. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

31. The language of Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

32. Denied. Article 11 speaks for itself.

33. Denied. Section 221.055, Florida Statutes, speaks for itself.

34. The referenced statutory language speaks for itself. Any allegations inconsistent with the same are therefore denied.

Wherefore, the City denies Plaintiff is entitled to the relief requested in Count II.

Count III

35. City repeats its answers to paragraphs 1-18 above.

36. The referenced statutory language speaks for itself. Any allegations inconsistent with the same are therefore denied.

37. Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

38. Section 11.10 speaks for itself. Any allegations inconsistent with the same are therefore denied.

39. Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

40. Article 11 speaks for itself. Any allegations inconsistent with the same are therefore denied.

41. Section 221.055, Florida Statutes, and Article 11 speaks for themselves. Any allegations inconsistent with the same are therefore denied.

42. Denied.

43. Article 11 speaks for themselves. Any allegations inconsistent with the same are therefore denied.

44. Section 221.055, Florida Statutes, and Article 11 speaks for themselves. Any allegations inconsistent with the same are therefore denied.

Wherefore, the City denies Plaintiff is entitled to the relief requested in Count III.

COUNT IV

45. City repeats its answers to paragraphs 1-18 above.

46. The language of the ballot summary speaks for itself. Any allegations inconsistent with the same are therefore denied.

47. The language of the financial impact of the ballot measure speaks for itself. Any allegations inconsistent with the same are therefore denied.

48. Denied.

49. Denied.

50. Admitted that the ballot summary could have stated many things, but denies that this conjecture is a relevant allegation and is therefore denied.

51. Denied.

Wherefore, the City denies Plaintiff is entitled to the relief requested in Count IV.

Affirmative Defenses

First Affirmative Defense

Standing

Plaintiff lacks standing to bring this action in his official capacity as a sitting County Commissioner of Hillsborough County. County Commissioners when acting in their official capacity, are required to sue in the name of the county of which they are commissioners. §125.15, Fla. Stat. Bringing an action in the name of a County requires a majority vote of the Board of County Commissioners, which has not occurred. Therefore, Plaintiff lacks standing to single-handedly bring this lawsuit in his official capacity as a County Commissioner.

Further, a public official may only seek a declaratory judgment when he is willing to perform his duties, but prevented from doing so by others. See Crossings at Fleming Island Cmty. Dev. v. Echeverri, 991 So.2d 793 (Fla. 2008). Nothing in Article 11 is preventing Plaintiff from performing his duties as a County Commissioner.

Second Affirmative Defense

Severability

In the event any language or provision in Article 11 is found to be invalid, the invalidity of such language or provision is not a basis for invalidating Article 11 in its entirety. Under the severability and supremacy provisions in Sections 11.11, the severability clause in Section 9.05 of the Charter, and the judicial doctrine of severability, any offending language should be severed and the remainder of Article 11 should stand.

Third Affirmative Defense

Supremacy

The supremacy provision of Article 11 (Section 11.11(3)), states:

> "This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail."

Thus, even if portions of Article 11 were incompatible with Florida law, the Charter amendment provides that the provisions of Florida law would prevail. Thus, there can be no contradiction between the provisions of the Transit Surtax Statute and Article 11 because Article 11 is, by its own terms, specifically subordinate to the provisions of the Transit Surtax Statute.

Fourth Affirmative Defense

Failure to state a cause of action – no case or controversy

Plaintiff fails to state a cause of action upon which declaratory relief can be granted as he has failed to state a case or controversy. A declaratory action requires that the case or controversy be a present, real controversy – not merely a request for legal opinion or advice. Plaintiff is essentially asking for a legal opinion on whether or not he can vote on certain measures as a sitting County Commissioner. Instead of asking for this opinion from legal counsel to the County, Plaintiff is asking for a legal opinion from this Court.

Fifth Affirmative Defense

Ripeness

As to Counts I, II and III, the Counts are not ripe for review by this Court. Plaintiff has not, and cannot, show that the Board of County Commissioners will fail to implement Article 11 consistent with Florida law. On December 5, 2018, the Board of County Commissioners discussed the preparation of an inter-local

agreement with the governmental entities. Such action is clearly contemplated by the Transit Surtax Statute. Section 212.055(1)(d)(4), Florida Statutes, provides that the County may implement Article 11 "pursuant to an inter-local agreement entered into pursuant to Chapter 163." It is anticipated that such inter-local agreement will be approved by the parties prior to the distribution of the surtax.

In Count I, Plaintiff is alleging that Article 11 prevents the Board of County Commissioners from applying the proceeds as the Board "deems appropriate." In Count II, Plaintiff is alleging that Article 11 prevents the Board of County Commissioners from distributing proceeds to Hart and other "Agencies" in amounts that it determines to be appropriate. These Counts would be rendered moot when Article 11 is implemented pursuant to an inter-local agreement. The allegations in Count III, involving the role of the Independent Oversight Committee, may also be addressed in an inter-local agreement, or their bylaws.

Sixth Affirmative Defense

Estoppel

As to all Counts, Plaintiff's claims are barred by estoppel. On or before August, 2018, Plaintiff became aware of the language of Article 11, the ballot summary and the financial impact information. Plaintiff failed to take any action prior to the referendum election. Plaintiff could have addressed the issues it is

raising in Counts I – IV in a number of ways, including an inter-local agreement prior to the election. Plaintiff cannot await the outcome of the referendum and then allege deficiencies which he might have raised prior to the election. See Winterfield v. Palm Beach, 455 So.2d 359, 362 (Fla. 1984); Republican Party v. Davis, 18 So.3d 1112 (3rd D.C.A. 2009); Levey v. Dijols, 990 So.2d 688 (4th D.C.A. 2008). Plaintiff is estopped from bringing this action after the referendum vote is final.

Seventh Affirmative Defense

Laches

Plaintiff's claims are barred by laches. Plaintiff had full knowledge of the initiative petition, the ballot language and the proposed language in Article 11 far in advance of its passage. Plaintiff failed to take any action until waiting over four weeks after the voters approved the referendum before filing suit. At this point, the surtax is in effect and the tax is being collected.

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been filed electronically with the Clerk of Court via the Florida E-filing Portal, which will provide an electronic copy to Chris W. Altenbernd, Esq., Banker Lopez Gassler, P.A., 501 E. Kennedy Boulevard, Suite 1700, Tampa, FL 33602, caltenbernd@bankerlopez.com, Attorney for Plaintiff, and Alan S. Zimmet, BCS, Nikki C. Day, BCS and Elizabeth W. Neiberger, Esq., One Tampa City Center, Suite 2700, Tampa, FL 33602, azimmet@bmolaw.com, nday@bmolaw.com, eneiberger@bmolaw.com, Attorneys for Hillsborough County; Will Shepherd, Esq., Hillsborough County Property Appraiser, 601 E. Kennedy Blvd., 15th Floor, Tampa, FL 33602,

shepherdw@hcpafl.org, Attorney for Bob Henriquez; Jerry M. Gewirtz, Esq., David Harvey, Esq., City Attorney's Office, 315 East Kennedy Blvd., 5th Floor, Tampa, FL 33602, Jerry.gewirtz@tampagov.net, David.harvey@tampagov.net, Attorney's for City of Tampa; David L. Smith, Esq., Robert E. Johnson, Esq., Julia C. Mandell, Esq., Gray Robinson, P.A., 401 East Jackson Street, Suite 2700, Tampa, FL 33602, David.smith@gray-robinson.com, rjohnson@gray-robinson.com, Julia.mandell@gray-robinson.com, Attorneys for Hillsborough Area Regional Transit Authority; Dale K. Bohner, Esq., 601 East Kennedy Blvd., 13th Floor, Tampa, FL 33602, bohnerd@hillsclerk.com, Attorney for Pat C. Frank; Robert E. Brazel, Esq., Office of the County Attorney, Post Office Box 1110, Tampa, FL 33601, brazelr@hillsboroughcounty.org, Attorney for Doug Belden; William H. Stafford, Esq., Senior Assistant Attorney General, Office of the Attorney General, State Programs Bureau, PL-01, The Capitol, Tallahassee, FL 32399, William.stafford@myfloridalegal.com on this 10th day of January, 2019.

s/Kenneth W. Buchman
Kenneth W. Buchman
Florida Bar No. 324991
City Attorney
City of Plant City
302 West Reynolds Street
Plant City, FL 33566
Telephone: (813) 659-4242
Email: kbuchman@plantcitygov.com

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.

_____/

CASE NO.: 2018-CA-011749
DIVISION: J

DEFENDANT HILLSBOROUGH COUNTY METROPOLITAN PLANNING ORGANIZATION'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Hillsborough County Metropolitan Planning Organization (the "MPO"), submits this answer and affirmative defenses to the Complaint for Declaratory Judgment filed by Plaintiff, Stacy White, on December 3, 2018.

Answer

As to the introductory paragraphs of the complaint, starting with the unnumbered paragraph beginning on the first page of the complaint directly below the heading "Complaint for Declaratory Judgment," and continuing through to the paragraph immediately preceding the heading "Jurisdiction and Venue" on page 4 of the complaint, no response is required. These

paragraphs are introductory paragraphs which consist of legal argument and which are not a part of the factual allegations of the complaint and are not incorporated into any count by reference. To the extent a response to these paragraphs is deemed required, they are denied.

Jurisdiction and Venue

1. In response to paragraph 1 of the complaint, the MPO admits that the complaint asserts claims for declaratory judgment under section 86.011, Florida, Statutes. Otherwise, denied.

2. In response to paragraph 2 of the complaint, the MPO admits that Hillsborough County, Florida, is the proper venue for this action. Otherwise, denied.

Parties

3. The MPO admits the allegations in paragraph 3 of the complaint.

4. The MPO admits the allegations in paragraph 4 of the complaint.

5. In response to the first sentence of paragraph 5 of the complaint, the MPO admits that the entity legally named the Hillsborough Transit Authority, is a transportation authority created and existing under chapter 163, Florida Statutes, which is sometimes referred to as the "Hillsborough Area Regional Authority" or "HART." As to the second sentence of paragraph 5, this sentence characterizes the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to the second sentence is required.

6. In response to the first sentence in paragraph 6, the MPO admits that the City of Tampa is a municipality located in Hillsborough County. As to the remainder of paragraph 6, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

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7. In response to the first sentence in paragraph 7, the MPO admits that the City of Temple Terrace is a municipality located in Hillsborough County. As to the remainder of paragraph 7, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

8. In response to the first sentence in paragraph 8, the MPO admits that Plant City is a municipality located in Hillsborough County. As to the remainder of paragraph 8, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

9. The correct name of the MPO is "Hillsborough County Metropolitan Planning Organization." In response to the first sentence in paragraph 9, the MPO admits that it is a metropolitan planning organization created and existing pursuant to section 339.017, Florida Statutes. As to the remainder of paragraph 9, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

10. In response to the first two sentences in paragraph 10, the MPO admits that Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County and named as a defendant in this lawsuit in her official capacity. As to the remainder of paragraph 10, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

11. In response to the first two sentences in paragraph 11, the MPO admits that Bob Henriquez is the Property Appraiser of Hillsborough County and named as a defendant in this

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lawsuit in his official capacity. As to third sentence of paragraph 11, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

12. In response to the first two sentences in paragraph 12, the MPO admits that Doug Belden is the Tax Collector of Hillsborough County and named as a defendant in this lawsuit in his official capacity. As to third sentence of paragraph 12, such allegations are characterizations of the contents and meaning of the Article 11 of the county charter, a written document which speaks for itself. Thus, no response to these allegations is required.

13. The MPO admits the allegations in paragraph 13.

The Creation of Article 11

14. In response to the allegations contained in paragraph 14, the MPO admits that the charter amendment contained in Article 11 was not drafted or approved by attorneys for Hillsborough County, and that it was not approved, voted upon, or adopted by the BOCC prior to the referendum election. As to the allegations in the second and third sentences of paragraph 14, the MPO lacks sufficient information or knowledge to form a belief of such allegations, and therefore denies the same.

15. The MPO admits the allegations contained in paragraph 15. The MPO admits that Exhibit B appears to be a true and accurate copy of the "County Charter Amendment Petition Form" for Article 11.

16. In response to the first sentence of paragraph 16, the MPO admits that on November 6, 2018, the voters of Hillsborough County voted in favor of the ballot measure for the charter amendment in Article 11 of Hillsborough County's charter. As to the second sentence in paragraph 16, no response is required as it characterizes the contents of Exhibit B, a

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written document that speaks for itself. In the event a response is deemed required, such allegations are denied.

17. The MPO admits the allegations in the second sentence of paragraph 17. The MPO admits that the document attached as Exhibit C appears to be a true and accurate copy of the Official General Election Ballot for Hillsborough County for the November 6, 2018, election with respect to Article 11. As to the remaining allegations in paragraph 17, no response is required because such allegations characterize the contents of Exhibit C, a written document that speaks for itself. In the event a response is deemed required, such allegations are denied.

18. The MPO admits the allegations in paragraph 18. The MPO admits that Exhibit D appears to be a true and accurate copy of the Official Results of the November 6, 2018, election with respect to Article 11.

COUNT 1

The Provisions of Article 11 Prevent The BOCC from Discharging its Statutory Duties and Responsibilities to Apply the Proceeds of the Surtax as the BOCC "Deems Appropriate."

19. In response to paragraph 19, the MPO repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

20. In response to paragraph 20, the MPO admits that the quoted language appears in section 212.054(1), Florida Statutes.

21. As to paragraph 21, no response is required because it characterizes the contents and meaning of the opening paragraph of section 212.055 and section 212.055(1), Florida Statutes, the text of which statutory provisions speak for themselves. In the event a response is deemed required, such allegations are denied.

22. In response to paragraph 22, the MPO admits that the quoted language appears in section 212.055(1)(d), Florida Statutes.

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23. As to paragraph 23 (including subparagraphs a-d), no response is required because this paragraph characterizes the contents and meaning, and sets forth the Plaintiff's argument as to the legal interpretation and effect, of Article 11. To the extent a response is required to any of the allegations of paragraph 23 (including subparagraphs a-d), those allegations are denied.

24. As to paragraph 24, the MPO admits that the BOCC is the governing body of Hillsborough County. As to all other allegations in paragraph 24, no response is required because such allegations characterize the contents and meaning, and sets forth the Plaintiff's argument as to the legal interpretation and effect, of Article 11 and unspecified statutes. In the event a response is deemed required, such allegations are denied.

25. As to paragraph 25, no response is required because such allegations constitute conclusions of law. In the event a response is deemed required, such allegations are denied.

26. As to the second sentence in paragraph 26, the MPO admits that the language quoted in this sentence appears in section 212.055(1), Florida Statutes. As to all other allegations in paragraph 26, no response is required because such allegations characterize the contents and meaning, of Article 11 and section 212.055(1), and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

27. As to paragraph 27, no response is required because such allegations characterize the contents and meaning, of Section 11.07(6) of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

28. As to paragraph 28, no response is required because such allegations characterize the contents and meaning, of Section 11.07(9) of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

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Requested Relief

The MPO denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-f) on page 10 of the complaint.

COUNT II

The Provisions of Article 11 Prevent the BOCC from Discharging its Statutory Duties and Responsibilities to Remit and Distribute Proceeds of the Surtax to HART and Other "Agencies" In Amounts it Determines To Be Appropriate

29. In response to paragraph 29, the MPO repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

30. As to paragraph 30, no response is required because such allegations characterize the contents, meaning, and effect of Section 11.04 of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

31. As to paragraph 31, no response is required because such allegations characterize the contents, meaning, and effect of Section 11.05 of Article 11 and consist of conclusions of law. In the event a response is deemed required, such allegations are denied.

32. As to paragraph 32, no response is required because such allegations characterize the contents, meaning, and effect of Article 11, which speaks for itself. In the event a response is deemed required, such allegations are denied.

33. As to paragraph 33, the MPO admits that the quoted language appears in section 212.055(1)(d)(2), Florida Statutes. As to the remainder of paragraph 33, no response is required because it characterizes the contents of this statutory provision, which speaks for itself. In the event a response is deemed required, such allegations are denied.

34. As to paragraph 34, the MPO admits that the BOCC is the governing body of Hillsborough County. Otherwise, denied.

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Requested Relief

The MPO denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-c) on pages 11-12 of the complaint.

COUNT III

The Creation and Powers of the IOC Are Not Authorized by Any General Law and Are in Conflict With Section 212.055(1)

35. In response to paragraph 35, the MPO repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

36. As to the first sentence in paragraph 36, the MPO admits that section 212.055(1), Florida Statutes, does not reference an "Independent Oversight Committee." As to the remainder of paragraph 36, such allegations constitute conclusions of law to which no response is required. To the extent a response is deemed required, such allegations are denied.

37. As to paragraph 37 (including subparagraphs a-d), no response is required as such allegations characterize the contents and meaning of Section 11.10 of Article 11, a writing which speaks for itself. In the event a response is deemed required, such allegations are denied.

38. As to paragraph 37 (including subparagraphs a-d), no response is required as such allegations characterize the contents and meaning of Section 11.10 of Article 11, a writing which speaks for itself. In the event a response is deemed required, such allegations are denied.

39. As to paragraph 39, the MPO admits that the quoted language appears in Article 11.

40. As to paragraph 40, the MPO admits that the quoted language appears in Article 11. Otherwise, denied.

41. The MPO denies the allegations in paragraph 41.

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42. As to paragraph 42, no response is required as such allegations characterize the contents and meaning of section 212.055(1), Florida Statutes, and Section 11.06, which speak for themselves, and set forth conclusions of law. To the extent a response is deemed required, such allegations are denied.

43. As to paragraph 43, no response is required as such allegations characterize the contents and meaning of Article 11, which speaks for itself, and sets forth conclusions of law. To the extent a response is deemed required, such allegations are denied.

44. As to paragraph 44 no response is required as such allegations characterize the contents and meaning of Article 11 and section 212.055(1), Florida Statutes, which speak for themselves, and set forth conclusions of law. To the extent a response is deemed required, such allegations are denied.

Requested Relief

The MPO denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-e) on pages 14-15 of the complaint.

COUNT IV

The Ballot Summary was Legally Insufficient and Did Not Provide the Voters with Fair Notice of the Contents of the Proposed Initiative

45. In response to paragraph 45, the MPO repeats and incorporates by reference its responses to paragraphs 1 through 18 above as if fully set forth in this paragraph.

46. In response to paragraph 46, the MPO admits that the quoted language was contained in the ballot summary for Article 11.

47. In response to paragraph 47, the MPO admits that the quoted language was contained in the ballot summary for Article 11.

48. The MPO denies the allegations in paragraph 48 (including subparagraphs a-d).

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49. The MPO denies the allegations in paragraph 49.

50. As to paragraph 50, such paragraph does not consist of allegations regarding present or past fact; rather, sets forth language that, according to the Plaintiff, hypothetically could have constituted the ballot language for Article 11. Such hypothetical ballot language also consists of the Plaintiff's conclusion of law. Thus, no response to paragraph 49 is required. To the extent a response is deemed required, such allegations are denied.

51. The MPO denies the allegations in paragraph 51.

Requested Relief

The MPO denies the Plaintiff is entitled to the relief sought in the unnumbered paragraph (including subparagraphs a-b) on page 18 of the complaint.

Affirmative Defenses

1. **Lack of Standing (Official Capacity).** The Plaintiff has filed this lawsuit in his official capacity as a sitting County Commissioner of Hillsborough County. The Plaintiff lacks standing to bring this action in such capacity. County Commissioners, when acting in their official capacity, are required to sue in the name of the county of which they are commissioners. § 125.15, Fla. Stat. Taking action in the name of Hillsborough County requires a majority vote of the BOCC, which has not occurred. Moreover, Hillsborough County does not have capacity to sue itself. Therefore, the Plaintiff lacks standing to single-handedly bring this lawsuit in his official capacity as a county commissioner.

2. **Lack of Standing (Individual Capacity).** The Plaintiff lacks standing to maintain this lawsuit in his individual capacity. The Plaintiff claims the right or status at issue in this declaratory action is the right or status to vote on the surtax as a member of the BOCC. Private citizens cannot sue to enforce rights held by the BOCC. Additionally, the Plaintiff has

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not demonstrated special injury, adverse effect, or any other facts conferring standing to sue for declaratory relief in his individual capacity.

3. **Laches.** As a sitting county commissioner, the Plaintiff has been heavily involved in this political process and has had full knowledge of the initiative petition and ballot language far in advance of the election. However, the Plaintiff waited over four weeks after the voters approved the referendum before filing suit. He also waited until a little less than one month before the surtax levy is to take effect before filing this lawsuit. Therefore, Plaintiff's claims are barred by the doctrine of laches.

4. **Ripeness.** The Plaintiff fails to state a cause of action upon which declaratory relief can be granted. A declaratory action requires that the case in controversy be a present, real controversy – not merely a request for legal opinion or advice. The Plaintiff is essentially asking for a legal opinion on whether or not he can vote on certain measures as a sitting county commissioner – but instead of asking for this opinion from legal counsel to Hillsborough County, the Plaintiff is asking for this legal opinion from the courts. This fails to state a case and controversy ripe for judicial action.

5. **Breach of Oath of Office.** The Plaintiff, as a sitting county commissioner, is required to uphold the Hillsborough County Charter. Therefore, unlike other private citizens, the Plaintiff cannot sue to challenge the Hillsborough County Charter without violating his oath of office.

6. **Severability (express severability provision in Article 11 and/or court's inherent authority under severability doctrine).** In the event any language or provision(s) in Article 11 is found to be invalid, the invalidity of such language or provisions(s) is not a basis for invalidating Article 11 in its entirety. Under the severability provision in Article 11 (Section

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11.11(2)), Article IX (Section 9.5), and/or the judicial doctrine of severability, the offending language should be severed and the remainder of Article 11 should stand.

7. **Supremacy Provision.** Under the supremacy provision of Article 11 (Section 11.11(3)), State law prevails in the event of any conflict with any language or provisions(s) in Article 11. Thus, if any language or provisions(s) of Article 11 are determined to be in conflict with State law, only the conflicting language or provisions(s) of Article 11 should be declared invalid and the remainder of Article 11 should stand.

For these reasons, the MPO requests that the Court enter judgment in its favor and against the Plaintiff with respect to all claims in the complaint, award the MPO its litigation costs as the prevailing party, and grant the MPO such further relief deemed just and appropriate.

Respectfully submitted on January 10, 2019.

/s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.
Fla. Bar No. 349615
NIKKI C. DAY, B.C.S.
Fla. Bar No. 77551
ELIZABETH W. NEIBERGER, ESQ.
Fla. Bar No. 70102
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
(813) 273-6677
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agardner@bmolaw.com
Attorneys for Hillsborough County Metropolitan Planning Organization

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CERTIFICATE OF SERVICE

I certify that, on January 10, 2019, this document was filed electronically with the Clerk of Court through the Florida Courts e-Filing Portal and a copy was served by email on the persons listed on the Service List below.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.

SERVICE LIST

Attorney for Plaintiff:
Chris W. Altenbernd, Esq.
Banker Lopez Gassler, P.A.
501 E. Kennedy Boulevard, Suite 1700
Tampa, FL 33602
Service-caltenbernd@bankerlopez.com
caltenbernd@bankerlopez.com
amercado@bankerlopez.com

Attorney for the City of Tampa
Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Boulevard, 5th Floor
Tampa, FL 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
David.harvey@tampagov.net
Erin.bradley@tampagov.net

Attorney for Hillsborough Area Regional Transit Authority
David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
Gray Robinson, P.A.
401 E. Jackson Street, Suite 2700
Tampa, FL 33602
David.smith@gray-robinson.com
Jane.larose@gray-robinson.com
rjohnson@gray-robinson.com
Valerie.taylor@gray-robinson.com
Julia.mandell@gray-robinson.com

Attorney for Florida Dept of Revenue
William H. Stafford, III, Esq.
Senior Assistant Attorney General
Office of the Attorney General
State Programs Bureau
PL-01, The Capitol
Tallahassee, FL 32399
William.stafford@myfloridalegal.com
Doris.brickhousehayes@myfloridalegal.com
Tyler.dudley@myfloridalegal.com

Attorney for the City of Temple Terrace
Pamela D. Cichon, Esq.
11250 N. 56th Street
Temple Terrace, FL 33617
pcichon@templeterrace.com

Attorney for Plant City
Kenneth W. Buchman, Esq.
302 W. Reynolds Street
Plant City, FL 33566
kbuchman@plantcitygov.com
kenbuchman@gmail.com
lyoung@plantcitygov.com

Attorney for Hillsborough Metropolitan Planning Organization
Cameron S. Clark, Esq.
601 E. Kennedy Boulevard, 27th Floor
Tampa, FL 33602
clarkc@hillboroughcounty.org

Attorney for Pat C. Frank
Dale K. Bohner, Esq.
601 E. Kennedy Boulevard, 13th Floor
Tampa, FL 33602
bohnerd@hillsclerk.com
holly.seidel@hillsclerk.com

Attorney for Bob Henriquez
Will Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Boulevard, 15th Floor
Tampa, FL 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
eservice@hcpafl.org

Attorney for Doug Belden
Robert E. Brazel, Esq.
Office of the County Attorney
Post Office Box 1110
Tampa, FL 33601
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
johnsonni@hillsboroughcounty.org

Attorney for Keep Hillsborough Moving, Inc. and All for Transportation (Intervenors)
Benjamin H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Boulevard, Suite 3700
Tampa, FL 33602
Ben.hill@hwhlaw.com
Robert.shimberg@hwhlaw.com
Logan.murphy@hwhlaw.com
dwhitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com

Barry S. Richard, Esq.
Greenberg Traurig, P.A.
101 E. College Avenue
Tallahassee, FL 32301
richardb@gtlaw.com
trammellc@gtlaw.com
flservice@gtlaw.com

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

Case No.: 18-CA-011749

Division: J

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ in his official capacity as Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE

Defendants.

_____/

DEFENDANT, CITY OF TAMPA'S, MOTION FOR FINAL SUMMARY JUDGMENT

Defendant, City of Tampa ("City"), by and through its undersigned counsel, pursuant to Fla. R. Civ. P. 1.510, hereby moves for final summary judgment in its favor as to all counts, and against Plaintiff. As set forth below, there is no genuine issue of material fact in this cause, and the City is entitled to judgment as a matter of law.

INTRODUCTION

The law is well established that the right of voters to exercise their power of initiative, and referendum, should be honored. To that end, this Court should recognize and uphold the vote by the majority of the qualified electors in Hillsborough County, on November 6, 2018, who approved a referendum for funding for countywide transportation and road improvement projects by County Charter Amendment ("the Referendum").[1]

Although the Plaintiff alleges that Article 11 of the Hillsborough County Charter appears to conflict with section 212.055(1), Florida Statutes (2018), in many substantial ways, this should not invalidate the Referendum. In the absence of the Court finding that Article 11 is clearly, convincingly, and entirely invalid, the voice of the majority of the qualified electors who voted in favor of the Referendum should be honored; and it is the City's position that Article 11 cannot be found to be clearly, convincingly, and entirely invalid. Moreover, any interlocal agreement that may be implemented in association with Article 11 may clarify and resolve any alleged inconsistency which is the subject of the Complaint. Finally, this Court may – if it deems it necessary – sever any component of Article 11 which the Court deems invalid while still preserving the remaining provisions of Article 11, and thereby honor the voice of the voters who approved a one-cent sales surtax, levied over the next 30 years, to pay for necessary countywide transportation and road improvement projects.

[1] As reflected on Exhibit "B" of the Complaint, the Ballot Title is denominated: "Funding for Countywide Transportation and Road Improvements by County Charter Amendment." The Article created pursuant to the County Charter Amendment is numbered "Article 11" and is denominated "SURTAX FOR TRANSPORTATION IMPROVEMENTS."

With respect to the ballot title and ballot summary, the language contained therein sufficiently advises the voters of the chief purpose of the Referendum to enable them to intelligently cast their ballot. Neither the ballot title nor the ballot summary misleads the public, and neither the ballot title nor the ballot summary is clearly or conclusively defective.

Plaintiff's lawsuit may also be barred where the events leading up to the approval of the Referendum were well publicized, and any concerns that the Plaintiff may have regarding the validity of the Referendum could have been raised by him in his individual capacity as a citizen and taxpayer in advance of the election on November 6, 2018. Instead, the Plaintiff waited until approximately four weeks after the election, and less than one month before the surtax was to become effective, before challenging the Referendum.

Finally, Plaintiff lacks standing to bring this action in his official capacity as a county commissioner of Hillsborough County, Florida, where (a) the record does not reflect that the Hillsborough County Board of County Commissioners, or the Hillsborough County Attorney, authorized the filing of this lawsuit; (b) Hillsborough County itself has been named as a Defendant in this action; (c) no person or entity has precluded Plaintiff from complying with the Referendum; and (d) it appears that it is the Plaintiff himself who is questioning the validity of the Referendum.

Factual Background

1. The approval of the Referendum, and the events leading up to the approval of the Referendum, were well publicized. (This Court may take judicial notice of this fact pursuant to section 90.202(11) and (12), Florida Statutes (2018).)

2. "By the July 27, 2018 deadline, All for Transportation had presented the Supervisor of Elections with more than 77,000 petitions signed by registered electors of Hillsborough County. Of the petitions presented, 50,705 were ultimately deemed valid." (Paragraph 18 of Affidavit of Tyler Hudson.)[2]

3. "On August 8, 2018, in a letter addressed to then Hillsborough County Commission Chair Sandra Murman, the Hillsborough County Supervisor of Elections provided the Commission with certification, pursuant to Section 8.03 of the Hillsborough County Charter, that All for Transportation had met the requirements with regard to the total number of valid signatures and apportionment among the County Commission districts, and informed the Commission that the proposed charter amendment and ballot summary would be placed on the November general election ballot." (Paragraph 19 of Affidavit of Tyler Hudson.)

4. "The General Election was held November 6, 2018, three months after the County Commission received the certification letter from the Supervisor of Elections. Early voting in Hillsborough County occurred between October 22, 2018 and November 4, 2018." (Paragraph 22 of Affidavit of Tyler Hudson.)

5. The Referendum "was approved by the citizens of Hillsborough County with a 57.3% of the vote, totaling 282,753 votes cast in support." (Paragraph 23 of Affidavit of Tyler Hudson.) (See also paragraph 18 of the Complaint.)

[2] The Affidavit of Tyler Hudson was previously filed of record on December 19, 2018 as an attachment - exhibit 1 - to the "Motion To Intervene By Keep Hillsborough Moving, Inc. And All For Transportation" (filing #82365737).

6. “All for Transportation analyzed the precinct by precinct election results on November 7, 2018 and concluded that the referendum had been approved in every city in Hillsborough County (approximate results: Tampa 63%, Temple Terrace 64%, and Plant City 54%), and in the unincorporated county (54.6%), and concluded that the referendum had been approved in every county commission district (approximate results: District 1: 57%, District 2: 53%, District 3: 67%, and District 4: 52%).” (Paragraph 24 of Affidavit of Tyler Hudson.)

7. On December 4, 2018, the Plaintiff filed the within lawsuit in his official capacity as a county commissioner of Hillsborough County, Florida.

8. The record does not reflect that either the Hillsborough County Board of County Commissioners or the Hillsborough County Attorney authorized the filing of the lawsuit.

9. The record does not reflect that any person or entity has precluded Plaintiff from complying with the Referendum; rather, it is the Plaintiff who is responsible for questioning the validity of the Referendum.

10. According to the Plaintiff’s calculations, the City should receive approximately 13% of the proceeds under the terms of Article 11.

11. According to the Complaint, the “total proceeds of this surtax are likely to exceed $9 billion.” (Page 2 of the Complaint.)

12. Pursuant to section 11.03 of the Charter Amendment, the surtax shall become effective January 1, 2019, and shall remain in effect for a period of thirty years.

The aforesaid facts should not be disputed, and there is no genuine issue of material fact.

Legal Arguments

I. The City should be granted summary judgment as to counts I, II, and III, where the right of voters to exercise their power of initiative and referendum should be honored, and Plaintiff cannot demonstrate that the Referendum is clearly, convincingly and entirely invalid

The Constitution of the State of Florida recognizes that "[a]ll political power is inherent in the people." *Fla. Const.*, art. I, §1. Florida jurisprudence also acknowledges that "[w]e begin with the premise that 'all political power is inherent in the people ….'" *Citizens for Responsible Growth v. City of St. Pete Beach*, 940 So.2d 1144, 1146 (Fla. 2d DCA 2006) (*quoting Charlotte County Bd. of County Comm'rs v. Taylor*, 650 So.2d 146, 148 (Fla. 2d DCA 1995) (citing *Miami Dolphins, Ltd. v. Metro Dade County*, 394 So.2d 981 (Fla. 1981)). This political power is recognized through the electorate exercising their right to vote in favor or against referendums. The Supreme Court of Florida has held that "[t]he concept of referendum is thought by many to be a keystone of self-government, and its increasing use is indicative of a desire on the part of the electorate to exercise greater control over the laws which directly affects them." *Fla. Land Co. v. City of Winter Springs*, 427 So.2d 170, 172 (Fla. 1983) (footnote omitted). The United States Supreme Court has held, moreover, that "[t]he referendum … is a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactments of representative bodies. The practice is designed to 'give citizens a voice on questions of public policy.'" *City of Eastlake v. Forest City Enterps., Inc.*, 426 U.S. 668, 673 (1976) (*quoting James v. Valtierra*, 402 U.S. 137, 141 (1971)).

The law is also well established that there is a "strong public policy against courts interfering in the democratic process of elections." *Florida League of Cities v. Smith*, 607 So.2d 397, 400 (Fla. 1992). Indeed, as it relates to referendums, "[t]he common thread running through cases concerning the referendum process is the principle that citizens are free to express their views on municipal matters through the power of referendum and that courts should not interfere with the exercise of their referendum rights except in very narrow circumstances." *Wright v. Frankel*, 965 So.2d 365, 372 (Fla. 4th DCA 2007) (citing *West Palm Beach Ass'n of Firefighters, Local Union*, 727 v. *Bd. of City Comm'rs of City of West Palm Beach*, 448 So.2d 1212, 1214 (Fla. 4th DCA 1984); *Gaines v. City of Orlando*, 450 So.2d 1171,1177 (Fla. 5th DCA 1984); *Wilson v. Dade County*, 369 So.2d 1002, 1003 (Fla. 3d DCA 1979); *Rivergate Rest. Corp. v. Metro Dade County*, 369 So.2d 679 (Fla. 3d DCA 1979)).

The courts have further held that "the right of the voters to exercise their power of initiative and referendum should be honored 'unless it is demonstrated that the ordinance is unconstitutional in its entirety.'" *Wright*, 965 So.2d at 373 (*quoting Brooks v. Watchtower Bible & Tract Society of Florida, Inc*. 706 So.2d 85, 90 (Fla. 4th DCA 1998)). *See also City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So.3d 18, 24 (Fla. 4th DCA 2012) wherein the District Court of Appeal ("District Court") held that a ballot amendment initiated by referendum was not invalid where "the appellants have not demonstrated the invalidity of each and every provision of the amendment. Thus, the trial court was correct in not restraining the electorate's opportunity to vote on it." In affirming the final judgment of the trial court, the District Court stated that:

the trial court determined that the entire amendment was not invalid:

> 'It is not the Court's function to decide piece meal whether certain parts of the public measure are valid or invalid. The Court is only supposed to consider the **entire** public measure as a whole and the referendum retains its validity unless it is shown to be **clearly**, **convincingly** and **entirely** invalid. *Wright v. Frankel*, 965 So.2d 365 (Fla. 4th DCA 2007).'

(emphasis in the final judgment). We also held in *Brooks v. Watchtower, Bible & Tract Society of Florida, Inc.*, 706 So.2d 85, 90 (Fla. 4th DCA 1998), that a referendum on an ordinance should not be prevented 'unless it is demonstrated that the ordinance is unconstitutional in its entirety.'

87 So.3d at 24.

The Supreme Court of Florida has also held, in the context of determining the validity of a referendum, that where "an interpretation upholding the constitutionality of an act is available to this Court, it must adopt that construction." *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So.2d 981, 988 (Fla. 1981). *See also Citizens for Responsible Growth, supra*, 940 So.2d at 1146-1147; *Charlotte County Bd. of County Comm'rs*, 650 So.2d at 148.

In applying the aforesaid legal principles to the matter at hand, Article 11 should not be declared invalid and unenforceable as requested by Plaintiff. The cornerstone of the Referendum is that voters of Hillsborough County wish to enact a one-cent sales surtax, levied for thirty years, to fund necessary countywide transportation and road improvement projects. Section 11.01 of the Charter Amendment, denominated "Purpose of Surtax," expressly states in the first sentence that: "The purpose of the surtax levied in accordance with Section 11.02 below is to fund transportation improvements throughout Hillsborough County, including road and bridge improvements; the expansion of public transit options;

fixing potholes; enhancing bus service; relieving rush hour bottlenecks; improving intersections; and making walking and biking safer." Florida Stat. § 212.055(1) does not expressly restrict the aforesaid purpose of the surtax articulated in section 11.01 of the Charter Amendment, and no implied restriction should be imposed.[3]

Moreover, any alleged inconsistency that may appear between Fla. Stat. § 212.055(1) and Article 11 may be clarified and resolved by an implementing interlocal agreement.[4] Fla. Stat. 212.055(1)(d) 4. provides, *inter alia*, that:

> Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

Finally, even assuming arguendo that this Court was to find any portion of Article 11 invalid, this Court may sever only that portion of the Charter Amendment which is offensive and otherwise give vitality to the remaining provisions of Article 11. In *High Ridge Management v. State*, 354 So.2d 377, 380-81 (Fla. 1977), where the Supreme Court

[3] In *Telli v. Broward County*, 94 So.3d 504, 513 (Fla. 2012), the Supreme Court of Florida made clear that counties should be able to govern themselves consistent with broad authority that has been granted to them by home rule power through the Florida Constitution. The Court stated, moreover, that: "Interpreting Florida's Constitution to find implied restrictions on powers otherwise authorized is unsound in principle." *See also Jimenez v. State*, 246 So.3d 219 (Fla. 2018) (Court concluded that plaintiff's arguments that the City's red light camera enforcement program unlawfully exceeded the grant of statutory authority, and violated the uniformity principles set forth in the statute, were without merit).

[4] The City reserves the right to file, in support of its Motion for Final Summary Judgment, any implementing interlocal agreement that may be executed prior to the hearing on the City's Motion for Final Summary Judgment. The City understands from Plaintiff, moreover, that Plaintiff has no objection to the City filing, in support of its Motion for Final Summary Judgment, any interlocal agreement that may be executed prior to the hearing on the City's Motion for Final Summary Judgment.

of Florida held that subsections of a statute were unconstitutional in that they constituted an unlawful delegation of authority, the unconstitutional subsections were found to be severable from the remaining valid provisions. Accordingly, the invalid subsections were eliminated without striking down the statute in its entirety. *Id*. *See also Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 209 So.3d 1181, 1196-97 (Fla. 2017) ("in this case, we are loathe to strike the entire claims bill … Under our longstanding law governing severability, we can uphold the remainder of the claims bill in this case after striking the unconstitutional fee limitation precisely because the remainder of the bill continues to be a valid, complete act that can accomplish the important beneficial purpose intended by the Legislature."). Similarly, in the case *sub judice*, even assuming arguendo that the provision creating and delegating authority to the Independent Oversight Committee, in section 11.10 of the County Charter, constitutes an unlawful delegation of authority, as alleged by Plaintiff, such provision could be severed without striking down Article 11 in its entirety. This approach would be consistent with the supremacy provision of section 11.11(3) of the Hillsborough County Charter which provides that:

> This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

It would also be consistent with section 9.05 of the Hillsborough County Charter, denominated "Severability," which provides that:

> It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of the Charter is held invalid, the remainder of the Charter shall not be affected.

Finally, it would also be consistent with section 11.11(2) of the Hillsborough County Charter, denominated "Severability," which provides that:

> To the extent that any mandated expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of Surtax Proceeds, the funds allocated to such impermissible use shall be expended by the applicable Agency on any project to improve public transportation permitted by F.S. § 212.055(1) and this Article.

Pursuant to sections 9.05, 11.11(2), and 11.11(3) of the Hillsborough County Charter, and the judicial doctrine of severability, if any provision of Article 11 is determined to be in conflict with the law of the State of Florida, only the conflicting provision should be declared invalid, and the remainder of Article 11 should not be affected. Indeed, the remaining provisions should remain effective, honored, and enforced.

II. The City should be granted summary judgment as to count IV where the ballot title and ballot summary fairly inform the voters of the chief purpose of the county charter amendment, and the language of the ballot title and ballot summary does not mislead the public

The ballot title and ballot summary, which are the subject of the Referendum, provide as follows:

> **BALLOT TITLE**: Funding for Countywide Transportation and Road Improvements by County Charter Amendment
>
> **BALLOT SUMMARY**: Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:
>
> Improve roads and bridges,
> Expand public transit options,
> Fix potholes,
> Enhance bus services,
> Relieve rush hour bottlenecks,
> Improve intersections, and
> Make walking and biking safer,

> By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

There are several compelling and instructive cases, discussed below, which support the City's position that the ballot title and ballot summary fairly inform the voters of the chief purpose of the county charter amendment, and do not mislead the public.

In the recent case of *Andrews v. City of Jacksonville*, 250 So.3d 172 (Fla. 1st DCA 2018), where citizens brought an action challenging the action of the Jacksonville City Council putting a one-half-cent sales surtax referendum before voters to address the city's problem of underfunded pension liability, the District Court affirmed the granting of the city's motion for final summary judgment and rejected the argument that the ballot title and summary misled voters to the point of requiring the election to be voided. The District Court stated that it saw no problem with the trial court's conclusion that "the summary clearly articulated the chief purpose to 'reduce or eliminate the City's unfunded pension liability through the use of a dedicated 1/2- cent sales tax to be adopted for not more than 30 years once the Better Jacksonville 1/2-cent sales tax ends.'" 250 So.3d at 175. Prior to reaching that conclusion, the District Court addressed the state of the law concerning judicial review of ballot titles and summaries and stated, in relevant part, as follows:

> Florida law requires that whenever a public measure is submitted to a vote of the people, a ballot summary must be printed in clear and unambiguous language on the ballot, which 'shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.' § 101.161(1), Fla. Stat. In construing §101.161, the [Florida Supreme Court] has explained 'that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot.'" *Roberts v. Doyle*, 43 So.3d 654, 659 (Fla. 2010) (quoting *Askew v. Firestone*, 421 So.2d 151, 155 (Fla. 1982)). When challenged, courts will review ballot titles and summaries by asking two questions: "first, whether the ballot title and summary 'fairly

> inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'" *Roberts*, 43 So.3d at 659 (quoting *Fla. Dep't of State v. Slough*, 992 So.2d 142, 147 (Fla. 2008)). Ballot summaries need not explain every ramification of a proposal, but must make sure that the chief purpose is clear and unhidden. *Fla. Hometown Democracy, Inc. v. Cobb*, 953 So.2d 666, 673 (Fla. 1st DCA 2007). Courts will invalidate a ballot title and summary if the record shows that they are "clearly and conclusively defective." *Askew*, 421 So.2d at 154-55; *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So.3d 18, 22 (Fla. 4th DCA 2012). But they will be upheld if they state the chief purpose and are not "affirmatively misleading." *Fla. Educ. Ass'n v. Fla. Dep't of State,* 48 So.3d 694, 704 (Fla. 2010); *see also City of Riviera Beach*, 87 So. 3d at 16 (instructing that [a] ballot title and summary cannot either 'fly under false colors' or 'hide the ball' as to the amendment's true effect"). Fair notice to voters is evaluated presuming that "the voter [will] acquaint himself with the details of a proposed ordinance on a referendum …. If he does not, it is not the function of the ballot question to provide him with the needed education." *Miami Heat Ltd. P'ship v. Leahy*, 682 So.2d 198, 203 (Fla. 3rd DCA 1996) (quoting *Metro Dade Cty. v. Shiver*, 365 So.2d 210, 213 (Fla. 3d DCA 1978)).

253 So.3d at 174-175.

In *Mattheson v. Miami-Dade Cty*, 187 So.3d 221 (Fla. 3d DCA 2015) *rev. den.* 2016 WL 4192295 (Fla. 2016), where a declaratory action was brought against Miami Dade County challenging the lawfulness of a county referendum concerning new construction at a tennis center, the trial court granted summary judgment in favor of the county and the District Court affirmed. In his complaint, the plaintiff alleged three counts:

> 1) that the referendum 'flew under false colors' and 'hid the ball,' in violation of section 101.61(1) because it did not disclose that the expansion was prohibited by the Settlement Agreement, the Master Plan and the Declaration of Restrictive Covenants, and because it could not be implemented without approval of the Amendment Committee and a vote of the BOCC); 2) that the proposal was non-binding and thus violated Article 7 of the Home Rule Charter; and 3) that the ballot title and summary failed to disclose facts and thus violated the 'Truth in Government' provisions of the County Charter and that Miami-Dade County Mayor

> Carlos Giminez violated the same provision by stating that the improvements would be paid for with private funds.

Id at 225. On appeal, plaintiff argued that the ballot language failed the requirements of §101.16 by "hiding the ball" and "flying under false colors." *Id*. In affirming summary judgment in favor of the county, the District Court noted that a court should invalidate a ballot question "'only if the record shows that the [ballot language] is clearly and conclusively defective.'" *Id. (Quoting Armstrong v. Harris,* 773 So.2d 7, 11 (Fla. 2000).) The District Court added that "Florida law makes clear that the ballot question does not have to explain every detail or ramification of the proposed amendment. It only must describe its chief purpose." *Id.* (Citations omitted.) The plaintiff then sought review before the Supreme Court of Florida where he argued - as Plaintiff similarly argues in this case - that the ballot summary was clearly "hiding the ball" and "flying under false colors." Specifically, the plaintiff argued, in his filings with the Supreme Court of Florida, that:

> The ballot summary which told the voters they were 'approving…erection of permanent structures and expand existing structures' did not identify or even describe the permanent structures to be built in the Park. It made no mention of the prohibitions precluding the proposed expansion. It did not identify any of the leases being modified or extended, let alone any of their material terms. As such, it was clearly 'hiding the ball' and 'flying under false colors' ….

2016 WL 3101722*5-6 (Fla.) (Appellate Brief). This argument was unsuccessful, and the Supreme Court of Florida declined to review the decision of the District Court.

The City also commends the Court's attention to *Poe v. Hillsborough County, City of Tampa, and Tampa Sports Authority*, 695 So.2d 672 (Fla. 1997), where another highly publicized and controversial referendum was held in Hillsborough County. In *Poe*, the voters of Hillsborough County, by a 53% majority vote, approved a community

investment tax for a period of thirty years which, as presented to the electorate, was "to finance infrastructure for jails, police and Sheriff's equipment, fire stations, emergency vehicles, school construction, a community stadium, transportation improvements, libraries, parks, stormwater improvement projects and public facilities." *Id.* at 674. A few weeks after the referendum was approved, a lawsuit was filed by William Poe, Sr., a former Mayor of the City, against the City, Hillsborough County, and the Tampa Sports Authority, challenging the constitutionality of using public funds to construct a new sports facility. The government then filed a complaint seeking to validate the bonds for the construction and equipping of the new stadium, the acquisition of the practice facility, and the demolition of the existing stadium. The two complaints were consolidated and, on March 21, 1997, the trial court issued a final judgment wherein the court concluded that:

> A. The Complaint of TSA, the County, and the City to validate the bonds to finance the cost of the acquisition, construction, operation and equipping of the new stadium and related facilities and improvements, including, but not limited to, the practice facility and the demolition of the existing stadium, is DENIED.
>
> B. The Amended Complaint of Poe is GRANTED to the extent that this Court declares that the stadium project as currently constituted does not serve a paramount public purpose and violates Article VII, Section 10 of the Florida Constitution.

1997 WL 35279081*6 (Fla. Cir. Ct. March 21, 1997). In reaching that conclusion, the trial court found that:

> 22. Although this Court recognizes that the sales tax increase which would partially finance the new stadium was approved by the voters of Hillsborough County in a referendum, there are three reasons why this Court does not believe this fact to be dispositive in favor of Plaintiffs. First, it is impossible to know to what extent voters cast their ballots on the tax issue based on their feelings about the stadium and to what extent they voted based on the other infrastructure projects to be financed by the sales tax.

> Second, the aspects of the project which prevent it from serving a paramount public purpose are distinct from the sales tax increase and were not submitted to the voters. Third, and most important, the Plaintiffs may not violate the Florida Constitution whether or not they conduct a referendum.

Id. The trial court also found "most significant the fact that under the Stadium Agreement, the Buccaneers would receive the first $2 million per year from non-Buccaneer events (such as college football games, soccer games, tractor pulls and concerts) at the new stadium … For this reason only, the paramount public purpose of the project is defeated." *Id*. at 35279081*5. In a subsequent order dated March 27, 1997, denying a motion for rehearing, the trial court stated that it would "validate the bonds if an agreement can be made between the Buccaneers, the City of Tampa, Hillsborough County and the Tampa Sports Authority to revise … the Stadium Agreement to delete the clause that grants the right to the Buccaneers to receive the first $2 million dollars per year from non-Buccaneer events."[5] Thereafter, the parties challenged the trial court's final order on appeal to the Florida Supreme Court. On May 22, 1997, the Florida Supreme Court issued a unanimous opinion reversing the trial court's order below, and ordered the trial court to enter a judgment validating the bonds proposed to be issued for the new stadium in Tampa. In reaching its decision, the Florida Supreme Court dispelled the notion that trial courts may micromanage public projects, and the Court held that the trial court's finding - that "the Bucs got 'too sweet' a deal with the one clause in the lease agreement allowing the Bucs to receive the first $2 million in proceeds from non-Bucs events," - was not a proper basis to refuse to validate the bonds. *Poe,* 695 So.2d at 679. The holding by the Supreme Court of Florida highlights, among other things,

[5] Order of Judge Pendino denying motion for rehearing at p. 2 (Fla. 13th Cir. Ct., case no. 96-6515 March 27, 1997).

a respect for the democratic process and honoring the will of the majority of the qualified electors in Hillsborough County that voted in favor of the referendum.[6]

The City also commends the Court's attention to *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So.2d 981 (Fla. 1981), where the Court held that, even though many details of a proposed local option referendum proposing a tourist development tax plan were not explained on the ballot, the referendum could not be removed from the ballot on the ground that the ballot question as framed was grossly misleading to the public.

In applying the aforesaid legal principles to the matter at hand, the ballot title and ballot summary should also pass muster. The ballot title and ballot summary, in the case at bar, sufficiently inform the voters of the chief purpose of the Referendum. The language in the ballot title and ballot summary do not affirmatively mislead the public, and neither the ballot title nor the ballot summary is clearly or convincingly defective. Although the Plaintiff alleges some deficiencies in the ballot summary, such alleged deficiencies do not rise to the level of compelling this Court to invalidate the Referendum, particularly when comparing this case to the other cases cited above where referendums were not invalidated and the voices of the electors were honored and respected by the courts.

[6] The City acknowledges that, in addition to the majority of the qualified electors that approved the referendum which provided for the construction of the new sports facility, the governing bodies of Hillsborough County, the City of Tampa and the Tampa Sports Authority also placed their imprimatur on the construction of the new sports facility. As stated in the trial court opinion in *Poe*, "The governing bodies of the Plaintiffs have each adopted resolutions authorizing the proposed bond issues and approving interlocal agreements. As discussed *infra*, such resolutions include express findings that the new stadium serves a public purpose. In addition, legislation enacted by the Florida Legislature pertaining to funding of sports facilities for professional teams contains determinations that such facilities serve a public purpose." 1997 WL at 35279081*2. That being said, the Florida Supreme Court decision in *Poe* also honored and respected the voice of the majority of the qualified electors in Hillsborough County that voted in favor of the referendum.

III. Florida jurisprudence recognizes that under some circumstances a post-election challenge may be barred and, under the facts of this case, this Court may find that Plaintiff's post-election challenge should be barred

The Supreme Court of Florida has recognized that, under certain circumstances, a post-election challenge may be barred. In *Winterfield v. Town of Palm Beach*, 455 So.2d 359, 362 (Fla. 1984), a case which involved an appeal from a circuit court judgment validating municipal bonds, the Supreme Court of Florida stated:

> In preserving elections in the face of post-election challenges to pre-election irregularities, this Court has found that a party is estopped from voiding an election where he was on notice of the irregularity before the election. 'The aggrieved party cannot await the outcome of the election and then assail preceding deficiencies which he might have complained of to the proper authorities before the election.' *Pearson v. Taylor*, 159 Fla. 775, 776, 32 So.2d 826, 827 (1947) (post-election challenge to sufficiency of petition which lead to election). *See also State ex rel. Robinson v. North Broward Hospital District*, 95 So.2d 434 (Fla. 1957) (failure to advertise bond referendum for full thirty days before election not grounds to invalidate election where no attack was made before election, no one claimed denial of right to vote, and no fraud was charged); *McDonald v. Miller*, 90 So.2d 124, 129 (Fla. 1956) (losing candidate, fully aware of blatant pre-election irregularities, barred from raising those irregularities as grounds to invalidate election. 'One cannot stand by with full knowledge and acquiescence in this type of conduct prior to an election and then, after being disappointed by the results, successfully overturn the election.') *Nelson v. Robinson*, 301 So.2d 508 (Fla. 2d DCA) *cert. denied*, 303 So.2d 21 (Fla. 1974) (losing candidate's challenge to name placement on the ballot may have been enforceable before election, but not after); *Spiegel v. Knight*, 224 So.2d 703, 706 (Fla. 3d DCA 1969) ('A different rule applies to technical or procedural irregularities which occur and are challenged prior to a general election than to those which are discovered and challenged after the general election, in the absence of corruption or fraud or a statutory penalty requiring an ouster of the elected official or a vacancy in the office.').

In *Lane v. Chiles*, 698 So.2d 260 (Fla. 1997), where plaintiffs brought an action challenging a state constitutional amendment on the grounds that the ballot summary did not properly inform citizens of the effect of the amendment, and the challenge was not

filed until eight months after it was adopted by a vote of the people, and less than two months before the amendment was to be effective, the Supreme Court of Florida stated:

> We find this claim to be untimely and without merit. In addition to the fact that this Court specifically approved the ballot summary, the general rule is that a challenge to the form of a proposed amendment must be made before the amendment is adopted. *Sylvester v. Timball*, 154 Fla. 663, 18 So.2d 892 (1944). Lane filed this challenge on June 20, 1995, eight months after the amendment was adopted by a vote of the people and less than two weeks before the amendment was to be effective on July 1, 1995.

698 So.2d at 265 (footnote omitted).

In *Wadhams v. Board of County Commissioners of Sarasota County*, 567 So.2d 414 (Fla. 1990), a case in which county residents sought a declaratory judgment to invalidate amendments to the county charter, the majority opinion acknowledged that "there would come a point where laches would preclude an attack on the ordinance ….", *Id*. at 417, however, the majority opinion went on to conclude that "such is not the situation in the present case where the suit was filed only a few weeks after the election." *Id.*[7]

In *Grose v. Firestone*, 422 So.2d 303, 306 (Fla. 1982), a case where the majority opinion held that there was no statutory impairment which would warrant interference with submission to voters of a proposed amendment, the concurring opinion addressed the issue of laches and stated in relevant part:

> The trial judge could have dismissed this case upon the grounds of laches. The house joint resolution was filed with the office of the secretary of state

[7] It should be noted that, in *Wadhams,* it appears that some of the petitioners were aware of the form of the ballot or the chief purpose of the proposed amendment prior to the election whereas other petitioners were not so aware. The Court stated that "The fact that some of the petitioners in the present case may have been aware of the form of the ballot or the chief purpose of the proposed amendment prior to the election does not change our conclusion. The Board fails to explain why the fact that some of the petitioners may have been aware precludes the present action by all of the petitioners." 567 So.2d at 419 n.2.

> on June 24, 1982. No action was taken by the appellants until October 22, 1982, a mere eleven days before the November 2, 1982 election. No reason has been given for the delay. Appellees, relying on no challenge to the proposed amendment, ordered the ballot printed, mailed out ballots to absentee voters, and have spent public money to insure proper ballots to all the electorate. At this date, there is no physical way to stop the ballot-printing process prior to election and still have a smooth running election. All of the facts presented by appellants were known on or immediately after June 24, 1982. The record of the legislation has been public and there has been no fraud or concealment of any facts by the appellees. The case of the appellants is barred by reason of laches.

422 So.2d at 306.

The City would also commend the Court's attention to *Republican Party of Miami-Dade County v. Davis*, 18 So.3d 1112 (Fla. 3d DCA 2009), wherein the District Court held:

> The Party's decision not to challenge the plaintiffs *before* the election is also a fatal flaw in its case below. The Party was fully aware of the appelllees' alleged noncompliance before the election, but did not attempt to have the allegedly-ineligible names stricken from the ballot. Florida law recognizes an estoppel in a case such as this, in which the alleged irregularities were known before the ballots were cast and results announced. *Winterfield v. Town of Palm Beach*, 455 So.2d 359, 362 (Fla. 1984); *Levey v. Dijols*, 990 So.2d 688, 694 (Fla. 4th DCA 2008).

18 So.3d at 1118 (emphasis in original).

In the case *sub judice*, the events leading up to the approval of the Referendum were well publicized, and the Plaintiff should have been knowledgeable as to the ballot language and the content of the proposed charter amendment in advance of the November 6, 2018 election. As noted earlier, on or about August 8, 2018, the Hillsborough County Supervisor of Elections issued a letter certifying that All for Transportation had met the requirements with regard to the total number of valid signatures and apportionment among the county commission districts, and informed the county commission that the proposed

charter amendment and ballot summary would be placed on the November general election ballot. To that point, any concerns by Plaintiff relative to challenging the validity of the Referendum could have been asserted by him in his individual capacity as a citizen and taxpayer in advance of the election. Instead, the Plaintiff waited until approximately four weeks after the election, and less than one month before the surtax levy was to take effect, before filing the within lawsuit.

The City, and its citizens, will be prejudiced if the City is unable to receive, or is required to disgorge, substantial proceeds that the City is expecting to receive under the terms of Article 11. Indeed, according to the calculations by Plaintiff, the City is expected to receive about thirteen percent of the proceeds under the terms of Article 11. Moreover, according to the Complaint, the "total proceeds of this surtax are likely to exceed $9 billion." (See page 2 of the Complaint.) As such, the City should be expected to receive in excess of one billion dollars under the terms of Article 11, and the failure to do so will substantially prejudice the City and its citizens.

Accordingly, under the facts of this case, this Court may find the Plaintiff's post-election challenge should be barred.

IV. Plaintiff lacks standing to sue in in his official capacity as a county commissioner of Hillsborough County, Florida

Fla. Stat. § 125.15, which is denominated "To sue and be sued in the name of county," expressly requires that "The county commissioners shall sue and be sued in the name of the county of which they are commissioners." The Supreme Court of Florida and the Second District Court of Appeal have recognized, moreover, that an action brought by county commissioners must be brought in the name of the county. *See Panama Inv. Co.*

v. Ricker, 70 Fla. 614, 70 So. 596 (Fla. 1916);[8] *Erickson v. Board of County Commissioners of Sarasota County*, 212 So.2d 340 (Fla. 2d DCA 1968).

Notwithstanding the foregoing statutory law, and case law, Plaintiff filed the within lawsuit in his official capacity as a county commissioner of Hillsborough County, Florida. The record does not reflect, moreover, that either the Hillsborough County Board of County Commissioners, or the Hillsborough County Attorney, ever approved the filing of the within lawsuit. To the contrary, the lawsuit names Hillsborough County, a charter county of the State of Florida, as a party Defendant, which is inconsistent with either the Hillsborough County Board of County Commissioners or the Hillsborough County Attorney ever placing their imprimatur on the filing of the within lawsuit.

The City also commends the Court's attention to the following cases addressing standing as it relates to the filing of suit by government officials in an official capacity. In *The Crossings At Fleming Island Community Development District v. Echeverri*, 991 So.2d 793 (Fla. 2008), the Supreme Court of Florida stated that:

> 'For important policy reasons, courts have developed special rules concerning the standing of governmental officials to bring a declaratory judgment action questioning a law those officials are duty-bound to apply. As a general rule, a public official may only seek a declaratory judgment when he is 'willing to perform his duties, but … prevented from doing so by others.' *Reid v. Kirk*, 257 So.2d 3, 4 (Fla. 1972). Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion. *See Askew v. City of Ocala*, 348 So.2d 308 (Fla. 1977)…. '

[8] In *Panama Inv. Co*, the Supreme Court of Florida was interpreting section 773, General Statutes 1906, which is very similar to section 125.15. "Section 773, General Statutes 1906, requires the county commissioners to sue in the name of the county of which they are commissioners." 70 So. at 621. Consistent therewith, the Supreme Court of Florida stated that "The county commissioners had no authority to bring suit in their names as such." *Id.*

991 So.2d at 802 (quoting *Dep't of Revenue v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981)). In *Echeverri*, the Court went on to hold that the fact that an appraiser was the defendant in a taxpayer's action did not confer standing on the appraiser to challenge the constitutionality of the taxing statute. In *Department of Education v. Lewis*, 416 So.2d 455 (Fla. 1982), where the Department of Education, State Board of Education and Commissioner of Education filed a complaint seeking a declaratory judgment that a proviso in appropriations bill relating to state aid to postsecondary education was unconstitutional and void, the Supreme Court of Florida held that while individual plaintiffs had standing as ordinary citizens and taxpayers, they had no standing in their official capacities. In reaching that conclusion, the Court stated that "State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." (Citations omitted.) Finally, in *Jones v. Department of Revenue*, 523 So.2d 1211 (Fla. 1st DCA 1988), where a county property appraiser brought an action challenging the methodology employed by the Department of Revenue in determining the county's estimated level of assessment, the District Court held that county property appraiser did not have standing to challenge the constitutionality of the statute in his official capacity as a property appraiser although he did have standing in his individual capacity as a citizen and taxpayer. In reaching that conclusion, the Court stated that "State officers and agencies are required to presume that the legislation affecting their duties is valid, and they do not have standing to initiate litigation for the purpose of determining otherwise." 523 So.2d at 1214 (citing *Department of Education v. Lewis*, 416 So.2d 455 (Fla. 1985) and *Barr v. Watts*, 70 So.2d 347 (Fla. 1953)).

Accordingly, based upon the foregoing legal authorities, and particularly where the record in this case does not reflect that any person or entity ever precluded Plaintiff from complying with the Referendum, Plaintiff lacks standing to bring this action in his official capacity as a county commissioner of Hillsborough County, Florida.

CONCLUSION

This Court should honor and respect - and not ignore - the voices of the majority of the qualified electors who voted to approve the Referendum on November 6, 2018.

Consistent with the foregoing, and for all of the reasons discussed above, it is respectfully requested that this Honorable Court grant final summary judgment in favor of the City, and against Plaintiff, as to all counts. There is no genuine issue of material fact in this cause, and the City is entitled to judgment as a matter of law.

Respectfully submitted,

/s/ Jerry M. Gewirtz

Jerry M. Gewirtz, Esquire
Florida Bar No. 0843865
Primary: Jerry.Gewirtz@tampagov.net
Secondary:Kimber.Spitsberg@tampagov.net
David Harvey, Esquire
Florida Bar No. 610046
Primary: David.Harvey@tampagov.net
Secondary: Erin.Bradley@tampagov.net
City Attorney's Office
5th Floor, City Hall, 315 E. Kennedy Boulevard
Tampa, Florida 33602
Telephone: (813) 274-8842
Facsimile: (813) 274-8809
Attorneys for Defendant, City of Tampa

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2019, a true and correct copy of the foregoing was electronically filed with the Clerk of Court through the Florida Courts E-filing Portal, and furnished via email to all counsel of record listed below.

By: */s/ Jerry M. Gewirtz*
Jerry M. Gewirtz, Esquire

Chris W. Altenbernd, Esquire Banker Lopez Gassler P.A. 501 East Kennedy Boulevard, Ste. 1700 Tampa, FL 33602 Telephone: (813) 221-1500 Facsimile No.: (813) 222-3066 caltenbernd@bankerlopez.com service-caltenbernd@bankerlopez.com Counsel for Plaintiff	Alan S. Zimmet, Esquire Nikki C. Day, Esquire Elizabeth W. Neiberger, Esquire Bryant Miller Olive, P.A. One Tampa City Center Suite 2700 Tampa, FL 33602 Telephone: (813) 273-6677 azimmet@bmolaw.com nday@bmolaw.com eneiberger@bmolaw.com nakins@bmolaw.com cmiller@bmolaw.com agamder@bmolaw.com Counsel for Hillsborough County, and Counsel for Hillsborough County Metropolitan Planning Organization
Robert E. Brazel, Esquire Hillsborough County Attorney's Office 601 E. Kennedy Boulevard, 27th Floor Tampa, Florida 33602-5758 Telephone: (813) 272-5670 Facsimile No.: (813) 272-5758 BrazelR@hillsboroughcounty.org MatthewsL@hillsboroughcounty.org JohnsonNi@hillsboroughcounty.org Counsel for Doug Belden	Dale K. Bohner, Esquire 601 E. Kennedy Boulevard, 13th Floor Tampa, Florida 33602-5758 Telephone: (813) 307-7015 bohnerd@hillsclerk.com Counsel for Pat C. Frank
Kenneth W. Buchman, Esquire City Attorney City of Plant City 302 West Reynolds Street Plant City, FL 33566 Telephone: (813) 659-4242	Benjamin H. Hill, III, Esquire Robert A. Shimberg, Esquire J. Logan Murphy, Esquire Hill Ward & Henderson, P.A. 101 E. Kennedy Boulevard., Suite 2700 Tampa, FL 33602

kbuchman@plantcitygov.com lyoung@plantcitygov.com Counsel for Plant City	Telephone: (813) 227-8469 Facsimile: (813) 221-2900 Primary: Ben.hill@hwhlaw.com Secondary: debra.withworth@hwhlaw.com Primary: Robert.shimberg@hwhlaw.com Secondary: regina.gigness@hwhlaw.com Primary: Logan.murphy@hwhlaw.com Secondary: tina.mcdonald@hwhlaw.com And Barry S. Richard, Esquire Greenberg Traurig, P.A. 101 E. College Avenue Tallahassee, FL 32301 richardb@gtlaw.com trammellc@gtlaw.com flservice@gtlaw.com Counsel for Keep Hillsborough Moving, Inc. and All for Transportation
William Henry Stafford, III, Esquire Office of the Attorney General PL-01 The Capitol Tallahassee, FL 32399-1050 Telephone: 850-314-3785 William.Stafford@myfloridalegal.com Counsel for Florida Department of Revenue	Pamela D. Cichon, Esquire City Attorney City of Temple Terrace 11250 N. 56th Street Temple Terrace, FL 33602 Telephone: (813) 506-6474 pcichon@templeterrace.com Counsel for City of Temple Terrace
William D. Shepherd, Esquire Hillsborough County Property Appraiser 601 E. Kennedy Blvd., 15th Floor Tampa, FL 33602 Telephone: (813) 276-8827 shepherdw@hcpafl.org Counsel for Bob Henriquez in his official capacity as the Hillsborough County Property Appraiser	David Smith, Esquire Robert Ernest Johnson, Esquire Julia C. Mandell, Esquire Gray Robinson 401 E. Jackson Street, Ste. 2700 Tampa, FL 33602 Telephone: (813) 274-8842 David.smith@gray-robinson.com jane.larose@gray-robinson.com rjohnson@gray-robinson.com valerie.taylor@gray-robinson.com Julia.mandell@gray-robinson.com jane.larose@gray-robinson.com Counsel for Hillsborough County Regional Transit Authority

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Case No. 18-CA-011749
Division: J

Defendants,

and

KEEP HILLSBOROUGH MOVING, INC., a Florida not for profit corporation; and ALL FOR TRANSPORTATION, a political committee,

Intervenor Defendants.
_____/

INTERVENOR DEFENDANTS' MOTION TO DISMISS

Intervenor Defendants Keep Hillsborough Moving, Inc. and its connected political committee, All for Transportation (collectively, "Intervenors"), move to dismiss Plaintiff Stacy White's Complaint for Declaratory Judgment for lack of standing.

INTRODUCTION

1. Stacy White filed this lawsuit "in his official capacity as a county commissioner of Hillsborough County." (Compl. at 1.) Commissioner White lacks standing to advance his claims for two reasons. First, as a county commissioner, he must sue in the name of the county. § 125.15, Fla. Stat. (2019). Second, as a public official, he has no standing to challenge the validity of the law he is oath-bound to follow. *Crossings at Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 796, 797 (Fla. 2008). Since Commissioner White cannot amend to state a claim in his official capacity, the Complaint should be dismissed with prejudice.

THE COMPLAINT

2. "The power to propose amendments to this Charter by initiative is vested in the people." Hillsborough County Charter § 8.03. In the November 2018 general election, Hillsborough County voters considered and approved a citizen's initiative referendum to amend the Hillsborough County Charter by adopting Article 11. (Compl. ¶ 18.) Article 11 codifies a one-cent sales tax for transportation improvements, as authorized by section 212.055(1), Florida Statutes.

3. Commissioner White publicly opposed Article 11 from the start. After the voters approved the referendum, Commissioner White brought this lawsuit in his official capacity as a county commissioner, challenging Article 11. (Compl. at 1.) The Complaint contains four counts, which can be divided into two parts. The first three counts seek a declaratory judgment that Article 11 conflicts with section 212.055(1), and that Commissioner White "has no lawful requirement, as a member of the BOCC, to deliberate or vote on measures to implement Article 11." (Compl. at 10, 11–12, 14–15.) The final count alleges the ballot summary and financial impact statement were misleading and legally insufficient. (Compl. ¶¶ 45–51.) Commissioner White lacks standing to maintain any of these four counts.

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4. By asking the Court to declare that he need not "deliberate or vote on measures to implement Article 11", Commissioner White seeks a judicial blessing of his refusal to comply with the Charter he took an oath to uphold. Commissioner White has no authority to seek such a declaration.

COMMISSIONER WHITE HAS NO AUTHORITY TO SUE IN HIS OFFICIAL CAPACITY

5. Section 125.15, Florida Statutes (2019), provides the sole manner in which county commissioners are authorized to pursue litigation:

> The county commissioners shall sue and be sued in the name of the county of which they are commissioners. A change in the persons composing the board of county commissioners shall not abate the suit, but it shall proceed as if such change had not taken place.

6. This statutory directive is clear: County commissioners have no authority to file suit in their official capacity—they may only pursue litigation in the name of the county they serve. *See Panama Inv. Co. v. Ricker*, 70 Fla. 614, 621, 70 So. 596, 598 (Fla. 1916); *Erickson v. Bd. of Cnty. Comm'rs of Sarasota Cnty*., 212 So. 2d 340, 340–41 (Fla. 2d DCA 1968). Hillsborough County requires a majority vote of its county commission in order to take any official action. Hillsborough County Charter § 4.08. Commissioner White has not alleged that the Board of County Commissioners ever voted to authorize the filing of this lawsuit in the name of the County (and in fact no such vote has occurred). Therefore, the statute precludes Commissioner White from filing or maintaining any of the four counts raised in his Complaint in his official capacity.

AS A PUBLIC OFFICIAL, COMMISSIONER WHITE LACKS STANDING TO CHALLENGE ARTICLE 11

7. Public Officials must presume the laws they administer are valid and therefore "'*do not have standing to initiate litigation for the purpose of determining otherwise*.'" *Fla.*

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Dep't of Agric. & Consumer Servs. v. Miami-Dade Cnty., 790 So. 2d 555, 558 (Fla. 3d DCA 2001) (quoting *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982)) (emphasis in original).

8. This rule prevents public officials from challenging laws to excuse their failure to perform oath-bound duties. *State ex rel. Atl. Coast Line Ry. Co. v. State Bd. of Equalizers*, 94 So. 681, 682–83 (Fla. 1922); *see Barr v. Watts*, 70 So. 2d 347, 351 (Fla. 1953) (explaining that public officials would violate their oath of office by refusing to apply a statute).

9. Commissioner White's Complaint asserts a right to challenge the Charter he is oath-bound to uphold—the law is to the contrary. *Crossings at Fleming Island*, 991 So. 2d at 796-97. The people of Hillsborough County expect their commissioners to "promptly carry out and put into effect the will of the people" expressed in Article 11. *Barr*, 70 So. 2d at 351. Allowing Commissioner White to abdicate his duties by maintaining this lawsuit would permit "nullification, pure and simple." *Atl. Coast Line*, 94 So. at 683.

WHEREFORE, Intervenors move to dismiss the Complaint in its entirety for lack of standing. The Complaint should be dismissed with prejudice because Commissioner White cannot amend to allege a viable claim in his official capacity.

DATED this 24th day of January, 2019.

Respectfully submitted,

/s/ *Robert A. Shimberg*
Benjamin H. Hill, III, Esq. (FBN 94585)
Robert A. Shimberg, Esq. (FBN 816043)
J. Logan Murphy, Esq. (FBN 72241)
Hill Ward & Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Tel. (813) 221-3900
Fax (813) 221-2900
ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com

/s/ *Barry S. Richard*
Barry S. Richard, Esq. (FBN 105599)
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Tel. (850) 426-8503
Fax (850) 681-0207
richardb@gtlaw.com
Attorneys for Keep Hillsborough Moving, Inc. and All for Transportation

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2019, I electronically filed the foregoing with the Clerk of Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to all counsel of record.

/s/ *Robert A. Shimberg*
Attorney

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,
Plaintiff,
v.

Case No. 2018-CA-011749
Division J

HILLSBOROUGH COUNTY, a charter county of the State of Florida, *et al.*,
Defendants.
_____/

HILLSBOROUGH COUNTY'S MOTION TO CONSOLIDATE

Defendant, HILLSBOROUGH COUNTY (the County), moves to consolidate this action with another case pending in this same Circuit Civil Division: *Hillsborough County, Florida v. State of Florida,* Case No. 2019-CA-001382 but assigned to Division G[1], pursuant to Fla. R. Civ. P. 1.270(a) and Admin. Or. S-2017-070, and in support thereof states:

Brief Introduction

1. This is a declaratory action challenging the legality of the local transportation surtax that was recently approved in the County (the Transportation Surtax). Specifically, this action seeks a declaration that the County charter amendment approved by the voters on November 6, 2018 that adopted the Transportation Surtax is invalid because it allegedly conflicts with state statute. The Plaintiff seeks a declaration that the charter amendment is invalid because he contends that ballot language misrepresented the charter amendment to the voters.

[1] Since this case and *Hillsborough County, Florida v. State of Florida* are interrelated, the undersigned filed a Request for Division Assignment, asking that *Hillsborough County, Florida v. State of Florida* be assigned to Division J in furtherance of judicial economy. The Clerk is awaiting an order transferring *Hillsborough County, Florida v. State of Florida* to Division J.

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Common Questions of Law and Fact

2. In *Hillsborough County, Florida v. State of Florida,* Case No. 2019-CA-001382 (the Bond Validation Action), the County seeks to validate the issuance of surtax revenue bonds to finance the costs of transportation projects throughout the County with the Transportation Surtax pledged as security for the repayment of the bonds.

3. The declaratory action and the Bond Validation Action involve common questions of law and fact. As stated above, this declaratory judgment action challenges the validity of the Transportation Surtax. In the bond validation, one of the issues is whether the County's authorization of the bonds complies with the requirements of law. This issue will include a determination by the court as to whether the Transportation Surtax, which is the revenue stream pledged to repay the bonds, is valid.

Judicial Economy and Prejudice

4. Consolidating the two actions would avoid unnecessary costs and delay, and would therefore be in the interest of judicial economy. Further, consolidating the actions avoids the danger of inconsistent rulings and prejudice to the County.

5. Consolidating the two actions will not prejudice any party. The County, however, will be prejudiced if this motion to consolidate is denied. The County is entitled to have the validity of its bonds and all matters connected therewith, including the source of security for the repayment of the bonds, forever and conclusively established on an expedited basis. §§75.01; 75.07, Fla. Stats. Therefore, it is appropriate for this declaratory action and the Bond Validation Action to be consolidated and addressed at the same hearing pursuant to the order to show cause and procedures under chapter 75, Florida Statutes. See *City of Parker v. State,* 992 So. 2d 171, 175 (Fla. 2008); *Rowe v. Pinellas Sports Auth.,* 461 So. 2d 72, 74-75 (Fla. 1984).

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Certificate of Conferral

Counsel for Defendant, HILLSBOROUGH COUNTY, in good faith, has conferred with counsel for all parties on the relief requested in this motion. Counsel for all defendants are in support of the relief requested by this motion. Plaintiff does not object to the case being assigned to Judge Barbas because the cases are interrelated, but may contest a full consolidation after reviewing the bond validation complaint. Although not a party to this proceeding, Counsel for the County attempted to but has not yet been able to confer with the Assistant State Attorney regarding the consolidation prior to the filing of this motion.

WHEREFORE, Defendant, HILLSBOROUGH COUNTY, respectfully requests this Honorable Court enter an order consolidating this case with *Hillsborough County, Florida v. State of Florida,* Case No. 2019-CA-001382 to proceed strictly under the procedures and time frames provided by law for bond validations under chapter 75, Florida Statutes with one final judgment to be entered, providing for the final show cause hearing to be conducted as part of the previously scheduled dispositive motion hearing on May 3, 2019, at 1:30 p.m.; and granting any further relief this Court deems just and proper.

Respectfully submitted on February 8, 2019.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.
Fla. Bar No. 349615
NIKKI C. DAY, B.C.S.
Fla. Bar No. 77551
ELIZABETH W. NEIBERGER, ESQ.
Fla. Bar No. 70102
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
(813) 273-6677
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agarner@bmolaw.com
Attorneys for Hillsborough County

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CERTIFICATE OF SERVICE

I CERTIFY that on February 8, 2019, a copy hereof has been filed electronically with the Clerk of Court via the Florida E-Filing Portal, which will provide an electronic copy to all parties on the Service List below:

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.

SERVICE LIST

Attorney for Plaintiff:
Chris W. Altenbernd, Esq.
Banker Lopez Gassler, P.A.
501 E. Kennedy Boulevard, Suite 1700
Tampa, FL 33602
Service-caltenbernd@bankerlopez.com
caltenbernd@bankerlopez.com
amercado@bankerlopez.com

Attorney for the City of Tampa
Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Boulevard, 5th Floor
Tampa, FL 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
David.harvey@tampagov.net
Erin.bradley@tampagov.net

Attorney for Hillsborough Area Regional Transit Authority
David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
Gray Robinson, P.A.
401 E. Jackson Street, Suite 2700
Tampa, FL 33602
David.smith@gray-robinson.com
Jane.larose@gray-robinson.com
rjohnson@gray-robinson.com
Valerie.taylor@gray-robinson.com
Julia.mandell@gray-robinson.com

Attorney for Florida Dept of Revenue
William H. Stafford, III, Esq.
Senior Assistant Attorney General
Office of the Attorney General
State Programs Bureau
PL-01, The Capitol
Tallahassee, FL 32399
William.stafford@myfloridalegal.com
Doris.brickhousehayes@myfloridalegal.com
Tyler.dudley@myfloridalegal.com

Attorney for the City of Temple Terrace
Pamela D. Cichon, Esq.
11250 N. 56th Street
Temple Terrace, FL 33617
pcichon@templeterrace.com

Attorney for Plant City
Kenneth W. Buchman, Esq.
302 W. Reynolds Street
Plant City, FL 33566
kbuchman@plantcitygov.com
kenbuchman@gmail.com
lyoung@plantcitygov.com

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Attorney for Hillsborough Metropolitan Planning Organization
Cameron S. Clark, Esq.
601 E. Kennedy Boulevard, 27th Floor
Tampa, FL 33602
clarkc@hillboroughcounty.org

Attorney for Bob Henriquez
Will Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Boulevard, 15th Floor
Tampa, FL 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
eservice@hcpafl.org

Attorney for Keep Hillsborough Moving, Inc. and All for Transportation (Intervenors)
Benjamin H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Boulevard, Suite 3700
Tampa, FL 33602
Ben.hill@hwhlaw.com
Robert.shimberg@hwhlaw.com
Logan.murphy@hwhlaw.com
dwhitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com

Attorney for Pat C. Frank
Dale K. Bohner, Esq.
601 E. Kennedy Boulevard, 13th Floor
Tampa, FL 33602
bohnerd@hillsclerk.com
holly.seidel@hillsclerk.com

Attorney for Doug Belden
Robert E. Brazel, Esq.
Office of the County Attorney
Post Office Box 1110
Tampa, FL 33601
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
johnsonni@hillsboroughcounty.org

Barry S. Richard, Esq.
Greenberg Traurig, P.A.
101 E. College Avenue
Tallahassee, FL 32301
richardb@gtlaw.com
trammellc@gtlaw.com
flservice@gtlaw.com

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al.,

Defendants.
_____/

Case No.: 18-CA-11749

Division: J

PLAINTIFF'S RESPONSE TO DEFENDANT HILLSBOROUGH COUNTY'S FIRST REQUEST FOR ADMISSIONS

Plaintiff, STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, by and through the undersigned counsel, hereby provides the following responses to Defendant, HILLSBOROUGH COUNTY's, First Request for Admissions filed January 8, 2019, and states as follows:

1. Admit that you had actual knowledge that the proposal to amend the Charter to create Article 11 would be included on the ballot for the November 6, 2018, general election in the County on or before September 1, 2018.

Response: Admit.

2. Admit that you had read the ballot summary for the proposal to amend the Charter to create Article 11 that would be included on the ballot for the November 6, 2018, general election in the County, prior to November 6, 2018.

Response: Admit.

3. Admit that the Board of County Commissioners of Hillsborough County has not authorized you to file this lawsuit.

Response: Admit, but this lawsuit has not been filed on behalf of Hillsborough County.

4. Admit that there is no provision of the Charter or the Hillsborough County Code of Ordinances which states that a single member of the Board of County Commissioners of Hillsborough County is authorized to file a lawsuit on behalf of the County.

Response: Admit, but this lawsuit has not been filed on behalf of Hillsborough County.

5. Admit that upon taking your seat as a member of the Board of County Commissioners of Hillsborough County you took the oath of office provided by Article II, section 5(b) of the Florida Constitution.

Response: Admit.

6. Admit that you are presently bound by the oath of office provided by Article II, section 5(b) of the Florida Constitution.

Response: Admit.

7. Admit that after certification on or about August 8, 2018, by the Hillsborough County Supervisor of Elections that All for Transportation had met the requirements to place the proposed charter amendment on the November 6, 2018, ballot, there was a robust campaign and community outreach to the voters of Hillsborough County by those in favor of Article 11 and those opposed to Article 11; the campaign and community outreach included many direct mail pieces, phone calls, and other methods of reaching out to the voters.

Response: Admit that after August 8, 2018, there was a campaign and community outreach to the voters by both those in favor and those opposed to Article 11 which included direct mail pieces and phone calls. Without knowledge as to whether this was a "robust" campaign.

8. Admit that after certification on or about August 8, 2018, by the Hillsborough County Supervisor of Elections that All for Transportation had met the requirements to place the proposed charter amendment on the November 6, 2018, ballot, there was substantial media coverage regarding Article 11.

Response: Admit.

