

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

**HILLSBOROUGH COUNTY, FLORIDA,
a political subdivision of the State of Florida,**

Plaintiff,

CASE NO.: 19-CA-001382

v.

Division: J

**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,**

**VALIDATION OF
TRANSPORTATION SALES
SURTAX REVENUE BONDS,
SERIES 2019, IN AN AGGREGATE
PRINCIPLE AMOUNT NOT TO
EXCEED \$10,000,000**

Defendants.

_____ /

NOTICE OF APPEAL

NOTICE IS GIVEN that Robert Emerson, Intervenor and Defendant/Appellant, appeals to the Florida Supreme Court the order of this Court rendered on July 9, 2019 (“Amended Final Judgment in Case No. 2019-CA-001382”). The nature of the order is a final order entering final judgment in a bond validation proceeding authorized under section 75 of the Florida Statutes, which is directly appealable to the Florida Supreme Court. *See Fla. Stat. § 75.08; Fla. R. App. P. 9.030(a)(1)(B)(i).* The basis for the entry of judgment was this Court’s earlier order on summary judgment, entered on June 17, 2019 (“Order Granting, in Part, and Denying, in Part, Plaintiff’s Request for Summary Judgment; Order Granting, in Part, and Denying, in Part, Defendants’ Request for Summary Judgment; and Order to Amend the County Charter.”). Copies of both orders are attached.

RECEIVED, 07/25/2019 09:04:30 AM, Clerk, Supreme Court

Dated: July 18, 2019

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was served by electronic mail to:

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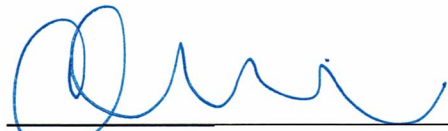
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this 18th day of July 2019.



Chelsea R. Harris, Esq.



This is to certify that the foregoing
is a true and correct copy of the doc
ument on file in my office, witness
my hand and official seal this 7/25/
2019
By: Wanda Pesquera, D.C.

**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**

AMENDED FINAL JUDGMENT IN CASE NO. 2019-CA-001382

This cause came before this Court for final hearing on May 3, 2019, and May 31, 2019, as set forth in the Amended Order to Show Cause issued by this Court upon the Complaint for Bond Validation filed in Case No. 2019-CA-001382 on February 7, 2019 ("Complaint"), by Plaintiff, Hillsborough County, Florida ("County"), against Defendants, the State of Florida and the several taxpayers, property owners and citizens of the 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 County's Transportation Sales Surtax Revenue Bonds, Series 2019, in an aggregate principle amount not to exceed \$10,000,000 (the "Bonds"), to finance,

refinance, and/or reimburse a portion of the costs 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 Committee established by Section 11.10 of the Hillsborough County Charter (collectively, the "County Transportation Projects"). Pursuant to chapter 75, Florida Statutes, in Case No. 2019-CA-001382, the County seeks to validate the Bonds and all matters connected therewith including but not limited to the County's authority to issue the Bonds, the legality of all proceedings in connection therewith, and the revenues and security pledged for the payment thereof.

This Amended Final Judgment is entered in Case No. 2019-CA-001382, and all references to "this action" in this Amended Final Judgment shall mean Case No. 2019-CA-001382. Unless otherwise defined herein, the capitalized terms in this Amended Final Judgment have the same meanings as set forth in Resolution No. R19-027, adopted by the Board of County Commissioners of the County (the "County Commission") on February 6, 2019 (the "Bond Resolution").

This Court, having considered the record and the evidence presented at the final hearing, and being otherwise duly advised in the premises, makes the following findings of fact and conclusions of law:

1. This Court has jurisdiction over this validation and the parties hereto pursuant to section 75.01, Florida Statutes.
2. The County is a charter county and political subdivision of the State of Florida.

3. The County is authorized to bring this action pursuant to chapter 75, Florida Statutes.

Authority to Issue the Bonds

4. Pursuant to the laws of the State of Florida and other applicable provisions of law and by virtue of the authority thereof, the County duly adopted the Bond Resolution authorizing the Bonds and has the lawful power and authority to adopt such resolution.

5. However, for the reasons set forth in the Court's order granting partial summary judgment in Case No.: 18-CA-11749 and this case, the Court finds that portions of the Charter Amendment, as defined below, are unconstitutional and should, therefore, be severed and stricken from the Hillsborough County Charter as shown on Exhibit A attached hereto. The Court hereby severs those matters as set forth on Exhibit A attached to this Amended Final Judgment.