Respectfully submitted,

/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.
Florida Bar No: 197394
BANKER LOPEZ GASSLER P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33602
Telephone: (813) 221-1500
Fax No: (813) 222-3066
Email: caltenbernd@bankerlopez.com
Service Email: service-caltenbernd@bankerlopez.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served via the State of Florida's E-Filing Portal on this 12th day of February, 2019 to:

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Email: azimmet@bmolaw.com
Email: nday@bmolaw.com
Email: eneiberger@bmolaw.com
Email: nakins@bmolaw.com
Email: cmiller@bmolaw.com
Email: agarner@bmolaw.com
Attorneys for Hillsborough County

Kenneth Buchman, Esq.
City Attorney for Plant City
302 W. Reynolds St.
Plant City, FL 33566
Email: kbuchman@plantcity.gov
Email: kbuch@tampabay.rr.com
Email: lyoung@plantcitygov.com
Attorney for Plant City

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
Email: shepherw@hcpafl.org
Attorney for Hillsborough County Property Appraiser

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Email: bohnerd@hillsclerk.com
Attorney for Pat Frank, Clerk of the Circuit Court

Robert E. Brazel, Esq.
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601
Email: brazelr@hillsboroughcounty.org
Email: matthewsl@hillsboroughcounty.org
Email: johnsonni@hillsboroughcounty.org
Attorney for Doug Belden, Hillsborough County Tax Collector

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com
Email: rjohnson@gray-robinson.com
Email: Julia.mandell@gray-robinson.com
Email: Valerie.taylor@gray-robinson.com
Attorneys for HART

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
Email: clarkc@hillsboroughcounty.org

Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602

Attorney for Hillsborough MPO

Email: jerry.gewirtz@tampagov.net
Email: david.harvey@tampagov.net
Email: Kimber.spitsberg@tampagov.net
Email: erin.bradley@tampagov.net
Attorneys for City of Tampa

William H. Stafford, III
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399
Email: William.stafford@myfloridalegal.com
Attorney for Florida Dep't of Revenue

Pamela D. Cichon, Esq.
City of Temple Terrace
11250 N. 56th St.
Temple Terrace, FL 33617
Email: pcichon@templeterrace.com
Attorney for City of Temple Terrace

Ben H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com
debra.whitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com
Attorneys for Keep Hillsborough Moving and All for Transportation

/s/ *Chris W. Altenbernd*
Chris W. Altenbernd, Esq.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al.,

Defendants.
_____/

Case No.: 18-CA-11749

Division: J

PLAINTIFF'S RESPONSE TO DEFENDANT HILLSBOROUGH COUNTY'S SECOND REQUEST FOR ADMISSIONS

Plaintiff, STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, by and through the undersigned counsel, hereby provides the following responses to Defendant, HILLSBOROUGH COUNTY's, Second Request for Admissions filed January 10, 2019, and states as follows:

A. The Plaintiff objects to each of these requests for admission because each request seeks an admission to a pure question of law and not to "the application of law to fact." *See Fla. R. Civ. P. 1.370(a).* Nevertheless, the Plaintiff will explain his legal position as to each of these legal issues.

B. In response to the enumerated requests, the Plaintiff explains as follows:

1. Admit that the use of the Surtax Proceeds on projects that improve, repair and maintain existing streets, roads and bridges, including fixing potholes as set forth in Section 11.07(1) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.07. He admits in the legal abstract that the use of the proceeds for the projects described in this request, derived from the language of Section 11.07, are not inconsistent with the uses permitted under section 212.055(1), Florida Statutes. He denies that the statute contains any reference to "fixing potholes," but admits the 30-year transportation goals and strategies decided upon by the BOCC could include fixing potholes. He denies that the provision of section 11.07(1) that compels each Agency to spend "at least 20% of the General Purpose Portion" on the enumerated projects is consistent with the general statute, which expressly permits the BOCC to spend all of the funds on other uses if it concludes that circumstances in its county reasonably warrant such an allocation.

However, Section 11.07, for all of the categories of use described in the enumerated subparagraphs, including subparagraph (1), provides that "any Agency's share of the General Purpose Portion shall be expended by the Agencies for" such purposes. It mandates that the Clerk must automatically, as a ministerial act, send a set amount of the funds to the Agency to be spent by that Agency without any input or control by the various county commissions that will be established by the electorate over the next 30 years.

By contrast, Section 212.055(1)(d) mandates that these proceeds "shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate." Thus, the Legislature in authorizing a county to impose this special surtax has conditioned the existence of this local surtax upon the BOCC exercising its reasoned discretion to set the basic long-term transportation goals for the county and to consider the strategies appropriate under the many available uses in Section 212.055(1) to accomplish the transportation goals best suited for that county.

Section 11.07 is simply one of many of the sections of Article 11 that overrides the Legislature's mandate that the BOCC must have the exclusive power and discretion to allocate the use of these surtax funds—and ultimately must be accountable to the voters for the wisdom of their decisions if the goals are not achieved.

2. Admit that the use of the Surtax Proceeds on projects that reduce congestion and transportation vulnerabilities as set forth in Section 11.07(1) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: Plaintiff adopts the same answer as to request #1.

3. Admit that the use of the Surtax Proceeds to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections as set forth and further described in Section 11.07(2) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.07. He admits in the legal abstract that the use of the proceeds for the projects described in this request, derived from the language of Section 11.07, are not inconsistent with the uses permitted under section 212.055(1), Florida Statutes. He incorporates the explanation in the response to request #1. He denies that the provision of section 11.07(2) that compels each Agency to spend "at least 26% of the General Purpose Portion" on the enumerated projects is consistent with the general statute, which expressly permits the BOCC to spend all of the funds on other uses if it concludes that circumstances in its county reasonably warrant such an allocation.

4. Admit that the use of the Surtax Proceeds to promote transportation safety improvements on existing streets, roads and bridges as set forth in Section 11.07(3) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.07. He admits in the legal abstract that the use of the proceeds for the projects described in this request, derived from the language of Section 11.07, are not inconsistent with the uses permitted under section 212.055(1), Florida Statutes. He incorporates the explanation in the response to request #1. He denies that the provision of section 11.07(3) that compels each Agency to spend "at least 27% of the General Purpose Portion" on the enumerated projects is consistent with the general statute, which expressly permits the BOCC to spend all of the funds on other uses if it concludes that circumstances in its county reasonably warrant such an allocation.

5. Admit that the use of the Surtax Proceeds for bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network as set forth and further described in Section 11.07(4) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.07. He admits in the legal abstract that the use of the proceeds for projects involving bicycle or pedestrian infrastructure as described in this request derived from the language of Section 11.07 may not necessarily be inconsistent with the uses permitted under section 212.055(1), Florida Statutes. He observes, however, that "bicycle or pedestrian infrastructure" is not an expressly enumerated use in section 212.055(1). He denies that the provision of section

11.07(4) that compels each Agency to spend "at least 12% of the General Purpose Portion" on bicycle and pedestrian infrastructure as part of any planned transportation network is consistent with the general statute, which expressly permits the BOCC to spend all of the funds on other uses if it concludes that circumstances in its county reasonably warrant such an allocation.

6. Admit that the use of the Surtax Proceeds on projects to improve transportation to the extent permitted by Section 212.055(1), Florida Statutes, as set forth in Section 11.07(5) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.07. He denies that Section 11.07(5) is a "permitted" use under section 212.055(1). As with all of these requests, the statute "permits" the BOCC in its independent judgment to apply the funds to as few or as many uses and in whatever combination it chooses. Section 11.07(5) allows each Agency, without approval of the BOCC, to use any leftover funds remaining after compliance with the four preceding percentage limitations (totaling 85%), on legal uses. The statute states the BOCC "shall" have the authority to decide the use of 100% of the proceeds.

7. Admit that the use of the Surtax Proceeds for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the Hart board of directors, to the extent permitted by Section 212.055(1), Florida Statutes, as set forth in Section 11.08 of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: He admits in the legal abstract that the use of the proceeds for public transportation projects as described in this request, derived from the language of Section 11.08, would be consistent with the uses permitted under section 212.055(1). But Section 11.08, coupled with Section 11.05(2), presents the same problem as explained in response to request #1. The statute mandates that the BOCC determine the appropriate allocation for public transportation. The BOCC might, for example, decide that it was prudent for HART to first present to the BOCC credible long-term goals and a strategy that had a high probability of increasing HART's ridership in Hillsborough County from 2% to 20% over the next 10 years before the BOCC agreed to spend billions of dollars on public transportation. But Article 11 compels the Clerk to give HART 45% of the surtax proceeds without any action or oversight by the BOCC.

8. Admit that the use of the Surtax Proceeds on bus service, including express, neighborhood, circulator, paratransit and all other types of transit now or hereafter operated by HART as set forth and more fully described in Section 11.08(1) of the County Charter, is a permitted use of the Surtax Proceeds under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.08. He adopts his answer to request #7. Section 11.08(1) mandates that 45% of the 45% restricted to the Transit Restricted Portion must be spent on the uses in this subsection. This additional override of the BOCC's statutory authority only enhances the conflict between the statute and Article 11.

9. Admit that the use of the Surtax Proceeds on transit services that utilize exclusive transit right-of-way for at least seventy-five percent of the length of the applicable service as set

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forth and more fully described in Section 11.08(2) of the County Charter, is permitted under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.08. He adopts his answer to request #7. Plaintiff is not entirely clear about the project envisioned by Section 11.08(2). This subsection mandates that 35% of the 45% restricted to the Transit Restricted Portion must be spent on the uses in this subsection. This additional override of the BOCC's statutory authority only enhances the conflict between the statute and Article 11.

10. Admit that the use of the Surtax Proceeds on any project to improve public transportation permitted by Section 212.055(1), Florida Statutes, or the County Charter as set forth and more fully described in Section 11.08(3) of the County Charter, is permitted under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits the content of both the statute and Section 11.08(3). He is not certain he understands this request. Plaintiff admits that any project permitted "by" Section 212.055(1) is permitted "under" Section 212.055(1). This subsection of 11.08 has the same legal problem as discussed in answer to request 6 concerning section 11.07(5). He denies that a use of surtax proceeds under this subsection by HART is permitted under Section 212.055(1) because HART receives the proceeds directly from the Clerk without any exercise of reasoned judgment by the BOCC to determine whether that use of the proceeds is appropriate.

11. Admit that the use of the Surtax Proceeds for planning and development purposes, including data collection, analysis, planning, and grant funding to assist the agencies receiving the Surtax Proceeds and the Independent Oversight Committee in carrying out the purposes set forth

in Section 11.01 of the County Charter, as set forth and more fully described in Section 11.05(3) of the County Charter, is permitted under Section 212.055(1), Florida Statutes.

Response: Plaintiff admits this request in part and denies it in part. He admits that surtax proceeds can be used for planning and development. But section 11.05(3) mandates that 1% of the proceeds shall be distributed automatically to the MPO, which is not designated as an "Agency" in the Article. The Clerk is required to distribute this amount each year for 30 years without any approval of the BOCC. That statute contemplates that the BOCC shall have discretion to spend these tax dollars as it deems appropriate. Given that the BOCC did not sponsor this tax initiative and has had no time to actually deliberate on appropriate 30-year transportation goals and the best strategies to achieve those goals, a prudent BOCC would likely have spent more proceeds on planning in the early portion of this 30-year period and much less in the later years. But Article 11 precludes the BOCC from exercising judgment on this expense even though the statute mandates that the BOCC do so.

Plaintiff denies that the use of the surtax proceeds for planning and development purposes of the Independent Oversight Committee is permitted under Section 212.055(1), Florida Statutes. The statute makes no reference to such a body and the functions given to it in Article 11. As explained in the Plaintiff's complaint, the powers given to the Independent Oversight Committee in Article 11, including the power to create its own by-laws, rules and regulations independent of both the BOCC and the Agencies, are powers of the BOCC as the governing body of the County that as a matter of general State law must remain with the BOCC.

Respectfully submitted,

/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.
Florida Bar No: 197394
BANKER LOPEZ GASSLER P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33602
Telephone: (813) 221-1500
Fax No: (813) 222-3066
Email: caltenbernd@bankerlopez.com
Service Email: service-caltenbernd@bankerlopez.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served via the State of Florida's E-Filing Portal on this 14th day of February, 2019 to:

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Email: azimmet@bmolaw.com
Email: nday@bmolaw.com
Email: eneiberger@bmolaw.com
Email: nakins@bmolaw.com
Email: cmiller@bmolaw.com
Email: agarner@bmolaw.com
Attorneys for Hillsborough County

Kenneth Buchman, Esq.
City Attorney for Plant City
302 W. Reynolds St.
Plant City, FL 33566
Email: kbuchman@plantcity.gov
Email: kbuch@tampabay.rr.com
Email: lyoung@plantcitygov.com
Attorney for Plant City

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
Email: shepherw@hcpafl.org
Attorney for Hillsborough County Property Appraiser

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Email: bohnerd@hillsclerk.com
Attorney for Pat Frank, Clerk of the Circuit Court

Robert E. Brazel, Esq.
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601
Email: brazelr@hillsboroughcounty.org
Email: matthewsl@hillsboroughcounty.org
Email: johnsonni@hillsboroughcounty.org
Attorney for Doug Belden, Hillsborough County Tax Collector

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com
Email: rjohnson@gray-robinson.com
Email: Julia.mandell@gray-robinson.com
Email: Valerie.taylor@gray-robinson.com
Attorneys for HART

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
Email: clarkc@hillsboroughcounty.org

Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602

Attorney for Hillsborough MPO

Email: jerry.gewirtz@tampagov.net
Email: david.harvey@tampagov.net
Email: Kimber.spitsberg@tampagov.net
Email: erin.bradley@tampagov.net
Attorneys for City of Tampa

William H. Stafford, III
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399
Email: William.stafford@myfloridalegal.com
Attorney for Florida Dep't of Revenue

Pamela D. Cichon, Esq.
City of Temple Terrace
11250 N. 56th St.
Temple Terrace, FL 33617
Email: pcichon@templeterrace.com
Attorney for City of Temple Terrace

Ben H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com
debra.whitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com
Attorneys for Keep Hillsborough Moving and All for Transportation

/s/ *Chris W. Altenbernd*
Chris W. Altenbernd, Esq.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al.,

Defendants.
_____/

Case No.: 18-CA-11749
Division: J

CLERK OF THE CIRCUIT COURT
2019 FEB 14 AM 10:44
COURTS

HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida,

Plaintiff,

v.

STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the issuance of the bonds herein described or to be affected in any way thereby,

Defendants.
_____/

Case No.: 19-CA-1382

ORDER ON HILLSBOROUGH COUNTY'S MOTION TO CONSOLIDATE

THIS CAUSE having come before the Court on February 14, 2019 on Hillsborough County's Motion to Consolidate, and the Court, after being otherwise advised in the premises, hereby:

ORDERS and ADJUDGES that said Motion is hereby **GRANTED**, subject to the following:

1. The two cases in the style of this order shall be assigned to Division J to be heard by Judge Rex Barbas;

2. Pleadings and other filings in Case No. 18-CA-11749 shall be filed in that court file and pleadings and other filings in Case NO. 19-CA-1382 shall be filed in that court file:;

3. Hearings set in either case shall be set in both cases;

4. The order to show cause hearing in Case No. 19-CA-1382 shall be set for May 3, 2019, at 1:30 PM and will be consolidated with the hearing in Case No. 18-CA-11749 scheduled to hear dispositive motions at that time;

5. Case No. 19-CA-1382 will be consolidated with Case No. 18-CA-11749 for purposes of discovery.

6. To the extent that issues raised in either case may be properly resolved in Case No.: 19-CA-1382, the issues will be resolved in that case;

7. If a final order of dismissal is entered in Case No. 18-CA-11749 without addressing the merits of Counts I-IV of the Complaint, Case No. 19-CA-1382 shall proceed in accordance with this Order and Chapter 75, Fla. Statutes.

DONE AND ORDERED in Chambers, HILLSBOROUGH COUNTY, FLORIDA, this 14 day of February, 2019.

HONORABLE REX BARBAS
CIRCUIT COURT JUDGE

Copies furnished to:
Attorneys of Record

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

Case No. 18-CA-011749
Division: K

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; et al.,

Defendants.
_____/

MOTION TO STRIKE OR FOR SUMMARY JUDGMENT CONCERNING CERTAIN PRELIMINARY AFFIRMATIVE DEFENSES OF THE DEFENDANTS

The Plaintiff, STACY WHITE, by and through his undersigned attorneys, moves this Court to strike or for summary judgment as to certain preliminary affirmative defenses of the several defendants. In support of this motion, the Plaintiff shows to this Court:

Introduction

There are eleven defendants in this case. They have responded to the Plaintiff's Complaint for Declaratory Relief with differing motions and pleadings. This motion addresses affirmative defenses or other claims of the defendants that do not go to the merits or the substance of the Plaintiff's Complaint for Declaratory Judgment, but rather challenge his right or standing to file any lawsuit at this time raising these issues. The answers of Hillsborough County and the MPO raise all of the affirmative defenses addressed in this motion and, thus, they will be used as the primary pleadings for this discussion. The similar claims of other defendants will be identified in a footnote at the beginning of each section.

1. Lack of Standing in his Official Capacity.[1]

The First Affirmative Defense of Hillsborough County and the MPO is that Commissioner White lacks standing to bring this action in his official capacity as a county commissioner. This affirmative defense is based on section 125.15, Florida Statutes, which addresses the bringing of an action on behalf of Hillsborough County. Commissioner White has not brought this action on behalf of the County. Indeed, because he is seeking a determination of the legal enforceability of Article 11 of the County Charter, he has named the County as a necessary defendant.

Simply stated, there is no case law applying section 125.15, Florida Statutes, that holds that a county commissioner who wishes to uphold Florida general law, as required by his oath, cannot bring an action for a judicial declaration that some portions of the County Charter, in particular provisions added by the initiative process without the involvement of the board of county commissioners, conflict with general law and are, accordingly, invalid. These affirmative defenses are either facially insufficient and should be stricken or are issues upon which there is no material fact in dispute and the Plaintiff is entitled to summary judgment as a matter of law.

A. Section 125.15, Florida Statutes

Part I of Chapter 125 of the Florida Statutes addresses the powers and duties of county commissioners. The affirmative defenses of standing in this case focus on one provision in that Part. Section 125.15 is entitled "To sue and be sued in the name of the county," and it states:

> The county commissioners shall sue and be sued in the name of the county of which they are commissioners. A change in the persons composing the board of county commissioners shall not abate the suit, but it shall proceed as if such change had not taken place.

[1] This issue is also raised by HART as its Third Affirmative Defense, by the City of Tampa as part of its Motion for Final Summary Judgment, by the City of Plant City in its First Affirmative Defense, by Keep Hillsborough Moving's Motion to Dismiss.

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On its face, this statute explains what the "county commissioners," as a group are empowered to do. They are entitled to "sue and be sued in the name of the county." Thus, the BOCC as a body can vote to sue and can authorize a defense to a suit, but the lawsuit must name "Hillsborough County," and not the individual members of the BOCC. *See Panama Inv. Co. v. Ricker*, 70 So. 596, 598 (Fla. 1916); *Erickson v. Board of County Com'rs of Sarasota County*, 212 So. 2d 340, 340 (Fla. 2d DCA 1968); *Strickland v. Pinellas County*, 2018 WL 6518761, at footnote 1 (Fla. App. 2 Dist., 2018) ("Strickland identified the defendant as the Board of Commissioners of Pinellas County, but as the County pointed out below, Pinellas County is the proper entity."); *Alianell v. Fossey*, 114 So. 2d 372, 373 (Fla. 3d DCA 1959) ("The action was not in appropriate form and the individuals making up the county commission were not proper defendants.").

As a result of this statute, the Plaintiff filed his action naming Hillsborough County as the political body governed by the disputed Article 11 of its County Charter. The BOCC authorized a defense, and Hillsborough County is defending this action, attempting to establish that no provision in Article 11 is in impermissible conflict with the general law of Florida. The Plaintiff agrees that the County has every right to do so.

But Hillsborough County maintains that this statute prohibits an individual commissioner from filing an action for declaratory judgment to determine whether a provision in the County Charter is in conflict with the general law of Florida. Nothing in the statute so provides. The defendants have cited no case law that so holds. To the best of the undersigned's knowledge, there is no case holding that this statute prevents a commissioner from filing such an action for declaratory relief.

This case unquestionably presents an unusual situation. A small group of local citizens created a not for profit corporation on June 8, 2018. *See* Affidavit of Tyler Hudson, Docket No.

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53, December 19, 2018. Without seeking any written input from any affected governmental entity, it filed an elaborate petition with the Supervisor of Elections six days later on June 14, 2018. A day later, the Supervisor provided the official certification permitting a petition drive. To be clear, the Supervisor does not review or approve the legality of a petition in this context and performs essentially a ministerial task.

The petition does not merely track the language of section 212.055(1) to create the surtax authorized by the Legislature and provide that the surtax proceeds will be applied to as many or as few of the statutorily authorized uses, in whatever combination the BOCC deems appropriate.

Instead, the petition contains pages of restrictions, mandatory uses, and prohibited uses. All of the surtax proceeds–for 30 years–are appropriated to designated governmental entities without any action being required by the BOCC. The Clerk is mandated to distribute the proceeds within five days of receipt without any action by the BOCC ever.

Commissioner White maintains that, if Article 11 is validly enacted, it must give the BOCC the authority to engage in the deliberative process that any governmental body would engage in before it made public policy decisions concerning the use of billions of dollars of tax funds over a period of 30 years. He maintains that the general law must prevail over the many restrictions that were placed in Article 11 by Keep Hillsborough Moving. But the BOCC is proceeding with a bond resolution and the implementation of Article 11 based on all of the restrictions and conditions contained in Article 11.

The only way that Commissioner White can fulfill his oath of office is to determine which law, which decision-making process, the BOCC must use in this context. It can be: (1) the ministerial process described in Article 11, or (2) the process provided by section 212.055, which gives the BOCC broad discretion to make public policy decisions for which ultimately the BOCC

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will accountable to the voters. But it cannot possibly be both methods because they cannot be reconciled. The only forum that can answer that legal question is this Court. Nothing in section 125.15 prohibits Commissioner White from obtaining this essential legal ruling.

B. The Cases Limiting Standing of Ministerial Officer to Challenge the Constitutionality of Statutes They are Required to Administer.

The City of Tampa, in its motion for summary judgment, cites to cases that prohibit certain constitutional officers from challenging the constitutionality of the statutes that they administer. Commissioner White has no quarrel with that case law. He is not challenging the constitutionality of section 212.055. Instead, he is seeking to enforce and obey that statute. He cannot be obedient to both the content of Article 11 and the content of section 212.055.

The case law cited by the City of Tampa appears to lead back to *State ex rel. Atlantic Coast Line R. Co. v. State Bd. of Equalizers*, 94 So. 681 (Fla. 1922). The court in that case described the issue on appeal as:

> This raises at the outset the question: Has a ministerial officer the right or power to declare an act unconstitutional, or to raise the question of its unconstitutionality without showing that he will be injured in person, property, or rights by its enforcement? *Id.* at 682.

The court answered that question: No. But its reasoning is instructive. It engages in a discussion of the history of judicial review and the power of the courts to be the sole arbiter of constitutional questions. It concludes:

> The contention that the oath of a public official requiring him to obey the Constitution places upon him the duty or obligation to determine whether an act is constitutional before he will obey it is, I think without merit. The fallacy in it is that every act of the Legislature is presumptively constitutional until judicially declared otherwise, and the oath of office **'to obey the Constitution' means to obey the Constitution, not as the officer decides, but as judicially determined.**

State ex rel. Atlantic Coast Line R. Co. v. State Bd. of Equalizers, 94 So. 681, 683 (Fla. 1922).

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This line of cases extends to *Crossings At Fleming Island Community Development Dist. v. Echeverri*, 991 So. 2d 793, 803 (Fla. 2008), in which the Court held: "Accordingly, we find *Atlantic Coast Line* to be binding in the instant case and hold that the property appraiser did not have standing to raise the constitutionality of section 189.403(1) as a defense.

Commissioner White is not a ministerial officer of the executive branch of government. A board of county commissioners performs more than one function, but section 212.055 calls upon a board of county commissioners to make public policy decisions as a budgetary, legislative body. Each county in Florida is different, and the transportation needs of each county vary among the counties and over time. Section 212.055 conditions the right of the county to impose this surtax upon the duty and responsibility of the board of county commissioners to exercise its sound discretion to make prudent selections for the use of those funds.

Commissioner White is not asking this Court to hold that any Florida statute is unconstitutional. Admittedly, he is asking that part or all of Article 11 be declared invalid under Article VIII, section 1(g) of the Florida Constitution because it is inconsistent with general law. But the *Atlantic Coast Line* cases do not address or prohibit a county commissioner from seeking judicial review of a portion of a county charter on grounds that the commissioner has concluded that he must obey the general law instead of the conflicting local law.

But even if these cases did apply in this case, *Crossings at Fleming* repeats an important earlier pronouncement by the Court:

> We held [in *Dep't of Revenue v. Markham*, 396 So. 2d 1120 (Fla. 1981)] that property appraisers generally do not have standing to initiate declaratory actions to avoid performing their official duties.
>
> For important policy reasons, courts have developed special rules concerning the standing of governmental officials to bring a declaratory judgment action questioning a law those officials are duty-bound to apply. **As a general rule, a public official may only seek a declaratory judgment when he is "willing to**

> **perform his duties, but ... prevented from doing so by others." Reid v. Kirk, 257 So. 2d 3, 4 (Fla.1972).** Disagreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion. *See Askew v. City of Ocala*, 348 So. 2d 308 (Fla.1977). **Since the property appraisers under section 195.027(1), Florida Statutes (1977), had a clear statutory duty to comply with the prescribed Department of Revenue regulations governing the taxability of household goods, they clearly lacked standing for declaratory relief in their governmental capacities.** Id. at 1121 (footnote omitted).

Crossings At Fleming Island Community Development Dist. v. Echeverri, 991 So.2d 793, 802 (Fla. 2008).

The short reference above to *Reid v. Kirk* in *Crossings at Fleming* comes from a paragraph in *Reid* that supports Commissioner White's position in this case. It explains:

> We find that the decisions rendered below are subject to challenge on two grounds. **First, the Assessor is not challenging the validity of statutes applicable to him and, therefore, his standing is not controlled by the line of cases** (*e.g., City of Pensacola v. King*, 47 So. 2d 317 (Fla.1950)) holding that a public officer must show a peril to his personal safety or interests before he can seek judicial review. **Rather, we think he comes within the situation exemplified by *Davis v. Gronemeyer,* 251 So. 2d 1 (Fla.1971), wherein standing is allowed when a public official is willing to perform his duties, but is prevented from doing so by others.**

Reid v. Kirk, 257 So. 2d 3, 4 (Fla. 1972).

The case of *Davis v. Gronemeyer*, 251 So. 2d 1 (Fla. 1971) is particularly instructive. In that case, members of a county civil service board filed an action to challenge a local ordinance, which the civil service board members claimed had taken away powers provided to the civil service board by special acts of the Legislature that governed the civil service board. Similar to this case, the lawyers for the county argued that the members of the civil service board had no standing to challenge the validity of the local ordinance. The Supreme Court's discussion of the issue states:

> We turn first to the question of the standing of the Civil Service Board to seek an injunction against the enforcement and implementation of the ordinances.
>
> The issue is one of first impression in this State. The County Commission argues, first, that appellees are foreclosed from raising the issue of the County's

> authority to repeal Chapter 27537 by the well established rule that office holder cannot question the constitutionality of a state statute without showing that he will be injured its enforcement. *State ex rel. Atlantic Coast Line R. Co. v. State Board of Equalizers*, 84 Fla. 592, 94 So. 681 (1922); *City of Pensacola v. King*, 47 So.2d 317 (Fla. 1950); *Steele v. Freel*, 157 Fla. 223, 25 So. 2d 501 (1946); *State ex rel. Watson v. Kirkman*, 158 Fla. 11, 27 So. 2d 610 (1946); *Green v. City of Pensacola*, 108 So. 2d 897 (Fla. App. 1st, 1959); and *State ex rel. Davis v. Love*, 99 Fla. 333, 126 So. 374 (1930).
>
> This argument is not persuasive. The Civil Service Board does not challenge the validity of any state statute. It seeks only to test the validity of Ordinances 69—1 and 69—2 under the 1968 Florida Constitution and Chapter 69—234 and 69—32, Laws of Florida. Moreover, in general, the cases holding that a ministerial officer may not challenge the validity of a statute have reference to those situations in which an office holder appointed to perform duties under a given act refuses to perform those duties because of the alleged constitutional invalidity of the act. In such a case, it is said that unless expenditure of public funds is involved, the office holder is foreclosed from questioning the validity of the act. *State ex rel. Davis v. Love, Supra*.
>
> In the instant case we are not confronted with this type of situation. The Board has been willing at all times to perform its duties under Chapter 27537 and its amendments, but has been prevented from doing so by the actions of appellants.
>
> It is true that Chapter 27537, as amended, does not give the Board an express power to sue. The Act does, however, give the Board power to enforce its provisions, to prevent violations, and to retain counsel. In our opinion, the necessary and fair inference to be drawn from these powers, taken collectively, is that they give the Board power to bring suit to test the constitutionality of ordinances which presume to repeal the Act. Indeed, if repeal by the County Commission may be characterized as the ultimate violation of the Act, as we think it may, the Board would be remiss in performing its obligation to require and enforce observance of the Act if it permitted the repeal to go untested. Accord, City of Pensacola v. King, Supra.

Davis v. Gronemeyer, 251 So. 2d 1, 3 (Fla. 1971).

If this Court determines that Hillsborough County has validly enacted a transportation tax, Commissioner White is fully willing to implement that tax under the directives of the Legislature in section 212.055, Florida Statutes. He is not challenging "the validity of any statute." But he is prevented from doing so by the actions of Keep Hillsborough Moving, which included extensive conditions, limitations, and restrictions on the use of the surtax proceeds in its quickly prepared

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Article 11. The language of Article 11 makes the mandatory allocations of the surtax funds to HART and the other governmental agencies a ministerial job to be performed by the Clerk with no vote, no deliberation, and no approval necessary at any time during the next thirty years by the BOCC. Commissioner White would be "remiss in performing [his] obligations to require and enforce observance of [Section 212.055] if [he] permitted [the adoption of these restrictions] to go untested."

C. Cases Filed by Other Constitutional Officers.

Finally, the case law clearly reflects that it is appropriate for other county constitutional officers to sue the County for declaratory relief when that action is necessary to clarify their legal obligations. In *Alachua County v. Powers*, 351 So. 2d 32, 35 (Fla. 1977), the Supreme Court gave full review of a declaratory judgment clarifying the duties of the Clerk. The issues presented by the clerk in that case sought clarification of his duties in four capacities: as auditor, accountant, custodian, and investor of county funds.

In *Demings v. Orange County Citizens Review Bd.*, 15 So. 3d 604, (Fla. 5th DCA 2009), then Judge Lawson wrote a lengthy opinion for the Fifth District addressing Sheriff Demings claim that certain provisions of the county charter were inconsistent with general law and, thus, unconstitutional. In that case, the Fifth District held: "We agree with Sheriff Demings and Jenny that the county charter and ordinance provisions creating the CRB and authorizing it to investigate citizen complaints against the Sheriff's deputies are unconstitutional, and reverse the order on appeal." *Id.* at 605-6. The Fifth District went on to reject the County's request that portions of the charter provision should be severed and remain constitutional. *Id.* at 611.

Accordingly, the Plaintiff is entitled to pursue this action for declaratory judgment and the affirmative defenses of standing should be stricken or denied by an order granting summary

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judgment. However, if this Court holds that Commissioner White had no standing in his official capacity to bring this action, he requests leave of court to amend an alternative ground for standing.

2. Lack of Standing in his Individual Capacity.

The Second Affirmative Defense of Hillsborough County and the MPO is that Commissioner White lacks standing to bring this action in his individual capacity. Commissioner White did not file the Complaint for Declaratory Judgement in that capacity. Commissioner White filed this action before the tax was actually in effect and before the County was collecting this tax from anyone. At that time, no taxpayer could allege that he or she had yet suffered any special injury. But, as a commissioner, he was being called upon to take actions to implement that tax because Article 11 had already been added to the County Charter. Thus, this affirmative defense should be stricken because it does not apply to this complaint.

That said, the County has quickly responded to the legal concerns raised in this Complaint by passing a bond resolution and filing a bond validation proceeding, which is consolidated with this action for most purposes. Commissioner White, and any other property owner, taxpayer, citizen or person interested may intervene in that action. *See* Section 75.07, Fla. Stat. (2018). Thus, the issues raised in this Complaint can and undoubtedly will be raised by persons in their individual capacity in that action, and this affirmative defense will not apply to that action.

3. Ripeness – Seeking a Dispositive Judicial Ruling Prior to Obtaining a Non-binding Opinion from a County Attorney.

The Fourth Affirmative Defense of Hillsborough County and the MPO is that this case is premature, that it is not a ripe dispute. The condition precedent suggested by these affirmative defenses is a requirement that Commissioner White obtain an opinion "from legal counsel to Hillsborough County."

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First, Commissioner White assumes that when this affirmative defense describes "legal counsel to Hillsborough County," it does not intend to identify Mr. Zimmet, who is the "legal counsel to Hillsborough County" actually raising this defense in his pleadings for Hillsborough County and who has filed the bond validation proceedings seeking to establish the total legality of Article 11.

The actual County Attorney and her staff are all very competent attorneys. But this dispute addresses the legality of the collection and allocation of billions of dollars in taxes. The County Attorney's Office has not issued any formal opinion addressing these issues either before or after the filing of this lawsuit. Instead, it prepared a bond resolution, recognizing that it is the role of the circuit court to resolve these issues, not that of the County Attorney.

But even if the County Attorney did render a formal written opinion addressing the conflict between Article 11 and Section 212.055, Florida Statutes, that opinion would have no binding legal effect. The role of the County Attorney is described in Article VI of the Hillsborough County Charter, attached hereto as **Exhibit "A."** That role allows the County Attorney to provide legal advice to the BOCC. But the Charter does not empower the County Attorney to be the final arbiter of the legality of the County Charter. The County Attorney has no power to enter an order declaring Article 11, in whole or part, to be in conflict with general law and, thus, unconstitutional and unenforceable. The power to declare Article 11 invalid is a power of judicial review; it is not vested in a county attorney; it is vested in this Court.

The Florida Constitution places general jurisdiction judicial power in the circuit courts. *See* Article V, Section 5(b), Fla. Const. Section 86.011, Florida Statutes, gives this Court broad jurisdictional power to resolve these disputes, as does Section 75.01, Florida Statutes. There is no case law, no statute of general application, and no provision in the County Charter that requires a

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commissioner to first seek a nonbinding opinion from the County Attorney prior to having the Court determine whether he is to obey the general law of Florida or the conflicting provisions of an article of the county charter added by the initiative process.

These affirmative defenses are either facially insufficient and should be stricken or are issues upon which there is no material fact in dispute and the Plaintiff is entitled to summary judgment as a matter of law.

4. Breach of Oath of Office.

The Fifth Affirmative Defense of Hillsborough County and the MPO is that the Plaintiff, as a sitting county commissioner, breaches his oath of office by filing a challenge to Article 11 because he is "required to uphold the County Charter." These affirmative defenses are either facially insufficient and should be stricken or are issues upon which there is no material fact in dispute and the Plaintiff is entitled to summary judgment as a matter of law.

There is no dispute that Commissioner White gave bond and took an oath of office when he became a county commissioner–a constitutional office in the State of Florida. *See* **Exhibit "B."** That oath, under Article II, section 5(b) of the Florida Constitution, provided:

> "I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of (*County Commissioner – District 4*) on which I am now about to enter. So help me God."

Commissioner White did not breach or disobey his oath when he filed this lawsuit. He filed this lawsuit because, in order to support, protect and defend the Constitution and the Government of the State of Florida he was required to obey and implement the general law of the State of Florida. He did, as discussed earlier, what the Supreme Court recognized to be appropriate in *Davis v. Gronemeyer*, 251 So. 2d 1 (Fla. 1971)

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Contrary to these affirmative defenses, there is nothing in the constitutional oath that requires Commissioner White or any commissioner to "uphold the County Charter." The Plaintiff has respect for the County Charter, which is essentially the constitution of the government for the County. *See Hollywood, Inc. v. Broward County,* 431 So. 2d 606, 609 (Fla. 4th DCA 1983). But a commissioner's duties are first to the constitutions of the United States and of the State of Florida. It is a commissioner's obligation to obey the general laws of Florida, not the County Charter, if they conflict.

This oath of offense affirmative defense is part of the defendant's repeated "will of the voters" argument. Respectfully, the law does not permit private groups of citizens to engage in misleading campaigns to convince voters to insert extensive requirements, restrictions, and limitations on the constitutional powers of the BOCC into the County Charter, especially when those restrictions conflict with the duties bestowed upon the BOCC by the Legislature in general laws. As the Second District accurately explained many years ago:

> On appeal, the Board first reminds us that all political power is inherent in the people and that we must, if possible, interpret the amendment as constitutional. *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So.2d 981 (Fla.1981). We realize, and appreciate, that as President Abraham Lincoln said in his address at Gettysburg that our government is one of the people, by the people, and for the people. We also appreciate that a majority of the people who voted on this amendment in Charlotte County wanted the tax cap amendment. It must also be realized, however, that a majority of the electors of the state wanted the Florida Constitution and that those voting for home rule in Charlotte County adopted a charter which is subject to that constitution.

Charlotte County Bd. of County Com'rs v. Taylor, 650 So. 2d 146, 148 (Fla. 2d DCA 1995).

5. The Supremacy Provision. [2]

The Seventh Affirmative Defense of Hillsborough County and the MPO is that the Supremacy Provision of Article 11 should control this case. It does not appear that Hillsborough

[2] Supremacy is also raised in the City of Plant City's Third Affirmative Defense.

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County or the MPO are arguing that this is a defense that precludes the Plaintiff from bringing this action. But supremacy is important to the Plaintiff's right to bring this action, and it is important to understand that supremacy is established by the Florida Constitution, not by Article 11. Any language of supremacy in the Charter is unnecessary, redundant or immaterial because it is Article VIII, section 1(g) of the Florida Constitution that creates the supremacy of Florida general law. That provision of the Constitution provides:

> CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government **not inconsistent with general law**, or with special law approved by vote of the electors. The governing body of a county operating under a charter **may enact county ordinances not inconsistent with general law**. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

Thus, the Charter has the right to establish whether a county or a municipal ordinance has supremacy, but it has no right to determine whether the County Charter is or is not supreme. It has no need to contain a supremacy provision because that issue is completely resolved by the Florida Constitution. It may be nice that the Charter acknowledges the supremacy of Florida general law, but it also unnecessary.

This affirmative defense should be stricken and the County and MPO should be allowed to amend, if they wish, to allege any right or defense they may have under Article VIII, section 1(g) of the Florida Constitution, as the actual source of the State's supremacy over the County.

Respectfully submitted,
/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.
Florida Bar No: 197394
BANKER LOPEZ GASSLER P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33602
Telephone: (813) 221-1500
Fax No: (813) 222-3066
Email: caltenbernd@bankerlopez.com
Service Email: service-caltenbernd@bankerlopez.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served via the State of Florida's E-Filing Portal on this 21st day of February, 2019 to:

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Email: azimmet@bmolaw.com
Email: nday@bmolaw.com
Email: eneiberger@bmolaw.com
Email: nakins@bmolaw.com
Email: cmiller@bmolaw.com
Email: agarner@bmolaw.com
Attorneys for Hillsborough County

Kenneth Buchman, Esq.
City Attorney for Plant City
302 W. Reynolds St.
Plant City, FL 33566
Email: kbuchman@plantcity.gov
Email: kbuch@tampabay.rr.com
Email: lyoung@plantcitygov.com
Attorney for Plant City

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
Email: shepherw@hcpafl.org
Attorney for Hillsborough County Property Appraiser

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Email: bohnerd@hillsclerk.com
Attorney for Pat Frank, Clerk of the Circuit Court

Robert E. Brazel, Esq.
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601
Email: brazelr@hillsboroughcounty.org
Email: matthewsl@hillsboroughcounty.org
Email: johnsonni@hillsboroughcounty.org
Attorney for Doug Belden, Hillsborough County Tax Collector

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com
Email: rjohnson@gray-robinson.com
Email: Julia.mandell@gray-robinson.com
Email: Valerie.taylor@gray-robinson.com
Attorneys for HART

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
Email: clarkc@hillsboroughcounty.org
Attorney for Hillsborough MPO

Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602
Email: jerry.gewirtz@tampagov.net

Email: david.harvey@tampagov.net
Email: Kimber.spitsberg@tampagov.net
Email: erin.bradley@tampagov.net
Attorneys for City of Tampa

William H. Stafford, III
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399
Email: William.stafford@myfloridalegal.com
Attorney for Florida Dep't of Revenue

Pamela D. Cichon, Esq.
City of Temple Terrace
11250 N. 56th St.
Temple Terrace, FL 33617
Email: pcichon@templeterrace.com
Attorney for City of Temple Terrace

Ben H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com
debra.whitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com
Attorneys for Keep Hillsborough Moving and All for Transportation

/s/ *Chris W. Altenbernd*
Chris W. Altenbernd, Esq.

Hillsborough County Florida

Home Rule Charter

Approved by Hillsborough County Voters
September 1983

Amended by Hillsborough County Voters
November 2002, 2004, and 2012

HCFLGOV.NET

P.O. Box 1110, Tampa, FL 33601
Phone: (813) 276-2640

Published 5/2017

EXHIBIT A

county administrator's compensation, including severance pay, may be set by contract if allowed by and pursuant to ordinance.

(3) The office of county administrator shall be deemed vacant if the incumbent: takes up residence outside the county; is by death, illness, or other casualty unable to continue to perform the duties of his office; resigns; or is removed by the board of county commissioners in the manner prescribed in Section 5 .03(1). A vacancy in the office shall be filled in the same manner as the original appointment. The board of county commissioners may appoint an interim administrator in the case of vacancy, temporary absence, or disability of the present administrator until a successor has been appointed and qualified or the administrator returns.

Section 5.04. Political Activity by Administrator.

The county administrator shall not hold any political office nor take part in any political activity other than voting.

Section 5.05. Performance Bond.

The county administrator shall be required to post a performance bond in accordance with general law.

VI. County Attorney

Section 6.01. Legal affairs.

The legal affairs of the County shall be assigned to and vested in the Office of the County Attorney. The office will consist of the County Attorney who shall be head of the office together with such chief assistants and other assistant county attorneys and legal support personnel as may from time to time be required subject only to budget determinations of the Board of County Commissioners. All attorneys and employees of the office shall serve at the pleasure of the County Attorney.

Section 6.02. County attorney duties.

(1) The County Attorney shall be responsible for representing, and is hereby authorized to represent, the Board as its County Attorney. The County Attorney shall provide legal services, including management and participation in all litigation and other such legal services, required to protect the interests of the County; and shall render legal advice and perform other legal and administrative responsibilities as described elsewhere herein to the Board and to all other departments and agencies of County government that the Board from time to time authorizes and directs.

(2) The duties, responsibilities and authority of the County Attorney shall include, without limitation: (a) providing legal advice and counsel to, and legal representation of, the Board, the County Administrator and the departments, agencies and officers of the County on all matters pertaining to the business of the County or in connection with the duties of the department, agency or office; (b) coordinating with the County Administrator and various departments and offices under his jurisdiction regarding all matters affecting and implicating overall County administration, including, without limitation, budgetary, personnel and

procurement matters; (c) advising and providing recommendations to the Board regarding the need for the selection of any special counsel to be retained to provide legal representation in specified matter; and (d) supervising, monitoring and coordinating, as appropriate, the representation services and work of outside attorneys employed pursuant to Subsection (c) above.

(3) Upon direction of the Board and with the consent of the County Attorney, the County Attorney's Office may provide legal advice and counsel to and representation of one or more of the County officers created under Section 1(d) of Article VIII of The Florida Constitution or any other state or local governmental office, unit or entity serving the County's interest and welfare and as may be authorized by law or interlocal agreement. At the request of the Board of County Commissioners, the County Attorney is hereby authorized to represent the Board of County Commissioners when it is acting as any other separate agency or legal entity consisting of the Hillsborough County Board of County Commissioners. The responsibility and authority of the County Attorney when serving as attorney in these matters shall include, but not be limited to, those duties and responsibilities as herein set out for the County Attorney.

(4) Nothing herein contained shall be construed as requiring the attorney to render legal services in any particular circumstance where, in the professional discretion and judgment of the attorney, the rendering of such legal services would violate the provisions of the Code of Professional Responsibility of the Florida Bar or create a direct conflict of interest between the County and attorney.

Section 6.03. County attorney qualifications, appointment, compensation.

(1) The County Attorney shall be and remain a member of The Florida Bar and shall have had at least five (5) years experience in Local Government Law or equivalent and such other experience as determined by the Board. The County Attorney need not be a resident at the time of appointment but shall within a reasonable time become and remain a resident of the County and remain so while in office. The County Attorney shall be a full time employee of the County and shall not otherwise engage in the practice of law except as may be authorized by the Board. The County Attorney shall be appointed by an affirmative vote of not less than five (5) members of the Board of County Commissioners and may be removed at any time by an affirmative vote of not less that five (5) members of the Board or upon the affirmative vote of four (4) members at each of two (2) regular meetings not less than thirteen (13) days apart and no more than twenty-eight (28) days apart.

(2) The compensation of the County Attorney, including severance pay and other benefits, shall be fixed by contract, ordinance or resolution as determined by the Board at a level commensurate with the requirements of the position.

(3) The Office of the County Attorney shall be deemed vacant if the incumbent is removed, resigns, moves his residence from the County or is, by death, illness or other casualty, unable to continue in office. In the case of temporary vacancy or absence or disability, until a successor has been appointed or the County Attorney returns, the Chief Assistant County Attorney or other Assistant Attorney designated by the County Attorney shall serve as the County Attorney upon approval of the Board.

Section 6.04 Special attorneys; bond counsel; disclosure counsel.

(1) Special attorneys may be employed by the Board of County Commissioners upon the recommendation of the County Attorney regarding the need for the selection of any special counsel to provide legal representation in specified matters.

(2) Bond and disclosure counsel shall be selected by the Board of County Commissioners from a list of not less than three (3) qualified respondents to publicly noticed solicitations for bond and disclosure counsel and upon the recommendation of the County Administrator and County Attorney.

Section 6.05 Political activity by County Attorney.

The County Attorney shall not hold any political office nor take part in any political activity other than voting.

VII. Administrative Code

Section 7.01. Purpose of Administrative Code.

The board of county commissioners shall enact and amend by ordinance an administrative code organizing the administration of the county government into divisions and offices and setting forth the duties, responsibilities, and powers of the county administrator, any assistant county administrators, if any, and divisions and offices of the county government not in conflict with the provisions of this Charter. It shall be the responsibility of the county administrator to compile, publish, and disseminate the administrative code, and to recommend revisions thereof in a continuing program to provide greater efficiency and economy in the operation of government.

Section 7.02. Initial Code.

Within ninety (90) days after the first organizational meeting of the board under this Charter, the county administrator shall submit a proposed administrative code to the board of county commissioners. The board of county commissioners shall adopt the proposed code, as submitted or amended, within three (3) months after the date submitted. If not adopted within three (3) months, the code, as proposed by the administrator, shall govern the operations of the county administrator, divisions and offices until such time as one may be adopted formally by the board of county commissioners.

VIII. Amendments To Charter

Section 8.01. By the Board of County Commissioners.

The board of county commissioners may propose amendments to this Charter by ordinance approved by at least five (5) members.

OATH OF OFFICE

COPY

(Art. II. § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Hillsborough

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

County Commissioner - District 4

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." *See* § 92.52, Fla. Stat.]

Stacy R White

Signature

DIANA M. LEON
MY COMMISSION # FF 939857
EXPIRES: November 30, 2019
Bonded Thru Notary Public Underwriters

Sworn to and subscribed before me this 12th *day of* December, 2018.

Diana M Leon

Signature of Officer Administering Oath or of Notary Public

Diana Leon

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☑ *OR* *Produced Identification* ☐

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☐ Home ☑ Office

P.O. Box 1110
Street or Post Office Box

Tampa, FL 33601
City, State, Zip Code

Stacy R. White
Print Name

Stacy R White
Signature

DS-DE 56 (Rev. 11/16)

EXHIBIT B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al.,

Defendants.
_____/

Case No.: 18-CA-11749
Division: J

HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida,

Plaintiff,
vs.

STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the issuance of the bonds herein described or to be affected in any way thereby,

Defendants.
_____/

CASE NO.: 2019-CA-001382

VALIDATION OF TRANSPORTATION SALES SURTAX REVENUE BONDS, SERIES 2019, IN AN AGGREGATE PRINCIPLE AMOUNT NOT TO EXCEED $10,000,000

ORDER TO SHOW CAUSE

TO: THE STATE OF FLORIDA, THROUGH THE STATE ATTORNEY FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, AND TO THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS OF HILLSBOROUGH COUNTY, FLORIDA, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, AND ALL OTHERS HAVING OR CLAIMING ANY RIGHT, TITLE, OR INTEREST IN PROPERTY TO BE AFFECTED BY HILLSBOROUGH COUNTY'S ISSUANCE OF ITS NOT TO EXCEED $10,000,000 IN THE AGGREGATE PRINCIPAL AMOUNT OF TRANSPORTATION SALES

SURTAX REVENUE BONDS, IN ONE OR MORE SERIES, OR TO BE AFFECTED IN ANY WAY THEREBY

Plaintiff, HILLSBOROUGH COUNTY, FLORIDA (the "County"), having filed its Complaint for Validation pursuant to Chapter 75, Florida Statutes, (the "Complaint") for purposes of obtaining validation of its authority to incur indebtedness and issue its not to exceed $10,000,000 in the aggregate principal amount of Transportation Sales Surtax Revenue Bonds, in one or more series (the "Bonds"), as more particularly described in the Complaint, to determine the legality of proceedings in connection therewith, the legality of the provisions, projects, covenants, and agreements contained therein, the revenues and funds pledged to the payment thereof, and seeking an Order to Show Cause and judgment of this Court, all as contained in the Complaint, and the Court being fully advised in the premises hereby

ORDERS, ADJUDGES, and DECREES that the State of Florida, through the State Attorney for the Thirteenth Judicial Circuit of the State of Florida, and the taxpayers, property owners and citizens of Hillsborough County, including nonresidents owning property subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected by the issuance of the Bonds or to be affected in any way thereby, are hereby required to appear before the Honorable Rex M. Barbas on the **3rd day of May, 2019**, at **1:30 p.m**. at the Hillsborough County Courthouse, 800 E. Twiggs Street, Room 501, Tampa, FL 33602, and show cause, if any there be, why the prayers of the Complaint should not be granted and why the proceedings for the Bonds and said obligations when issued pursuant thereto and the revenues and funds pledged to the payment thereof and the legality of all matters in connection therewith should not be validated and confirmed as requested.

IT IS FURTHER ORDERED AND ADJUDGED that prior to the date set for the Order to Show Cause hearing as set forth above, the Clerk of this Court shall cause a copy of this Order

to Show Cause to be published in a newspaper published and of general circulation in Hillsborough County, Florida, once each week for two (2) consecutive weeks, commencing with the first publication which shall not be less than twenty (20) days prior to the date set for said hearing.

AND IT IS FURTHER ORDERED AND ADJUDGED that, by such publication of this Order, all taxpayers, property owners and citizens of Hillsborough County including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the County's issuance of the Bonds, or to be affected in any way thereby, be and they are made parties defendant to this proceeding, and that this Court shall have jurisdiction of them to the same extent as if named as defendants in the Complaint and personally served with process in this cause.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of _____, 2019.

18-CA-011749 3/6/2019 3:26:57 PM

18-CA-011749 3/6/2019 3:26:57 PM

HONORABLE REX M. BARBAS
CIRCUIT COURT JUDGE

Copies furnished to:
Alan S. Zimmet, B.C.S.
Ada Carmona, Assistant State Attorney
Chris W. Altenbernd, Esq.
Jerry M. Gewirtz, Esq.
David Harvey, Esq.
David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
William H. Stafford, III, Esq.
Pamela D. Cichon, Esq.
Kenneth W. Buchman, Esq.
Cameron S. Clark, Esq.
Dale K. Bohner, Esq.
Will Shepherd, Esq.
Robert E. Brazel, Esq.
Benjamin H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Barry S. Richard, Esq.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida
Plaintiff,
v.

Case No.: 18-CA-11749
Division: J

HILLSBOROUGH COUNTY,
a charter county of the State of Florida, et al.,
Defendants.
_____/

HILLSBOROUGH COUNTY, FLORIDA,
a political subdivision of the State of Florida,
Plaintiff,
vs.

CASE NO.: 2019-CA-001382

STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the issuance of the bonds herein described or to be affected in any way thereby,
Defendants.
_____/

VALIDATION OF TRANSPORTATION SALES SURTAX REVENUE BONDS, SERIES 2019, IN AN AGGREGATE PRINCIPLE AMOUNT NOT TO EXCEED $10,000,000

HILLSBOROUGH COUNTY'S NOTICE OF FILING

The Defendant, HILLSBOROUGH COUNTY, FLORIDA, by and through the undersigned attorney, hereby files Section 4.01, Section 4.08, Section 9.05, and Section 11.11 of the County Charter, in opposition to the Plaintiff's Motion to Strike or for Summary Judgment Concerning Certain Preliminary Affirmative Defenses of the Defendants.

Dated March 8, 2019.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.
Fla. Bar No. 349615
NIKKI C. DAY, B.C.S.
Fla. Bar No. 77551
ELIZABETH W. NEIBERGER, ESQ.
Fla. Bar No. 70102
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
(813) 273-6677
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agarner@bmolaw.com
Attorneys for Hillsborough County

CERTIFICATE OF SERVICE

I CERTIFY that on March 8, 2019, a copy hereof has been filed electronically with the Clerk of Court via the Florida E-Filing Portal, which will provide an electronic copy to all parties on the Service List below:

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.

SERVICE LIST

Attorney for Plaintiff:
Chris W. Altenbernd, Esq.
Banker Lopez Gassler, P.A.
501 E. Kennedy Boulevard, Suite 1700
Tampa, FL 33602
Service-caltenbernd@bankerlopez.com
caltenbernd@bankerlopez.com
amercado@bankerlopez.com

Attorney for the City of Tampa
Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Boulevard, 5th Floor
Tampa, FL 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
David.harvey@tampagov.net
Erin.bradley@tampagov.net

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Attorney for Hillsborough Area Regional Transit Authority
David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
Gray Robinson, P.A.
401 E. Jackson Street, Suite 2700
Tampa, FL 33602
David.smith@gray-robinson.com
Jane.larose@gray-robinson.com
rjohnson@gray-robinson.com
Valerie.taylor@gray-robinson.com
Julia.mandell@gray-robinson.com

Attorney for Florida Dept of Revenue
William H. Stafford, III, Esq.
Senior Assistant Attorney General
Office of the Attorney General
State Programs Bureau
PL-01, The Capitol
Tallahassee, FL 32399
William.stafford@myfloridalegal.com
Doris.brickhousehayes@myfloridalegal.com
Tyler.dudley@myfloridalegal.com

Attorney for the City of Temple Terrace
Pamela D. Cichon, Esq.
11250 N. 56th Street
Temple Terrace, FL 33617
pcichon@templeterrace.com

Attorney for Plant City
Kenneth W. Buchman, Esq.
302 W. Reynolds Street
Plant City, FL 33566
kbuchman@plantcitygov.com
kenbuchman@gmail.com
lyoung@plantcitygov.com

Attorney for Hillsborough Metropolitan Planning Organization
Cameron S. Clark, Esq.
601 E. Kennedy Boulevard, 27th Floor
Tampa, FL 33602
clarkc@hillboroughcounty.org

Attorney for Pat C. Frank
Dale K. Bohner, Esq.
601 E. Kennedy Boulevard, 13th Floor
Tampa, FL 33602
bohnerd@hillsclerk.com
holly.seidel@hillsclerk.com

Attorney for Bob Henriquez
Will Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Boulevard, 15th Floor
Tampa, FL 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
eservice@hcpafl.org

Attorney for Doug Belden
Robert E. Brazel, Esq.
Office of the County Attorney
Post Office Box 1110
Tampa, FL 33601
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
johnsonni@hillsboroughcounty.org

Attorney for Keep Hillsborough Moving, Inc. and All for Transportation (Intervenors)
Benjamin H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Boulevard, Suite 3700
Tampa, FL 33602

Barry S. Richard, Esq.
Greenberg Traurig, P.A.
101 E. College Avenue
Tallahassee, FL 32301
richardb@gtlaw.com
trammellc@gtlaw.com
flservice@gtlaw.com

Ben.hill@hwhlaw.com
Robert.shimberg@hwhlaw.com
Logan.murphy@hwhlaw.com
dwhitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com

Ada Carmona
Assistant State Attorney
Office of the State Attorney
419 N. Pierce Street
Tampa, FL 33602-4022
Mailprocessingstaff@sao13th.com
Simonetta_i@sao13th.com
Carmona_a@sao13th.com

Sec. 4.01. - [Legislative responsibilities and powers of local self government.].

All legislative responsibilities and powers of local self government of the county not inconsistent with this Charter shall be assigned to and vested in the board of county commissioners.

Sec. 4.08. - Enactment of ordinances and resolutions.

The commission may take official action only by the adoption of ordinances, resolutions, or motions. Unless otherwise provided herein, all ordinances, rules and resolutions shall be adopted by at least four (4) affirmative votes, and all motions shall be adopted by majority vote of the members present. A majority of the full commission shall constitute a quorum to conduct business.

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Sec. 9.05. - Severability.

It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.

Sec. 11.11. - Miscellaneous.

(1) Prohibited Uses. No Surtax Proceeds may be used for any of the following uses: (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports facility or any other facility not related to transportation; or (iii) any other use expressly prohibited by law.

(2) Severability. To the extent that any mandated expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of Surtax Proceeds, the funds allocated to such impermissible use shall be expended by the applicable Agency on any project to improve public transportation permitted by F.S § 212.055(1) and this Article.

(3) Supremacy. This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

(Amend. of 11-7-2018)

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida
Plaintiff,
v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al.,
Defendants.
_____/

Case No.: 18-CA-11749
Division: J

HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida,
Plaintiff,
vs.

STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the issuance of the bonds herein described or to be affected in any way thereby,
Defendants.
_____/

CASE NO.: 2019-CA-001382

VALIDATION OF TRANSPORTATION SALES SURTAX REVENUE BONDS, SERIES 2019, IN AN AGGREGATE PRINCIPLE AMOUNT NOT TO EXCEED $10,000,000

HILLSBOROUGH COUNTY'S NOTICE OF FILING DEPOSITION TRANSCRIPT OF STACY WHITE, WITH EXHIBITS

The Defendant, HILLSBOROUGH COUNTY, FLORIDA, by and through the undersigned attorney, hereby files the February 25, 2019, deposition transcript of Stacy White, with exhibits, in opposition to the Plaintiff's Motion to Strike or for Summary Judgment Concerning Certain Preliminary Affirmative Defenses of the Defendants.

Dated March 8, 2019.

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.
Fla. Bar No. 349615
NIKKI C. DAY, B.C.S.
Fla. Bar No. 77551
ELIZABETH W. NEIBERGER, ESQ.
Fla. Bar No. 70102
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
(813) 273-6677
azimmet@bmolaw.com
nday@bmolaw.com
eneiberger@bmolaw.com
nakins@bmolaw.com
cmiller@bmolaw.com
agarner@bmolaw.com
Attorneys for Hillsborough County

CERTIFICATE OF SERVICE

I CERTIFY that on March 8, 2019, a copy hereof has been filed electronically with the Clerk of Court via the Florida E-Filing Portal, which will provide an electronic copy to all parties on the Service List below:

s/Alan S. Zimmet
ALAN S. ZIMMET, B.C.S.

SERVICE LIST

Attorney for Plaintiff:
Chris W. Altenbernd, Esq.
Banker Lopez Gassler, P.A.
501 E. Kennedy Boulevard, Suite 1700
Tampa, FL 33602
Service-caltenbernd@bankerlopez.com
caltenbernd@bankerlopez.com
amercado@bankerlopez.com

Attorney for the City of Tampa
Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Boulevard, 5th Floor
Tampa, FL 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
David.harvey@tampagov.net
Erin.bradley@tampagov.net

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Attorney for Hillsborough Area Regional Transit Authority
David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
Gray Robinson, P.A.
401 E. Jackson Street, Suite 2700
Tampa, FL 33602
David.smith@gray-robinson.com
Jane.larose@gray-robinson.com
rjohnson@gray-robinson.com
Valerie.taylor@gray-robinson.com
Julia.mandell@gray-robinson.com

Attorney for Florida Dept of Revenue
William H. Stafford, III, Esq.
Senior Assistant Attorney General
Office of the Attorney General
State Programs Bureau
PL-01, The Capitol
Tallahassee, FL 32399
William.stafford@myfloridalegal.com
Doris.brickhousehayes@myfloridalegal.com
Tyler.dudley@myfloridalegal.com

Attorney for the City of Temple Terrace
Pamela D. Cichon, Esq.
11250 N. 56th Street
Temple Terrace, FL 33617
pcichon@templeterrace.com

Attorney for Plant City
Kenneth W. Buchman, Esq.
302 W. Reynolds Street
Plant City, FL 33566
kbuchman@plantcitygov.com
kenbuchman@gmail.com
lyoung@plantcitygov.com

Attorney for Hillsborough Metropolitan Planning Organization
Cameron S. Clark, Esq.
601 E. Kennedy Boulevard, 27th Floor
Tampa, FL 33602
clarkc@hillboroughcounty.org

Attorney for Pat C. Frank
Dale K. Bohner, Esq.
601 E. Kennedy Boulevard, 13th Floor
Tampa, FL 33602
bohnerd@hillsclerk.com
holly.seidel@hillsclerk.com

Attorney for Bob Henriquez
Will Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Boulevard, 15th Floor
Tampa, FL 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
eservice@hcpafl.org

Attorney for Doug Belden
Robert E. Brazel, Esq.
Office of the County Attorney
Post Office Box 1110
Tampa, FL 33601
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
johnsonni@hillsboroughcounty.org

Attorney for Keep Hillsborough Moving, Inc. and All for Transportation (Intervenors)
Benjamin H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Boulevard, Suite 3700
Tampa, FL 33602

Barry S. Richard, Esq.
Greenberg Traurig, P.A.
101 E. College Avenue
Tallahassee, FL 32301
richardb@gtlaw.com
trammellc@gtlaw.com
flservice@gtlaw.com

Ben.hill@hwhlaw.com
Robert.shimberg@hwhlaw.com
Logan.murphy@hwhlaw.com
dwhitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com

Ada Carmona
Assistant State Attorney
Office of the State Attorney
419 N. Pierce Street
Tampa, FL 33602-4022
Mailprocessingstaff@sao13th.com
Simonetta_i@sao13th.com
Carmona_a@sao13th.com

In the Matter of:

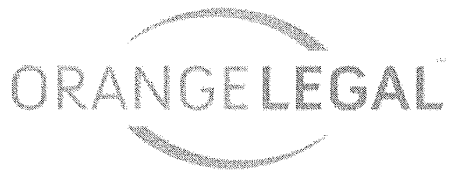
STACY WHITE

vs.

HILLSBOROUGH COUNTY

STACY WHITE

February 25, 2019



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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

vs. CASE NO.: 18-CA-011749
DIVISION: K

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE, KEEP HILLSBOROUGH MOVING, INC., and ALL FOR TRANSPORTATION,

Defendants.
_____/

DEPOSITION OF:	STACY WHITE
TAKEN BY:	The Defendants, Keep Hillsborough Moving, Inc., and All for Transportation
DATE TAKEN:	Monday, February 25, 2019
TIME:	2:10 p.m. - 5:01 p.m.
PLACE:	Banker Lopez Gassler, P.A. 501 East Kennedy Boulevard Suite 1700 Tampa, Florida 33602
REPORTED BY:	Tonya H. Magee, Registered Professional Reporter and Notary Public, State of Florida at Large

A P P E A R A N C E S:

CHRIS W. ALTENBERND, ESQUIRE
OF: Banker Lopez Gassler P.A.
501 East Kennedy Boulevard
Suite 1700
Tampa, Florida 33602
(813) 574-8562
caltenbernd@bankerlopez.com

APPEARING ON BEHALF OF THE PLAINTIFF

ROBERT E. BRAZEL, ESQUIRE
OF: Hillsborough County Attorney's Office
601 East Kennedy Boulevard
Florida 27
Tampa, Florida 33602
(813) 272-5670
brazelr@hillsboroughcounty.org

ALAN S. ZIMMET, ESQUIRE
OF: Bryant Miller Olive, P.A.
201 North Franklin Street
Suite 2700
Tampa, Florida 33602
(813) 273-6677
azimmet@bmolaw.com

APPEARING ON BEHALF OF THE DEFENDANT HILLSBOROUGH COUNTY

ROBERT E. JOHNSON, ESQUIRE
OF: GrayRobinson, P.A.
401 East. Jackson Street
Suite 2700
Tampa, Florida 33602
(813) 273-5000
rjohnson@gray-robinson.com

APPEARING ON BEHALF OF THE DEFENDANT HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY

APPEARANCES CONTINUED

JERRY M. GERWIRTZ, CITY ATTORNEY
OF: City of Tampa, Office of the City Attorney
315 East Kennedy Boulevard
Tampa, Florida 33602
(813) 274-8996
jerry.gerwitz@tampagov.net

APPEARING ON BEHALF OF THE DEFENDANT
CITY OF TAMPA

PAMELA D. CICHON, ESQUIRE (Appearing telephonically)
OF: City of Temple Terrace, Legal Department
535 Central Avenue
St Petersburg, FL 33701-3703
(813) 506-6474
pcichon@templeterrace.com

APPEARING ON BEHALF OF THE DEFENDANT
CITY OF TEMPLE TERRACE

KENNETH W. BUCHMAN, CITY ATTORNEY
OF: City of Plant City, Legal Department
302 West Reynolds Street
Plant City, Florida 33563
(813) 659-4242
kbuch@tampabay.rr.com

APPEARING ON BEHALF OF THE DEFENDANT
CITY OF PLANT CITY

DALE K. BOHNER, ESQUIRE
OF: Hillsborough County Clerk of the Circuit Court
601 East Kennedy Boulevard
Floor 13
Tampa, Florida 33602
(813) 307-7015
bohnerd@hillsclerk.com

APPEARING ON BEHALF OF DEFENDANT PAT C. FRANK

APPEARANCES CONTINUED:

KENNETH W. BUCHMAN, CITY ATTORNEY
OF: City of Plant City
302 West Reynolds Street
Plant City, Florida 33563
(813) 659-4242
kbuch@tampabay.rr.com

APPEARING ON BEHALF OF THE DEFENDANT CITY OF PLANT CITY

BENJAMIN H. HILL, III
FRED CONWELL MARSHALL, II
OF: Hill, Ward & Henderson, P.A.
101 East Kennedy Boulevard
Suite 3700
Tampa, Florida 33602
(813) 221-3900
bhill@hwhlaw.com
kip.marshall@hwhlaw.com

ADA CARMONA, ASSISTANT STATE ATTORNEY
OF: State Attorney's Office
419 North Pierce Street
2nd Floor
Tampa, Florida 33602
(813) 272-5400
carmona_a@sao13th.com

APPEARING ON BEHALF OF THE STATE OF FLORIDA

I N D E X

TESTIMONY OF STACY WHITE:

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- - - - -

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- - - - -

S T I P U L A T I O N S

It is hereby agreed and so stipulated by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript are expressly reserved by the Deponent.

- - - - -

P R O C E E D I N G S

****

THE COURT REPORTER: Do you solemnly swear or affirm the testimony you're going to give in this cause will be the truth, the whole truth, and nothing but the truth?

THE DEPONENT: I do.

STACY WHITE,

having been first duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q. Mr. White, my name is Ben Hill, and with me is my partner, Kip Marshall. I'm going to be asking you some questions today and I want to get an agreement from you that if at any time I ask a question and you don't understand it, please stop me and I'll try to rephrase is it so that you can understand it.

A. I will do that.

Q. Okay. And that's another thing is please be sure that you answer the questions audibly and not just shake your head. You can shake your head and say something audibly, but we need to have something so the court reporter can pick it up. All right?

A. I will do that.

Q. Have you had your deposition taken before?

A. Never.

Q. All right. Tell me your position in the county, please, sir.

A. I'm a Hillsborough County commissioner. I represent District 4, and I'm currently the board chaplain.

Q. And how long have you been a county commissioner?

A. Since 2014, and I would have been sworn in in November of that year.

Q. Have you ever served on any other board in the county?

A. I have, multiple boards.

Q. Was HART one of them?

A. Yes.

Q. How long did you serve on the HART board?

A. Interestingly, I just received recognition as having been a board member from November 2015, until November 2018, however I believe that's an error. I believe I served on that board from November of 2014, to November of 2018.

Q. And in that position, did you ever rise to the chair of that board?

A. I never did.

Q. When you were on that board, did you work with any attorney or attorneys?

A. Well, David Smith, the board counsel, sat next to me at most of the board meetings. So we were neighbors at the board meetings, so to speak.

Q. All right, sir. Now, we're here today on a lawsuit that you have filed in your official capacity as county commissioner against several defendants. And you're obviously familiar with that lawsuit; is that correct?

A. Yes, sir.

Q. I'm going to just show you a copy of the complaint and just have you verify that this is the complaint.

MR. HILL: Do you want a copy?

MR. ALTENBERND: Yeah.

MR. HILL: I'm happy, Chris, if you want me to, to mark it as an exhibit. But since everybody has it, I'm not sure we need to. It doesn't have the exhibits attached to it.

MR. ALTENBERND: You're representing to me that it's the one from the record and it doesn't have the exhibits attached, but other than that, I don't see a need for this to be an exhibit at this point in time.

Q. (MR. HILL) And you recognize this as your complaint. Did you see this complaint before it was filed, sir?

A. No, sir -- well, excuse me. Before it was filed, yes, I did. I was provided with a draft of the complaint before it was officially filed.

Q. And when you received the complaint and were provided a draft, did you make any changes to the draft that you had or did you just simply review the draft?

A. To the best of my recollection, I only remember just reviewing the draft. I don't recall making any substantive changes.

Q. Now, the subject matter of the draft deals with the transportation tax that the citizens of Hillsborough County passed. You're familiar with that?

A. Yes, sir.

Q. Okay. And with respect to the tax, what was your first recollection of someone introducing a potential of filing the tax?

A. If I'm understanding your question correctly, that would be when I received a phone call on the morning of June 13, 2018, from Jeff Vinik.

Q. Okay. And what did that phone call consist of, what did he say?

A. Mr. Vinik expressed to me that he was involved

in a petition drive in order to get a transportation referendum on the 2018 ballot.

Q. And were you conscious of the need for improved transportation in Hillsborough County at that time?

A. Yes, sir.

Q. And prior to that time?

A. Yes, sir.

Q. Okay. Did you welcome that call or did you take issue with what Mr. Vinik was saying?

A. I'm neutral on that issue because Mr. Vinik did not get into any of the substantive details about the proposed referendum.

Q. Okay. And what did he say his role was?

A. He clearly expressed that he was involved with the petition drive and -- although, I couldn't recollect whether or not he specifically said so, but I understood that he would be involved in the campaign and the entire process to get the referendum passed.

Q. Did you know Mr. Vinik prior to that telephone call?

A. Yes.

Q. How did you know him, sir?

A. I visited with him in person on at least one occasion and perhaps exchanged a phone call or a text

message or so with him throughout the years.

Q. And what was the occasion that caused you to visit with him?

A. It was an introductory visit. I was a relatively new county commissioner and he wanted to reach out, get to know me.

Q. And what is your understanding of Mr. Vinik's role in this community?

A. He's the owner of the Tampa Bay Lightning and I know that he's involved with -- if I have the name of the organization correctly, Strategic Property Partners, SPP, involved in the proposed Water Street development.

Q. And the Water Street development is a downtown development?

A. I think of it more as a Channelside development, but I think one could make the argument that that's downtown.

Q. All right. After June 13, when you had that telephone conversation with Mr. Vinik, when was the next contact you had with what I will call the "potential petition" or the petition itself?

A. To the best of my recollection, that was when I received an e-mail two days later, so June 15th, from Sharon Calvert. And that e-mail included a copy of the petition, the referendum language, and, of course, the

ballot summary as well.

Q. Who is Sharon Calvert?

A. I would term her as being an activist in the community, particularly as it relates to transportation issues.

Q. And is she an activist for or against transportation?

A. She's an activist for transportation, but I think she's an activist in the cause of how do we best address solving our transportation issues here in Hillsborough County.

Q. And did you have any discussion with her when she sent that petition to you?

A. I don't recall having a verbal discussion with her that day.

Q. Okay. With respect to the petition, did you review the petition that was sent to you by Ms. Calvert?

A. I don't recall whether or not I reviewed it that day, but I would certainly say that I reviewed it within a week of receiving it.

MR. HILL: I'm going to ask that this be marked as Exhibit No. 1. It is a copy of the petition.

(Exhibit No. 1 was marked for identification.)

Q. (MR. HILL) Do you recognize that, sir, as a

copy of the petition that you were furnished that day by Ms. Calvert?

A. I do, yes, sir.

Q. Did you review that petition on that day or shortly thereafter?

A. If you consider within a week to be shortly thereafter, I would say I reviewed it shortly thereafter.

Q. All right. Before you reviewed the petition, did you have any conversations with anyone about what was in the petition?

A. Before I had a chance to review the petition, I don't recall any such conversations.

Q. And what was your reaction to the petition itself?

A. Almost immediately -- of course, I was politically opposed to this proposal, okay, but almost immediately I had concerns about the legality of the language within the referendum.

Q. Well, let me back up, then. You said you were opposed to the petition before you reviewed it?

A. No, sir. Upon reviewing it.

Q. Upon reviewing it?

A. Yes, sir.

Q. And why were you opposed?

A. Because I -- I didn't believe that we needed a one cent sales tax levied over a 30-year period to solve what I think of as the key or critical issues with our -- with our transportation system.

Q. Have you ever taken a position, sir, on a tax levied in either Hillsborough County or the City of Tampa or let's just say our at-large community?

A. I have. You might be familiar with the Go Hillsborough process that played out a year or two before this referendum made it onto the ballot.

Q. And what was your role in that Go Hillsborough process?

A. Well, certainly the county commission was involved in that process. Had that made it to the ballot, it would have been a county commission-initiated referendum, but, of course, it didn't receive the majority vote of the county commission and never made it onto the ballot. And it was a sales tax proposal as well.

Q. When you considered that as a member of the county commission, did you vote for or against the Go Hillsborough petition?

A. I voted against it.

Q. Have you ever voted for a tax?

A. Have I ever --

Q. Voted in favor of a tax.

A. Of a tax increase?

Q. Yes.

A. Perhaps when I was a school board member, because they have this required local effort or RLE system where the state legislature essentially tells the school board what they're going to levy in terms of mileage. So in that context, I may have voted in favor of a tax increase.

Q. Have you ever voted in favor of a tax increase initiated by the Hillsborough County Commission or by the citizenry of Hillsborough County?

A. To the best of my knowledge, no.

Q. Are you generally against taxes?

A. I'm generally against tax increases, yes, sir.

Q. Now, you recognize, I believe, that when you received that petition, that under the Hillsborough County Charter, that that petition had a certain path that it had to take before it got to the ballot; is that correct?

A. I would agree with that and I would say that that pathway, as prescribed in the charter, is largely ministerial in nature, yes.

Q. Well, doesn't it require a certain number of votes from the citizenry before it makes the ballot?

A. I wouldn't call it votes, but I would say that a certain number of petitions need to be produced.

Q. Supporting the petition?

A. Yes, sir.

Q. And is it your understanding that at some point in time, that that required number of votes -- or number of supporters was met?

A. Yes, sir.

Q. And when did you understand that happened?

A. To the best of my recollection, that was on August 8, 2018, when there were media accounts indicating that the Supervisor of Elections had certified the petitions.

MR. HILL: All right. I'm going to mark this as Exhibit 2, please.

(Exhibit No. 2 was marked for identification.)

Q. (MR. HILL) Did you actually -- I'm showing you what has been labeled Exhibit 2. It appears to be a letter from the Supervisor of Elections dated August 8th. Is this the letter that you're referring to?

A. I'm referring to media accounts that were referring to this letter, yes.

Q. Okay. Did you ever see this letter?

A. I'm not sure that I've ever laid eyes on this

letter, but, you know, I had no reason to doubt that the media accounts indicating that Mr. Latimer had certified the petitions, you know, were true.

Q. Well, from a procedural standpoint, when a letter is written to the chair of Hillsborough County Commission, is that not shared with the commissioners?

A. That's generally the case. I'm looking at the cc line on this particular letter and there's no indication that the other commissioners were copied.

Q. But you understood this letter is a letter that came from the Supervisor of Elections?

A. I understood that based upon media accounts, yes, sir.

Q. And according to this letter, the total number of ballot signatures for a petition to go on the ballot had been met; is that correct?

A. Yes, sir.

Q. Okay. Now, with respect to the signatures necessary for a ballot, signatures had to come out of each district; is that correct, sir?

A. That is correct.

Q. Which would include District 4, your district?

A. That would.

Q. And the signatures had to total a certain number at large; is that correct?

A. I don't have a copy of the county charter in front of me, but I believe that's the case.

Q. Now, I want to back up a little bit and ask you what you did between June 15 and August 8, with respect to the petition. Did you just simply stay at home or attend commission meetings or did you actually get involved in some kind of an effort either for or against the petition?

A. Between June 15th and August 8th, I don't recall getting involved in any kind of effort against the petition. However, I do recall in conversations with State Senator Tom Lee around mid-June, so, you know, call that between June 15th and about a week thereafter, he and I had talked a little bit about it and things such as my concerns about the legality of it came up. Things such as the need for -- for the agencies that would receive these funds to undergo an audit, as described in state statute, came up.

Sometime after that, I reached out to Christine Beck, the Hillsborough County attorney. I'm calling that sometime around mid-June, but we can say between, again, June 15th and a week thereafter, and I was asking her some questions about some of the provisions within the proposed county charter article, Article 11.

And basically, what she said to me at that time, I'm certain that she said to me that challenges based upon what I had concerns about, which were the independent oversight committee and the predetermined spending allocations, any challenges to those would not be frivolous, is what she told me. And I'm fairly certain, although I cannot say that I'm 100 percent certain, but I'm fairly certain that in the course of that conversation, that she told me that the issues of the independent oversight committee and the predetermined allocations could not be challenged until such time as they became law.

Q. Okay. Let's take the latter statement first. Are you sure she told you that or is this something that you are putting together, perhaps?

A. I'm certain that she told me that -- that challenges to the independent oversight committee and predetermined spending allocations would not be frivolous. I'm 100 percent certain of that and I'm fairly certain that she told me that there could be no challenge until such time that it became law.

She also told me that the severability clause looked peculiar, in her opinion.

Q. Peculiar, did you say?

A. Yes, sir.

Q. In what sense?

A. She didn't really get into that, but she expressed concerns about the severability clause.

Q. Have you read other documents, legal documents, let's just say the county charter, as an example, that have severability clauses, do you think those are peculiar?

A. I'm not an attorney. I would have to defer to my attorney on that. It sounds like a question that's a as a matter of law and I'm not in a position to --

Q. Well, I'm not asking you as an attorney. I just want you to understand that. I'm asking you as a county commissioner that sat here and told me that a severability clause was peculiar.

A. I said the county attorney told me that it looked peculiar.

Q. Okay. Did you share that belief?

A. With respect to the severability clause, I can't say that I shared that belief at that time, but certainly my primary concerns at that point in time were with the independent oversight committee and with the predetermined spending allocations.

Q. All right. Have you ever been involved in an issue involving taxes in which the governmental body had an independent oversight committee?

A. Not that I can recall.

Q. Are you familiar with the school board?

A. Yes. I served on the school board from 2010 to 2014.

Q. Did the school board have an independent oversight committee with respect to the tax that it passed?

A. Not while I was on the school board, but my understanding is that they -- they now have a committee that's much different than the committee that you've seen created in Article 11 of the county charter.

Q. But was it -- is it an oversight committee?

A. I'm going -- I'm going to say that my understanding is that they play the role of an advisory committee.

Q. And they would advise on the expenditure of funds raised by the particular tax; is that correct?

A. Advise only, yes, sir.

Q. Is that correct?

A. They advise only, yes, sir.

Q. And did you -- you weren't on the school board when that tax was passed?

A. I was not.

Q. Did you vote for that provision, for that tax?

A. I'm going to ask my attorney if I have to

answer that question.

MR. ALTENBERND: You voted as a private citizen. I don't see any reason for you to even answer it.

If you can tell me why you think it's relevant.

Q. (MR. HILL) With respect to the allocation, what is the realm that gave you concern about the allocation in the transportation tax, Article 11?

A. Well, not being an attorney, early on I suspected that there was an issue with the Florida constitution. I know certainly as early as October 18, when I was asked a question by a member of the media during a press conference that I held, 212.055 came up specifically in that press conference.

But certainly early on, having been an elected official since 2010, I felt strongly that something was amiss legally with a provision that creates an independent oversight committee with the powers that it's given and with the predetermined spending allocations that essentially removes duties and powers that are vested with county commissioners.

Q. Okay. Let's -- let me focus, for the time being, on the allocation. From your standpoint as a county commissioner under 212.055, does that statute

provide that the county commission has the ability to allocate among the various recipients of the tax?

A. I don't view that as being a complete statement of the facts within 212.055, because there's specific mention of allocating them -- allocating them the revenues as the county commission deems appropriate.

Q. Okay. If the county commission deems it appropriate -- that is, the allocation of revenue from the tax -- is that consistent with 212.055, to your understanding?

A. No, sir, because as county commissions change, as you have elections through the years and you have new members or, for that matter, even the same members that have changed their mind on how to best allocate these funds, my understanding is that Article 11 of the county charter would not give county commissions their duly vested authority to change course under such a circumstance.

Q. And that's because of what?

A. Because of the predetermined spending allocations.

Q. And is it because of the duration of them or is it because of the allocations themselves?

A. I believe it's both.

Q. Okay. Is there anything inconsistent --

according to your understanding of 212.055, anything inconsistent with the county commission giving, as an example, 45 percent of the revenue to HART?

MR. ALTENBERND: Mr. Hill, I'm going to make an objection for the record. You and I talked about this before. You're asking him questions about his personal beliefs of this, and I'll let him answer those questions, but his answers are directed to an issue of law that the judge will ultimately decide in this case.

MR. HILL: I understand that, and that's why I included in my question --

MR. ALTENBERND: I'm not going to stop him from answering these questions, but I just want the record to be clear that I don't think his answers to legal questions are particularly relevant in this case.

Q. (MR. HILL) And I'm not asking you from a legal standpoint. I'm asking you from a county commissioner's standpoint that initiated this lawsuit what your understanding was with respect to the allocation of 45 percent to HART, as an example? Is that something that the county commission can do?

A. My answer is that according to 212.055, the county commission may do so. According to Article 11 of

the county charter, it says that the county commission must do so.

Q. But if the county commission decides to do it, under the qualification that you gave, can that be done by the county commission and be consistent as far as your understanding is concerned of 212.055?

A. According to 212.055, my understanding is that the county commission may allocate in this case 45 percent to HART, but two weeks later, at a subsequent commission meeting, the county commission may decide to change course and give more, give less, give none at all.

Q. Let me just back up then. Can the county commission -- under your understanding, can the county commission allocate funds from the transportation tax to a given agency and be consistent with 212.055, with your understanding?

A. Article 11 completely aside, if we're just assuming that it doesn't exist, then I would say, yes, that a county commission may under 212.055 do that.

Q. And can the county commission under 212.055 create an oversight committee to look over the expenditure of the funds from the tax, according to your understanding?

A. I need to defer to my attorney on that one

because I don't know -- I certainly know that the county commission could create a committee and I know that it could serve an advisory role. Whether or not the county commission could vest the duties and powers into such a committee that's been vested in the IOC within Article 11, I think that's a question of law and I'd have to defer to my attorney on that one.

Q. Okay. You have expressed some rather strong views about two points in the petition, one is the IOC and the other's the allocation. And you've told me that on October 18, at a press conference, that somehow or another this all came together for you; is that right, or --

A. Oh, no. No, sir.

Q. Okay. Well --

A. I didn't indicate that. I indicated that I held a press conference on October 18, but by no way did I intend to imply that things just sort of all came together on that day.

Q. Well, then, when did you form those opinions about the IOC and the allocation?

A. I would say, you know, upon reviewing the referendum language, which -- which ultimately became Article 11 to the county charter.

Q. From June 15, six or seven days later when you

reviewed the petition, from that time until August 8, did you take any official action as a counsel commissioner with respect to the tax itself? When I say "official action," I'm talking about at the county commission meeting or some type of action, if any.

MR. ALTENBERND: Official action as to what was the question?

MR. HILL: As to the tax, as to the transportation tax. He's indicated he's opposed to it.

MR. ALTENBERND: I'm going to object to the form, because for that time period there's just a ballot out being signed by citizens.

MR. HILL: I understand it's that situation.

Q. (MR. HILL) But I'm asking: Did you take any official action in terms of making a motion or anything like that at a county commission meeting during that time period?

MR. ALTENBERND: Regarding the transportation tax?

MR. HILL: Right.

A. No, I didn't, and the reason why I didn't is --

Q. (MR. HILL) Excuse me. Let me just stop you, if I can. And I don't mean to be rude, but if you can

just answer my question with a yes or no and then if you want to explain it, that would be fine. Just jumping into an explanation is a little beyond my question

A. I think some of your questions bear an explanation.

Q. I'm not saying they don't. I'm saying if you could answer yes or no, do that, and then explain till the cows come home.

THE DEPONENT: Is that appropriate, Mr. Altenbernd?

MR. ALTENBERND: That's fine.

A. So I'll answer that question with a no.

Q. (MR. HILL) Okay. While I'm on that subject, have you ever made a motion, all the way up until today, at a county commission meeting with respect to the transportation tax?

A. With respect to the transportation tax, perhaps, because the board has, you know, taken part in various levels of implementation of this. And I've said from the very beginning that, you know, I'm going to participate in those as a county commissioner. So ...

Q. Well, what I'm just asking is: Have you ever made a motion as a county commissioner -- under the charter where county commission business is done by motions, as I understand it, have you ever made a motion

with respect to transportation tax, all the way up until today?

A. I'm not sure whether or not I've made a motion. I've certainly cast some votes that are related to this tax, yes, sir.

Q. But you don't remember making a motion one way or the other?

A. I mean, I can't recall. I mean, that's semantics sometimes with respect to who made a motion, who seconded the motion, and then the issue subsequently goes to a vote.

Q. Well, let me go further, then. How many times have you, as a county commissioner, voted on anything at the county commission meetings with respect to the transportation tax?

A. I don't have that information in front of me. There have been motions and votes, for example, to move forward with advertising for the independent oversight committee positions. I mean, there have just been a number of votes that are almost ministerial in nature.

Q. Well, and I'll accept that. What I need to know is the best you can recall, what ministerial motions have you been called upon to vote on dealing with the transportation tax?

A. We've taken votes on advertising for the

independent oversight committee positions. We've taken a vote on -- on a draft of an interlocal agreement between the county and various other governmental agencies. I'm certain there have been others, but those are two that come to mind, just to give you an idea of the kinds of things that have come to a vote with the county commission.

Q. And you certainly can recall, I suspect if I refresh your memory, perhaps, about the bond resolution, did the county commission take a position on that?

A. We did, we did. And that's -- that's, perhaps, me having a lack of understanding of the question. I automatically started thinking in terms of this lawsuit. Of course, that's related to a lawsuit that's been -- that's been brought forth alongside this lawsuit. The bond validation hearing is what I'm referring to, but yes, I do recall taking a vote on the bond resolution.

Q. So as you sit here today, between June 15 and today, you can recall three positions that were taken at a county commission meeting at which you attended and you voted; is that correct?

A. At least three, yes, sir.

Q. And you voted on all of those?

A. I did.

Q. Okay. Did you vote in favor of any one of those?

A. I don't recall. I may have voted in favor of advertising for the IOC positions. The reason I'm having trouble recalling is because there may have been one motion to both advertise and to approve the description, and I do you recall not being in favor of the description of the IOC because I view it as unlawful and inconsistent with 212.055.

Q. Okay. So there possibly were four votes that you participated in?

A. Oh, I've said that there were at least three. There may have been four or more.

Q. Well, let me ask you this: Has anything that's been done through Article 11 precluded you from voting at the county commission meeting?

A. I would like the advice of my attorney on that one.

MR. ALTENBERND: If you can answer, go ahead and answer that question.

A. To this date there are no provisions within Article 11 that have prohibited me from voting as a county commissioner.

Q. (MR. HILL) So when you made an allegation that you had been prevented from voting, the allegation

doesn't mean that you weren't able to cast a vote; is that correct?

A. Well, I'm going to seek the advice of my attorney. I don't recall, okay, and of course this was -- the complaint was drafted by legal counsel, but I don't recall in my complaint saying or at least intending that I would somehow be prohibited from voting as a county commissioner. I said that I would be prohibited from exercising the duties and powers vested in me as a county commissioner in 212.055.

Q. So if it's been said somewhere along the line, and I don't want to say it's in the complaint or answers to interrogatories and anywhere else, you have been prevented from participating in a county commission meeting as a voter, you would deny that? You've been able to vote either for or against whatever's been on the floor with respect to the transportation tax; is that correct?

A. To date, I've been able to vote. And any answer to an interrogatory or elsewhere where it's somehow been implied that I've said that I'm prohibited from voting would have clearly been some type of an error in semantics on the author's part, whether that's me authoring it or someone else authoring it.

Q. I'm going to show you what we'll label as

Exhibit 3.

(Exhibit No. 3 was marked for identification.)

Q. (MR. HILL) What I am showing you here, sir, is Resolution -- the front page of Resolution R19-027, and then the one page that follows it, I wanted to ask you about, instead of having the thick resolution. And do you recognize that front page as a copy of the resolution relating to the bond validation that you voted on?

A. I do. Yes, sir.

Q. And if you turn to the page which is marked 40 and look at Section 25. Did you recall this section in the bond validation resolution?

A. I do, and it's because of Section 25 that I voted against the resolution.

Q. So in Section 25, if I can read it, it says, "Appropriateness of Article 11 of the Hillsborough County Charter. Article 11 which was a citizens' initiative to amend the Hillsborough County Charter pursuant to Section 8.03 of the Hillsborough County Charter and Section 212.055 (1)(a), Florida Statutes, was approved by a majority of voters in the county on November 6, 2018."

Stop right there. Do you agree with that, sir?

MR. ALTENBERND: Agree that it's factually accurate --

MR. HILL: Yeah.

MR. ALTENBERND: -- or what's your question?

MR. HILL: Yeah.

Q. (MR. HILL) Do you agree that it's factually correct

A. I agree that that sentence is factually accurate.

Q. If that was the only sentence in this entire resolution, you would agree with it?

A. I mean, I'd have to go back and review the entire resolution to answer the question. I can tell you that my no vote pertained to Section 25.

Q. Okay. And the second sentence says, "The provisions of Article 11, including the allocation and uses of the funds as set forth therein, are hereby deemed appropriate pursuant to Section 212.055 (1)(d), Florida Statutes, by the governing body." Do you agree that's what it says?

A. I agree that's what it says.

Q. And you voted against the resolution because of that sentence; is that correct, sir?

A. Yes, sir.

Q. But you did vote?

A. I did vote.

Q. Okay. In that respect, sir, how many county commissioners voted on the other side of your position on that sentence?

A. According to the front page, it doesn't look like we had any commissioners absent. It indicates that there was a vote of six to one.

Q. Focusing in on that sentence --

(Exhibit No. 4 was marked for identification.)

Q. (MR. HILL) I identify this exhibit as No. 4.

A. Okay.

Q. This is Florida Statute 212.055, dealing only with transportation tax. And 212.055, I suspect you recall, contains more taxes than just the transportation tax?

A. Absolutely.

Q. And 212.055 gives a charter county, as I understand it, the ability to pass a sales tax for transportation purposes. That's a very general statement, but is that right?

A. That's my understanding. I'm not going to answer the question as to the law, but that's my understanding.

Q. Well, that's what I'm asking is your understanding as a county commissioner.

A. Yes.

Q. And is it your understanding that the one cent sales tax that was passed, as provided under Article 11, was passed as a result of 212.055?

A. No, sir.

Q. Okay. Well, what was the one cent tax the result of? How did the county have the authority to do that?

A. Under the charter itself, I believe Section 8.03, if I'm not mistaken. I don't have the charter in front of me, but I'm pretty sure it's 8.03.

Q. And the charter provides that it would comply with 212.055, does it not, sir? I'm not asking if it's right or wrong. I'm just asking if that's your recollection.

MR. ALTENBERND: The county charter says it has --

MR. HILL: Says it's consistent with 212.055.

MR. ALTENBERND: Are you talking Article 11 or other parts of it?

MR. HILL: I think parts of Article 11.

MR. ALTENBERND: Repeat it, please.

Q. (MR. HILL) Okay. Is that your understanding?

A. So my answer is that my understanding is that this amendment passed pursuant to 8.03 of the county

charter.

Q. If you'll look at the 212.055, Exhibit 4 that's in front of you, can you look at paragraph 1(d), that reads, "Procedures from the surtax shall be applied to as many or as a few of the uses enumerated below in whatever combination the county commission deems appropriate."

Is that correct, sir?

A. That is correct.

Q. And if you, then, refer to the bond resolution, to the sentence that you object to, does it not say that that the county commission -- and I'm paraphrasing now -- deems appropriate the use of the funds as set forth?

A. I would say that the county commission that was seated and voting on the date that this was passed deemed it to be appropriate. I would say that Article 11 of the county charter removes the duties and powers that are vested in county commissions and county commissioners pursuant to 212.055 (1)(d), from making a future determination that this is, indeed, not appropriate.

Q. But you're saying as it was voted on on the day that the resolution was voted on -- I don't have the date -- well, I do, November -- no, I don't have the

date. So on the date it was voted on by the county commission -- February 6, I believe is the date. Does that sound right?

A. My answer is that the county commission seated on February 6th deemed it to be appropriate.

Q. That it deemed it to be appropriate, right? Is that what you're saying?

A. If you highlight the fact that I said the county commission seated on February 6th deemed it appropriate, yes, sir.

Q. Is there anything in 212.055, that you're aware of -- this is now your understanding, not a legal understanding -- that says that the county commission needs to deem it appropriate at any particular point in time?

A. Yes. I think that's inferred in 212.055 (1)(d).

Q. Okay. Well, let me ask you this, sir: As of February 6, 2019, have any funds from the transportation tax been allocated?

A. To the best of my knowledge, they have not been allocated.

MR. ALTENBERND: Except by virtue of the language of Article 11, which mandates it all for 30 years. You're going to ask him a legal

question, but that's the whole dispute here is because the Article 11 doesn't allow the county commission to ever allocate it.

Q. (MR. HILL) That's your lawyer's answer. But from your standpoint, do you recall whether 212.055 has a time in which the allocation needs to be deemed appropriate?

A. Again, I believe that's implied in 212.055 (1)(d), in that in the context of this statute, the county commission means the county commission as a body in perpetuity. So there was a vote cast on February 6th that -- that spoke to the appropriateness of Article 11.

My assertion, though, is that had this not passed or let's say if a county commission four years from now takes another vote, a subsequent vote, that says this Section 25 is not valid and is not appropriate, that county commission would be prohibited from taking that action because of Article 11 of the county charter.

Q. Are you finished?

A. Yes, sir.

Q. But on the face of 212 -- without being implied, on the face of 212.055, is there a provision, to your knowledge, as to when the county commission needs to deem an allocation appropriate, on the face?

A. On the face, there is a time, yes. I read 212.055 (1)(d) as saying that a county commission at any time has the ability to deem these expenditures either appropriate or not appropriate.

Q. So there's no prescribed time?

A. I'll defer to my attorney on that question. It's sounding more like a legal question.

MR. ALTENBERND: It's a legal question. So if you don't know the answer, you don't know the answer.

THE DEPONENT: Yeah.

Q. (MR. HILL) But you would agree that as of February 6, 2019, that there has been no monetary allocation by the county commission of funds; is that correct?

A. That's correct.

Q. And they -- the funds are held by the clerk; is that right?

A. Yes, sir.

Q. Until there's an allocation?

A. That is correct.

Q. Now, in your lawsuit, you have requested relief in each of the four counts in the lawsuit, correct, sir?

A. That is correct.

Q. And the last request that you have is that the Article 11 be rendered invalid and unenforceable or null and void; is that correct?

A. That is correct.

Q. Did you ever make a motion to the county commission that the county commission initiate an action to declare Article 11 invalid, unenforceable, null, or void?

A. No, sir.

Q. And insofar as your understanding of the county commission and the action that it can take, it requires a motion, is that correct, in order to take an action of some kind?

A. For the full board of county commissioners as a body, yes, sir.

Q. And that full board needs to vote a majority of those present, assuming there's a quorum present, needs to vote to take such an action?

A. There are various circumstances outside of the purview of this lawsuit that require a super majority vote of the board, but yes, sir, generally a majority or certainly a super majority in any context would prevail.

Q. In the relief that you are taking -- or excuse me, the relief that you are seeking in the lawsuit, if that relief was granted by the court, would the fact

that Article 11 would be unenforceable or invalid or null and void, would that apply to all of the county commissioners or just you?

A. That would apply to all of the county commissioners. I mean, it would be null and void. It would be nonexistent.

Q. So you unilaterally -- that is, on your own -- are taking a stand that will affect all of the county commissioners; is that correct, sir?

A. I'm unilaterally taking a stand that would affect all of the county commissioners?

Q. Yes.

A. That sounds like a question of law.

MR. ALTENBERND: I'll tell you, the answer is absolutely yes. The judge will either give them the authority to make what they deem appropriate under that tax and be accountable for it or he'll hold the tax to be invalid. So it will affect them all.

Q. (MR. HILL) So the answer is -- your answer is yes?

A. I would --

Q. You're speaking for the entire board, basically, is what's happening; is that correct?

A. I offer my attorney's answer as my answer.

Q. Do you have an answer on your own, without regard to what your attorney said?

A. Well, the question was a legal question. So my attorney's answered it in legal terms.

Q. Are you saying that you don't understand that you're speaking for the board?

A. That's clearly a legal question and I'm not going to answer that question.

Q. Okay. Do you understand that the action that you're taking will affect the board, the entire board?

A. I am asserting that my action would affect the entire board of county commissioners as well as the 1.4 million-plus residents of Hillsborough County that had a referendum presented to them that may be unlawful, according to 212.055, and I'm asking for a judge to make a determination as to whether or not that referendum is lawful.

Q. And you're doing that without any support, if I understand it, from your fellow county commissioners; is that correct?

A. I would have to ask you to define support.

Q. Has any commissioner voted with you on the transportation tax?

A. To the best of my knowledge, no.

Q. Okay. And no commissioner has authorized you

to take this action?

A. That's a legal question as well. I'm not taking this action on behalf of the board of county commissioners.

Q. Did you -- let me back up for a minute and let's go back to August the 8th, and that's when the petition was recognized by the Supervisor of Elections to contain the requisite number of supporters to put it on the ballot.

A. Yes.

Q. Prior to that time, other than the conversation that you told me about with Christine Beck, had you consulted with any other attorney?

A. No, sir.

Q. When was the first time you consulted with an attorney after August 8th?

A. I have to ask my counsel.

THE DEPONENT: Would that be consulting with someone who just happens to be an attorney?

MR. ALTENBERND: He's asking you about people who are an attorney, not necessarily your attorney.

THE DEPONENT: Not necessarily my attorney.

MR. ALTENBERND: Is that a fair statement?

MR. HILL: That's a fair statement.

A. Okay. Then I would say that, to the best of

my recollection, that was in a conversation with Martin Garcia on September 24th.

Q. (MR. HILL) September 20th

A. Fourth.

Q. Fourth. And what were the circumstances of that conversation?

A. I was running for reelection at that time. We had lunch that day. And certainly the bulk of the conversation revolved around my reelection bid, politics in general, but I did ask him that day -- I recall asking him two questions as it relates to the referendum: The first being whether or not he's a supporter of it, and the second being whether or not he sees any legal issues with the referendum language.

Q. Well, had he reviewed it by then?

A. To the best of my knowledge, yes.

Q. Do you know the circumstances under which he reviewed it?

A. I do not.

Q. And did you retain Mr. Garcia as an attorney?

A. I did not at that time, no, sir.

Q. When was the first time that you retained an attorney?

A. First time that I retained an attorney was when I retained Mr. Altenbernd and, of course, Martin

Garcia, you know, signed on as counsel as well.

Q. And that was when?

A. That was on November 26th, to the best of my recollection.

Q. So that's after the election?

A. That is after the election.

Q. Okay. Prior to November 6th, did you ever consult with any other lawyer or talk with any other lawyer, other than Mr. Garcia?

A. Not that I recall, with the exception of my conversation with Christine Beck, which is already on the record.

Q. Did Ms. Beck ever issue an opinion to the county commission on this tax, on the transportation tax?

A. To the best of my knowledge, no.

Q. When you had that conversation with Ms. Beck, did -- was there anybody else present when that conversation took place?

A. No, sir. It was a telephone conversation.

Q. A telephone conversation?

A. Yeah.

Q. I need to ask you: Was it recorded in any way?

A. To the best of my knowledge, no.

Q. So you're telling us about that conversation based upon your recollection of that conversation?

A. I think that's an accurate statement.

Q. Have you ever talked with Ms. Beck since then about the transportation tax?

A. After the election, I had some conversations with her about it. Whether or not we talked about it, you know, between mid-June and the election, I don't recall.

Q. And when I ask if she's ever rendered an opinion, I want to rephrase that, if I can, because the county attorney has certain prescribed duties under the county charter, correct?

A. That's an accurate statement.

Q. And among those duties is to render legal opinions to the county commission or the governing board, correct?

A. Yes.

Q. And has she ever rendered one to this date to the governing board, which is the board of county commissioners, to your knowledge?

A. To my knowledge, a formal legal opinion, I don't believe so.

Q. Now, in your activity between June and the election, did you come to know that there was a private

group that was pursuing the petition?

A. Yes, sir.

Q. And who was that private group?

A. I noted them as All For Transportation, but I now know that there's some other entity called, I believe, Keep Hillsborough Moving. I could be wrong, but I certainly know the group as All For Transportation.

Q. And did you ever talk with individuals who purported to represent one or both of those?

A. I can recall one meeting that was in my office on July 19, 2018. Brian Willis and Rena Frazier came out to meet.

Q. Who was that?

A. Rena Frazier, Brian Willis and Rena Frazier.

Q. What was the purpose of that meeting?

A. Just to let me know that they were out in the field with the petitions. I believe they shared with me at that time a copy of the referendum language. Of course, I already had that. I had received it in that e-mail just more than a month prior.

It was a short conversation. In looking at my county calendar, we had the meeting set for an hour. I'd be surprised if the meeting lasted longer than 15 minutes. It was a short, short meeting.

Q. And they were obviously pursuing the petition or had people pursuing the petition?

A. That was my understanding, yes.

Q. Did you know whether there was a group that was opposed to the petition that was working to keep the petition from reaching the number of signatures required?

A. At that time, I don't believe I did.

Q. When was the first time you learned that there was an opposition group?

A. Well, in reviewing my phone records for request for production, I came across a text message to Sam Rashid. I believe the date of that message was August 14th, if I'm not mistaken. So Sam and I would have certainly started talking sometime shortly thereafter. It would have been that period in time where I would have begun to recognize that there was a group forum to go oppose.

Q. And who is Sam Rashid?

A. He's a political activist in eastern Hillsborough County.

Q. Is he in your district?

A. I believe he is. His business certainly is, and I'm quite certain that he resides within my district as well.

Q. Were you aware that he was involved in the organization of a group of people or other entities that were going to oppose the petition?

A. At some point in time, I was, absolutely.

Q. And when did you learn that? Was that before or after the conversation with Martin Garcia?

A. That was likely -- could have been before, could have been shortly thereafter. I know I held a press conference on October 18th. I know I was provided some quotes for some political mail, a statement for a robocall, but that would have certainly been leading up to the election, as people were starting to go out to the ballot and vote. So I would say at the earliest, it would have been around the time that I met with Mr. Garcia.

Q. Well, let me ask you this. I'm interested in knowing what type of activity there was on behalf of the opponents. Now, you've already identified robocalls; is that correct?

A. Yes, sir.

Q. What other activity was there?

A. I'm only aware of robocalls and political mail.

Q. Political mail. And who would do the mailing?

A. I'm not sure who did that mail.

Q. Well, I have seen in the records that you produced Bascom, B-a-s-c-o-m, which apparently is a political outfit out of Tallahassee; is that correct?

A. That is correct.

Q. Were they involved?

A. They were not.

Q. They were not involved?

A. Not in the political campaign, to the best of my knowledge, no, sir. I was not in touch with Bascom until after the election.

Q. So they were not involved, to the best of your knowledge, before November 6th?

A. To the best of my knowledge, no.

Q. Who was involved? Rashid? Calvert?

A. Uh-huh.

Q. Okay. You mentioned those names already. So who else?

A. Well, I mentioned in my request for production that I had had conversations with Karen DeRoche. I recall a conversation or two. She's an activist, as well. Former HART board member, also.

Of course, I spoke with Senator Tom Lee from time to time. As you know, he appeared on at least one of those political mail pieces as well. So, you know, he was involved in some capacity, at least on the

political side of things.

Q. Can I ask you this, sir: You talk about a mailing campaign. How extensive of a campaign was that in terms of quantity of mailers?

A. I wasn't involved in that side of it. I would have no idea.

Q. Well, who was?

A. The reason I say I'm not sure who was is because political mail has to be paid for and approved by some appropriate political entity. I do know that there's a group out there called No Tax for Tracks, for example, is one that comes to mind. So the mail could have been done under that political committee.

I just don't recall which political entity or political committee was behind the mechanics in the funding of the campaign. I was only involved on the political side of it.

Q. Was No Tax for Tracks involved at all in the campaign against the transportation tax?

A. I'm not sure.

Q. Okay. In a number of e-mails that we have seen, you use the word "team" and your call for a team meeting or a team conference call. Who is on the team?

A. That was after I had retained legal counsel. So my team would have been myself --

Q. This was after the election, then?

A. Absolutely.

Q. Okay. And who are the team members?

A. When I write my "team," in that context I'm thinking of, obviously, myself, my legal counsel. And Bascom was on board to help me with communicating the matters as it relates to the lawsuit -- as they relate to the lawsuit.

Q. And how did Bascom get involved in this?

A. I believe it was Senator Lee that introduced me to the folks, the Bascom group.

Q. Did they come down, somebody from Bascom come down and talk with you?

A. No, sir. We did everything via conference call.

Q. Who paid for the mailers?

A. The mailers?

MR. ALTENBERND: What mailers?

Q. (MR. HILL) You referred to mailings.

MR. ALTENBERND: Preelection, you mean?

MR. HILL: Preelection, yes.

A. That's what I'm getting at. I was asked by Sam Rashid, who was presumably working with a duly authorized and lawful political committee to do this mail. So I provided him with quotes, a voice-over for a

robocall.

I don't recall -- certainly without having one of the mail pieces in front of me, I'm not sure which political committee or committees would have paid for and approved that political mail. I was not involved in that side of the campaign, if you will.

Q. (MR. HILL) Did you have e-mails with anybody on that side of the campaign?

A. Just individuals that I know like Sam Rashid. I don't recall having any e-mails that would identify the political committee.

Q. Okay.

A. If I do, I certainly don't recall and certainly wasn't involved in that side of the campaign.

Q. Which side of the campaign were you involved in? Maybe that will help narrow it down some.

A. Giving the approval to use my picture, quotes. I recorded a robocall, things like that.

Q. Well, where is the recording of the robocall?

A. I couldn't tell you.

Q. Do you have copies of the pictures that you gave?

A. I don't believe --

Q. Are they pictures of yourself?

A. They are, on a piece of political mail that

went out to voters. That's not something that I would have kept in a file.

Q. But in the sense that you provided the information that was on those mail-outs --

A. I didn't provide the picture. They took the picture from a website or someplace. I mean, that's commonplace, you get political mail all the time where someone's taken a picture of an elected official off the Internet or something like that.

Q. And you indicated that you made a recording of some kind; is that correct?

A. They're known as robocalls.

Q. And where did you make that recording?

A. Via phone. You pick up the phone, you dial a toll-free number. You enter a conference code, similar to what this gentleman's done. You record the message. You hit a button and it accepts the message, and I'd have to ask an IT professional what happens to it from there.

Q. And you never kept a copy of it?

A. No, sir. And I don't believe it's common practice to keep a copy of something like that.

Q. Well, I'm not asking that. I'm just asking if you kept a copy of it. You didn't have any reason to keep a copy of it?

A. No. And I just want to look to my attorney and state for the record that, you know, we're now talking about the political campaign as it relates to this tax. We're not talking about the legal realm.

Q. Well, you objected to talking about the legal realm. So I'm trying to find an area we can discuss and the political realm is what you were involved; is that right?

A. Well, certainly, I have a legal issue with this as well. What I have objected to is answering questions that I believe should be directed to my attorney that are questions of matters of law.

Q. I'm going to show you what we'll mark as Exhibit 5.

(Exhibit No. 5 was marked for identification.)

Q. (MR. HILL) Exhibit 5 has several pages, but I'm looking at the one that I think is in front of you there.

MR. ALTENBERND: May I have one as well? I don't have one.

Q. (MR. HILL) And it refers to -- it's got a Bates stamp on it of White000067.

A. Okay. I have that in front of me.

Q. Okay. And it refers to a series of -- looks like series of exchanges, e-mail exchanges. Can you

recognize which one is from you?

A. Yes. It looks like the ones with the dark background and the white text are from me.

Q. All right. And the ones that are just printed without the shaded background are from Sharon Calvert?

A. They're to me from Sharon Calvert.

Q. And in there you will see there's a reference to $2,000 per 10,000 texts or 10,000 texts -- or, excuse me, $10,000 for 50 [sic] texts; is that right?

A. That's correct.

Q. Who's paying for that?

A. I have no idea. That's what I'm getting at. In the campaign world, you know, you have to do campaigns through a duly lawful political committee. I know these people as individuals and I trust them as individuals, but which committee they were doing this through, I would assume it's through No Tax for Tracks, but without having a mail piece in front of me to see who it was paid for and approved by, I couldn't tell you.

Q. Well, let me ask you this, sir: This appears to be a strange entry of $2,000 for 10,000 texts. Why would they be telling you that if you have no interest in that?

A. Well, because there were occasions where

Sharon was asking if I could help with fund-raising in this endeavor, but I never got involved in the fundraising side of it. And you can see -- you can see I gave her a thumbs up and the conversation about that ended there. There are no further conversations about fundraising because I never got involved in that end of it, frankly, because I was raising money for my own reelection campaign. I just didn't have any resources available to help them in that endeavor.

Q. And as I understand it -- although I don't see a date on this e-mail. I don't know if you could date it, but it was before the election?

A. This is a text and --

Q. Excuse me, a text. A text before the election?

A. Yeah. I can tell by the content of what's in here that it's before the election, yes. This pertains to the campaign.

Q. This refers to an interview. Is this the press conference that you're talking about?

A. No, sir. That was a stand-alone interview by Sharon Parker with 970 AM.

Q. Let's talk about your press conference. You refer to that as taking place on October 18, I think you said?

A. Yes, sir.

Q. How long did that press conference take?

A. Actually, in an anticipation of this deposition, I just took a look at it today a few hours ago. There's a video copy of it on YouTube, and YouTube shows it as being 16 minutes and 3 seconds long.

Q. And where did that take place?

A. County Center.

Q. And who called the conference?

A. I did.

Q. Was that called in connection with your reelection campaign or was that called in connection with the transportation tax?

A. In my official capacity.

Q. As what?

A. As a county commissioner.

Q. But related to the transportation tax?

A. Yes, but not in any way related to my campaign.

Q. That's what I'm asking, yeah.

We started down this track, and I want to pursue it, about the things that you know of that occurred that took place in opposition to the tax. Now, you've got a press conference that took place and that was something you called and you answered questions or

made a statement and then answered questions?

A. I made a fairly lengthy statement, prepared statement, and opened the floor to questions and answers.

Q. Where can we get that statement?

A. YouTube. It's labeled "Stacy White Press Conference." I believe it was posted the next day, October 19th, if I'm not mistaken.

Q. Your statement was 16 minutes or the --

A. Well, that includes the question-and-answer portion of the press conference, but what's on YouTube is just over 16 minutes long. And to the best of my knowledge, that's the press conference in its entirety including the statement and the question-and-answer session.

Q. You had a prepared statement, I take it?

A. Yes, sir.

Q. And where is that statement?

A. I don't know if I have that in my possession.

Q. Let me digress for a second. What have you done to keep all the records that you had with respect to the transportation tax that you personally had?

A. Well, as you can see, I produced a binder that's inches thick, but, you know, there is the concept of a transitory record in the Public Records Act and,

you know, in that context I prepared my own statement, typed it myself. No one else laid eyes on it. I used it for my press conference. I don't believe that there's a requirement for me to -- they're notes, essentially.

Q. I'm not saying a requirement. I'm asking -- as I understand it, from looking at some of the information we have, you had the county serve as the custodian of records?

A. That is correct.

Q. Is that right?

A. That is correct.

Q. And do they have a copy -- does the county have a copy of this or do you know?

A. I don't believe they do because they were personally drafted notes just to keep myself on track throughout the course of the press conference.

Q. And did you keep those personal notes somewhere?

A. I don't believe I did. I'd be happy to look for them, but I don't believe I did.

Q. Well, I think they're within the scope of the request to produce, but I didn't know if you looked for them or not. You have not looked for them as of today; is that correct?

A. Well, I have gone through my records extensively for this request for production. So -- let me rephrase that and say I'd be happy to look again for those notes, but I don't generally keep notes of that nature.

Q. I would ask that do you that and if you find them, if you can give them to Mr. Altenbernd --

A. Absolutely.

Q. -- and we can determine if we can get them or not.

A. I would remind you, though, that there's a video of the press conference in the public arena and there wouldn't be anything that I didn't say in that press conference that was in my notes.

Q. Okay. Well, I want to go down and return now to the line of questioning dealing with what was done in opposition so that the public would at least be exposed to the other side of the petition.

A. Okay.

Q. And as I understand it, we now have a press conference?

A. That's correct.

Q. This e-mail that's Exhibit 5 talks about an interview with Ms. Parker, who was the electronic media person; is that correct?

A. She's a radio journalist on 970 AM, in the mornings.

Q. Okay. You talked about mail-outs or mailers. I'm not sure what language you used. Mailers, I guess.

A. They call them "mailers," in the political world.

Q. Okay.

A. Or "mail pieces," sometimes they're called "mail pieces."

Q. And all this is before the election. You've talked about texts. Tell me about the texts that you're aware of.

A. Well, the only robotexts, the mass texts that I'm aware of were from the side that was in favor of the tax. I'm only aware of mailers and phone calls, robocalls for those that were opposed to the tax.

Q. And the robocall is -- my limited experience, it's a call that I get usually when I'm sitting in a deposition like this, the phone rings. It's somebody telling me what they want to sell me or whatever, but essentially a robocall is a blind call to numbers; is that correct?

A. I don't want to call it a "blind call." I mean, it's targeted to phone numbers that presumably belong to people that have a track record of getting out

and voting, yes, sir.

Q. Insofar as that track record is concerned, do political activists have that record and you as a politician, do you have that record?

A. I would say that some do. Me as a politician, no, I don't have that record. Me as a candidate, yes, my political consultants and whatnot would have those records, yes, sir. I can't say that I personally retained them because they start over fresh every two years with each new campaign.

Q. Well, can you give me a ballpark number of robocalls that were made in opposition from your camp, if you will?

A. I cannot because I was -- we're now talking about the campaign world and I was not involved in that side of it. I know the crux here seems to be that there's a lack of understanding of what I term as the "side" of it.

There's the side where someone is running a campaign, they're raising money, they're involved with a political committee. And then there's the side of it where they might reach out to a candidate or an official such as myself, to make a political statement that they could then use on these mailers, or in the case where I recorded a message, on a robocall.

I was not involved in that side of it where they're looking at data and targeting voters and raising money and spending money. So from that aspect, I have no idea how many people they reached out to.

MR. ALTENBERND: We've been going an hour and a half. We don't have to stop right now, but at some time.

MR. HILL: I understand.

Q. (MR. HILL) Let me ask you this: You divided for me the people involved in the opposition and you've referred to one of them as the campaign group, if you will, that raises money, solicit funds, and involves themselves in a variety of activities. Who are those people?

A. Well, it's clear in this text message that Sharon Calvert was involved in that end of it. You can see evidentially at some point, either verbally or in a previous text -- I don't know if these texts are in chronological order. Oh, yes, they are.

So if you go to the one labeled White000066, she says, "Thanks, we would like to send out our text messages too, but we need more money. We are ready to go with vendor, just need money. Any help will be greatly appreciated."

From there the conversation continues and

there comes a point where I say, How much do we need to raise for the texts? And she gives an answer and I give her thumbs up. And of course, you can see that I went cold from there because, as anyone that's run for political office can tell you, you have to watch your own back first. And, frankly, I was raising money for my reelection campaign and didn't want to get involved in trying to commit resources to this group.

MR. HILL: Okay. We'll stop. Take 15 minutes.

MR. ALTENBERND: That's fine.

(Brief recess.)

BY MR. HILL:

Q. We talked about a recording that you made. Where did you make that recording?

A. From my home via telephone.

Q. The thing that was on YouTube?

A. No. What's on YouTube is my press conference that I conducted at County Center on October 18th.

Q. Okay. But the recording that you had for robocalls you just made from your home?

A. From the comfort of my own home, yes, sir.

Q. Okay. We were going down the track of trying to identify all of the things that were done by the opponents prior to the election, and so far we've talked

about Ms. Parker, we've talked about mailers, we've talked about robotexts. What else? Press conference.

A. Yeah. But to the best of my knowledge, though, I don't have any knowledge of any robotexts by those opposed to the tax, only in favor of the tax.

Q. Well, you said a robocall was in opposition to the tax, I thought.

A. A call is a voice recording --

Q. I understand.

A. -- via traditional telephone. A mass text, you go into the text message feature of your phone and it's a text message to them.

Q. All right. Would you have an approximation -- a minute ago or earlier today, you said 1.4 million people that you were speaking for or you were speaking to.

A. That's how many people live in Hillsborough County, just north of 1.4 million people.

Q. What percentage do you believe that you had contact with through robocalls or any other things?

A. I have no idea because I was not involved in that aspect of the campaign.

Q. Well, who did the robocalling?

A. Well, I did a voice recording, but then someone -- I did that for Sam Rashid. So then Sam

Rashid, through some political committee, would have had certain numbers dialed and had the folks that answer the phone receive that message.

Q. Okay. You --

A. But I have no idea how many people were called or reached in that process because I wasn't involved in that arm of it, if you will.

Q. But you had said earlier that robocalling is not blind calling, as I -- that was my word. You said it's target calling, targeting people who have a record of voting?

A. Everything to do with a good campaign, regardless what it's a campaign for or against, is all about targeting.

Q. My question to you now, sir, is: How many people, roughly, if you don't know -- if you know exact, that's fine, but how many people do you believe are subject to robocalling as a target?

A. That depends on the campaign and the issue. And since I wasn't involved in it for the campaign related to this tax, I really have no idea. That's a different side of the house, if you will, is a better way to put it.

Q. So you're telling me that Sam Rashid, as an example, never told you, I contacted 200,000 people or

500,000?

A. He did not divulge any of that information to me. How much was raised, how much was spent, how many people were targeted, I was not made privy to any of that kind of information.

Q. Was he -- how would you describe the -- his intensity, if you will, of campaigning? Was he campaigning every day or was he campaigning once a week, how was he doing it in terms of opposing the tax?

A. I have no idea.

Q. He didn't share that with you?

A. He did not.

Q. How about Bascom -- the Bascom was after the election, right?

A. Correct. They had nothing to do with the campaign on the political side of it.

Q. How about Calvert, did she share with you how many people she contacted directly or indirectly?

A. No. She sent me this text message indicating what it would cost to call or, in this case, text different numbers of people, but I have no idea whether she raised the funds, how much she raised, and how many people she was able to contact. In fact, she may not have been able to do the texts at all because the text message on the one titled White000066 says, "Thanks. We

would like to send out our text messages too, but we need more money. We are ready to go with vendor, just need money. Any help greatly appreciated."

I have no idea whether she raised all the money she needed, none of the money, some of the money. I have no earthly idea how many people they were able to contact in this campaign.

Q. If there was a presumption that whatever she did, she did through an authorized committee, that would be a logical presumption?

A. That's my presumption, yes, sir.

Q. But that would be the law?

A. That would be the law, yes, sir.

Q. So you don't know the name of her committee, or do you?

A. I mean, look, I know that Sharon Calvert is associated with a committee called No Tax For Tracks, but there are various committees that could have been utilized for this campaign.

Q. And that committee would -- if I understand just reading the newspapers and watching TV, that committee would have records of its activity?

A. That's a question of law. I don't have the statutes in front of me and I'm not in a position, as a non-attorney, to answer anything about a political

committee's record retention requirements.

Q. Do you have a political committee or did you have one working for you for reelection?

A. No, sir. Everything I sent out for my own campaign was paid for and approved by Stacy White for Hillsborough County Commission.

Q. Did you keep a record of it?

A. I didn't, but my political consultant that manages my campaign kept any records as --

Q. Who was that?

A. -- required by law.

Audie Canney works on my political campaign. She had nothing to do with this.

Q. That's what I was going to ask next. Okay. Thank you.

Now, talking about the other side, the campaign side, what is your knowledge of the things that they told you that they did or were going to do in terms of opposing the petition; for instance, robotexts or mailers?

A. All I'm aware of is a voice recording that I provided for robocalls and a statement that I approved to be included on a mail piece or mail pieces. I have no idea how many.

Q. At some point in time, do you know if there

was any polling done before the election on how the voters were reacting to the campaign for and against the petition?

A. To the best of my recollection, I may have heard about some polling information along the way, but I certainly don't recall laying eyes on any type of a professionally done poll.

Q. What was your understanding of the results of the polling that you heard about?

A. I recall hearing that it was looking favorable for the tax to pass, but I don't recall any exact number or percentage breakdowns.

(Exhibit No. 6 was marked for identification.)

Q. (MR. HILL) I've handed you a packet of documents that you produced. These are e-mails. And once again, the shaded e-mails are from you?

A. For the record, they're text messages.

Q. I'm sorry, text messages.

But the shaded texts are from you?

A. From me.

Q. To someone?

A. To someone.

Q. Presumably Sam Rashid?

A. In every piece of paper that you've handed me, the ones that are shaded are from me to Mr. Rashid and

the ones that are not shaded are from Mr. Rashid to me.

Q. All right. And if you'll turn to the second page, there's an e-mail [sic] that says "First piece dropped today." What does that mean?

A. That means that they dropped a mail piece or a mailer in the mail.

Q. It's not a single letter mail, though. You're talking about a packet of mailers of some kind?

A. Obviously, it's a mass mailing.

Q. And then you have, from what you had wrote right after that, that a -- it shows 55 percent of those that already voted gave it a yes vote?

A. Yeah, but you'll notice that I put the word "poll" in quotes and that it was done by ABC, which is a news network. And quite frankly, polls that you see done in that nature are usually garbage, which is why I put the word "poll" in quotes and used the term loosely.

Q. And Sam responds later on, "When our pieces start hitting" -- presumably talking about his mailers -- "that number will drop like a rock." Is that right?

A. He does make that assertion, yes, sir.

Q. Did you agree?

A. What's that, did I agree?

Q. Yes.

A. Let's see if I agreed at any point. This is way back in October. You know, he says, "Yes, we can," in kind of a comic sort of a way, and I gave him some thumbs up. Yeah, that looks like I agreed with him.

Q. Then it talks about more drops. How many more drops or do you know if there were more drops?

A. All that I know is what's contained in these text messages that I produced. I was not privy to any exact numbers.

Q. Okay. There seems to be a discussion with respect to using your name in text messages, and at one point in time it looks like there was discussion of whether you could be of help in the east and northwest of Hillsborough County.

A. Could you refer me to the page you're referring to?

Q. Bates stamped 41.

A. Forty-one.

Q. It has Sam Rashid's name at the top.

A. Yes, sir, I see that. I'm just looking at the previous page, because I provided these to you in chronological order.

I did offer to do a text message similar to what I shared with him on the one that's stamped 40, which was a text that had been done by those in favor of

the tax.

Q. All right. And then you see on that page, the Bates-stamped page 41, Sam says, "Already being done today. Piece mails Monday. That would be the fourth drop out of seven planned."

So they're keeping you advised of what work they're doing; is that correct?

A. Not really, because what he calls a "drop," I have no idea who's targeted, how many pieces went out. That's the information that you need to really be, quote, in the know on that side of it. So telling me that they've done four drops, the fourth drop out of seven planned, that really tells me nothing.

Q. Well, let me just summarize all of this, if I can. And if it's too general, let me know.

A. Okay.

Q. But is it fair to say that the opponents had a significant amount of correspondence, context, whatever you want to label it, in terms of support for their position opposing it?

A. I cannot agree with that for two reasons. Number one, the term "significant" is a subjective term, and objectively, I have no idea how many people they reached. I mean, yes, he told me they've done the fourth drop out of seven planned, but again, I have no

idea what constitutes a drop. That could have gone to any number -- each drop could have gone to any number of voters.

Q. Was the opponent or the opposing campaign, was it active from basically when the -- it was noted that it would be on the ballot until the vote?

A. I can't say that either because, as you can see in what I produced in the request for production, I didn't even have contact with Sam Rashid until August 14th, that was me reaching out to him. And then it's all the way to October 18th, before I send him a YouTube link to my press conference.

Which by the way, for those of you that are interested, that's it in the one Bates stamped 37, right at the top, that's the direct link to my press conference.

So I mean, I think it's safe to say that I have knowledge of Mr. Rashid being involved sometime after August 14th, but I don't know when that sometime is. I mean, you can see we didn't communicate again until October 18th.

Q. From October until the November election, was there an active campaign opposing the petition?

A. I think that's fair. Even with a subjective term like "active," yeah, I'd say they were at least

somewhat active in the campaign.

Q. All right. Let's shift gears for a moment. Let's return to Exhibit No. 1 --

A. Okay.

Q. -- which is the petition itself.

MR. ALTENBERND: It's a complaint for declaratory judgment.

MR. HILL: No, no.

MR. ALTENBERND: I'm sorry, we never numbered that.

A. Okay. The petition itself. Yes, sir.

Q. (MR. HILL) You see the ballot summary that's on there?

A. Uh-huh.

Q. And you see under the ballot summary there is a list of projects, would you please review those projects for a minute. I'm looking just at the summary.

A. Oh, just at the summary?

Q. Yeah.

A. Okay.

Q. Are all of those projects within the projects that are permitted by 212.055?

A. I cannot say that Brandon, Town 'n' Country, and Sun City Center received any special allocations --

Q. No, no. I'm looking at the list of projects,

not the agencies. The list of projects.

A. I would say that it's true that to some degree each of those could be funded through the tax.

Q. Well, because the way you answered that, now I've got to ask you: What do you mean by "some degree"?

A. Well, if you look at --

Q. Let's take it one at a time.

A. Okay.

Q. Well, the roads and bridges, is that clearly permitted under 212.055?

A. I would say that it's -- I think any rational voter would look at that and --

Q. No, sir. I'm not asking you --

MR. ALTENBERND: He's asking you a legal question, but go ahead and answer it. Okay.

A. Okay. So my attorney recognizes that this is a legal question that I'm being asked.

Q. (MR. HILL) If you're not comfortable answering it, that's fine with me.

A. So I think I'm receiving advice from my attorney to say that it's okay that all seven of these can be funded with the tax, yes, sir.

Q. Okay. Now, as I understand under the charter, Article 11, of the amendment or the charter, the Hillsborough County Charter, you can oppose a tax under

212.055 two ways. One is the county commission can come up with the tax and what they're going to do with it for transportation, or the citizens can do it; is that correct?

A. That's not -- that's not --

MR. ALTENBERND: That's your understanding of the law?

Q. (MR. HILL) No, your understanding.

A. No, sir, that's not my understanding of the law.

Q. Okay. Is there a provision for the county commissioners to impose a tax, if they chose to do so?

A. Yes.

Q. Is there a provision for a citizens' initiative, if the citizens decide to do so?

A. Yes. And the reason I originally answered no is there's also a provision that allows for the process to work through the charter review board that convenes, I believe, every five years.

Q. Okay. So there's three different ways. The charter review board is every five years like the constitutional provision every 20 years, if you draw an analogy?

A. And that's to amend the charter in any way, not even just for transit tax, but, yes, sir.

Q. But then does that have to be voted on by the people?

A. It -- it does. Of course, if it goes through the county commission route, that involves first a vote of the county commission. If it goes through the charter review board, it gets sent to the county commission for a vote. If it goes the citizens' petition route, then they have to gather the petition signatures that we've already spoken about.

Q. But ultimately before an amendment can take place to the county charter, the people have to vote?

A. That is indeed true.

Q. Under either of the three processes?

A. Yes, sir.

MR. ALTENBERND: To change the charter?

MR. HILL: To amend the charter.

MR. ALTENBERND: Yes.

Q. (MR. HILL) To amend the charter, it takes a public vote for any one of the three?

A. All three routes ultimately lead to a vote of the public, yes, sir.

Q. In this case, it was a citizens' initiative, out of the three choices. That's the one that pushed this transportation tax; is that correct?

A. That is correct.

Q. And with respect to that, the citizens of Hillsborough County voted 57.3 percent in favor of the tax?

A. With all due respect, sir, 57 percent of the people could theoretically amend the charter to say that we should segregate our county facilities. And in that context, we would have a real legal problem, even though the 57 percent of the people in this county --

Q. That's not my question. My question is --

A. Well, let the record reflect that.

Q. Well, that's fine, but let me just ask the question. The question is: In this instance, did 57.3 percent vote in favor of the petition?

A. I don't have the numbers in front of me, but 57.3 sounds correct to me.

Q. That's 282,000 and a few more voters?

A. That figure sounds correct as well.

Q. Okay. Now, from your perspective as a county commissioner, what significance does it have, if any, that 282,000 people in this county voted for the tax?

A. I'm not -- can you repeat the question or better clarify the question?

Q. What significance is it to you that 282,000 people voted for the tax?

A. With all due respect, and I'm not trying to be

disrespectful, but the significance to me is that 282,000 plus voted in favor of this article in the county charter.

Q. Well, as a politician, are you influenced by 282,000 people?

A. Sir, I think that's the problem with politics today.

MR. ALTENBERND: He's not here as a politician. He's here as a constitutional officer.

Q. (MR. HILL) As a county commissioner elected by the public, are 282,000 people in favor of something that's of significance to you or are you just saying that's 282,000 people?

A. Sir, I think we had politicians in the 1950s that pushed back against issues with civil rights that, you know, the majority may be pushing one way, but I'm going to show some leadership and I'm going to push a different direction. And I believe strongly that an unlawful referendum and unlawful proposed charter amendment was presented to the voters of Hillsborough County in the November election.

Q. So in terms of honoring what the people voted on --

MR. ALTENBERND: Mr. Hill, we've probably had enough of this issue and the legal supremacy of

general law versus an article in the charter, and you know that. And whether the voters voted 100 percent or not, the question is whether under the Florida constitution one is supreme over the other and that's got nothing -- the questions have nothing to do with this lawsuit at this point.

Q. (MR. HILL) What is the significance to you of Hillsborough County being home rule or charter county?

A. It means that we are governed, generally speaking, by a county charter and that -- well, I think any further statement would start to become an issue of law, so I would defer to my attorney on that.

Q. So you have -- beyond that you have no opinion, other than what your counsel would tell you is a legal opinion?

A. That is correct.

Q. In one of your pleadings or something that you filed, you talked about a, quote, small group of people that were involved in the petition process. Who were you referring to when you talk about a small group of people?

A. A small group of people that funded not only the petition drive, but the campaign in favor of the referendum as well.

Q. And who are the small group of people?

A. I don't have their names in front of me, but I certainly -- Mr. Vinik certainly comes to mind. I believe Mr. Sykes made a contribution as well, but I think when you look at the roughly $4 million raised, I think anyone would come to the conclusion that the majority of the money raised came from just a small group of people that could make very large contributions to the campaign.

Q. And do you know that or are you just suspecting that?

A. No, that's a record that's available to the supervisor of elections' office.

Q. Well, I understand that, but have you gone and reviewed that record?

A. I have. I don't have that record in front of me. So, you know, I -- I can't speak to exact figures, but, yes, I have reviewed that record.

Q. Why did you review that?

A. Just so that -- to know who's backing this referendum and who's campaigning in favor of it. Something you always want to know in this --

Q. Well, let me ask you this: Are you suggesting, either directly or indirectly, that in some way that this small group of people stand to profit from any of this?

A. No, sir. I'm not making that assertion.

Q. Are you asserting any type of improper activity on behalf of this small group of people?

A. No, sir. Funding a political campaign and campaign in favor of an issue is not improper activity.

Q. Well, I'm trying to find out if by innuendo or indirectly you're suggesting that a small group of people can't put a petition together unless they have something to gain from it?

A. No, I can tell you the innuendo. The innuendo was that this was not a true grassroots campaign. That's the innuendo. This was a funded campaign that was funded by sophisticated money and political interests. That's not illegal, that's not improper, but it was definitely not a grassroots campaign.

Q. Well, are you saying that the people that voted for it are not part of a grassroots part of Hillsborough County?

A. I know that when I go and vote, I'm not a part of a grassroots network.

Q. That's what I'm asking. Are you suggesting that somehow or another the people that voted are not part of what you're calling "grassroots" of the county?

A. With all due respect, this article is a complex legal document. At our last public meeting, we

had a workshop on this article last week and our high-level -- we had a high-level member of staff, John Lyons, who didn't even have his facts straight about what Article 11 requires and does not require. That's on the record.

So I think to say that each and every one of those 282-plus-thousand people fully understood this complex legal document, no, I don't think they all did.

Q. So are you saying, then, that in Hillsborough County we have a bunch of ignorant voters?

MR. ALTENBERND: I'm going to object to this question and instruct him not to answer it. The issue deals with what was in the summary that the voters read as compared to what was in Article 11.

A. I will say, for the record, that I don't think John Lyons is ignorant, but he clearly --

MR. ALTENBERND: Stop, stop.

Q. (MR. HILL) How large was the group that was opposing this petition?

MR. ALTENBERND: Define "group," please.

MR. HILL: I'm sorry.

MR. ALTENBERND: What do you mean by "group"?

A. And I would ask that you define "opposing." Against it?

Q. (MR. HILL) Was there a campaign against it?

A. Yes.

Q. Was Mr. Rashid and Ms. Calvert involved in that campaign?

A. Yes.

Q. How many others were involved, how many people were involved in the campaign against it?

A. I have no idea because I wasn't involved in that arm of it. The only folks that I can recall conversing with or communicating with that were involved were Sam Rashid, Sharon Calvert. I spoke once, maybe twice with Karen DeRoche. And, of course, I mentioned that Senator Tom Lee was provided in the same way that I was, providing quotes and things like that, but I don't know that he was involved in the mechanics.

Q. You're saying on the pro side of the campaign there was a small group, but on the other side of the campaign, the opponent side of the campaign, other than those three or four people, you don't know anybody else from a personal standpoint; is that correct?

A. That's correct.

Q. Is there a record of who those people might be?

A. Perhaps in pulling the information on any political committees who the campaign was run through, there may be some information available.

Q. But you can't even tell me the names of the political committees; is that right?

A. Again, I believe that -- that at least some of the mail went through No Tax For Tracks, I believe. I'm not 100 percent certain, but no, I can't tell you with 100 percent certainty what political committee or committees were used in the campaign.

Q. Okay. Shifting gears totally now. In the course of what you answered earlier today, you talked about votes at the county commission on advertising for the IOC?

A. Yes.

Q. And you talked about an interlocal draft and you talked about the bond resolution.

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Okay. I want to talk about, just for a moment, the interlocal agreement. What is the purpose of that, as you understand it?

A. As I understand it, it is to essentially spell out the duties and powers of the IOC, the independent oversight committee.

Q. Okay. And that's it? What about the allocations?

A. I don't believe the allocations are referenced in that resolution. If they are, I don't have recollection of that.

Q. So the only thing that you can recall is the IOC, the independent oversight committee?

A. To the best of my recollection, that proposed resolution -- I'm sorry, interlocal agreement --

Q. Interlocal agreement is what I'm talking about.

A. -- deals heavily, if not solely, with the independent oversight committee.

MR. ALTENBERND: We're talking about a proposed.

MR. HILL: I'm sorry?

MR. ALTENBERND: We're talking about the proposed agreement.

MR. HILL: Oh, yeah. This is the proposed agreement.

Q. (MR. HILL) There's a draft, I think?

A. A draft, yes, sir.

MR. HILL: I'm going to have this marked as Exhibit 7.

(Exhibit No. 7 was marked for identification.)

Q. (MR. HILL) Mr. White, I've handed you what we have labeled as Exhibit No. 7,

A. Yes.

Q. And I'll represent this is -- what I was given is a copy of the draft that you voted on that you voted against; is that correct, sir?

A. Yes, sir.

Q. If you'll look at page 3, Section 3, does that help you recall that the interlocal agreement deals with more than the independent oversight committee?

A. Again, this is a question that's difficult to answer with a yes-or-no answer, but this references Section 11.05. And as it relates to this lawsuit, I don't understand any of the counts that I've raised to take issue with Section 11.05.

Q. Well, I'm not saying you are. All I'm saying is does this help refresh you -- your interlocal agreement draft involved more than the IOC?

A. I would say technically, the answer's yes.

Q. If you prevailed in your lawsuit and Article 11 would be declared invalid or unenforceable or null and void, what affect would it have, if you know, on the interlocal agreement?

A. That's clearly a legal question.

Q. So you don't know?

A. As a matter of law, no, sir.

Q. Well, as a matter of a county commissioner

that votes on the interlocal agreement, what did you understand the effect would be?

A. I would ask the county attorney's office what the effect would be.

Q. So you have no idea independently of a lawyer?

A. That is correct because that's a legal question. That's a question of law.

MR. HILL: Let's mark this as Exhibit No. 8. It's the home rule charter.

(Exhibit No. 8 was marked for identification.)

Q. (MR. HILL) If I understand Section 4.08 -- it's not what I understand. I'm sorry, let me rephrase that.

What is your understanding of 4.08 insofar as taking action or board action, does it require a majority for any board action that could be taken?

A. For the board as a body to take action, that is true. I do know that state statute and perhaps certain board policy may require a super majority vote in some cases, but yes, I would say that this prescribes that for the body to adopt an ordinance resolution through a motion, that it takes at least a simple majority.

Q. And if I remember your testimony earlier, you have not made any proposal to the board in an official

motion, which is required under 4.08, for the board to do anything, to either oppose or support the petition; is that correct?

A. I have not.

Q. Or Article 11?

A. I have not.

Q. Prior to the vote on November 6, and after the matter was officially placed on the ballot on October -- excuse me, August 15, if I understand those dates.

A. August 8, I believe.

Q. August 8. Sorry, sorry.

August 8 to November 6, during that period of time did you consult with any attorney about filing a lawsuit to prevent in some way this transportation tax from being effective?

A. Does the question mean just someone that's credentialed as an attorney or someone that's agreed to be my attorney?

Q. Either way.

A. Yes, I've had a couple conversations with Martin Garcia.

Q. Okay. And at the time that you had those conversations, because he didn't come on board for you until after the election, at the time you had those conversations, did he give you advice about filing

before the election?

A. He did not.

Q. Did he say not to do it?

A. He did not.

Q. Did you ever discuss it?

A. I don't recall. I do know that at some point along the way, I had knowledge that -- at least as I understood to be correct, that a lawsuit as it relates to Counts 1, 2, and 3, cannot be filed until such time that the referendum becomes law. I believe it was Ms. Beck that told me that in mid-June.

I'm not 100 percent certain of that, but I do know that at some point I had awareness that at least what I -- I was aware that I perceived to be correct, that a lawsuit could not be filed on the first three counts until such time that it's law and inconsistent with general law.

Q. You can't pinpoint that, you can't date it, you can't say who told you that. Is that correct on all those points?

A. I mean, I can say that I'm fairly certain that it was Ms. Beck that told me that in June, but I'm not 100 percent certain.

Q. Well, I think we're dealing with 100 percent here.

A. Okay.

Q. So you're not 100 percent certain?

A. That's right.

Q. In your role as a county commissioner, do you have interactions with county commissioners or city commissioners or city council people in other areas of the Tampa Bay area?

A. Very rarely do I interact with the other county commissioners, because even if you get together and talk about your vacation or how the kids are doing, if people see you talking they can automatically begin to assume there's government and a Sunshine Law violation. So I very rarely interact with other commissioners outside of publicly noticed forums for that reason, but yes, I do, on occasion, speak with city commissioners and members of other boards.

Q. And with respect to the ones that you may include in those with whom you speak, is St. Petersburg one of the groups that maybe you've spoken with, one of the commissioners or counsel?

A. To the best of my knowledge, no. I'm not even sure that I can -- well, I was going to say I'm not sure I can name a St. Pete city commissioner, but I do believe that a St. Pete city commissioner serves on the estuary board with me. Outside of that, I can't recall

ever reacting with any St. Pete city commissioners.

Q. Did you have any direct communications with Keep Hillsborough Moving?

A. Unless you count that July 19th meeting with Brian Willis and Rena Frazier as such a communication, no, I don't recall any other communications.

Q. What about All For Transportation?

A. The meeting with Brian Willis and Rena Frazier in July.

Q. So up to the election, you never had any contact, other than that July meeting, with either AFT or KHM?

A. To the best of my recollection, no.

Q. And afterwards, have you had any conversation with them; that is, after the November 6 election?

A. I certainly haven't had any two-way conversations that I'm aware of. I know that they've levied some quotes that were clearly directed to me, but -- but no, I have not had any.

Q. What kind of quotes?

A. Quotes in the media and whatnot, you know. A press conference -- well, not press -- well, maybe press conferences, but doing interviews, press conferences, what have you.

Q. Can you give me any quotes or something

paraphrasing?

A. I'd have to look it up.

MR. ALTENBERND: I'm not sure I understand how this is going to lead to anything that's material to this lawsuit.

A. So no, I've not conversed with anyone from those groups.

Q. (MR. HILL) The petition itself, I mean, you received a copy of it in June and you presumably saw it more than one other occasion between then and the November 6 election. That's when you talked to Martin Garcia, you probably had the petition?

A. No, no. I did not have the petition.

Q. Or he did?

A. No, sir.

Q. Okay. But you saw it?

A. Oh, yeah.

Q. And you knew the petition had a copy of the entire amendment, not just a summary; is that correct?

A. Yes.

Q. And anyone who signed the petition in support of it so it could get on the ballot would have at least have had access to the entire petition because it was all in one document?

A. The answer's yes. I'm inclined to offer

another clarifier. I'll offer to clarify it. Yes, but I don't believe they had access to 212.055 Florida statutes, nor do I think that everyone that signed the petition had legal counsel with them.

Q. The petition itself refers on the front page to 212.055; does it not?

A. It references it, yes, sir.

Q. In one of the answers to interrogatories, you said that, "I have also potentially mentioned the referendum at multiple candidate forums, community meetings, political party meetings as well as speaking to the media. It is also possible that I mentioned it in passing to political and opinion leaders, other than those mentioned above. I don't keep a diary."

That's an accurate response, correct? That's your response?

A. That's my response.

Q. Okay. Who were the opinion leaders with whom you talked?

A. I don't know of any off the top of my head, but I just wanted to acknowledge in my answer, in an effort to be 100 percent truthful, that -- you know, we're going all the way back to June, that's a long time. I don't keep diaries of my phone calls. I don't keep call logs. I just wanted to acknowledge that it's

possible that at some point in passing that, you know, the referendum could have come up in a conversation, but I'm not prepared to offer any specific names. If I had specific names, the people would have been named as such.

Q. What about political leaders?

A. Again, none that come to mind, but again, you know, I've never been deposed before. I had no earthly idea back in mid-June that I would end up as a plaintiff in a lawsuit like this. So I've not kept a diary or a phone log, but, you know, I just -- again, that's just an acknowledgment on my part that, you know, if I were here today and you were to say, Well, Commissioner White, this record indicates that you may have spoken to John Doe, you know, I just wanted to acknowledge that, yes, over a very long period of time where I don't keep a diary or a phone log, that it's certainly possible that I could have mentioned it.

And I did say in passing. I certainly don't recall any substantive conversations with anyone, other than the folks that were mentioned in the interrogatories.

Q. The interrogatory also talks about multiple candidate forums. What is a multiple candidate forum?

A. Candidate forums happen throughout the course

of a political campaign. In my case, it was a campaign for reelection. So various chambers of commerce, political groups will host these candidate forums. It's like a debate, but for local offices. I've never been in a situation where they allow back-and-forth debates. So they call them "candidate forums" instead. You go up to the podium and you're typically allotted about three minutes to tell them who you are and what you believe in and what you stand for.

Q. My question, though, is not your reelection campaign, but with respect to your opposition to the transportation tax. Did you have -- did you participate in a candidate forum and talk about the tax?

A. Well, certainly, because, you know, at a candidate forum, it's certainly possible that someone during a question-and-answer session would have asked where I stand on it, for example. So I would have answered such questions.

Q. Okay. Community meetings, you're referring to chamber of commerce, Kiwanis, Rotary, that type of thing?

A. Absolutely.

Q. Political party meetings, do you recall attending any political party meeting where you discussed the tax?

A. Again, I attended multiple local Republican Club meetings, probably a Hillsborough Republican Executive Committee meeting as well. It would not surprise me to know that the tax or to find out that the tax would have come up in one of those meetings. In fact, it's likely that it did.

Q. But you don't have any specific recollection?

A. I do not.

Q. David Garcia is your assistant; is that correct?

A. One of my two assistants.

Q. One of your two assistants?

A. Yes, sir.

Q. Does he keep a separate record of what you do with him, a calendar or anything like that that shows where you are in a given time?

A. I mean, I do keep a county commission calendar. It shows where I am as an official. It would not show where I am as a candidate, though.

Q. Okay. Did you ever talk with Ed Turanchik about this? When I say "this," I'm talking about the transportation tax.

A. Ed Turanchik may have been one of those community leaders where it may have come up in passing. I certainly haven't talked about the substance of it

with Ed Turanchik, but it certainly could have come up in passing.

Q. Was Ed Turanchik part of the opponents or was he part of the pros?

A. I'm not aware either way. He could have been a part of the pros, he could have been a part of those opposed. He could have not been a part of either.

Q. Do you recall what you talked to him about, if you talked to him?

A. It would have been something nonsubstantive and in passing, if we even talked about it at all. Again, I didn't keep a diary or a call log.

Q. Have you talked to Ed Turanchik since the election?

A. I'm not sure. If I have, it's been infrequent, maybe once or twice.

Q. Have you reviewed Tyler Hudson's affidavit?

A. I've glanced at it. I've not reviewed it substantively.

Q. Can you tell me whether there was anything in there that you took issue with or was it really a factual recitation to your recollection of what's in the affidavit?

MR. ALTENBERND: He hasn't read the affidavit in a long, long time. If you want to give him a

copy and let him go line by line.

A. Yeah, that would be great.

(Exhibit No. 9 was marked for identification.)

MR. ALTENBERND: Is there a question on the floor?

Q. (MR. HILL) Yeah. The question is: Do you find anything in your review of the affidavit?

A. Oh, you wanted me to read it in its entirety. Okay. I thought you were going to direct me to a particular line. Let me just give it a quick read.

MR. ALTENBERND: There's probably a bunch of things in here that he may not know the answer to. So I'm just kind of concerned about the character of your question.

MR. HILL: I'm trying to find out if there's anything that's untrue.

MR. ALTENBERND: That he knows to be untrue?

MR. HILL: Right, right.

Q. (MR. HILL) And by the way, this is not a trick question. So I'm not suggesting there is anything.

A. No, I just -- I want to give it a complete read before I answer the question. (Reviewing document.)

I do not see anything in here that I know to

be untrue.

Q. Okay. Thank you.

Going forward, you have, in general, described two parts of the petition -- excuse me, Article 11, which troubled you or which you contest. One is the IOC and the other is the allocation. Is that a fair statement? I'm not saying there's not others, but I'm just saying those are the two major issues you had.

A. Within Article 11, as it stands today. I also have a comment that speaks to the ballot summary in such time that it went to the voters.

Q. I'm talking about Article 11. So my follow-up question to that is: If either of those was severed, would you be in favor of Article 11?

A. The requested relief was drafted by my attorney. So I'll defer to my attorney.

Q. No, I'm talking about --

MR. ALTENBERND: You're asking a political question right now. If they took out --

Q. (MR. HILL) If you took out the IOC and you took out the allocations, would you be in favor of a tax that funds these projects?

MR. ALTENBERND: Just for clarification, if you take out those things, while the uses described in here might be legal uses, the description about

how the agencies get it is tied to that.

A. I think -- I think you know that I'm not a yes-or-no guy and my apologies.

Q. (MR. HILL) I think I picked that up this afternoon.

A. If a referendum had been done lawfully pursuant to 212.055, I would not be here today as a plaintiff in a lawsuit.

Q. Well, what I'm asking is: If there's a severability clause in Article 11, which there is, as you know, if you eliminated IOC and the allocations that's set forth in Article 11, would you be in favor of the petition?

A. I don't see how that's not a question of law. I would have to defer to my attorney on that.

Q. You're not able to answer that question?

A. That's a question of law. And the reason it's a question of law is because all of the other sections of Section 11 would have to be reviewed. I mean, for all I know, if you sever those two provisions, there might be other sections within the article that didn't have to be amended in some way.

Q. Are you aware, as a county commissioner -- in your official capacity as a county commissioner, of any other part of Article 11 which creates an issue for you?

MR. ALTENBERND: Which creates a legal issue for the court. That's for his lawyer to answer. So if you want to know what he likes or dislikes.

MR. HILL: I want to know -- he's suing in an official capacity as county commissioner.

MR. HILL: I want to know in his official capacity of his county commission status, will he vote for this if those two provisions are removed.

MR. ALTENBERND: The severability issue is decided by the court, not by the board of county commissioners. They're not going to vote on the severability.

MR. HILL: Well, if the court decides to remove it would he vote for it?

A. What do you mean by would I vote for it?

Q. (MR. HILL) Would you support the tax?

A. I would carry out my duties as required by Florida statutes and by the Florida constitution, yes.

Q. Okay. And what are your duties, as you understand them, by Florida statutes and the constitution? Is that what you said, the Florida constitution?

MR. ALTENBERND: Can I suggest a question to help you with this, because I think the question is if the court were to invalidate everything other

than the one cent tax and tell the board of county commissioners that they had to deliberate and evaluate the situation and decide whether one use or another was deemed appropriate by the board of county commissioners, would you participate in that process?

THE DEPONENT: Yes, I would participate in that process if the judge would rule.

Q. (MR. HILL) The whole lawsuit that you have initiated deals with the one cent surtax, correct, one cent sales tax?

A. Again, I have to offer a clarifier, but as prescribed in Article 11 of the county charter, yes.

Q. The county commission has a budget, does it not, today without regard to this one cent sales tax for transportation?

A. It does indeed.

Q. Included in the existing budget, is there a provision for the seven projects that are listed in Article 11?

A. I'm going to go back to the ballot summary for the seven items summarized.

Q. They're listed.

A. Here it is. I have it right here. Sorry.

I will -- I will say yes, with -- with a

clarifier with respect to item No. 2, expand public transit options, and item No. 4, enhance bus services. In Hillsborough County because of the special act of the legislature that created HART, the county commission is not usually involved in funding those two categories for transportation enhancements, but there has been at least one occasion where the county commission has agreed to provide revenues to HART to carry out such services.

So whether or not our current budget, you know, still provides for provisions under 2 and 4, it probably does, but -- but just know that the county commission is -- at least in Hillsborough County because of the existence of HART, does not normally get involved in 2 and 4.

Q. So if the existing budget was amended to remove these seven projects, to the extent that they're in the existing budget, and fund them with the one cent tax, that would free up more money for building new roads; would it not?

A. Would that free up money to build existing roads?

Q. Not existing roads, new roads.

A. Or -- or new roads. That question is more complex than it seems on the surface because, you know, you could be talking about restricted funding sources in

the budget and a whole host of things. And without going through a complete budget analysis with our budget director and with our public works department, believe me when I tell you that that question is much, much more complex than it seems on the surface.

Q. On the surface, would you agree that it would appear that if you remove the cost of funding these seven items --

A. On -- on some level I'll agree with you, yes, sir.

Q. And then you could apply the gain that you would get in the existing budget to more projects, more roads, whatever?

A. With the understanding that I'm not agreeing that that's the case on a dollar-for-dollar basis, but on some level, yes, I'll agree with you.

Q. Is it your understanding from your political acumen that the people in Hillsborough County want better transportation?

A. I think so, yes, sir.

Q. And in many respects, this tax at least offers that; yes or no?

A. I will say yes, on some levels, yes, sir.

Q. We've talked a little bit -- we've talked a lot about bringing the lawsuit and you've indicated that

you did not do so. Did you want to bring a lawsuit before November 6, to try to stop this petition?

A. Again, I had an understanding, and I'm not -- I don't recollect at what point between mid-June and the election that I had this understanding that a lawsuit cannot be brought until such time that you have a local law that's inconsistent with general law, but for that reason alone, you know, I was not inclined to attempt to take any sort of legal action before the election.

Q. Did you want to, though?

A. I wanted to see the legal issues resolved. Now, you know, whether that means someone else stepping up as a plaintiff or myself being a plaintiff or, you know, whether or not it can be done before or after the election, I just didn't have that information available to me.

Q. Let me pursue that last answer, and that is: Do you know if there was anyone, other than you, approached to be a plaintiff in a lawsuit against the tax?

A. To the best of my knowledge, no.

Q. As a single county commissioner, does Article 11 injure you in some respects?

A. It does because as an individual county commissioner, I've sworn an oath of office to uphold the

Florida constitution and the laws to the state of Florida. So yes, that would cause me to have to cast votes and make a determination whether I want to cast a vote bound by Article 11 of the Hillsborough County Charter or by Chapter 212 Florida statutes. So yes, it does injure me as an individual county commissioner.

Q. (MR. HILL) And that injury that you just described would apply to each of the other six county commissioners; would it not?

A. If I'm proven to be correct, for lack of a better term, in summary judgment, then yes, that statement could be made that it would affect the other six commissioners.

Q. And therefore would affect the entire board?

A. That might be a legal question. You're talking about the board as a body versus, you know -- I'm feeling conflicted between 212 and Article 11.

Q. What is your opinion as just an individual commissioner?

MR. ALTENBERND: It's going to have nothing to do with what the judge decides. He's just asking you questions.

Q. (MR. HILL) I'm just asking you questions.

A. As a commissioner, yes, I would assert that it would impact the board as a body.

MR. ALTENBERND: How much longer are you going to go?

MR. HILL: Probably it's time to stop, if you want to. We're going to have to come back. We have others that probably want to ask questions.

MR. ALTENBERND: Do you have a sense of how many -- you've got three hours so far asking a lot of irrelevant questions.

MR. HILL: I have another 15 pages, at least, to go through and maybe more, but this would be a good time to stop. We're going to have to come back. So we can do it at whatever time you say.

MR. ALTENBERND: If we're coming back based on the HART production, this may take a while, because what they gave me is bizarre, to be honest with you.

MR. HILL: This can be off the record.

(Discussion off the record.)

Q. (MR. HILL) We talked about filing a lawsuit and you said you would or you could or whatever, you wanted to, I'll stand on whatever you said, but with respect to Count 4, did anyone say that you could not file a lawsuit on Count 4 before the election?

A. No, sir.

MR. HILL: That's it.

MR. ALTENBERND: Read.

Are you going to transcribe this thing right away? What are you going to do with it?

MR. HILL: Yeah, I think we better transcribe it.

MR. ALTENBERND: If he transcribes it, he needs to read and sign.

THE COURT REPORTER: Does everyone want a copy?

MR. GERWITZ: I do.

MR. HILL: Mr. Johnson may. He's on the phone.

MR. JOHNSON: Let me talk to my client and I'll get back with you.

MR. ZIMMET: I'll take a copy.

THE COURT REPORTER: Okay. Thank you.

(Signature was reserved.)

(The deposition adjourned sine die at 5:01 p.m.)

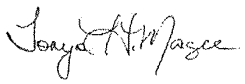
CERTIFICATE OF OATH

STATE OF FLORIDA:

COUNTY OF HILLSBOROUGH:

I, Tonya H. Magee, Registered Professional Reporter, Notary Public, State of Florida, certify that STACY WHITE personally appeared before me on February 25, 2019, and was duly sworn.

Witness my hand and official seal this 6th day of March 2019.



Tonya H. Magee,
Registered Professional Reporter
Notary Public, State of Florida
My Commission No. FF 934780
Expires: March 8, 2020

COUNTY CHARTER AMENDMENT PETITION FORM

Note:

- *All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.*
- *Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]*
- *If all requested information on this form is not completed, the form will not be valid.*

Your Name _____

Please Print Name *as it appears on your Voter Information Card*

Your Address _____

City _____ Zip _____ County _____

☐ Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable)

Voter Registration Number _____ **or** Date of Birth _____

I am a registered voter of Hillsborough County, Florida and hereby petition the Supervisor of Elections to place the following proposed amendment to the Hillsborough County Charter on the ballot in the general election:

BALLOT TITLE: Funding for Countywide Transportation and Road Improvements by County Charter Amendment

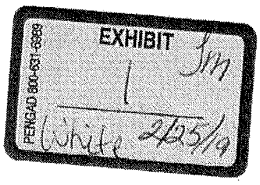
BALLOT SUMMARY:

Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:

Improve roads and bridges,
Expand public transit options,
Fix potholes,
Enhance bus services,
Relieve rush hour bottlenecks,
Improve intersections, and
Make walking and biking safer,

By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

___ Yes
___ No



ARTICLE AND SECTION BEING CREATED OR AMENDED: Article 11

FULL TEXT OF THE PROPOSED COUNTY CHARTER AMENDMENT:

XI. SURTAX FOR TRANSPORTATION IMPROVEMENTS

Section 11.01. Purpose of Surtax. The purpose of the surtax levied in accordance with Section 11.02 below is to fund transportation improvements throughout Hillsborough County, including road and bridge improvements; the expansion of public transit options; fixing potholes; enhancing bus service; relieving rush hour bottlenecks; improving intersections; and making walking and biking safer. The proceeds of the surtax shall be distributed and disbursed in compliance with F.S. § 212.055(1) and in accordance with the provisions of this Article 11.

Continue to next page

EXHIBIT B

Section 11.02. Levy of One-Cent Surtax to Fund Transportation Improvements. There shall be levied throughout the incorporated and unincorporated areas of Hillsborough County an additional tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, Florida Statutes, and communications services as defined by Chapter 202, Florida Statutes, at the rate of one cent for each $1.00 of the sales price or actual value received, and for each fractional part of $1.00 of the sales price or actual value received (the "Transportation Surtax"). The Transportation Surtax shall be levied and imposed in accordance with F.S. §§ 212.054 and 212.055(1), the rules promulgated by the Florida Department of Revenue, and this Article 11. Any other provision of this Charter to the contrary notwithstanding, all proceeds from the Transportation Surtax, including any interest earnings and bond proceeds generated therefrom, shall be expended only as permitted by this Article 11, F.S. § 212.055(1), and in accordance with the purpose set forth in Section 11.01 above. For purposes of this Article 11, Hillsborough County, Florida (the "County"), each municipality, as defined in F.S. § 165.031, that is located in the County (the "Municipalities"), and the Hillsborough Area Regional Transit Authority or its successor ("HART") are each an "Agency" and collectively, the "Agencies." "Independent Oversight Committee" shall refer to the committee mandated and governed by Section 11.10 below.

Section 11.03. Duration of Transportation Surtax. The Transportation Surtax authorized by this Article 11 shall be effective commencing January 1, 2019, and shall remain in effect for a period of thirty (30) years.

Section 11.04. Duties of the Clerk. The Clerk of the Circuit Court of Hillsborough County, Florida (the "Clerk") shall receive the proceeds of the Transportation Surtax (the "Surtax Proceeds") from the Florida Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate account until disbursed in accordance with this Section 11.04 and the distribution allocations provided for in Section 11.05. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided in Section 11.05 shall be made to the Agencies by the Clerk within five (5) business days of the Clerk's receipt of Surtax Proceeds from the Florida Department of Revenue. Additionally, the Clerk shall provide, on behalf of the board of county commissioners, the notices to the Florida Department of Revenue required by F.S. §§ 212.054(7)(a) and (b), and any other notices that must be delivered to the Department of Revenue or the State of Florida as required by applicable law. The Clerk shall engage an independent accounting firm to conduct an annual, independent audit of the distribution and expenditure of all Surtax Proceeds, which shall be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining the Clerk's and each Agency's compliance with the provisions of this Article relating to the distribution and expenditure of Surtax Proceeds during such fiscal year. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds to the Clerk on an annual basis to permit the Clerk to carry out the annual audit of Surtax Proceeds described in this Section 11.04.

Section 11.05. Distribution of Surtax Proceeds. The Surtax Proceeds shall be deposited in a dedicated trust fund (the "Trust Fund") maintained by the Clerk and distributed in accordance with the following formula:

(1) General Purpose Portion. Fifty-four percent (54%) of the Surtax Proceeds (the "General Purpose Portion") shall be distributed to the County and to each Municipality in accordance with their relative populations as calculated utilizing the statutory formula provided in F.S. § 218.62 (the "Distribution Formula") and be expended by the County and each Municipality in accordance with Section 11.07. The County and each Municipality may elect to bond or otherwise encumber their respective distribution of the Surtax Proceeds allocated pursuant to this Section 11.05(1), and shall provide notice of such election to the other recipients of the General Purpose Portion at least ninety (90) days prior to issuing bonds.

(2) Transit Restricted Portion. Forty-five percent (45%) of the Surtax Proceeds (the "Transit Restricted Portion") shall be distributed to HART and be expended by HART in accordance with Section 11.08. Subject to compliance with applicable law and the charter of HART, HART may elect to directly, or through the County, bond or otherwise encumber the Transit Restricted Portion.

(3) Planning and Development Portion. One percent (1%) of the Surtax Proceeds (the "Planning and Development Portion") shall be distributed to the metropolitan planning organization described in F.S. § 339.175 whose jurisdiction includes Hillsborough County (the "MPO"). The Planning and Development Portion shall be expended by the MPO on planning and development purposes, including data collection, analysis, planning, and grant funding to assist the Agencies and the Independent Oversight Committee in carrying out the purpose set forth in Section 11.01.

Section 11.06. Agency Project Plans. No later than September 30th of each year, each Agency shall deliver to the Independent Oversight Committee a plan (a "Project Plan") setting forth the projects, including reasonable detail for each, on which such Agency will expend their distribution of the Surtax Proceeds for the following calendar year in accordance with the uses mandated by Sections 11.07 and 11.08 below. Each Project Plan must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee at a public hearing. No Agency may expend Surtax Proceeds for any purpose other than implementation of each of the projects set forth in such Agency's Project Plan, and each Agency shall diligently and prudently pursue implementation of each of the projects set forth in such Agency's Project Plan. If any Agency desires to amend its Project Plan after the Independent Oversight Committee has approved the same, the Independent

Continue to next page

Oversight Committee shall approve or disapprove (and state the basis therefore) the amended Project Plan within thirty (30) days of an Agency's request to amend.

Section 11.07. Uses of General Purpose Portion. For any Agency that the Clerk reasonably estimates will receive five percent (5%) or more of the Surtax Proceeds in a given calendar year, such Agency's share of the General Purpose Portion shall be expended by the Agencies for the planning, development, construction, operation, and maintenance of roads, bridges, sidewalks, intersections, and public transportation (which, for purposes of this Section, may include any technological innovations such as autonomous vehicles and related infrastructure), to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Maintenance and Vulnerability Reduction. At least twenty percent (20%) of the General Purpose Portion shall be expended on projects that: (i) improve, repair and maintain existing streets, roads, and bridges, including fixing potholes, or (ii) reduce congestion and transportation vulnerabilities.

(2) Congestion Reduction. At least twenty-six (26%) of the General Purpose Portion shall be expended to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections. Expenditures in the category described in this Section 11.07(2) may include projects that improve intersection capacity through the use of technology, the construction of new intersections, the redevelopment of existing intersections, and may include related infrastructure such as roundabouts and turn lanes. Projects described in the foregoing sentence do not constitute New Automobile Lane Capacity, as defined in Section 11.07(8) below.

(3) Transportation Safety Improvements. At least twenty-seven (27%) of the General Purpose Portion shall be expended to promote transportation safety improvements on existing streets, roads and bridges.

(4) Transportation Network Improvements. At least twelve (12%) of the General Purpose Portion shall be expended on bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network within any Agency's jurisdiction, and to the extent permitted by F.S. § 212.055(1).

(5) Remaining Funds. Any remaining portions of the General Purpose Portion shall be expended on any project to improve transportation in the applicable Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article.

(6) Inter-Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, the County and each Municipality may distribute any amount of its share of General Purpose Portion to any Agency (an "Agency Distribution"). For purposes of this Section, any Agency's share of the General Purpose Portion shall be reduced, or increased, by the amount of the Agency Distribution distributed, or received, as the case may be.

(7) Small Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, any Agency that receives five percent (5%) or less of the Surtax Proceeds in any given calendar year, on an annualized basis, is not required to expend its share of General Purpose Portion on the categories set forth in Section 11.07(1) through (5) above, and shall instead expend its distribution of the Surtax Proceeds on any purpose consistent with Section 11.01 and permitted by F.S. § 212.055(1).

(8) Limits on New Automobile Lane Capacity. Agencies are prohibited from expending any funds from the categories mandated by Section 11.07(1), (2) and (3) above on New Automobile Lane Capacity. For purposes of this Section 11.07(8), "New Automobile Lane Capacity" means projects that consist of (i) adding additional lanes for automobile traffic to existing roads or streets that are not related to intersection capacity improvement, or (ii) constructing new roads or streets.

(9) Reallocation of Expenditure Categories. Upon request by an Agency, which request must be approved by seventy-five percent (75%) of the Independent Oversight Committee, the General Purpose Portion expenditure allocations mandated in Sections 11.07(1) through (3) above may instead be expended on any project to improve transportation within such Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article if, in the opinion of the requesting Agency, any of the percentages set forth in Sections 11.07(1) through (3) exceed the amounts required to fulfill the purpose set forth therein.

Section 11.08. Uses of Transit Restricted Portion. The Transit Restricted Portion, and any Agency Distribution received by HART, shall be spent by HART for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the HART board of directors, to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Enhancing Bus Services. No less than forty-five percent (45%) of the Transit Restricted Portion shall be spent on bus services, including express, neighborhood, circulator, paratransit, and all other types of transit now or hereafter operated by

Continue to next page

HART. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(2) Expanding Public Transit Options. No less than thirty-five percent (35%) of the Transit Restricted Portion shall be spent on transit services that utilize exclusive transit right-of-way for at least seventy-five percent (75%) of the length of the applicable service. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; utilizing or extending existing fixed guideways and rights-of-way; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(3) Remaining Funds. Any remaining portions of the Transit Restricted Portion shall be spent on any project to improve public transportation permitted by F.S. § 212.055(1) or this Charter.

Section 11.09. Suspension of Distribution. In the event it is determined by a two-thirds majority of the Independent Oversight Committee that an Agency has failed to comply with any term or condition of this Article 11 and such Agency fails to correct such non-compliance within reasonable periods of time determined by the Independent Oversight Committee, but not more than ninety (90) days following written notice of such noncompliance, the Independent Oversight Committee may direct that distributions of the Surtax Proceeds to such Agency be suspended by the Clerk and held by the Clerk in the Trust Fund until such time as the Agency has cured the non-compliance, at which point distributions of the Surtax Proceeds to such Agency shall re-commence and any withheld Surtax Proceeds shall be distributed to the Agency.

The foregoing shall not apply to any portion of Surtax Proceeds encumbered by bond indebtedness pursuant to law; provided, however, that the financing instruments for such bond indebtedness include covenants requiring the Agency to comply with the terms and conditions of this Charter.