6. Authority is conferred upon the County under and by virtue of the laws of the State, particularly the Constitution of the State of Florida, chapter 125, Florida Statutes, chapter 212, Florida Statutes (and in particular sections 212.054 and 212.055(1), Florida Statutes), the Hillsborough County Charter with all matters severed as set forth in Exhibit A to this Amended Final Judgment, and other applicable provisions of law (collectively, the "Act"), and the Bond Resolution, to issue the Bonds, without the approval of the qualified electors of the County, to finance a portion of the Costs of the County Transportation Projects, and to pay the costs of issuing the Bonds.

7. In session duly and regularly assembled, the County Commission did properly and lawfully adopt the Bond Resolution.

8. In approving the Bond Resolution, the County Commission authorized, among other things, issuing the Bonds in order to finance a portion of the Costs of the County Transportation Projects.

9. The Bond Resolution properly and lawfully authorized the issuance of the Bonds.

10. The issuance of the Bonds for the purposes described herein serves a public purpose, is within the authority of the County, and with the matters severed by the Court as set forth in Exhibit A to this Amended Final Judgment, is authorized and consistent with the Act, including particularly sections 212.054 and 212.055(1), Florida Statutes, and complies with the requirements of all other applicable law.

Legislative Findings of the County

11. In the Bond Resolution, the County Commission ascertained, determined, and declared that:

(A) The County is authorized under the Act to issue bonds to finance, refinance and reimburse various capital projects.

(B) It is necessary and in the best interests of the County to provide for the financing, refinancing and/or reimbursement of a portion of the Costs of the County Transportation Projects, which constitute a valid public purpose of the County.

(C) The Bonds will be paid from the Pledged Funds as provided in the Bond Resolution. The estimated Transportation Sales Surtax Revenues will be at least sufficient to pay the principal of and interest on the Bonds as the same become due.

(D) The County is authorized under the Act to issue the Bonds for the purposes described above.

(E) The Pledged Funds are not pledged or encumbered in any manner.

(F) The principal of and interest on the Bonds and all required sinking fund, reserve and other payments shall be secured solely by a pledge of the Pledged Funds as provided in the Bond Resolution, and the County has full authority to irrevocably pledge the Pledged Funds. The Bondholders shall never have the power to require the County to levy ad valorem taxes on any property within its boundaries to pay the principal of or interest on the Bonds or to make any of the required sinking fund, reserve or other payments required under the Bond Resolution, and the Bonds shall not constitute a lien upon any tangible property owned by or situated within the boundaries of the County.

(G) On November 6, 2018, the voters of the County, by a vote of 282,753 to 210,722, approved in a referendum an amendment to the Hillsborough County Charter providing for the transportation sales surtax (the "Charter Amendment").

12. Except for those matters severed by the Court as set forth in Exhibit A to this Amended Final Judgment, the findings of the County Commission are true and correct and are entitled to deference as conclusively established.

The Charter Amendment Referendum

13. The Charter Amendment was presented to Hillsborough County voters by a citizen's initiative petition in a referendum. For the reasons set forth in the Court's order granting partial summary judgement in Case No.: 18-CA-11749 and this case, the referendum did not violate the single-subject rule. Further, the referendum further met all requirements of section 101.161, Florida Statutes, regarding the ballot title and summary.

14. After receiving the requisite number of petition signatures, the referendum was conducted on November 6, 2018, by the Hillsborough County Supervisor of Elections wherein the Charter Amendment was approved by a vote of the electorate, 282,753 to 210,722.

15. The Charter Amendment enacted a one-percent transportation sales surtax pursuant to section 212.055(1), Florida Statutes, to fund the County Transportation Projects as set forth therein.

16. The Charter Amendment was validly adopted and, with the matters severed by the Court as set forth in Exhibit A to this Amended Final Judgment, complies with section 212.055(1), Florida Statutes.

17. The uses of the funds set forth in the Charter Amendment are consistent with and comply with section 212.055(1).

Security for the Bonds — The Pledged Funds

18. Debt service on the Bonds will be secured solely by the Pledged Funds. Pursuant to the Bond Resolution, the "Pledged Funds" are the Transportation Sales Surtax Revenues, Qualified Derivative Receipts, and all funds held in trust by the County under the Bond Resolution for the benefit of the Bondholders (except for the Rebate Account), and all earnings and investment income derived from the investment thereof.