Section 11.10. Independent Oversight Committee. To ensure that the Transportation Surtax is successfully implemented, independent oversight of the distribution and expenditure of the Surtax Proceeds shall be provided by an Independent Oversight Committee, which shall be composed of Hillsborough County residents appointed by the following bodies: (i) four (4) individuals appointed by the board of county commissioners, and of which two are Experts (as defined below) in either transportation, planning, sustainability, engineering, or construction; (ii) one (1) from each Municipality, appointed by the mayor thereof; (iii) one (1) additional member from each Municipality for each 200,000 residents in such Municipality, appointed by the legislative body of that Municipality, based on population estimates published annually by the State of Florida; (iv) two (2) from HART, appointed by the HART board of directors; (v) one (1) attorney, who is a member by the Florida Bar, appointed by the Clerk; (vi) one (1) land use or real estate Expert appointed by the Hillsborough County Property Appraiser; and (vii) one (1) certified public accountant appointed by the Hillsborough County Tax Collector. No person then currently serving as an elected or appointed city, county, special district, state, or federal public office holder shall be eligible to serve as a member of the Independent Oversight Committee. Additionally, no member of the Independent Oversight Committee may be an employee of, independent contractor of, or otherwise be materially engaged for remuneration by any public or private recipient of Surtax Proceeds. Independent Oversight Committee members shall serve terms of three (3) years, without compensation, and each shall serve at the pleasure of the appointing body. The Independent Oversight Committee may make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with this Charter. The Independent Oversight Committee shall have only those powers and duties specifically vested in it by this Section 11.10. A majority of the members of the Independent Oversight Committee shall constitute a quorum, and the Independent Oversight Committee may conduct business only when a quorum is present. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds on an annual basis for the administrative expenses of the Independent Oversight Committee in an amount sufficient for the Independent Oversight Committee to fulfill its duties under this Article 11. For purposes of this Section 11.10, "Expert" means an individual who has at least seven years of experience in their respective subject matter area, and possesses professional accreditations or degrees that are typical of an expert in their respective subject matter area. The Independent Oversight Committee shall have the powers and duties set forth below:

(1) Review the results of the annual audit described in Section 11.04 and make findings as to whether the Clerk and each Agency has complied with the terms of this Article. Such findings shall include a determination as to whether Surtax Proceeds have been distributed as provided in this Article and whether the Surtax Proceeds have been expended in compliance with applicable state law, this Article, and any additional requirements that an Agency may have lawfully adopted.

(2) Approve Project Plans and approve and certify as to whether the projects therein comply with this Article.

(3) Prepare an annual report to the Clerk and each Agency presenting the results of the annual audit process and any findings made. The Independent Oversight Committee shall cause a summary of the annual report to be published in a local newspaper and ensure that the report and annual audit are available online and are delivered to every library located within the County for

Continue to next page

public review. The Independent Oversight Committee shall hold a public hearing on each audit and annual report and shall report the comments of the public to each Agency.

(4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and forward them to the appropriate Agency for consideration.

Section 11.11. Miscellaneous.
(1) Prohibited Uses. No Surtax Proceeds may be used for any of the following uses: (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports facility or any other facility not related to transportation; or (iii) any other use expressly prohibited by law.

(2) Severability. To the extent that any mandated expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of Surtax Proceeds, the funds allocated to such impermissible use shall be expended by the applicable Agency on any project to improve public transportation permitted by F.S § 212.055(1) and this Article.

(3) Supremacy. This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

_____ X_____
DATE OF SIGNATURE **SIGNATURE OF REGISTERED VOTER**

Initiative petition sponsored by All for Transportation, 610 S Boulevard, Tampa, FL 33606

If paid petitioner circulator is used:

Circulator's name: _____

Circulator's address: _____

_____

RETURN TO:
All for Transportation
610 S Boulevard
Tampa, FL 33606

For Official Use Only
Serial Number: _____
Date Approved: _____

Craig Latimer
Supervisor of Elections
Our Vision: To be the best place in America to vote

GOVERNOR'S STERLING AWARD RECIPIENT

August 8, 2018

Sandra Murman, Chair
Hillsborough County Board of County Commissioners
P.O. Box 1110
Tampa, Florida 33601

Dear Commissioner Murman,

Pursuant to Section 8.03 of the Hillsborough County Charter, this is to certify that the All For Transportation citizen initiative, Funding for Countywide Transportation and Road Improvements, has met the requirements with regard to the total number of valid signatures and apportionment among the County Commission districts.

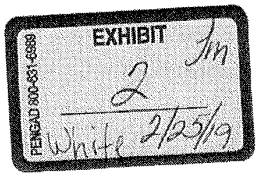
In accordance with the County Charter, the proposed charter amendment will be placed on the November 6, 2018 General Election ballot.

Sincerely,

Craig Latimer

Craig Latimer
Supervisor of Elections

Cc: Mary Helen Farris, General Counsel, Hillsborough County Attorney's Office

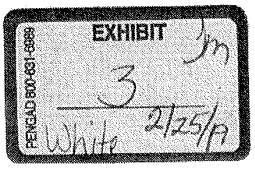


RESOLUTION NO. R19-027

A BOND RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA, PROVIDING FOR THE ISSUANCE OF NOT EXCEEDING $10,000,000 OF ITS TRANSPORTATION SALES SURTAX REVENUE BONDS, SERIES 2019 TO FINANCE, REFINANCE AND/OR REIMBURSE ALL OR A PORTION OF THE COSTS OF THE PLANNING, DEVELOPMENT AND CONSTRUCTION OF TRANSPORTATION IMPROVEMENTS TO COUNTY ROADS, BRIDGES, SIDEWALKS, INTERSECTIONS, AND PUBLIC TRANSPORTATION (INCLUDING ANY TECHNOLOGICAL INNOVATIONS SUCH AS AUTONOMOUS VEHICLES AND RELATED INFRASTRUCTURE) TO THE EXTENT PERMITTED BY SECTION 212.055(1), FLORIDA STATUTES, IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 11.07 OF THE HILLSBOROUGH COUNTY CHARTER AND PROJECT PLANS APPROVED BY SAID BOARD AND THE INDEPENDENT OVERSIGHT COMMITTEE ESTABLISHED BY SECTION 11.10 OF THE HILLSBOROUGH COUNTY CHARTER; PROVIDING FOR THE PAYMENT OF SAID BONDS FROM THE COUNTY'S TRANSPORTATION SALES SURTAX REVENUES; AUTHORIZING A BOND VALIDATION; MAKING CERTAIN COVENANTS AND AGREEMENTS AND PROVIDING CERTAIN DETAILS IN CONNECTION THEREWITH; PROVIDING FOR AN EFFECTIVE DATE

Upon motion by Commissioner Miller, seconded by Commissioner Overman, the following Resolution was adopted by a vote of 6 to 1, with Commissioner(s) _____, White voting No; Commissioner(s) _____ being absent.

WHEREAS, on November 6, 2018, in excess of 57% of the electors of the County approved by referendum an amendment adding Article XI to the Hillsborough County Charter, enacting a one-percent transportation sales surtax within the County, commencing January 1, 2019 for a period of thirty years to, in part, be used by Hillsborough County, Florida, a political subdivision of the State of Florida (the "County") to plan, develop and construct transportation improvements to County roads, bridges, sidewalks, intersections, and public transportation (including any technological innovations such as autonomous vehicles and related infrastructure) to the extent permitted by Section 212.055(1), Florida Statutes, in accordance with the requirements of Section 11.07 of the Hillsborough County Charter and project plans approved by the Board of County Commissioners of the County and the Independent Oversight



from any other legally available funds of the County, an amount equal to the Rebate Amount for such Rebate Year. The County shall use such moneys deposited in the Rebate Account only for the payment of the Rebate Amount to the United States as required by this Section 22. In complying with the foregoing, the County may establish a separate subaccount in the Rebate Account for each Series of Bonds and rely upon any instructions or opinions from Bond Counsel.

If any amount shall remain in the Rebate Account after payment in full of all Bonds issued hereunder that are not Taxable Bonds and after payment in full of the Rebate Amount to the United States in accordance with the terms hereof, such amounts shall be available to the County for any lawful purpose.

The Rebate Account shall be held separate and apart from all other funds and accounts of the County, and shall not be impressed with a lien in favor of the Bondholders and the moneys therein shall be available for use only as herein provided.

Amounts on deposit in the Rebate Account may be invested pursuant to the County's adopted investment policy and applicable law.

SECTION 23. QUALIFIED DERIVATIVE AGREEMENTS. The County may enter into one or more Qualified Derivative Agreements with respect to one or more Series of Bonds (or portions thereof); provided, however, that if such Qualified Derivative Agreement is not entered into at the time of initial issuance of the Series of Bonds to which it relates, the requirements of Section 16.I. hereof must be met, applying the same as if $1.00 in principal amount of Additional Bonds is being issued as of the effective date of such Qualified Derivative Agreement. Qualified Derivative Payments payable by the County under any such Agreement shall be payable from the Qualified Derivative Obligations Fund on a parity with principal, interest and Amortization Installment payments with respect to Bonds issued and outstanding hereunder.

SECTION 24. VALIDATION AUTHORIZED. Bond Counsel is hereby authorized and directed to institute appropriate proceedings in the Circuit Court in and for Hillsborough County, Florida, for validation of the 2019 Bonds pursuant to Chapter 75, Florida Statutes, and the proper officers of the County are hereby authorized to verify on behalf of the County the pleadings in such proceedings.

SECTION 25. APPROPRIATENESS OF ARTICLE 11 OF THE HILLSBOROUGH COUNTY CHARTER. Article 11, which was a citizens' initiative to amend the Hillsborough County Charter pursuant to Section 8.03 of the Hillsborough County Charter and Section 212.055(1)(a), Florida Statutes, was approved by a majority of the voters in the County on November 6, 2018. The provisions of Article 11, including the allocation and uses of the funds set forth therein, are hereby deemed appropriate pursuant to Section 212.055(1)(d), Florida Statutes, by the Governing Body.

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212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway

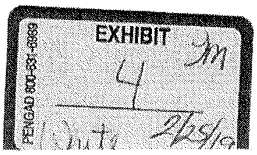
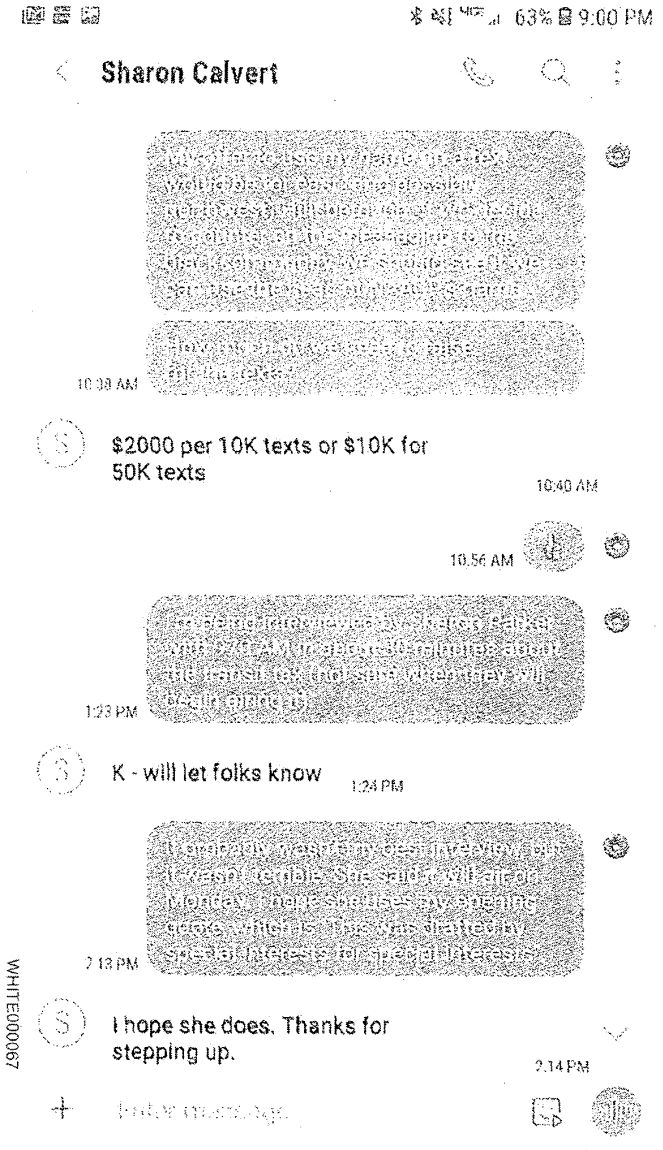


EXHIBIT A

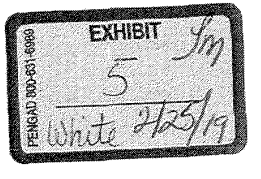
systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

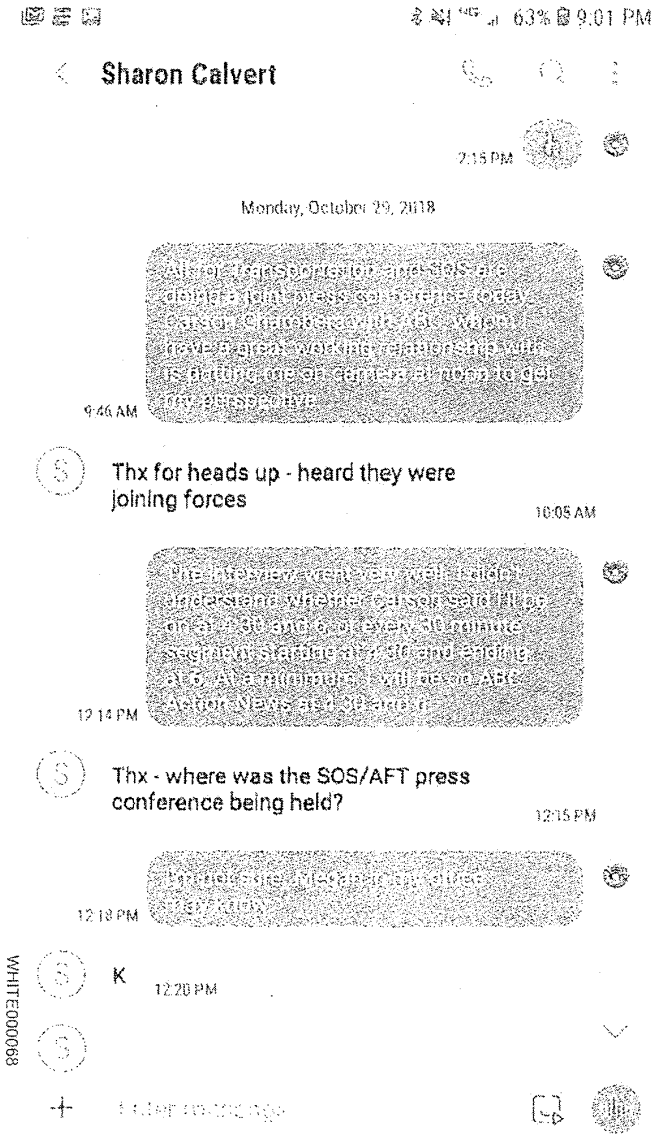
(e) As used in this subsection, the term "on-demand transportation services" means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.



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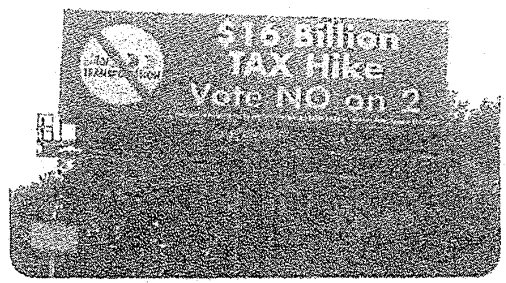


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63% 9:01 PM

Sharon Calvert



N Dale Mabry westside north of Busch.
2 others at Brandon Blvd & Parsons
and I-4 east of MLK

MMS
5:13 PM

5:26 PM

Tuesday, November 6, 2018

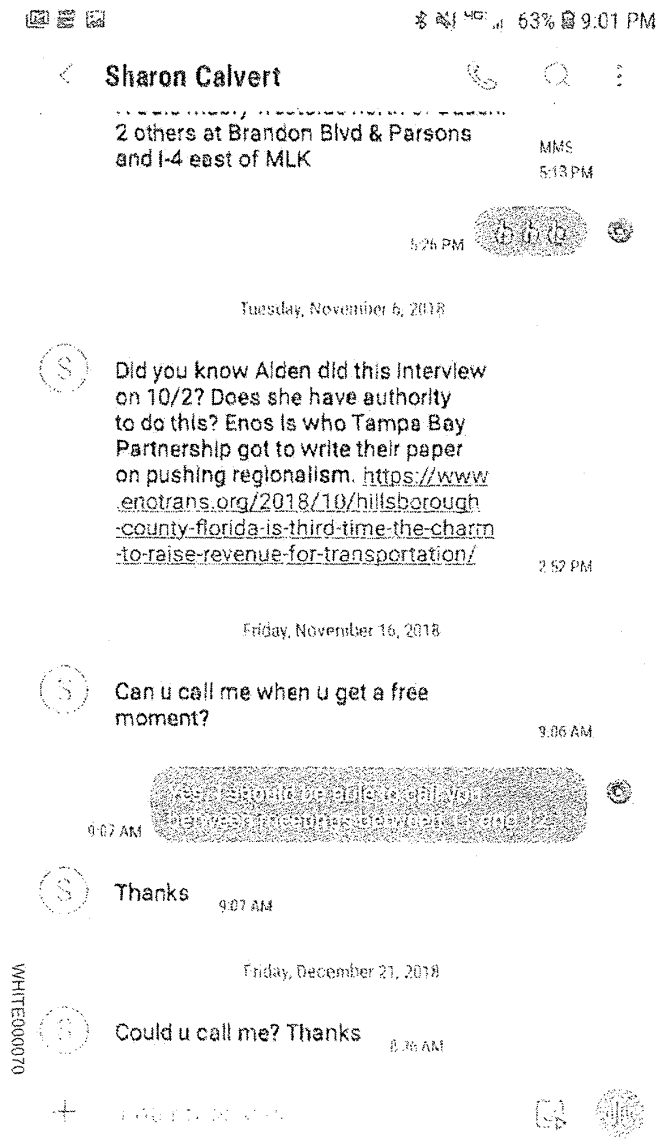
Did you know Alden did this interview on 10/2? Does she have authority to do this? Enos is who Tampa Bay Partnership got to write their paper on pushing regionalism. https://www.enotrans.org/2018/10/hillsborough-county-florida-is-third-time-the-charm-to-raise-revenue-for-transportation/

2:52 PM

Friday, November 16, 2018

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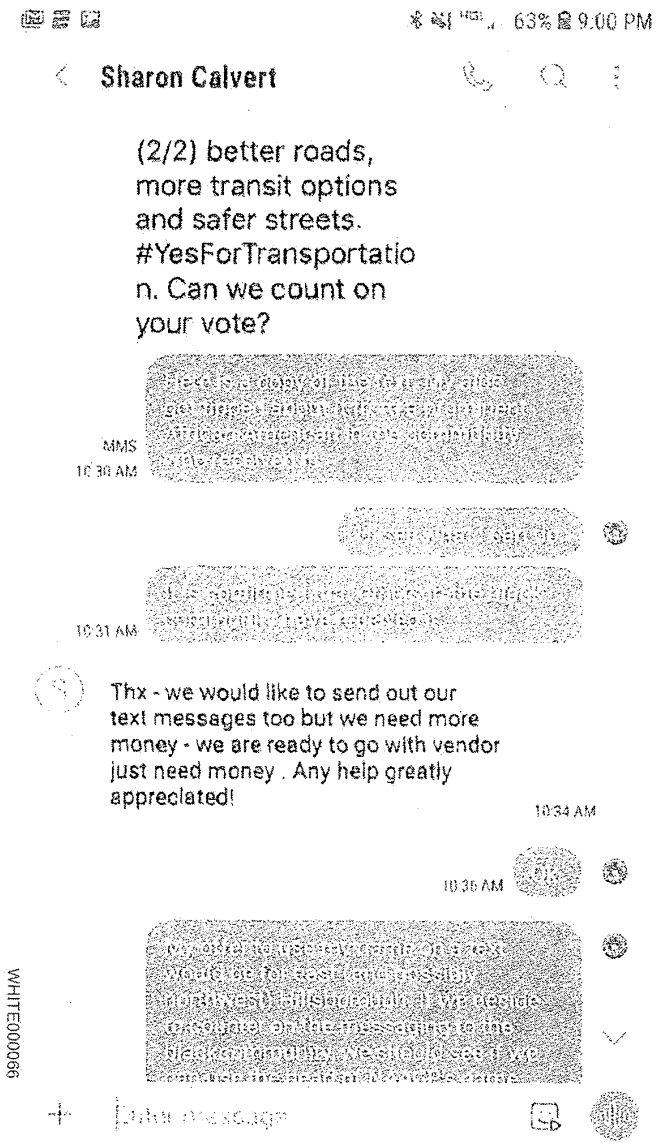
3/8/2019 4:41 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page

63% 8:59 PM
Sharon Calvert
Wednesday, October 17, 2018
8:42 PM
Thx - mark & I will be there -
camera in tow
8:43 PM
Thursday, October 18, 2018
12:46 PM
12:47 PM
Yes! Will get mark to send to you
thank you very much for stepping up
and speaking!
12:48 PM
WHITE000064

A1.410

WHITE000065

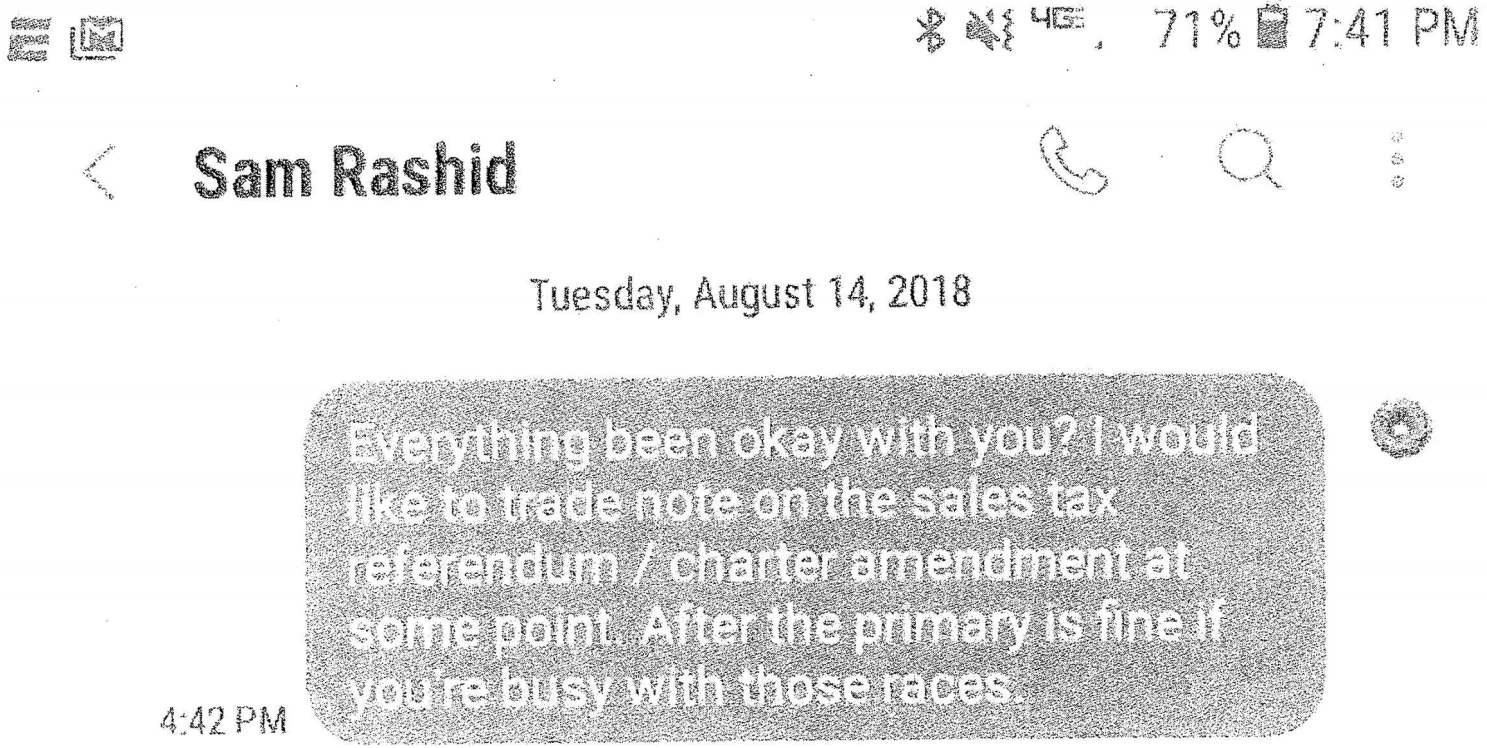
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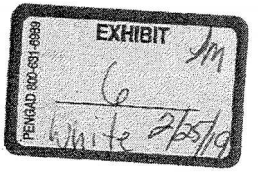
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WHITE000036



71% 7:42 PM
Sam Rashid
Thursday, October 18, 2018
3:05 PM
6:11 PM
Fabulous good job I will be using it in my mall
First piece dropped today
6:11 PM
6:13 PM
Yes that is the right number I have between 54 and 60
But they have received only 9 positive pieces
6:13 PM
When our pieces start hitting
That number will drop like a rock
6:14 PM
WHITE000037

A1.414

Sam Rashid
6:14 PM
Yes
We
Can
Lol
That's Obama talking
6:15 PM
Friday, October 26, 2018
WHITE0000038

7:44 PM 71%

Sam Rashid

Ty 12:17 PM

Tuesday, October 30, 2018

[redacted] 9:53 AM

Yes I'll send the script today ty 11:01 AM

Wednesday, October 31, 2018

[redacted] 12:29 PM

12:29 PM

WHITE00039

3/8/2019 4:41 PM Electronically Filed: Hillsborough County/13th Judicial Circuit Page

Sam Rashid

10:39 AM

Already being done today piece mails Monday that would be 4th drop out of 7 planned

10:41 AM

10:56 AM

1:24 PM

Put some sound bites in that we can use

Special Interests 1:24 PM

1:25 PM

Oversight committee may not fly with our constitutional obligations

WHITE00041

A1.418

Sam Rashid
2:18 PM
2:18 PM
Monday, October 29, 2018
9:46 AM
Ok
9:47 AM
12:14 PM
Excellent ty
Ill need a voice record from you
today 30 second message I'll provide
the script but it will be basically
WHITE0000042

A1.419

WHITE000043

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Hillsborough County Florida

Agenda Item Cover Sheet

Agenda Item No. B-1

Meeting Date 2/6/2019

☐ Consent Section ☒ Regular Section ☐ Public Hearing

Subject: Transportation Sales Surtax Interlocal Agreement

Department Name: County Attorney's Office

Contact Person: Samuel S. Hamilton Contact Phone: (813) 307-3107

Sign-Off Approvals

		Christine Beck	1/30/2019
		Managing County Attorney	Date
Christine Beck	1/30/2019		
County Attorney	Date	Joint Department Director	Date
Kevin Brickey	1/31/2019	Samuel Hamilton	1/30/2019
Management and Budget – Approved as to Financial Impact Accuracy	Date	Assistant County Attorney	Date

Staff's Recommended Board Motion:
Receive a draft of the Transportation Sales Surtax Interlocal Agreement in the form as presented and authorize staff to distribute the draft to the other parties for review and comment. Approval of this item will have no financial impact on the FY 19 Adopted Budget.

PENGAD 800-631-6989 EXHIBIT jm 7 White 2/25/19

Financial Impact Statement:
Approval of this item will have no financial impact on the FY 19 Adopted Budget.

Background:
On November 6, 2018, the electorate of Hillsborough County approved a ballot measure providing for an amendment to the Hillsborough County Charter (the "Charter Amendment") which levies a one percent (1%) transportation sales surtax (the "Surtax") in accordance with Florida law. On December 5, 2018, the Board directed staff to provide the details of an interlocal agreement between the County and various local governmental agencies regarding the implementation of the Charter Amendment. The attached draft has been prepared with input from the County Administration.

Generally, the draft interlocal agreement addresses the implementation of the Charter Amendment by addressing the method of disbursement and use of proceeds of the Surtax, the powers and duties of the Independent Oversight Committee, and the responsibilities of the Metropolitan Planning Organization with respect to the implementation and administration of the Surtax.

If approved by the Board, the County Attorney's office will distribute the draft interlocal agreement to the other parties for their review and comment. This review can be concurrent with the appointment process for the Independent Oversight Committee and the development of project plans as required by the Charter

Amendment.
List Attachments: Draft Transportation Surtax Interlocal Agreement

INTERLOCAL AGREEMENT REGARDING
TRANSPORTATION SALES SURTAX

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into as of this day of _____, 2019, without regard to the date signed by all the Parties, by and between the City of Tampa ("Tampa"), the City of Temple Terrace ("Temple Terrace") and the City of Plant City ("Plant City"), all of which are municipal corporations organized and existing under the laws of the State of Florida within Hillsborough County (collectively, the "Municipalities"), the Hillsborough Transit Authority ("HART"), a regional transportation authority created under the laws of Florida, with its principal office at 1201 E. 7th Avenue, Third Floor, Tampa, FL 33602, Hillsborough County, a county and political subdivision of the State of Florida ("County") and the Metropolitan Planning Organization (the "MPO"), a transportation policy-making board formed pursuant to the MPO Interlocal Agreement as described in 23 USC s. 134(b)(2), 49 USC s. 5303, and Section 339.175(1) Florida Statutes.

WITNESSETH:

WHEREAS, pursuant to Chapter 163, Florida Statutes, counties, cities, public authorities, and other political subdivisions and public entities have the authority to enter into interlocal agreements among and between themselves in order to make the most efficient use of their powers and enabling them to cooperate with other localities; and

WHEREAS, on November 6, 2018, the electorate of Hillsborough County approved a ballot measure providing for an amendment to the Hillsborough County Charter (the "Charter Amendment") which levies a one percent (1%) transportation sales surtax (the "Surtax") in accordance with Section 212.054 and 212.055, Florida Statutes; and

WHEREAS, in order to implement the provisions of the Charter Amendment in a collaborative manner, the Parties desire to enter into this Agreement; and

WHEREAS, such action is in the best interests of the Parties and serves a public purpose; and

WHEREAS, this Agreement is authorized by Sections 212.054 and 212.055(1), Florida Statutes, the Charter Amendment and other applicable laws;

NOW, THEREFORE, in consideration of the premises and of the mutual benefits and in consideration of the covenants and agreements set forth herein, the Parties hereto agree as follows:

SECTION 1. DEFINITIONS. As used herein, the following terms shall have the meaning ascribed below:

(A) *Agreement* means this Interlocal Agreement.

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(B) *Auditor* means the independent accounting firm engaged by the Clerk to conduct an annual, independent audit of the distribution and expenditure of all Surtax Proceeds as provided for in Section 11.04 of the Charter Amendment.

(C) *Business Day* means any day other than a Saturday or Sunday or legal holiday or a day on which the principal office of the County is closed.

(D) *Charter Amendment* means the amendment to the Hillsborough County Charter approved by the electorate of Hillsborough County on November 6, 2018.

(E) *Clerk* means the Clerk of the Circuit Court of Hillsborough County, Florida, in the capacity of Clerk to the Board.

(F) *MPO Interlocal Agreement* means that certain Interlocal Agreement dated September 4, 2014, by and between the Florida Department of Transportation, the County, Tampa, Temple Terrace, Plant City, HART, the Hillsborough County Aviation Authority, the Tampa-Hillsborough Expressway Authority, the Tampa Port Authority, and the Hillsborough County City-County Planning Commission.

(G) *Party* and *Parties* means the local governmental entities that have elected to enter into this Agreement either singularly or collectively.

(H) *Professional Engineer* means an individual who has fulfilled education and experience requirements and passed specified exams that, under Florida law, permits such individual to offer engineering services directly to the public.

(I) *Surtax* means the one percent (1%) transportation sales surtax levied pursuant to the Charter Amendment.

(J) *Surtax Proceeds* means all Surtax funds received by the Clerk from the Florida Department of Revenue including any interest and penalties on delinquent taxes.

All other terms used in this Agreement in capitalized form shall have the same meanings as ascribed to them in the Charter Amendment.

SECTION 2. USE OF SURTAX PROCEEDS. Any other provision of this Agreement to the contrary notwithstanding, the County, the Municipalities, HART and the MPO each certify to each of the other Parties that all Surtax Proceeds, including any interest earnings and bond proceeds generated therefrom, shall be expended by that jurisdiction only as permitted by this Agreement, Section 212.055(1), Florida Statutes, the Charter Amendment, and the ballot language of the November 6, 2018 referendum on the Charter Amendment.

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SECTION 3. DISBURSEMENT OF THE SURTAX PROCEEDS. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided in Section 11.05 of the Charter Amendment shall be made by the Clerk within five (5) Business Days of the Clerk's receipt of Surtax Proceeds from the Florida Department of Revenue.

SECTION 4. INDEPENDENT OVERSIGHT COMMITTEE.

(A) Powers and Duties. The Parties acknowledge and agree that the powers and duties of the Independent Oversight Committee (the "IOC") are limited to the following:

(1) Review the Auditor's results of the annual audit described in section 11.04 of the Charter Amendment and make findings based on such results as to whether the Clerk and each Agency have complied with the terms of the Charter Amendment;

(2) Approve and certify, in reliance upon each respective Professional Engineer certification provided for in Section 5(B) of this Agreement, whether Project Plans as submitted by each Agency provide for the expenditure by such Agency of its distribution of Surtax Proceeds in accordance with the uses mandated by Sections 11.07 and 11.08 of the Charter Amendment; provided, that such approval and certification does not authorize the IOC to:

(a) independently initiate proposed projects or Project Plans, or proposed expenditures of Surtax Proceeds; or

(b) disapprove Agency approved projects or Project Plans that are in accordance with the uses mandated by Sections 11.07 and 11.08 of the Charter Amendment.

(3) Prepare an annual report to the Clerk and each Agency presenting the Auditor's results of the annual audit process provided for in the Charter Amendment and any findings made; and

(4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and forward them to the appropriate Agency for consideration and potential inclusion in such Agency's Project Plan.

(B) Review of Project Plans. The Parties agree that the IOC should incorporate in its by-laws the following matters:

(1) a commitment to timely approve or disapprove Agency Project Plans within

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thirty (30) Business Days of submission thereof;

(2) a process for submission of Agency Project Plans for its approval and certification that:

(a) is in accordance with the Charter Amendment;

(b) is consistent with the process approved by the Agencies, a copy of which is attached hereto as Exhibit A and by reference made a part hereof; and

(c) affirms that any disagreement by the IOC with any portion of an Agency's Project Plan which is otherwise in accordance with the uses mandated by Sections 11.07 and 11.08 of the Charter Amendment shall not be a basis for the IOC to disapprove any portion of such Project Plan; and

(3) a process to address any potential disputes between an Agency and the IOC.

(C) Legal Counsel. The Parties acknowledge and agree that the County Attorney's Office shall serve as legal counsel to the IOC.

SECTION 5. AGENCY PROJECT PLANS.

(A) In order to further the implementation of the terms of the Charter Amendment in a collaborative manner, each Party agrees to collaborate with the other Parties in the development and implementation of each of its annual Project Plans.

(B) Each Agency agrees to engage a Professional Engineer to certify to such Agency and the IOC that each of its annual Project Plans complies with the terms of the Charter Amendment.

SECTION 6. METROPOLITAN PLANNING ORGANIZATION. The Parties acknowledge and agree that with respect to the implementation and administration of the Surtax, the powers and duties of the MPO are limited to the following:

(1) transportation planning and development activities, including data collection, analysis, planning, and grant funding to assist the Agencies at their request in carrying out the purpose set forth in Section 11.01 of the Charter Amendment; and

(2) assisting the IOC in carrying out the duties of the IOC described in Sections

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4(A)(2) and 4(A)(3) of this Agreement; provided, that since the MPO is a transportation planning agency and not a Professional Engineer, the role of the MPO is not to assist the IOC in perfecting a dispute with any portion of a Project Plan submitted by an Agency.

SECTION 7. AUDITS. Each of the Parties agrees to assist and cooperate with the Clerk in conducting the annual audits required by Section 11.04 of the Charter Amendment.

SECTION 8. MISCELLANEOUS PROVISIONS.

(A) It is stipulated by the Parties that this Agreement complies with the Constitution and Statutes of the State of Florida.

(B) Each Party warrants and represents to the other Parties that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of its respective government, and that this Agreement has been otherwise executed and delivered by an authorized officer, as applicable.

(C) The Parties agree that upon full execution of this Agreement, each will promptly execute and deliver such documents and instruments, and take such other actions as may be reasonably required, including compliance with applicable law, to carry out the purpose and intent of this Agreement.

(D) Any notices, or other documents required to be delivered under this Agreement shall be delivered to the following addresses, unless or until a Party provides written notice of a change:

Hillsborough County
c/o Chairman
Board of County Commissioners
P.O. Box 1110
Tampa, FL 33601

City of Temple Terrace
c/o Mayor
11250 North 56th Street
Temple Terrace, FL 33617

City of Tampa
c/o Mayor
306 E. Jackson Street
Tampa, FL 33602

City of Plant City
c/o Mayor
P.O. Box C
Plant City, FL 33564

Hillsborough Transit Authority
c/o Chief Executive Officer
1201 E. 7th Avenue, 3rd Floor
Tampa, FL 33602

Metropolitan Planning Organization
c/o Executive Director
601 E. Kennedy Blvd., 18th Floor
Tampa, FL 33602

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(E) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement shall be construed equally against each Party in recognition of the fact that each Party has had the opportunity of review and participation, by its respective counsel, in the preparation of this Agreement.

(F) If, for any reason, any portion of this Agreement is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

(G) This Agreement shall be effective upon the later of execution by all Parties and filing with the Clerk as herein provided and shall expire upon receipt by each Party of its final distribution of the Surtax Proceeds.

(H) This Agreement and any subsequent amendments thereto shall be filed with the Clerk as provided by Section 163.01(11), Florida Statutes, and with the Director of the Florida Department of Revenue.

(I) This Agreement may be executed separately by the Parties in two or more execution or "joinder" pages, all of which, together, shall constitute but one and the same instrument.

(J) No rights or obligations under this Agreement may be assigned, except upon written consent of the Parties.

SECTION 9. AMENDMENT; TERMINATION; INCONSISTENT ACTIONS

(A) This Agreement constitutes the entire agreement between the Parties with respect to the matters herein contained and may be amended only in writing, signed by all of the Parties. Moreover, the Parties shall amend this Agreement to include any newly created municipalities to the extent and within the timeframe required by Section 212.055(1)(d)4, Florida Statutes.

(B) This Agreement may only be terminated by unanimous consent of the Parties, and any such termination shall take effect only upon the full retirement of any bonds secured by Surtax Proceeds that were issued by one or more of the Parties pursuant to this Agreement.

(C) No Party shall take, advocate or otherwise cause to occur any action inconsistent with this Agreement, including seeking any change in state or federal law that would alter the rights of the Parties under this Agreement, or enacting, amending or repealing any ordinance that would alter the rights of the Parties under this Agreement.

IN WITNESS WHEREOF, the Parties have respectively executed a Joinder Execution Page, which pages are attached to this Agreement and, by this reference, made a part hereof.

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JOINDER EXECUTION PAGE

TO BE ATTACHED AND INCORPORATED INTO THE INTERLOCAL AGREEMENT FOR DISTRIBUTION OF TRANSPORTATION SALES SURTAX PROCEEDS BETWEEN THE CITY OF TAMPA, THE CITY OF TEMPLE TERRACE, THE CITY OF PLANT CITY, THE HILLSBOROUGH TRANSIT AUTHORITY, HILLSBOROUGH COUNTY, FLORIDA, AND THE METROPOLITAN PLANNING ORGANIZATION, THE SAME BEING DATED AS OF _____, 2019.

ATTEST:
By: _____
DEPUTY CITY CLERK

CITY OF TAMPA
By: _____
MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
ATTORNEY FOR CITY OF TAMPA

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JOINDER EXECUTION PAGE

TO BE ATTACHED AND INCORPORATED INTO THE INTERLOCAL AGREEMENT FOR DISTRIBUTION OF TRANSPORTATION SALES SURTAX PROCEEDS BETWEEN THE CITY OF TAMPA, THE CITY OF TEMPLE TERRACE, THE CITY OF PLANT CITY, THE HILLSBOROUGH TRANSIT AUTHORITY, HILLSBOROUGH COUNTY, FLORIDA, AND THE METROPOLITAN PLANNING ORGANIZATION, THE SAME BEING DATED AS OF _____, 2019.

ATTEST:

By: _____
CITY CLERK

CITY OF TEMPLE TERRACE

By: _____
MAYOR

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
ATTORNEY FOR THE CITY OF TEMPLE TERRACE

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JOINDER EXECUTION PAGE

TO BE ATTACHED AND INCORPORATED INTO THE INTERLOCAL AGREEMENT FOR DISTRIBUTION OF TRANSPORTATION SALES SURTAX PROCEEDS BETWEEN THE CITY OF TAMPA, THE CITY OF TEMPLE TERRACE, THE CITY OF PLANT CITY, THE HILLSBOROUGH TRANSIT AUTHORITY, HILLSBOROUGH COUNTY, FLORIDA, AND THE METROPOLITAN PLANNING ORGANIZATION, THE SAME BEING DATED AS OF _____, 2019.

ATTEST:

By: _____
CITY CLERK

CITY OF PLANT CITY

By: _____
MAYOR

APPROVED AS TO FORM AND CORRECTNESS

By: _____
ATTORNEY FOR THE CITY OF PLANT CITY

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JOINDER EXECUTION PAGE

TO BE ATTACHED AND INCORPORATED INTO THE INTERLOCAL AGREEMENT FOR DISTRIBUTION OF TRANSPORTATION SALES SURTAX PROCEEDS BETWEEN THE CITY OF TAMPA, THE CITY OF TEMPLE TERRACE, THE CITY OF PLANT CITY, THE HILLSBOROUGH TRANSIT AUTHORITY, HILLSBOROUGH COUNTY, FLORIDA, AND THE METROPOLITAN PLANNING ORGANIZATION, THE SAME BEING DATED AS OF _____, 2019.

ATTEST:

By: _____
HART BOARD SECRETARY

HILLSBOROUGH TRANSIT AUTHORITY

By: _____
CHIEF EXECUTIVE OFFICER

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
GENERAL COUNSEL

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JOINDER EXECUTION PAGE

TO BE ATTACHED AND INCORPORATED INTO THE INTERLOCAL AGREEMENT FOR DISTRIBUTION OF TRANSPORTATION SALES SURTAX PROCEEDS BETWEEN THE CITY OF TAMPA, THE CITY OF TEMPLE TERRACE, THE CITY OF PLANT CITY, THE HILLSBOROUGH TRANSIT AUTHORITY, HILLSBOROUGH COUNTY, FLORIDA, AND THE METROPOLITAN PLANNING ORGANIZATION, THE SAME BEING DATED AS OF _____, 2019.

ATTEST: PAT FRANK
CLERK OF THE CIRCUIT COURT

By: _____
DEPUTY CLERK

HILLSBOROUGH COUNTY, FLORIDA

By: _____
LESLEY "LES" MILLER, JR., CHAIR
BOARD OF COUNTY
COMMISSIONERS

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
COUNTY ATTORNEY

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JOINDER EXECUTION PAGE

TO BE ATTACHED AND INCORPORATED INTO THE INTERLOCAL AGREEMENT FOR DISTRIBUTION OF TRANSPORTATION SALES SURTAX PROCEEDS BETWEEN THE CITY OF TAMPA, THE CITY OF TEMPLE TERRACE, THE CITY OF PLANT CITY, THE HILLSBOROUGH TRANSIT AUTHORITY, HILLSBOROUGH COUNTY, FLORIDA, AND THE METROPOLITAN PLANNING ORGANIZATION, THE SAME BEING DATED AS OF _____, 2019.

ATTEST: METROPOLITAN PLANNING ORGANIZATION

By: _____ By: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____

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EXHIBIT A
Agency Project Plans Submission, Approval and Certification Process

[TO COME]

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Hillsborough County Florida

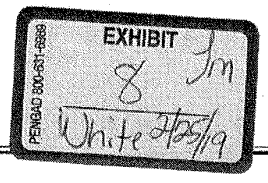
Home Rule Charter

Approved by Hillsborough County Voters
September 1983

Amended by Hillsborough County Voters
November 2002, 2004, 2012, and 2018

HCFLGov.NET

P.O. Box 1110, Tampa, FL 33601
Phone: (813) 276-2640



Charter-At-A-Glance

- Responsibilities of the executive branch (County Administrator) and legislative branch (County Commission) are specified, and neither branch is to exercise powers pertaining to the other branch.
- There are seven members of the County Commission; four are from single-member districts, and three are elected countywide. Every elector of the County may vote for a majority of the commissioners: the commissioner representing the elector's district, and thee commissioners elected at large.
- Terms of County Commissioners are staggered.
- The Charter does not affect any court, any constitutional office, district school board or any municipality.
- Special laws enacted by the Florida Legislature may be affective in Hillsborough County without approval by the County electors if they relate to: civil service, aviation, the port, sports, transportation, hospitals, planning, environment, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts.
- There are provisions for recall of elected officials.
- There is a provision for a Charter Review Board to be appointed by the County Commission two years after the implementation and every five years thereafter. The Charter Review Board is empowered to conduct a study of County government and propose amendments to the charter.
- Amendments also may be proposed by the County Commission by ordinance adopted by five commissioners, or by initiative.
- No amendment may be effective unless it is approved by a majority vote of the electors of the County.

Preamble

We, the people of Hillsborough County, Florida, in order to attain greater local self-determination, to exercise more control over our own destiny, to create a more responsible and effective government, and to guarantee equal civil and political rights to all, do avail ourselves of the opportunity afforded by the Florida Constitution to become a chartered county and do hereby ordain and establish by this Home Rule Charter a new form of government of and for Hillsborough County.

I. Creation

Section 1.01 Chartered County.

The county government for Hillsborough County shall be that of a chartered county under Section I, Article VIII of the Florida Constitution pursuant to which this Charter is adopted. Its boundaries are as provided by law. This is not a charter for consolidation of county and municipal governments in Hillsborough County, but solely a charter for the county government, and it is the intent of the people that it be so interpreted.

Section 1.02 Extent.

As used in this Charter, the term "the county government" means the government of Hillsborough County, but such term does not include and this Charter does not affect any court; any constitutional officer, as defined in Section I (d) of Article VIII, Florida Constitution: clerk of the circuit court, property appraiser, tax collector, sheriff or supervisor of elections; district school board; any municipality, whether created or enlarged before or after the adoption of this Charter; or any governmental body which has jurisdiction extending beyond the boundaries of Hillsborough County, and the relationship of the county government to them shall be the same as it would have been if this Charter had not been adopted.

II. Powers

Section 2.01. Powers.

The county government shall have all powers of local self government not inconsistent with general law; special law approved by the vote of the electors of Hillsborough County; special law relating to civil service, aviation, the port, sports, transportation, hospitals, planning, environment, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts, which laws may be effective as to Hillsborough County without approval by vote of the electors; or this Charter.

III. Separation of Powers.

Section 3.01. Separation of Legislative and Executive Powers.

The power of the county government shall be divided between legislative and executive branches. No person belonging to one branch shall exercise any powers appertaining to the other branch unless expressly provided herein.

IV. Legislative Branch

Section 4.01.

All legislative responsibilities and powers of local self-government of the county not inconsistent with this Charter shall be assigned to and vested in the board of county commissioners.

Section 4.02. Board of County Commissioners.

The board of county commissioners shall consist of seven commissioners, each of whom shall be elected from one of seven districts and each of whom shall be entitled to have other employment which does not prevent the member from having the time to discharge the duties of a commissioner. Prior to voting on any matter of county business, any commissioner having a conflict of interest shall declare that conflict to the board.

Section 4.03. Districts.

The territory of three districts shall embrace the entire territory of the county and be designated as districts 5, 6 and 7 respectively. The territory of four districts shall be established by dividing all of the county into four separate areas, designated as districts 1 through 4 respectively, as nearly equal in population as practicable.

Section 4.04. Residency Requirement and Limit on Terms.

Each candidate for a seat on the board of county commissioners shall be a citizen of the United States of America, a registered voter of the district for which the candidate qualifies, and a resident of Hillsborough County. No person who has, or but for resignation could have, served as a commission member from districts 1 through 4 for more than six years in two consecutive terms shall be elected as commission member from districts 1 through 4 for the next succeeding term, and no person who has, or but for resignation would have, served as a commission member from districts 5 through 7 for more than six years in two consecutive terms shall be elected as commission member from districts 5 through 7 for the next succeeding term.

Section 4.05. Election and Term of Office.

Except as provided herein, all elections for the board of county commissioners shall be as provided for county commissioners in non-charter counties. Each commissioner shall be elected by the electors residing in the district for which the commissioner qualifies. Each commissioner shall be elected for a term of four years, except as provided for initial commissioners in the transition article and

except that, in order to reflect population shifts between decennial censuses as quickly as possible, in 1990 and every ten years thereafter the commissioners to be elected from districts I and 3 shall be elected for terms of two years, and in 1992 and every ten years thereafter the commissioners to be elected from districts 2 and 4 shall be elected for terms of two years. Terms of office shall commence on the second Tuesday following the general election at which the commissioner was elected.

Section 4.06. Reapportionment.

Within 120 days after the certification of the federal decennial census, the board of county commissioners shall reapportion districts 1 through 4. Before doing so, the board of county commissioners shall cause an accurate description of the proposed new boundaries of such districts to be entered upon its minutes and a certified copy thereof to be published once each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation published in the county and via electronic media. The notice shall include the date of the meeting at which the board shall consider such boundaries and take testimony from the public regarding boundary changes. Proof of such publication shall be entered on the minutes of the board. The publication of the notice shall be for information only and shall not be jurisdictional. Should the board of county commissioners desire to make substantial changes to the proposed boundaries that were initially advertised and considered at the public meeting, the board of county commissioners shall hold an additional meeting to consider such new boundaries within 28 days of the first meeting and shall cause an accurate description of the new proposed districts to be advertised once each week for two weeks in a newspaper of general circulation and via electronic media. Whenever the boundaries of the existing districts are changed, the board shall cause its clerk to furnish the Department of State with a certified copy of its minutes, reflecting the description of the boundaries of the district, as changed.

Section 4.07. Compensation.

Salaries of all commission members shall be as provided by ordinance at 75 percent or higher of the salary which would have been provided by general law had this Charter not been adopted. Such salary shall constitute full compensation for all services and expenses provided that commissioners may be reimbursed for mileage while traveling on commission business within Hillsborough County and for travel expenses when traveling outside of Hillsborough County on official business, in accordance with general law. The chairman shall receive additional remuneration in an amount often percent of the basic salary for the period of time such person serves as chairman of the commission.

Section 4.08. Enactment of Ordinances and Resolutions.

The commission may take official action only by the adoption of ordinances, resolutions, or motions. Unless otherwise provided herein, all ordinances, rules and resolutions shall be adopted by at least 4 affirmative votes, and all motions shall be adopted by majority vote of the members present. A majority of the full commission shall constitute a quorum to conduct business.

Section 4.09. Conflict with Municipal Ordinances.

In the event of a conflict between a county ordinance and a municipal ordinance, the municipal ordinance shall prevail within the municipality regardless of whether the municipal ordinance was adopted or enacted before or after the county ordinance.

Section 4.10. County Internal Auditor.

(1) To advise the board of county commissioners and assist the board of county commissioners in conducting continuing studies of the operation of county programs and services, there shall be a county internal auditor.

(2) The county internal auditor shall be appointed by five (5) affirmative votes of the board of county commissioners. The board of county commissioners, at any time, may remove the county internal auditor with five (5) affirmative votes. The county internal auditor shall be responsible directly to the board of county commissioners. The county internal auditor need not be a resident of Hillsborough County at the time of appointment, but shall become a resident of Hillsborough County within a reasonable period of time and remain a resident of Hillsborough County while in office.

(3) The county internal auditor shall be a certified public accountant holding an active license to practice public accountancy in the State of Florida, and/or shall be qualified by education and experience in governmental accounting, internal auditing practice, and fiscal controls. The county internal auditor shall not engage in any other business or occupation. The compensation of the county internal auditor shall be fixed by the board of county commissioners at a level which is commensurate with the requirements of the position. The county internal auditor's compensation, including severance pay, may be set by contract.

(4) The board of county commissioners shall bi-annually establish an audit committee of 3 to 5 members who shall be selected by the board of county commissioners from among qualified applicants from the public and who shall meet without compensation from time to time for the purpose of making internal audit program recommendations to the board of county commissioners. The board of county commissioners shall annually, after receiving recommendations from the audit committee, give direction to the county internal auditor. The Hillsborough County internal auditor's work may include audits of all aspects of this Charter Government and its offices and its officials with written audit reports submitted to both the board of county commissioners and the county administrator. To the extent it is reasonable, the County internal auditor's work shall comply with professional standards for internal auditing. To the degree necessary to fulfill the responsibilities directed by the board, the auditor shall have free and unrestricted access to Charter government employees, officials, records, and reports and where appropriate, may require all divisions, offices, and officials of the Charter government to provide all oral and written reports and to produce documents, files and other records.

(5) The county internal auditor shall hire, on either a full-time or part-time basis, and may remove assistants. The number and qualifications of assistants shall be provided by the board of county commissioners. The county internal auditor may also be authorized by the board of

county commissioners to hire outside expertise as may be deemed necessary. The county internal auditor's budget shall be set by the board of county commissioners.

(6) The office of county internal auditor shall be deemed vacant if the incumbent: takes up residence outside of Hillsborough County; dies; resigns; or is removed by five (5) affirmative votes of the board of county commissioners. A vacancy in the office of the county internal auditor shall be filled in the same manner as the original appointment.

(7) The county internal auditor shall not hold any political office nor take part in any political activity other than voting.

V. Executive Branch County Administrator

Section 5.01. County Administrator.

The executive responsibilities and powers of local self government of the county not inconsistent with this Charter shall be assigned to and vested in the county administrator. One or more assistant county administrators may be appointed by the county administrator with the advice and consent of the board and shall serve at the pleasure of the county administrator.

Section 5.02. Administrative Organization.

All functions of the executive branch shall be allotted among not more than ten divisions or of fines. Each division or office shall be administered by a division or office head in accordance with the administrative code. Each division or office head shall be appointed by the county administrator with the advice and consent of the board and shall serve at the pleasure of the county administrator. Each division or office head shall report to and be responsible to the county administrator or designated assistant county administrator. The county administrator may, as allowed by ordinance, require one division or office to undertake a task of another division or office on a temporary basis or until the board provides otherwise.

Section 5.03. County Administrator: Qualifications, Appointment, Compensation.

(1) The county administrator shall be a full-time officer who holds a masters degree in public administration, management, or related field and shall have three years of executive or managementexperience in public administration. The county administrator shall be appointed by an affirmative vote of not less than five members of the Board of County Commissioners and may be removed at any time by an affirmative vote of not less than five members of the board or upon the affirmative vote of 4 members at each of 2 regular meetings not less than 13 days apart and no more than 28 days apart. The administrator need not be a resident of the county at the time of appointment, but shall within a reasonable time become and remain while in office a resident of the county. The county administrator shall not engage in any other business or occupation.

(2) The compensation of the administrator shall be fixed by the Board of County Commissioners by ordinance at a level which is commensurate with the requirements of the position. The

county administrator's compensation, including severance pay, may be set by contract if allowed by and pursuant to ordinance.

(3) The office of county administrator shall be deemed vacant if the incumbent: takes up residence outside the county; is by death, illness, or other casualty unable to continue to perform the duties of his office; resigns; or is removed by the board of county commissioners in the manner prescribed in Section 5 .03(1). A vacancy in the office shall be filled in the same manner as the original appointment. The board of county commissioners may appoint an interim administrator in the case of vacancy, temporary absence, or disability of the present administrator until a successor has been appointed and qualified or the administrator returns.

Section 5.04. Political Activity by Administrator.

The county administrator shall not hold any political office nor take part in any political activity other than voting.

Section 5.05. Performance Bond.

The county administrator shall be required to post a performance bond in accordance with general law.

VI. County Attorney

Section 6.01. Legal affairs.

The legal affairs of the County shall be assigned to and vested in the Office of the County Attorney. The office will consist of the County Attorney who shall be head of the office together with such chief assistants and other assistant county attorneys and legal support personnel as may from time to time be required subject only to budget determinations of the Board of County Commissioners. All attorneys and employees of the office shall serve at the pleasure of the County Attorney.

Section 6.02. County attorney duties.

(1) The County Attorney shall be responsible for representing, and is hereby authorized to represent, the Board as its County Attorney. The County Attorney shall provide legal services, including management and participation in all litigation and other such legal services, required to protect the interests of the County; and shall render legal advice and perform other legal and administrative responsibilities as described elsewhere herein to the Board and to all other departments and agencies of County government that the Board from time to time authorizes and directs.

(2) The duties, responsibilities and authority of the County Attorney shall include, without limitation: (a) providing legal advice and counsel to, and legal representation of, the Board, the County Administrator and the departments, agencies and officers of the County on all matters pertaining to the business of the County or in connection with the duties of the department, agency or office; (b) coordinating with the County Administrator and various departments and offices under his jurisdiction regarding all matters affecting and implicating overall County administration, including, without limitation, budgetary, personnel and

procurement matters; (c) advising and providing recommendations to the Board regarding the need for the selection of any special counsel to be retained to provide legal representation in specified matter; and (d) supervising, monitoring and coordinating, as appropriate, the representation services and work of outside attorneys employed pursuant to Subsection (c) above.

(3) Upon direction of the Board and with the consent of the County Attorney, the County Attorney's Office may provide legal advice and counsel to and representation of one or more of the County officers created under Section 1(d) of Article VIII of The Florida Constitution or any other state or local governmental office, unit or entity serving the County's interest and welfare and as may be authorized by law or interlocal agreement. At the request of the Board of County Commissioners, the County Attorney is hereby authorized to represent the Board of County Commissioners when it is acting as any other separate agency or legal entity consisting of the Hillsborough County Board of County Commissioners. The responsibility and authority of the County Attorney when serving as attorney in these matters shall include, but not be limited to, those duties and responsibilities as herein set out for the County Attorney.

(4) Nothing herein contained shall be construed as requiring the attorney to render legal services in any particular circumstance where, in the professional discretion and judgment of the attorney, the rendering of such legal services would violate the provisions of the Code of Professional Responsibility of the Florida Bar or create a direct conflict of interest between the County and attorney.

Section 6.03. County attorney qualifications, appointment, compensation.

(1) The County Attorney shall be and remain a member of The Florida Bar and shall have had at least five (5) years experience in Local Government Law or equivalent and such other experience as determined by the Board. The County Attorney need not be a resident at the time of appointment but shall within a reasonable time become and remain a resident of the County and remain so while in office. The County Attorney shall be a full time employee of the County and shall not otherwise engage in the practice of law except as may be authorized by the Board. The County Attorney shall be appointed by an affirmative vote of not less than five (5) members of the Board of County Commissioners and may be removed at any time by an affirmative vote of not less that five (5) members of the Board or upon the affirmative vote of four (4) members at each of two (2) regular meetings not less than thirteen (13) days apart and no more than twenty-eight (28) days apart.

(2) The compensation of the County Attorney, including severance pay and other benefits, shall be fixed by contract, ordinance or resolution as determined by the Board at a level commensurate with the requirements of the position.

(3) The Office of the County Attorney shall be deemed vacant if the incumbent is removed, resigns, moves his residence from the County or is, by death, illness or other casualty, unable to continue in office. In the case of temporary vacancy or absence or disability, until a successor has been appointed or the County Attorney returns, the Chief Assistant County Attorney or other Assistant Attorney designated by the County Attorney shall serve as the County Attorney upon approval of the Board.

Section 6.04 Special attorneys; bond counsel; disclosure counsel.

(1) Special attorneys may be employed by the Board of County Commissioners upon the recommendation of the County Attorney regarding the need for the selection of any special counsel to provide legal representation in specified matters.

(2) Bond and disclosure counsel shall be selected by the Board of County Commissioners from a list of not less than three (3) qualified respondents to publicly noticed solicitations for bond and disclosure counsel and upon the recommendation of the County Administrator and County Attorney.

Section 6.05 Political activity by County Attorney.

The County Attorney shall not hold any political office nor take part in any political activity other than voting.

VII. Administrative Code

Section 7.01. Purpose of Administrative Code.

The board of county commissioners shall enact and amend by ordinance an administrative code organizing the administration of the county government into divisions and offices and setting forth the duties, responsibilities, and powers of the county administrator, any assistant county administrators, if any, and divisions and offices of the county government not in conflict with the provisions of this Charter. It shall be the responsibility of the county administrator to compile, publish, and disseminate the administrative code, and to recommend revisions thereof in a continuing program to provide greater efficiency and economy in the operation of government.

Section 7.02. Initial Code.

Within ninety (90) days after the first organizational meeting of the board under this Charter, the county administrator shall submit a proposed administrative code to the board of county commissioners. The board of county commissioners shall adopt the proposed code, as submitted or amended, within three (3) months after the date submitted. If not adopted within three (3) months, the code, as proposed by the administrator, shall govern the operations of the county administrator, divisions and offices until such time as one may be adopted formally by the board of county commissioners.

VIII. Amendments To Charter

Section 8.01. By the Board of County Commissioners.

The board of county commissioners may propose amendments to this Charter by ordinance approved by at least five (5) members.

Section 8.02. Charter Review Board.

Within two years after the effective date of this Charter and every five years thereafter, the board of county commissioners shall appoint a charter review board consisting of fourteen (14) electors of the county. Each commissioner shall appoint two members of the charter review board who shall be electors in that commissioner's district, and none of whom may be an elected official. Members of the charter review board shall serve for a term of one year without compensation. Such board shall be empowered to conduct a comprehensive study of any or all phases of county government. The board of county commissioners shall provide such professional, technical, and clerical assistance as may be reasonably required by the charter review board upon submission of an appropriately documented request by the charter review board. The charter review board shall, after two public hearings and upon approval of two thirds of its members, file any proposed amendments to the Charter, if any, with the supervisor of elections who shall provide for a vote on it pursuant to Section 8.04.

Section 8.03. Initiative.

The power to propose amendments to this Charter by initiative is vested in the people:

(1) The power may be invoked by filing with the supervisor of elections a petition containing a copy of the proposed Charter amendment. Each petition must be circulated in each numbered board district and must be signed by a number of electors in each of one-half of districts 1 through 4 and of the county as a whole equal to eight percent of the votes cast in each of such districts and the county as whole in the last preceding election in which a president or presidential electors were chosen. The address of each signer, and date of each signature, must appear on the petition. Each petition shall embrace but one subject and matter properly connected therewith. A date certain must be designated to and certified by the supervisor of elections as the beginning date of any petition drive, and said drive shall terminate six months after that date. In the event sufficient signatures are not acquired during that six-month period, the petition drive shall be rendered null and void and none of the signatures may be carried over onto another identical or similar petition.

(2) The petition shall be filed with the supervisor of elections who shall, within a period of not more than thirty (30) days, determine whether the petition contains the required valid signatures. The supervisor shall be paid the sum specified by general law by the persons or committee seeking verification.

a) If it is determined that the petition does not contain the required signatures, the supervisor shall so certify to the board of county commissioners and the petition drive shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

b) If it is determined that the petition has the required signatures, the supervisor shall so certify to the board of county commissioners and place the amendment on the ballot.

(3) All other procedures shall be as provided by general law for constitutional amendments with the supervisor of elections performing the duties of the secretary of state.

Section 8.04. Elections and Notice.

All elections shall be held and conducted pursuant to the provisions of general law except as otherwise provided in this Charter. Charter amendments by ordinance shall be voted on at special elections or regular elections as the board of county commissioners chooses. Charter review and initiative amendments shall be voted on at the next regular general election. Amendments shall become effective upon approval by a majority vote of the electors voting at the next scheduled countywide election or special referendum election.

Section 8.05. Financial Impact Statement for All Proposed County Charter Amendments and Countywide Referenda.

The board of county commissioners shall require by ordinance that for all County elections, a separate financial impact statement, not exceeding seventy-five words, including a two-year estimate of the increase or decrease in revenues or costs to the county resulting from approval of all proposed county Charter amendments and all other proposed countywide referenda unrelated to a county Charter amendment, be prepared by the county budget director and placed on the ballot immediately following the ballot question.

IX. General Provisions

Section 9.01. Limitation on State Law.

No law passed by the state legislature shall be effective as to the county government:

(a) Unless it is approved at referendum, or

(b) Except to the extent,

(1) the Florida Constitution or this Charter requires that it be effective, or

(2) it permits this county government to grant powers to, receive powers from, or combine powers with other governmental entities, or

(3) it solely affects (i) Tax authorization not inconsistent with this Charter or (ii) the relations of this county government to any governmental body which has jurisdiction extending beyond the boundary of Hillsborough County, or

(4) it is authorized under Section 2.01.

Section 9.02. Construction of the Charter.

It is the intent of the electorate in adopting this Charter that this Charter shall be liberally construed to achieve the objectives of local home rule and separation of branches as set forth herein.

Section 9.03. Code of Ethics.

The code of ethics for public officers and employees and the penalties for violation thereof as provided by general law or more restrictive ordinance, if any, shall be applicable to all employees and office holders of this county government.

Section 9.04. Political Activities.

Political activities of officers and employees of the county government shall be governed and controlled by general law except as provided herein and except that the county administrator's assistants and division and office heads, the county internal performance auditor, the county internal performance auditor's assistants, and the county attorney and his assistants, shall not hold any political office nor take part in any political activity relating to county commission elections, other than voting.

Section 9.05. Severability.

It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.

Section 9.06. Vacancies.

Vacancies in commission districts shall be deemed to exist and be filled in accordance with the Constitution and Laws of Florida.

Section 9.07. Public Meetings.

Meetings of the board of county commissioners and other boards shall be held and conducted as provided by general law and rules of the board not inconsistent therewith.

Section 9.08. Recall.

The people shall have the power to recall elected officials by recall election initiated, called, held and conducted as provided by general law for chartered counties.

Section 9.09. Planning.

There shall be for Hillsborough County and its municipalities a single local planning agency created by such special law or laws which need not be approved by a referendum. It shall have responsibility for comprehensive planning and related activities as are committed to it by general law or applicable special laws.

Section 9.10. Environmental Protection.

There shall be for Hillsborough County and its municipalities a single local environmental protection commission created by such special law or laws which need not be approved by referendum.

Section 9.11 Discrimination Prohibited.

To be consistent with federal and state constitutions, laws, rules, and regulations, the county government shall not deprive any person of any right because of race, sex, age, national origin, religion, disability, or political affiliation. The administrative code shall provide adequate means for protecting these rights, including equal opportunity assurances.

Section 9.12. Lowering of Salaries.

The salaries of commissioners and the county administrator may be lowered to the extent allowed by general law.

X. Transition And Schedule

Section 10.01. Offices and Officers of Former Government.

Unless otherwise provided by this Charter, all offices, officials, boards, commissions, and agencies of the former government shall continue to perform their respective duties and functions until such minimum time allowed for the adoption of an administrative code pursuant to Section 7.02. At said time, said duties and functions shall be performed in accordance with the administrative code.

Section 10.02. Interim County-Wide Districts.

The commissioners elected countrywide in the year 1982 shall immediately become commissioners from districts 5 and 7 respectively and stand for initial election [in] 1986.

Section 10.03. Initial Commissioners.

By November 15, 1983, the board of county commissioners shall establish the apportionment of districts 1 through 4 under procedures provided in Section 4.06 and using the 1980 federal decennial census population figures. At the 1984 general elections commissioners from districts I through 4 and district 6 shall be elected, with the terms of the new commissioners from districts I and 3 to be for two years only and the terms of commissioners from districts 2, 4 and 6 to be for four years. The commissioners from districts 2 and 4 as drawn in 1981, who were elected by county-wide vote in 1982, shall serve as the commissioners from districts 5 and 7 respectively until the second Tuesday following the 1986 general election, but if either is not in office at the beginning of qualification in 1984, then a commissioner for new district 5 or 7, as the case may be, shall be elected in the initial election for a term of 2 years.

Section 10.04. Effective Date of Government.

County government shall go into force and effect when the commissioners elected at the 1984 general election take office.

Section 10.05. Preservation of Existing Government.

All provisions of the laws or parts thereof rendered ineffective as to the county government

by Section 9.01, which are not inconsistent with this Charter shall become ordinances of this government subject to modification or repeal as are other ordinances; however, they shall stand repealed as of November 15, 1985.

Section 10.06. Preservation of Existing Ordinances.

All ordinances, codes, rules, regulations and resolutions of the county of Hillsborough or any of its agencies which are not inconsistent with this Charter, shall become ordinances, rules, regulations of the county government subject to modification or repeal as are other ordinances.

Section 10.07. Rights Reserved.

(a) Obligations Honored. All lawful rights and obligations, of whatever kind or nature in existence on the date this Charter is approved by the electors, of the local government becoming a part of the county government on the one hand, and any person, firm, corporation, other government or agency on the other hand, shall become the rights and obligations of the county government.

(b) No Enlargement of Obligations. All such rights and obligations shall be limited to the area, or funds, which would have been subject to such rights or obligations if this Charter had not been adopted.

Section 10.08. Classified Employees and Officers.

All employees in the classified service and officers of the county shall be transferred to the division, office, or agency to which the functions, powers, and duties in which they were engaged upon the effective date of this Charter are allocated under this Charter. Such transfer shall be without examination or diminution of existing compensation, pension, or retirement rights, privileges, or obligations of any such officers or employee. The adoption of any subsequent classified service plan shall not adversely affect the tenure, pension, seniority, or promotional rights of any county officer or employee in the classified service when this Charter is adopted.

XI. Surtax for Transportation Improvements

Section 11.01. Purpose of Surtax.

The purpose of the surtax levied in accordance with Section 11.02 below is to fund transportation improvements throughout Hillsborough County, including road and bridge improvements; the expansion of public transit options; fixing potholes; enhancing bus service; relieving rush hour bottlenecks; improving intersections; and making walking and biking safer. The proceeds of the surtax shall be distributed and disbursed in compliance with F.S. § 212.055(1) and in accordance with the provisions of this Article 11.

Section 11.02. Levy of One-Cent Surtax to Fund Transportation Improvements.

There shall be levied throughout the incorporated and unincorporated areas of Hillsborough

County an additional tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, Florida Statutes, and communications services as defined by Chapter 202, Florida Statutes, at the rate of one cent for each $1.00 of the sales price or actual value received, and for each fractional part of $1.00 of the sales price or actual value received (the "Transportation Surtax"). The Transportation Surtax shall be levied and imposed in accordance with F.S. §§ 212.054 and 212.055(1), the rules promulgated by the Florida Department of Revenue, and this Article 11. Any other provision of this Charter to the contrary notwithstanding, all proceeds from the Transportation Surtax, including any interest earnings and bond proceeds generated therefrom, shall be expended only as permitted by this Article 11, F.S. § 212.055(1), and in accordance with the purpose set forth in Section 11.01 above. For purposes of this Article 11, Hillsborough County, Florida (the "County"), each municipality, as defined in F.S. § 165.031, that is located in the County (the "Municipalities"), and the Hillsborough Area Regional Transit Authority or its successor ("HART") are each an "Agency" and collectively, the "Agencies." "Independent Oversight Committee" shall refer to the committee mandated and governed by Section 11.10 below.

Section 11.03. Duration of Transportation Surtax.

The Transportation Surtax authorized by this Article 11 shall be effective commencing January 1, 2019, and shall remain in effect for a period of thirty (30) years.

Section 11.04. Duties of the Clerk.

The Clerk of the Circuit Court of Hillsborough County, Florida (the "Clerk") shall receive the proceeds of the Transportation Surtax (the "Surtax Proceeds") from the Florida Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate account until disbursed in accordance with this Section 11.04 and the distribution allocations provided for in Section 11.05. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided in Section 11.05 shall be made to the Agencies by the Clerk within five (5) business days of the Clerk's receipt of Surtax Proceeds from the Florida Department of Revenue. Additionally, the Clerk shall provide, on behalf of the board of county commissioners, the notices to the Florida Department of Revenue required by F.S. §§ 212.054(7)(a) and (b), and any other notices that must be delivered to the Department of Revenue or the State of Florida as required by applicable law. The Clerk shall engage an independent accounting firm to conduct an annual, independent audit of the distribution and expenditure of all Surtax Proceeds, which shall be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining the Clerk's and each Agency's compliance with the provisions of this Article relating to the distribution and expenditure of Surtax Proceeds during such fiscal year. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds to the Clerk on an annual basis to permit the Clerk to carry out the annual audit of Surtax Proceeds described in this Section 11.04.

Section 11.05. Distribution of Surtax Proceeds.

The Surtax Proceeds shall be deposited in a dedicated trust fund (the "Trust Fund") maintained by the Clerk and distributed in accordance with the following formula:

(1) General Purpose Portion. Fifty-four percent (54%) of the Surtax Proceeds (the "General

Purpose Portion") shall be distributed to the County and to each Municipality in accordance with their relative populations as calculated utilizing the statutory formula provided in F.S. § 218.62 (the "Distribution Formula") and be expended by the County and each Municipality in accordance with Section 11.07. The County and each Municipality may elect to bond or otherwise encumber their respective distribution of the Surtax Proceeds allocated pursuant to this Section 11.05(1), and shall provide notice of such election to the other recipients of the General Purpose Portion at least ninety (90) days prior to issuing bonds.

(2) Transit Restricted Portion. Forty-five percent (45%) of the Surtax Proceeds (the "Transit Restricted Portion") shall be distributed to HART and be expended by HART in accordance with Section 11.08. Subject to compliance with applicable law and the charter of HART, HART may elect to directly, or through the County, bond or otherwise encumber the Transit Restricted Portion.

(3) Planning and Development Portion. One percent (1%) of the Surtax Proceeds (the "Planning and Development Portion") shall be distributed to the metropolitan planning organization described in F.S. § 339.175 whose jurisdiction includes Hillsborough County (the "MPO"). The Planning and Development Portion shall be expended by the MPO on planning and development purposes, including data collection, analysis, planning, and grant funding to assist the Agencies and the Independent Oversight Committee in carrying out the purpose set forth in Section 11.01.

Section 11.06. Agency Project Plans.

No later than September 30th of each year, each Agency shall deliver to the Independent Oversight Committee a plan (a "Project Plan") setting forth the projects, including reasonable detail for each, on which such Agency will expend their distribution of the Surtax Proceeds for the following calendar year in accordance with the uses mandated by Sections 11.07 and 11.08 below. Each Project Plan must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee at a public hearing. No Agency may expend Surtax Proceeds for any purpose other than implementation of each of the projects set forth in such Agency's Project Plan, and each Agency shall diligently and prudently pursue implementation of each of the projects set forth in such Agency's Project Plan. If any Agency desires to amend its Project Plan after the Independent Oversight Committee has approved the same, the Independent Oversight Committee shall approve or disapprove (and state the basis therefore) the amended Project Plan within thirty (30) days of an Agency's request to amend.

Section 11.07. Uses of General Purpose Portion.

For any Agency that the Clerk reasonably estimates will receive five percent (5%) or more of the Surtax Proceeds in a given calendar year, such Agency's share of the General Purpose Portion shall be expended by the Agencies for the planning, development, construction, operation, and maintenance of roads, bridges, sidewalks, intersections, and public transportation (which, for purposes of this Section, may include any technological innovations such as autonomous vehicles and related infrastructure), to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Maintenance and Vulnerability Reduction. At least twenty percent (20%) of the General

Purpose Portion shall be expended on projects that: (i) improve, repair and maintain existing streets, roads, and bridges, including fixing potholes, or (ii) reduce congestion and transportation vulnerabilities.

(2) Congestion Reduction. At least twenty-six (26%) of the General Purpose Portion shall be expended to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections. Expenditures in the category described in this Section 11.07(2) may include projects that improve intersection capacity through the use of technology, the construction of new intersections, the redevelopment of existing intersections, and may include related infrastructure such as roundabouts and turn lanes. Projects described in the foregoing sentence do not constitute New Automobile Lane Capacity, as defined in Section 11.07(8) below.

(3) Transportation Safety Improvements. At least twenty-seven (27%) of the General Purpose Portion shall be expended to promote transportation safety improvements on existing streets, roads and bridges.

(4) Transportation Network Improvements. At least twelve (12%) of the General Purpose Portion shall be expended on bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network within any Agency's jurisdiction, and to the extent permitted by F.S. § 212.055(1).

(5) Remaining Funds. Any remaining portions of the General Purpose Portion shall be expended on any project to improve transportation in the applicable Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article.

(6) Inter-Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, the County and each Municipality may distribute any amount of its share of General Purpose Portion to any Agency (an "Agency Distribution"). For purposes of this Section, any Agency's share of the General Purpose Portion shall be reduced, or increased, by the amount of the Agency Distribution distributed, or received, as the case may be.

(7) Small Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, any Agency that receives five percent (5%) or less of the Surtax Proceeds in any given calendar year, on an annualized basis, is not required to expend its share of General Purpose Portion on the categories set forth in Section 11.07(1) through (5) above, and shall instead expend its distribution of the Surtax Proceeds on any purpose consistent with Section 11.01 and permitted by F.S. § 212.055(1).

(8) Limits on New Automobile Lane Capacity. Agencies are prohibited from expending any funds from the categories mandated by Section 11.07(1), (2) and (3) above on New Automobile Lane Capacity. For purposes of this Section 11.07(8), "New Automobile Lane Capacity" means projects that consist of (i) adding additional lanes for automobile traffic to existing roads or streets that are not related to intersection capacity improvement, or (ii) constructing new roads or streets.

(9) Reallocation of Expenditure Categories. Upon request by an Agency, which request must be approved by seventy-five percent (75%) of the Independent Oversight Committee, the General Purpose Portion expenditure allocations mandated in Sections 11.07(1) through (3) above may instead be expended on any project to improve transportation within such Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article if, in the opinion of the requesting Agency, any of the percentages set forth in Sections 11.07(1) through (3) exceed the amounts required to fulfill the purpose set forth therein.

Section 11.08. Uses of Transit Restricted Portion.

The Transit Restricted Portion, and any Agency Distribution received by HART, shall be spent by HART for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the HART board of directors, to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Enhancing Bus Services. No less than forty-five percent (45%) of the Transit Restricted Portion shall be spent on bus services, including express, neighborhood, circulator, paratransit, and all other types of transit now or hereafter operated by HART. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(2) Expanding Public Transit Options. No less than thirty-five percent (35%) of the Transit Restricted Portion shall be spent on transit services that utilize exclusive transit right-of-way for at least seventy-five percent (75%) of the length of the applicable service. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; utilizing or extending existing fixed guideways and rights-of-way; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(3) Remaining Funds. Any remaining portions of the Transit Restricted Portion shall be spent on any project to improve public transportation permitted by F.S. § 212.055(1) or this Charter.

Section 11.09. Suspension of Distribution.

In the event it is determined by a two-thirds majority of the Independent Oversight Committee that an Agency has failed to comply with any term or condition of this Article 11 and such Agency fails to correct such non-compliance within reasonable periods of time determined by the Independent Oversight Committee, but not more than ninety (90) days following written notice of such noncompliance, the Independent Oversight Committee may direct that distributions of the Surtax Proceeds to such Agency be suspended by the Clerk and held by the Clerk in the Trust Fund until such time as the Agency has cured the non-compliance, at which point distributions of the Surtax Proceeds to such Agency shall re-commence and any withheld Surtax Proceeds shall be

distributed to the Agency.

The foregoing shall not apply to any portion of Surtax Proceeds encumbered by bond indebtedness pursuant to law; provided, however, that the financing instruments for such bond indebtedness include covenants requiring the Agency to comply with the terms and conditions of this Charter.

Section 11.10. Independent Oversight Committee.

To ensure that the Transportation Surtax is successfully implemented, independent oversight of the distribution and expenditure of the Surtax Proceeds shall be provided by an Independent Oversight Committee, which shall be composed of Hillsborough County residents appointed by the following bodies: (i) four (4) individuals appointed by the board of county commissioners, and of which two are Experts (as defined below) in either transportation, planning, sustainability, engineering, or construction; (ii) one (1) from each Municipality, appointed by the mayor thereof; (iii) one (1) additional member from each Municipality for each 200,000 residents in such Municipality, appointed by the legislative body of that Municipality, based on population estimates published annually by the State of Florida; (iv) two (2) from HART, appointed by the HART board of directors; (v) one (1) attorney, who is a member by the Florida Bar, appointed by the Clerk; (vi) one (1) land use or real estate Expert appointed by the Hillsborough County Property Appraiser; and (vii) one (1) certified public accountant appointed by the Hillsborough County Tax Collector. No person then currently serving as an elected or appointed city, county, special district, state, or federal public office holder shall be eligible to serve as a member of the Independent Oversight Committee. Additionally, no member of the Independent Oversight Committee may be an employee of, independent contractor of, or otherwise be materially engaged for remuneration by any public or private recipient of Surtax Proceeds. Independent Oversight Committee members shall serve terms of three (3) years, without compensation, and each shall serve at the pleasure of the appointing body. The Independent Oversight Committee may make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with this Charter. The Independent Oversight Committee shall have only those powers and duties specifically vested in it by this Section 11.10. A majority of the members of the Independent Oversight Committee shall constitute a quorum, and the Independent Oversight Committee may conduct business only when a quorum is present. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds on an annual basis for the administrative expenses of the Independent Oversight Committee in an amount sufficient for the Independent Oversight Committee to fulfill its duties under this Article 11. For purposes of this Section 11.10, "Expert" means an individual who has at least seven years of experience in their respective subject matter area, and possesses professional accreditations or degrees that are typical of an expert in their respective subject matter area. The Independent Oversight Committee shall have the powers and duties set forth below:

(1) Review the results of the annual audit described in Section 11.04 and make findings as to whether the Clerk and each Agency has complied with the terms of this Article. Such findings shall include a determination as to whether Surtax Proceeds have been distributed as provided in this Article and whether the Surtax Proceeds have been expended in compliance with applicable state

law, this Article, and any additional requirements that an Agency may have lawfully adopted.

(2) Approve Project Plans and approve and certify as to whether the projects therein comply with this Article.

(3) Prepare an annual report to the Clerk and each Agency presenting the results of the annual audit process and any findings made. The Independent Oversight Committee shall cause a summary of the annual report to be published in a local newspaper and ensure that the report and annual audit are available online and are delivered to every library located within the County for public review. The Independent Oversight Committee shall hold a public hearing on each audit and annual report and shall report the comments of the public to each Agency.

(4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and forward them to the appropriate Agency for consideration.

Section 11.11. Miscellaneous.

(1) Prohibited Uses. No Surtax Proceeds may be used for any of the following uses: (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports facility or any other facility not related to transportation; or (iii) any other use expressly prohibited by law.

(2) Severability. To the extent that any mandated expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of Surtax Proceeds, the funds allocated to such impermissible use shall be expended by the applicable Agency on any project to improve public transportation permitted by F.S § 212.055(1) and this Article.

(3) Supremacy. This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity
as a county commissioner of
Hillsborough County, Florida,

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants.

Case No. 18-CA-011749
Division: K

_____/

AFFIDAVIT OF TYLER HUDSON

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

BEFORE ME, the undersigned authority, personally appeared TYLER HUDSON, who, after being duly sworn, deposes and says of his own personal knowledge:

1. My name is Tyler Hudson. I am over the age of eighteen (18) and otherwise competent to execute this Affidavit.

2. I make this affidavit of my own personal knowledge.

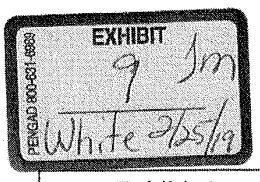


Exhibit 1

3. I reside in Hillsborough County, Florida, and have resided in Hillsborough County at all times relevant to this lawsuit.

4. I currently serve as President, Director, and registered agent of Keep Hillsborough Moving, Inc., a Florida not for profit corporation, and as Chair of All for Transportation, a Florida Political Committee.

5. In addition to myself, the Directors of Keep Hillsborough Moving, Inc. are Christina Barker, Janet Scherberger, and Robert I. Watkins. Nancy H. Watkins is the Treasurer of Keep Hillsborough Moving, Inc.

6. Keep Hillsborough Moving, Inc. is an active not for profit corporation located at 610 S. Boulevard, Tampa, Florida 33606.

7. I caused Articles of Incorporation for Keep Hillsborough Moving, Inc. to be filed with the Florida Secretary of State on June 8, 2018, establishing the corporate entity, and amended articles to be filed on June 26, 2018 and December 10, 2018.

8. The principals of Keep Hillsborough Moving, Inc. formed the not for profit corporation for the purpose of educating the public on issues related to transportation and transportation funding in Hillsborough County, to advocate for legislation and public policy furthering those goals, and to serve as a core organization bringing together citizens and representatives of other organizations with the common goal of advocating for transportation funding in Hillsborough County, which its principals have been engaged in for many years.

9. Keep Hillsborough Moving, Inc. conducted fundraising activities, and employed staff, consultants, and attorneys for the purpose of supporting a citizen-driven ballot initiative to amend the Hillsborough County Charter by adopting a new article, Article 11, titled "Surtax for Transportation Improvements."

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10. On June 8, 2018, Keep Hillsborough Moving, Inc. formed the political committee All for Transportation in accordance with section 106.03, *Florida Statutes* (2018).

11. I executed a Statement of Organization of Political Committee on behalf of Keep Hillsborough Moving, Inc., establishing All for Transportation, which was received by the Hillsborough County Supervisor of Elections on June 11, 2018. Keep Hillsborough Moving, Inc., is a connected organization to All for Transportation.

12. I am the Chair of All for Transportation. Nancy H. Watkins is its Treasurer and registered agent, and Robert I. Watkins is the Deputy Treasurer of All for Transportation.

13. Keep Hillsborough Moving, Inc. formed All for Transportation to prepare and advance a citizen-driven ballot initiative to amend the Hillsborough County Charter, to collect signatures of registered electors in Hillsborough County who supported the initiative, and to advocate for approval of the referendum adopting Article 11.

14. All for Transportation prepared the petition and submitted it to the Hillsborough County Supervisor of Elections via email on June 14, 2018, seeking a start date for its signature collection drive. The petition submitted to the Supervisor of Elections included the proposed language of Article 11 and the proposed ballot summary.

15. On June 15, 2018, in a letter addressed to myself on behalf of All for Transportation, the Hillsborough County Supervisor of Elections provided All for Transportation with official certification, pursuant to Section 8.03 of the Hillsborough County Charter, that the beginning date of its petition drive would be June 15, 2018, and that all signed petitions were required to be returned to the Supervisor of Elections for verification no later than 5:00 PM on July 27, 2018.

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16. Following receipt of the certification letter from the Hillsborough County Supervisor of Elections, All for Transportation began collecting signatures through hundreds of volunteers complimented by paid collection efforts.

17. The petition All for Transportation presented to the registered electors of Hillsborough County seeking their support for the initiative included the entire proposed language of Article 11 and the proposed ballot summary.

18. By the July 27, 2018 deadline, All for Transportation had presented the Supervisor of Elections with more than 77,000 petitions signed by registered electors of Hillsborough County. Of the petitions presented, 50,705 were ultimately deemed valid.

19. On August 8, 2018, in a letter addressed to then Hillsborough County Commission Chair Sandra Murman, the Hillsborough County Supervisor of Elections provided the Commission with certification, pursuant to Section 8.03 of the Hillsborough County Charter, that All for Transportation had met the requirements with regard to the total number of valid signatures and apportionment among the County Commission districts, and informed the Commission that the proposed charter amendment and ballot summary would be placed on the November general election ballot.

20. On September 5, 2018, in accordance with the requirements of section 212.055(10), *Florida Statutes* (2018), a performance audit of Hillsborough County and Hillsborough Area Regional Transit Authority was submitted to Mr. Michael Merrill, County Administrator for Hillsborough County by the accounting firm of McConnell & Jones, LLP. The accounting firm was selected by the Office of Program Policy Analysis and Government Accountability (OPPAGA).

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21. The proposed charter amendment was included on the 2018 General Election ballot as Hillsborough County Referendum Number 2.

22. The General Election was held November 6, 2018, three months after the County Commission received the certification letter from the Supervisor of Elections. Early voting in Hillsborough County occurred between October 22, 2018 and November 4, 2018.

23. Hillsborough County Referendum Number 2 was approved by the citizens of Hillsborough County with 57.3% of the vote, totaling 282,753 votes cast in support.

24. All for Transportation analyzed the precinct by precinct election results on November 7, 2018 and concluded that the referendum had been approved in every city in Hillsborough County (approximate results: Tampa: 63%, Temple Terrace 64%, and Plant City 54%), and in the unincorporated county (54.6%), and concluded that the referendum had been approved in every county commission district (approximate results: District 1: 57%, District 2: 53%, District 3: 67%, and District 4: 52%).

25. The official election results of the November 6, 2018 general election were certified by the Hillsborough county Supervisor of Elections on November 18, 2018.

26. From the time of its formation, All for Transportation expended significant sums on a variety of paid campaign communications and community outreach, sent millions of direct mail pieces to the registered electors of Hillsborough County, knocked on tens-of-thousands of doors and made thousands more phone calls urging the registered electors of Hillsborough County to approve the citizen-driven ballot initiative adopting Article 11, produced hundreds of digital advertisements, engaged in a robust canvasing program to turn out supportive voters, and employed four full time employees. All of these efforts were directed toward advocating for approval of the referendum adopting Article 11.

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27. All for Transportation remains an active political committee.

28. Keep Hillsborough Moving, Inc. continues to advocate for the expeditious implementation of Article 11 as adopted by the citizens of Hillsborough County, continues to advocate for citizen participation in the area of transportation policy, and continues to advocate for citizen participation in a transportation appropriation process that is consistent with the allocation of surtax funds set forth in Article 11.

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FURTHER AFFIANT SAYETH NOT.

TYLER HUDSON

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Tyler Hudson who is personally known to me or who produced _____ as identification and who executed the foregoing Affidavit and acknowledged before me that he voluntarily executed the same, and who did take an oath.

SWORN TO AND SUBSCRIBED before me this 18th day of December, 2018.

DEVA ARTHUR
MY COMMISSION # GG 138746
EXPIRES: December 28, 2021
Bonded Thru Notary Public Underwriters

(Notary Public Signature)

Notary Public: Deva Arthur

My commission expires _____

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

v.

CASE NO.: 2018-CA-011749

DIVISION: J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB ENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants.
_____/

DEFENDANT, CITY OF TEMPLE TERRACE'S MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED

COMES NOW, THE CITY OF TEMPLE TERRACE (hereinafter "CITY"), by and through its undersigned counsel, and moves this honorable court dismiss the Complaint for Declaratory Judgment against the City, and as grounds therefor states as follows:

1. Defendant alleges that the Complaint filed by Plaintiff fails to state a cause of action against this Defendant.

2. Not all elements necessary to maintain the action are present. No bona fide dispute exists between the Plaintiff and the City of Temple Terrace.

Memorandum of Law in Support

3. Individuals seeking declaratory relief must show that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable set of facts or present controversy as to a set of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law, and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

4. Although a court may entertain a declaratory action regarding a statute's or County charter provision's validity, there must be a bona fide need for such a declaration based on present, ascertainable facts or the court lacks jurisdiction to render declaratory relief. *See, City of Sarasota v. Mikos*, 613 So.2d 566, 567 (Fla. 2d DCA 1993); *Francis v. City of St. Petersburg*, 640 So.2d 149, 151 (Fla. 2d DCA 1994), *Yell v. Healthmark of Walton, Inc*., 772 So.2d 568, 570 (Fla. 1st DCA 2000).

5. The City of Temple Terrace has no actual, present, adverse and antagonistic interest in the subject matter either in fact or in law where the City committed no act to create the Charter Amendment (Article 11) that is the subject of this case nor did the City of Temple Terrace advance it to the ballot, nor has it insisted that Article 11 be implemented in any particular manner, if at all. The interests of the parties are not even "potentially adverse," so the case is not justiciable and no

declaratory decree can be entered, since the court would be acting merely as a counselor and not deciding a controversy between Plaintiff and the City of Temple Terrace. *Brautigam v. MacVicar*, 73 So.2d 863 (Fla. 1954); *Lassiter v. City of Miami Beach*, 239 So.2d 269 (Fla. 3d Dist. 1970).

6. To state a cause of action for declaratory relief, a complaint must allege that: *(1) there is a bona fide dispute between the parties;* (2) the moving party has a justiciable question as to the existence or non-existence of some right, status, immunity, power or privilege, or as to some fact upon which the existence of such right, status, immunity, power or privilege does or may depend; (3) plaintiff is in doubt as to the right, status, immunity, power or privilege; and (4) there is a bona fide, actual, present need for the declaration. *See, Romo v. Amedex Ins. Co.*, 930 So.2d 643, 648 (Fla. 3d DCA 2006).

7. The Complaint does not allege that there is a bona fide dispute between the Plaintiff and the City of Temple Terrace. *Sarasota-Fruitville Drainage Dist. v. Certain Lands,* 80 So.2d 335 (Fla. 1955); *State v. Lewis*, 72 So.2d 823 (Fla. 1954); *Miller v. Miller*, 151 So.2d 869 (Fla. 2d Dist. 1963) (all holding that failure to allege adverse interests requires dismissal).

8. As a general rule, a public official may only seek a declaratory judgment when he is willing to perform his duties, but is prevented from doing so by others. *Department of Revenue of State of Fla. v. Markham*, 396 So.2d 1120, 1121 (Fla. 1981), *superseded by statute on other grounds as stated in Crossings At Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So.2d 793 (Fla. 2008). The Complaint fails to allege that the City of Temple Terrace has taken any official action aimed at or actually preventing the Plaintiff from doing his job as a County Commissioner.

THEREFORE, this cause of action should be dismissed as against the Defendant, City of Temple Terrace.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served via the State of Florida's E-Filing Portal on this 12th day of March, 2019 to:

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
Christopher B. Roe, Esq
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Email: azimmet@bmolaw.com
Email: nday@bmolaw.com
Email: eneiberger@bmolaw.com
Email: nakins@bmolaw.com
Email: cmiller@bmolaw.com
Email: croe@bmolaw.com
Attorneys for Hillsborough County

Robert E. Brazel, Esq
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601
Email: brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
johnsonni@hillsboroughcounty.org
Attorney for Doug Belden,
Hillsborough County Tax Collector

Kenneth Buchman, Esq. City Attorney for Plant City
302 W. Reynolds St.
Plant City, FL 33566
Email: kbuchman@plantcity.gov
Email: kbuch@tampabay.rr.com
Email: lyoung@plantcitygov.com
Attorney for Plant City

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com
Email: rjohnson@gray-robinson.com
Email: Julia.mandell@grayrobinson.com
Attorneys for HART

Ada Carmona, Esq
State Attorney's Office
419 N. Pierce St
Tampa, FL 33602
Email: mailprocessingstaff@sao13th.com

Samuel S. Hamilton, Esq.
601 E. Kennedy Blvd., 27th Floor
Tampa, FL 33602
Email: hamiltons@hillsboroughcounty.org
Email: hapem@hillsboroughcounty.org
Attorney for Hillsborough County

Chris W. Altenbernd, Esq.
BANKER LOPEZ GASSLER P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33602
Email: caltenbernd@bankerlopez.com
Service Email: servicecaltenbernd@bankerlopez.com
Attorney for Plaintiff Stacy White

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
Email:clarkc@hillsboroughcounty.org
Email:Valerie.taylor@gray-robinson.com
Attorney for Hillsborough MPO

Jerry M. Gewirtz,Esq. and David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602
Email: jerry.gewirtz@tampagov.net
Email: david.harvey@tampagov.net
Email: Kimber.spitsberg@tampagov.net
Email: erin.bradley@tampagov.net
Attorneys for City of Tampa

William H. Stafford, III
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399
Email: William.stafford@myfloridalegal.com
Attorney for Florida Dep't of Revenue

Ben H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: ben.hill@hwhlaw.com robert.shimberg@hwhlaw.com logan.murphy@hwhlaw.com
debra.whitworth@hwhlaw.com regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com

Attorneys for Keep Hillsborough Moving and All for Transportation

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
Email: shepherw@hcpafl.org
Attorney for Hillsborough County Property Appraiser

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Email: bohnerd@hillsclerk.com
Attorney for Pat Frank, Clerk of the Circuit Court

/s/*Pamela D. Cichon*
Pamela D. Cichon
City Attorney
11250 N. 56th Street
Temple Terrace, FL 33617
(813)506-6474
PCichon@templeterrace.com
Florida Bar Number: 321508
Attorney for City of Temple Terrace

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Case No. 18-CA-011749
Division: J

Defendants,

and

KEEP HILLSBOROUGH MOVING, INC., a Florida not for profit corporation; and ALL FOR TRANSPORTATION, a political committee,

Intervenor Defendants.
_____/

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Intervenor Defendants Keep Hillsborough Moving, Inc. and its connected political committee All for Transportation (collectively, "Intervenors"), submit the following memorandum in support of their January 24, 2019 Motion to Dismiss Plaintiff Stacy White's Complaint for Declaratory Judgment for lack of standing in his official capacity as a Hillsborough County Commissioner (Filing # 83870711).

Stacy White filed this lawsuit in his official capacity as a county commissioner to invalidate a charter amendment initiated by the citizens of Hillsborough County and approved by 282,000 voters. White has no authority to challenge the charter amendment in his official capacity.

Article VIII of the Florida Constitution permits the creation of charter counties. The "governing body of each county shall be a board of county commissioners." Art. VIII, § 1(e), Fla. Const. (2019). Hillsborough County is a charter county. Section 4.08 of its Charter authorizes the Board of County Commissioners ("BOCC") to "take official action only by the adoption of ordinances, resolutions, or motions," which must be approved be a majority vote. Pursuant to these authorities, the BOCC is essentially the County's legislative body. As such, the Charter does not authorize individual commissioners to take official action on behalf of the County.

Article II, section 5(c), of the Florida Constitution provides in part that the "powers [and] duties [of] county officers shall be fixed by law." Section 125.15, Florida Statutes, articulates one of those powers, providing that "county commissioners shall sue and be sued in the name of the county of which they are commissioners." This has been the law since roughly 1881.

By filing this lawsuit, Commissioner White is attempting to take official action that would affect the entire BOCC and the County itself. The requested relief would render the charter amendment invalid and unenforceable. However, Commissioner White has failed to allege the prerequisite fact that a majority vote of the BOCC authorized this official act. In fact, Commissioner White has not alleged that he even sought BOCC approval pursuant to section 4.08 of the Charter, let alone that the BOCC took official action by a majority vote to challenge the validity of the charter amendment. As such, Commissioner White cannot establish his

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standing as a matter of law. *See Panama Inv. Co. v. Ricker*, 70 So. 596 (Fla. 1916); *Erickson v. Bd. of Cnty. Comm'rs of Sarasota Cnty.*, 212 So. 2d 340 (Fla. 2d DCA 1968).

Commissioner White is attempting to unilaterally commandeer the BOCC to take official action on behalf of the County that he is not authorized to take. Commissioner White is authorized by Florida law to participate in the legislative process, choosing either to vote for or against items implementing the charter amendment. However, he has no authority to unilaterally take official action on behalf of the County itself by filing this lawsuit in his official capacity.

In fact, pursuant to section 4.08, the BOCC has taken official action to implement the charter amendment White now seeks to invalidate on at least three occasions. It has: (1) authorized the filing of a bond validation lawsuit in the name of the County and adopted a resolution deeming appropriate the allocation and distribution of charter amendment surtax proceeds, (2) authorized the distribution of a draft interlocal agreement, and (3) appointed members to the Independent Oversight Committee ("IOC"). (Public records of the BOCC action will be made available.) The BOCC did not, however, vote to challenge the validity of the charter amendment. Commissioner White voted in his official capacity on all three items, voting against the bond resolution and interlocal agreement, and in favor of appointing members to the IOC.

So, on the one hand Commissioner White seeks to invalidate the charter amendment, while on the other hand he votes to appoint members to a board he alleges to be unlawful and illegal. (Compl. ¶¶ 35-44.) This is inconsistent with Commissioner White's position in his Motion to Strike (Filing # 85282287) that he "is prevented from [implementing Article 11] by the Actions of Keep Hillsborough Moving[.]" (Motion p. 8.) White is a member of the County's legislative body. Individual legislators do not have standing to challenge actions that affect a

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legislative body unless they represent a majority whose vote has been completely nullified. *Raines v. Byrd*, 521 U.S. 811 (1997) (ordering dismissal for lack of standing). The purported injury here is to the County, not Commissioner White. As such, he lacks standing in his official capacity to speak on its behalf.

It is important to note that there is a strong public policy in favor of allowing charter counties to govern themselves. *See Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (reversing prior decision because the determination that a voter-approved charter amendment was impliedly prohibited "undermines the ability of counties to govern themselves as that broad authority has been granted to them by home rule power through the Florida Constitution").

Here, section 4.08 of the Charter expressly provides the manner in which the BOCC shall take official action on behalf of the County. The official action Commissioner White has taken violates that mandate, and violates section 125.15, Florida Statutes. The Complaint should be dismissed with prejudice. Commissioner White cannot amend his Complaint to establish standing in his official capacity as a matter of law.

Respectfully submitted,

/s/ *Benjamin H. Hill, III*

Benjamin H. Hill, III, Esq. (FBN 94585)
Robert A. Shimberg, Esq. (FBN 816043)
J. Logan Murphy, Esq. (FBN 72241)
Hill Ward & Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Tel. (813) 221-3900
Fax (813) 221-2900
ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com

/s/ *Barry S. Richard*
Barry S. Richard, Esq. (FBN 105599)
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Tel. (850) 426-8503
Fax (850) 681-0207
richardb@gtlaw.com
Attorneys for Keep Hillsborough Moving, Inc. and All for Transportation

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2019, I electronically filed the foregoing with the Clerk of Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to all counsel of record.

/s/ *Benjamin H. Hill, III*
Attorney

12368830v2

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida

Plaintiff,

v.

HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al.,

Defendants.
_____/

Case No.: 18-CA-11749
Division: J

FILED
CLERK OF CIRCUIT COURT
2019 MAR 15 AM 10:29
HILLSBOROUGH CNTY, FLA
CIRCUIT CIVIL

HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida,

Plaintiff,
vs.

STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the issuance of the bonds herein described or to be affected in any way thereby,

Defendants.
_____/

CASE NO.: 2019-CA-001382

VALIDATION OF TRANSPORTATION SALES SURTAX REVENUE BONDS, SERIES 2019, IN AN AGGREGATE PRINCIPLE AMOUNT NOT TO EXCEED $10,000,000

AMENDED ORDER TO SHOW CAUSE

TO: THE STATE OF FLORIDA, THROUGH THE STATE ATTORNEY FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, AND TO THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS OF HILLSBOROUGH COUNTY, FLORIDA, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, AND ALL OTHERS HAVING OR CLAIMING ANY RIGHT, TITLE, OR INTEREST IN PROPERTY TO BE AFFECTED BY HILLSBOROUGH COUNTY'S ISSUANCE OF ITS NOT TO EXCEED $10,000,000 IN THE AGGREGATE PRINCIPAL AMOUNT OF TRANSPORTATION SALES

SURTAX REVENUE BONDS, IN ONE OR MORE SERIES, OR TO BE AFFECTED IN ANY WAY THEREBY

Plaintiff, HILLSBOROUGH COUNTY, FLORIDA (the "County"), having filed its Complaint for Validation pursuant to Chapter 75, Florida Statutes, (the "Complaint") for purposes of obtaining validation of its authority to incur indebtedness and issue its not to exceed $10,000,000 in the aggregate principal amount of Transportation Sales Surtax Revenue Bonds, in one or more series (the "Bonds"), as more particularly described in the Complaint, to determine the legality of proceedings in connection therewith, the legality of the provisions, projects, covenants, and agreements contained therein, the revenues and funds pledged to the payment thereof, and seeking an Order to Show Cause and judgment of this Court, all as contained in the Complaint, and the Court being fully advised in the premises hereby

ORDERS, ADJUDGES, and DECREES that the State of Florida, through the State Attorney for the Thirteenth Judicial Circuit of the State of Florida, and the taxpayers, property owners and citizens of Hillsborough County, including nonresidents owning property subject to taxation therein, and all others having or claiming any right, title or interest in property to be affected by the issuance of the Bonds or to be affected in any way thereby, are hereby required to appear before the Honorable Rex M. Barbas on the **3rd day of May, 2019**, at 9:30 a.m. at the Hillsborough County Courthouse, 800 E. Twiggs Street, Room 501, Tampa, FL 33602, and show cause, if any there be, why the prayers of the Complaint should not be granted and why the proceedings for the Bonds and said obligations when issued pursuant thereto and the revenues and funds pledged to the payment thereof and the legality of all matters in connection therewith should not be validated and confirmed as requested.

IT IS FURTHER ORDERED AND ADJUDGED that prior to the date set for the Order to Show Cause hearing as set forth above, the Clerk of this Court shall cause a copy of this Order

to Show Cause to be published in a newspaper published and of general circulation in Hillsborough County, Florida, once each week for two (2) consecutive weeks, commencing with the first publication which shall not be less than twenty (20) days prior to the date set for said hearing.

AND IT IS FURTHER ORDERED AND ADJUDGED that, by such publication of this Order, all taxpayers, property owners and citizens of Hillsborough County including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the County's issuance of the Bonds, or to be affected in any way thereby, be and they are made parties defendant to this proceeding, and that this Court shall have jurisdiction of them to the same extent as if named as defendants in the Complaint and personally served with process in this cause.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this 14 day of March, 2019.

HONORABLE REX M. BARBAS
CIRCUIT COURT JUDGE

Copies furnished to:
Alan S. Zimmet, B.C.S.
Ada Carmona, Assistant State Attorney
Chris W. Altenbernd, Esq.
Jerry M. Gewirtz, Esq.
David Harvey, Esq.
David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
William H. Stafford, III, Esq.
Pamela D. Cichon, Esq.
Kenneth W. Buchman, Esq.
Cameron S. Clark, Esq.
Dale K. Bohner, Esq.
Will Shepherd, Esq.
Robert E. Brazel, Esq.
Benjamin H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Barry S. Richard, Esq.

INSTRUMENT#: 2019128377, BK: 26498 PG: 1218 PGS: 1218 - 1219 03/27/2019 at 08:50:23 AM, DEPUTY CLERK:ADELCUADRO Pat Frank,Clerk of the Circuit Court Hillsborough County

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants,

and

KEEP HILLSBOROUGH MOVING, INC., a Florida not for profit corporation; and ALL FOR TRANSPORTATION, a political committee,

Intervenor Defendants.
/

Case No. 18-CA-011749
Division: J

FILED
CLERK OF CIRCUIT COURT
2019 MAR 15 AM 10:29
HILLSBOROUGH CNTY. FLA
CIRCUIT CIVIL

ORDER GRANTING INTERVENOR DEFENDANTS' MOTION TO DISMISS

THIS MATTER is before the Court on Intervenor Defendants Keep Hillsborough Moving, Inc. and All for Transportation's (collectively "Intervenors") January 24, 2019 Motion to Dismiss Plaintiff Stacy White's Complaint for Declaratory Judgment (Filing # 83870711). The Court has reviewed the motion and court file, heard argument of counsel both for and against the motion on March 14, 2019, and is otherwise duly advised in the premises.

Plaintiff Stacy White filed this lawsuit "in his official capacity as a county commissioner of Hillsborough County" on December 3, 2018. (Compl. § 1.) Section 125.15, Florida Statutes, provides that "county commissioners shall sue and be sued in the name of the county of which they are commissioners." As such, Commissioner White is without authority to maintain this lawsuit in his official capacity because he lacks standing to do so.

WHEREFORE, Intervenor Defendants Keep Hillsborough Moving, Inc. and All for Transportation's Motion to Dismiss is **GRANTED** ~~with~~ without prejudice. Plaintiff shall have ten (10) days to respond from today

ORDERED this 14 day of March, 2019, in Hillsborough County, Florida.

REX M. BARBAS, Circuit Judge

Electronic copy provided to all
counsel of record through JAWS

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE

Plaintiff,

v.

Case No.: 18-CA-11749

Division: J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; THE CITY OF PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector The FLORIDA DEPARTMENT OF REVENUE, and Intervenors, KEEP HILLSBOROUGH MOVING, INC., and its connected political committee, ALL FOR TRANSPORTATION,

Defendants.
_____/

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiff, Stacy White (Mr. White), by and through his undersigned attorneys, brings this action for declaratory judgment.

JURISDICTION AND VENUE

1. This is an action for a declaratory judgment pursuant to section 86.011, Florida Statutes (2018) to determine whether Article 11 of the Hillsborough County Charter is unconstitutional, invalid, or unenforceable, in whole or in part. This Court has jurisdiction of the subject matter of this complaint.

2. Venue is proper in Hillsborough County to perform such a judicial review of Article of Article 11 of the Hillsborough County Charter to determine these issues.

STANDING

3. Mr. White is a citizen, resident, and taxpayer of Hillsborough County.

4. He challenges the exercise of the taxing and spending authority established by Article 11 for each of the Defendants except for Intervenors on the ground that it exceeds specific limitations imposed on their taxing or spending powers by the Florida Constitution.

5. The Florida Constitution provides:

   a. In Article VIII, section 1(g) that: "Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances."

   b. In Article VIII, section 1(e) that: "Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years."

   c. In Article VIII, section 1(b) that: "The care, custody and method of disbursing county funds shall be provided by general law."

   d. In Article VII, section 1(a) that: "No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible

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personal property. All other forms of taxation shall be preempted to the state except as provided by general law."

e. In Article VII, section 9(a) that: "Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

f. In Article V, section 1 that: "The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality."

6. As alleged in greater detail in this amended complaint, Mr. White maintains that Article 11 of the Hillsborough County Charter subjects him to governance under local law that exceeds specific limitations imposed on these local governments' taxing or spending powers by the Florida Constitution. Specifically, he is entitled to a transportation tax system that is created and restricted by the general law of Florida. That law requires that the BOCC have the duty and the responsibility to make appropriate decisions as to all uses of transportation surtax proceeds. Article 11, on its face, establishes a spending or appropriation structure that provides for specific allocations of surtax proceeds to various governmental agencies for a period of thirty years without the need of any vote by the BOCC ever, much less any proper decision-making process to exercise its discretion as to what uses, in whatever amounts, may be appropriate for the citizens of Hillsborough County. The Legislature delegated its power to tax to Hillsborough County under section 212.055(1), subject to the requirement that the BOCC have the duties and responsibilities of spending or appropriating those funds. The Legislature delegated its powers under a statutory

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system that assured appropriate governmental decisions and accountability to the voters from representatives, whom they could retain or could replace in general elections. Article 11 deprives the BOCC of these powers and actually transfers some of these powers to an independent, unelected group of citizens. Article 11 is unconstitutional and deprives Mr. White, as a taxpayer and citizen of Hillsborough County, of a taxation system subject to the proper limitations guaranteed to him by the Florida Constitution and the general law of Florida.

7. Although unnecessary to establish standing as a taxpayer in this case, Mr. White has also sustained special damages as a result of Article 11:

a. Unlike taxpayers in the other counties of Florida, due to his residency, he is subjected to taxation and government spending that is beyond the control of his representatives. The BOCC is implementing Article 11 without engaging in the deliberative process required to exercise reasoned discretion to select the appropriate uses of these surtax proceeds. The BOCC is doing this because it believes it must obey the conditions, restrictions, and limitations contained in Article 11 even though Article 11 was created by a private group of citizens and with no open, public process. Over his own personal protest, the BOCC is creating an independent, unelected body of citizens to perform functions that are the functions for which all citizens in Hillsborough County, like citizens in other counties, are constitutionally entitled to have performed by their BOCC.

b. Mr. White has a legal responsibility to advocate for the citizens of Hillsborough County and especially those in District 4 who elected him to represent them in county government. Because the BOCC is abiding by the unconstitutional restrictions in Article 11, he cannot meaningfully advocate for the use of these

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surtax funds for projects that would be appropriate under section 212.055(1), but are sharply restricted or impossible under Article 11. For example, he would advocate for the use of these funds, including funds that are now required to go to HART, for projects that widen Lithia Pinecrest Road, Big Bend Road, and 19th Avenue. These are projects that would be permitted projects under section 212.055(1), but are essentially impossible under Article 11.

c. Mr. White cannot advocate on behalf of the citizens of District 4 that HART be required to present a reasoned project plan deemed appropriate by the BOCC and addressing the concerns of the citizens of District 4 before it spends billions of tax dollars on bus services. This would be permitted advocacy under section 212.055(1), but is prohibited under Article 11, which automatically distributes the funds to HART.

d. He cannot attempt to advocate and negotiate with the Florida Department of Transportation to use these funds to widen State Road 674 (Sun City Center Blvd), which would be permitted advocacy under section 212.055(1), but is essentially impossible under Article 11.

PARTIES

8. Defendant, Hillsborough County, is a charter county of the State of Florida, organized pursuant to Article VIII of the Constitution of the State of Florida. The charter under which it operates was recently amended to include Article 11.

9. The Hillsborough Area Regional Transit Authority (HART) is a transportation authority chartered pursuant to Chapter 163, Florida Statutes. In Article 11, HART is described

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as an "Agency" and is entitled to receive 45% of the surtax proceeds each year without the BOCC voting annually–or ever– to remit this amount.

10. The City of Tampa is a municipality located in Hillsborough County. In Article 11, Tampa is described as an "Agency," and it is entitled to a distribution of a portion of the tax proceeds each year under a "distribution formula." It is automatically entitled to this distribution without the BOCC ever voting to distribute any amount to it. It is entitled to this amount even in the absence of an interlocal agreement under Chapter 163.

11. The City of Temple Terrace is a municipality in Hillsborough County. In Article 11, the City of Temple Terrace is described as an "Agency" and it is entitled to a distribution of a portion of the tax proceeds each year under a "distribution formula." It is automatically entitled to this distribution without the BOCC ever voting to distribute any amount to it. It is entitled to this amount even in the absence of an interlocal agreement under Chapter 163.

12. The City of Plant City is a municipality in Hillsborough County. In Article 11, the City of Plant City is described as an "Agency," and it is entitled to a distribution of a portion of the tax proceeds each year under a "distribution formula." It is automatically entitled to this distribution without the BOCC ever voting to distribute any amount to it. It is entitled to this amount even in the absence of an interlocal agreement under Chapter 163.

13. The Hillsborough Metropolitan Planning Organization (MPO) is a transportation policy-making board created pursuant to section 339.175, Florida Statutes. In Article 11, MPO is not described as an "Agency," but it is nevertheless entitled to receive 1% of the surtax proceeds each year without the BOCC ever voting to distribute this amount.

14. Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County. The Clerk is named in her official capacity. The Clerk is responsible for receiving the proceeds of the surtax

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challenged in this Complaint from the Florida Department of Revenue and distributing those proceeds. Under the terms of Article 11, the Clerk is required to distribute funds to HART, and the several municipalities in predetermined proportions without any authorization from the BOCC. The Clerk is required to obey the IOC if it orders a suspension of distributions to Agencies or overrides the BOCC. The Clerk is also required to select an attorney as a member of the IOC.

15. Bob Henriquez is the Property Appraiser of Hillsborough County. The Property Appraiser is named in his official capacity. The Property Appraiser is required to select a member of the IOC.

16. Doug Belden is the Tax Collector of Hillsborough County. The Tax Collector is named in his official capacity. The Tax Collector is required to select a member of the IOC.

17. The Florida Department of Revenue collects the proceeds of the surtax challenged in this Complaint and distributes those proceeds to the Clerk.

THE BASIC CONTROVERSY

18. Section 212.055(1), Florida Statutes (2018), is the statute that authorizes a charter county to implement a 1% sales surtax to fund transportation projects. A county cannot create such a transportation surtax unless it is authorized by and is consistent with the requirements of section 212.055(1). An accurate copy of the opening paragraph of section 212.055 and section 212.055(1) is attached to this amended complaint as Exhibit A.

19. Article 11 of the Hillsborough County Charter, the "Surtax for Transportation Improvements," was submitted to the Hillsborough County voters by initiative petition In November 2018 and was approved by a majority of those voters. A true and accurate copy of Article 11 is attached to this amended complaint as Exhibit B.

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20. Every section of Article 11 with the exception of section 11.11 contains content that directly conflicts with the provisions in section 212.055(1).

21. The Defendants, including the Intervenors, deny that Article 11 conflicts with section 212.055(1) and are implementing Article 11 in its entirety without first even attempting to remove all of the provisions that violate state law.

22. Mr. White maintains that he has the rights of any other citizen in Florida to have a taxing and expenditure system in accord with the Florida Constitution and Florida general law, and that the Defendants are proceeding to create a system that deprives the citizens and taxpayers of Hillsborough County of the same rights possessed by other Floridians.

23. This legal disagreement between the parties is a constitutional disagreement of the variety that has been resolved by the process of judicial review since the beginning of our state. No other person, except a duty qualified state judge, may resolve this dispute in a fashion that is binding on all parties.

THE CREATION OF ARTICLE 11

24. Article 11 was not drafted and approved by attorneys representing Hillsborough County or the State of Florida. Its content was neither debated nor voted upon by the BOCC. Although pursuant to section 212.055(10), Florida Statutes, a "performance audit" for Article 11 was completed on September 5, 2018, it did not address the issues presented in this complaint. Article 11 has never been determined to satisfy the Laws and the Constitution of the State of Florida by any Court.

25. Article 11 was drafted by undisclosed private citizens. This amendment to Hillsborough County's Charter was accomplished by "initiative" under Section 8.03 of the

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Charter. A true and accurate copy of Article 11, as presented on the "County Charter Amendment Petition Form" is attached hereto and incorporated herein as Exhibit B.

26. On November 6, 2018, the voters of Hillsborough County considered the adoption of this amendment. The ballot used the ballot title and ballot summary language provided in Exhibit B.

27. The ballot also contained a "financial impact statement" immediately following the ballot summary. The financial impact statement was required by section 8.03(3) of the Charter and section 101.161(1), Florida Statutes. An accurate copy of the entire information provided on the Official General Election Ballot for Hillsborough County for the November 6, 2018, election concerning Article 11, including both the ballot summary and the financial impact statement, is attached hereto as Exhibit C.

28. The Hillsborough County Canvassing Board's Official Results establish that this amendment was approved by 282,753 "yes" votes to 210,722 "no" votes. An accurate copy of the Official Results is attached hereto as Exhibit D.

COUNT 1

The Provisions of Article 11 Prevent The BOCC from Discharging its Statutory Duties and Responsibilities to Apply the Proceeds of the Surtax As the BOCC "Deems Appropriate."

29. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.

30. Section 212.054(1), Florida Statutes, provides that: "[n]o general excise tax on sales shall be levied by the governing body of any county unless specifically authorized in s. 212.055."

31. The opening paragraph of section 212.055 and section 212.055(1) provides the authorization and requirements for a discretionary sales surtax to fund transportation spending.

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32. Section 212.055(1)(d) specifies that "[p]roceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate[.]"

33. Article 11 prevents the BOCC from applying the proceeds of the surtax to as many or as few of the uses, and in whatever combination, the BOCC deems appropriate:

a. For a period of 30 years, section 11.05(2) mandates that 45% of the proceeds of the surtax, an amount that in total will likely exceed $4 billion, must be distributed annually to HART without any vote of the BOCC;

b. For a period of 30 years, section 11.05(1) mandates that 54% of the proceeds of the surtax must be distributed to Hillsborough County and the above-referenced municipalities based on a "distribution formula" and without any vote of the BOCC.

c. For a period of 30 years, section 11.05(3) mandates that 1% of the proceeds of the surtax, an amount that in total will likely exceed $90 million, must be distributed annually to the MPO without any vote of the BOCC.

d. For a period of 30 years, section 11.07(8) restricts the BOCC's statutory right to use a substantial percentage of the proceeds of the surtax to add additional lanes for automobile traffic to existing roads and to build new roads and streets.

e. For a period of 30 years, section 11.07, including all subparts, gives the right to make decisions on uses to the Agencies, when section 212.055(1) requires those decisions to be made by the BOCC. Moreover, it places conditions, limitations, and restrictions on the Agencies' decisions concerning uses that would violate general law even if the BOCC were free to make the decisions on uses.

f. For a period of 30 years, section 11.08, including all subparts, gives the right to make certain decisions on uses to HART when section 212.055(1) requires the BOCC to make decisions on funds that may be remitted to HART. Moreover, it places conditions, limitations, and restrictions on HART's decisions concerning uses that would violate general law even if the BOCC were free to make the decisions on uses.

34. In authorizing a local transportation surtax, the Legislature specified that the duly elected members of the BOCC, as the constitutional "governing body" of Hillsborough County must have the duty and the responsibility, when the BOCC deems it appropriate, to "remit" surtax proceeds to HART as a transportation authority. By creating a compulsory distribution of 45% of the proceeds, Article 11 prevents the BOCC from exercising its judgment to fulfill its statutory duties and responsibilities established by the Legislature in the express text of section 212.055(1).

35. By creating compulsory distributions in set amounts to the municipalities and the MPO, Article 11 prevents the BOCC from exercising its judgment to fulfill its statutory duties and responsibilities established by the Legislature in section 212.055(1).

36. In authorizing a local transportation surtax, the Legislature specified that the duly elected members of the BOCC were entitled to apply the proceeds of the surtax to as many of the enumerated uses and in whatever combination the BOCC deemed appropriate. One of the enumerated uses in that statute is the use "by the county for the development, construction, operation, and maintenance of roads and bridges in the county." In creating a categorical prohibition on the use of substantial portions of the surtax to build additional lanes for automobile traffic and to build new roads and streets, Article 11 prevents the BOCC from exercising its

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judgment to fulfill its statutory duties and responsibilities established by the Legislature in the express text of section 212.055(1).

37. Section 11.07(6) of Article 11 permits inter-Agency distributions of certain proceeds, not including the proceeds distributed to HART. But the authority to make such an adjustment is given to the Agency. Thus, the BOCC is prevented from using its judgment to make these reallocations of the proceeds. It is merely given the authority to reduce the distribution to the County for the benefit one of the municipalities.

38. Section 11.07(9) of Article 11 permits reallocation of expenditure categories under section 11.07. But that power is vested only in the IOC, not in the BOCC.

Requested Relief

WHEREFORE, Mr. White respectfully requests this Court enter a declaratory judgment:

a. Declaring that Article 11 of the Charter, as a whole or, in the alternative, in many of its subparts, conflicts with section 212.055(1) and that the mandatory distribution of surtax proceeds created in section 11.05 of the Charter is unconstitutional, invalid, and unenforceable;

b. Declaring that Article 11 of the Charter, as a whole or, in the alternative, in many of its subparts, conflicts with section 212.055(1) and that the conditions, limitations, and restrictions placed on the uses of the surtax in section 11.07 and 11.08 are unconstitutional, invalid, and unenforceable;

c. Declaring that Article 11 of the Charter, as a whole or, in the alternative, in many of its subparts, conflicts with section 212.055(1) and that the prohibition on the use of proceeds for additional traffic lanes for automobile traffic and the prohibition on

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the use of proceeds for the creation of new roads and streets in section 11.07(8) of the Charter is unconstitutional, invalid, and unenforceable;

d. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the provisions in sections 11.07(6) and 11.07(9) giving redistribution powers to the IOC and the municipalities are unconstitutional, invalid, and unenforceable;

e. Declaring that any transportation surtax in Hillsborough County must provide the BOCC with the duties and responsibilities specified in section 212.055(1)(d) and that Article 11 does not so provide; and

f. Declaring that the invalid portions of Article 11 described in the preceding subparagraphs are so central to Article 11– both as presented to the voters and as it is to be implemented for the next 30 years – that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11 or under the constitutional doctrine of severability, and that Article 11 in its entirety is unconstitutional, invalid, and unenforceable.

COUNT II

The Provisions of Article 11 Prevent the BOCC from Discharging its Statutory Duties and Responsibilities to Remit and Distribute Proceeds of the Surtax To HART and Other "Agencies" In Amounts It Determines To Be Appropriate.

39. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.

40. Section 11.04 of Article 11 requires the Clerk to receive the proceeds of the surtax from the Florida Department of Revenue and to distribute those proceeds to the "Agencies" within five business days of receipt.

41. The Clerk is required to distribute the proceeds in accordance with section 11.05, which contains the compulsory distributions discussed in Count I.

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42. Under Article 11, the Clerk's duty to disperse the proceeds is automatic and not dependent on any authorizing vote of the BOCC at any time, much less annually.

43. Section 221.055(1)(d)(2) specifies that a transportation authority may receive funds if "remitted by the governing body of the county" when the BOCC is making its decisions as to what enumerated uses it "deems appropriate."

44. The Legislature restricted the decision to remit proceeds of the surtax to the duly elected members of the BOCC, as the constitutional "governing body" in Hillsborough County accountable to all local residents. Article 11 violates and conflicts with section 212.055(1).

Requested Relief

WHEREFORE, Mr. White respectfully requests this Court enter a declaratory judgment:

a. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the distribution duties created for the Clerk in section 11.04, in the absence of any prior vote to distribute by the BOCC, is unconstitutional, invalid, and unenforceable; and

b. Declaring that the invalid portions of Article 11 described in the preceding subparagraph, independently and also coupled with those described in Count I are so central to Article 11– both as presented to the voters and as it is to be implemented for the next 30 years – that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11 or under the constitutional doctrine of severability, and that Article 11 in its entirety is unconstitutional, invalid, and unenforceable.

COUNT III

The Creation and Powers of the IOC Are Not Authorized by Any General Law and Are in Conflict With Section 212.055(1).

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45. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.

46. Section 212.055(1) makes no reference to an "Independent Oversight Committee." It provides no powers or authority to any such committee. It does not authorize a County to create such a committee or to delegate the BOCC's constitutional and statutory decision-making authority to such a committee. No general law gives the power of judicial or quasi-judicial review to any such committee, no matter the credentials of its unelected members, and Article V of the Florida Constitution expressly forbids this.

47. Section 11.10 of Article 11 requires the creation of an "Independent Oversight Committee," which shall provide oversight "of the distribution and expenditure" of the proceeds of the surtax.

a. Each municipality is required to appoint at least one member of the IOC;

b. The Property Appraiser, the Tax Collector and the County Clerk are each required to appoint one member;

c. The Board of Directors of HART are required to appoint two members; and

d. The BOCC is required to appoint four members.

48. Section 11.10 requires the BOCC to appropriate County funds annually to pay for the administrative expenses of the IOC. These funds do not appear to come from the proceeds of the surtax because the surtax proceeds are mandated to be completely (100%) distributed by the provisions of section 11.05.

49. The IOC is expressly given certain "powers and duties," including the power to "approve Project Plans and approve and certify as to whether the projects therein comply with [Article 11]."

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50. Section 11.06 of Article 11 discusses "Agency Project Plans." During the annual planning process, each project plan "must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee." The proposed uses of the surtax proceeds of the other Agencies are submitted, not to the BOCC for its decision as required by section 212.055(1), but rather to the IOC.

51. While section 212.055(1) vests the BOCC with the exclusive authority to use its judgment to make the decisions it deems appropriate for the annual use of the proceeds from the surtax, Article 11 removes the BOCC entirely from the approval process for the percentages—exceeding 50% of the proceeds—that are automatically distributed to HART and the municipalities.

52. While section 212.055(1) vests authority in the BOCC to make the decisions it deems appropriate for the annual use of the proceeds from the surtax, Section 11.06 requires that each project plan approved by the BOCC must also be approved by a majority vote of the IOC. Thus, the IOC can effectively veto a project that has been approved by the BOCC. The IOC can do so despite the fact that: (1) its existence is not authorized by the constitution or any statute, (2) a majority of its members are not selected by the BOCC, (3) its members are not elected or otherwise accountable to the local residents, and (4) Article 11 creates no standards for the IOC to apply or obey in deciding to veto a project approved by the BOCC. Instead, the IOC it empowered to "make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with this Charter." The Agencies, much less the BOCC, are not given any power to restrain or regulate the independence of the IOC.

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53. Sections 11.10(1) and 11.09 empowers the IOC, by a two-thirds vote, to determine that "an Agency has failed to comply with any term or condition of Article 11." If the Agency fails to correct the non-compliance, the IOC has the power to direct the Clerk to suspend distributions of proceeds to the Agency. Thus, the IOC is given the power to make findings of fact about the compliance of the Agencies with Article 11 and to enjoin constitutional officers from performing duties established by general law. These are powers of judicial review given by a county ordinance to a board of unelected private citizens in the absence of any provision in the Florida Constitution or Florida general law authorizing such power. Article V of the Florida Constitution expressly forbids the establishment of such a judicial power in the IOC.

54. The provisions in Article 11 creating the IOC, funding the IOC, providing for the selection of its members, and extending extensive powers to the IOC are all without any authorization in section 212.055(1) and are in conflict with the authority granted to the BOCC by the Florida Constitution and by the Legislature in a duly enacted general law.

Requested Relief

WHEREFORE, Mr. White respectfully requests this Court enter a declaratory judgment:

a. Declaring that section 11.10 of Article 11 of the Charter, by creating the IOC and authorizing it to perform duties of the BOCC, conflicts with section 212.055(1) and is unconstitutional, invalid, and unenforceable;

b. Declaring that section 11.09 of Article 11 of the Charter, by vesting unauthorized judicial power in the IOC, conflicts with general law including section 212.055(1) and is unconstitutional, invalid, and unenforceable;

c. Declaring that section 11.06 of Article 11 of the Charter, in requiring the BOCC to obtain the approval of the IOC before the BOCC can deem a project to be an

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acceptable use of the surtax proceeds and apply those proceeds to the project as a valid use, conflicts with section 212.055(1) and is unconstitutional, invalid, and unenforceable; and

d. Declaring that the invalid portions of Article 11 described in the preceding subparagraph, independently and also coupled with those described in Counts I and II, are so central to Article 11 – both as presented to the voters and as it is to be implemented for the next 30 years – that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11 or under the constitutional doctrine of severability, and that Article 11 in its entirety is unconstitutional, invalid, and unenforceable.

COUNT IV

The Proposed Article 11 is an Invalid Amendment under Article 8.03 of the Hillsborough County Charter because it Embraces More than One Subject.

55. Article 8.03 restricts a citizens' initiative petition to a single subject. Specifically, it states: "Each petition shall embrace but one subject and matter properly connected therewith."

56. The Ballot Title for this amendment provided: "Funding for Countywide Transportation and Road Improvements by County Charter Amendment."

57. "Funding" is a broad concept, and that term was used to address two subjects: 1) the adoption of a transportation surtax as authorized by section 212.055(1), Florida Statutes; and 2) the creation of a spending or appropriation system containing mandatory recipients who receive mandatory amounts of the surtax proceeds, coupled with conditions, limitations, and restrictions on the uses otherwise authorized by section 212.055(1) to be decisions within the sound discretion of the BOCC.

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58. The first subject of the proposed Article 11 was an appropriate subject for an amendment. Standing alone, it could have been described by a ballot title stating roughly: "Establishing a 30-year, 1% sales tax for Hillsborough County transportation projects." The ballot summary could have explained that the BOCC would have discretion to fund a list of uses authorized by Florida law.

59. But the citizens behind All For Transportation, who created the proposed Article 11 in their petition, wanted to deprive the BOCC of its statutory powers. Thus, they created an elaborate funding structure, including the IOC. This second subject of "Funding" is not only a separate subject, it is also, in its entirety, an unconstitutional restriction upon the powers given to the BOCC by the Legislature in section 212.055(1). The Legislature authorized charter counties to have this taxing power, but only if the BOCC would be responsible for and accountable for the appropriations made, and the uses approved, once the surtax was in place.

60. Thus, the proposed Article 11 had two "chief purposes." One chief purpose was to establish the transportation tax authorized by the Legislature. The other chief purpose was to establish a mandatory spending or appropriation structure for the tax proceeds that deprived the BOCC of the powers given to it by the Legislature, and that assured the tax money would go to fund the users and the projects that the citizens behind the initiative favored.

61. Even if the second purpose were constitutional, it would violate the requirement that an initiative petition must contain only one subject. The fact that the second subject is unconstitutional simply makes the one-subject violation more harmful.

Requested Relief

WHEREFORE, Mr. White respectfully requests this Court enter a declaratory judgment:

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a. Declaring that the proposed Article 11 violates section 8.03 of the Hillsborough County Charter by including more than a single subject; and

b. Declare that Article 11 is unconstitutional, void, and unenforceable because it was not approved by the voters as two separate initiatives.

COUNT V

The Ballot Summary was Clearly and Conclusively Defective and Did Not Provide the Voters with Fair Notice of the Contents of the Proposed Initiative.

62. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.

63. The ballot summary states:

> Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:
>
> Improve roads and bridges,
> Expand public transit options,
> Fix potholes,
> Enhance bus services,
> Relieve rush hour bottlenecks,
> Improve intersections, and
> Make walking and biking safer,
>
> By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

64. This summary is misleading in at least five respects:

a. The summary does not tell voters that HART will always receive 45% of the proceeds of the surtax even if the BOCC thinks that percentage is too high or too low in any given year.

b. It expressly lists Brandon, Town 'n' County, and Sun City along with Tampa, Plant City and Temple Terrace, even though these communities are not municipalities, are not given a member on the IOC, and have no special part in the distribution

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formula. The residents of these communities have no rights that are any different from the voters in any other precinct of unincorporated Hillsborough County, such as precincts in Wimauma, Progress Village, or Lutz. But the voters were led to believe that they had special rights.

c. It lists many projects that might be funded with the surtax, but fails to mention the extreme 30-year limitation in section 11.07(8) preventing general purpose funds from being used to add additional lanes for automobile traffic or to build new roads. Additional lanes and new roads are the types of projects that voters undoubtedly expected the new taxes to fund given that the first use of proceeds suggested by the summary is to "improve roads and bridges." These are projects that the BOCC has authority to fund under section 212.055(1), but Article 11 prevents the BOCC from exercising its discretion to fund these projects even if safety is the primary concern.

d. The ballot summary lists "expand public transit options," but fails to mention the conditions on use of existing right-of-ways that will favor some regions and may make it very difficult to build such transit to many neighborhoods including the ones specially identified in the ballot summary. Nothing in the summary would cause a voter to feel it necessary to read the proposed Article 11 to learn about the provisions limiting the areas for public transit expansion. There are so many provisions in this complex article that a fair, single "chief purpose" may be impossible to articulate, but if the voters were being asked to spend more than 1.4 billion dollars on public transit that must utilize "exclusive transit right-of-way for at least 75% of the length of the applicable service," and must favor the use of

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existing fixed guideways and right-of-ways, they needed some notice that these conditions were tucked away inside the lengthy article.

e. The creation and powers of the IOC are explained to the voters, if at all, only with the ambiguous phrase "an audited trust fund with independent oversight." This phrase may actually have been intended only to describe the responsibilities of the auditing CPAs under section 11.04. The IOC has oversight over far more than the "audited trust fund." The voters are not told that this committee can effectively veto projects approved by the county commission and the several city councils. Its extensive powers and the sizable budget required to staff and perform those powers are not mentioned.

65. Admittedly, the 75-word limitation applicable to the summary requires succinct wording, but the words selected confuse rather than inform the voter. Under the accuracy requirements essential for an adequate ballot summary for an initiative petition, the information provided to the voters was legally insufficient.

66. The ballot summary could have stated, for example:

> Should the County Charter be amended to enact a one-cent sales tax, levied for 30 years and placed in an audited trust account, to fund transportation improvements in Hillsborough County, Tampa, Plant City, and Temple Terrace, that are approved by an unelected, independent oversight committee – with 45% of the proceeds restricted for HART transit projects, 1% for planning, and 54% for general transportation projects, with limitations on projects adding lanes or creating new roads?

67. The ballot language in this case is defective for what it does say and for what it does not say. It does not reveal that the chief purpose of the many provisions in Article 11 was to deprive the BOCC of its duties and responsibilities under section 212.055(1) to spend and otherwise appropriate and distribute the surtax proceeds. It fails the applicable accuracy

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requirements of applicable Florida law. The fact that a majority of the voters approved the amendment when presented with this defective ballot language does not cure the error created by the language.

68. Article 11 was proposed by Keep Hillsborough Moving, Inc. (KHM), and/or All For Transportation (AFT) which themselves did not exist until approximately June 8, 2018, and June 11, 2018 respectively.

69. AFT did not submit the ballot petition to the Supervisor of Elections until June 14, 2018. The Supervisor provided official certification for the petition drive on June 15, 2018.

70. Because this petition was submitted so late in the election cycle, the Supervisor could not provide the maximum 6 months for the petition drive. Instead, in order to have adequate time to process the petition and add that proposal to the November ballot, the Supervisor required the petitions to be in the Supervisor's office by 5 p.m. on July 27, 2018.

71. Mr. White does not know whether the petitions were timely filed, but All For Transportation does not claim that it filed the petitions prior to July 27, 2018, and the Supervisor did not notify the BOCC that the proposal would be on the ballot until August 8, 2018.

72. Mr. White does not know when the Supervisor began the printing of the ballots, but mail or absentee ballots were mailed as early as October 2, 2018, and early voting began on October 22, 2018.

73. Mr. White admits that he was aware of the content of the ballot petition in June 2018 and had, at least, general concerns about its substance and legality during the summer. But even if All For Transportation had conceded the substantive and form errors in its petition then, which it is not what it is doing in this action now, it did not have time to resubmit a revised petition

to the Supervisor and restart the petition drive in the accelerated time line that it had created for itself.

74. Unlike the process for the proposed constitutional amendments by the Constitutional Revision Commission, which were prepared under the Sunshine Laws of Florida in February and March 2018 with adequate time allotted for the Florida Supreme Court to approve or reject them prior to the preparation of the ballot for the fall election, this petition was prepared in secrecy and there was less than 60 days between the date when the Supervisor announced that it would be on the ballot and the date when the Supervisor began mailing ballots to voters.

75. Even if Mr. White had understood the problems with the ballot summary on August 8, 2018, and had had the resources to retain an attorney to file a challenge to the ballot summary, any lawsuit to challenge the ballot summary prior to the election could not have been resolved prior to the election. There is no legal prejudice caused by Mr. White's filing of this objection to the ballot language at this time. The prejudice, if any, was created by All For Transportation's decision to delay the petition process to the last possible moment.

76. Mr. White's objection to the language of the ballot summary is not merely a technical question of form. As demonstrated by the other counts of this pleading, it is intermingled with concerns about the substance of Article 11. The adequacy of the ballot summary depends, in part, upon which portions, if any, of Article 11 are unconstitutional due to their conflict with general law. Thus, these intermingled issues were not a proper subject for resolution until Article 11 became law by virtue of the election.

77. If this Court determines that the ballot language that was selected by the group of private citizens did not provide fair notice of the content of Article 11 to the voters, but instead misled those voters as measured by the applicable accuracy requirements of Florida law, then the

Defendants, who are governmental bodies, do not have standing to claim that this tax and spending system must exist for thirty years despite the fact the voters were misled.

78. The fact that this action was filed a few weeks after the election, but prior to the effective date of the tax, is not a legal or equitable basis for governmental bodies to claim that the votes of citizens, who were given legally insufficient information at the voting booth, established "the will of the voters" to be burdened with an unconstitutional transportation surtax system. This is especially true of a fully mandated system that cannot be altered over the next thirty years by the vote of future members of the BOCC even if those future commissioners "deem appropriate" projects radically different from the uses mandated by the many sections of Article 11 that were never disclosed to the voters when they voted.

Requested Relief

WHEREFORE, Mr. White respectfully requests this Court enter an order disapproving the bond validation and:

a. Declaring that the ballot language for Article 11 was legally insufficient, that Mr. White was not compelled to challenge this language prior to the election, and that, accordingly, Article 11 was not validly approved by the voters and is unconstitutional, null, and void; or, in the alternative,

b. Declaring that the insufficiencies in the ballot even if not timely challenged prior to the election are an additional reason to determine that the inconsistent provisions of Article 11, described in Section A of these defenses and objections, cannot be severed and that all of Article 11 must be declared unconstitutional and unenforceable under the general law of Florida.

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Respectfully submitted,

/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.
Florida Bar No: 197394
BANKER LOPEZ GASSLER P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33602
Telephone: (813) 221-1500
Fax No: (813) 222-3066
Email: caltenbernd@bankerlopez.com
Service Email: service-caltenbernd@bankerlopez.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served via the State of Florida's E-Filing Portal on this 22 day of March, 2019 to:

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Email: azimmet@bmolaw.com
Email: nday@bmolaw.com
Email: eneiberger@bmolaw.com
Email: nakins@bmolaw.com
Email: cmiller@bmolaw.com
Email: agarner@bmolaw.com
Attorneys for Hillsborough County

Kenneth Buchman, Esq.
City Attorney for Plant City
302 W. Reynolds St.
Plant City, FL 33566
Email: kbuchman@plantcity.gov
Email: kbuch@tampabay.rr.com
Email: lyoung@plantcitygov.com
Attorney for Plant City

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
Email: shepherw@hcpafl.org
Attorney for Hillsborough County Property Appraiser

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Email: bohnerd@hillsclerk.com
Attorney for Pat Frank, Clerk of the Circuit Court

Robert E. Brazel, Esq.
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.

Email: brazelr@hillsboroughcounty.org
Email: matthewsl@hillsboroughcounty.org
Email: johnsonni@hillsboroughcounty.org
Attorney for Doug Belden, Hillsborough County Tax Collector

401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com
Email: rjohnson@gray-robinson.com
Email: Julia.mandell@gray-robinson.com
Email: Valerie.taylor@gray-robinson.com
Attorneys for HART

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
Email: clarkc@hillsboroughcounty.org
Attorney for Hillsborough MPO

Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602
Email: jerry.gewirtz@tampagov.net
Email: david.harvey@tampagov.net
Email: Kimber.spitsberg@tampagov.net
Email: erin.bradley@tampagov.net
Attorneys for City of Tampa

William H. Stafford, III
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399
Email: William.stafford@myfloridalegal.com
Attorney for Florida Dep't of Revenue

Pamela D. Cichon, Esq.
City of Temple Terrace
11250 N. 56th St.
Temple Terrace, FL 33617
Email: pcichon@templeterrace.com
Attorney for City of Temple Terrace

Ben H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com
debra.whitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com
Attorneys for Keep Hillsborough Moving and All for Transportation

/s/ *Chris W. Altenbernd*
Chris W. Altenbernd, Esq.

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212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway

EXHIBIT A

systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

(e) As used in this subsection, the term “on-demand transportation services” means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

COUNTY CHARTER AMENDMENT PETITION FORM

Note:

- *All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.*
- *Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]*
- *If all requested information on this form is not completed, the form will not be valid.*

Your Name_____

Please Print Name *as it appears on your Voter Information Card*

Your Address _____

City _____Zip _____County _____

☐ Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable)

Voter Registration Number _____ **or** Date of Birth _____

I am a registered voter of Hillsborough County, Florida and hereby petition the Supervisor of Elections to place the following proposed amendment to the Hillsborough County Charter on the ballot in the general election:

BALLOT TITLE: Funding for Countywide Transportation and Road Improvements by County Charter Amendment

BALLOT SUMMARY:

Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:

Improve roads and bridges,
Expand public transit options,
Fix potholes,
Enhance bus services,
Relieve rush hour bottlenecks,
Improve intersections, and
Make walking and biking safer,

By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

___ Yes
___ No

ARTICLE AND SECTION BEING CREATED OR AMENDED: Article 11

FULL TEXT OF THE PROPOSED COUNTY CHARTER AMENDMENT:

XI. SURTAX FOR TRANSPORTATION IMPROVEMENTS

Section 11.01. Purpose of Surtax. The purpose of the surtax levied in accordance with Section 11.02 below is to fund transportation improvements throughout Hillsborough County, including road and bridge improvements; the expansion of public transit options; fixing potholes; enhancing bus service; relieving rush hour bottlenecks; improving intersections; and making walking and biking safer. The proceeds of the surtax shall be distributed and disbursed in compliance with F.S. § 212.055(1) and in accordance with the provisions of this Article 11.

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EXHIBIT B

Section 11.02. Levy of One-Cent Surtax to Fund Transportation Improvements. There shall be levied throughout the incorporated and unincorporated areas of Hillsborough County an additional tax imposed on sales, use, services, rentals, admissions, and other transactions by Chapter 212, Florida Statutes, and communications services as defined by Chapter 202, Florida Statutes, at the rate of one cent for each $1.00 of the sales price or actual value received, and for each fractional part of $1.00 of the sales price or actual value received (the "Transportation Surtax"). The Transportation Surtax shall be levied and imposed in accordance with F.S. §§ 212.054 and 212.055(1), the rules promulgated by the Florida Department of Revenue, and this Article 11. Any other provision of this Charter to the contrary notwithstanding, all proceeds from the Transportation Surtax, including any interest earnings and bond proceeds generated therefrom, shall be expended only as permitted by this Article 11, F.S. § 212.055(1), and in accordance with the purpose set forth in Section 11.01 above. For purposes of this Article 11, Hillsborough County, Florida (the "County"), each municipality, as defined in F.S. § 165.031, that is located in the County (the "Municipalities"), and the Hillsborough Area Regional Transit Authority or its successor ("HART") are each an "Agency" and collectively, the "Agencies." "Independent Oversight Committee" shall refer to the committee mandated and governed by Section 11.10 below.

Section 11.03. Duration of Transportation Surtax. The Transportation Surtax authorized by this Article 11 shall be effective commencing January 1, 2019, and shall remain in effect for a period of thirty (30) years.

Section 11.04. Duties of the Clerk. The Clerk of the Circuit Court of Hillsborough County, Florida (the "Clerk") shall receive the proceeds of the Transportation Surtax (the "Surtax Proceeds") from the Florida Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate account until disbursed in accordance with this Section 11.04 and the distribution allocations provided for in Section 11.05. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided in Section 11.05 shall be made to the Agencies by the Clerk within five (5) business days of the Clerk's receipt of Surtax Proceeds from the Florida Department of Revenue. Additionally, the Clerk shall provide, on behalf of the board of county commissioners, the notices to the Florida Department of Revenue required by F.S. §§ 212.054(7)(a) and (b), and any other notices that must be delivered to the Department of Revenue or the State of Florida as required by applicable law. The Clerk shall engage an independent accounting firm to conduct an annual, independent audit of the distribution and expenditure of all Surtax Proceeds, which shall be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining the Clerk's and each Agency's compliance with the provisions of this Article relating to the distribution and expenditure of Surtax Proceeds during such fiscal year. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds to the Clerk on an annual basis to permit the Clerk to carry out the annual audit of Surtax Proceeds described in this Section 11.04.

Section 11.05. Distribution of Surtax Proceeds. The Surtax Proceeds shall be deposited in a dedicated trust fund (the "Trust Fund") maintained by the Clerk and distributed in accordance with the following formula:

(1) General Purpose Portion. Fifty-four percent (54%) of the Surtax Proceeds (the "General Purpose Portion") shall be distributed to the County and to each Municipality in accordance with their relative populations as calculated utilizing the statutory formula provided in F.S. § 218.62 (the "Distribution Formula") and be expended by the County and each Municipality in accordance with Section 11.07. The County and each Municipality may elect to bond or otherwise encumber their respective distribution of the Surtax Proceeds allocated pursuant to this Section 11.05(1), and shall provide notice of such election to the other recipients of the General Purpose Portion at least ninety (90) days prior to issuing bonds.

(2) Transit Restricted Portion. Forty-five percent (45%) of the Surtax Proceeds (the "Transit Restricted Portion") shall be distributed to HART and be expended by HART in accordance with Section 11.08. Subject to compliance with applicable law and the charter of HART, HART may elect to directly, or through the County, bond or otherwise encumber the Transit Restricted Portion.

(3) Planning and Development Portion. One percent (1%) of the Surtax Proceeds (the "Planning and Development Portion") shall be distributed to the metropolitan planning organization described in F.S. § 339.175 whose jurisdiction includes Hillsborough County (the "MPO"). The Planning and Development Portion shall be expended by the MPO on planning and development purposes, including data collection, analysis, planning, and grant funding to assist the Agencies and the Independent Oversight Committee in carrying out the purpose set forth in Section 11.01.

Section 11.06. Agency Project Plans. No later than September 30th of each year, each Agency shall deliver to the Independent Oversight Committee a plan (a "Project Plan") setting forth the projects, including reasonable detail for each, on which such Agency will expend their distribution of the Surtax Proceeds for the following calendar year in accordance with the uses mandated by Sections 11.07 and 11.08 below. Each Project Plan must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee at a public hearing. No Agency may expend Surtax Proceeds for any purpose other than implementation of each of the projects set forth in such Agency's Project Plan, and each Agency shall diligently and prudently pursue implementation of each of the projects set forth in such Agency's Project Plan. If any Agency desires to amend its Project Plan after the Independent Oversight Committee has approved the same, the Independent

Continue to next page

Oversight Committee shall approve or disapprove (and state the basis therefore) the amended Project Plan within thirty (30) days of an Agency's request to amend.

Section 11.07. Uses of General Purpose Portion. For any Agency that the Clerk reasonably estimates will receive five percent (5%) or more of the Surtax Proceeds in a given calendar year, such Agency's share of the General Purpose Portion shall be expended by the Agencies for the planning, development, construction, operation, and maintenance of roads, bridges, sidewalks, intersections, and public transportation (which, for purposes of this Section, may include any technological innovations such as autonomous vehicles and related infrastructure), to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Maintenance and Vulnerability Reduction. At least twenty percent (20%) of the General Purpose Portion shall be expended on projects that: (i) improve, repair and maintain existing streets, roads, and bridges, including fixing potholes, or (ii) reduce congestion and transportation vulnerabilities.

(2) Congestion Reduction. At least twenty-six (26%) of the General Purpose Portion shall be expended to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections. Expenditures in the category described in this Section 11.07(2) may include projects that improve intersection capacity through the use of technology, the construction of new intersections, the redevelopment of existing intersections, and may include related infrastructure such as roundabouts and turn lanes. Projects described in the foregoing sentence do not constitute New Automobile Lane Capacity, as defined in Section 11.07(8) below.

(3) Transportation Safety Improvements. At least twenty-seven (27%) of the General Purpose Portion shall be expended to promote transportation safety improvements on existing streets, roads and bridges.

(4) Transportation Network Improvements. At least twelve (12%) of the General Purpose Portion shall be expended on bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network within any Agency's jurisdiction, and to the extent permitted by F.S. § 212.055(1).

(5) Remaining Funds. Any remaining portions of the General Purpose Portion shall be expended on any project to improve transportation in the applicable Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article.

(6) Inter-Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, the County and each Municipality may distribute any amount of its share of General Purpose Portion to any Agency (an "Agency Distribution"). For purposes of this Section, any Agency's share of the General Purpose Portion shall be reduced, or increased, by the amount of the Agency Distribution distributed, or received, as the case may be.

(7) Small Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, any Agency that receives five percent (5%) or less of the Surtax Proceeds in any given calendar year, on an annualized basis, is not required to expend its share of General Purpose Portion on the categories set forth in Section 11.07(1) through (5) above, and shall instead expend its distribution of the Surtax Proceeds on any purpose consistent with Section 11.01 and permitted by F.S. § 212.055(1).

(8) Limits on New Automobile Lane Capacity. Agencies are prohibited from expending any funds from the categories mandated by Section 11.07(1), (2) and (3) above on New Automobile Lane Capacity. For purposes of this Section 11.07(8), "New Automobile Lane Capacity" means projects that consist of (i) adding additional lanes for automobile traffic to existing roads or streets that are not related to intersection capacity improvement, or (ii) constructing new roads or streets.

(9) Reallocation of Expenditure Categories. Upon request by an Agency, which request must be approved by seventy-five percent (75%) of the Independent Oversight Committee, the General Purpose Portion expenditure allocations mandated in Sections 11.07(1) through (3) above may instead be expended on any project to improve transportation within such Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article if, in the opinion of the requesting Agency, any of the percentages set forth in Sections 11.07(1) through (3) exceed the amounts required to fulfill the purpose set forth therein.

Section 11.08. Uses of Transit Restricted Portion. The Transit Restricted Portion, and any Agency Distribution received by HART, shall be spent by HART for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the HART board of directors, to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Enhancing Bus Services. No less than forty-five percent (45%) of the Transit Restricted Portion shall be spent on bus services, including express, neighborhood, circulator, paratransit, and all other types of transit now or hereafter operated by

Continue to next page

HART. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(2) Expanding Public Transit Options. No less than thirty-five percent (35%) of the Transit Restricted Portion shall be spent on transit services that utilize exclusive transit right-of-way for at least seventy-five percent (75%) of the length of the applicable service. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; utilizing or extending existing fixed guideways and rights-of-way; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(3) Remaining Funds. Any remaining portions of the Transit Restricted Portion shall be spent on any project to improve public transportation permitted by F.S. § 212.055(1) or this Charter.

Section 11.09. Suspension of Distribution. In the event it is determined by a two-thirds majority of the Independent Oversight Committee that an Agency has failed to comply with any term or condition of this Article 11 and such Agency fails to correct such non-compliance within reasonable periods of time determined by the Independent Oversight Committee, but not more than ninety (90) days following written notice of such noncompliance, the Independent Oversight Committee may direct that distributions of the Surtax Proceeds to such Agency be suspended by the Clerk and held by the Clerk in the Trust Fund until such time as the Agency has cured the non-compliance, at which point distributions of the Surtax Proceeds to such Agency shall re-commence and any withheld Surtax Proceeds shall be distributed to the Agency.

The foregoing shall not apply to any portion of Surtax Proceeds encumbered by bond indebtedness pursuant to law; provided, however, that the financing instruments for such bond indebtedness include covenants requiring the Agency to comply with the terms and conditions of this Charter.

Section 11.10. Independent Oversight Committee. To ensure that the Transportation Surtax is successfully implemented, independent oversight of the distribution and expenditure of the Surtax Proceeds shall be provided by an Independent Oversight Committee, which shall be composed of Hillsborough County residents appointed by the following bodies: (i) four (4) individuals appointed by the board of county commissioners, and of which two are Experts (as defined below) in either transportation, planning, sustainability, engineering, or construction; (ii) one (1) from each Municipality, appointed by the mayor thereof; (iii) one (1) additional member from each Municipality for each 200,000 residents in such Municipality, appointed by the legislative body of that Municipality, based on population estimates published annually by the State of Florida; (iv) two (2) from HART, appointed by the HART board of directors; (v) one (1) attorney, who is a member by the Florida Bar, appointed by the Clerk; (vi) one (1) land use or real estate Expert appointed by the Hillsborough County Property Appraiser; and (vii) one (1) certified public accountant appointed by the Hillsborough County Tax Collector. No person then currently serving as an elected or appointed city, county, special district, state, or federal public office holder shall be eligible to serve as a member of the Independent Oversight Committee. Additionally, no member of the Independent Oversight Committee may be an employee of, independent contractor of, or otherwise be materially engaged for remuneration by any public or private recipient of Surtax Proceeds. Independent Oversight Committee members shall serve terms of three (3) years, without compensation, and each shall serve at the pleasure of the appointing body. The Independent Oversight Committee may make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with this Charter. The Independent Oversight Committee shall have only those powers and duties specifically vested in it by this Section 11.10. A majority of the members of the Independent Oversight Committee shall constitute a quorum, and the Independent Oversight Committee may conduct business only when a quorum is present. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds on an annual basis for the administrative expenses of the Independent Oversight Committee in an amount sufficient for the Independent Oversight Committee to fulfill its duties under this Article 11. For purposes of this Section 11.10, “Expert” means an individual who has at least seven years of experience in their respective subject matter area, and possesses professional accreditations or degrees that are typical of an expert in their respective subject matter area. The Independent Oversight Committee shall have the powers and duties set forth below:

(1) Review the results of the annual audit described in Section 11.04 and make findings as to whether the Clerk and each Agency has complied with the terms of this Article. Such findings shall include a determination as to whether Surtax Proceeds have been distributed as provided in this Article and whether the Surtax Proceeds have been expended in compliance with applicable state law, this Article, and any additional requirements that an Agency may have lawfully adopted.

(2) Approve Project Plans and approve and certify as to whether the projects therein comply with this Article.

(3) Prepare an annual report to the Clerk and each Agency presenting the results of the annual audit process and any findings made. The Independent Oversight Committee shall cause a summary of the annual report to be published in a local newspaper and ensure that the report and annual audit are available online and are delivered to every library located within the County for

Continue to next page

public review. The Independent Oversight Committee shall hold a public hearing on each audit and annual report and shall report the comments of the public to each Agency.

(4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and forward them to the appropriate Agency for consideration.

Section 11.11. Miscellaneous.
(1) Prohibited Uses. No Surtax Proceeds may be used for any of the following uses: (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports facility or any other facility not related to transportation; or (iii) any other use expressly prohibited by law.

(2) Severability. To the extent that any mandated expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of Surtax Proceeds, the funds allocated to such impermissible use shall be expended by the applicable Agency on any project to improve public transportation permitted by F.S § 212.055(1) and this Article.

(3) Supremacy. This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

_____ **X**_____

DATE OF SIGNATURE **SIGNATURE OF REGISTERED VOTER**

Initiative petition sponsored by All for Transportation, 610 S Boulevard, Tampa, FL 33606

If paid petitioner circulator is used:

Circulator's name: _____

Circulator's address: _____

_____

RETURN TO:
All for Transportation
610 S Boulevard
Tampa, FL 33606

For Official Use Only
Serial Number: _____
Date Approved: _____

Official General Election Ballot / Boleta Oficial de la Elección General
November 6, 2018 / 6 de noviembre 2018
Hillsborough County, Florida / Condado de Hillsborough, Florida

- Instructions: To vote, fill in the oval completely ● next to your choice. Use black ballpoint pen.
- If you make a mistake, ask for a new ballot. Do not cross out or your vote may not count.
- To vote for a candidate whose name is not printed on the ballot, fill in the oval, and write in the candidate's name on the blank line provided for a write-in candidate.

- Instrucciones: Para votar, rellene completamente ● el óvalo próximo a su selección. Use boligrafo negro.
- Si comete un error, solicite una nueva boleta. No borre o realice otras marcas, o su voto puede no ser computado.
- Para votar por un candidato cuyo nombre no está impreso en la boleta, rellene el óvalo, y escriba el nombre del candidato en la linea en blanco que se provee para un candidato agregado.

RELEVANT PORTION OF EXHIBIT ON NEXT PAGE

EXHIBIT C

No. 2 Hillsborough County Referendum
N.° 2 Referéndum del Condado de Hillsborough

Funding for Countywide Transportation and Road Improvements by County Charter Amendment

Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:

Improve roads and bridges,
Expand public transit options,
Fix potholes,
Enhance bus services,
Relieve rush hour bottlenecks,
Improve intersections, and
Make walking and biking safer,

By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?

A new 1% sales surtax is in addition to the current 7% sales tax and is estimated to raise $276 million annually and $552 million the first two calendar years. Revenues will be shared by Hillsborough Area Regional Transit Authority (HART); Metropolitan Planning Organization; and, using a population-based formula, by Hillsborough County Board of County Commissioners, City of Tampa, Plant City, and City of Temple Terrace. Expenditures will be governed by the Charter Amendment.

Financiamiento para mejoras de transporte y viales en todo el condado mediante enmienda a la Carta del Condado

¿Deben financiarse mejoras de transporte en toda la extensión del Condado de Hillsborough, incluidos los sitios de Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country y Sun City, mediante proyectos destinados a fines tales como:

Mejorar rutas y puentes;
Ampliar las opciones de tránsito público;
Arreglar baches;
Mejorar los servicios de los autobuses,
Aliviar los embotellamientos de las horas pico;
Mejorar las intersecciones; y
Aumentar la seguridad de peatones y ciclistas,

Por medio de una enmienda a la Carta del Condado con el fin de implementar un sobreimpuesto de un centavo sobre las ventas, recaudado durante 30 años y depositado en un fondo fiduciario auditado con supervisión independiente?

Un nuevo sobreimpuesto del 1% sobre las ventas se suma al actual impuesto del 7% sobre las ventas y se estima que recaude $276 millones anualmente y $552 millones durante los dos primeros años calendario. Las rentas se repartirán entre la Autoridad Regional del Tránsito del Área de Hillsborough (HART, por sus siglas en inglés); la Organización de Planificación Metropolitana; y, mediante la aplicación de una fórmula basada en la población, el Consejo de Comisionados del Condado de Hillsborough, City of Tampa, Plant City y City of Temple Terrace. Los gastos se regirán según lo establecido en la enmienda a la Carta.

○ Yes / Sí
○ No / No

NO. 12
CONSTITUTIONAL AMENDMENT
ARTICLE II, SECTION 8;
ARTICLE V, SECTION 13;
ARTICLE XII, NEW SECTION
LOBBYING AND ABUSE OF OFFICE BY PUBLIC OFFICERS

Expands current restrictions on lobbying for compensation by former public officers; creates restrictions on lobbying for compensation by serving public officers and former justices and judges; provides exceptions; prohibits abuse of a public position by public officers and employees to obtain a personal benefit.

Yes for Approval	360,619	votes
No for Rejection	137,300	votes

NO. 13
CONSTITUTIONAL AMENDMENT
ARTICLE X, NEW SECTION;
ARTICLE XII, NEW SECTION
ENDS DOG RACING

Phases out commercial dog racing in connection with wagering by 2020. Other gaming activities are not affected.

Yes for Approval	334,200	votes
No for Rejection	172,389	votes

FUNDING FOR COUNTYWIDE TRANSPORTATION AND ROAD IMPROVEMENTS BY COUNTY CHARTER AMENDMENT

Should transportation improvements be funded throughout Hillsborough County, including Tampa, Plant City, Temple Terrace, Brandon, Town 'n' Country, and Sun City, including projects that:
Improve roads and bridges,
Expand public transit options,
Fix potholes,
Enhance bus services,
Relieve rush hour bottlenecks,
Improve intersections, and
Make walking and biking safer,
By amending the County Charter to enact a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight?
A new 1% sales surtax is in addition to the current 7% sales tax and is estimated to raise $276 million annually and $552 million the first two calendar years. Revenues will be shared by Hillsborough Area Regional Transit Authority (HART); Metropolitan Planning Organization; and, using a population-based formula, by Hillsborough County Board of County Commissioners, City of Tampa, Plant City, and City of Temple Terrace. Expenditures will be governed by the Charter Amendment.

Yes for Approval	282,753	votes
No for Rejection	210,722	votes

EXHIBIT D

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,

v.

CASE NO.: 2018-CA-011749
DIVISION: J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ in his official capacity as Hillsborough County Property Appraiser; DOUG BELDEN, in his Official capacity as the Hillsborough County Tax Collector; and the FLORIDA DEPARTMENT OF REVENUE,

Defendants.

And

KEEP HILLSBOROUGH MOVING, INC., a Florida not for profit corporation; and ALL FOR TRANSPORTATION, a political committee,

Intervenor Defendants.

_____/

HILLSBOROUGH COUNTY, FLORIDA, a Political subdivision of the State of Florida,

Plaintiff,

v.

CASE NO.: 2019-CA-01382

STATE OF FLORIDA, and the tax payers, Property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation therein, and others claiming any right, title or

VALIDATION OF TRANSPORTATION SALES SURTAX REVENUE BONDS,

interest in property to be affected by the issuance of the bonds herein described or to be affected in any way thereby,

Defendants.
_____/

SERIES 2019, IN AND AGGREGATE PRINCIPLE AMOUNT NOT TO EXCEED $10,000,000

NOTICE OF FILING TRANSCRIPT

Defendant, City of Tampa hereby gives notice of filing "Excerpt of All Pending Motions" on March 14, 2019 in the above matter.

Respectfully submitted,

/s/ Jerry M. Gewirtz

Jerry M. Gewirtz, Esquire
Florida Bar No. 0843865
Primary: Jerry.Gewirtz@tampagov.net
Secondary:Kimber.Spitsberg@tampagov.net
David Harvey, Esquire
Florida Bar No. 610046
Primary: David.Harvey@tampagov.net
Secondary: Erin.Bradley@tampagov.net
City Attorney's Office
5th Floor, City Hall, 315 E. Kennedy Boulevard
Tampa, Florida 33602
Telephone: (813) 274-8842
Facsimile: (813) 274-8809
Attorneys for Defendant, City of Tampa

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2019, a true and correct copy of the foregoing was electronically filed with the Clerk of Court through the Florida Courts E-filing Portal, and furnished via email to all counsel of record listed below.

By: */s/ Jerry M. Gewirtz*
Jerry M. Gewirtz, Esquire

Chris W. Altenbernd, Esquire Banker Lopez Gassler P.A. 501 East Kennedy Boulevard, Ste. 1700 Tampa, FL 33602 Telephone: (813) 221-1500 Facsimile No.: (813) 222-3066 caltenbernd@bankerlopez.com amercado@bankerlopez.com service-caltenbernd@bankerlopez.com Counsel for Plaintiff	Alan S. Zimmet, Esquire Nikki C. Day, Esquire Elizabeth W. Neiberger, Esquire Bryant Miller Olive, P.A. One Tampa City Center Suite 2700 Tampa, FL 33602 Telephone: (813) 273-6677 azimmet@bmolaw.com nday@bmolaw.com eneiberger@bmolaw.com nakins@bmolaw.com cmiller@bmolaw.com agamder@bmolaw.com Counsel for Hillsborough County, and Counsel for Hillsborough County Metropolitan Planning Organization
Robert E. Brazel, Esquire Hillsborough County Attorney's Office 601 E. Kennedy Boulevard, 27th Floor Tampa, Florida 33602-5758 Telephone: (813) 272-5670 Facsimile No.: (813) 272-5758 BrazelR@hillsboroughcounty.org MatthewsL@hillsboroughcounty.org JohnsonNi@hillsboroughcounty.org Counsel for Doug Belden	Dale K. Bohner, Esquire 601 E. Kennedy Boulevard, 13th Floor Tampa, Florida 33602-5758 Telephone: (813) 307-7015 bohnerd@hillsclerk.com Counsel for Pat C. Frank
Kenneth W. Buchman, Esquire City Attorney City of Plant City 302 West Reynolds Street Plant City, FL 33566 Telephone: (813) 659-4242 kbuchman@plantcitygov.com lyoung@plantcitygov.com Counsel for Plant City	Benjamin H. Hill, III, Esquire Robert A. Shimberg, Esquire J. Logan Murphy, Esquire Hill Ward & Henderson, P.A. 101 E. Kennedy Boulevard., Suite 2700 Tampa, FL 33602 Telephone: (813) 227-8469 Facsimile: (813) 221-2900 Primary: Ben.hill@hwhlaw.com Secondary: debra.withworth@hwhlaw.com Primary: Robert.shimberg@hwhlaw.com Secondary: regina.gigness@hwhlaw.com Primary: Logan.murphy@hwhlaw.com Secondary: tina.mcdonald@hwhlaw.com And

	Barry S. Richard, Esquire Greenberg Traurig, P.A. 101 E. College Avenue Tallahassee, FL 32301 richardb@gtlaw.com trammellc@gtlaw.com flservice@gtlaw.com Counsel for Keep Hillsborough Moving, Inc. and All for Transportation
William Henry Stafford, III, Esquire Office of the Attorney General PL-01 The Capitol Tallahassee, FL 32399-1050 Telephone: 850-314-3785 William.Stafford@myfloridalegal.com Counsel for Florida Department of Revenue	Pamela D. Cichon, Esquire City Attorney City of Temple Terrace 11250 N. 56th Street Temple Terrace, FL 33602 Telephone: (813) 506-6474 pcichon@templeterrace.com Counsel for City of Temple Terrace
William D. Shepherd, Esquire Hillsborough County Property Appraiser 601 E. Kennedy Blvd., 15th Floor Tampa, FL 33602 Telephone: (813) 276-8827 shepherdw@hcpafl.org Counsel for Bob Henriquez in his official capacity as the Hillsborough County Property Appraiser	David Smith, Esquire Robert Ernest Johnson, Esquire Julia C. Mandell, Esquire Gray Robinson 401 E. Jackson Street, Ste. 2700 Tampa, FL 33602 Telephone: (813) 274-8842 David.smith@gray-robinson.com jane.larose@gray-robinson.com rjohnson@gray-robinson.com valerie.taylor@gray-robinson.com Julia.mandell@gray-robinson.com jane.larose@gray-robinson.com Counsel for Hillsborough County Regional Transit Authority

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION
CASE NO: 18-CA-11749
DIVISION: J

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida,

Plaintiff,
vs.