19. The Bonds do not constitute general obligations or indebtedness of the County within the meaning of the Constitution of the State, but shall be payable from and secured by a lien solely upon and a pledge of the Pledged Funds. No Bondholder shall ever have the right to compel the exercise of the ad valorem taxing power of the County or taxation in any form on any property to pay such Bonds or the interest thereon, nor shall any such Bondholder be entitled to payment of such principal and interest or premium thereon from any other funds of the County except the Pledged Funds as provided in the Bond Resolution. The County is not generally obligated to pay the same or the interest thereon except from the funds pledged therefor as described in the Bond Resolution and by the proceedings authorizing the issuance

of such Bonds, and the faith and credit of the County are not pledged to the payment of the principal of, premium, if any, or interest on such Bonds. The Bonds shall be payable from, and the Bondholders shall have a lien solely on, the Pledged Funds.

Details of the Bonds

20. The Bonds may be issued in one or more series. If the Bonds are not delivered in calendar year 2019, the series designation may be changed to match the calendar year of delivery.

21. The Bonds shall:

- (A) be issued in fully registered form;
- (B) be dated;
- (C) shall be in the denomination of \$5,000 each, or integral multiples thereof;
- (D) bear interest at a rate or rates not exceeding the maximum rate allowed by law, payable semiannually in each year on such dates;
- (E) be serial bonds or term bonds;
- (F) mature on such dates with a final maturity not later than thirty (30) years following the date of their issuance, and may be subject to redemption prior to maturity; and
- (G) have a Paying Agent and Registrar;

all as shall be fixed by supplemental resolution adopted by the County Commission before the Bonds are delivered to their purchasers.

22. The Bond Resolution provides other details of the Bonds and provides for the manner of issuance thereof.

23. The County is not required to expend any ad valorem tax revenues generated by the exercise of the ad valorem taxing power of the County to pay or finance any cost of acquisition,

construction, development, installation, leasing, operation, maintenance or repair of the County Transportation Projects.

24. Neither the Bonds nor the interest and premium, if any, payable thereon shall constitute a general obligation or general indebtedness of the County, or the State of Florida, or any other political subdivision thereof, within the meaning of the Constitution and laws of Florida. The Bonds and the interest and premium, if any, payable thereon do not constitute either a pledge of the full faith and credit of the County or a lien upon any property of the County other than as provided in the Bond Resolution. No owner of any of the Bonds or any other person shall ever have the right to compel the exercise of any ad valorem taxing power of the County or any other public authority or governmental body to pay debt service on the Bonds or to pay any other amounts required to be paid pursuant to the Bond Resolution.

25. The County, by virtue of the Constitution and laws of the State of Florida, and with the matters severed by the Court as set forth in Exhibit A to this Amended Final Judgment, the Act, and the Bond Resolution, is authorized to issue the Bonds to finance a portion of the Cost of the County Transportation Projects.

26. The County has acted in accordance with the law in all respects, and, when issued and sold, the Bonds will be valid and binding special revenue obligations of the County. As such, a successful referendum is not a condition precedent to the issuance of the Bonds.

27. Pursuant to the Bond Resolution, the Bonds will be dated, will bear interest at the rate or rates not exceeding the maximum rate permitted by Florida law at the time of issuance; will be payable or will mature on specific dates not to exceed thirty (30) years from the date of issuance, will be subject to redemption, and will be executed, authorized and delivered and will be in such

form and subject to such terms and conditions, and may be issued in such lesser aggregate principal amount, all as provided in the Bond Resolution.

28. The Bonds may be sold by the County at public sale by competitive bids or by negotiated sale or pursuant to a private placement, as shall be as determined by the County Commission to be in the best interest of the County and set forth in a subsequent resolution of the County Commission pertaining to the series of Bonds.

29. Due and proper notice addressed to the State of Florida, and the taxpayers, property owners and citizens of the County, including nonresidents owning property or 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 was duly published in the Tampa Bay Times, a newspaper published and of general circulation in Hillsborough County, Florida, once each week for two consecutive weeks, the first such publication was on March 21, 2019, which is not less than twenty (20) days prior to the date of the Order to Show Cause hearing, as required by law. The Amended Order to Show Cause and the County's Complaint for Validation were duly and timely served on the State Attorney of the Thirteenth Judicial Circuit of Florida.

30. The Court has carefully considered all objections and defenses raised at the hearing on its Amended Order to Show Cause.

31. With the matters severed by the Court as set forth in Exhibit A to this Amended Final Judgment, all requirements of the Constitution, the Act, and laws of the State of Florida pertaining to the issuance of the Bonds, these proceedings, the adoption of the Bond Resolution, the adoption of the Charter Amendment and the one-percent transportation sales surtax imposed by the Charter Amendment, and all proceedings connected therewith, have been met.