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; and The FLORIDA DEPARTMENT OF REVENUE,

Defendants. /

BEFORE: Judge Rex Barbas

PROCEEDINGS: Excerpt of All Pending Motions

DATE: March 14, 2019

TIME: 2:42 p.m. - 3:46 p.m.

PLACE: Hillsborough County Courthouse
800 East Twiggs Street, Room 501
Tampa, FL 33602

REPORTED BY: RUTH A. CARNEY, Notary Public
State of Florida at large

EXCERPT OF MOTIONS

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APPEARANCES:

CHRIS W. ALTENBERND, ESQUIRE
Banker Lopez Gassler, P.A.
501 East Kennedy Blvd., Suite 1700
Tampa, FL 33603
Attorney for Plaintiff

ALAN S. ZIMMET, ESQUIRE
Bryant Miller Olive, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Attorney for Hillsborough County

KENNETH BUCHMAN, ESQUIRE
City Attorney for Plant City
302 West Reynolds Street
Plant City, FL 33566
Attorney for Plant City

DALE K. BOHNER, ESQUIRE
601 East Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Attorney for Pat Frank

DAVID L. SMITH, ESQUIRE
GrayRobinson, P.A.
401 East Jackson Street, Suite 2700
Tampa, FL 33602
Attorneys for HART

ROBERT E. BRAZEL, ESQUIRE
Chief Assistant City Attorney
P.O. Box 1110
Tampa, FL 33601
Attorney for Doug Belden

JERRY M. GEWIRTZ, ESQUIRE
City Attorney's Office
315 East Kennedy Blvd., 5th Floor
Tampa, FL 33601
Attorney for City of Tampa

PAMELA D. CICHON, ESQUIRE
City of Temple Terrace
11250 North 56th Street
Temple Terrace, FL 33617
Attorney for the City of Temple Terrace

BENJAMIN H. HILL, ESQUIRE
KIP MARSHALL, ESQUIRE
ROBERT SHIMBERG, ESQUIRE
Hill Ward Henderson
101 East Kennedy Blvd., Suite 3700
Tampa, FL 33602
Attorneys for KMH and AFT

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(The following excerpt was taken from the proceedings held on March 14, 2019:)

THE COURT: All right. Anybody else?

MR. GEWIRTZ: Your Honor, Jerry Gewirtz on behalf of the City of Tampa.

We are not here today on any motions for summary judgment. The City did not file a motion to dismiss, but for the record I would point out that our Motion for Final Summary Judgment, under argument 4, the City also asserts the argument that the Plaintiff lacks standing to sue in his official capacity as a county commissioner of Hillsborough County, and the cases and authorities that we support in favor of that proposition are found on pages 21 through 24 of our motion, and I can simply stand on that, or if you wish, I can cite aloud the relevant case law.

THE COURT: That's all right.

MR. GEWIRTZ: Very good.

THE COURT: Any other response, Counsel?

All right. I want to go ahead and grant the Motion to Dismiss for lack of standing in his official capacity.

Are you requesting orally to move to amend?

MR. ALTENBERND: I will request leave to amend, yes.

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THE COURT: Any objection?

No. There will be no objection at all.

Granted. How much time do you need?

MR. ALTENBERND: Ten days.

MR. ZIMMET: That's fine.

THE COURT: Ten days. Granted.

Who wants to prepare the order?

I'll let you prepare the order since you're the oldest among us.

Yes, sir.

MR. GEWIRTZ: Yes, Your Honor, if I may, and there may be another spokesperson, I believe that -- and if I'm out of school, my colleagues will tell me.

I think it's the collective with everyone here that the amount of time that we have reserved at our next hearing on Friday, May 3rd, if I have the date correct -- while Your Honor has been extraordinarily generous by giving us the afternoon, it may fall on the short side, given that there's --

THE COURT: Are you asking for the whole day?

MR. GEWIRTZ: Yes, Your Honor.

THE COURT: That's what I thought.

THE JUDICIAL ASSISTANT: That's why I'm still in here.

THE COURT: That's right. I know you guys.

MR. ZIMMET: And, Your Honor, I brought a re -- an amended order to show cause of the bond validation case. If you're agreeable to change the time, where we can insert the new time, and we would publicize --

THE COURT: Yes.

MR. ZIMMET: -- the amended order.

THE COURT: Yes.

(Judge Barbas confers with J.A.)

THE COURT: I can probably start as early as 11. I do have hearings that are already scheduled that morning. What I would do is just compress them down into an earlier time --

MR. ZIMMET: That --

MR. GEWIRTZ: Okay. Any additional --

THE COURT: -- and I can give a shortened lunch period so --

MR. ZIMMET: That would be great.

MR. GEWIRTZ: Sure. Any additional amount of time would be appreciated.

THE COURT: Is everybody available for that?

MR. HILL: Yes, sir.

MR. ZIMMET: I actually had sent out a communication to everybody and I didn't get anybody indicating they weren't available the entire day.

THE COURT: Okay. So let's . . .

(Judge Barbas confers with J.A.)

THE COURT: I'll tell you what, we're going to move everything on that Friday morning to the following Friday morning. So everything on the 3rd that is presently scheduled that morning I will move to the 10th and give you all the entire day of the 3rd.

MR. GEWIRTZ: That's very generous, thank you.

MR. ZIMMET: That's great, Your Honor.

MR. HILL: Starting at what time?

MR. ZIMMET: What time would you like us to start?

THE COURT: Starting at 9:30. Is that all right?

MR. ZIMMET: That's fine.

MR. GEWIRTZ: And if I haven't worn out my welcome --

THE COURT: Not yet.

MR. GEWIRTZ: Okay.

-- I believe it may assist the Court and may be an interest of all involved if Your Honor were to issue an order requiring that the parties submit agreed upon facts and/or disputed facts.

I know I've been working with Mr. Altenbernd as it relates to the City of Tampa, but, again, just for

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efficiency for the Court, to the extent that Your Honor were receptive to that, it may help make it more efficient.

MR. ZIMMET: Can I just --

THE COURT: That would make it much more efficient.

MR. ZIMMET: My only concern about that, Your Honor, is in the bond validation, which has been consolidated on the same day, is people could show up that morning, and we won't know that until the morning of May 3rd. So we won't have any idea if they're going to stipulate to those facts or not.

I mean, we can do that, but there's certainly other people, and we know there's another lawsuit out there with --

THE COURT: You mean the one that was in the paper this morning?

MR. ZIMMET: Yes, that one.

MR. GEWIRTZ: I think that, Your Honor, at least as it relates to the parties and their counsel that are here --

THE COURT: Right. We can do at least that, and if we need to, we can distribute a copy of the stipulated facts to whoever shows up that day and see if they agree or disagree. If they disagree, then

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we'll handle that as it comes along.

MR. ZIMMET: That's -- I just wanted to make sure the Court was aware that everybody that may be here on May 3rd may not be here yet.

THE COURT: Okay.

MR. ZIMMET: If I could approach, Your Honor, I do have the amended order to show cause and the bond validation.

THE COURT: Yes.

Have you shown it to everybody?

MR. GEWIRTZ: Excuse me, Your Honor.

MR. ZIMMET: It's the same exact one that you issued except for the time's changed.

MR. HILL: We prepared an order for today, but we had to add something on the end. I showed it to all the parties, and if that's okay --

THE COURT: Yeah, that's fine.

MR. HILL: We're off the record.

(Discussions held off the record.)

MR. GEWIRTZ: Excuse me, Your Honor. So as far as it relates to the time period --

THE COURT: Everybody quite down please.

MR. GEWIRTZ: Yeah, two other points.

As it relates to the time period in which Your Honor would require that there be a submission of the

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agreed upon or disputed facts, what time frame would Your Honor suggest?

THE COURT: Can we do at least by Monday 5 p.m. of that same week; would that be enough time?

MR. GEWIRTZ: That would be fine.

And just as it relates to that Friday, specifically as it relates to the City of Tampa, we're happy to be as flexible as Your Honor would like.

I would like to put on the record that it would be our desire that the City have a total of one hour between the City's argument and Plaintiff's response to address that. If Your Honor chooses to make that part of the record, that's fine. If not, we can just be guided by whatever amount of time is available that day.

THE COURT: I think -- let's try to be guided by whatever time is available. You may or may not agree with other arguments that are made --

MR. GEWIRTZ: Okay.

THE COURT: -- so I'd rather try and play it by ear than give specific hours or times --

MR. GEWIRTZ: Very well.

THE COURT: -- for everybody, and I'll be as fair and I'll -- you know, as long as people are not

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being repetitive, I'll be happy to give you as much time as necessary.

MR. GEWIRTZ: Thank you.

THE COURT: I'll be happy to go into the evening. If need be, I'll be happy to go into Saturday.

MR. GEWIRTZ: Very good. Thank you so much.

THE COURT: All right.

MR. ZIMMET: Thank you, Your Honor.

THE COURT: She'll be back in a second with the conformed copies.

(Discussions held off the record.)

MR. SMITH: Your Honor, are we going to change the deviated motions --

THE COURT: I'm glad you haven't closed up yet.

MR. SMITH: Our summary judgment motions are due April 7th --

THE COURT: Right.

MR. SMITH: -- but we have an amended pleading coming in 10 days. I can't imagine it's going to change it much, but it could.

Could we have 10 days to supplement our Motion for Summary Judgment --

THE COURT: Yes.

MR. SMITH: -- if we need to or --

THE COURT: Yeah.

MR. SMITH: Okay.

THE COURT: All right.

In the hopes that we can accomplish all of this on the May 3rd date.

MR. SMITH: Yes.

(Discussions held off the record.)

MR. GEWIRTZ: Your Honor, would you suggest that one of the attorneys take responsibility for submitting an order regarding the submission of the nondisputed and disputed facts by the Monday before the Friday?

THE COURT: Since you are so astute at making the motion, I'll let you take the lead.

MR. GEWIRTZ: Very well, Judge. Thank you.

THE COURT: Are we through now?

She's closed up three times now.

MR. GEWIRTZ: Actually, Your Honor, I apologize.

THE COURT: Hold on. He has one more idea.

MR. GEWIRTZ: Relative to submitting a motion to intervene on the bond validation proceeding, does Your Honor have any guidance or direction?

I understand that that is not opposed by the Plaintiff. Whatever -- I mean, if the easy button were to make an ore tenus motion to do that, then I

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would make that ore tenus motion.

THE COURT: I'm not really following what you're asking.

MR. ZIMMET: He wants to intervene in the bond validation case --

THE COURT: Oh.

MR. ZIMMET: -- for the City of Tampa. We have no objection, Your Honor.

MR. GEWIRTZ: Okay. So let me do this and I will --

THE COURT: I'll let you intervene --

MR. GEWIRTZ: On behalf of the City --

THE COURT: -- on your oral motion.

And does anybody else wish to intervene on -- everybody wishes to intervene on behalf -- other than the Clerk. I didn't see the Clerk's hand on that.

He's saying yes.

MR. ZIMMET: I think all they need to do, Your Honor, is file a notice of appearance in the bond validation case.

THE COURT: All right. Everybody -- just do me a favor. Make the notice of appearance and note that I have granted your right to intervene in the bond validation case.

MR. GEWIRTZ: And that will be as a party

Plaintiff, correct?

THE COURT: Correct.

MR. GEWIRTZ: Very good. Thank you.

MR. SMITH: As a party?

MR. GEWIRTZ: Well, in favor of the Plaintiff.

MR. SMITH: Okay.

THE COURT: Right. You're not really intervening as plaintiff or defendant; you're intervening in your individual capacities.

MR. GEWIRTZ: In support of the Plaintiff.

THE COURT: You can do it in support of. Yeah, you can say it that way. You just can't say it as Plaintiff, that's all.

MR. GEWIRTZ: Right. In support of the Plaintiff.

THE COURT: Right.

MR. GEWIRTZ: Very well.

Thank you so much. We appreciate it.

THE COURT: Wait a minute. One more time. Anybody else have anything for the clerk or the court reporter?

All right. We're adjourned.

(Proceedings concluded at 3:46 p.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF PINELLAS)

I, RUTH A. CARNEY, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the Excerpt of All Pending Motions; and that the foregoing transcript, pages 1 through 14, is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 21st day of March, 2019.

Ruth A. Carney
Registered Professional Reporter

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE,

Plaintiff,

v.

Case No.: 18-CA-11749
Division J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; THE CITY OF PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector The FLORIDA DEPARTMENT OF REVENUE, and Intervenors, KEEP HILLSBOROUGH MOVING, INC., and its connected political committee, ALL FOR TRANSPORTATION,

Defendants.
_____/

DEFENDANT DOUG BELDEN'S RESPONSE TO PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Defendant Doug Belden, in his official capacity as the Hillsborough County Tax Collector, hereby files his response to Plaintiff's Complaint for Declaratory Judgment, and states as follows:

1. As an independently elected constitutional officer, Mr. Belden takes no position with respect to the issues raised in Plaintiff's Complaint for Declaratory Judgment.

2. Mr. Belden stands ready to fully comply with the ruling of this Court.

_____
Robert E. Brazel, Esquire

Chief Assistant County Attorney
Florida Bar No. 0866430
Office of the County Attorney
Post Office Box 1110
Tampa, Florida 33601-1110
(813) 272-5670 – Fax: (813) 272-5758
Attorney for Doug Belden, Hillsborough County Tax Collector
Service Emails:
BrazelR@hillsboroughcounty.org
MatthewsL@hillsboroughcounty.org
JohnsonNi@hillsboroughcounty.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was provided, via the Court's Electronic Filing System, to email address(es) contained therein for the following on Mar. 25, 2019.

Alan S. Zimmet, B.C.S.
Nikki C. Day, B.C.S.
Elizabeth W. Neiberger, Esq.
BRYANT MILLER OLIVE, P.A.
One Tampa City Center, Suite 2700
Tampa, FL 33602
Email: azimmet@bmolaw.com
Email: nday@bmolaw.com
Email: eneiberger@bmolaw.com
Email: nakins@bmolaw.com
Email: cmiller@bmolaw.com
Email: agarner@bmolaw.com
Attorneys for Hillsborough County

Dale K. Bohner, Esq.
601 E. Kennedy Blvd., 13th Floor
P.O. Box 1110
Tampa, FL 33601
Email: bohnerd@hillsclerk.com
Attorney for Pat Frank, Clerk of the Circuit Court

Cameron Clark, Esq.
Hillsborough County Attorney's Office
P.O. Box 1110
Tampa, FL 33601
Email: clarkc@hillsboroughcounty.org
Attorney for Hillsborough MPO

William D. Shepherd, Esq.
Hillsborough County Property Appraiser
601 E. Kennedy Blvd., 15th Floor
Tampa, FL 33602
Email: shepherw@hcpafl.org
Attorney for Hillsborough County Property Appraiser

Kennedy Buchman, Esq.
City Attorney for Plant City
302 W. Reynolds Street
Plant City, FL 33566
Email: kbuchman@plantcity.gov
Email: kbuch@tampabay.rr.com
Email: lyoung@plantcitygov.com
Attorney for Plant City

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com
Email: rjohnson@gray-robinson.com
Email: Julia.mandell@gray-robinson.com
Email: Valerie.taylor@gray-robinson.com
Attorneys for HART

Jerry M. Gewirtz, Esq.
David Harvey, Esq.
City Attorney's Office
315 E. Kennedy Blvd., 5th Floor
Tampa, FL 33602 Temple Terrace, FL 33617
Email: jerry.gewirtz@tampagov.net
Email: david.harvey@tampagov.net
Email: Kimber.spitsberg@tampagov.net
Email: erin.bradley@tampagov.net
Attorneys for City of Tampa

William H. Stafford, III
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399
Email: William.stafford@myfloridalegal.com
Attorney for Florida Department of Revenue

Pamela D. Cichon, Esq.
City of Temple Terrace
11250 N. 56th Street
Email: pcichon@templeterrace.com
Attorney for City of Temple Terrace

Ben H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com
debra.whitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com
Attorneys for Keep Hillsborough Moving And All for Transportation

Robert E. Brazel, Esquire
Chief Assistant County Attorney

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida
Plaintiff,
v.

Case No.: 18-CA-11749
Division: J

HILLSBOROUGH COUNTY,
a charter county of the State of Florida, et al.,
Defendants.
_____/

HILLSBOROUGH COUNTY, FLORIDA,
a political subdivision of the State of Florida,
Plaintiff,
vs.

CASE NO.: 2019-CA-001382

STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation therein, and others claiming any right, title or interest in property to be affected by the issuance of the bonds herein described or to be affected in any way thereby,
Defendants.
_____/

VALIDATION OF TRANSPORTATION SALES SURTAX REVENUE BONDS, SERIES 2019, IN AN AGGREGATE PRINCIPLE AMOUNT NOT TO EXCEED $10,000,000

ORDER CONCERNING (1) SUBMISSION OF UNDISPUTED FACTS BY APRIL 29, 2019, (2) ENLARGING HEARING TIME ON MAY 3, 2019, AND (3) AUTHORIZING THE CITY OF TAMPA, HILLSBOROUGH TRANSIT AUTHORITY, THE CITY OF TEMPLE TERRACE, AND THE CITY OF PLANT CITY, TO INTERVENE IN CASE NO. 2019-CA-001382 IN SUPPORT OF PLAINTIFF

This matter came before the Court on March 14, 2019, at which time counsel for the City of Tampa requested that this Court require that all parties submit undisputed facts in advance of the May 3, 2019, hearing, suggested that the May 3, 2019, hearing time be enlarged, and made an Ore Tenus Motion that the City of Tampa be permitted to intervene in case no. 2019-CA-001382 in support of plaintiff. Counsel for all parties joined in the request for an order requiring the submission of stipulated facts in advance of the hearing, and an enlargement of time for the hearing

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on May 3, 2019, and certain counsel for Defendants in Case Number 2018-CA-011749, also requested the opportunity to intervene in support of the plaintiff in case no. 2019-CA-01382. This Court having reviewed the Court file, and being fully advised in the premises;

It is hereby **ORDERED and ADJUDGED** that:

1. On or before April 29, 2019, the parties shall submit a joint stipulated statement of undisputed facts.

2. The May 3, 2019 hearing will commence at 9:30 a.m. and continue as long as is necessary to completion on May 3, 2019, and, if necessary, will continue to completion on May 4, 2019.

3. The City of Tampa, the Hillsborough Transit Authority, the City of Temple Terrace, and the City of Plant City, are hereby authorized to intervene in Case No. 2019-CA-001382 in support of plaintiff and may do so by filing a Notice of Entry of Appearance as an Intervenor in support of plaintiff in said case

DONE and ORDERED in Chambers in Hillsborough County, Florida, this ____ day of March, 2019.

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18-CA-011749 3/26/2019 1:08:47 PM

REX M. BARBAS
CIRCUIT COURT JUDGE

Electronic Copy to:
All Counsel of Record through JAWS

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STACY WHITE, in his official capacity
as a county commissioner of
Hillsborough County, Florida

Plaintiff,

v.

Case No.: 18-CA-011749
Division: J

HILLSBOROUGH COUNTY, a charter county of the State of Florida; The HILLSBOROUGH AREA REGIONAL TRANSIT AUTHORITY; The CITY OF TAMPA; The CITY OF TEMPLE TERRACE; The CITY OF PLANT CITY; The HILLSBOROUGH METROPOLITAN PLANNING ORGANIZATION; PAT C. FRANK, in her official capacity as the Clerk of the Circuit Court of Hillsborough County, Florida; BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser; DOUG BELDEN, in his official capacity as the Hillsborough County Tax Collector; The FLORIDA DEPARTMENT OF REVENUE, and Intervenors, KEEP HILLSBOROUGH MOVING, INC, and its connected political committee, ALL FOR TRANSPORTATION,

Defendants.
_____/

DEFENDANT HENRIQUEZ' RESPONSE TO PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Defendant, BOB HENRIQUEZ, in his official capacity as the Hillsborough County Property Appraiser, hereby responds to Plaintiff's Amended Complaint for Declaratory Judgement, and states as follows:

1. As an independently elected constitutional officer, Mr. Henriquez takes no position with respect to the issues raised in Plaintiff's Complaint for Declaratory Judgment.

2. Mr. Henriquez stands ready to fully comply with the ruling of this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was furnished via the court's electronic filing system to Chris W. Altenbernd, Esq. caltenbernd@bankerlopez.com, service-caltenbernd@bankerlopez.com, amercado@bankerlopez.com, Alan S. Zimmet, Esq. azimmet@bmolaw.com, nakins@bmolaw.com, cmiller@bmolaw.com, Nikki C Day, Esq. nday@bmolaw.com, nakins@bmolaw.com, cmiller@bmolaw.com, Elizabeth W Neiberger, Esq. eneiberger@bmolaw.com, agarner@bmolaw.com, mtripodi@bmolaw.com, Cameron Clark, clarkc@hillsboroughcounty.org, Dale Kent Bohner, Esq. bohnerd@hillsclerk.com, David L. Smith, Esq. david.smith@gray-robinson.com, jane.larose@gray-robinson.com, Jerry M. Gewirtz, Esq. jerry.gewirtz@tampagov.net, kimber.spitsberg@tampagov.net, Kenneth Buchman, Esq. kbuchman@plantcitygov.com, kenbuchman@gmail.com, lyoung@plantcitygov.com, Michael H Rosen, Esq. RosenM@goHART.org, eservice@goHART.org, StewartC@goHART.org, Robert Brazel, Esq. brazelr@hillsboroughcounty.org, matthewsl@hillsboroughcounty.org, JohnsonNi@hillsboroughcounty.org, William Henry Stafford III, Esq. william.stafford@myfloridalegal.com, doris.brickhousehayes@myfloridalegal.com, tyler.dudley@myfloridalegal.com, this 26th day of March 2019.

/s/ William D. Shepherd
Florida Bar No. 938289
Attorney for BOB HENRIQUEZ
Hillsborough County Property Appraiser's Office
601 E. Kennedy Blvd.
County Center, 15th Floor
Tampa, FL 33602
Telephone: (813) 276-8890
Facsimile: (813) 276-2710
Primary E-Mail: eservice@hcpafl.org
gomezm@hcpafl.org

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

DEFENDANT CLERK'S ANSWER TO THE AMENDED COMPLAINT IN CASE NO.: 2018-CA-11749

COMES NOW Pat Frank, Clerk of the Circuit Court and Comptroller for Hillsborough County, Florida ("Clerk") and in answer to the Amended Complaint for Declaratory Judgment states:

JURISDICTION AND VENUE

1. Deny that Plaintiff has alleged sufficient grounds for this court's jurisdiction.
2. Admit that venue is proper in Hillsborough County, if the court has jurisdiction.

STANDING

3. Admit.
4. Admit.
5. Admit subsections (a) through (f) are quotes from the Florida Constitution. The cited sections of the Florida Constitution speak for themselves.
6. Deny. The Clerk does not agree with Plaintiff's legal interpretation of the Florida Constitution, Florida law and the Hillsborough County Home Rule Charter as alleged in this paragraph.
7. Deny.

PARTIES

8. Admit.
9. Admit the existence of the Hillsborough County Area Regional Transit Authority (HART). Deny the remaining allegations.
10. Admit the existence of the City of Tampa. Deny the remaining allegations.
11. Admit the existence of the City of Temple Terrace. Deny the remaining allegations.
12. Admit the existence of the City of Plant City. Deny the remaining allegations.
13. Admit the existence of the Hillsborough Metropolitan Planning Organization (MPO). Deny the remaining allegations.
14. Admit that "Pat Frank" not "Pat C. Frank" is the Clerk of the Circuit Court for Hillsborough County, Florida ("Clerk") and that she is named in her official capacity. Deny that the remaining allegations accurately state the Clerk's duties under Article 11.
15. Admit.

16. Admit.
17. Admit.

THE BASIC CONTROVERSY

18. Admit the reference to section 212.055 (including subsection (1), Florida Statutes (2018). Florida law speaks for itself. Deny that section 212.055(1) applies only to charter counties.
19. Admit.
20. Deny.
21. Deny. The Clerk is without knowledge as to any answer of the other defendants to the amended complaint.
22. Deny.
23. Deny, to the extent this is a legal conclusion and made prior to the defendants answering the amended complaint, which answers along with this amended complaint will form the issues to be decided by this court.

THE CREATION OF ARTICLE 11

24. Deny.
25. Without knowledge as to who drafted Article 11. Admit the remaining allegations and that Exhibit "B" is an accurate copy of Article 11.
26. Admit.
27. Without knowledge whether or not Exhibit "C" is an accurate copy as alleged and therefore deny the same.
28. Admit.

COUNT I

29. The Clerk repeats her answers to paragraphs 1 through 28 as if fully set forth herein.

30. Admit. The quoted statutory language speaks for itself and is contained in section 212.054, Florida Statutes (2018).
31. Deny. The opening paragraph of section 212.054 and section 212.055(1) speak for themselves, but not as characterized by Plaintiff.
32. Admit. The quoted statutory language speaks for itself and is contained in section 212.055(1)(d).
33. Deny. Article 11 speaks for itself.
34. Deny. The Clerk does not agree with Plaintiff's legal interpretation of section 212.055(1), Florida Statutes (2018).
35. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11 and section 212.055(1), Florida Statutes (2018).
36. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11 and section 212.055(1), Florida Statutes (2018).
37. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11 and section 212.055(1), Florida Statutes (2018).
38. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11.

WHEREFORE, the Clerk respectfully requests this court to enter a declaratory judgment confirming that Article 11 of the Hillsborough County Charter does not conflict with the Florida Constitution or section 212.055(1), Florida Statutes (2018) and is constitutional, valid and enforceable.

COUNT II

39. The Clerk repeats her answers to paragraphs 1 through 28 as if fully set forth herein.
40. Deny. Section 11.04 of Article 11 speaks for itself. The Clerk's duties are adequately defined throughout Article 11.
41. Deny. Section 11.05 of Article 11 speaks for itself. The Clerk's duties are adequately defined throughout Article 11 and not as characterized by Plaintiff.
42. Deny. The Clerk's duties are adequately defined in Article 11and not as characterized by Plaintiff.

43. Deny. The Clerk does not agree with Plaintiff's legal interpretation of section 212.055(1), Florida Statutes (2018).
44. Deny. The Clerk does not agree with Plaintiff's legal interpretation of section 212.055(1), Florida Statutes (2018).

WHEREFORE, the Clerk respectfully requests this court to enter a declaratory judgment confirming that Article 11 of the Hillsborough County Charter does not conflict with the Florida Constitution or section 212.055(1), Florida Statutes (2018) and is constitutional, valid and enforceable.

COUNT III

45. The Clerk repeats her answers to paragraphs 1 through 28 as if fully set forth herein.
46. Deny. Section 212.055(1) speaks for itself. Article 11 does not create any power of local self-government that is inconsistent with a general law of Florida, and specifically section 212.055(1), Florida Statutes (2018).
47. Deny. Section 11.10 of Article 11 speaks for itself. The characterization of part of section 11.10 of Article 11 is therefore denied.
48. Deny. Section 11.10 of Article 11 speaks for itself. The characterization of part of section 11.10 of Article 11 is therefore denied.
49. Deny. Article 11 speaks for itself. The characterization of part of Article 11 is therefore denied.
50. Deny. Section 11.06 of Article 11 speaks for itself. The characterization of part of section 11.106 is therefore denied.
51. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11 and section 212.055(1), Florida Statutes (2018).
52. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11 and section 212.055(1), Florida Statutes (2018).
53. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11 and Article V of the Florida Constitution.

54. Deny. The Clerk does not agree with Plaintiff's legal interpretation of Article 11 and section 212.055(1), Florida Statutes (2018).

WHEREFORE, the Clerk respectfully requests this court to enter a declaratory judgment confirming that Article 11 of the Hillsborough County Charter does not conflict with the Florida Constitution or section 212.055(1), Florida Statutes (2018); is not inconsistent with any general law of Florida; and is constitutional, valid and enforceable.

COUNT IV

55. Deny.
56. Deny.
57. Deny.
58. Deny.
59. Deny.
60. Deny.
61. Deny.

WHEREFORE, the Clerk respectfully requests this court to enter a declaratory judgment confirming that the enactment of Article 11 was consistent with and did not violate section 8.03 of the Hillsborough County Home Rule Charter and that Article 11 is constitutional, valid and enforceable.

COUNT V

62. The Clerk repeats her answers to paragraphs 1 through 28 as if fully set forth herein.
63. Deny. The ballot summary speaks for itself. The characterization of part of the ballot summary is therefore denied.
64. Deny.
65. Deny.

66. Admit that the ballot summary could have been stated using different language. Deny the suggested language because it is speculation and does not constitute relevant material facts.
67. Without knowledge and therefore deny.
68. Without knowledge and therefore deny.
69. Without knowledge and therefore deny.
70. Without knowledge and therefore deny.
71. Without knowledge and therefore deny.
72. Without knowledge and therefore deny.
73. Without knowledge and therefore deny.
74. Without knowledge and therefore deny.
75. Without knowledge and therefore deny.
76. Deny.
77. Deny.
78. Deny.

WHEREFORE, the Clerk respectfully requests this court to enter a declaratory judgment confirming that Article 11 of the Hillsborough County Charter was properly enacted according to the Florida Constitution and Florida law and is constitutional, valid and enforceable.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the following by email through the ePortal, on this 28th day of March, 2019:

Chris W. Altenbernd, Esq.
Banker Lopez Gassler, PA
501 E. Kennedy Blvd., Suite 1700
Tampa, Florida 33602
caltenbernd@bankerlopez.com
service-caltenbernd@bankerlopez.com
Attorney for Plaintiff

Robert E. Brazel, Esq.
Hillsborough Co. Attorney's Office
601 E. Kennedy Blvd., 27th Floor
Tampa, Florida 33602
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
Attorney for Defendant Doug Belden in His Official Capacity as the Hillsborough Co. Tax Collector

Alan S. Zimmet, Esq.
Bryant Miller Olive PA
201 N. Franklin St., Suite 2700
Tampa, Florida 33602
azimmet@bmolaw.com
nakins@bmolaw.com
Attorney for Defendant Hillsborough Co.

Kenneth W. Buchman, Esq.
302 W. Reynolds St.
Plant City, Florida 33563
kbuchman@plantcitygov.com
kenbuchman@gmail.com
Attorney for Defendant Plant City

William D. Shepherd, Esq.
601 E. Kennedy Blvd., 15th Floor
Tampa, Florida 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
Attorney for Defendant Bob Henriquez in His Official Capacity as Hillsborough County Property Appraiser

Jerry M. Gewirtz, Esq.
Office of the City Attorney
315 E. Kennedy Blvd., 5th Floor
Tampa, Florida 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
Attorney for Defendant City of Tampa

Robert E. Johnson, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
rjohnson@gray-robinson.com
Valerie.Taylor@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

David L. Smith, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
david.smith@gray-robinson.com
jane.larose@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

William H. Stafford III, Esq.
Senior Assistant Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
william.stafford@myfloridalegal.com
tyler.dudley@myfloridalegal.com
Attorney for Defendant Florida Dept. of Revenue

Cameron Clark, Esq.
Hillsborough Co. Attorney's Office
P.O. Box 1110
Tampa, Florida 33601
clarkc@hillsboroughcounty.org
Attorney for Hillsborough Metropolitan Planning Organization

Benjamin H. Hill, III, Esq.
Hill Ward & Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, Florida 33602
bhill@hwhlaw.com
dwhitworth@hwhlaw.com
Attorney for Intervenor Defendants Keep Hillsborough Moving, Inc. and All for Transportation

Pamela D. Cichon, Esq.
11250 North 56th St.
Temple Terrace, Florida 33617
pcichon@templeterrace.com
Attorney for Defendant City of Temple Terrace

/s/ Dale K. Bohner

Dale K. Bohner, Esquire
601 E. Kennedy Boulevard, 13th Floor
P.O. Box 1110
Tampa, Florida 33601
(813) 307-7015
bohnerd@hillsclerk.com
Florida Bar Number: 0145875
Attorney for the Clerk of the Circuit Court

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT

IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

DEFENDANT CLERK'S MEMORANDUM OF LAW IN SUPPORT OF THE CLERK'S MOTION FOR SUMMARY JUDGMENT

Pat Frank, in her official capacity as Clerk of the Circuit Court of Hillsborough County (the "Clerk") files this memorandum of law in support of the Clerk's Motion for Summary Judgment, and states:

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Background

In 1983, the citizens of Hillsborough County elected a charter form of county government authorized by Article VIII, Section 1(g) of the Florida Constitution. The Hillsborough County Home Rule Charter, at section 2.01 confirms that the county government shall have all powers of local self-government not inconsistent with general law and enumerated special laws, which special laws are not relevant to this cause of action.

In 2018, the citizens of Hillsborough County decided to exercise their right of self-governance under the County Home Rule Charter by proposing and then voting to approve a charter amendment that imposed a transportation surtax on transactions in Hillsborough County. A local transportation surtax adopted by a county charter amendment is authorized by the Florida Legislature in subsection 212.055(1), Florida Statutes (2018). The citizens' imposition of the transportation surtax is codified as Amendment XI to the Hillsborough County Home Rule Charter.

Amendment XI, at section 11.04, allocates the surtax proceeds during the thirty-year life of the surtax among the county, the three municipalities in Hillsborough County, the Hillsborough Area Transit Authority ("HART") and the Metropolitan Planning Organization ("MPO") by a fixed percentage of the proceeds. Article XI, at sections 11.07 and 11.08 defines the statutory uses for the proceeds and for the agency recipients of the proceeds. Amendment XI at section 11.10 establishes an Independent Oversight Committee with specific duties comprised of representatives selected by the county, the municipalities, HART and three of the county constitutional officers.

Stacy White filed this amended declaratory judgment action (in Counts I, II and III) to question whether Amendment XI is inconsistent with Florida general law and therefore not a valid exercise of home rule power. Specifically, Stacy White identifies words in subsection 212.055(1)(d), Florida Statutes (2018), to wit; "*Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate"* as the general law restricting the citizens' power of self-government exercised in Amendment XI. As the Clerk understands Stacy White's position, these words reserve to the Hillsborough County Board of County Commissioners the sole authority to identify the statutory uses for the surtax proceeds and allocate the proceeds among those uses. Further, the Clerk understands Stacy White's position is that there is no provision in section 212.055, Florida Statutes

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(2018) that authorizes an Independent Oversight Committee with the powers granted to it in Amendment XI.

After reviewing the Hillsborough County Home Rule Charter and sections 212.054 and 212.055, Florida Statutes, and the history of those sections as they evolved from 2009 to the present, it is the Clerk's opinion that Amendment XI to the Charter, as proposed and approved by the citizens of Hillsborough County, is not inconsistent with section 212.055, Florida Statutes (2018). The imposition of the transportation surtax through the adoption of Amendment XI was a valid exercise of home rule power, exercised directly by the citizens of Hillsborough County, Florida.

Analysis

The starting point is to ascertain the legislative intent that gives reasonable meaning to the words of section 212.055, Florida Statutes and specifically the intended meaning of the words identified by Stacy White, "*Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate."* As discussed below, Stacy White alleges that this quoted statutory language from subsection 212.055(1)(d) contains words that prohibit the citizens of Hillsborough County from directly adopting the transportation surtax in the form as stated in Amendment XI. Conversely, it is the Clerk's position that the quoted statutory language is limited only to clarify that when a county commission initiates a transportation surtax under section 212.055(1), the county commission may use as many or as few of the stated uses in the four sub-subsections of 212.055(1)(d), and nothing more. The statutory language does not expressly prohibit the citizens of a charter county from imposing the transportation surtax on themselves as was accomplished by the citizens of Hillsborough County through Amendment XI. These two interpretations of the same statutory language identify an ambiguity that must be resolved in this declaratory judgment action.

The Florida Supreme Court states that the polestar of statutory construction is to ascertain the legislative intent of the language being construed. If an ambiguity exists, the court must examine the legislative history and the purpose behind its enactment. A provision must never be construed in such manner as to make it possible for the will of the people to be frustrated or denied. See: *Schoeff v. R.J. Reynolds tobacco Company* 232 So.3d 294 (Fla. 2017); *Edwards v. Thomas*, 229 So.3d 277 (Fla. 2017). Of equal importance is application of the Florida Supreme Court's

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directive in *Telli v. Broward County*, 94 So.3d 504 (Fla. 2012) which holds that broad home rule power is granted to charter counties under the Florida Constitution and statutory language that restricts that home rule power must be express and cannot be implied.

This court must determine whether or not the words "*Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate"* and similar words in section 212.055 identified by Stacy White are intended as an express restriction on the authority of the citizens of Hillsborough County's to impose the transportation surtax as it exists in Amendment XI to the Hillsborough County Home Rule Charter.

The Nature of Section 212.055

Article VII, section 1(a) of the Florida Constitution gives the state the preemptive power to levy taxes by law. [See Exhibit 3.] Section 212.055, Florida Statutes is the legislative delegation of authority to local governments to impose nine specified types of discretionary sales taxes identified in subsections (1) through (9). While subsection (6) authorizes certain school boards to impose a discretionary sales tax, subsections (1) through (5) and (7) through (9) all authorize certain county governments to impose eight specific types of discretionary sales taxes. [See Exhibit 2.] Excluding the transportation surtax in subsection (1), the remaining seven discretionary sales taxes in subsections (2) through (5) and (7) through (9) all require the discretionary sales tax to be initiated by an ordinance duly passed by the county governing body. The Florida Legislature did not authorize county governments to adopt any of these seven discretionary sales taxes by charter amendment. The transportation surtax authorized in 212.055(1) is the only discretionary sales taxes in section 212.055 that may be imposed by either a charter amendment or by an ordinance adopted by the local governing authority. There is no express language in section 212.055(1) that defines the procedure a county must follow to initiate a charter amendment. There is no express language in section 212.055(1) that restricts the charter amendment from being initiated by a citizen's initiative if that county's charter permits charter amendments by citizen initiatives.

The History of Section 212.055(1)

The 2009 Amendment

Prior to 2009, section 212.055(1) existed as the "Charter county transit system surtax". According to the Florida House of Representatives staff analysis of Bill CS/CS/HB 1205 (which became Chapter 2009-146 Laws of Florida amending section 212.055(1)), this tax began as a tax to finance the development, construction and operation of fixed guideway rapid transit systems. [See Exhibit 10.] Prior to 2009, only seven charter counties were eligible to levy the surtax including Hillsborough County. Only two counties, Duval and Miami-Dade actually levied the tax. [See Exhibit 10.] In 2009, section 212.055(1) was amended, renamed the "Charter county transportation system surtax" and the transportation surtax authorization was expanded from the original seven charter counties that existed prior to 1984 to all twenty charter counties in Florida that existed in 2009. The transportation surtax was authorized to be initiated by either an ordinance adopted by the county commission or by a charter amendment (following the charter amendment procedure in the county charter), both of which required approval of a majority vote of the electorate. [See Exhibit 6.]

The 2010 Amendment

In 2010, the Florida Legislature for the first time expanded authorization to impose the transportation surtax to certain non-charter counties in Florida. In 2010, the Florida Legislature amended section 212.055(1) by renaming it the "Charter county and regional transportation system surtax", expanding the tax authorization in subsection (1)(a) beyond charter counties to "each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343…". [See Exhibit 7.] There are five regional transportation authorities created under Chapter 343, Florida Statutes. Those five regional transportation authorities have a total of twenty-six member counties, eleven of which are charter counties and fifteen of which are non-charter counties. [See Exhibits 9 and 10.] After the 2010 amendment, section 212.055(1) was no longer a transportation surtax authorization for charter counties only. It became a transportation surtax authorization for a mixture of twenty charter counties and fifteen non-charter counties.

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Subsection 212.055(1)(a)

Subsection 212.055(1)(a) authorizes two methods for imposing the transportation surtax: by "levy" which is an action initiated by the county governing body following the ordinance adoption procedure in section 212.054, or by a charter amendment which in Hillsborough County may be initiated by: (1) the board of county commissioners; (2) by a people's initiative; or (3) by a charter review board. Subsection 212.055(1)(a) does not included any language that addresses the procedure for how a charter county adopts a transportation surtax by charter amendment except that it must be approved by a majority vote of the electors. There is no language in subsection 212.055(1)(a) that qualifies or restricts the people of a county from initiating and approving the transportation surtax by charter amendment as long as the charter amendment text complies with the requirements of section 212.055(1).

After 2010, section 212.055(1)(a) authorizes both charter counties and certain non-charter counties to propose the transportation surtax by ordinance or by charter amendment. Non-charter counties may only initiate the surtax by ordinance duly passed by the governing authority and approved by the voters. (Non-charter counties obviously have no charter to amend.) Charter counties may initiate the surtax by ordinance duly passed by the governing authority and approved by the voters or by a charter amendment approved by the voters.

Subsections 212.055(1)(b),(c),and(d)

While subsection 212.055(1)(a) defines the types of counties and the procedures for those counties to authorize the transportation surtax, subsections 212.055(1)(b), (c) and (d) are the restrictions the state placed on its authorization for counties to impose the transportation surtax. Those restrictions are: (b) a cap on the rate at 1%; (c) the requirement of placing the proposal to adopt the discretionary sales tax on the ballot; and (d) the limitation on the types of uses for which the surtax proceeds may be used. In addition, subsection (10) of section 212.055 requires a performance audit when any of the nine discretionary sales taxes are proposed.

The Context of Subsections 212.055(1)(a) and (d)

Each of the charters of each of the twenty charter counties authorizes a charter amendment by a citizen's or people's initiative. [See Composite Exhibit 8.] There is no language in subsection

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212.055(1)(a) that restricts the people of a charter county from initiating the transportation surtax on themselves by a charter amendment. Likewise, there is no language in subsection 212.055(1)(a) that mandates that the county commission has the sole authority to initiate the transportation surtax by charter amendment.

However, only the county commission in the fifteen non-charter counties that are members of the five regional transportation authorities may initiate the transportation surtax by ordinance because a charter amendment is not available in non-charter counties. The county commission in all twenty charter counties may initiate the transportation surtax either by ordinance or by charter amendment. Under those circumstances, the words in subsection 212.055(1)(d), "*Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate"* are clearly applicable to but also limited to providing clarification for the county commission. The critical distinction is that in the twenty charter counties, the citizens may exercise their constitutional home rule authority directly by imposing the transportation surtax on themselves by charter amendment without engaging their elected county commission in the process. That is precisely what happened in Hillsborough County.

When a county commission initiates the transportation surtax, it is the responsibility of the county commission to comply with all of the requirements of section 212.055(1) and (10) and section 212.054. When the transportation surtax is proposed by a citizen's initiative without engaging the county commission, it is the responsibility of the citizens proposing the transportation surtax charter amendment to meet the requirement of subsections 212.055(1)(b) and (d) and (10). The county commission remains responsible to comply with the ballot requirements of subsection (c).

The Purpose of Subsection (d)

The language that Stacy White identifies as a general law restricting the right of citizens to impose the transportation surtax in Amendment XI is contained in section 212.055(1) in subsection (d). The purpose of subsection (d) is to identify the permitted transportation uses for the surtax proceeds. Subsection (d) has four subparts, each of which lists numerous types of transportation uses that the legislature defines as authorized uses for the surtax proceeds. The language preceding

the four subparagraphs in subsection (d) contains two phrases. The words in the first phrase, "*Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below…*" can only be reasonably construed as clarifying that the numerous uses listed in the four numbered subparagraphs are a comprehensive list of authorized uses, any or all of which may be chosen ("as many or as few").

The second phrase, "*…in whatever combination the county commission deems appropriate*" confirms that the county commission has the authority **but not the exclusive authority** to initiate the proposed transportation surtax. The fifteen non-charter counties may only impose the transportation surtax by ordinance duly adopted by their county commission and in those circumstances the clarifying language is properly directed to the county commission. That phrase also applies to the twenty charter counties when the county commission initiates the transportation tax by ordinance or by charter amendment. But the phrase "*…in whatever combination the county commission deems appropriate*" has no application when the transportation surtax is imposed directly by the citizens exercising their right of home rule governance. The county commission as the representative legislative body of the citizens is not involved when the citizens exercise their right of self-governance directly. A charter amendment by citizens' initiative is an authorized procedure undertaken independently and apart from the legislative authority of the county commission. In this circumstance, the county commission's role is limited to following the ballot process in subsection (c) and nothing more. The text of section 212.055(1) does not restrict the citizens of a charter county from imposing a tax upon themselves as an exercise of their right of home rule governance. The words "*…in whatever combination the county commission deems appropriate*" have a reasonable but limited meaning that applies when the county commission initiates the transportation surtax, and nothing more.

Express Language Required to Restrict Broad Home Rule Power

The words "*…in whatever combination the county commission deems appropriate*" in subparagraph (d) do not expressly restrict the citizens of a charter county from initiating a transportation tax by charter amendment as an exercise of their home rule power. Stacy White can only imply his interpretation by expanding the reasonable and proper application of the words beyond situations where a county commission initiates the transportation surtax by ordinance or

charter amendment. Those words do not expressly prohibit the citizens of Hillsborough County from exercising their home rule power through Article XI. Stacy White's interpretation violates the clear direction of the Florida Supreme Court in the *Telli* case. Broad home rule power is granted to charter counties under the Florida Constitution and statutory language that restricts that home rule power must be express and cannot be implied. There is no express language in sections 212.055(1) and (10) that restricts the people of Hillsborough County from funding their transportation needs by imposing the permitted transportation surtax on transactions within their county by charter amendment.

The Florida Constitution and the Hillsborough County Home Rule Charter

Article VIII, Section 1(e) of the Florida Constitution provides:

"*Commissioners. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.*"

Section 4.01 of the Hillsborough County Home Rule Charter provides:

"*All legislative responsibilities and powers of local self government [sic] of the county not inconsistent with this Charter shall be assigned to and vested in the board of county commissioners*".

Section 8.03 of the Hillsborough County Home Rule Charter provides, in part:

"*the power to propose amendments to this Charter by the initiative is vested in the people*…" (thereafter follows the procedure).

Both the Florida Constitution and the Hillsborough County Home Rule Charter vest the power of local self-government in a board of county commissioners. Both the Florida Constitution and the Hillsborough County Home Rule Charter provide exceptions to this broad grant of power when

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the exception is contained elsewhere in the county charter. Amendment XI of the Hillsborough County Home Rule Charter is that permitted exception.

The citizens decided they wanted to retain oversight of the transportation surtax funds and uses over the thirty-year period independent from the legislative bodies of the county, the three municipalities and the county transit authority. The Independent Oversight Committee is comprised of a combination of citizens, some with required professional experience but all are designated by and representative of the county, the three municipalities, HART and three of the county constitutional officers. This is clearly a county charter exception to governance through the board of county commissioners which is expressly permitted by the Florida Constitution and by the Hillsborough County Home Rule Charter. There is no language in the Florida Constitution or Florida law or the Hillsborough County Home Rule Charter that prohibits oversight by an independent committee to administer a discrete surtax. It is a permitted exception written into the county charter. It is a valid exercise of home rule governance by the citizens of Hillsborough County. There is no authorization in Florida law needed as a prerequisite to its existence.

Conclusion

The only reasonable construction of the words "*Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate"* in subsection (d) is that these words are intended to clarify how many or how few of the listed permitted transportation uses may be included in an ordinance or charter amendment when the imposition of the transportation surtax is initiated by the county commission.

Section 212.055(1)(a) permits the twenty charter counties to initiate the transportation surtax by charter amendment. There is no express statutory language that prohibits the charter amendment from being initiated through a citizen's initiative as an exercise of the people's right of home rule self-governance when the county charter authorizes charter amendment by a citizen's initiative.

The other seven discretionary sales taxes available to county governments in subsections (2) through (5) and (7) through (9) in section 212.055 expressly require the tax to be initiated by ordinance duly enacted by the local governing authority. None of those seven subsections permit

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the tax to be initiated by charter amendment. If the Florida Legislature intended to allow only the county commissions to initiate the transportation surtax, it would have used the same language in section 212.055(1) as was used in the other seven discretionary sales tax sections. It did not.

The twenty charter counties authorized to impose the transportation surtax permit a charter amendment by a citizen or people's initiative. This is public knowledge available to the Florida Legislature when it expanded section 212.055(1) to the twenty charter counties in 2009. If the Florida Legislature intended to prohibit the transportation surtax from being initiated by charter amendment proposed by the citizens of the county as opposed to the county commission, the legislature would have provided such express language in subsection 212.055(1)(a). It did not.

The Florida Constitution and the Hillsborough County Home Rule Charter designate the county commission to act as the legislative or governing authority of the county unless provided elsewhere in the charter. As an exercise of self-governance, the citizens of a charter county enjoy the privilege of self-governance except when the state restricts that privilege by the enactment of a general law. But such a restriction on the right of self-governance must be by express language in the general law. Restrictions on the people of a charter county's right of self-governance cannot be inferred by implication. Amendment XI was properly added to the Hillsborough County Charter and exists as the permitted exception to the broad authority granted to the county commission as the governing body of the county. The provisions of Amendment XI are not prohibited by any express language in a general law of Florida.

The words "*Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate"* in section 212.055(1)(d) by their context and by their clear meaning were intended to clarify that when a county commission proposes a transportation surtax (as opposed to a transportation surtax proposed by the citizens through a charter amendment), it can use as many or as few of the transportation uses from the list of uses in sub-subsections (1) through (4) of subsection (d), and nothing more. If the legislature intended to prohibit the citizens of a county from imposing the transportation surtax on themselves by charter amendment, that prohibition would have been included in express language in section 212.055(1)(a).

It appears to be Stacy White's position that even if the citizens of Hillsborough County have the right to initiate a transportation surtax on transactions in Hillsborough County, those citizens must turn over all authority to administer the surtax to the county commission. There is no general law in Florida that prohibits the citizens of a county from exercising their right of home rule power by defining the types of permitted transportation uses, allocating surtax revenues among designated agencies and providing for their own oversight on the administration of the surtax revenues by a charter amendment. Article XI is the charter amendment that the majority of voters in Hillsborough County approved as a valid exercise of self-governance apart from governance delegated to the county commission. As an approved charter amendment it acts as a constitutionally permitted exception to the power of the county commission to act as the governing body of the county government. If the county commission wanted to control the transportation surtax programs and revenues, it could have proposed to levy the transportation surtax with the approval of the voters. The county commission took no action to address the transportation needs of the citizens it represents since 2009. The citizens of Hillsborough County took the extraordinary action in 2018 to tax themselves to address their transportation needs and excluded the county commission from exercising any authority to administer the transportation surtax.

It is the Clerk's position that Amendment XI to the Hillsborough County Home Rule Charter is a valid exercise of the people's right to self-governance and is not inconsistent with any Florida general law.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the following, by regular U.S. mail or by email through the ePortal, on this 28th day of March, 2019:

Chris W. Altenbernd, Esq.
Banker Lopez Gassler, PA
501 E. Kennedy Blvd., Suite 1700
Tampa, Florida 33602
caltenbernd@bankerlopez.com
service-caltenbernd@bankerlopez.com
Attorney for Plaintiff

Robert E. Brazel, Esq.
Hillsborough Co. Attorney's Office
601 E. Kennedy Blvd., 27th Floor
Tampa, Florida 33602
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
Attorney for Defendant Doug Belden in His Official Capacity as the Hillsborough Co. Tax Collector

Alan S. Zimmet, Esq.
Bryant Miller Olive PA
201 N. Franklin St., Suite 2700
Tampa, Florida 33602
azimmet@bmolaw.com
nakins@bmolaw.com
Attorney for Defendant Hillsborough Co.

Kenneth W. Buchman, Esq.
302 W. Reynolds St.
Plant City, Florida 33563
kbuchman@plantcitygov.com
kenbuchman@gmail.com
Attorney for Defendant Plant City

William D. Shepherd, Esq.
601 E. Kennedy Blvd., 15th Floor
Tampa, Florida 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
Attorney for Defendant Bob Henriquez in His Official Capacity as Hillsborough County Property Appraiser

Jerry M. Gewirtz, Esq.
Office of the City Attorney
315 E. Kennedy Blvd., 5th Floor
Tampa, Florida 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
Attorney for Defendant City of Tampa

Robert E. Johnson, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
rjohnson@gray-robinson.com
Valerie.Taylor@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

David L. Smith, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
david.smith@gray-robinson.com
jane.larose@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

William H. Stafford III, Esq.
Senior Assistant Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
william.stafford@myfloridalegal.com
tyler.dudley@myfloridalegal.com
Attorney for Defendant Florida Dept. of Revenue

Cameron Clark, Esq.
Hillsborough Co. Attorney's Office
P.O. Box 1110
Tampa, Florida 33601
clarkc@hillsboroughcounty.org
Attorney for Hillsborough Metropolitan Planning Organization

Benjamin H. Hill, III, Esq.
Hill Ward & Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, Florida 33602
bhill@hwhlaw.com
dwhitworth@hwhlaw.com
Attorney for Intervenor Defendants Keep Hillsborough Moving, Inc. and All for Transportation

Pamela D. Cichon, Esq.
11250 North 56th St.
Temple Terrace, Florida 33617
pcichon@templeterrace.com
Attorney for Defendant City of Temple Terrace

/s/ Dale K. Bohner

Dale K. Bohner, Esquire
601 E. Kennedy Boulevard, 13th Floor
P.O. Box 1110
Tampa, Florida 33601
(813) 307-7015
bohnerd@hillsclerk.com
Florida Bar Number: 0145875
Attorney for the Clerk of the Circuit Court

Filing # 87114105 E-Filed 03/28/2019 12:48:46 PM

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

DEFENDANT CLERK'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant Pat Frank as the Clerk of the Circuit Court, Hillsborough County, Florida ("Clerk") by and through her undersigned legal counsel and moves this court for Summary Judgment pursuant to Rule 1.510, Florida Rules of Civil Procedure, as to Counts I, II and III of Plaintiff's Amended Complaint, and as grounds therefore states there are no material facts in dispute and as a matter of law, Article XI to the Hillsborough County Home Rule Charter

was properly enacted by the citizens of Hillsborough County and imposes a valid transportation surtax tax consistent with the requirements of the Florida Constitution and Florida law.

MATERIAL FACTS NOT IN DISPUTE

1. That the jurisdiction and venue as alleged in the Amended Complaint are properly in this court.
2. That the Plaintiff and all party defendants are properly before this court and are necessary parties for this court to render a declaratory judgment.
3. That Article Eleven to the Hillsborough County Home Rule Charter was added as an amendment to the Hillsborough County Home Rule Charter in the manner as substantially alleged in paragraph 19 of the Amended Complaint. The content of Article Eleven is accurately set out in Exhibit "B" to the Amended Complaint.
4. That Article VII, Section 1(a) of the Florida Constitution gives the state the preemptive power to levy taxes by law, which power may be delegated to local governments by general law. The Clerk requests the court to take judicial notice of Article VII, Section 1(a) of the Florida Constitution. A copy is attached as Exhibit "1" to this Motion.
5. That section 212.055, Florida Statutes (2018) is the Florida Legislature's exercise of its power to levy taxes and the delegation of that power to local governments by enactment of a general law. The Clerk requests the court to take judicial notice of section 212.055, Florida Statutes (2018). A copy is attached as Exhibit "2" to this Motion.
6. That section 212.055, Florida Statutes (2018) states that taxable transactions and administrative procedures shall be as provided in section 212.054, Florida Statutes (2018). The Clerk requests the court to take judicial notice of section 212.054, Florida Statutes (2018). A copy is attached as Exhibit "3" to this Motion.
7. That subsection 212.055(1), Florida Statutes (2018) titled "*Charter county and regional transportation system surtax*" is the Florida Legislature's authorization for certain counties defined in the subsection to impose a transportation system surtax on transactions conducted within the county, all in accordance with the provisions of the subsection.
8. That Article VIII, Section 1(g) of the Florida Constitution authorized county charter

government. The Clerk requests the court to take judicial notice of Article VIII, Section 1(g) of the Florida Constitution. A copy is attached as Exhibit "4" to this Motion.

9. That Hillsborough County is a Home Rule Charter County; that Article IV of the Charter defines the Legislative Branch as the Board of County Commissioners: that Article VIII of the Charter defines how the Charter is amended. The Clerk requests the court to take judicial notice of the most current version of the Hillsborough County Home Rule Charter. A copy is attached as Exhibit "5" to this Motion.
10. That section 212.055(1), Florida Statutes has been amended from time to time, and specifically by section 1 of Chapter 2009-146, Laws of Florida and by section 1 of Chapter 2010-225, Laws of Florida. Compare section 212.055(1) Florida Statutes (2008) and section 212.055(1) Florida Statutes (2009). The Clerk requests the court to take judicial notice of Chapter 2009-146, Laws of Florida. A copy is attached as Exhibit "6" to this Motion. The Clerk requests the court to take judicial notice of Chapter 2010-225, Laws of Florida. A copy is attached as Exhibit "7" to this Motion.
11. That from 2009 to the present, there are twenty charter counties in Florida. The Clerk requests the court to take judicial notice of the charters of each of the twenty charter counties in Florida, and particularly that article in each county charter that defines the process to amend the charter. Copies of the twenty county charters, cited in the exhibit index, are attached as Composite Exhibit "8" to this Motion.
12. That under Chapter 343, Florida Statutes, five regional transportation authorities have been created, to wit: the "Northeast Florida Regional Transportation Commission"; the "South Florida Regional Transportation Commission"; the "Central Florida Regional Transportation Authority"; the "Northwest Florida Transportation Corridor Authority"; and the "Tampa Bay Regional Transit Authority". The member counties of each of the five regional transportation authorities are identified in Chapter 343, Florida Statutes. Some of the member counties are charter counties and some of the member counties are non-charter counties. The Clerk requests the court to take judicial notice of Chapter 343, Florida Statutes, and particularly the following sections which identify the five regional authorities and their member counties, to wit: sections 343.1003; 343.53; 343.63; 343.81; and 343.92, Florida Statutes (2018). A copy of sections 343.1003; 343.53; 343.63; 343.81; and 343.92 of Florida Statutes (2018) is attached hereto as

Composite Exhibit "9" to this Motion.

13. That there are two counties in Florida, the governments of which are consolidated with that of one or more municipalities, to wit: "Miami-Dade" and "Jacksonville-Duval", as identified in Exhibit "10" below.
14. The Clerk requests the court to take judicial notice of Florida House of Representatives Staff Analysis for Bill CS/CS/HB 1205, dated 4/21/2009. A copy is attached as Exhibit "10" to this Motion. The limited purpose of Exhibit "10" is to provide the court with the history of section 212.055(1) Florida Statutes prior to 2009, and the proposed changes identified in the Staff Analysis for CS/CS/HB 1205, which were enacted and became Chapter 2009-146, Laws of Florida. Judicial notice of a House of Representatives staff analysis is authorized under section 90.902(5) and (9), Florida Statutes. See: *Department of Health & Rehabilitative Services v. Shatto*, 487 So.2d 1152 (Fla. 1st DCA, 1986).

SUBSTANTIAL MATTERS OF LAW

15. That Article 8, Section 1(g) of the Florida Constitution authorizes the creation of charter counties with all powers of local government not inconsistent with general law.
16. That Articles IV and VIII of the Hillsborough County Home Rule Charter authorize the citizens of Hillsborough County to impose a transportation surtax upon themselves as an amendment to the Charter.
17. That section 212.055, Florida Statutes (2018) is a "general law" within the meaning of Article VII, Section 1(a) and Article VIII, Section 1(g) of the Florida Constitution.
18. The imposition of the transportation surtax by a charter amendment in the form of and as initiated by the citizens of Hillsborough County as opposed to a charter amendment initiated by the board of county commissioners, is not inconsistent with subsection 212.055(1) and section 212.054, Florida Statutes (2018).
19. *Telli v. Broward County*, 94 So.3d 504 (Fla. 2012) holds that broad home rule power is granted to charter counties under the Florida Constitution and statutory language that restricts that home rule power must be express and cannot be implied.
20. Case law that identifies and applies statutory rules of construction, when construing Florida Statutes. See: *Schoeff v. R.J. Reynolds tobacco Company* 232 So.3d 294 (Fla.

2017); *Edwards v. Thomas*, 229 So.3d 277 (Fla. 2017); *Doe v. Department of Health*, 948 So.2d 803 (Fla. 2d DCA 2006).

The Clerk requests the Court to enter Summary Judgment in her favor and against the Plaintiff as to Counts I, II, and III of Plaintiff's Amended Complaint after consideration of the Clerk's Motion for Summary Judgment and the accompanying Memorandum of Law.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the following by regular U.S. mail or by email through the ePortal on this 28th day of March, 2019.

Chris W. Altenbernd, Esq.
Banker Lopez Gassler, PA
501 E. Kennedy Blvd., Suite 1700
Tampa, Florida 33602
caltenbernd@bankerlopez.com
service-caltenbernd@bankerlopez.com
Attorney for Plaintiff

Robert E. Brazel, Esq.
Hillsborough Co. Attorney's Office
601 E. Kennedy Blvd., 27th Floor
Tampa, Florida 33602
brazelr@hillsboroughcounty.org
matthewsl@hillsboroughcounty.org
Attorney for Defendant Doug Belden in His Official Capacity as the Hillsborough Co. Tax Collector

Alan S. Zimmet, Esq.
Bryant Miller Olive PA
201 N. Franklin St., Suite 2700
Tampa, Florida 33602
azimmet@bmolaw.com
nakins@bmolaw.com
Attorney for Defendant Hillsborough Co.

Kenneth W. Buchman, Esq.
302 W. Reynolds St.
Plant City, Florida 33563
kbuchman@plantcitygov.com
kenbuchman@gmail.com
Attorney for Defendant Plant City

William D. Shepherd, Esq.
601 E. Kennedy Blvd., 15th Floor
Tampa, Florida 33602
shepherdw@hcpafl.org
gomezm@hcpafl.org
Attorney for Defendant Bob Henriquez in His Official Capacity as Hillsborough County Property Appraiser

Jerry M. Gewirtz, Esq.
Office of the City Attorney
315 E. Kennedy Blvd., 5th Floor
Tampa, Florida 33602
Jerry.gewirtz@tampagov.net
Kimber.spitsberg@tampagov.net
Attorney for Defendant City of Tampa

Robert E. Johnson, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
rjohnson@gray-robinson.com
Valerie.Taylor@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

David L. Smith, Esq.
GrayRobinson, P.A.
401 E. Jackson St., Suite 2700
Tampa, Florida 33602
david.smith@gray-robinson.com
jane.larose@gray-robinson.com
Attorney for Defendant Hillsborough Area Transit Authority

William H. Stafford III, Esq.
Senior Assistant Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
william.stafford@myfloridalegal.com
tyler.dudley@myfloridalegal.com
Attorney for Defendant Florida Dept. of Revenue

Cameron Clark, Esq.
Hillsborough Co. Attorney's Office
P.O. Box 1110
Tampa, Florida 33601
clarkc@hillsboroughcounty.org
Attorney for Hillsborough Metropolitan Planning Organization

Benjamin H. Hill, III, Esq.
Hill Ward & Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, Florida 33602
bhill@hwhlaw.com
dwhitworth@hwhlaw.com
Attorney for Intervenor Defendants Keep Hillsborough Moving, Inc. and All for Transportation

Pamela D. Cichon, Esq.
11250 North 56th St.
Temple Terrace, Florida 33617
pcichon@templeterrace.com
Attorney for Defendant City of Temple Terrace

/s/ Dale K. Bohner
Dale K. Bohner, Esquire
601 E. Kennedy Boulevard, 13th Floor
P.O. Box 1110
Tampa, Florida 33601
(813) 307-7015
bohnerd@hillsclerk.com
Florida Bar Number: 0145875
Attorney for the Clerk of the Circuit Court

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

EXHIBIT 1

FLORIDA CONSTITUTION

Article VII

Finance and Taxation

SECTION 1. Taxation; appropriations; state expenses; state revenue limitation.—

(a) No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.

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EXHIBIT 2

Select Year: 2018 Go

The 2018 Florida Statutes

Title XIV	Chapter 212	View Entire Chapter
TAXATION AND FINANCE	TAX ON SALES, USE, AND OTHER TRANSACTIONS	

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for

the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

(e) As used in this subsection, the term "on-demand transportation services" means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(a)1. The governing authority in each county may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax shall be placed on the ballot and shall take effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

2. If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance, or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of such surtax may be extended only by approval of a majority of the electors of the county voting in a referendum on the surtax.

(b) A statement which includes a brief general description of the projects to be funded by the surtax and which conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing authority of any county which enacts an ordinance calling for a referendum on the levy of the surtax or in which the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions calling for a referendum on the surtax. The following question shall be placed on the ballot:

FOR the	-cent sales tax
AGAINST the	-cent sales tax

(c) Pursuant to s. 212.054(4), the proceeds of the surtax levied under this subsection shall be distributed to the county and the municipalities within such county in which the surtax was collected, according to:

1. An interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, which agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population; or

2. If there is no interlocal agreement, according to the formula provided in s. 218.62.

Any change in the distribution formula must take effect on the first day of any month that begins at least 60 days after written notification of that change has been made to the department.

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire any interest in land for public recreation, conservation, or protection of natural resources or to prevent or satisfy private property rights claims resulting from limitations imposed by the designation of an area of critical state concern; to provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service. For purposes of this sub-subparagraph, the term "public facilities" means facilities as defined in s. 163.3164(39), s. 163.3221(13), or s. 189.012(5), and includes facilities that are necessary to carry out governmental purposes, including, but not limited to, fire stations, general governmental office buildings, and animal shelters, regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

f. Instructional technology used solely in a school district's classrooms. As used in this sub-subparagraph, the term "instructional technology" means an interactive device that assists a teacher in instructing a class or a group of students and includes the necessary hardware and software to operate the interactive device. The term also includes support systems in which an interactive device may mount and is not required to be affixed to the facilities.

2. For the purposes of this paragraph, the term "energy efficiency improvement" means any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; installation of solar panels; building modifications to increase the use of daylight or shade; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; installation of systems for natural gas fuel as defined in s. 206.9951; and installation of efficient lighting equipment.

3. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit into a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

(e) School districts, counties, and municipalities receiving proceeds under the provisions of this subsection may pledge such proceeds for the purpose of servicing new bond indebtedness incurred pursuant to law. Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through the provisions of this subsection. Counties and municipalities may join together for the issuance of bonds authorized by this subsection.

(f)1. Notwithstanding paragraph (d), a county that has a population of 50,000 or less on April 1, 1992, or any county designated as an area of critical state concern on the effective date of this act, and

that imposed the surtax before July 1, 1992, may use the proceeds and interest of the surtax for any public purpose if:

a. The debt service obligations for any year are met;

b. The county's comprehensive plan has been determined to be in compliance with part II of chapter 163; and

c. The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66 authorizing additional uses of the surtax proceeds and interest.

2. A municipality located within a county that has a population of 50,000 or less on April 1, 1992, or within a county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may not use the proceeds and interest of the surtax for any purpose other than an infrastructure purpose authorized in paragraph (d) unless the municipality's comprehensive plan has been determined to be in compliance with part II of chapter 163 and the municipality has adopted an amendment to its surtax ordinance or resolution pursuant to the procedure provided in s. 166.041 authorizing additional uses of the surtax proceeds and interest. Such municipality may expend the surtax proceeds and interest for any public purpose authorized in the amendment.

3. Those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section. A county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes for 20 years following removal of the designation, notwithstanding subparagraph (a)2. After expiration of the 20-year period, a county may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure if the county adopts an ordinance providing for such continued use of the surtax proceeds.

(g) Notwithstanding paragraph (d), a county having a population greater than 75,000 in which the taxable value of real property is less than 60 percent of the just value of real property for ad valorem tax purposes for the tax year in which an infrastructure surtax referendum is placed before the voters, and the municipalities within such a county, may use the proceeds and interest of the surtax for operation and maintenance of parks and recreation programs and facilities established with the proceeds of the surtax throughout the duration of the surtax levy or while interest earnings accruing from the proceeds of the surtax are available for such use, whichever period is longer.

(h) Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this subsection and subsections (3), (4), and (5) in excess of a combined rate of 1 percent.

(3) SMALL COUNTY SURTAX.—

(a) The governing authority in each county that has a population of 50,000 or less on April 1, 1992, may levy a discretionary sales surtax of 0.5 percent or 1 percent. The levy of the surtax shall be pursuant to ordinance enacted by an extraordinary vote of the members of the county governing authority if the surtax revenues are expended for operating purposes. If the surtax revenues are expended for the purpose of servicing bond indebtedness, the surtax shall be approved by a majority of the electors of the county voting in a referendum on the surtax.

(b) A statement that includes a brief general description of the projects to be funded by the surtax and conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing authority

of any county that enacts an ordinance calling for a referendum on the levy of the surtax for the purpose of servicing bond indebtedness. The following question shall be placed on the ballot:

FOR the	-cent sales tax
AGAINST the	-cent sales tax

(c) Pursuant to s. 212.054(4), the proceeds of the surtax levied under this subsection shall be distributed to the county and the municipalities within the county in which the surtax was collected, according to:

1. An interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population, which agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population; or
2. If there is no interlocal agreement, according to the formula provided in s. 218.62.

Any change in the distribution formula shall take effect on the first day of any month that begins at least 60 days after written notification of that change has been made to the department.

(d)1. If the surtax is levied pursuant to a referendum, the proceeds of the surtax and any interest accrued thereto may be expended by the school district or within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, for the purpose of servicing bond indebtedness to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation or protection of natural resources. However, if the surtax is levied pursuant to an ordinance approved by an extraordinary vote of the members of the county governing authority, the proceeds and any interest accrued thereto may be used for operational expenses of any infrastructure or for any public purpose authorized in the ordinance under which the surtax is levied.

2. For the purposes of this paragraph, "infrastructure" means any fixed capital expenditure or fixed capital costs associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto.

(e) A school district, county, or municipality that receives proceeds under this subsection following a referendum may pledge the proceeds for the purpose of servicing new bond indebtedness incurred pursuant to law. Local governments may use the services of the Division of Bond Finance pursuant to the State Bond Act to issue any bonds through the provisions of this subsection. A jurisdiction may not issue bonds pursuant to this subsection more frequently than once per year. A county and municipality may join together to issue bonds authorized by this subsection.

(f) Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this subsection and subsections (2), (4), and (5) in excess of a combined rate of 1 percent.

(4) INDIGENT CARE AND TRAUMA CENTER SURTAX.—

(a)1. The governing body in each county the government of which is not consolidated with that of one or more municipalities, which has a population of at least 800,000 residents and is not authorized to levy a surtax under subsection (5), may levy, pursuant to an ordinance either approved by an extraordinary vote of the governing body or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

2. If the ordinance is conditioned on a referendum, a statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following questions shall be placed on the ballot:

FOR THE. . . .CENTS TAX
AGAINST THE. . . .CENTS TAX

3. The ordinance adopted by the governing body providing for the imposition of the surtax shall set forth a plan for providing health care services to qualified residents, as defined in subparagraph 4. Such plan and subsequent amendments to it shall fund a broad range of health care services for both indigent persons and the medically poor, including, but not limited to, primary care and preventive care as well as hospital care. The plan must also address the services to be provided by the Level I trauma center. It shall emphasize a continuity of care in the most cost-effective setting, taking into consideration both a high quality of care and geographic access. Where consistent with these objectives, it shall include, without limitation, services rendered by physicians, clinics, community hospitals, mental health centers, and alternative delivery sites, as well as at least one regional referral hospital where appropriate. It shall provide that agreements negotiated between the county and providers, including hospitals with a Level I trauma center, will include reimbursement methodologies that take into account the cost of services rendered to eligible patients, recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care, promote the advancement of technology in medical services, recognize the level of responsiveness to medical needs in trauma cases, and require cost containment including, but not limited to, case management. It must also provide that any hospitals that are owned and operated by government entities on May 21, 1991, must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to meetings of the governing board, the subject of which is budgeting resources for the rendition of charity care as that term is defined in the Florida Hospital Uniform Reporting System (FHURS) manual referenced in s. 408.07. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service delivery and funding.

4. For the purpose of this paragraph, the term "qualified resident" means residents of the authorizing county who are:

a. Qualified as indigent persons as certified by the authorizing county;

b. Certified by the authorizing county as meeting the definition of the medically poor, defined as persons having insufficient income, resources, and assets to provide the needed medical care without using resources required to meet basic needs for shelter, food, clothing, and personal expenses; or not being eligible for any other state or federal program, or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage. In all cases, the authorizing county is intended to serve as the payor of last resort; or

c. Participating in innovative, cost-effective programs approved by the authorizing county.

5. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in an indigent health care trust fund;

b. Invest any funds held on deposit in the trust fund pursuant to general law;

c. Disburse the funds, including any interest earned, to any provider of health care services, as provided in subparagraphs 3. and 4., upon directive from the authorizing county. However, if a county

has a population of at least 800,000 residents and has levied the surtax authorized in this paragraph, notwithstanding any directive from the authorizing county, on October 1 of each calendar year, the clerk of the court shall issue a check in the amount of $6.5 million to a hospital in its jurisdiction that has a Level I trauma center or shall issue a check in the amount of $3.5 million to a hospital in its jurisdiction that has a Level I trauma center if that county enacts and implements a hospital lien law in accordance with chapter 98-499, Laws of Florida. The issuance of the checks on October 1 of each year is provided in recognition of the Level I trauma center status and shall be in addition to the base contract amount received during fiscal year 1999-2000 and any additional amount negotiated to the base contract. If the hospital receiving funds for its Level I trauma center status requests such funds to be used to generate federal matching funds under Medicaid, the clerk of the court shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that it is allowed through the General Appropriations Act; and

d. Prepare on a biennial basis an audit of the trust fund specified in sub-subparagraph a. Commencing February 1, 2004, such audit shall be delivered to the governing body and to the chair of the legislative delegation of each authorizing county.

6. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(b) Notwithstanding any other provision of this section, the governing body in each county the government of which is not consolidated with that of one or more municipalities and which has a population of less than 800,000 residents, may levy, by ordinance subject to approval by a majority of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.25 percent for the sole purpose of funding trauma services provided by a trauma center licensed pursuant to chapter 395.

1. A statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following shall be placed on the ballot:

FOR THE. . . .CENTS TAX
AGAINST THE. . . .CENTS TAX

2. The ordinance adopted by the governing body of the county providing for the imposition of the surtax shall set forth a plan for providing trauma services to trauma victims presenting in the trauma service area in which such county is located.

3. Moneys collected pursuant to this paragraph remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

a. Maintain the moneys in a trauma services trust fund.

b. Invest any funds held on deposit in the trust fund pursuant to general law.

c. Disburse the funds, including any interest earned on such funds, to the trauma center in its trauma service area, as provided in the plan set forth pursuant to subparagraph 2., upon directive from the authorizing county. If the trauma center receiving funds requests such funds be used to generate federal matching funds under Medicaid, the custodian of the funds shall instead issue a check to the Agency for Health Care Administration to accomplish that purpose to the extent that the agency is allowed through the General Appropriations Act.

d. Prepare on a biennial basis an audit of the trauma services trust fund specified in sub-subparagraph a., to be delivered to the authorizing county.

4. A discretionary sales surtax imposed pursuant to this paragraph shall expire 4 years after the effective date of the surtax, unless reenacted by ordinance subject to approval by a majority of the electors of the county voting in a subsequent referendum.

5. Notwithstanding any other provision of this section, a county shall not levy local option sales surtaxes authorized in this paragraph and subsections (2) and (3) in excess of a combined rate of 1 percent.

(5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in s. 125.011(1) may levy the surtax authorized in this subsection pursuant to an ordinance either approved by extraordinary vote of the county commission or conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(a) The rate shall be 0.5 percent.

(b) If the ordinance is conditioned on a referendum, the proposal to adopt the county public hospital surtax shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body. The referendum question on the ballot shall include a brief general description of the health care services to be funded by the surtax.

(c) Proceeds from the surtax shall be:

1. Deposited by the county in a special fund, set aside from other county funds, to be used only for the operation, maintenance, and administration of the county public general hospital; and

2. Remitted promptly by the county to the agency, authority, or public health trust created by law which administers or operates the county public general hospital.

(d) Except as provided in subparagraphs 1. and 2., the county must continue to contribute each year an amount equal to at least 80 percent of that percentage of the total county budget appropriated for the operation, administration, and maintenance of the county public general hospital from the county's general revenues in the fiscal year of the county ending September 30, 1991:

1. Twenty-five percent of such amount must be remitted to a governing board, agency, or authority that is wholly independent from the public health trust, agency, or authority responsible for the county public general hospital, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e);

2. However, in the first year of the plan, a total of $10 million shall be remitted to such governing board, agency, or authority, to be used solely for the purpose of funding the plan for indigent health care services provided for in paragraph (e), and in the second year of the plan, a total of $15 million shall be so remitted and used.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. No member may be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical

Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311(45). Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member per-month fee or capitation for those members enrolled in their service area, as compensation for the services rendered following the initial emergency visit. Except for provisions of emergency services, upon determination of eligibility, enrollment shall be deemed to have occurred at the time services were rendered. The provisions for specific reimbursement of emergency services shall be repealed on July 1, 2001, unless otherwise reenacted by the Legislature. The capitation amount or rate shall be determined before program implementation by an independent actuarial consultant. In no event shall such reimbursement rates exceed the Medicaid rate. The plan must also provide that any hospitals owned and operated by government entities on or after the effective date of this act must, as a condition of receiving funds under this subsection, afford public access equal to that provided under s. 286.011 as to any meeting of the governing board, agency, or authority the subject of which is budgeting resources for the retention of charity care, as that term is defined in the rules of the Agency for Health Care Administration. The plan shall also include innovative health care programs that provide cost-effective alternatives to traditional methods of service and delivery funding.

3. The plan's benefits shall be made available to all county residents currently eligible to receive health care services as indigents or medically poor as defined in paragraph (4)(d).

4. Eligible residents who participate in the health care plan shall receive coverage for a period of 12 months or the period extending from the time of enrollment to the end of the current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board, agency, or authority shall prepare an audit that reviews the budget of the plan, delivery of services, and quality of services, and makes recommendations to increase the plan's efficiency. The audit shall take into account participant

hospital satisfaction with the plan and assess the amount of poststabilization patient transfers requested, and accepted or denied, by the county public general hospital.

(f) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2) and (3) in excess of a combined rate of 1 percent.

(6) SCHOOL CAPITAL OUTLAY SURTAX.—

(a) The school board in each county may levy, pursuant to resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum, a discretionary sales surtax at a rate that may not exceed 0.5 percent.

(b) The resolution shall include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax. The statement shall conform to the requirements of s. 101.161 and shall be placed on the ballot by the governing body of the county. The following question shall be placed on the ballot:

FOR THE	CENTS TAX
AGAINST THE	CENTS TAX

(c) The resolution providing for the imposition of the surtax shall set forth a plan for use of the surtax proceeds for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses which have a useful life expectancy of 5 or more years, and any land acquisition, land improvement, design, and engineering costs related thereto. Additionally, the plan shall include the costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the school district. Surtax revenues may be used for the purpose of servicing bond indebtedness to finance projects authorized by this subsection, and any interest accrued thereto may be held in trust to finance such projects. Neither the proceeds of the surtax nor any interest accrued thereto shall be used for operational expenses.

(d) Surtax revenues collected by the Department of Revenue pursuant to this subsection shall be distributed to the school board imposing the surtax in accordance with law.

(7) VOTER-APPROVED INDIGENT CARE SURTAX.—

(a)1. The governing body in each county that has a population of fewer than 800,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. The surtax may be levied at a rate not to exceed 0.5 percent, except that if a publicly supported medical school is located in the county, the rate shall not exceed 1 percent.

2. Notwithstanding subparagraph 1., the governing body of any county that has a population of fewer than 50,000 residents may levy an indigent care surtax pursuant to an ordinance conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum. The surtax may be levied at a rate not to exceed 1 percent.

(b) A statement that includes a brief and general description of the purposes to be funded by the surtax and that conforms to the requirements of s. 101.161 shall be placed on the ballot by the governing body of the county. The following questions shall be placed on the ballot:

FOR THE. . . .CENTS TAX
AGAINST THE. . . .CENTS TAX

(c)1. The ordinance adopted by the governing body providing for the imposition of the surtax must set forth a plan for providing health care services to qualified residents, as defined in paragraph (d). The plan and subsequent amendments to it shall fund a broad range of health care services for indigent persons and the medically poor, including, but not limited to, primary care and preventive care, as well as hospital care. It shall emphasize a continuity of care in the most cost-effective setting, taking into consideration a high quality of care and geographic access. Where consistent with these objectives, it shall include, without limitation, services rendered by physicians, clinics, community hospitals, mental health centers, and alternative delivery sites, as well as at least one regional referral hospital where appropriate. It shall provide that agreements negotiated between the county and providers shall include reimbursement methodologies that take into account the cost of services rendered to eligible patients, recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care, and require cost containment, including, but not limited to, case management. The plan must also include innovative health care programs that provide cost-effective alternatives to traditional methods of service delivery and funding.

2. In addition to the uses specified or services required to be provided under this subsection, the ordinance adopted by a county that has a population of fewer than 50,000 residents may pledge surtax proceeds to service new or existing bond indebtedness incurred to finance, plan, construct, or reconstruct a public or not-for-profit hospital in such county and any land acquisition, land improvement, design, or engineering costs related to such hospital, if the governing body of the county determines that a public or not-for-profit hospital existing at the time of issuance of the bonds authorized under this subparagraph would, more likely than not, otherwise cease to operate. The plan required under this paragraph may, by an extraordinary vote of the governing body of such county, provide that some or all of the surtax revenues and any interest earned must be expended for the purpose of servicing such bond indebtedness. Such county may also use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue bonds under this subparagraph. A jurisdiction may not issue bonds under this subparagraph more frequently than once per year. Any county that has a population of fewer than 50,000 residents at the time any bonds authorized in this subparagraph are issued retains the authority granted under this subparagraph throughout the terms of such bonds, including the term of any refinancing bonds, regardless of any subsequent increase in population which would result in such county having 50,000 or more residents.

(d) For the purpose of this subsection, the term "qualified residents" means residents of the authorizing county who are:

1. Qualified as indigent persons as certified by the authorizing county;

2. Certified by the authorizing county as meeting the definition of the medically poor, defined as persons having insufficient income, resources, and assets to provide the needed medical care without using resources required to meet basic needs for shelter, food, clothing, and personal expenses; not being eligible for any other state or federal program or having medical needs that are not covered by any such program; or having insufficient third-party insurance coverage. In all cases, the authorizing county shall serve as the payor of last resort; or

3. Participating in innovative, cost-effective programs approved by the authorizing county.

(e) Moneys collected pursuant to this subsection remain the property of the state and shall be distributed by the Department of Revenue on a regular and periodic basis to the clerk of the circuit court as ex officio custodian of the funds of the authorizing county. The clerk of the circuit court shall:

1. Maintain the moneys in an indigent health care trust fund.

2. Invest any funds held on deposit in the trust fund pursuant to general law.

3. Disburse the funds, including any interest earned, to any provider of health care services, as provided in paragraphs (c) and (d), upon directive from the authorizing county.

4. Disburse the funds, including any interest earned, to service any bond indebtedness authorized in this subsection upon directive from the authorizing county, which directive may be irrevocably given at the time the bond indebtedness is incurred.

(f) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2) and (3) in excess of a combined rate of 1 percent or, if a publicly supported medical school is located in the county or the county has a population of fewer than 50,000 residents, in excess of a combined rate of 1.5 percent.