32. With the matters severed by the Court as set forth in Exhibit A to this Final Judgment, the Court hereby validates and confirms the Bonds, the authority of the County to issue the Bonds to finance a portion of the Costs of the County Transportation Projects, and the legality of all matters in connection therewith, including but not limited to the lawfulness and validity of the Charter Amendment and the one percent transportation sales surtax imposed by the Charter Amendment, the uses of the one percent transportation sales surtax set forth in the Charter Amendment, the lawfulness of County Transportation Projects, the Pledged Funds and source of security relating to the payment of the Bonds, and the Bond Resolution.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the issuance by the County of the Bonds bearing interest payable in such manner and on such dates, at interest rates not exceeding the maximum rate permitted by law, are for proper, legal and public purposes and are fully authorized by law, and that with the matters severed by the Court as set forth in Exhibit A to this Amended Final Judgment, this Amended Final Judgment validates and confirms: (i) the authority of the County to issue the Bonds, (ii) the proceedings heretofore taken for the authorization and issuance of the Bonds and the legality of all proceedings in connection therewith, (iii) the revenues and security pledged by the County as provided in the Bond Resolution, for the payment thereof, including, but not limited to, the Charter Amendment; and (iv) all proceedings connected with the foregoing.

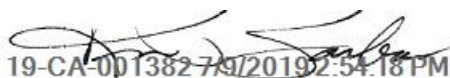
There shall be stamped or written on the back the Bonds a statement in substantially the following form:

"This Bond was validated by judgment of the Circuit Court for Hillsborough County, Florida rendered on _____, 2019.

Chairman

provided that such statement or certificate shall not be affixed within thirty (30) days after the date of this judgment and unless no appeal be filed in this cause.

DONE AND ORDERED AND ADJUDGED in Hillsborough County, Florida, this _____ day of _____, 2019.



19-CA-001382-7/9/2019 2:54:18 PM

19-CA-001382 7/9/2019 2:54:18 PM

REX M. BARBAS
CIRCUIT JUDGE

Conformed Copies to:

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- Jerry M. Gewirtz, Esq.
- David Harvey, Esq.
- David L. Smith, Esq.
- Robert E. Johnson, Esq.
- Julia C. Mandell, Esq.
- Kenneth W. Buchman, Esq.
- Benjamin H. Hill, III, Esq.
- Robert A. Shimberg, Esq.
- J. Logan Murphy, Esq.

EXHIBIT A

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

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~~

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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.

DATE OF SIGNATURE

X _____
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: _____

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

STACY WHITE,
Plaintiff,

CASE NO.: 18-CA-011749

v.

HILLSBOROUGH COUNTY, a Charter
County of the State of ██████ a, et al.,
Defendants.

DIVISION: J

2019 JUN 17 PM 3:43
CLERK OF THE
CIRCUIT COURT
COURT'S

HILLSBOROUGH COUNTY, FLORIDA,
a political subdivision of the State of Florida,
Plaintiff,

CASE NO.: 19-CA-001382

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.

VALIDATION OF TRANSPORTATION
SALES SURTAX REVENUE BONDS,
SERIES 2019, IN AN AGGREGATE
PRINCIPLE AMOUNT NOT TO
EXCEED \$10,000,000.

ORDER GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFF'S REQUEST
FOR SUMMARY JUDGMENT;
ORDER GRANTING, IN PART, AND DENYING, IN PART, DEFENDANTS' REQUEST
FOR SUMMARY JUDGMENT,
AND;
ORDER TO AMEND THE COUNTY CHARTER

THIS CAUSE came before the Court for hearing on May 3, 2019, and May 31, 2019, on
cross motions for summary judgment in Case No. 18-CA-011749 and for the duly noticed show
cause hearing in Case No. 19-CA-001382. Having reviewed the pleadings, heard arguments from
all parties, and being otherwise fully advised in the premises, the Court finds and rules as follows:

BACKGROUND

The present action arises from the amendment of Hillsborough County's Charter to include Article 11 which imposed a transportation surtax on transactions in Hillsborough County. In 2018, a group of Hillsborough County residents formed Keep Hillsborough County Moving. Keep Hillsborough County Moving's purpose was to "support a citizen-driven ballot initiative to amend the Hillsborough County Charter by adopting a new article, Article 11, titled 'Surtax for Transportation Improvements.'" *See* T. Hudson Aff. ¶ 9.

On June 15, 2018, All for Transportation, a connected organization to Keep Hillsborough County Moving, received the required official certification allowing them to gather the required number of Hillsborough County voters signatures needed to support its petition to place the referendum on the ballot. *See* T. Hudson Aff. ¶¶ 11-15. Having collected 50,705 validly signed petitions, All for Transportation submitted the petitions to the Supervisor of Elections. *Id.* at ¶ 18. On August 8, 2018, the Supervisor of Elections informed the Board of County Commissioners ("BOCC") that All for Transportation collected the required amount of signatures and that the proposed amendment and ballot summary would be placed on the November 2018, general election ballot. *See* Supervisor of Elections Letter to BOCC.