(8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

(a) The governing authority of a county, other than a county that has imposed two separate discretionary surtaxes without expiration, may, by ordinance, levy a discretionary sales surtax of up to 1 percent for emergency fire rescue services and facilities as provided in this subsection. As used in this subsection, the term "emergency fire rescue services" includes, but is not limited to, preventing and extinguishing fires; protecting and saving life and property from fires or natural or intentional acts or disasters; enforcing municipal, county, or state fire prevention codes and laws pertaining to the prevention and control of fires; and providing prehospital emergency medical treatment.

(b) Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The ordinance will take effect if approved by a majority of the electors of the county voting in a referendum held for such purpose. The referendum shall be placed on the ballot of a regularly scheduled election. The ballot for the referendum must conform to the requirements of s. 101.161.

(c) Pursuant to s. 212.054(4), the proceeds of the discretionary sales surtax collected under this subsection, less an administrative fee that may be retained by the Department of Revenue, shall be distributed by the department to the county. The county shall distribute the proceeds it receives from the department to each local government entity providing emergency fire rescue services in the county. The surtax proceeds, less an administrative fee not to exceed 2 percent of the surtax collected, shall be distributed by the county based on each entity's average annual expenditures for fire control and emergency fire rescue services in the 5 fiscal years preceding the fiscal year in which the surtax takes effect in proportion to the average annual total of the expenditures for such entities in the 5 fiscal years preceding the fiscal year in which the surtax takes effect. The county shall revise the distribution proportions to reflect a change in the service area of an entity receiving a distribution of the surtax proceeds. If an entity declines its share of surtax revenue, such revenue shall be redistributed proportionally to the entities that are participating in the sharing of such revenue based on each participating entity's average annual expenditures for fire control and emergency fire rescue services in the preceding 5 fiscal years in proportion to the average annual total of the expenditures for the participating entities in the preceding 5 fiscal years.

(d) If a local government entity requests personnel or equipment from any other service provider on a long-term basis and the personnel or equipment is provided, the local government entity providing the service is entitled to payment from the requesting service provider from that provider's share of the surtax proceeds for all costs of the equipment or personnel.

(e) Upon the surtax taking effect and initiation of collections, each local government entity receiving a share of surtax proceeds shall reduce the ad valorem tax levy or any non-ad valorem assessment for fire control and emergency rescue services in its next and subsequent budgets by the estimated amount of revenue provided by the surtax.

(f) Use of surtax proceeds authorized under this subsection does not relieve a local government entity from complying with chapter 200 and any related provision of law that establishes millage caps or limits undesignated budget reserves and procedures for establishing rollback rates for ad valorem taxes and budget adoption. If surtax collections exceed projected collections in any fiscal year, any surplus distribution shall be used to further reduce ad valorem taxes in the next fiscal year. These proceeds shall be applied as a rebate to the final millage, after the TRIM notice is completed in accordance with this provision. If a local government entity receiving a share of the surtax is unable to further reduce ad valorem taxes because the millage rate is zero, the funds shall be applied to reduce any non-ad valorem assessments levied for the purposes described in this section. If no ad valorem or non-ad valorem reduction is possible, the surplus surtax collections shall be returned to the county, and the county shall reduce the county millage rates to offset the surplus surtax proceeds.

(g) Surtax collections shall be initiated on January 1 of the year following a successful referendum in order to coincide with s. 212.054(5).

(h) Notwithstanding s. 212.054, if a multicounty independent special district created pursuant to chapter 67-764, Laws of Florida, levies ad valorem taxes on district property to fund emergency fire rescue services within the district and is required by s. 2, Art. VII of the State Constitution to maintain a uniform ad valorem tax rate throughout the district, the county may not levy the discretionary sales surtax authorized by this subsection within the boundaries of the district.

(9) PENSION LIABILITY SURTAX.—

(a) The governing body of a county may levy a pension liability surtax to fund an underfunded defined benefit retirement plan or system, pursuant to an ordinance conditioned to take effect upon approval by a majority vote of the electors of the county voting in a referendum, at a rate that may not exceed 0.5 percent. The county may not impose a pension liability surtax unless the underfunded defined benefit retirement plan or system is below 80 percent of actuarial funding at the time the ordinance or referendum is passed. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding for purposes of determining eligibility to impose the surtax. The governing body of a county may only impose the surtax if:

1. An employee, including a police officer or firefighter, who enters employment on or after the date when the local government certifies that the defined benefit retirement plan or system formerly available to such an employee has been closed may not enroll in a defined benefit retirement plan or system that will receive surtax proceeds.

2. The local government and the collective bargaining representative for the members of the underfunded defined benefit retirement plan or system or, if there is no representative, a majority of the members of the plan or system, mutually consent to requiring each member to make an employee retirement contribution of at least 10 percent of each member's salary for each pay period beginning with the first pay period after the plan or system is closed.

3. The pension board of trustees for the underfunded defined benefit retirement plan or system, if such board exists, is prohibited from participating in the collective bargaining process and engaging in the determination of pension benefits.

4. The county currently levies a local government infrastructure surtax pursuant to subsection (2) which is scheduled to terminate and is not subject to renewal.

5. The pension liability surtax does not take effect until the local government infrastructure surtax described in subparagraph 4. is terminated.

(b) A referendum to adopt a pension liability surtax must meet the requirements of s. 101.161 and must include a brief and general description of the purposes for which the surtax proceeds will be used.

(c) Pursuant to s. 212.054(4), the proceeds of the surtax collected under this subsection, less an administrative fee that may be retained by the department, shall be distributed by the department to the local government.

(d) The local government may use the pension liability surtax proceeds in the following manner:

1. If the proceeds of the pension liability surtax have been actuarially recognized as provided in s. 112.64(6), the local government must distribute the proceeds to an eligible defined benefit retirement plan or system, not including the Florida Retirement System.

2. If the proceeds of the pension liability surtax have not been actuarially recognized, the local government is authorized to distribute the proceeds to an eligible defined benefit retirement plan or system, not including the Florida Retirement System, to pledge the proceeds of the surtax to repay debts incurred for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system, and to reimburse itself from the proceeds of the surtax for any borrowing costs associated with such debts.

(e) The ordinance providing for the imposition of the pension liability surtax must specify how the proceeds will be used:

1. The ordinance must specify the method of determining the percentage of the proceeds, and the frequency of such payments, distributed to each eligible defined benefit retirement plan or system if the proceeds of the pension liability surtax are actuarially recognized as provided in s. 112.64(6).

2. The ordinance must specify the local government's intention to incur debt for the purpose of making advanced payments toward the unfunded liability of an underfunded defined benefit retirement plan or system if the proceeds of the pension liability surtax are not actuarially recognized as provided in s. 112.64(6).

(f) A pension liability surtax imposed pursuant to this subsection shall terminate on December 31 of the year in which the actuarial funding level is expected to reach or exceed 100 percent for the defined benefit retirement plan or system for which the surtax was levied or December 31, 2060, whichever occurs first. The most recent actuarial report submitted to the Department of Management Services pursuant to s. 112.63 must be used to establish the level of actuarial funding.

(g) Notwithstanding any other provision of this section, a county may not levy local option sales surtaxes authorized in this subsection and subsections (2), (3), (4), and (5) in excess of a combined rate of 1 percent.

(10) PERFORMANCE AUDIT.—

(a) For any referendum held on or after March 23, 2018, to adopt a discretionary sales surtax under this section, an independent certified public accountant licensed pursuant to chapter 473 shall conduct a performance audit of the program associated with the surtax adoption proposed by the county or school district. The Office of Program Policy Analysis and Government Accountability shall procure the certified public accountant and may use carryforward funds to pay for the services of the certified public accountant.

(b) At least 60 days before the referendum is held, the performance audit shall be completed and the audit report, including any findings, recommendations, or other accompanying documents, shall be made available on the official website of the county or school district. The county or school district shall keep the information on its website for 2 years from the date it was posted.

(c) For purposes of this subsection, the term "performance audit" means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation

standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:

1. The economy, efficiency, or effectiveness of the program.
2. The structure or design of the program to accomplish its goals and objectives.
3. Alternative methods of providing program services or products.
4. Goals, objectives, and performance measures used by the program to monitor and report program accomplishments.
5. The accuracy or adequacy of public documents, reports, and requests prepared by the county or school district which relate to the program.
6. Compliance of the program with appropriate policies, rules, and laws.

(d) This subsection does not apply to a referendum held to adopt the same discretionary surtax that was in place during the month of December immediately before the date of the referendum.

History.—s. 2, ch. 76-284; s. 5, ch. 82-154; s. 3, ch. 83-3; s. 1, ch. 84-373; s. 1, ch. 84-555; s. 25, ch. 85-180; s. 70, ch. 85-342; s. 8, ch. 87-99; s. 1, ch. 87-100; s. 2, ch. 87-239; s. 12, ch. 87-548; s. 85, ch. 90-132; s. 4, ch. 90-203; s. 1, ch. 90-282; ss. 2, 3, ch. 91-81; s. 29, ch. 91-112; s. 2, ch. 91-418; s. 1, ch. 91-423; s. 148, ch. 92-279; ss. 1, 2, ch. 92-309; s. 55, ch. 92-326; s. 3, ch. 93-207; s. 3, ch. 93-222; s. 51, ch. 94-356; s. 1, ch. 95-258; s. 1, ch. 96-240; s. 1, ch. 97-83; s. 17, ch. 97-384; s. 7, ch. 98-258; s. 9, ch. 98-342; s. 4, ch. 99-4; s. 1, ch. 99-340; s. 54, ch. 99-385; s. 40, ch. 2000-151; ss. 10, 11, 13, 16, ch. 2000-312; s. 78, ch. 2000-318; s. 33, ch. 2001-60; s. 100, ch. 2002-20; s. 7, ch. 2002-196; s. 1, ch. 2003-77; ss. 33, 42, ch. 2003-254; s. 91, ch. 2003-402; s. 6, ch. 2004-41; s. 1, ch. 2004-66; s. 1, ch. 2004-259; s. 3, ch. 2005-55; s. 1, ch. 2005-56; s. 1, ch. 2005-96; s. 1, ch. 2005-242; s. 1, ch. 2006-66; s. 2, ch. 2006-223; s. 14, ch. 2007-196; s. 19, ch. 2009-96; s. 1, ch. 2009-132; s. 1, ch. 2009-146; s. 1, ch. 2009-182; s. 1, ch. 2010-154; s. 1, ch. 2010-225; s. 5, ch. 2011-15; s. 3, ch. 2012-117; s. 14, ch. 2013-198; s. 6, ch. 2015-100; s. 1, ch. 2015-169; s. 2, ch. 2016-146; s. 2, ch. 2016-225; s. 64, ch. 2016-241; s. 27, ch. 2017-173; ss. 34, 35, 62, ch. 2018-118; s. 22, ch. 2018-158.

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

EXHIBIT 3

Select Year: 2018 Go

The 2018 Florida Statutes

Title XIV TAXATION AND FINANCE | Chapter 212 TAX ON SALES, USE, AND OTHER TRANSACTIONS | View Entire Chapter

212.054 Discretionary sales surtax; limitations, administration, and collection.—

(1) No general excise tax on sales shall be levied by the governing body of any county unless specifically authorized in s. 212.055. Any general excise tax on sales authorized pursuant to said section shall be administered and collected exclusively as provided in this section.

(2)(a) The tax imposed by the governing body of any county authorized to so levy pursuant to s. 212.055 shall be a discretionary surtax on all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by this chapter and communications services as defined for purposes of chapter 202. The surtax, if levied, shall be computed as the applicable rate or rates authorized pursuant to s. 212.055 times the amount of taxable sales and taxable purchases representing such transactions. If the surtax is levied on the sale of an item of tangible personal property or on the sale of a service, the surtax shall be computed by multiplying the rate imposed by the county within which the sale occurs by the amount of the taxable sale. The sale of an item of tangible personal property or the sale of a service is not subject to the surtax if the property, the service, or the tangible personal property representing the service is delivered within a county that does not impose a discretionary sales surtax.

(b) However:

1. The sales amount above $5,000 on any item of tangible personal property shall not be subject to the surtax. However, charges for prepaid calling arrangements, as defined in s. 212.05(1)(e)1.a., shall be subject to the surtax. For purposes of administering the $5,000 limitation on an item of tangible personal property, if two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items that, when assembled, comprise a working unit or part of a working unit, such items must be considered a single item for purposes of the $5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental.

2. In the case of utility services billed on or after the effective date of any such surtax, the entire amount of the charge for utility services shall be subject to the surtax. In the case of utility services billed after the last day the surtax is in effect, the entire amount of the charge on said items shall not be subject to the surtax. "Utility service," as used in this section, does not include any communications services as defined in chapter 202.

3. In the case of written contracts which are signed prior to the effective date of any such surtax for the construction of improvements to real property or for remodeling of existing structures, the surtax shall be paid by the contractor responsible for the performance of the contract. However, the contractor may apply for one refund of any such surtax paid on materials necessary for the completion of the contract. Any application for refund shall be made no later than 15 months following initial

imposition of the surtax in that county. The application for refund shall be in the manner prescribed by the department by rule. A complete application shall include proof of the written contract and of payment of the surtax. The application shall contain a sworn statement, signed by the applicant or its representative, attesting to the validity of the application. The department shall, within 30 days after approval of a complete application, certify to the county information necessary for issuance of a refund to the applicant. Counties are hereby authorized to issue refunds for this purpose and shall set aside from the proceeds of the surtax a sum sufficient to pay any refund lawfully due. Any person who fraudulently obtains or attempts to obtain a refund pursuant to this subparagraph, in addition to being liable for repayment of any refund fraudulently obtained plus a mandatory penalty of 100 percent of the refund, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. In the case of any vessel, railroad, or motor vehicle common carrier entitled to partial exemption from tax imposed under this chapter pursuant to s. 212.08(4), (8), or (9), the basis for imposition of surtax shall be the same as provided in s. 212.08 and the ratio shall be applied each month to total purchases in this state of property qualified for proration which is delivered or sold in the taxing county to establish the portion used and consumed in intracounty movement and subject to surtax.

(3) For the purpose of this section, a transaction shall be deemed to have occurred in a county imposing the surtax when:

(a)1. The sale includes an item of tangible personal property, a service, or tangible personal property representing a service, and the item of tangible personal property, the service, or the tangible personal property representing the service is delivered within the county. If there is no reasonable evidence of delivery of a service, the sale of a service is deemed to occur in the county in which the purchaser accepts the bill of sale.

2. The sale of any motor vehicle or mobile home of a class or type which is required to be registered in this state or in any other state shall be deemed to have occurred only in the county identified as the residence address of the purchaser on the registration or title document for such property.

(b) The event for which an admission is charged is located in the county.

(c) The consumer of utility services is located in the county.

(d)1. The user of any aircraft or boat of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government imported into the county for use, consumption, distribution, or storage to be used or consumed in the county is located in the county.

2. However, it shall be presumed that such items used outside the county for 6 months or longer before being imported into the county were not purchased for use in the county, except as provided in s. 212.06(8)(b).

3. This paragraph does not apply to the use or consumption of items upon which a like tax of equal or greater amount has been lawfully imposed and paid outside the county.

(e) The purchaser of any motor vehicle or mobile home of a class or type which is required to be registered in this state is a resident of the taxing county as determined by the address appearing on or to be reflected on the registration document for such property.

(f)1. Any motor vehicle or mobile home of a class or type which is required to be registered in this state is imported from another state into the taxing county by a user residing therein for the purpose of use, consumption, distribution, or storage in the taxing county.

2. However, it shall be presumed that such items used outside the taxing county for 6 months or longer before being imported into the county were not purchased for use in the county.

(g) The real property which is leased or rented is located in the county.

(h) The transient rental transaction occurs in the county.

(i) The delivery of any aircraft or boat of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government is to a location in the county. However, this paragraph does not apply to the use or consumption of items upon which a like tax of equal or greater amount has been lawfully imposed and paid outside the county.

(j) The dealer owing a use tax on purchases or leases is located in the county.

(k) The delivery of tangible personal property other than that described in paragraph (d), paragraph (e), or paragraph (f) is made to a location outside the county, but the property is brought into the county within 6 months after delivery, in which event, the owner must pay the surtax as a use tax.

(l) The coin-operated amusement or vending machine is located in the county.

(m) The florist taking the original order to sell tangible personal property is located in the county, notwithstanding any other provision of this section.

(4)(a) The department shall administer, collect, and enforce the tax authorized under s. 212.055 pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under the provisions of this chapter, except as provided in this section. The provisions of this chapter regarding interest and penalties on delinquent taxes shall apply to the surtax. Discretionary sales surtaxes shall not be included in the computation of estimated taxes pursuant to s. 212.11. Notwithstanding any other provision of law, a dealer need not separately state the amount of the surtax on the charge ticket, sales slip, invoice, or other tangible evidence of sale. For the purposes of this section and s. 212.055, the "proceeds" of any surtax means all funds collected and received by the department pursuant to a specific authorization and levy under s. 212.055, including any interest and penalties on delinquent surtaxes.

(b) The proceeds of a discretionary sales surtax collected by the selling dealer located in a county imposing the surtax shall be returned, less the cost of administration, to the county where the selling dealer is located. The proceeds shall be transferred to the Discretionary Sales Surtax Clearing Trust Fund. A separate account shall be established in the trust fund for each county imposing a discretionary surtax. The amount deducted for the costs of administration may not exceed 3 percent of the total revenue generated for all counties levying a surtax authorized in s. 212.055. The amount deducted for the costs of administration may be used only for costs that are solely and directly attributable to the surtax. The total cost of administration shall be prorated among those counties levying the surtax on the basis of the amount collected for a particular county to the total amount collected for all counties. The department shall distribute the moneys in the trust fund to the appropriate counties each month, unless otherwise provided in s. 212.055.

(c)1. Any dealer located in a county that does not impose a discretionary sales surtax but who collects the surtax due to sales of tangible personal property or services delivered outside the county shall remit monthly the proceeds of the surtax to the department to be deposited into an account in the Discretionary Sales Surtax Clearing Trust Fund which is separate from the county surtax collection accounts. The department shall distribute funds in this account using a distribution factor determined for each county that levies a surtax and multiplied by the amount of funds in the account and available for distribution. The distribution factor for each county equals the product of:

a. The county's latest official population determined pursuant to s. 186.901;

b. The county's rate of surtax; and

c. The number of months the county has levied a surtax during the most recent distribution period;

divided by the sum of all such products of the counties levying the surtax during the most recent distribution period.

2. The department shall compute distribution factors for eligible counties once each quarter and make appropriate quarterly distributions.

3. A county that fails to timely provide the information required by this section to the department authorizes the department, by such action, to use the best information available to it in distributing surtax revenues to the county. If this information is unavailable to the department, the department may partially or entirely disqualify the county from receiving surtax revenues under this paragraph. A county that fails to provide timely information waives its right to challenge the department's determination of the county's share, if any, of revenues provided under this paragraph.

(5) No discretionary sales surtax or increase or decrease in the rate of any discretionary sales surtax shall take effect on a date other than January 1. No discretionary sales surtax shall terminate on a day other than December 31.

(6) The governing body of any county levying a discretionary sales surtax shall enact an ordinance levying the surtax in accordance with the procedures described in s. 125.66(2).

(7)(a) The governing body of any county levying a discretionary sales surtax or the school board of any county levying the school capital outlay surtax authorized by s. 212.055(6) shall notify the department within 10 days after final adoption by ordinance or referendum of an imposition, termination, or rate change of the surtax, but no later than November 16 prior to the effective date. The notice must specify the time period during which the surtax will be in effect and the rate and must include a copy of the ordinance and such other information as the department requires by rule. Failure to timely provide such notification to the department shall result in the delay of the effective date for a period of 1 year.

(b) In addition to the notification required by paragraph (a), the governing body of any county proposing to levy a discretionary sales surtax or the school board of any county proposing to levy the school capital outlay surtax authorized by s. 212.055(6) shall notify the department by October 1 if the referendum or consideration of the ordinance that would result in imposition, termination, or rate change of the surtax is scheduled to occur on or after October 1 of that year. Failure to timely provide such notification to the department shall result in the delay of the effective date for a period of 1 year.

(8) With respect to any motor vehicle or mobile home of a class or type which is required to be registered in this state, the tax due on a transaction occurring in the taxing county as herein provided shall be collected from the purchaser or user incident to the titling and registration of such property, irrespective of whether such titling or registration occurs in the taxing county.

History.—s. 69, ch. 85-342; s. 68, ch. 86-152; ss. 11, 84, ch. 87-6; ss. 10, 11, ch. 87-548; ss. 19, 37, ch. 88-119; s. 38, ch. 89-356; ss. 19, 31, ch. 90-132; s. 3, ch. 90-203; s. 1, ch. 91-81; ss. 28, 129, ch. 91-112; s. 2, ch. 93-222; s. 1, ch. 96-325; s. 24, ch. 96-397; s. 22, ch. 97-99; s. 3, ch. 98-141; s. 8, ch. 98-342; s. 39, ch. 2000-151; ss. 47, 49, 58, ch. 2000-260; ss. 28, 38, ch. 2001-140; s. 50, ch. 2010-102.

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

EXHIBIT 4

FLORIDA CONSTITUTION

ARTICLE VIII
LOCAL GOVERNMENT

SECTION 1. Counties-

g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

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EXHIBIT 5

- Chapter 34 - NUISANCES
- Chapter 36 - OFFENSES AND MISCELLANEOUS PROVISIONS
- Chapter 38 - PARKS AND RECREATION
- Chapter 40 - PLANNING AND DEVELOPMENT
- Appendix Chapter 40 - PLANNING AND DEVELOPMENT
- Chapter 42 - ROADS AND BRIDGES
- Chapter 44 - SPECIAL DISTRICTS
- Chapter 46 - TAXATION AND SPECIAL ASSESSMENTS
- Appendix Chapter 46 - TAXATION AND SPECIAL ASSESSMENTS
- Chapter 48 - TELECOMMUNICATIONS
- Chapter 50 - TRAFFIC AND VEHICLES
- Chapter 51 - WAGE RECOVERY
- Chapter 52 - WATERWAYS
- Appendix A - TABLE OF OMITTED ORDINANCES

Appendix B - LIST OF SPECIAL ACTS

CODE COMPARATIVE TABLE - LAWS OF FLORIDA

CODE COMPARATIVE TABLE

STATE LAW REFERENCE TABLE

‹ SUPPLEMENT HISTORY TABLE Chapter 1 - GENERAL PROVISIONS ›

CHARTER OF HILLSBOROUGH COUNTY[1]

[Article] I. - Creation

PREAMBLE

We, the people of Hillsborough County, Florida, in order to attain greater local self-determination, to exercise more control over our own destiny, to create a more responsible and effective government, and to guarantee equal civil and political rights to all, do avail ourselves of the opportunity afforded by the Florida Constitution to become a chartered county and do hereby ordain and establish by this home rule Charter a new form of government of and for Hillsborough County.

[ARTICLE] I. - CREATION

Sec. 1.01. - Chartered County.

The county government for Hillsborough County shall be that of a chartered county under Section I, Article VIII of the Florida Constitution pursuant to which this Charter is adopted. Its boundaries are as provided by law. This is not a charter for consolidation of county and municipal governments in Hillsborough County but solely a charter for the county government and it is the intent of the people that it be so interpreted.

Sec. 1.02. - Extent.

As used in this Charter, the term "the county government" means the government of Hillsborough County, but such term does not include and this Charter does not affect any court; any constitutional officer, as defined in Section 1(d) of Article VIII, Florida Constitution: clerk of the circuit court, property appraiser, tax collector, sheriff or supervisor of elections; district school board; any municipality, whether created or enlarged before or after the adoption of this Charter; or any governmental body which has jurisdiction extending beyond the boundaries of Hillsborough County, and the relationship of the county government to them shall be the same as it would have been if this Charter had not been adopted.

[ARTICLE] II. - POWERS

Sec. 2.01. - Powers.

The county government shall have all powers of local self-government not inconsistent with general law; special law approved by the vote of the electors of Hillsborough County; special law relating to civil service, aviation, the port, sports, transportation, hospitals,

planning, environment, solid waste management, consumer affairs, resource recovery, criminal justice, historic preservation, and the arts, which laws may be effective as to Hillsborough County without approval by vote of the electors; or this Charter.

[ARTICLE] III. - SEPARATION OF POWERS

Sec. 3.01. - Separation of legislative and executive powers.

The power of the county government shall be divided between legislative and executive branches. No person belonging to one branch shall exercise any powers appertaining to the other branch unless expressly provided herein.

[ARTICLE] IV. - LEGISLATIVE BRANCH

Sec. 4.01. - [Legislative responsibilities and powers of local self government.].

All legislative responsibilities and powers of local self government of the county not inconsistent with this Charter shall be assigned to and vested in the board of county commissioners.

Sec. 4.02. - Board of County Commissioners.

The board of county commissioners shall consist of seven commissioners, each of whom shall be elected from one of seven districts and each of whom shall be entitled to have other employment which does not prevent the member from having the time to discharge the duties of a commissioner. Prior to voting on any matter of county business, any commissioner having a conflict of interest shall declare that conflict to the board.

Sec. 4.03. - Districts.

The territory of three districts shall embrace the entire territory of the county and be designated as districts 5, 6 and 7 respectively. The territory of four districts shall be established by dividing all of the county into four separate areas, designated as districts 1 through 4 respectively, as nearly equal in population as practicable.

Sec. 4.04. - Residency requirement and limit on terms.

Each candidate for a seat on the board of county commissioners shall be a citizen of the United States of America, a registered voter of the district for which the candidate qualifies, and a resident of Hillsborough County. No person who has, or but for resignation could have, served as a commission member from districts 1 through 4 for more than six years in two consecutive terms shall be elected as commission member from districts 1 through 4 for the next succeeding term, and no person who has, or but for resignation would have, served as a commission member from districts 5 through 7 for more than six years in two consecutive terms shall be elected as commission member from districts 5 through 7 for the next succeeding term.

Sec. 4.05. - Election and term of office.

Except as provided herein, all elections for the board of county commissioners shall be as provided for county commissioners in non-charter counties. Each commissioner shall be elected by the electors residing in the district for which the commissioner qualifies. Each commissioner shall be elected for a term of four years, except as provided for initial commissioners in the transition article and except that, in order to reflect population shifts between decennial censuses as quickly as possible, in 1990 and every ten years thereafter the commissioners to be elected from districts 1 and 3 shall be elected for terms of two years, and in 1992 and every ten years thereafter the commissioners to be elected from districts 2 and 4 shall be elected for terms of two years. Terms of office shall commence on the second Tuesday following the general election at which the commissioner was elected.

Sec. 4.06. - Reapportionment.

Within 120 days after the certification of the federal decennial census, the board of county commissioners shall reapportion districts 1 through 4. Before doing so, the board of county commissioners shall cause an accurate description of the proposed new boundaries of such districts to be entered upon its minutes and a certified copy thereof to be published once each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation published in the county and via electronic media. The notice shall include the date of the meeting at which the board shall consider such boundaries and take testimony from the public regarding boundary changes. Proof of such publication shall be entered on the minutes of the board. The publication of the notice shall be for information only and shall not be jurisdictional. Should the board of county commissioners desire to make substantial

changes to the proposed boundaries that were initially advertised and considered at the public meeting, the board of county commissioners shall hold an additional meeting to consider such new boundaries within 28 days of the first meeting and shall cause an accurate description of the new proposed districts to be advertised once each week for two weeks in a newspaper of general circulation and via electronic media. Whenever the boundaries of the existing districts are changed, the board shall cause its clerk to furnish the department of state with a certified copy of its minutes, reflecting the description of the boundaries of the district, as changed.

(Res. No. 2010-03, § 1, 8-12-2010)

Sec. 4.07. - Compensation.

Salaries of all commission members shall be as provided by ordinance at 75 percent or higher of the salary which would have been provided by general law had this Charter not been adopted. Such salary shall constitute full compensation for all services and expenses, provided that commissioners may be reimbursed for mileage while traveling on commission business within Hillsborough County and for travel expenses when traveling outside of Hillsborough County on official business, in accordance with general law. The chairman shall receive additional remuneration in an amount of ten percent of the basic salary for the period of time such person serves as chairman of the commission.

Sec. 4.08. - Enactment of ordinances and resolutions.

The commission may take official action only by the adoption of ordinances, resolutions, or motions. Unless otherwise provided herein, all ordinances, rules and resolutions shall be adopted by at least four (4) affirmative votes, and all motions shall be adopted by majority vote of the members present. A majority of the full commission shall constitute a quorum to conduct business.

Sec. 4.09. - Conflict with municipal ordinances.

In the event of a conflict between a county ordinance and a municipal ordinance, the municipal ordinance shall prevail within the municipality regardless of whether the municipal ordinance was adopted or enacted before or after the county ordinance.

Sec. 4.10. - County Internal Auditor.

1. To advise the board of county commissioners, assist the board of county commissioners in conducting continuing studies of the operation of county programs and services, there shall be a county internal auditor.
2. The county internal auditor shall be appointed by five (5) affirmative votes of the board of county commissioners. The board of county commissioners, at any time, may remove the county internal auditor with five (5) affirmative votes. The county internal auditor shall be responsible directly to the board of county commissioners. The county internal auditor need not be a resident of Hillsborough County at the time of appointment, but shall become a resident of Hillsborough County within a reasonable period of time and remain a resident of Hillsborough County while in office.
3. The county internal auditor shall be a certified public accountant holding an active license to practice public accountancy in the State of Florida, and/or shall be qualified by education and experience in governmental accounting, internal auditing practice, and fiscal controls. The county internal auditor shall not engage in any other business or occupation. The compensation of the county internal auditor shall be fixed by the board of county commissioners at a level which is commensurate with the requirements of the position. The county internal auditor's compensation, including severance pay, may be set by contract.
4. The board of county commissioners shall biennially establish an audit committee of 3 to 5 members who shall be selected by the board of county commissioners from among qualified applicants from the public and who shall meet without compensation from time to time for the purpose of making internal audit program recommendations to the board of county commissioners. The board of county commissioners shall annually, after receiving recommendations from the audit committee, give direction to the county internal auditor. The Hillsborough County internal auditor's work may include audits of all aspects of this Charter Government and its offices and its officials with written audit reports submitted to both the board of county commissioners and the county administrator. To the extent it is reasonable, the County internal auditor's work shall comply with professional standards for internal auditing. To the degree necessary to fulfill the responsibilities directed by the board, the auditor shall have free and unrestricted access to Charter

government employees, officials, records, and reports and where appropriate, may require all divisions, offices, and officials of the Charter government to provide all oral and written reports and to produce documents, files and other records.

5. The county internal auditor shall hire, on either a full-time or part-time basis, and may remove assistants. The number and qualifications of assistants shall be provided by the board of county commissioners. The county internal auditor may also be authorized by the board of county commissioners to hire outside expertise as may be deemed necessary. The county internal auditor's budget shall be set by the board of county commissioners.
6. The office of county internal auditor shall be deemed vacant if the incumbent: takes up residence outside of Hillsborough County; dies; resigns; or is removed by five (5) affirmative votes of the board of county commissioners. A vacancy in the office of the county internal auditor shall be filled in the same manner as the original appointment.
7. The county internal auditor shall not hold any political office nor take part in any political activity other than voting.

(Ord. No. 10-12, § 1, 8-18-2010)

Editor's note— The date given for Ord. No. 10-12 is the adoption date.

[ARTICLE] V. - EXECUTIVE BRANCH: COUNTY ADMINISTRATOR

Sec. 5.01. - County Administrator.

The executive responsibilities and powers of local self government of the county not inconsistent with this Charter shall be assigned to and vested in the county administrator. One or more assistant county administrators may be appointed by the county administrator with the advice and consent of the board and shall serve at the pleasure of the county administrator.

Sec. 5.02. - Administrative organization.

All functions of the executive branch shall be allotted among not more than ten divisions or offices. Each division or office shall be administered by a division or office head in accordance with the administrative code. Each division or office head shall be appointed by the county administrator with the advice and consent of the board and shall serve at the pleasure of the county administrator. Each division or office head shall report to and be responsible to the county administrator or designated assistant county administrator. The county administrator may, as allowed by ordinance, require one division or office to undertake a task of another division or office on a temporary basis or until the board provides otherwise.

Sec. 5.03. - County Administrator; qualifications, appointment, compensation.

(1) The county administrator shall be a full-time officer who holds a masters degree in public administration, management, or related field and shall have three years of executive or management experience in public administration. The county administrator shall be appointed by an affirmative vote of not less than five members of the board of county commissioners and may be removed at any time by an affirmative vote of not less than five members of the board or upon the affirmative vote of four (4) members at each of two (2) regular meetings not less than thirteen (13) days apart and no more than twenty-eight (28) days apart. The administrator need not be a resident of the county at the time of appointment, but shall within a reasonable time become and remain while in office a resident of the county. The county administrator shall not engage in any other business or occupation.

(2) The compensation of the administrator shall be fixed by the board of county commissioners by ordinance at a level which is commensurate with the requirements of the position. The county administrator's compensation, including severance pay, may be set by contract if allowed by and pursuant to ordinance.

(3) The office of county administrator shall be deemed vacant if the incumbent; takes up residence outside the county; is by death, illness, or other casualty unable to continue to perform the duties of his office; resigns; or is removed by the board of county commissioners in the manner prescribed in section 5.03 (1). A vacancy in the office shall be filled in the same manner as the original

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appointment. The board of county commissioners may appoint an interim administrator in the case of vacancy, temporary absence, or disability of the present administrator until a successor has been appointed and qualified or the administrator returns.

Sec. 5.04. - Political activity by Administrator.

The county administrator shall not hold any political office nor take part in any political activity other than voting.

Sec. 5.05. - Performance bond.

The county administrator shall be required to post a performance bond in accordance with general law.

[ARTICLE] VI. - COUNTY ATTORNEY

Sec. 6.01. - Legal affairs.

The legal affairs of the County shall be assigned to and vested in the Office of the County Attorney. The office will consist of the County Attorney who shall be head of the office together with such chief assistants and other assistant county attorneys and legal support personnel as may from time to time be required subject only to budget determinations of the Board of County Commissioners. All attorneys and employees of the office shall serve at the pleasure of the County Attorney.

(Ord. No. 04-9, § 1, 2-11-2004)

Sec. 6.02. - County Attorney duties.

(1) The County Attorney shall be responsible for representing, and is hereby authorized to represent, the Board as its County Attorney. The County Attorney shall provide legal services, including management and participation in all litigation and other such legal services, required to protect the interests of the County; and shall render legal advice and perform other legal and

administrative responsibilities as described elsewhere herein to the Board and to all other departments and agencies of County government that the Board from time to time authorizes and directs.

(2) The duties, responsibilities and authority of the County Attorney shall include, without limitation:

(a) Providing legal advice and counsel to, and legal representation of, the Board, the County Administrator and the departments, agencies and officers of the County on all matters pertaining to the business of the County or in connection with the duties of the department, agency or office;

(b) Coordinating with the County Administrator and various departments and offices under his jurisdiction regarding all matters affecting and implicating overall County administration, including, without limitation, budgetary, personnel and procurement matters;

(c) Advising and providing recommendations to the Board regarding the need for the selection of any special counsel to be retained to provide legal representation in specified matter; and

(d) Supervising, monitoring and coordinating, as appropriate, the representation services and work of outside attorneys employed pursuant to Subsection (c) above.

(3) Upon direction of the Board and with the consent of the County Attorney, the County Attorney's Office may provide legal advice and counsel to and representation of one or more of the County officers created under Section 1 (d) of Article VIII of The Florida Constitution or any other state or local governmental office, unit or entity serving the County's interest and welfare and as may be authorized by law or interlocal agreement.

At the request of the Board of County Commissioners, the County Attorney is hereby authorized to represent the Board of County Commissioners when it is acting as any other separate agency or legal entity consisting of the Hillsborough County Board of County Commissioners. The responsibility and authority of the County Attorney when serving as attorney in these matters shall include, but not be limited to, those duties and responsibilities as herein set out for the County Attorney.

(4) Nothing herein contained shall be construed as requiring the attorney to render legal services in any particular circumstance where, in the professional discretion and judgment of the attorney, the rendering of such legal services would violate the provisions of the Code of Professional Responsibility of the Florida Bar or create a direct conflict of interest between the County and attorney.

(Ord. No. 04-9, § 1, 2-11-2004)

Sec. 6.03. - County Attorney qualifications, appointment, compensation.

(1) The County Attorney shall be and remain a member of The Florida Bar and shall have had at least five (5) years experience in Local Government Law or equivalent and such other experience as determined by the Board. The County Attorney need not be a resident at the time of appointment but shall within a reasonable time become and remain a resident of the County and remain so while in office. The County Attorney shall be a full time employee of the County and shall not otherwise engage in the practice of law except as may be authorized by the Board. The County Attorney shall be appointed by an affirmative vote of not less than five (5) members of the Board of County Commissioners and may be removed at any time by an affirmative vote of not less than five (5) members of the Board or upon the affirmative vote of four (4) members at each of two (2) regular meetings not less than thirteen (13) days apart and no more than twenty-eight (28) days apart.

(2) The compensation of the County Attorney, including severance pay and other benefits, shall be fixed by contract, ordinance or resolution as determined by the Board at a level commensurate with the requirements of the position.

(3) The Office of the County Attorney shall be deemed vacant if the incumbent is removed, resigns, moves his residence from the County or is, by death, illness or other casualty, unable to continue in office. In the case of temporary vacancy or absence or disability, until a successor has been appointed or the County Attorney returns, the Chief Assistant County Attorney or other Assistant Attorney designated by the County Attorney shall serve as the County Attorney upon approval of the Board.

(Ord. No. 04-9, § 1, 2-11-2004)

Sec. 6.04. - Special attorneys; bond counsel; disclosure counsel.

(1) Special attorneys may be employed by the Board of County Commissioners upon the recommendation of the County Attorney regarding the need for the selection of any special counsel to provide legal representation in specified matters.

(2) Bond and disclosure counsel shall be selected by the Board of County Commissioners from a list of not less than three (3) qualified respondents to publicly noticed solicitations for bond and disclosure counsel and upon the recommendation of the County Administrator and County Attorney.

(Ord. No. 04-9, § 1, 2-11-2004)

Sec. 6.05. - Political activity by County Attorney.

The County Attorney shall not hold any political office nor take part in any political activity other than voting.

(Ord. No. 04-9, § 1, 2-11-2004)

[ARTICLE] VII. - ADMINISTRATIVE CODE

Sec. 7.01. - Purpose of administrative code.

The board of county commissioners shall enact and amend by ordinance an administrative code organizing the administration of the county government into divisions and offices and setting forth the duties, responsibilities, and powers of the county administrator, any assistant county administrators, if any, and divisions and offices of the county government not in conflict with the provisions of this Charter. It shall be the responsibility of the county administrator to compile, publish, and disseminate the administrative code, and to recommend revisions thereof in a continuing program to provide greater efficiency and economy in the operation of government.

Sec. 7.02. - Initial code.

Within ninety (90) days after the first organizational meeting of the board under this Charter, the county administrator shall submit a proposed administrative code to the board of county commissioners. The board of county commissioners shall adopt the proposed code, as

submitted or amended, within three (3) months after the date submitted. If not adopted within three (3) months, the code, as proposed by the administrator, shall govern the operations of the county administrator, divisions and offices until such time as one may be adopted formally by the board of county commissioners.

[ARTICLE] VIII. - AMENDMENTS TO CHARTER

Sec. 8.01. - By the Board of County Commissioners.

The board of county commissioners may propose amendments to this Charter by ordinance approved by at least five (5) members.

Sec. 8.02. - Charter Review Board.

Within two years after the effective date of this Charter and every five years thereafter, the board of county commissioners shall appoint a charter review board consisting of fourteen (14) electors of the county. Each commissioner shall appoint two members of the charter review board who shall be electors in that commissioner's district, and none of whom may be an elected official. Members of the charter review board shall serve for a term of one year without compensation. Such board shall be empowered to conduct a comprehensive study of any or all phases of county government. The board of county commissioners shall provide such professional, technical, and clerical assistance as may be reasonably required by the charter review board upon submission of an appropriately documented request by the charter review board. The charter review board shall, after two public hearings and upon approval of two-thirds of its members, file any proposed amendments to the Charter, if any, with the supervisor of elections who shall provide for a vote on it pursuant to Section 8.04.

Sec. 8.03. - Initiative.

The power to propose amendments to this Charter by initiative is vested in the people:

(1) The power may be invoked by filing with the supervisor of elections a petition containing a copy of the proposed Charter amendment. Each petition must be circulated in each numbered board district and must be signed by a number of electors in each of one-half of districts 1 through 4 and of the county as a whole equal to eight percent of the votes cast in each of such districts and the county as a whole in the last preceding

election in which a president or presidential electors were chosen. The address of each signer, and date of each signature, must appear on the petition. Each petition shall embrace but one subject and matter properly connected therewith. A date certain must be designated to and certified by the supervisor of elections as the beginning date of any petition drive, and said drive shall terminate six months after that date. In the event sufficient signatures are not acquired during that six-month period, the petition drive shall be rendered null and void and none of the signatures may be carried over onto another identical or similar petition.

(2) The petition shall be filed with the supervisor of elections who shall, within a period of not more than thirty (30) days, determine whether the petition contains the required valid signatures. The supervisor shall be paid the sum specified by general law by the persons or committee seeking verification.

(a) If it is determined that the petition does not contain the required signatures, the supervisor shall so certify to the board of county commissioners and the petition drive shall be at an end. No additional names may be added to the petition, and the petition shall not be used in any other proceeding.

(b) If it is determined that the petition has the required signatures, the supervisor shall so certify to the board of county commissioners and place the amendment on the ballot.

(3) All other procedures shall be as provided by general law for constitutional amendments with the supervisor of elections performing the duties of the secretary of state.

Sec. 8.04. - Elections and notice.

All elections shall be held and conducted pursuant to the provisions of general law except as otherwise provided in this Charter. Charter amendments by ordinance shall be voted on at special elections or regular elections as the board of county commissioners chooses. Charter review and initiative amendments shall be voted on at the next regular general election. Amendments shall become effective upon approval by a majority vote of the electors voting at the next scheduled countywide election or special referendum election.

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Sec. 8.05. - Financial impact statement for all proposed County Charter amendments and Countywide referenda.

For all County elections, a separate financial impact statement, not exceeding 75 words, including a two-year estimate of the increase or decrease in revenues or costs to the County resulting from approval of all proposed County Charter amendments and all other proposed Countywide referenda unrelated to a County Charter amendment, shall be prepared by the County Budget Director who shall receive input and advice from a committee to be established by Board of County Commissioners' Resolution, and placed on the ballot immediately following the ballot question.

(Res. No. 2011-02, § 1, 1-31-2011; Ord. No. 18-19, § A, 6-21-2018)

[ARTICLE] IX. - GENERAL PROVISIONS

Sec. 9.01. - Limitation on State law.

No law passed by the state legislature shall be effective as to the county government:

(a) Unless it is approved at referendum; or

(b) Except to the extent:

(1) The Florida Constitution or this Charter requires that it be effective; or

(2) It permits this county government to grant powers to, receive powers from, or combine powers with other governmental entities; or

(3) It solely affects:

(i) Tax authorization not inconsistent with this Charter; or

(ii) The relations of this county government to any governmental body which has jurisdiction extending beyond the boundary of Hillsborough County; or

(4) It is authorized under Section 2.01.

Sec. 9.02. - Construction of the Charter.

It is the intent of the electorate in adopting this Charter that this Charter shall be liberally construed to achieve the objectives of local home rule and separation of branches as set forth herein.

Sec. 9.03. - Code of Ethics.

The code of ethics for public officers and employees and the penalties for violation thereof as provided by general law or more restrictive ordinance, if any, shall be applicable to all employees and office holders of this county government.

Sec. 9.04. - Political activities.

Political activities of officers and employees of the county government shall be governed and controlled by general law except as provided herein and except that the county administrator's assistants and division and office heads, and the county attorney and his assistants, shall not hold any political office nor take part in any political activity relating to county commission elections, other than voting.

Sec. 9.05. - Severability.

It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.

Sec. 9.06. - Vacancies.

Vacancies in commission districts shall be deemed to exist and be filled in accordance with the Constitution and Laws of Florida.

Sec. 9.07. - Public meetings.

Meetings of the board of county commissioners and other boards shall be held and conducted as provided by general law and rules of the board not inconsistent therewith.

Sec. 9.08. - Recall.

The people shall have the power to recall elected officials by recall election initiated, called, held and conducted as provided by general law for chartered counties.

Sec. 9.09. - Planning.

There shall be for Hillsborough County and its municipalities a single local planning agency created by such special law or laws which need not be approved by a referendum. It shall have responsibility for comprehensive planning and related activities as are committed to it by general law or applicable special laws.

Sec. 9.10. - Environmental protection.

There shall be for Hillsborough County and its municipalities a single local environmental protection commission created by such special law or laws which need not be approved by referendum.

Sec. 9.11. - Discrimination prohibited.

To be consistent with Federal and State constitutions, laws, rules, and regulations, the County government shall not deprive any person of any right because of race, sex, age, national origin, religion, disability, or political affiliation. The Administrative Code shall provide adequate means for protecting these rights, including equal opportunity assurances.

(Res. No. 2011-01, § 1, 1-24-2011)

Sec. 9.12. - Lowering of salaries.

The salaries of commissioners and the county administrator may be lowered to the extent allowed by general law.

[ARTICLE] X. - TRANSITION AND SCHEDULE

Sec. 10.01. - Offices and officers of former government.

Unless otherwise provided by this Charter, all offices, officials, boards, commissions, and agencies of the former government shall continue to perform their respective duties and functions until such minimum time allowed for the adoption of an administrative code pursuant to section 7.02. At said time, said duties and functions shall be performed in accordance with the administrative code.

Sec. 10.02. - Interim Countywide Districts.

The commissioners elected countywide in the year 1982 shall immediately become commissioners from districts 5 and 7 respectively and stand for initial election 1986.

Sec. 10.03. - Initial Commissioners.

By November 15, 1983, the board of county commissioners shall establish the apportionment of districts 1 through 4 under procedures provided in section 4.06 and using the 1980 federal decennial census population figures. At the 1984 general elections commissioners from districts 1 through 4 and district 6 shall be elected, with the terms of the new commissioners from districts 1 and 3 to be for two years only and the terms of commissioners from districts 2, 4 and 6 to be for four years. The commissioners from districts 2 and 4 as drawn in 1981, who were elected by county-wide vote in 1982, shall serve as the commissioners from districts 5 and 7 respectively until the second Tuesday following the 1986 general election, but if either is not in office at the beginning of qualification in 1984, then a commissioner for new district 5 or 7, as the case may be, shall be elected in the initial election for a term of 2 years.

Sec. 10.04. - Effective date of government.

County government shall go into force and effect when the commissioners elected at the 1984 general election take office.

Sec. 10.05. - Preservation of existing government.

All provisions of the laws or parts thereof rendered ineffective as to the county government by Section 9.01, which are not inconsistent with this Charter shall become ordinances of this government subject to modification or repeal as are other ordinances; however, they shall stand repealed as of November 15, 1985.

Sec. 10.06. - Preservation of existing ordinances.

All ordinances, codes, rules, regulations and resolutions of the county of Hillsborough or any of its agencies which are not inconsistent with this Charter, shall become ordinances, rules, regulations of the county government subject to modification or repeal as are other ordinances.

Sec. 10.07. - Rights reserved.

(a)

Obligations Honored. All lawful rights and obligations, of whatever kind or nature in existence on the date this Charter is approved by the electors, of the local government becoming a part of the county government on the one hand, and any person, firm, corporation, other government or agency on the other hand, shall become the rights and obligations of the county government.

(b) *No Enlargement of Obligations.* All such rights and obligations shall be limited to the area, or funds, which would have been subject to such rights or obligations if this Charter had not been adopted.

Sec. 10.08. - Classified employees and officers.

All employees in the classified service and officers of the county shall be transferred to the division, office, or agency to which the functions, powers, and duties in which they were engaged upon the effective date of this Charter are allocated under this Charter. Such transfer shall be without examination or diminution of existing compensation, pension, or retirement rights, privileges, or obligations of any such officer or employee. The adoption of any subsequent classified service plan shall not adversely affect the tenure, pension, seniority, or promotional rights of any county officer or employee in the classified service when this Charter is adopted.

[ARTICLE] XI. - SURTAX FOR TRANSPORTATION IMPROVEMENTS

Sec. 11.01. - Purpose of surtax.

The purpose of the surtax levied in accordance with Section 11.02 below is to fund transportation improvements throughout Hillsborough County, including road and bridge improvements; the expansion of public transit options; fixing potholes; enhancing bus service; relieving rush hour bottlenecks; improving intersections; and making walking and biking safer. The proceeds of the surtax shall be distributed and disbursed in compliance with F.S. § 212.055(1) and in accordance with the provisions of this Article 11.

(Amend. of 11-7-2018)

Sec. 11.02. - Levy of one-cent surtax to fund transportation improvements.

There shall be levied throughout the incorporated and unincorporated areas of Hillsborough County an additional tax imposed on sales, use, services, rentals, admissions, and other transactions by F.S. Ch. 212, and communications services as defined by F.S. Ch. 202, at the rate of one cent for each $1.00 of the sales price or actual value received, and for each fractional part of $1.00 of the sales price or actual value received (the "Transportation Surtax"). The Transportation Surtax shall be levied and imposed in accordance with F.S. §§ 212.054 and 212.055(1), the rules promulgated by the Florida Department of Revenue, and this Article 11. Any other provision of this Charter to the contrary notwithstanding, all proceeds from the Transportation Surtax, including any interest earnings and bond proceeds generated therefrom, shall be expended only as permitted by this Article 11, F.S. § 212.055(1), and in accordance with the purpose set forth in Section 11.01 above. For purposes of this Article 11, Hillsborough County, Florida (the "County"), each municipality, as defined in F.S. § 165.031, that is located in the County (the "Municipalities"), and the Hillsborough Area Regional Transit Authority or its successor ("HART") are each an "Agency" and collectively, the "Agencies." "Independent Oversight Committee" shall refer to the committee mandated and governed by Section 11.10 below.

(Amend. of 11-7-2018)

Sec. 11.03. - Duration of transportation surtax.

The Transportation Surtax authorized by this Article 11 shall be effective commencing January 1, 2019, and shall remain in effect for a period of thirty (30) years.

(Amend. of 11-7-2018)

Sec. 11.04. - Duties of the Clerk.

The Clerk of the Circuit Court of Hillsborough County, Florida (the "Clerk") shall receive the proceeds of the Transportation Surtax (the "Surtax Proceeds") from the Florida Department of Revenue and act as trustee thereof and shall retain all Surtax Proceeds in a separate account until disbursed in accordance with this Section 11.04 and the distribution allocations provided for in Section 11.05. Disbursements of the Surtax Proceeds in accordance with the distribution allocations provided in Section 11.05 shall be made to the Agencies by the Clerk within five (5) business days of the Clerk's receipt of Surtax Proceeds from the Florida Department of Revenue. Additionally, the Clerk shall provide, on behalf of the board of county commissioners, the notices to the Florida Department of Revenue required by F.S. §§ 212.054

(7)(a) and (b), and any other notices that must be delivered to the Department of Revenue or the State of Florida as required by applicable law. The Clerk shall engage an independent accounting firm to conduct an annual, independent audit of the distribution and expenditure of all Surtax Proceeds, which shall be completed within six (6) months after the end of the fiscal year being audited, for the purpose of determining the Clerk's and each Agency's compliance with the provisions of this Article relating to the distribution and expenditure of Surtax Proceeds during such fiscal year. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds to the Clerk on an annual basis to permit the Clerk to carry out the annual audit of Surtax Proceeds described in this Section 11.04.

(Amend. of 11-7-2018)

Sec. 11.05. - Distribution of Surtax Proceeds.

The Surtax Proceeds shall be deposited in a dedicated trust fund (the "Trust Fund") maintained by the Clerk and distributed in accordance with the following formula:

(1) General Purpose Portion. Fifty-four percent (54%) of the Surtax Proceeds (the "General Purpose Portion") shall be distributed to the County and to each Municipality in accordance with their relative populations as calculated utilizing the statutory formula provided in F.S. § 218.62 (the "Distribution Formula") and be expended by the County and each Municipality in accordance with Section 11.07. The County and each Municipality may elect to bond or otherwise encumber their respective distribution of the Surtax Proceeds allocated pursuant to this Section 11.05(1), and shall provide notice of such election to the other recipients of the General Purpose Portion at least ninety (90) days prior to issuing bonds.

(2) Transit Restricted Portion. Forty-five percent (45%) of the Surtax Proceeds (the "Transit Restricted Portion") shall be distributed to HART and be expended by HART in accordance with Section 11.08. Subject to compliance with applicable law and the charter of HART, HART may elect to directly, or through the County, bond or otherwise encumber the Transit Restricted Portion.

(3)

Planning and Development Portion. One percent (1%) of the Surtax Proceeds (the "Planning and Development Portion") shall be distributed to the metropolitan planning organization described in F.S. § 339.175 whose jurisdiction includes Hillsborough County (the "MPO"). The Planning and Development Portion shall be expended by the MPO on planning and development purposes, including data collection, analysis, planning, and grant funding to assist the Agencies and the Independent Oversight Committee in carrying out the purpose set forth in Section 11.01.

(Amend. of 11-7-2018)

Sec. 11.06. - Agency project plans.

No later than September 30th of each year, each Agency shall deliver to the Independent Oversight Committee a plan (a "Project Plan") setting forth the projects, including reasonable detail for each, on which such Agency will expend their distribution of the Surtax Proceeds for the following calendar year in accordance with the uses mandated by Sections 11.07 and 11.08 below. Each Project Plan must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee at a public hearing. No Agency may expend Surtax Proceeds for any purpose other than implementation of each of the projects set forth in such Agency's Project Plan, and each Agency shall diligently and prudently pursue implementation of each of the projects set forth in such Agency's Project Plan. If any Agency desires to amend its Project Plan after the Independent Oversight Committee has approved the same, the Independent Oversight Committee shall approve or disapprove (and state the basis therefore) the amended Project Plan within thirty (30) days of an Agency's request to amend.

(Amend. of 11-7-2018)

Sec. 11.07. - Uses of General Purpose Portion.

For any Agency that the Clerk reasonably estimates will receive five percent (5%) or more of the Surtax Proceeds in a given calendar year, such Agency's share of the General Purpose Portion shall be expended by the Agencies for the planning, development, construction, operation, and maintenance of roads, bridges, sidewalks, intersections, and public

transportation (which, for purposes of this Section, may include any technological innovations such as autonomous vehicles and related infrastructure), to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Maintenance and Vulnerability Reduction. At least twenty percent (20%) of the General Purpose Portion shall be expended on projects that: (i) improve, repair and maintain existing streets, roads, and bridges, including fixing potholes, or (ii) reduce congestion and transportation vulnerabilities.

(2) Congestion Reduction. At least twenty-six (26%) of the General Purpose Portion shall be expended to relieve rush hour bottlenecks and improve the flow of traffic on existing roads and streets and through intersections. Expenditures in the category described in this Section 11.07(2) may include projects that improve intersection capacity through the use of technology, the construction of new intersections, the redevelopment of existing intersections, and may include related infrastructure such as roundabouts and turn lanes. Projects described in the foregoing sentence do not constitute New Automobile Lane Capacity, as defined in Section 11.07(8) below.

(3) Transportation Safety Improvements. At least twenty-seven (27%) of the General Purpose Portion shall be expended to promote transportation safety improvements on existing streets, roads and bridges.

(4) Transportation Network Improvements. At least twelve (12%) of the General Purpose Portion shall be expended on bicycle or pedestrian infrastructure and related improvements that make walking and biking safer, to the extent the foregoing is or is planned to become a part of the transportation network within any Agency's jurisdiction, and to the extent permitted by F.S. § 212.055(1).

(5) Remaining Funds. Any remaining portions of the General Purpose Portion shall be expended on any project to improve transportation in the applicable Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article.

(6)

Inter-Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, the County and each Municipality may distribute any amount of its share of General Purpose Portion to any Agency (an "Agency Distribution"). For purposes of this Section, any Agency's share of the General Purpose Portion shall be reduced, or increased, by the amount of the Agency Distribution distributed, or received, as the case may be.

(7) Small Agency Distributions. Notwithstanding anything to the contrary set forth in this Section 11.07, any Agency that receives five percent (5%) or less of the Surtax Proceeds in any given calendar year, on an annualized basis, is not required to expend its share of General Purpose Portion on the categories set forth in Section 11.07(1) through (5) above, and shall instead expend its distribution of the Surtax Proceeds on any purpose consistent with Section 11.01 and permitted by F.S. § 212.055(1).

(8) Limits on New Automobile Lane Capacity. Agencies are prohibited from expending any funds from the categories mandated by Section 11.07(1), (2) and (3) above on New Automobile Lane Capacity. For purposes of this Section 11.07(8), "New Automobile Lane Capacity" means projects that consist of (i) adding additional lanes for automobile traffic to existing roads or streets that are not related to intersection capacity improvement, or (ii) constructing new roads or streets.

(9) Reallocation of Expenditure Categories. Upon request by an Agency, which request must be approved by seventy-five percent (75%) of the Independent Oversight Committee, the General Purpose Portion expenditure allocations mandated in Sections 11.07(1) through (3) above may instead be expended on any project to improve transportation within such Agency's jurisdiction to the extent permitted by F.S § 212.055(1) and this Article if, in the opinion of the requesting Agency, any of the percentages set forth in Sections 11.07(1) through (3) exceed the amounts required to fulfill the purpose set forth therein.

(Amend. of 11-7-2018)

Sec. 11.08. - Uses of Transit Restricted Portion.

The Transit Restricted Portion, and any Agency Distribution received by HART, shall be spent by HART for the planning, development, construction, operation, and maintenance of public transportation projects located solely in Hillsborough County, which are consistent with the HART Transit Development Plan, as adopted and amended from time to time by the HART board of directors, to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:

(1) Enhancing Bus Services. No less than forty-five percent (45%) of the Transit Restricted Portion shall be spent on bus services, including express, neighborhood, circulator, paratransit, and all other types of transit now or hereafter operated by HART. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(2) Expanding Public Transit Options. No less than thirty-five percent (35%) of the Transit Restricted Portion shall be spent on transit services that utilize exclusive transit right-of-way for at least seventy-five percent (75%) of the length of the applicable service. HART shall consider the following factors in determining the projects included in its Project Plan for this purpose: existing transit ridership; utilizing or extending existing fixed guideways and rights-of-way; increasing existing service; expanding service to more residents; existing and future land use; and the availability and feasibility of obtaining third party funding sources to fund any portions of the Project Plan.

(3) Remaining Funds. Any remaining portions of the Transit Restricted Portion shall be spent on any project to improve public transportation permitted by F.S. § 212.055(1) or this Charter.

(Amend. of 11-7-2018)

Sec. 11.09. - Suspension of distribution.

In the event it is determined by a two-thirds majority of the Independent Oversight Committee that an Agency has failed to comply with any term or condition of this Article 11 and such Agency fails to correct such non-compliance within reasonable periods of time determined by the Independent Oversight Committee, but not more than ninety (90) days following written notice of such noncompliance, the Independent Oversight Committee may direct that distributions of the Surtax Proceeds to such Agency be suspended by the Clerk and held by the Clerk in the Trust Fund until such time as the Agency has cured the non-compliance, at which point distributions of the Surtax Proceeds to such Agency shall re-commence and any withheld Surtax Proceeds shall be distributed to the Agency.

The foregoing shall not apply to any portion of Surtax Proceeds encumbered by bond indebtedness pursuant to law; provided, however, that the financing instruments for such bond indebtedness include covenants requiring the Agency to comply with the terms and conditions of this Charter.

(Amend. of 11-7-2018)

Sec. 11.10. - Independent Oversight Committee.

To ensure that the Transportation Surtax is successfully implemented, independent oversight of the distribution and expenditure of the Surtax Proceeds shall be provided by an Independent Oversight Committee, which shall be composed of Hillsborough County residents appointed by the following bodies: (i) four (4) individuals appointed by the board of county commissioners, and of which two are Experts (as defined below) in either transportation, planning, sustainability, engineering, or construction; (ii) one (1) from each Municipality, appointed by the mayor thereof; (iii) one (1) additional member from each Municipality for each 200,000 residents in such Municipality, appointed by the legislative body of that Municipality, based on population estimates published annually by the State of Florida; (iv) two (2) from HART, appointed by the HART board of directors; (v) one (1) attorney, who is a member by the Florida Bar, appointed by the Clerk; (vi) one (1) land use or real estate Expert appointed by the Hillsborough County Property Appraiser; and (vii) one (1) certified public accountant appointed by the Hillsborough County Tax Collector. No person then currently serving as an elected or appointed city, county, special district, state, or federal public office holder shall be eligible to serve as a member of the Independent Oversight Committee. Additionally, no member of the Independent Oversight Committee may be an employee of, independent contractor of, or otherwise be materially engaged for remuneration by any

public or private recipient of Surtax Proceeds. Independent Oversight Committee members shall serve terms of three (3) years, without compensation, and each shall serve at the pleasure of the appointing body. The Independent Oversight Committee may make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with this Charter. The Independent Oversight Committee shall have only those powers and duties specifically vested in it by this Section 11.10. A majority of the members of the Independent Oversight Committee shall constitute a quorum, and the Independent Oversight Committee may conduct business only when a quorum is present. For the duration of the period in which the Transportation Surtax is in effect, the board of county commissioners shall appropriate County funds on an annual basis for the administrative expenses of the Independent Oversight Committee in an amount sufficient for the Independent Oversight Committee to fulfill its duties under this Article 11. For purposes of this Section 11.10, "Expert" means an individual who has at least seven years of experience in their respective subject matter area, and possesses professional accreditations or degrees that are typical of an expert in their respective subject matter area. The Independent Oversight Committee shall have the powers and duties set forth below:

(1) Review the results of the annual audit described in Section 11.04 and make findings as to whether the Clerk and each Agency has complied with the terms of this Article. Such findings shall include a determination as to whether Surtax Proceeds have been distributed as provided in this Article and whether the Surtax Proceeds have been expended in compliance with applicable state law, this Article, and any additional requirements that an Agency may have lawfully adopted.

(2) Approve Project Plans and approve and certify as to whether the projects therein comply with this Article.

(3) Prepare an annual report to the Clerk and each Agency presenting the results of the annual audit process and any findings made. The Independent Oversight Committee shall cause a summary of the annual report to be published in a local newspaper and ensure that the report and annual audit are available online and are delivered to every library located within the County for public review. The Independent Oversight Committee shall hold a public hearing on each audit and annual report and shall report the comments of the public to each Agency.

(4) Review any projects proposed by citizens for inclusion in an Agency's Project Plan, and forward them to the appropriate Agency for consideration.

(Amend. of 11-7-2018)

Sec. 11.11. - Miscellaneous.

(1) Prohibited Uses. No Surtax Proceeds may be used for any of the following uses: (i) expansion of right of way or width of the interstate highway system; (ii) construction of a sports facility or any other facility not related to transportation; or (iii) any other use expressly prohibited by law.

(2) Severability. To the extent that any mandated expenditure category set forth in Section 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of Surtax Proceeds, the funds allocated to such impermissible use shall be expended by the applicable Agency on any project to improve public transportation permitted by F.S § 212.055(1) and this Article.

(3) Supremacy. This Article 11 shall at all times be interpreted in a manner consistent with the laws of Florida, and in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail.

(Amend. of 11-7-2018)

[APPENDIX A. - LEGAL STATUS PROVISIONS OF ORD. NO. 83-9]

ORDINANCE # 83-9

AN ORDINANCE PROPOSING A HOME RULE CHARTER FOR THE GOVERNANCE OF HILLSBOROUGH COUNTY, FLORIDA, PURSUANT TO PART IV CHAPTER 125, FLORIDA STATUTES; PROVIDING FOR A PREAMBLE; CREATING AND PROVIDING FOR THE EXTENT OF THE COUNTY CHARTER GOVERNMENT; SEPARATING THE POWERS INTO A LEGISLATIVE BRANCH AND AN EXECUTIVE BRANCH; VESTING THE LEGISLATIVE POWER IN A BOARD OF SEVEN COUNTY COMMISSIONERS AND THE EXECUTIVE POWER IN AN APPOINTED COUNTY ADMINISTRATOR; PROVIDING FOR THE SELECTION, QUALIFICATIONS, TENURE AND COMPENSATION OF THE COUNTY COMMISSIONERS AND COUNTY ADMINISTRATOR; PROVIDING THAT MUNICIPAL ORDINANCES SHALL PREVAIL WITHIN MUNICIPAL BOUNDARIES WHEN IN CONFLICT WITH

COUNTY ORDINANCES; PROVIDING FOR THE ORGANIZATION OF THE EXECUTIVE BRANCH; PROVIDING LIMITS ON POLITICAL ACTIVITY; PROVIDING FOR A COUNTY ATTORNEY AND FOR LEGAL SERVICES; PROVIDING FOR AN ADMINISTRATIVE CODE; PROVIDING FOR AMENDMENTS TO THE CHARTER AND A CHARTER REVIEW BOARD; PROVIDING FOR INITIATIVE; PROVIDING FOR LIMITATIONS ON STATE LAW; PROVIDING FOR CONSTRUCTION; PROVIDING FOR A CODE OF ETHICS; PROVIDING FOR SEVERABILITY; PROVIDING FOR VACANCIES; PROVIDING FOR RECALL; PROVIDING FOR PLANNING AND ENVIRONMENTAL AGENCIES; PROHIBITING DISCRIMINATION; PROVIDING FOR TRANSITION AND SCHEDULE; PRESERVING RIGHTS AND OBLIGATIONS; PROVIDING FOR A SPECIAL REFERENDUM ELECTION ON SEPTEMBER 20, 1983, REFERENDUM QUESTION AND PROVIDING THAT THIS CHARTER SHALL BECOME LAW ONLY IF A MAJORITY OF THOSE VOTING IN HILLSBOROUGH COUNTY SHALL VOTE "YES".

WHEREAS, the board of county commissioners of Hillsborough County, Florida, is desirous of presenting to the electorate a Charter for the creation of a county charter government having home rule powers, and

WHEREAS, Part IV, Chapter 125, Florida Statutes authorizes the board of county commissioners to propose by ordinance a Charter for adoption by the electorate of Hillsborough County, Florida, and

WHEREAS, in adopting this Charter the people will be making a finding of fact:

1. That under the present structure it is possible for a commissioner to intrude into the day to day operation of executive activities without regard either to the policies set by the board as a whole or to the means the county administrator wishes to use to implement those policies; that such intrusions have occurred in the past; that such intrusions disrupt the governance of this county and frustrate the implementation of even the best laid policies; that the ability to so intrude creates pressures on commissioners to intrude in order to disarm political opponents and reward political favorites; and that the time and effort to so intrude work to transform what would be a part-time policy setting role into a full time job of delivering patronage and can foster corruption; and
2. That eliminating the ability to intrude will reduce the time demands on each commissioner thereby increasing the number of people who can afford to serve as commissioners without prohibitive sacrifices of

Code of Ordinances, Part A

personal income and activities; while also increasing the time available to devote to the consideration of policies to promote the quality of life in the county; and the elimination of these intrusions will materially enhance the ability of the county administrator to implement county commission policies while also enhancing the ability of the county commission as a whole to pinpoint responsibility for failure in implementation of county commission policies; and

3. That the way to eliminate this intrusion is to clearly delineate that the board of county commissioners, as the legislative branch, is to do only two things; set overall policy by means of ordinances, resolutions and motions, and assure qualified people for implementation of those policies by appointing and removing the county administrator, and advising on the appointment of assistant county administrators, division heads and office heads, while the county administrator is to do only two things: faithfully implement those policies and obtain qualified people to assist him.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA:

Sec. 1. The board of county commissioners of Hillsborough County, hereby proposes by ordinance the following Charter for the governance of Hillsborough County, Florida.

Sec. 2. The proposed Charter of Hillsborough County, Florida reads as follows:

***

Sec. 3. (a) The proposed Charter of Hillsborough County, Florida shall be presented to the Hillsborough County electorate by placing the question of whether to adopt same on the ballot at a special referendum election held on September 20, 1983.

(b) The question on the ballot shall be as follows:

CHARTER FOR HILLSBOROUGH COUNTY AS PROPOSED BY COUNTY ORDINANCE ____

To establish a Charter Government with home rule powers for Hillsborough County, providing for executive power in an appointed County Administrator and Legislative power in an elected Board of seven Commissioners; providing that municipal ordinances shall prevail within municipal boundaries when in conflict with county ordinances; and providing for an effective date following the 1984 general election.

_____ Yes for Approval

_____ No for Rejection

Sec. 4. (a) The Charter of Hillsborough County, Florida, as proposed by this ordinance shall become effective when and only if the Charter is approved by a "yes" vote by a majority of those voting on the question posed at the September 20, 1983 referendum. If a majority of those voting shall not vote "yes" to the question posed, the proposed Charter shall not be adopted and said Charter as proposed by this ordinance shall be of no force and effect.

(b) This ordinance shall be effective upon receipt of official acknowledgment that it has been duly filed, but shall be of no further effect if the proposed Charter is not approved by a majority of those voting at the September 20, 1983 referendum.

CHARTER COMPARATIVE TABLE

ORDINANCES

This table shows the location of amendment to the Charter. The Charter was section 2 of Ord. No. 83-9, which ordinance was effective on August 9, 1983. The charter was approved at referendum on September 20, 1983. An asterisk (*) after an ordinance number in the table below indicates the adoption date rather than the effective date has been given.

Ordinance Number	Effective Date	Section	Charter Section
83-9	8- 9-1983		Char. (note)

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

EXHIBIT 6

CHAPTER 2009-146

Council Substitute for Committee Substitute for House Bill No. 1205

An act relating to the charter county transit system surtax; amending s. 212.055, F.S.; changing the name of the surtax; expanding eligible counties authorized to levy the surtax; requiring interlocal agreements in certain counties to be updated no less than every 5 years to include certain municipalities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY TRANSPORTATION ~~TRANSIT~~ SYSTEM SURTAX.—

(a) Each charter county that has ~~which~~ adopted a charter ~~prior to January 1, 1984~~, and each county the government of which is consolidated with that of one or more municipalities, may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, and related costs of a fixed guideway rapid transit system;

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the charter county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the charter county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the charter county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any charter county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

Section 2. This act shall take effect July 1, 2009.

Approved by the Governor June 10, 2009.

Filed in Office Secretary of State June 10, 2009.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Filing # 87114105 E-Filed 03/28/2019 12:48:46 PM

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

STACY WHITE, in his official capacity as a county commissioner of Hillsborough County, Florida, Plaintiff, v. HILLSBOROUGH COUNTY, a charter county of the State of Florida, et al., Defendants. _____/	Case No.: 18-CA-11749 Division: J
HILLSBOROUGH COUNTY, FLORIDA, a political subdivision of the State of Florida, Plaintiff, v. STATE OF FLORIDA, and the taxpayers, property owners and citizens of Hillsborough County, Florida, including non-residents owning property or subject to taxation, therein, and others claiming any right, title or interest in property to be affected or to be affected in any way thereby, Defendants.	Case No.: 19-CA-1382 Division: J

EXHIBIT 7

CHAPTER 2010-225

Council Substitute for Committee Substitute for Committee Substitute for House Bill No. 1271

An act relating to transportation; amending s. 212.055, F.S.; authorizing counties within or under an interlocal agreement with a regional transportation or transit authority to levy a discretionary sales surtax for transportation systems under certain conditions; providing that the county commission may apply the proceeds from the charter county transportation system surtax to the planning, development, construction, expansion, operation, and maintenance of on-demand transportation services; defining the term "on-demand transportation services"; amending s. 310.0015, F.S., relating to pilotage rates; providing for such rates to be set by the Pilotage Rate Review Committee to conform to changes made by the act; amending s. 310.002, F.S.; revising the definition of the term "pilotage" to conform to changes made by the act; amending s. 310.011, F.S.; revising the membership of the Board of Pilot Commissioners; amending s. 310.151, F.S.; redesignating the "Pilotage Rate Review Board" as the "Pilotage Rate Review Committee"; providing that the committee is part of the Board of Pilot Commissioners; revising membership and providing for appointment of members from among the commissioners; requiring members to comply with specified disclosure requirements; providing that decisions of the committee regarding rates are not appealable to the board; directing the Governor to make certain appointments to the Board of Pilot Commissioners before a certain date; providing requirements for the transfer of pending matters; repealing s. 315.03(12)(c), F.S., relating to legislative review of a loan program of the Florida Seaport Transportation and Economic Development Council; amending s. 316.003, F.S.; defining the term "motor carrier transportation contract" for purposes of the Florida Uniform Traffic Control Law; amending s. 316.1001, F.S.; revising the method to be used to provide notice following the issuance of a citation for failure to pay a toll; providing that receipt of the citation rather than its mailing constitutes notification; authorizing any governmental entity, including the clerk of court, to provide certain data to the Department of Highway Safety and Motor Vehicles regarding outstanding violations for failure to pay tolls; amending s. 316.302, F.S.; revising reference to specified federal rules and regulations applicable to owners and drivers of commercial motor vehicles engaged in intrastate commerce; providing that certain indemnification provisions in motor carrier transportation contracts are against public policy and are void and unenforceable; defining the term "promisee," as used in motor carrier transportation contracts; provides an exception to such definition; providing for application to certain contracts; amending s. 316.515, F.S.; conforming a cross-reference; amending s. 316.545, F.S.; providing for a reduction in the gross weight of certain vehicles equipped with idle-reduction technologies when calculating a penalty for exceeding maximum weight limits; requiring the operator to provide certification of

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the weight of the idle-reduction technology and to demonstrate or certify that the idle-reduction technology is fully functional at all times; amending s. 316.550, F.S.; authorizing the department or local authority to issue permits for certain vehicles to operate on certain routes; requiring issuance of permits within a specified period after a request; providing restrictions on routes; providing conditions when vehicles must be unloaded; conforming a cross-reference; amending s. 318.18, F.S.; revising provisions for distribution of proceeds collected by the clerk of the court for disposition of citations for failure to pay a toll; providing alternative procedures for disposition of such citation; providing for adjudication to be withheld and no points assessed against the driver's license unless adjudication is imposed by a court; authorizing a court to direct the department to suspend a person's driver's license for violations involving the failure to pay tolls; amending s. 320.03, F.S.; clarifying provisions requiring that the tax collector withhold issuance of a license plate or revalidation sticker if certain fines are outstanding; amending s. 320.08, F.S.; providing that specified license tax provisions apply to wreckers used for certain purposes; amending s. 320.08058, F.S.; revising authorized uses of revenue received from the sale of United We Stand license plates; amending s. 322.27, F.S.; providing for assessment of points against a driver's license for specified violations of requirements to pay a toll only when the points are imposed by a court; repealing s. 332.14, F.S., relating to the Secure Airports for Florida's Economy Council; providing for the use of funds accrued by the Secure Airports for Florida's Economy Council; amending s. 337.14, F.S.; revising application procedures for the qualification of contractors; requiring any required interim financial statement to be accompanied by an updated application; amending s. 337.401, F.S.; revising provisions for rules of the department that provide for the placement of and access to certain electrical transmission lines on the right-of-way of department-controlled roads; authorizing the rules to include that the use of the limited access right-of-way for longitudinal placement of such transmission lines is reasonable based upon consideration of certain economic and environmental factors; providing that removal or relocation of a transmission line shall be at the expense of the utility; amending s. 337.406, F.S.; prohibiting camping on certain parts of the right-of-way of the State Highway System; amending s. 338.155, F.S.; authorizing the department to adopt rules relating to the payment, collection, and enforcement of tolls; amending ss. 341.051 and 341.3025, F.S.; requiring the use of universally accepted contactless fare media on new or upgraded public rail transit systems or public transit systems connecting to such rail systems; amending s. 343.64, F.S.; authorizing the Central Florida Regional Transportation Authority to borrow funds under certain circumstances; amending s. 348.51, F.S.; revising the definition for the term "bonds" when used in the Tampa-Hillsborough County Expressway Authority Law; amending s. 348.545, F.S.; authorizing certain costs to be financed by bonds issued on behalf of the Tampa-Hillsborough County Expressway Authority pursuant to the State Bond Act or bonds issued by the authority under specified provisions; amending s. 348.56, F.S.; authorizing bonds to be issued on behalf of the authority pursuant to

the State Bond Act or issued by the authority under specified provisions; revising requirements for such bonds; requiring the bonds to be sold at public sale; authorizing the authority to negotiate the sale of bonds with underwriters under certain circumstances; amending s. 348.565, F.S.; providing that facilities of the expressway system are approved to be refinanced by the revenue bonds issued by the Division of Bond Finance of the State Board of Administration and the State Bond Act or by revenue bonds issued by the authority; providing that certain projects of the authority are approved for financing or refinancing by revenue bonds; amending s. 348.57, F.S.; authorizing the authority to provide for the issuance of certain bonds for the refunding of bonds outstanding regardless of whether the bonds being refunded were issued by the authority or on behalf of the authority; amending s. 348.70, F.S.; providing that the Tampa-Hillsborough County Expressway Authority Law does not repeal, rescind, or modify any other laws; providing that such law supersedes laws that are inconsistent with the provisions of that law; creating part XI of ch. 348, F.S.; creating s. 348.9950, F.S.; providing a short title; creating s. 348.9951, F.S.; providing that certain terms have the same meaning as in the Florida Expressway Authority Act for certain purposes; creating s. 348.9952, F.S.; creating the Osceola County Expressway Authority as an agency of the state; providing for a governing body of the authority; providing for membership, terms, organization, personnel, and administration; authorizing payment of travel and other expenses; directing the authority to cooperate with and participate in any efforts to establish a regional expressway authority; declaring that the authority is not eligible for voting membership in certain metropolitan planning organizations; creating s. 348.9953, F.S.; providing purposes and powers of the authority; creating s. 348.9954, F.S.; authorizing the issuance of bonds to pay or secure certain obligations; creating s. 348.9955, F.S.; authorizing the authority to enter into certain agreements; creating s. 348.9956, F.S.; authorizing the department to act as the authority's appointed agent under certain circumstances; creating s. 348.9957, F.S.; authorizing the authority to acquire certain lands and property; authorizing the authority to exercise eminent domain; creating s. 348.9958, F.S.; authorizing certain entities to enter into agreements with the authority; creating s. 348.9959, F.S.; providing legislative intent and a pledge of the state to bondholders; creating s. 348.9960, F.S.; exempting the authority from taxation; providing an exemption from taxes for bonds issued by or on behalf of the authority and the income therefrom; providing an exception; creating s. 348.9961, F.S.; providing for dissolution of the authority under certain circumstances; amending s. 369.317, F.S.; providing that certain activity relating to mitigation of certain environmental impacts in the Wekiva Study Area or the Wekiva parkway alignment corridor meet specified impact requirements under certain conditions; amending s. 373.41492, F.S.; increasing the mitigation fee for mining activities in the Miami-Dade County Lake Belt; suspending an annual increase in the mitigation fee; revising the frequency of an interagency committee report; amending s. 403.4131, F.S.; removing provisions relating to a report on the adopt-a-highway program; amending s. 479.01, F.S.; defining the terms "allowable

uses," "commercial use," "industrial use," and "zoning category" and revising the definition of the terms "commercial or industrial zone" and "main-traveled way" for purposes of provisions relating to outdoor advertising; conforming cross-references; amending s. 479.07, F.S.; providing for the placement of new or replacement signs erected on an interstate highway in certain areas; requiring such sign to be located on land designated for commercial or industrial use under the future land use map and land use development regulations; exempting such location from specified evaluation criteria; amending s. 479.261, F.S.; removing a provision authorizing the Department of Transportation to rotate certain logo signs relating to gas, food, and lodging services on the rights-of-way of the interstate highway system during a specified period; reducing the annual permit fees for businesses participating in the interstate highway logo sign program; designating pts. I and II of ch. 479, F.S., entitled "General Provisions" and "Special Programs," respectively; creating pt. III of ch. 479, F.S., entitled "Sign Removal"; creating s. 479.310, F.S.; providing intent relating to unpermitted and illegal signs; placing financial responsibility for the removal of such signs; providing the department authority to recover costs of removal of such signs; creating s. 479.311, F.S., providing jurisdiction to consider claims to recover costs; defining the term "venue" for the purposes of a claim filed by the department; creating s. 479.312, F.S.; providing that costs incurred by the department in removing certain signs shall be assessed against certain individuals; providing presumption of a ownership; creating s. 479.313, F.S.; providing for the assessment of the cost of removal for signs following the revocation of a sign permit; creating s. 479.315, F.S.; providing for the assessment of the cost of removal of signs located within a highway right-of-way; amending s. 705.18, F.S.; removing provisions for disposal of personal property lost or abandoned at certain public-use airports; creating s. 705.182, F.S.; providing for disposal of personal property found on premises owned or controlled by the operator of a public-use airport; providing a timeframe for the property to be claimed; providing options for disposing of such personal property; providing procedures for selling abandoned personal property; providing for notice of sale; providing that the rightful owner of such property may reclaim the property at any time prior to sale; permitting airport tenants to establish lost and found procedures; providing that purchaser holds title to the property free of the rights of persons then holding any legal or equitable interest thereto; creating s. 705.183, F.S.; providing for disposition of derelict or abandoned aircraft on the premises of public-use airports; providing procedures for such disposition; requiring a record of when the aircraft is found; defining the terms "derelict aircraft" and "abandoned aircraft"; providing for notification of aircraft owner and all persons having an equitable or legal interest in the aircraft; providing for notice if the owner of the aircraft is unknown or cannot be found; providing for disposition if the aircraft is not removed upon payment of required fees; requiring any sale of the aircraft to be at a public auction; providing notice requirements for such public auction; providing procedures for disposal of the aircraft; providing for liability if charges and costs related to the disposition are more than

that obtained from the sale; providing for a lien by the airport for fees and charges; providing for notice of lien; requiring recording of a claim of lien; providing for the form of the claim of lien; providing for service of the claim of lien; providing that the purchaser of the aircraft takes the property free of rights of persons holding legal or equitable interest in the aircraft; requiring purchaser or recipient to notify the Federal Aviation Administration of change in ownership; providing for disposition of moneys received for an aircraft sold at public sale; authorizing the airport to issue documents relating to the aircraft's disposal; creating s. 705.184, F.S.; providing for disposition of derelict or abandoned motor vehicles on the premises of public-use airports; providing procedures; requiring recording of the abandoned motor vehicle; defining the terms "derelict motor vehicle" and "abandoned motor vehicle"; providing for removal of such motor vehicle from airport premises; providing for notice to the owner, the company insuring the motor vehicle, and any lienholder; providing for disposition if the motor vehicle is not removed upon payment of required fees; requiring any sale of the motor vehicle to be at a public auction; providing notice requirements for such public auction; providing procedures for disposal of the motor vehicle; providing for a lien by the airport or a licensed independent wrecker for fees and charges; providing for notice of lien; requiring recording of a claim of lien; providing for the form of the claim of lien; providing for service of claim of lien; providing that the purchaser of the motor vehicle takes the property free of the rights of persons holding legal or equitable interest in the motor vehicle; amending s. 479.156, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(a) Each charter county that has adopted a charter, ~~and~~ each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a

regional transportation or transit authority created under chapter 343 or chapter 349 may levy a discretionary sales surtax, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

(b) The rate shall be up to 1 percent.

(c) The proposal to adopt a discretionary sales surtax as provided in this subsection and to create a trust fund within the county accounts shall be placed on the ballot in accordance with law at a time to be set at the discretion of the governing body.

(d) Proceeds from the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

1. Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

2. Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges;

3. Used by the ~~charter~~ county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and

4. Used by the ~~charter~~ county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and

such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the ~~charter~~ county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any ~~charter~~ county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

(e) As used in this subsection, the term "on-demand transportation services" means transportation provided between flexible points of origin and destination selected by individual users with such service being provided at a time that is agreed upon by the user and the provider of the service and that is not fixed-schedule or fixed-route in nature.

Section 2. Paragraph (b) of subsection (3) of section 310.0015, Florida Statutes, is amended to read:

310.0015 Piloting regulation; general provisions.—

(3) The rate-setting process, the issuance of licenses only in numbers deemed necessary or prudent by the board, and other aspects of the economic regulation of piloting established in this chapter are intended to protect the public from the adverse effects of unrestricted competition which would result from an unlimited number of licensed pilots being allowed to market their services on the basis of lower prices rather than safety concerns. This system of regulation benefits and protects the public interest by maximizing safety, avoiding uneconomic duplication of capital expenses and facilities, and enhancing state regulatory oversight. The system seeks to provide pilots with reasonable revenues, taking into consideration the normal uncertainties of vessel traffic and port usage, sufficient to maintain reliable, stable piloting operations. Pilots have certain restrictions and obligations under this system, including, but not limited to, the following:

(b) Pilots may not unilaterally determine the pilotage rates they charge. Such pilotage rates shall instead be determined by the Pilotage Rate Review Committee ~~Board~~, in the public interest, as set forth in s. 310.151.

Section 3. Subsection (7) of section 310.002, Florida Statutes, is amended to read:

310.002 Definitions.—As used in this chapter, except where the context clearly indicates otherwise:

(7) "Pilotage" means the compensation fixed by the Pilotage Rate Review Committee ~~Board~~ which is payable by a vessel, its owners, agents,

charterers, or consignees to one or more pilots in the port where piloting is performed. The word "pilotage" also means the compensation of all types and sources derived by one or more pilots or deputy pilots for the performance of piloting at that port by licensed pilots or by certificated deputy pilots, whether such piloting is performed pursuant to this chapter or is performed by state-licensed pilots or state-certificated deputy pilots when acting as a federal pilot for vessels not required by this chapter to use a state-licensed pilot or state-certificated deputy pilot.

Section 4. Section 310.011, Florida Statutes, is amended to read:

310.011 Board of Pilot Commissioners.—

(1) A board is established within the Division of Professions of the Department of Business and Professional Regulation to be known as the Board of Pilot Commissioners. The board shall be composed of 10 members, to be appointed by the Governor, as follows: five members ~~5 of whom~~ shall be licensed state pilots actively practicing their profession; two members shall be actively involved in a professional or business capacity in the maritime industry, marine shipping industry, or commercial passenger cruise industry; one member shall be a certified public accountant with at least 5 years of experience in financial management; and two members shall be citizens of the state. The latter three board members shall not be involved in, or have any financial interest in, the piloting profession, the maritime industry, the marine shipping industry, or the commercial passenger cruise industry. The board shall perform such duties and possess and exercise such powers relative to the protection of the waters, harbors, and ports of this state as are prescribed and conferred on it in this chapter.

(2) ~~In accordance with the requirements of subsection (1), the Governor shall appoint five licensed state pilots who are actively practicing their profession and five citizens of the state who are not pilots, one of whom shall be actively involved in a professional or business capacity in maritime or marine shipping, one of whom shall be a user of piloting services, and three of whom shall not be involved or monetarily interested in the piloting profession or in the maritime industry or marine shipping, to constitute the members of the board. For purposes of this subsection, a "user of piloting services" may include any person with an ownership interest in a business that regularly employs licensed state pilots or certificated deputy pilots for the purpose of delivering piloting services, or any person who is a direct employee of, and who is employed in a management position for, that business.~~ Each member shall be appointed for a term of 4 years. The Governor shall have power to remove members of the board from office for neglect of duty required by this chapter, for incompetency, or for unprofessional conduct. Any vacancy which may occur in the board in consequence of death, resignation, removal from the state, or other cause shall be filled for the unexpired term by the Governor in the same manner. A majority of those serving on the board shall constitute a quorum.

(3) In appointing members to the board who are pilots, the Governor shall appoint one member from the state at large; one member from any of the following ports: Pensacola, Panama City, or Port St. Joe; one member from any of the following ports: Tampa Bay, Boca Grande, Punta Gorda, Charlotte Harbor, or Key West; one member from any of the following ports: Fernandina, Jacksonville, or Port Canaveral; and one member from any of the following ports: Ft. Pierce, Miami, Port Everglades, or Palm Beach.

Section 5. Section 310.151, Florida Statutes, is amended to read:

310.151 Rates of pilotage; Pilotage Rate Review Committee ~~Board~~.—

(1)(a) As used in ~~For the purposes of~~ this section, the term:

1. "Committee" ~~"board"~~ means the Pilotage Rate Review Committee established under this section as part of the Board of Pilot Commissioners.

2. "Board" means the Board of Pilot Commissioners.

(b)~~1.~~ To carry out the provisions of this section, the Pilotage Rate Review Committee ~~Board~~ is established as part of the Board of Pilot Commissioners ~~created~~ within the Department of Business and Professional Regulation. ~~Members shall be appointed by the Governor, subject to confirmation by the Senate. Members shall be appointed for 4-year terms, except as otherwise specified in this paragraph. No member may serve more than two consecutive 4-year terms or more than 11 years on the board.~~ The committee ~~board~~ shall consist of the following seven members of the board: two board members who are licensed state pilots actively practicing their profession, who shall be appointed by majority vote of the licensed state pilots serving on the board; two board members who are actively involved in a professional or business capacity in the maritime industry, marine shipping industry, or commercial passenger cruise industry; one board member who is a certified public accountant with at least 5 years of experience in financial management; and two board members who are citizens of the state. ~~No member may have ever served as a state pilot or deputy pilot, and no member may currently serve or have served as a direct employee, contract employee, partner, corporate officer, sole proprietor, or representative of any vessel operator, shipping agent, or pilot association or organization, except that one member shall be or have been a person licensed by the United States Coast Guard as an unlimited master, without a first-class pilot's endorsement, initially appointed to a 2-year term. One member shall be a certified public accountant with at least 5 years' experience in financial management, initially appointed to a 3-year term. One member shall be a former hearing officer or administrative law judge of the Division of Administrative Hearings, as defined in s. 120.65, or a former judge who has served on the Supreme Court or any district court of appeal, circuit court, or county court, initially appointed to a 4-year term. Except as otherwise provided in subparagraph 2., the remaining members shall be appointed by the Governor from among persons not prohibited pursuant to this paragraph. Members of the board shall be appointed so as to be geographically distributed, with the~~

~~southern, central, northeastern, and northwestern regions of the state having at least one member each.~~

~~2. Three members shall be the consumer members of the Board of Pilot Commissioners serving on that board as of January 1, 1994. Of those members, one shall be appointed to a 1-year term, one shall be appointed to a 2-year term, and one shall be appointed to a 3-year term. Each of those members shall be eligible for reappointment in the same fashion as other members of the board, but, thereafter, no member of the board shall be a current or former member of the Board of Pilot Commissioners. The service of the consumer members of the Board of Pilot Commissioners on this board, while they are maintaining concurrent membership with the Board of Pilot Commissioners, shall be considered duties in addition to and related to their duties on the Board of Pilot Commissioners. In the event that any of the three board members stipulated according to this subparagraph are unable to serve, the Governor shall fill the position or positions by appointment from among persons not prohibited pursuant to this paragraph.~~

(c) Committee members shall comply with the disclosure requirements of s. 112.3143(4) if participating in any matter that would result in special private gain or loss as described in that subsection.

(d)~~(c)~~ The committee ~~board~~ has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of this section conferring duties upon it. The department shall provide the staff required by the committee ~~board~~ to carry out its duties under this section.

(e)~~(d)~~ All funds received pursuant to this section shall be placed in the account of the Board of Pilot Commissioners, and the Board of Pilot Commissioners shall pay for all expenses incurred pursuant to this section.

(2) Any pilot, group of pilots, or other person or group of persons whose substantial interests are directly affected by the rates established by the committee ~~board~~ may apply to the committee ~~board~~ for a change in rates. However, an application for a change in rates shall not be considered for any port for which rates have been changed by this committee ~~board~~ in the 18 months preceding the filing of the application. All applications for changes in rates shall be made to the committee ~~board~~, in writing, pursuant to rules prescribed by the committee ~~board~~. In the case of an application for a rate change on behalf of a pilot or group of pilots, the application shall be accompanied by a consolidated financial statement, statement of profit or loss, and balance sheet prepared by a certified public accountant of the pilot or group of pilots and all relevant information, fiscal and otherwise, on the piloting activities within the affected port area, including financial information on all entities owned or partially owned by the pilot or group of pilots which provide pilot-related services in the affected port area. In the case of an application for a rate change filed on behalf of persons other than a pilot or group of pilots, information regarding the financial state of interested parties other than pilots shall be required only to the extent that such financial information is made relevant by the application or subsequent argument

before the committee ~~board~~. The committee ~~board~~ shall have the authority to set, by rule, a rate review application fee of up to $1,000, which must be submitted to the committee ~~board~~ upon the filing of the application for a rate change.

(3) The committee ~~board~~ shall investigate and determine whether the requested rate change will result in fair, just, and reasonable rates of pilotage pursuant to rules prescribed by the committee ~~board~~. In addition to publication as required by law, notice of a hearing to determine rates shall be mailed to each person who has formally requested notice of any rate change in the affected port area. The notice shall advise all interested parties that they may file an answer, an additional or alternative petition, or any other applicable pleading or response, within 30 days after the date of publication of the notice, and the notice shall specify the last date by which any such pleading must be filed. The committee ~~board~~ may, for good cause, extend the period for responses to a petition. Multiple petitions filed in this manner do not warrant separate hearings, and these petitions shall be consolidated to the extent that it shall not be necessary to hold a separate hearing on each petition. The committee ~~board~~ shall conclude its investigation, conduct a public hearing, and determine whether to modify the existing rates of pilotage in that port within 60 days after the filing of the completed application, except that the committee ~~board~~ may not be required to complete a hearing for more than one port within any 60-day period. Hearings shall be held in the affected port area, unless a different location is agreed upon by all parties to the proceeding.

(4)(a) The applicant shall be given written notice, either in person or by certified mail, that the committee ~~board~~ intends to modify the pilotage rates in that port and that the applicant may, within 21 days after receipt of the notice, request a hearing pursuant to the Administrative Procedure Act. Notice of the intent to modify the pilotage rates in that port shall also be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to any person who has formally requested notice of any rate change in the affected port area. Within 21 days after receipt or publication of notice, any person whose substantial interests will be affected by the intended committee ~~board~~ action may request a hearing pursuant to the Administrative Procedure Act. If the committee ~~board~~ concludes that the petitioner has raised a disputed issue of material fact, the committee ~~board~~ shall designate a hearing, which shall be conducted by formal proceeding before an administrative law judge assigned by the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57(1), unless waived by all parties. If the committee ~~board~~ concludes that the petitioner has not raised a disputed issue of material fact and does not designate the petition for hearing, that decision shall be considered final agency action for purposes of s. 120.68. The failure to request a hearing within 21 days after receipt or publication of notice shall constitute a waiver of any right to an administrative hearing and shall cause the order modifying the pilotage rates in that port to be entered. If an administrative hearing is requested pursuant to this subsection, notice of the time, date, and location of

the hearing shall be published in the Florida Administrative Weekly and in a newspaper of general circulation in the affected port area and shall be mailed to the applicant and to any person who has formally requested notice of any rate change for the affected port area.

(b) In any administrative proceeding pursuant to this section, the committee's ~~board's~~ proposed rate determination shall be immediately effective and shall not be stayed during the administrative proceeding, provided that, pending rendition of the committee's ~~board's~~ final order, the pilot or pilots in the subject port deposit in an interest-bearing account all amounts received which represent the difference between the previous rates and the proposed rates. The pilot or pilots in the subject port shall keep an accurate accounting of all amounts deposited, specifying by whom or on whose behalf such amounts were paid, and shall produce such an accounting upon request of the committee ~~board~~. Upon rendition of the committee's ~~board's~~ final order:

1. Any amounts deposited in the interest-bearing account which are sustained by the final order shall be paid over to the pilot or pilots in the subject port, including all interest accrued on such funds; and

2. Any amounts deposited which exceed the rates sustained in the committee's ~~board's~~ final order shall be refunded, with the accrued interest, to those customers from whom the funds were collected. Any funds that are not refunded after diligent effort of the pilot or pilots to do so shall be disbursed by the pilot or pilots as the committee ~~board~~ shall direct.

(5)(a) In determining whether the requested rate change will result in fair, just, and reasonable rates, the committee ~~board~~ shall give primary consideration to the public interest in promoting and maintaining efficient, reliable, and safe piloting services.

(b) The committee ~~board~~ shall also give consideration to the following factors:

1. The public interest in having qualified pilots available to respond promptly to vessels needing their service.

2. A determination of the average net income of pilots in the port, including the value of all benefits derived from service as a pilot. For the purposes of this subparagraph, "net income of pilots" refers to total pilotage fees collected in the port, minus reasonable operating expenses, divided by the number of licensed and active state pilots within the ports.

3. Reasonable operating expenses of pilots.

4. Pilotage rates in other ports.

5. The amount of time each pilot spends on actual piloting duty and the amount of time spent on other essential support services.

6. The prevailing compensation available to individuals in other maritime services of comparable professional skill and standing as that sought in pilots, it being recognized that in order to attract to the profession of piloting, and to hold the best and most qualified individuals as pilots, the overall compensation accorded pilots should be equal to or greater than that available to such individuals in comparable maritime employment.

7. The impact rate change may have in individual pilot compensation and whether such change will lead to a shortage of licensed state pilots, certificated deputy pilots, or qualified pilot applicants.

8. Projected changes in vessel traffic.

9. Cost of retirement and medical plans.

10. Physical risks inherent in piloting.

11. Special characteristics, dangers, and risks of the particular port.

12. Any other factors the committee ~~board~~ deems relevant in determining a just and reasonable rate.

(c) The committee ~~board~~ may take into consideration the consumer price index or any other comparable economic indicator when fixing rates of pilotage; however, because the consumer price index or such other comparable economic indicator is primarily related to net income rather than rates, the committee ~~board~~ shall not use it as the sole factor in fixing rates of pilotage.

(6) The committee ~~board~~ shall fix rates of pilotage pursuant to this section based upon the following vessel characteristics:

(a) Length.

(b) Beam.

(c) Net tonnage, gross tonnage, or dead weight tonnage.

(d) Freeboard or height above the waterline.

(e) Draft or molded depth.

(f) Any combination of the vessel characteristics listed in this subsection or any other relevant vessel characteristic or characteristics.

(7) The decisions of the committee regarding rates are not appealable to the board.

Section 6. By October 31, 2010, the Governor shall appoint to the Board of Pilot Commissioners: two members actively involved in a professional or business capacity in the maritime industry, marine shipping industry, or commercial passenger cruise industry; one member who is a certified public

accountant with at least 5 years of experience in financial management; and two members who are citizens of the state. Notwithstanding any other provision of this act, the nonpilot members of the board as of the effective date of this act shall continue to serve until the Governor makes the appointments required in this section. The terms of the pilot members of the board shall not be affected by this section. Any pending matters before the Pilotage Rate Review Board as of the effective date of this act shall be transferred for further action to the Pilotage Rate Review Committee.

Section 7. Paragraph (c) of subsection (12) of section 315.03, Florida Statutes, is repealed.

Section 8. Subsection (86) is added to section 316.003, Florida Statutes, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(86) MOTOR CARRIER TRANSPORTATION CONTRACT.–

(a) A contract, agreement, or understanding covering:

1. The transportation of property for compensation or hire by the motor carrier;

2. Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or

3. A service incidental to activity described in subparagraph 1. or subparagraph 2., including, but not limited to, storage of property.

(b) "Motor carrier transportation contract" does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

Section 9. Paragraph (b) of subsection (2) and subsection (4) of section 316.1001, Florida Statutes, are amended to read:

316.1001 Payment of toll on toll facilities required; penalties.—

(2)

(b) A citation issued under this subsection may be issued by mailing the citation by first-class ~~first class~~ mail, ~~or by certified mail,~~ return receipt requested, to the address of the registered owner of the motor vehicle involved in the violation. Receipt of ~~Mailing~~ the citation ~~to this address~~ constitutes notification. In the case of joint ownership of a motor vehicle, the traffic citation must be mailed to the first name appearing on the

registration, unless the first name appearing on the registration is a business organization, in which case the second name appearing on the registration may be used. A citation issued under this paragraph must be mailed to the registered owner of the motor vehicle involved in the violation within 14 days after the date of issuance of the citation ~~violation~~. In addition to the citation, notification must be sent to the registered owner of the motor vehicle involved in the violation specifying remedies available under ss. 318.14(12) and 318.18(7).

(4) Any governmental entity, including, without limitation, a clerk of court, may provide ~~supply~~ the department with data that is machine readable by the department's computer system, listing persons who have one or more outstanding violations of this section, with reference to the person's driver's license number or vehicle registration number in the case of a business entity. Pursuant to s. 320.03(8), those persons may not be issued a license plate or revalidation sticker for any motor vehicle.

Section 10. Paragraph (b) of subsection (1) of section 316.302, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(1)

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 385, and 390-397, with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus, as such rules and regulations existed on October 1, 2009 ~~2007~~.

(12)(a) Notwithstanding any provision of law to the contrary, a provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable.

(b) As used in this subsection, the term "promisee" means the contract's promisee and any agents, employees, servants, or independent contractors who are directly responsible to the contract's promisee, except that the term does not include motor carriers which are party to a motor carrier transportation contract with the contract's promisee, including such motor carrier's agents, employees, servants, or independent contractors directly responsible to such motor carrier.

(c) This subsection only applies to motor carrier transportation contracts entered into or renewed on or after July 1, 2010.

Section 11. Paragraph (c) of subsection (8) of section 316.515, Florida Statutes, is amended to read:

316.515 Maximum width, height, length.—

(8) WRECKERS.—The limitations imposed by this section do not apply to a combination of motor vehicles consisting of a wrecker licensed in accordance with s. 320.08(5)(d) or (e) and a disabled motor vehicle, trailer, semitrailer, or tractor-trailer combination, or a replacement motor vehicle, which is under tow by the wrecker, if the size and weight of the towed vehicle is consistent with statutory requirements and the requirements of this subsection.

(c) Where the combined weight of the wrecker and the towed vehicle exceeds the maximum weight limits as established by s. 316.535, the wrecker must be operating under a current wrecker special use permit or permits as provided in s. 316.550(5)~~(4)~~ or in accordance with paragraph (b).

Section 12. Paragraphs (c) and (d) of subsection (3) of section 316.545, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(3) Any person who violates the overloading provisions of this chapter shall be conclusively presumed to have damaged the highways of this state by reason of such overloading, which damage is hereby fixed as follows:

(c) For a vehicle equipped with fully functional idle-reduction technology, any penalty shall be calculated by reducing the actual gross vehicle weight or the internal bridge weight by the certified weight of the idle-reduction technology or by 400 pounds, whichever is less. The vehicle operator must present written certification of the weight of the idle-reduction technology and must demonstrate or certify that the idle-reduction technology is fully functional at all times. This calculation is not allowed for vehicles described in s. 316.535(6);

Section 13. Subsections (4) through (10) of section 316.550, Florida Statutes, are renumbered as subsections (5) through (11), respectively, present subsection (7) is amended, and a new subsection (4) is added to that section, to read:

316.550 Operations not in conformity with law; special permits.—

(4)(a) The Department of Transportation or local authority may issue permits that authorize commercial vehicles having weights not exceeding the limits of s. 316.535(5), plus the scale tolerance provided in s. 316.545(2), to operate off the interstate highway system on a designated route specified in the permit. Such permits shall be issued within 14 days after receipt of the request.

(b) The designated route shall avoid any bridge which the department determines cannot safely accommodate vehicles with a gross vehicle weight authorized in paragraph (a).

(c) Any vehicle or combination of vehicles which exceeds the weight limits authorized in paragraph (a) shall be unloaded and all material so unloaded shall be cared for by the owner or operator.

(8)~~(7)~~ The Department of Transportation may impose fines for the operation of a vehicle in violation of this section, as provided in subsection (10) ~~(9)~~.

Section 14. Subsection (7) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(7) Mandatory $100 fine for each violation of s. 316.1001 plus the amount of the unpaid toll shown on the traffic citation for each citation issued. The clerk of the court shall forward $25 of the $100 fine received, plus the amount of the unpaid toll that is shown on the citation, to the governmental entity that issued the citation for citations issued by toll enforcement officers or to the entity administering the tolls at the facility where the violation occurred for citations issued by law enforcement officers. However, a person may elect to pay $30 to the clerk of the court, plus the amount of the unpaid toll that is shown on the citation, in which case adjudication is withheld, and no points may be assessed under s. 322.27. Upon receipt of the $30 and unpaid toll amount, the clerk of the court shall retain $5 for administrative purposes and shall forward the remaining $25, plus the amount of the unpaid toll shown on the citation, to the governmental entity that issued the citation for citations issued by toll enforcement officers or to the entity administering the tolls at the facility where the violation occurred for citations issued by law enforcement officers. Additionally, adjudication shall be withheld and no points shall be assessed under s. 322.27, except when adjudication is imposed by the court after a hearing pursuant to s. 318.14(5)~~, or on whose behalf the citation was issued~~. If a plea arrangement is reached prior to the date set for a scheduled evidentiary hearing and, as a result of the plea, adjudication is withheld, there shall be a mandatory fine assessed per citation of not less than $50 and not more than $100, plus the amount of the unpaid toll for each citation issued. The clerk of the court shall forward $25 of the fine imposed plus the amount of the unpaid toll that is shown on the citation to the governmental entity that issued the citation for citations issued by toll enforcement officers or to the entity administering the tolls at the facility where the violation occurred for citations issued by law enforcement officers ~~or on whose behalf the citation was issued~~. The court shall have specific authority to consolidate issued citations for the same defendant for the purpose of sentencing and aggregate jurisdiction. In addition, the court may direct the department to ~~shall~~ suspend for 60 days the driver's license of a

person who is convicted of 10 violations of s. 316.1001 within a 36-month period. Any funds received by a governmental entity for this violation may be used for any lawful purpose related to the operation or maintenance of a toll facility.

Section 15. Subsection (8) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), or s. 713.78(13), a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the governmental entity or the clerk of court that provided the data showing that the fines outstanding have been paid. This subsection does not apply to the owner of a leased vehicle if the vehicle is registered in the name of the lessee of the vehicle. The tax collector and the clerk of the court are each entitled to receive monthly, as costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the term "civil penalties and fines" does not include a wrecker operator's lien as described in s. 713.78(13). If the tax collector has private tag agents, such tag agents are entitled to receive a pro rata share of the amount paid to the tax collector, based upon the percentage of license plates and revalidation stickers issued by the tag agent compared to the total issued within the county. The authority of any private agent to issue license plates shall be revoked, after notice and a hearing as provided in chapter 120, if he or she issues any license plate or revalidation sticker contrary to the provisions of this subsection. This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which is inclusive of the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(7)(b).

Section 16. Paragraph (e) of subsection (5) of section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(2), and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(d) A wrecker, as defined in s. 320.01(40), which is used to tow a vessel as defined in s. 327.02(39), a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01(38), or a replacement motor vehicle as defined in s. 320.01(39): $41 flat, of which $11 shall be deposited into the General Revenue Fund.

(e) A wrecker that is used to tow any nondisabled motor vehicle, ~~regardless of whether such motor vehicle is a disabled motor vehicle, a replacement motor vehicle,~~ a vessel, or any other cargo unless used as defined in paragraph (d), as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat, of which $31 shall be deposited into the General Revenue Fund.

2. Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat, of which $46 shall be deposited into the General Revenue Fund.

3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: $251 flat, of which $65 shall be deposited into the General Revenue Fund.

4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: $324 flat, of which $84 shall be deposited into the General Revenue Fund.

5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat, of which $105 shall be deposited into the General Revenue Fund.

6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $772 flat, of which $200 shall be deposited into the General Revenue Fund.

7. Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: $915 flat, of which $237 shall be deposited into the General Revenue Fund.

8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat, of which $280 shall be deposited into the General Revenue Fund.

9. Gross vehicle weight of 72,000 pounds or more: $1,322 flat, of which $343 shall be deposited into the General Revenue Fund.

Section 17. Paragraph (b) of subsection (32) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.—

(32) UNITED WE STAND LICENSE PLATES.—

(b) The department shall retain all revenues from the sale of such plates until all startup costs for developing and issuing the plates have been recovered. Thereafter, 100 percent of the annual use fee shall be distributed to the Department of Transportation to fund security-related aviation projects pursuant to chapter 332 ~~SAFE Council to fund a grant program to enhance security at airports throughout the state, pursuant to s. 332.14~~.

Section 18. Paragraph (d) of subsection (3) of section 322.27, Florida Statutes, is amended to read:

322.27 Authority of department to suspend or revoke license.—

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of s. 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or applicable provisions of s. 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed resulting in a crash—6 points.

4. Passing a stopped school bus—4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points.

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points. However, no points shall be imposed for a violation of s. 316.0741 or s. 316.2065(12); and points shall be imposed for a violation of s. 316.1001 only when imposed by the court after a hearing pursuant to s. 318.14(5).

8. Any moving violation covered above, excluding unlawful speed, resulting in a crash—4 points.

9. Any conviction under s. 403.413(6)(b)—3 points.

10. Any conviction under s. 316.0775(2)—4 points.

Section 19. Section 332.14, Florida Statutes, is repealed.

Section 20. All funds accrued by the Secure Airports for Florida's Economy Council prior to July 1, 2010, shall be retained by the Department of Transportation. The Department of Transportation is authorized to use these funds for statewide training purposes relating to airport security and management. The Department of Transportation is further authorized to use these funds for security-related aviation projects pursuant to chapter 332, Florida Statutes.

Section 21. Subsection (1) of section 337.14, Florida Statutes, is amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any person desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department shall address the qualification of persons to bid on construction contracts in excess of $250,000 and shall include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification. The department is authorized to limit the dollar amount of any contract upon which a person is qualified to bid or the aggregate total dollar volume of contracts such person is allowed to have under contract at any one time. Each applicant seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification shall be accompanied by the latest annual financial statement of the applicant completed within the last 12 months. If the application or the annual financial statement shows the financial condition of the applicant more than 4 months prior to the date on which the application is received by the department, then an interim financial statement must ~~also~~ be submitted and be accompanied by an updated application. The interim financial statement must cover the period from the end date of the annual statement and must show the financial condition of the applicant no more than 4 months prior to the date the interim financial statement ~~on which the application~~ is received by the department. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant or a public accountant approved by the

department. The information required by this subsection is confidential and exempt from the provisions of s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

Section 22. Subsection (1) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(1)(a) The department and local governmental entities, referred to in ss. 337.401-337.404 as the "authority," that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining along, across, or on any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section as the "utility." ~~For aerial and underground electric utility transmission lines designed to operate at 69 or more kilovolts that are needed to accommodate the additional electrical transfer capacity on the transmission grid resulting from new base-load generating facilities, where there is no other practicable alternative available for placement of the electric utility transmission lines on the department's rights-of-way, the department's rules shall provide for placement of and access to such transmission lines adjacent to and within the right-of-way of any department-controlled public roads, including longitudinally within limited access facilities to the greatest extent allowed by federal law, if compliance with the standards established by such rules is achieved. Such rules may include, but need not be limited to, that the use of the right-of-way is reasonable based upon a consideration of economic and environmental factors, including, without limitation, other practicable alternative alignments, utility corridors and easements, impacts on adjacent property owners, and minimum clear zones and other safety standards, and further provide that placement of the electric utility transmission lines within the department's right-of-way does not interfere with operational requirements of the transportation facility or planned or potential future expansion of such transportation facility. If the department approves longitudinal placement of electric utility transmission lines in limited access facilities, compensation for the use of the right-of-way is required. Such consideration or compensation paid by the electric utility in connection with the department's issuance of a permit does not create any property right in the department's property regardless of the amount of consideration paid or the improvements constructed on the property by the utility. Upon notice by the department that the property is needed for expansion or improvement of the transportation facility, the electric utility transmission line will relocate~~

~~from the facility at the electric utility's sole expense. The electric utility shall pay to the department reasonable damages resulting from the utility's failure or refusal to timely relocate its transmission lines. The rules to be adopted by the department may also address the compensation methodology and relocation. As used in this subsection, the term "base-load generating facilities" means electric power plants that are certified under part II of chapter 403.~~ The department may enter into a permit-delegation agreement with a governmental entity if issuance of a permit is based on requirements that the department finds will ensure the safety and integrity of facilities of the Department of Transportation; however, the permit-delegation agreement does not apply to facilities of electric utilities as defined in s. 366.02(2).

(b) For aerial and underground electric utility transmission lines designed to operate at 69 or more kilovolts that are needed to accommodate the additional electrical transfer capacity on the transmission grid resulting from new base-load generating facilities, the department's rules shall provide for placement of and access to such transmission lines adjacent to and within the right-of-way of any department-controlled public roads, including longitudinally within limited access facilities where there is no other practicable alternative available, to the greatest extent allowed by federal law, if compliance with the standards established by such rules is achieved. Without limiting or conditioning the department's jurisdiction or authority described in paragraph (a), with respect to limited access right-of-way, such rules may include, but need not be limited to, that the use of the right-of-way for longitudinal placement of electric utility transmission lines is reasonable based upon a consideration of economic and environmental factors, including, without limitation, other practicable alternative alignments, utility corridors and easements, impacts on adjacent property owners, and minimum clear zones and other safety standards, and further provide that placement of the electric utility transmission lines within the department's right-of-way does not interfere with operational requirements of the transportation facility or planned or potential future expansion of such transportation facility. If the department approves longitudinal placement of electric utility transmission lines in limited access facilities, compensation for the use of the right-of-way is required. Such consideration or compensation paid by the electric utility in connection with the department's issuance of a permit does not create any property right in the department's property regardless of the amount of consideration paid or the improvements constructed on the property by the utility. Upon notice by the department that the property is needed for expansion or improvement of the transportation facility, the electric utility transmission line will be removed or relocated at the electric utility's sole expense. The electric utility shall pay to the department reasonable damages resulting from the utility's failure or refusal to timely remove or relocate its transmission lines. The rules to be adopted by the department may also address the compensation methodology and removal or relocation. As used in this subsection, the term "base-load generating facilities" means electric power plants that are certified under part II of chapter 403.

Section 23. Subsection (4) of section 337.406, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

337.406 Unlawful use of state transportation facility right-of-way; penalties.—

(4) Camping is prohibited on any portion of the right-of-way of the State Highway System that is within 100 feet of a bridge, causeway, overpass, or ramp.

Section 24. Subsection (1) of section 338.155, Florida Statutes, is amended to read:

338.155 Payment of toll on toll facilities required; exemptions.—

(1) No persons are permitted to use any toll facility without payment of tolls, except employees of the agency operating the toll project when using the toll facility on official state business, state military personnel while on official military business, handicapped persons as provided in this section, persons exempt from toll payment by the authorizing resolution for bonds issued to finance the facility, and persons exempt on a temporary basis where use of such toll facility is required as a detour route. Any law enforcement officer operating a marked official vehicle is exempt from toll payment when on official law enforcement business. Any person operating a fire vehicle when on official business or a rescue vehicle when on official business is exempt from toll payment. Any person participating in the funeral procession of a law enforcement officer or firefighter killed in the line of duty is exempt from toll payment. The secretary, or the secretary's designee, may suspend the payment of tolls on a toll facility when necessary to assist in emergency evacuation. The failure to pay a prescribed toll constitutes a noncriminal traffic infraction, punishable as a moving violation pursuant to s. 318.18. The department is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, as authorized in chapters 316, 318, 320, 322, and 338, including, but not limited to, rules for the implementation of video or other image billing and variable pricing ~~guaranteed toll accounts~~.

Section 25. Subsection (7) is added to section 341.051, Florida Statutes, to read:

341.051 Administration and financing of public transit and intercity bus service programs and projects.—

(7) INTEROPERABLE FARE COLLECTION SYSTEMS.—

(a) The Legislature recognizes the importance of encouraging the seamless use of local and regional public transportation systems by residents of and visitors to the state wherever possible. The paramount concern is to encourage the implementation of fare collection systems that are interoperable and compatible with multiple public transportation systems throughout the state.

(b) Notwithstanding any other provision of law to the contrary, in order to facilitate the ease of transfer from one public transportation system to another, any public transit system which connects directly with a new public rail system put into service after December 1, 2010, and which is adding a new fare media system or is upgrading its existing fare media system shall use a universally accepted contactless fare media that is compatible with the American Public Transportation Association's Contactless Fare Media System Standard or the applicable bankcard contactless media standards and allows users to purchase fares at a single point of sale with coin, cash, or credit card. This paragraph does not require the use of a universally accepted contactless fare media for the paratransit element of any transit system or by any public transit system that does not share one or more points of origin or destination with a public rail system.

For purposes of this section, the term "net operating costs" means all operating costs of a project less any federal funds, fares, or other sources of income to the project.

Section 26. Subsection (7) of section 341.3025, Florida Statutes, is renumbered as subsection (8), and a new subsection (7) is added to that section to read:

341.3025 Multicounty public rail system fares and enforcement.—

(7)(a) The Legislature recognizes the importance of encouraging the seamless use of local and regional public transportation systems by residents of and visitors to the state wherever possible. The paramount concern is to encourage the implementation of fare collection systems that are interoperable and compatible with multiple public transportation systems throughout the state.

(b) Notwithstanding any other provision of law to the contrary, in order to facilitate the ease of transfer from one public transportation system to another, any new public rail system that is constructed after December 1, 2010, by the state, an agency of the state, a regional transportation authority, or one or more counties or municipalities shall use a universally accepted contactless fare media that is compatible with the American Public Transportation Association's Contactless Fare Media System Standard or the applicable bankcard contactless media standards and allows users to purchase fares at a single point of sale with coin, cash, or credit card. Additionally, any existing public rail system that is adding a new fare media system or is upgrading its existing fare media system shall use a universally accepted contactless fare media that is compatible with the American Public Transportation Association's Contactless Fare Media System Standard or the applicable bankcard contactless media standards and allows users to purchase fares at a single point of sale with coin, cash, or credit card.

Section 27. Paragraph (q) is added to subsection (2) of section 343.64, Florida Statutes, to read:

343.64 Powers and duties.—

(2) The authority may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but not limited to, the following rights and powers:

(q) Notwithstanding s. 343.65, to borrow money in a principal amount not to exceed $10 million in any calendar year to refinance all or part of the costs or obligations of the authority, including, but not limited to, obligations of the authority as a lessee under a lease.

Section 28. Subsection (3) of section 348.51, Florida Statutes, is amended to read:

348.51 Definitions.—The following terms whenever used or referred to in this part shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(3) "Bonds" means and includes the notes, bonds, refunding bonds, or other evidences of indebtedness or obligations, in either temporary or definitive form, which ~~of~~ the authority is authorized to issue ~~issued~~ pursuant to this part.

Section 29. Section 348.545, Florida Statutes, is amended to read:

348.545 Facility improvement; bond financing authority.—Pursuant to s. 11(f), Art. VII of the State Constitution, the Legislature hereby approves for bond financing by the Tampa-Hillsborough County Expressway Authority improvements to toll collection facilities, interchanges to the legislatively approved expressway system, and any other facility appurtenant, necessary, or incidental to the approved system. Subject to terms and conditions of applicable revenue bond resolutions and covenants, such costs ~~financing~~ may be financed in whole or in part by revenue bonds issued pursuant to s. 348.56(1)(a) or (b), whether currently issued or issued in the future, or by a combination of such bonds.

Section 30. Subsections (1) and (2) of section 348.56, Florida Statutes, are amended to read:

348.56 Bonds of the authority.—

(1)(a) Bonds may be issued on behalf of the authority pursuant to the State Bond Act.

(b) Alternatively, the authority shall have the power and is hereby authorized from time to time to issue bonds in such principal amount as, in the opinion of the authority, shall be necessary to provide sufficient moneys for achieving its corporate purposes, including construction, reconstruction, improvement, extension, repair, maintenance and operation of the expressway system, the cost of acquisition of all real property, interest on bonds during construction and for a reasonable period thereafter, establishment of

reserves to secure bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2)(a) Bonds issued by the authority pursuant to paragraph (1)(a) or paragraph (1)(b) shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding 40 years from their respective dates, bear interest at such rate or rates, not exceeding the maximum rate fixed by general law for authorities, be in such denominations, be in such form, either coupon or fully registered, carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption and be entitled to such priorities of lien on the revenues, other available moneys, and the Hillsborough County gasoline tax funds as such resolution or any resolution subsequent thereto may provide. The bonds shall be executed either by manual or facsimile signature by such officers as the authority shall determine, provided that such bonds shall bear at least one signature which is manually executed thereon. The coupons attached to such bonds shall bear the facsimile signature or signatures of such officer or officers as shall be designated by the authority. Such bonds shall have the seal of the authority affixed, imprinted, reproduced, or lithographed thereon.

(b) The bonds issued pursuant to paragraph (1)(a) or paragraph (1)(b) shall be sold at public sale in the same manner provided in the State Bond Act~~, and the net interest cost to the authority on such bonds shall not exceed the maximum rate fixed by general law for authorities. If all bids received on the public sale are rejected, the authority may then proceed to negotiate for the sale of the bonds at a net interest cost which shall be less than the lowest net interest cost stated in the bids rejected at the public sale~~. However, if the authority determines, by official action at a public meeting, that a negotiated sale of such bonds is in the best interest of the authority, the authority may negotiate the sale of such bonds with the underwriter or underwriters designated by the authority and the Division of Bond Finance within the State Board of Administration with respect to bonds issued pursuant to paragraph (1)(a) or solely by the authority with respect to bonds issued pursuant to paragraph (1)(b). The authority's determination to negotiate the sale of such bonds may be based, in part, upon the written advice of the authority's financial adviser. Pending the preparation of definitive bonds, temporary bonds or interim certificates may be issued to the purchaser or purchasers of such bonds and may contain such terms and conditions as the authority may determine.

Section 31. Section 348.565, Florida Statutes, is amended to read:

348.565 Revenue bonds for specified projects.—The existing facilities that constitute the Tampa-Hillsborough County Expressway System are hereby approved to be refinanced by ~~the issuance of~~ revenue bonds issued by the Division of Bond Finance of the State Board of Administration pursuant to s. 11(f), Art. VII of the State Constitution and the State Bond Act or by

revenue bonds issued by the authority pursuant to s. 348.56(1)(b). In addition, the following projects of the Tampa-Hillsborough County Expressway Authority are approved to be financed or refinanced by the issuance of revenue bonds in accordance with this part and ~~pursuant to~~ s. 11(f), Art. VII of the State Constitution:

(1) Brandon area feeder roads.

(2) Capital improvements to the expressway system, including safety and operational improvements and toll collection equipment.

(3) Lee Roy Selmon Crosstown Expressway System widening.

(4) The connector highway linking the Lee Roy Selmon Crosstown Expressway to Interstate 4.

Section 32. Subsection (1) of section 348.57, Florida Statutes, is amended to read:

348.57 Refunding bonds.—

(1) Subject to public notice as provided in s. 348.54, the authority is authorized to provide by resolution for the issuance from time to time of bonds pursuant to s. 348.56(1)(b) for the purpose of refunding any bonds then outstanding regardless of whether the bonds being refunded were issued by the authority pursuant to this chapter or on behalf of the authority pursuant to the State Bond Act. The authority is further authorized to provide by resolution for the issuance of bonds for the combined purpose of:

(a) Paying the cost of constructing, reconstructing, improving, extending, repairing, maintaining and operating the expressway system.

(b) Refunding bonds then outstanding. The authorization, sale and issuance of such obligations, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

Section 33. Section 348.70, Florida Statutes, is amended to read:

348.70 This part complete and additional authority.—

(1) The powers conferred by this part shall be in addition and supplemental to the existing respective powers of the authority, the department, the county, and the city, if any, and this part shall not be construed as repealing any of the provisions of any other law, general, special, or local, but shall be deemed to supersede such other law or laws in the exercise of the powers provided in this part insofar as such other law or laws are inconsistent with the provisions of this part and to provide a complete method for the exercise of the powers granted herein. The construction,

reconstruction, improvement, extension, repair, maintenance, and operation of the expressway system, and the issuance of bonds hereunder to finance all or part of the cost thereof, may be accomplished upon compliance with the provisions of this part without regard to or necessity for compliance with the provisions, limitations, or restrictions contained in any other general, special, or local law, including, but not limited to, s. 215.821, and no approval of any bonds issued under this part by the qualified electors or qualified electors who are freeholders in the state or in the county or in the city or in any other political subdivision of the state shall be required for the issuance of such bonds.

(2) This part does not repeal, rescind, or modify any other law or laws relating to the State Board of Administration, the Department of Transportation, or the Division of Bond Finance of the State Board of Administration, but shall supersede such other law or laws as are inconsistent with the provisions of this part, including, but not limited to, s. 215.821.

Section 34. Part XI of chapter 348, Florida Statutes, consisting of sections 348.9950, 348.9951, 348.9952, 348.9953, 348.9954, 348.9955, 348.9956, 348.9957, 348.9958, 348.9959, 348.9960, and 348.9961, is created to read:

348.9950 Short title.—This part may be cited as the "Osceola County Expressway Authority Law."

348.9951 Definitions.—Terms used in this part, except where the context clearly indicates otherwise, shall have the same meanings as those defined in the Florida Expressway Authority Act.

348.9952 Osceola County Expressway Authority.—

(1) There is created a body politic and corporate, an agency of the state, to be known as the Osceola County Expressway Authority.

(2)(a) The governing body of the authority shall consist of six members. Five members, at least one of whom must be a member of a racial or ethnic minority group, must be residents of Osceola County, three of whom shall be appointed by the governing body of the county and two of whom shall be appointed by the Governor. The sixth member shall be the district secretary of the department serving in the district that includes Osceola County, who shall serve as an ex officio, nonvoting member. The term of each appointed member shall be for 4 years, except that the first term of the initial members appointed by the Governor shall be 2 years each. Each appointed member shall hold office until his or her successor has been appointed and has qualified. A vacancy occurring during a term shall be filled only for the balance of the unexpired term. Each appointed member of the authority shall be a person of outstanding reputation for integrity, responsibility, and business ability, but a person who is an officer or employee of any municipality or of Osceola County in any other capacity may not be an appointed member of the authority. A member of the authority is eligible for reappointment.

(b) Members of the authority may be removed from office by the Governor for misconduct, malfeasance, or nonfeasance in office.

(3)(a) The authority shall elect one of its members as chair. The authority shall also elect a secretary and a treasurer, who may be members of the authority. The chair, secretary, and treasurer shall hold such offices at the will of the authority.

(b) Three members of the authority constitute a quorum, and the vote of three members is necessary for any action taken by the authority. A vacancy in the authority does not impair the right of a quorum of the authority to exercise all of the rights and perform all of the duties of the authority.

(4)(a) The authority may employ an executive secretary, an executive director, its own counsel and legal staff, technical experts, engineers, and other employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons, firms, or corporations. Additionally, the authority may employ a fiscal agent or agents. However, the authority shall solicit sealed proposals from at least three persons, firms, or corporations for the performance of any services as fiscal agents. The authority may delegate to one or more of its agents or employees such of its power as it deems necessary to carry out the purposes of this part, subject always to the supervision and control of the authority.

(b) Members of the authority are entitled to receive from the authority their travel and other necessary expenses incurred in connection with the business of the authority as provided in s. 112.061, but members shall not draw salaries or other compensation.

(c) The department is not required to grant funds for startup costs to the authority. However, the governing body of the county may provide funds for such startup costs.

(d) The authority shall cooperate with and participate in any efforts to establish a regional expressway authority.

(e) Notwithstanding any other provision of law, including s. 339.175(3), the authority is not entitled to voting membership in a metropolitan planning organization in which Osceola County, or any of the municipalities therein, are also voting members.

348.9953 Purposes and powers.—The purposes and powers of the authority shall be the same as those identified in the Florida Expressway Authority Act. In implementing this act, the authority shall institute procedures to encourage the awarding of contracts for professional services and construction to certified minority business enterprises as defined in s. 288.703. The authority shall develop and implement activities to encourage the participation of certified minority business enterprises in the contracting process.

348.9954 Bonds.—Bonds may be issued on behalf of the authority as provided by the State Bond Act and subject to the provisions of the Florida Expressway Authority Act.

348.9955 Lease-purchase agreement.—The authority may enter into lease-purchase agreements with the department as provided in the Florida Expressway Authority Act.

348.9956 Department may be appointed agent of authority for construction.—The authority may appoint the department as its agent as provided in the Florida Expressway Authority Act.

348.9957 Acquisition of lands and property.—The authority may acquire such rights, title, or interest in private or public property and such property rights, including easements, rights of access, air, view, and light by gift, devise, purchase, or condemnation by eminent domain proceedings, as the authority may deem necessary for the purposes of this part and subject to the provisions of the Florida Expressway Authority Act.

348.9958 Cooperation with other units, boards, agencies, and individuals.—Any county, municipality, drainage district, road and bridge district, school district, or other political subdivision, board, commission, or individual in or of the state may make and enter into any contract, lease, conveyance, partnership, or other agreement with the authority within the provisions and for purposes of this part. The authority may make and enter into any contract, lease, conveyance, partnership, or other agreement with any political subdivision, agency, or instrumentality of the state or any federal agency, corporation, or individual for the purpose of carrying out the provisions of this part.

348.9959 Legislative intent; covenant of the state.—It is the intent of the Legislature that the state pledge to and agree with any person, firm, corporation, or federal or state agency subscribing to or acquiring the bonds to be issued by the authority for the purposes of this part that the state will not limit or alter the rights hereby vested in the authority and the department until all bonds at any time issued together with the interest thereon are fully paid and discharged insofar as the same affects the rights of the holders of bonds issued hereunder. It is also the intent of the Legislature that the state further pledge to and agree with the United States that in the event any federal agency shall construct or contribute any funds for the completion, extension, or improvement of the Osceola County Expressway System, or any part or portion thereof, the state will not alter or limit the rights and powers of the authority and the department in any manner that would be inconsistent with the continued maintenance and operation of the Osceola County Expressway System, or the completion, extension, or improvement thereof, or that would be inconsistent with the due performance of any agreements between the authority and any such federal agency. The authority and the department shall continue to have and may exercise all powers herein granted so long as the same shall be necessary or desirable for the carrying out of the purposes of this part and the purposes of

the United States in the completion, extension, or improvement of the Osceola County Expressway System or any part or portion thereof.

348.9960 Exemption from taxation.—

(1) As provided under and limited by the Florida Expressway Authority Act, the Osceola County Expressway Authority is not required to pay taxes or assessments of any kind or nature whatsoever upon any property acquired by it or used by it for such purpose or upon revenues at any time received by it.

(2) The bonds issued by or on behalf of the authority, their transfer, and the income therefrom, including any profits made on the sale thereof, shall at all times be free from taxation of any kind by the state or by any political subdivision or other taxing agency or instrumentality thereof. The exemption granted by this subsection does not apply to any tax imposed under chapter 220 on interest, income, or profits on debt obligations owned by corporations.

348.9961 Automatic dissolution.—If, before January 1, 2020, the authority has not encumbered any funds to further its purposes and powers as authorized in s. 348.9953 to establish the system, the Osceola County Expressway Authority is dissolved.

Section 35. Subsection (6) of section 369.317, Florida Statutes, is amended to read:

369.317 Wekiva Parkway.—

(6) The Orlando-Orange County Expressway Authority is hereby granted the authority to act as a third-party acquisition agent, pursuant to s. 259.041 on behalf of the Board of Trustees or chapter 373 on behalf of the governing board of the St. Johns River Water Management District, for the acquisition of all necessary lands, property and all interests in property identified herein, including fee simple or less-than-fee simple interests. The lands subject to this authority are identified in paragraph 10.a., State of Florida, Office of the Governor, Executive Order 03-112 of July 1, 2003, and in Recommendation 16 of the Wekiva Basin Area Task Force created by Executive Order 2002-259, such lands otherwise known as Neighborhood Lakes, a 1,587+/-acre parcel located in Orange and Lake Counties within Sections 27, 28, 33, and 34 of Township 19 South, Range 28 East, and Sections 3, 4, 5, and 9 of Township 20 South, Range 28 East; Seminole Woods/ Swamp, a 5,353+/-acre parcel located in Lake County within Section 37, Township 19 South, Range 28 East; New Garden Coal; a 1,605+/-acre parcel in Lake County within Sections 23, 25, 26, 35, and 36, Township 19 South, Range 28 East; Pine Plantation, a 617+/-acre tract consisting of eight individual parcels within the Apopka City limits. The Department of Transportation, the Department of Environmental Protection, the St. Johns River Water Management District, and other land acquisition entities shall participate and cooperate in providing information and support to the third-party acquisition agent. The land acquisition process authorized by this paragraph shall begin no later than December 31, 2004. Acquisition of

the properties identified as Neighborhood Lakes, Pine Plantation, and New Garden Coal, or approval as a mitigation bank shall be concluded no later than December 31, 2010. Department of Transportation and Orlando-Orange County Expressway Authority funds expended to purchase an interest in those lands identified in this subsection shall be eligible as environmental mitigation for road construction related impacts in the Wekiva Study Area. If any of the lands identified in this subsection are used as environmental mitigation for road-construction-related impacts incurred by the Department of Transportation or Orlando-Orange County Expressway Authority, or for other impacts incurred by other entities, within the Wekiva Study Area or within the Wekiva parkway alignment corridor and, if the mitigation offsets these impacts, the St. Johns River Water Management District and the Department of Environmental Protection shall consider the activity regulated under part IV of chapter 373 to meet the cumulative impact requirements of s. 373.414(8)(a).

Section 36. Subsections (2) and (5) and paragraph (b) of subsection (9) of section 373.41492, Florida Statutes, are amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and the east one-half of sections 24 and 25 and all of sections 35 and 36, Township 53 South, Range 39 East. The mitigation fee is imposed for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. The mitigation fee imposed by this subsection for each ton of limerock and sand sold shall be 12 cents per ton beginning January 1, 2007; 18 cents per ton beginning January 1, 2008; ~~and~~ 24 cents per ton beginning January 1, 2009; and 45 cents per ton beginning close of business December 31, 2011. To upgrade a water treatment plant that treats water coming from the Northwest Wellfield in Miami-Dade County, a water treatment plant upgrade fee is imposed within the same Lake Belt Area subject to the mitigation fee and upon the same kind of mined limerock and sand subject to the mitigation fee. The water treatment plant upgrade fee imposed by this subsection for each ton of limerock and sand sold shall be 15 cents per ton beginning on January 1, 2007, and the collection of this fee shall cease once the total amount of proceeds collected for this fee reaches the amount of the actual moneys necessary to design and construct the water treatment plant upgrade, as determined in an open, public solicitation process. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fees. The amount of the mitigation fee and the water treatment plant upgrade fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand

product from the limerock or sand miner, or its subsidiary or affiliate, for which the fee or fees apply. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and the water treatment plant upgrade fee and forward the proceeds of the fees to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs.

(5) Each January 1, beginning January 1, 2010, through December 31, 2011 ~~and each January 1 thereafter~~, the per-ton mitigation fee shall be increased by 2.1 percentage points, plus a cost growth index. The cost growth index shall be the percentage change in the weighted average of the Employment Cost Index for All Civilian Workers (ecu 10001I), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, and the percentage change in the Producer Price Index for All Commodities (WPU 00000000), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, compared to the weighted average of these indices for the previous year. The weighted average shall be calculated as 0.6 times the percentage change in the Employment Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times the percentage change in the Producer Price Index for All Commodities (WPU 00000000). If either index is discontinued, it shall be replaced by its successor index, as identified by the United States Department of Labor.

(9)

(b) No sooner than January 31, 2010, and no more frequently than every 2 ~~5~~ years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee, including the annual escalator provided for in subsection (5), to ensure that the revenue generated reflects the actual costs of the mitigation.

Section 37. Subsection (1) of section 403.4131, Florida Statutes, is amended to read:

403.4131 Litter control.—

(1) The Department of Transportation shall establish an "adopt-a-highway" program to allow local organizations to be identified with specific highway cleanup and highway beautification projects authorized under s. 339.2405. ~~The department shall report to the Governor and the Legislature on the progress achieved and the savings incurred by the "adopt-a-highway" program.~~ The department shall ~~also~~ monitor ~~and report on~~ compliance with the provisions of the adopt-a-highway program to ensure that organizations participating ~~that participate~~ in the program comply with the goals identified by the department.

Section 38. Section 479.01, Florida Statutes, is amended to read:

479.01 Definitions.—As used in this chapter, the term:

(1) "Allowable uses" means those uses that are authorized within a zoning category without the requirement to obtain a variance or waiver. The term includes conditional uses and those allowed by special exception, but does not include uses that are accessory, incidental to the allowable uses, or allowed only on a temporary basis.

(2)~~(1)~~ "Automatic changeable facing" means a facing that is capable of delivering two or more advertising messages through an automated or remotely controlled process.

(3)~~(2)~~ "Business of outdoor advertising" means the business of constructing, erecting, operating, using, maintaining, leasing, or selling outdoor advertising structures, outdoor advertising signs, or outdoor advertisements.

(4)~~(3)~~ "Commercial or industrial zone" means a parcel of land designated for commercial or industrial uses ~~use~~ under both the future land use map of the comprehensive plan and the land use development regulations adopted pursuant to chapter 163. If a parcel is located in an area designated for multiple uses on the future land use map of a comprehensive plan and the zoning category of the land development regulations does ~~do~~ not clearly designate that parcel for a specific use, the area will be considered an unzoned commercial or industrial area if it meets the criteria of subsection (26) ~~(23)~~.

(5) "Commercial use" means activities associated with the sale, rental, or distribution of products or the performance of services. The term includes, without limitation, such uses or activities as retail sales; wholesale sales; rentals of equipment, goods, or products; offices; restaurants; food service vendors; sports arenas; theaters; and tourist attractions.

(6)~~(4)~~ "Controlled area" means ~~shall mean~~ 660 feet or less from the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system and beyond 660 feet of the nearest edge of the right-of-way of any portion of the State Highway System, interstate, or federal-aid primary system outside an urban area.

(7)~~(5)~~ "Department" means the Department of Transportation.

(8)~~(6)~~ "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; but it does not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign.

(9)~~(7)~~ "Federal-aid primary highway system" means the existing, unbuilt, or unopened system of highways or portions thereof, which shall include the National Highway System, designated as the federal-aid primary highway system by the department.

(10)~~(8)~~ "Highway" means any road, street, or other way open or intended to be opened to the public for travel by motor vehicles.

(11) "Industrial use" means activities associated with the manufacture, assembly, processing, or storage of products or the performance of services relating thereto. The term includes, without limitation, such uses or activities as automobile manufacturing or repair, boat manufacturing or repair, junk yards, meat packing facilities, citrus processing and packing facilities, produce processing and packing facilities, electrical generating plants, water treatment plants, sewage treatment plants, and solid waste disposal sites.

(12)~~(9)~~ "Interstate highway system" means the existing, unbuilt, or unopened system of highways or portions thereof designated as the national system of interstate and defense highways by the department.

(13)~~(10)~~ "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking areas.

(14)~~(11)~~ "Maintain" means to allow to exist.

(15)~~(12)~~ "Motorist services directional signs" means signs providing directional information about goods and services in the interest of the traveling public where such signs were lawfully erected and in existence on or before May 6, 1976, and continue to provide directional information to goods and services in a defined area.

(16)~~(13)~~ "New highway" means the construction of any road, paved or unpaved, where no road previously existed or the act of paving any previously unpaved road.

(17)~~(14)~~ "Nonconforming sign" means a sign which was lawfully erected but which does not comply with the land use, setback, size, spacing, and lighting provisions of state or local law, rule, regulation, or ordinance passed at a later date or a sign which was lawfully erected but which later fails to comply with state or local law, rule, regulation, or ordinance due to changed conditions.

(18)~~(15)~~ "Premises" means all the land areas under ownership or lease arrangement to the sign owner which are contiguous to the business conducted on the land except for instances where such land is a narrow strip contiguous to the advertised activity or is connected by such narrow strip, the only viable use of such land is to erect or maintain an advertising sign. When the sign owner is a municipality or county, "premises" shall mean all lands owned or leased by such municipality or county within its jurisdictional boundaries as set forth by law.

(19)~~(16)~~ "Remove" means to disassemble, transport from the site, and dispose of sign materials by sale or destruction.

(20)~~(17)~~ "Sign" means any combination of structure and message in the form of an outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, advertising structure, advertisement, logo, symbol, or other form, whether placed individually or on a V-type, back-to-back, side-to-side, stacked, or double-faced display or automatic changeable facing, designed, intended, or used to advertise or inform, any part of the advertising message or informative contents of which is visible from any place on the main-traveled way. The term does not include an official traffic control sign, official marker, or specific information panel erected, caused to be erected, or approved by the department.

(21)~~(18)~~ "Sign direction" means that direction from which the message or informative contents are most visible to oncoming traffic on the main-traveled way.

(22)~~(19)~~ "Sign face" means the part of the sign, including trim and background, which contains the message or informative contents.

(23)~~(20)~~ "Sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction.

(24)~~(21)~~ "Sign structure" means all the interrelated parts and material, such as beams, poles, and stringers, which are constructed for the purpose of supporting or displaying a message or informative contents.

(25)~~(22)~~ "State Highway System" means the existing, unbuilt, or unopened system of highways or portions thereof designated as the State Highway System by the department.

(26)~~(23)~~ "Unzoned commercial or industrial area" means a parcel of land designated by the future land use map of the comprehensive plan for multiple uses that include commercial or industrial uses but are not specifically designated for commercial or industrial uses under the land development regulations, in which three or more separate and distinct conforming industrial or commercial activities are located.

(a) These activities must satisfy the following criteria:

1. At least one of the commercial or industrial activities must be located on the same side of the highway and within 800 feet of the sign location;

2. The commercial or industrial activities must be within 660 feet from the nearest edge of the right-of-way; and

3. The commercial industrial activities must be within 1,600 feet of each other.

Distances specified in this paragraph must be measured from the nearest outer edge of the primary building or primary building complex when the individual units of the complex are connected by covered walkways.

(b) Certain activities, including, but not limited to, the following, may not be so recognized as commercial or industrial activities:

1. Signs.

2. Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.

3. Transient or temporary activities.

4. Activities not visible from the main-traveled way.

5. Activities conducted more than 660 feet from the nearest edge of the right-of-way.

6. Activities conducted in a building principally used as a residence.

7. Railroad tracks and minor sidings.

8. Communication towers.

(27)~~(24)~~ "Urban area" has the same meaning as defined in s. 334.03(29)~~(32)~~.

(28)~~(25)~~ "Visible commercial or industrial activity" means a commercial or industrial activity that is capable of being seen without visual aid by a person of normal visual acuity from the main-traveled way and that is generally recognizable as commercial or industrial.

(29)~~(26)~~ "Visible sign" means that the advertising message or informative contents of a sign, whether or not legible, is capable of being seen without visual aid by a person of normal visual acuity.

(30)~~(27)~~ "Wall mural" means a sign that is a painting or an artistic work composed of photographs or arrangements of color and that displays a commercial or noncommercial message, relies solely on the side of the building for rigid structural support, and is painted on the building or depicted on vinyl, fabric, or other similarly flexible material that is held in place flush or flat against the surface of the building. The term excludes a painting or work placed on a structure that is erected for the sole or primary purpose of signage.

(31) "Zoning category" means the designation under the land development regulations or other similar ordinance enacted to regulate the use of land as provided in s. 163.3202(2)(b), which designation sets forth the allowable uses, restrictions, and limitations on use applicable to properties within the category.

Section 39. Paragraph (c) of subsection (9) of section 479.07, Florida Statutes, is amended to read:

479.07 Sign permits.—

(9)

(c) Notwithstanding subparagraph (a)1., there is established a pilot program in Orange, Hillsborough, and Osceola Counties, and within the boundaries of the City of Miami, under which the distance between permitted signs on the same side of an interstate highway may be reduced to 1,000 feet if all other requirements of this chapter are met and if:

1. The local government has adopted a plan, program, resolution, ordinance, or other policy encouraging the voluntary removal of signs in a downtown, historic, redevelopment, infill, or other designated area which also provides for a new or replacement sign to be erected on an interstate highway within that jurisdiction if a sign in the designated area is removed;

2. The sign owner and the local government mutually agree to the terms of the removal and replacement; and

3. The local government notifies the department of its intention to allow such removal and replacement as agreed upon pursuant to subparagraph 2.

4. The new or replacement sign to be erected on an interstate highway within that jurisdiction is to be located on a parcel of land specifically designated for commercial or industrial use under both the future land use map of the comprehensive plan and the land use development regulations adopted pursuant to chapter 163 and such parcel shall not be subject to an evaluation in accordance with the criteria set forth in the s. 479.01(26) to determine if the parcel can be considered an unzoned commercial or industrial area.

The department shall maintain statistics tracking the use of the provisions of this pilot program based on the notifications received by the department from local governments under this paragraph.

Section 40. Subsections (1) and (5) of section 479.261, Florida Statutes, are amended to read:

479.261 Logo sign program.—

(1) The department shall establish a logo sign program for the rights-of-way of the interstate highway system to provide information to motorists about available gas, food, lodging, camping, attractions, and other services, as approved by the Federal Highway Administration, at interchanges through the use of business logos and may include additional interchanges under the program.

(a) As used in this chapter, the term "attraction" means an establishment, site, facility, or landmark that is open a minimum of 5 days a week for 52 weeks a year; that has as its principal focus family-oriented entertainment, cultural, educational, recreational, scientific, or historical activities; and that is publicly recognized as a bona fide tourist attraction.

(b) The department shall incorporate the use of RV-friendly markers on specific information logo signs for establishments that cater to the needs of persons driving recreational vehicles. Establishments that qualify for participation in the specific information logo program and that also qualify as "RV-friendly" may request the RV-friendly marker on their specific information logo sign. An RV-friendly marker must consist of a design approved by the Federal Highway Administration. The department shall adopt rules in accordance with chapter 120 to administer this paragraph, including rules setting forth the minimum requirements that establishments must meet in order to qualify as RV-friendly. These requirements shall include large parking spaces, entrances, and exits that can easily accommodate recreational vehicles and facilities having appropriate overhead clearances, if applicable.

~~(c) The department may implement a 3-year, rotation-based logo program providing for the removal and addition of participating businesses in the program.~~

(5) At a minimum, permit fees for businesses that participate in the program must be established in an amount sufficient to offset the total cost to the department for the program, including contract costs. The department shall provide the services in the most efficient and cost-effective manner through department staff or by contracting for some or all of the services. The department shall adopt rules that set reasonable rates based upon factors such as population, traffic volume, market demand, and costs for annual permit fees. However, annual permit fees for sign locations inside an urban area, as defined in s. 334.03(32), may not exceed $3,500 ~~$5,000~~, and annual permit fees for sign locations outside an urban area, as defined in s. 334.03(32), may not exceed $2,000 ~~$2,500~~. After recovering program costs, the proceeds from the annual permit fees shall be deposited into the State Transportation Trust Fund and used for transportation purposes.

Section 41. Sections 479.01, 479.015, 479.02, 479.03, 479.04, 479.05, 479.07, 479.08, 479.10, 479.105, 479.106, 479.107, 479.11, 479.111, 479.12, 479.14, 479.15, 479.155, 479.156, 479.16, 479.21, 479.24, and 479.25, Florida Statutes, are designated as part I of chapter 479, Florida Statutes, and entitled "General Provisions."

Section 42. Sections 479.261, 479.262, 479.27, 479.28, and 479.30, Florida Statutes, are designated as part II of chapter 479, Florida Statutes, and entitled "Special Programs."

Section 43. Part III of chapter 479, Florida Statutes, consisting of sections 479.310, 479.311, 479.312, 479.313, and 479.315, is created to read:

PART III
SIGN REMOVAL

479.310 Unpermitted and illegal signs; intent.—It is the intent of this part to relieve the department from the financial burden incurred in the

removal of unpermitted and illegal signs located within the right-of-way of and controlled areas adjacent to the State Highway System, interstate highway system, and federal-aid primary highway system; to place the financial responsibility for the cost of such removal directly upon those benefiting from the location and operation of such unpermitted and illegal signs; and to provide clear authority to the department for the recovery of cost incurred by the department in the removal of such unpermitted and illegal signs.

479.311 Jurisdiction; venue.—The county court shall have jurisdiction concurrent with the circuit court to consider claims filed by the department in amounts which are within their jurisdictional limitations. For the purposes of a claim filed by the department to recover its cost as provided in this section, venue shall be Leon County.

479.312 Unpermitted signs; cost of removal.-All costs incurred by the department in connection with the removal of a sign located within a controlled area adjacent to the State Highway System, interstate highway system, or federal-aid primary highway system which has not been issued a permit under part I shall be assessed against and collected from the owner of the sign, the advertiser displayed on the sign, or the owner of the property upon which the sign is located. For the purposes of this section, a sign that does not display the name of the sign owner shall be presumed to be owned by the owner of the property upon which the sign is located.

479.313 Permit revocation; cost of removal.—All costs incurred by the department in connection with the removal of a sign located within a controlled area adjacent to the State Highway System, interstate highway system, or federal-aid primary highway system following the revocation of the permit for such sign shall be assessed against and collected from the permittee.

479.315 Highway rights-of way; cost of sign removal.-All cost incurred by the department in connection with the removal of a sign located within the right-of-way of the State Highway System, interstate highway system, or federal-aid primary highway system shall be assessed against and collected from the owner of the sign or the advertiser displayed on the sign.

Section 44. Section 705.18, Florida Statutes, is amended to read:

705.18 Disposal of personal property lost or abandoned on university or community college campuses ~~or certain public-use airports~~; disposition of proceeds from sale ~~thereof~~.—

(1) Whenever any lost or abandoned personal property shall be found on a campus of an institution in the State University System or a campus of a state-supported community college~~, or on premises owned or controlled by the operator of a public-use airport having regularly scheduled international passenger service~~, the president of the institution or the president's designee ~~or the director of the airport or the director's designee~~ shall take charge of the

property ~~thereof~~ and make a record of the date such property was found. If, within 30 days after such property is found, or a longer period of time as may be deemed appropriate by the president ~~or the director~~ under the circumstances, the property ~~it~~ is not claimed by the owner, the president ~~or director~~ shall order it sold at public outcry after giving notice of the time and place of sale in a publication of general circulation on the campus of such institution ~~or within the county where the airport is located~~ and written notice to the owner if known. The rightful owner of such property may reclaim the same at any time prior to sale.

(2) All moneys realized from such institution's sale shall be placed in an appropriate fund and used solely for student scholarship and loan purposes. ~~All moneys realized from such sale by an airport, less its costs of storage, transportation, and publication of notice, shall, unless another use is required by federal law, be deposited into the state school fund.~~

Section 45. Section 705.182, Florida Statutes, is created to read:

705.182 Disposal of personal property found on the premises of public-use airports.—

(1) Whenever any personal property, other than an aircraft or motor vehicle, is found on premises owned or controlled by the operator of a public-use airport, the director of the airport or the director's designee shall take charge of the property and make a record of the date such property was found.

(2) If, within 30 calendar days after such property is found or for a longer period of time as may be deemed appropriate by the director or the director's designee under the circumstances, the property is not claimed by the owner, the director or the director's designee may:

(a) Retain any or all of the property for use by the airport or for use by the state or the unit of local government owning or operating the airport;

(b) Trade such property to another unit of local government or a state agency;

(c) Donate the property to a charitable organization;

(d) Sell the property; or

(e) Dispose of the property through an appropriate refuse removal company or a company that provides salvage services for the type of personal property found or located on the airport premises.

(3) The airport shall notify the owner, if known, of the property found on the airport premises and that the airport intends to dispose of the property as provided in subsection (2).

(4) If the airport elects to sell the property under paragraph (2)(d), the property must be sold at a public auction either on the Internet or at a specified physical location after giving notice of the time and place of sale, at least 10 calendar days prior to the date of sale, in a publication of general circulation within the county where the airport is located and after written notice, via certified mail, return receipt requested, is provided to the owner, if known. Any such notice shall be sufficient if the notice refers to the airport's intention to sell all then-accumulated found property, and there is no requirement that the notice identify each item to be sold. The rightful owner of such property may reclaim the property at any time prior to sale by presenting acceptable evidence of ownership to the airport director or the director's designee. All proceeds from the sale of the property shall be retained by the airport for use by the airport in any lawfully authorized manner.

(5) Nothing in this section shall preclude the airport from allowing a domestic or international air carrier or other tenant, on premises owned or controlled by the operator of a public-use airport, to establish its own lost and found procedures for personal property and to dispose of such personal property.

(6) A purchaser or recipient in good faith of personal property sold or obtained under this section shall take the property free of the rights of persons then holding any legal or equitable interest thereto, whether or not recorded.

Section 46. Section 705.183, Florida Statutes, is created to read:

705.183 Disposal of derelict or abandoned aircraft on the premises of public-use airports.—

(1)(a) Whenever any derelict or abandoned aircraft is found or located on premises owned or controlled by the operator of a public-use airport, whether or not such premises are under a lease or license to a third party, the director of the airport or the director's designee shall make a record of the date the aircraft was found or determined to be present on the airport premises.

(b) For purposes of this section, the term:

1. "Abandoned aircraft" means an aircraft that has been disposed of on a public-use airport in a wrecked, inoperative, or partially dismantled condition or an aircraft that has remained in an idle state on premises owned or controlled by the operator of a public-use airport for 45 consecutive calendar days.

2. "Derelict aircraft" means any aircraft that is not in a flyable condition, does not have a current certificate of air worthiness issued by the Federal Aviation Administration, and is not in the process of actively being repaired.

(2) The director or the director's designee shall contact the Federal Aviation Administration, Aircraft Registration Branch, to determine the

name and address of the last registered owner of the aircraft and shall make a diligent personal search of the appropriate records, or contact an aircraft title search company, to determine the name and address of any person having an equitable or legal interest in the aircraft. Within 10 business days after receipt of the information, the director or the director's designee shall notify the owner and all persons having an equitable or legal interest in the aircraft by certified mail, return receipt requested, of the location of the derelict or abandoned aircraft on the airport premises, that fees and charges for the use of the airport by the aircraft have accrued and the amount thereof, that the aircraft is subject to a lien under subsection (5) for the accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, that the lien is subject to enforcement pursuant to law, and that the airport may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e) if, within 30 calendar days after the date of receipt of such notice, the aircraft has not been removed from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft. Such notice may require removal of the aircraft in less than 30 calendar days if the aircraft poses a danger to the health or safety of users of the airport, as determined by the director or the director's designee.

(3) If the owner of the aircraft is unknown or cannot be found, the director or the director's designee shall cause a laminated notice to be placed upon such aircraft in substantially the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: ...(setting forth brief description)... is unlawfully upon public property known as ...(setting forth brief description of location)... and has accrued fees and charges for the use of the ...(same description of location as above)... and for the transportation, storage, and removal of the property. These accrued fees and charges must be paid in full and the property must be removed within 30 calendar days after the date of this notice; otherwise, the property will be removed and disposed of pursuant to chapter 705, Florida Statutes. The property is subject to a lien for all accrued fees and charges for the use of the public property known as ...(same description of location as above)... by such property and for all fees and charges incurred by the public property known as ...(same description of location as above)... for the transportation, storage, and removal of the property. This lien is subject to enforcement pursuant to law. The owner will be liable for such fees and charges, as well as the cost for publication of this notice. Dated this: ...(setting forth the date of posting of notice)..., signed: ...(setting forth name, title, address, and telephone number of law enforcement officer)....

Such notice shall be not less than 8 inches by 10 inches and shall be sufficiently weatherproof to withstand normal exposure to the weather. If, at the end of 30 calendar days after posting the notice, the owner or any person interested in the described derelict or abandoned aircraft has not removed

the aircraft from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for failure to do so, the director or the director's designee may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e).

(4) Such aircraft shall be removed within the time period specified in the notice provided under subsection (2) or subsection (3). If, at the end of such period of time, the owner or any person interested in the described derelict or abandoned aircraft has not removed the aircraft from the airport upon payment in full of all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for the failure to do so, the director or the director's designee may cause the use, trade, sale, or removal of the aircraft as described in s. 705.182(2)(a), (b), (d), or (e).

(a) If the airport elects to sell the aircraft in accordance with s. 705.182(2)(d), the aircraft must be sold at public auction after giving notice of the time and place of sale, at least 10 calendar days prior to the date of sale, in a publication of general circulation within the county where the airport is located and after providing written notice of the intended sale to all parties known to have an interest in the aircraft.

(b) If the airport elects to dispose of the aircraft in accordance with s. 705.182(2)(e), the airport shall be entitled to negotiate with the company for a price to be received from such company in payment for the aircraft, or, if circumstances so warrant, a price to be paid to such company by the airport for the costs of disposing of the aircraft. All information pertaining to the establishment of such price and the justification for the amount of such price shall be prepared and maintained by the airport, and such negotiated price shall be deemed to be a commercially reasonable price.

(c) If the sale price or the negotiated price is less than the airport's then current charges and costs against the aircraft, or if the airport is required to pay the salvage company for its services, the owner of the aircraft shall remain liable to the airport for the airport's costs that are not offset by the sale price or negotiated price, in addition to the owner's liability for payment to the airport of the price the airport was required to pay any salvage company. All costs incurred by the airport in the removal, storage, and sale of any aircraft shall be recoverable against the owner of the aircraft.

(5) The airport shall have a lien on a derelict or abandoned aircraft for all fees and charges for the use of the airport by such aircraft and for all fees and charges incurred by the airport for the transportation, storage, and removal of the aircraft. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the last registered owner and all persons having an equitable or legal interest in the aircraft. Serving the notice does not dispense with recording the claim of lien.

(6)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which shall state:

1. The name and address of the airport.

2. The name of the last registered owner of the aircraft and all persons having a legal or equitable interest in the aircraft.

3. The fees and charges incurred by the aircraft for the use of the airport and the fees and charges for the transportation, storage, and removal of the aircraft.

4. A description of the aircraft sufficient for identification.

(b) The claim of lien shall be signed and sworn to or affirmed by the airport director or the director's designee.

(c) The claim of lien shall be sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of .....

County of .....

Before me, the undersigned notary public, personally appeared ....., who was duly sworn and says that he/she is the .....of ....., whose address is.....; and that the following described aircraft:

...(Description of aircraft)...

owned by ....., whose address is ....., has accrued $..... in fees and charges for the use by the aircraft of ..... and for the transportation, storage, and removal of the aircraft from .....; that the lienor served its notice to the last registered owner and all persons having a legal or equitable interest in the aircraft on ....., ...(year)..., by.....

...(Signature)...

Sworn to (or affirmed) and subscribed before me this ..... day of ....., ...(year) ..., by ...(name of person making statement)....

...(Signature of Notary Public)... ...(Print, Type, or Stamp Commissioned name of Notary Public)...

Personally Known.....OR Produced.....as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the last registered owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien shall be served on the last registered owner of the aircraft and all persons having an equitable or legal interest in the aircraft. The claim of lien shall be so served before recordation.

(e) The claim of lien shall be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien shall attach at the time of recordation and shall take priority as of that time.

(7) A purchaser or recipient in good faith of an aircraft sold or obtained under this section takes the property free of the rights of persons then holding any legal or equitable interest to the aircraft, whether or not recorded. The purchaser or recipient is required to notify the appropriate Federal Aviation Administration office of such change in the registered owner of the aircraft.

(8) If the aircraft is sold at public sale, the airport shall deduct from the proceeds of sale the costs of transportation, storage, publication of notice, and all other costs reasonably incurred by the airport, and any balance of the proceeds shall be deposited into an interest-bearing account not later than 30 calendar days after the airport's receipt of the proceeds and held there for 1 year. The rightful owner of the aircraft may claim the balance of the proceeds within 1 year after the date of the deposit by making application to the airport and presenting acceptable written evidence of ownership to the airport's director or the director's designee. If no rightful owner claims the proceeds within the 1-year period, the balance of the proceeds shall be retained by the airport to be used in any manner authorized by law.

(9) Any person acquiring a legal interest in an aircraft that is sold by an airport under this section or s. 705.182 shall be the lawful owner of such aircraft and all other legal or equitable interests in such aircraft shall be divested and of no further force and effect, provided that the holder of any such legal or equitable interests was notified of the intended disposal of the aircraft to the extent required in this section. The airport may issue documents of disposition to the purchaser or recipient of an aircraft disposed of under this section.

Section 47. Section 705.184, Florida Statutes, is created to read:

705.184 Derelict or abandoned motor vehicles on the premises of public-use airports.—

(1)(a) Whenever any derelict or abandoned motor vehicle is found on premises owned or controlled by the operator of a public-use airport, including airport premises leased to a third party, the director of the airport or the director's designee may take charge of the motor vehicle and make a record of the date such motor vehicle was found.

(b) For purposes of this section, the term:

1. "Abandoned motor vehicle" means a motor vehicle that has been disposed of on a public-use airport in a wrecked, inoperative, or partially dismantled condition or a motor vehicle that has remained in an idle state on the premises of a public-use airport for 45 consecutive calendar days.

2. "Derelict motor vehicle" means any motor vehicle that is not in a drivable condition.

(c) After the information relating to the abandoned or derelict motor vehicle is recorded in the airport's records, the director or the director's designee may cause the motor vehicle to be removed from airport premises by the airport's wrecker or by a licensed independent wrecker company to be stored at a suitable location on or off the airport premises. If the motor vehicle is to be removed from airport premises by the airport's wrecker, the airport must follow the procedures in subsections (2)-(8). The procedures in subsections (2)-(8) do not apply if the motor vehicle is removed from the airport premises by a licensed independent wrecker company, and the licensed wrecking company shall comply with s. 713.78.

(2) The airport director or the director's designee shall contact the Department of Highway Safety and Motor Vehicles to notify that department that the airport has possession of the abandoned or derelict motor vehicle and to determine the name and address of the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and any person who has filed a lien on the motor vehicle. Within 7 business days after receipt of the information, the director or the director's designee shall send notice by certified mail, return receipt requested, to the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle. The notice shall state the fact of possession of the motor vehicle, that charges for reasonable towing, storage, and parking fees, if any, have accrued and the amount thereof, that a lien as provided in subsection (6) will be claimed, that the lien is subject to enforcement pursuant to law, that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any motor vehicle which, at the end of 30 calendar days after receipt of the notice, has not been removed from the airport upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, may be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(3) If attempts to notify the owner or lienholder pursuant to subsection (2) are not successful, the requirement of notice by mail shall be considered met and the director or the director's designee, in accordance with subsection (5), may cause the motor vehicle to be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle

being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(4)(a) The owner of, or any person with a lien on, a motor vehicle removed pursuant to subsection (1), may, within 10 calendar days after the time he or she has knowledge of the location of the motor vehicle, file a complaint in the county court of the county in which the motor vehicle is stored to determine if his or her property was wrongfully taken or withheld.

(b) Upon filing a complaint, an owner or lienholder may have his or her motor vehicle released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the fees for towing, storage, and accrued parking, if any, to ensure the payment of such fees in the event he or she does not prevail. Upon the posting of the bond or other adequate security and the payment of any applicable fee, the clerk of the court shall issue a certificate notifying the airport of the posting of the bond or other adequate security and directing the airport to release the motor vehicle. At the time of such release, after reasonable inspection, the owner or lienholder shall give a receipt to the airport reciting any claims he or she has for loss or damage to the motor vehicle or the contents of the motor vehicle.

(5) If, after 30 calendar days after receipt of the notice, the owner or any person claiming a lien has not removed the motor vehicle from its storage location upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, or shown reasonable cause for the failure to do so, the airport director or the director's designee may dispose of the motor vehicle as provided in s. 705.182(2)(a), (b), (d), or (e). If the airport elects to sell the motor vehicle pursuant to s. 705.182(2)(d), the motor vehicle may be sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less. The sale shall be a public auction either on the Internet or at a specified physical location. If the date of the sale was not included in the notice required in subsection (2), notice of the sale, sent by certified mail, return receipt requested, shall be given to the owner of the motor vehicle and to all persons claiming a lien on the motor vehicle. Such notice shall be mailed not less than 10 calendar days before the date of the sale. In addition to the notice by mail, public notice of the time and place of the sale at auction shall be made by publishing a notice of the sale at auction one time, at least 10 calendar days prior to the date of sale, in a newspaper of general circulation in the county in which the sale is to be held. All costs incurred by the airport for the towing, storage, and sale of the motor vehicle, as well as all accrued parking fees, if any, shall be recovered by the airport from the proceeds of the sale, and any proceeds of the sale in excess of such costs shall be retained by the airport for use by the airport in any manner authorized by law.

(6) The airport pursuant to this section or, if used, a licensed independent wrecker company pursuant to s. 713.78 shall have a lien on an abandoned or derelict motor vehicle for all reasonable towing, storage, and accrued parking fees, if any, except that no storage fee shall be charged if the motor vehicle is stored less than 6 hours. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, or lienholders are not successful, the requirement of notice by mail shall be considered met. Serving of the notice does not dispense with recording the claim of lien.

(7)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which shall state:

1. The name and address of the airport.

2. The name of the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle.

3. The costs incurred from reasonable towing, storage, and parking fees, if any.

4. A description of the motor vehicle sufficient for identification.

(b) The claim of lien shall be signed and sworn to or affirmed by the airport director or the director's designee.

(c) The claim of lien shall be sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of .....

County of .....

Before me, the undersigned notary public, personally appeared ....., who was duly sworn and says that he/she is the ..... of ....., whose address is.....; and that the following described motor vehicle:

...(Description of motor vehicle)...

owned by ....., whose address is ....., has accrued $..... in fees for a reasonable tow, for storage, and for parking, if applicable; that the lienor served its notice to the owner, the insurance company insuring the motor vehicle notwithstanding the provisions of s. 627.736, Florida Statutes, and

all persons of record claiming a lien against the motor vehicle on ....., ...(year) ..., by.....

...(Signature)...

Sworn to (or affirmed) and subscribed before me this ..... day of ....., ...(year) ..., by ...(name of person making statement)....

...(Signature of Notary Public)... ...(Print, Type, or Stamp Commissioned name of Notary Public)...

Personally Known.....OR Produced.....as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien shall be served on the owner of the motor vehicle, the insurance company insuring the motor vehicle, notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle notwithstanding the provisions of s. 627.736, or lienholders are not successful, the requirement of notice by mail shall be considered met. The claim of lien shall be so served before recordation.

(e) The claim of lien shall be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien shall attach at the time of recordation and shall take priority as of that time.

(8) A purchaser or recipient in good faith of a motor vehicle sold or obtained under this section takes the property free of the rights of persons then holding any legal or equitable interest thereto, whether or not recorded.

Section 48. Section 479.156, Florida Statutes, is amended to read:

479.156 Wall murals.—Notwithstanding any other provision of this chapter, a municipality or county may permit and regulate wall murals within areas designated by such government. If a municipality or county permits wall murals, a wall mural that displays a commercial message and is within 660 feet of the nearest edge of the right-of-way within an area adjacent to the interstate highway system or the federal-aid primary highway system shall be located in an area that is zoned for industrial or commercial use and the municipality or county shall establish and enforce regulations for such areas that, at a minimum, set forth criteria governing the size, lighting, and spacing of wall murals consistent with the intent of the Highway Beautification Act of 1965 and with customary use. Whenever a municipality or county exercises such control and makes a determination of customary use pursuant to 23 U.S.C. s. 131(d), such determination shall be

accepted in lieu of controls in the agreement between the state and the United States Department of Transportation, and the department shall notify the Federal Highway Administration pursuant to the agreement, 23 U.S.C. s. 131(d), and 23 C.F.R. s. 750.706(c). A wall mural that is subject to municipal or county regulation and the Highway Beautification Act of 1965 must be approved by the Department of Transportation and the Federal Highway Administration when required by federal law and federal regulation under the agreement between the state and the United States Department of Transportation and federal regulations enforced by the Department of Transportation under s. 479.02(1). The existence of a wall mural as defined in s. 479.01(30)~~(27)~~ shall not be considered in determining whether a sign as defined in s. 479.01(20)~~(17)~~, either existing or new, is in compliance with s. 479.07(9)(a).

Section 49. This act shall take effect July 1, 2010.

Approved by the Governor June 4, 2010.

Filed in Office Secretary of State June 4, 2010.