On November 6, 2018, 57.3% of Hillsborough County voters elected to amend the County Charter to enact a 1% Transportation System Surtax. *See* Stipulation of Undisputed Facts ¶ 10-11. In so doing, voters adopted a "formula" for the distribution of the surtax proceeds. *See* County Charter Amendment Petition Form.

The adopted “formula” as reflected in Article 11 Section 5 of the County Charter provides:

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.

Id.

On January 1, 2019, the 1% surtax became effective for a period of thirty years. *See* Stipulation of Undisputed Facts ¶ 13. On February 6, 2019, BOCC adopted Resolution No. R19-027 authorizing the issuance of revenue bonds, in an aggregate principle amount not to exceed

\$10,000,000, secured by pledging the transportation surtax revenues received by the County pursuant to Article 11. ¶ 14.

ISSUES

On December 3, 2018, Plaintiff White subsequently brought an action for declaratory judgment in Case No. 18-CA-011749, pursuant to Florida Statutes Sections 86.011 and 212.055(1). Plaintiff's Complaint was subsequently amended on March 22, 2019. Plaintiff White's Amended Complaint relates to whether Article 11 of Hillsborough County's Charter, imposing a surtax on transportation, conflicts with section 212.055(1) and is therefore unconstitutional, invalid or unenforceable.

Plaintiff specifically asserts:

1. The provisions of Article 11 prevent BOCC from discharging its statutory duties and responsibilities to apply the proceeds of the surtax as BOCC "deems appropriate";
2. The provisions of Article 11 prevent 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;
3. The creation and powers of IOC [(Independent Oversight Committee)] are not authorized by any general law and are in conflict with section 212.055(1);
4. The proposed Article 11 is an invalid amendment under Article 8.03 of the Hillsborough County Charter because it embraces more than one subject, and;
5. The ballot summary was clearly and conclusively defective and did not provide the voters with fair notice of the contents of the proposed initiative.

See Amended Complaint for Declaratory Judgment.

On February 7, 2019, Hillsborough County filed a Complaint seeking a bond validation pursuant to Florida Statutes Chapter 25, in Case No. 19-CA-001382. *See Stipulation of Undisputed Facts* ¶ 24. On February 14, 2019, this Court entered an order explaining the extent to which the

Court would allow Case Nos. 18-CA-011749 and 19-CA-001382 to be consolidated. *See* Feb. 14, 2019, Order.

STANDARD OF REVIEW

As a threshold issue, the Court finds it has jurisdiction to consider a complaint attacking the constitutionality of a charter amendment enacted by voters through the citizen initiative process. *See Citizens for Responsible Growth v. City of St. Pete Beach*, 940 So. 2d 1144, 1147 (Fla. 2d DCA 2006). The Florida Supreme Court has explained the standard of review for citizen initiative petitions as follows:

This Court has traditionally applied a deferential standard of review to the validity of a citizen initiative petition and has been reluctant to interfere with the right of self-determination for all Florida's citizens to formulate their own organic law. This Court does not consider or address the merits or wisdom of the proposed amendment and must act with extreme care, caution, and restraint before it removes a constitutional amendment from the vote of the people.

Advisory Opinion to the Atty. Gen. Re: Voting Restoration Amendment, 215 So. 3d 1202, 1205 (Fla. 2017).

This Court wholeheartedly understands and follows the Supreme Court's view of the Court's involvement in the citizen's initiatives. It is always incumbent upon all courts to give credence to initiatives, where not contrary to constitutional law and statutory law, when applicable as here.

In this vein, this Court has long explained that our duty is to uphold the proposal unless it can be shown to be clearly and conclusively defective.

When determining the validity of an amendment arising through the citizen initiative process, our inquiry is limited to two legal issues: (1) whether the proposed amendment violates the single-subject

requirement of article XI, section 3, of the Florida Constitution; and (2) whether the ballot title and summary violate the requirements of section 101.161(1), Florida Statutes.

In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions, 132 So. 3d 786, 794 (Fla. 2014) (internal quotations omitted). **Additionally, “the Court will not address the merits or wisdom of the proposed amendment.”** *Advisory Opinion to the Atty. Gen. re Extending Existing Sales Tax to Non-Taxed Services Where Exclusion Fails to Serve Public Purpose*, 953 So. 2d 471, 477 (Fla. 2007) (internal citation omitted) (emphasis added).

SINGLE-SUBJECT REQUIREMENT

Plaintiff first challenges the validity of the proposed initiative petition by asserting that Article 11, as reflected in the proposed petition, violates the single-subject requirement. The Florida Supreme Court has previously noted that “[n]either the constitution nor Florida Statutes applies the rule to proposed amendments to county charters.” *Charter Review Com'n of Orange County v. Scott*, 647 So. 2d 835, 837 (Fla. 1994). However, the Supreme Court has also found that

Our state constitution revision process offers guidance in the present case. There are four ways that changes to our constitution may be proposed: through the legislature; through the Constitution Revision Commission; through a petition initiative; and through a Constitutional Convention. Art. XI, Fla. Const. Only proposals originating through a petition initiative are subject to the single-subject rule.

Id. (internal citations omitted).

The process for amending the County Charter is analogous to the petition initiative process for amending our state constitution. Article XI, Section 3, of the Florida Constitution sets forth the requirements for a constitutional amendment arising via the citizen initiative process. In pertinent part, it provides that any citizen initiative amendment “shall embrace but one subject and matter directly connected therewith.” Art. XI, § 3, Fla. Const. (2018). In assessing whether an

amendment violates the single-subject rule, a court must determine “whether it has a logical and natural oneness or purpose.” *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984).

In the instant case, the Court finds that the initiative has “a logical and natural oneness of purpose”. The ballot initiative specifically asks whether Hillsborough County residents wish to amend the County Charter to enact a thirty year, one-cent sales surtax to fund transportation improvements throughout Hillsborough County. The proposed amendment’s provisions include components such as examples of what types of projects the proceeds would be used for and distribution of the proceeds, all of which relate to the single unifying purpose – transportation. The Court further notes that the uses included in the amendment duplicate those delineated in section 212.055(1).

As such, the Court finds that the proposed amendment does not violate the single-subject rule.

ADEQUACY OF BALLOT TITLE AND SUMMARY

Florida Statutes Section 101.161(1) requires that whenever a public measure is submitted to the electors, 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.” Section 101.161(1) also mandates that “[t]he ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of.” Although the ballot title and summary need not explain every detail and ramification of the proposed amendment, it 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) (internal quotation omitted); *see also Carroll v. Firestone*, 497 So. 2d 303, 305 (Fla. 1982).

When determining the adequacy of a proposed amendment, the Court asks two questions: (1) “whether the ballot title and summary fairly inform the voter of the chief purpose of the amendment,” and; (2) “whether the language of the title and summary, as written, misleads the public.” *Roberts*, 43 So. 3d at 659 (internal quotations omitted).

After reviewing the ballot summary, this Court finds that while:

It is true ... that certain details of the [text] as well as some of its ramifications were either omitted from the ballot question or could have been better explained therein. That, however, is not the test. *There is no requirement that the referendum question set forth the [text] verbatim nor explain its complete terms at great and undue length.* Such would hamper instead of aiding the intelligent exercise of the privilege of voting. Under our system of free elections, **the voter must acquaint himself with the details of a proposed ordinance on a referendum** together with the pros and cons thereon before he enters the voting booth. If he does not, **it is no function of the ballot question to provide him with that needed education.** What the law very simply requires is that the ballot give the voter fair notice of the question he must decide so that he may intelligently cast his vote.

In re Advisory Opinion to the Atty. Gen. re Physician Shall Charge the Same Fee for the Same Health Care Service to Every Patient, 880 So. 2d 659, 665 (Fla. 2004) (internal citation omitted) (emphasis added).

In the instant case, the Court finds the ballot summary satisfied the statute by informing the voters that, if approved by a majority of the voters, the amendment authorizes the levy of a one-cent sales surtax over the next thirty years to be shared among Hillsborough County, its municipalities, HART, and the Metropolitan Planning Organization for the purpose of financing countywide transportation and road improvements. That is the chief purpose of the proposal – a tax over thirty years for the purpose of transportation needs in Hillsborough County, municipalities and agencies in Hillsborough County. That is all that the statute requires be set forth in the ballot summary. Plaintiff would have this court analyze the motives and intentions of the parties behind

the initiative. However, as the Supreme Court has pointed out, it is not for this Court to go behind the initiative, but to remain within the four corners of the initiative and determine whether it complies with Florida Constitutional requisites.

Additionally, Counsel for Plaintiff asserts that the Court should be concerned with the motives behind utilizing certain verbiage in the ballot summary. However,

In deciding the constitutionality of a charter amendment to a home rule charter, we must presume that it is constitutional and construe it in harmony with the constitution if it is reasonable to do so. The amendment to the charter is only invalid if it is inconsistent with general law, i.e. contradictory in the sense of legislative provisions which cannot coexist.

Charlotte County Bd. Of County Com'rs v. Taylor, 650 So. 2d 146, 148 (Fla. 2d DCA 1995) (internal citations omitted). Neither the motives of the governing body of a county nor the wisdom of a charter amendment are subjects of judicial inquiry. See *City of Pompano Beach v. Big Daddy's, Inc.*, 375 So.2d 281, 282 (Fla.1979); *Rainbow Lighting, Inc. v. Chiles*, 707 So. 2d 939, 940 (Fla. 3d DCA 1998).

As such, this Court finds that the ballot summary more than adequately meets the requirement and that it does satisfies section 101.161.

CONSTITUTIONALITY

Next, Plaintiff puts forth three arguments as to why various provisions in Article 11 conflict with Florida Statutes Section 212.055(1) and should therefore be declared unconstitutional.

The Supreme Court has ruled that

Under the Florida Constitution, counties operating under county charters, such as Sarasota County, shall have all powers of local self-government not inconsistent with general law. Further, the governing body of a charter county may enact county ordinances not inconsistent with general law. There are two separate and distinct ways in which a local government enactment may be inconsistent with state law. A local government enactment may be

inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute.

Sarasota All. For Fair Elections Inc. v. Browning, 28 So. 3d 880, 885-86 (Fla. 2010) (internal citations omitted). As previously stated, the Second District Court of Appeal has further clarified the courts duties when examining amendments to a county home rule charter:

In deciding the constitutionality of a charter amendment to a home rule charter, we must presume that it is constitutional and construe it in harmony with the constitution if it is reasonable to do so. The amendment to the **charter is only invalid if it is inconsistent with general law**, i.e. contradictory in the sense of legislative provisions which cannot coexist.

Charlotte County Bd. Of County Com'rs, 650 So. 2d at 148 (internal citations omitted) (emphasis added). However, neither the motives of the governing body of a county nor the wisdom of a charter amendment are subjects of judicial inquiry. See *City of Pompano Beach*, 375 So.2d at 282; *Rainbow Lighting, Inc.*, 707 So. 2d at 940.

Plaintiff first asserts that Article 11 Sections 5 – 9 conflict with section 212.055(1)(d)(1)-(4) and are thus unconstitutional. Plaintiff argues that Article 11 Sections 5 – 9, mandating what uses the proceeds should be applied to and how much each use is to receive, were determined solely by voters. Section 212.055(1) in pertinent part states

(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.

...

(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.**

§ 212.055(1)(a),(d), Fla. Stat. (2018) (emphasis added). The use of the word *shall* denotes the legislature's intention that the county commission be exclusively responsible for determining which uses the surtax proceeds should be allocated to as well as the amount to be distributed to each use. *See Maloy v. Seminole County*, 264 So. 3d 370, 374 (Fla. 3d DCA 2019) (Unlike the word 'may,' which implies discretion, the word 'shall' usually denotes a requirement.).

The Court finds that Article 11 Section 5 mandates how the proceeds will be distributed; section 6 requires IOC to approve all Agency project plans and amendments to said plans before the Agency may utilize the proceeds towards the project; section 7 mandates how each Agency must expend their allocated proceeds; section 8 specifies how HART must allocate their portion of proceeds to specific uses, and; section 9 states that if a two-thirds majority of IOC determines an Agency is not in compliance with Article 11 and if the Agency fails to correct the non-compliance, IOC may direct the Clerk to suspend distribution of proceeds to the Agency until such time as they come into compliance. Because Article 11 Sections 5 – 9 were established by the voters rather than by the county commission, this Court finds they fly directly in the face of general law as enunciated in section 212.055(1)(d)(1)-(4). *See Charlotte County Bd. Of County Com'rs*, 650 So. 2d at 149 (holding amendment unconstitutional where it was inconsistent with general laws which required county commission, not electors, to establish budget and levy ad valorem taxes). The Court finds that “[i]f the voters are not satisfied with the commissioners’ actions in this regard, they have a remedy through the ballot box at the next popular election.” *Id.*

As such, the Court finds the portions of Article 11 Sections 5 – 9 that have been stricken on the attached Amended Petition Form, unconstitutional. This is because the

stricken portions constitute a usurpation of powers as they dictate the uses BOCC may apply the proceeds to as well as how much of the proceeds BOCC may apply to each one.

Plaintiff next asserts that Article 11 Sections 4 and 5 conflict with section 212.055(1) and are therefore unconstitutional. Plaintiff specifically asserts that Article 11 Sections 4 and 5 dictate how the clerk must distribute the proceeds without any determination by BOCC. The Court finds that although the clerk is the “ex officio clerk of the board of county commissioners . . . and custodian of all county funds,” they may not carry out any action that would distribute funds in a manner inconsistent with general law. Fla. Const. Art. VIII, § 1(d) (2018).

As previously stated, the legislature has mandated that BOCC is solely responsible for determining which uses to apply the proceeds to and how much to allocate to each use. The Court finds that Article 11 Section 4 merely outlines the duties of the clerk and does not deprive BOCC of any statutory duty. Section 5, however, mandates which uses the proceeds shall be applied to and provides a formula for the distribution of the proceeds. Because Article 11 Section 7 was solely decided by the voters through the initiative petition process without any input from BOCC, it is in direct conflict with general law. It is in conflict with general law because section 212.055(1) requires the clerk to distribute the proceeds in accordance with how BOCC deems appropriate.

As such, the Court finds Article 11 Section 4 constitutional. The Court further finds the portions of Article 11 Section 5 that have been stricken on the attached Amended Petition Form, unconstitutional.

Finally, Plaintiff asserts that Article 11 Sections 6, 9, and 10 are unconstitutional as they also conflict with section 212.055(1). Plaintiff argues that Article 11 Sections 6, 9, and 10 create an IOC and confer IOC with the authority to perform BOCC’s statutorily mandated duties. The Court finds that duties which the legislature expressly provides shall be performed by county

commissioners cannot be conferred upon another. *See State v. Wheat*, 103 Fla. 1 (Fla. 1931); *Citizens for Reform v. Citizens for Open Government, Inc.*, 931 So. 2d 977 (Fla. 3d DCA 2006). However, an independent review committee is not prohibited from reviewing materials and executing supplementary duties so long as it does not relieve BOCC of its authority and mandated duties. *Id.*

As the Court previously found, section 6 requires IOC to approve all Agency project plans and amendments to said plans before such Agency may utilize the proceeds towards the project, and; section 9 states that if a two-thirds majority of IOC determines an Agency is not in compliance with Article 11 and if such Agency fails to correct the non-compliance, IOC may direct the Clerk to suspend distribution of proceeds to the Agency until such time as they come into compliance. Upon further review, the Court finds Article 11 Section 10 explains: IOC's purpose; how IOC members will be appointed; term limits for IOC members; how IOC may conduct business, and; the responsibilities of IOC. Among IOC's responsibilities mandated in section 10 is the approval of Agency project plans.

The Court finds that Article 11 Sections 6, 9, and 10 reflect the duties prescribed to IOC are not supplementary and instead have the effect of depriving the county commission of its statutory authority and duties mandated in section 212.055(1). The portions **not** stricken allow IOC to review and audit the expenditures and plans that are proposed under the Amendment and make their findings known to the general public.

As such, the Court finds Article 11 Sections 6, 9, and 10, as stricken on the attached Amended Petition Form, unconstitutional. This is because the stricken portions prescribe duties to IOC, which have the effect of relieving BOCC of the following duties: determining

which uses the proceeds will be applied; determining in which combination the proceeds may be applied, or; final approval and payment thereof.

SEVERABILITY

Finally, this Court must determine whether the unconstitutional portions of Article 11 Sections 5 – 10 require the entire amendment be struck down or whether the unconstitutional portions of the aforementioned sections may be severed from the amendment. The Court notes that Article 9 Section 5 of the County Charter provides “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.” Hillsborough County, Fla., County Charter, Art. IX, § 9.5 (2018). Thus, “[t]he severability of a statutory provision is determined by its relation to the overall legislative intent of the statute of which it is a part, and whether the statute, less the invalid provisions, can still accomplish this intent.” *Ray v. Mortham*, 742 So. 2d 1276, 1280 (Fla. 1999) (internal citation omitted). The test to determine the severability provides that:

When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the []purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the [voters] would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

Id. at 1281 (internal citation omitted).

In the instant case, the Court finds that (1) the unconstitutional portions of the provisions can be separated from the remaining valid portions of the provisions, (2) the purpose expressed in the valid provisions can be accomplished independently of the portions which are void, (3) the valid and invalid features are not so inseparable in substance that it can be said that the voters

would not have passed it without the invalid features, and (4) the amendment is completely operational without the invalid portions. In finding that the valid and invalid features are not so inseparable in substance that it can be said that the voters would not have passed it without the invalid features, the Court finds it clear from the initiative petition that severability was anticipated by the voters.

The initiative petition contained a severability clause as well as a supremacy clause, which is persuasive that the framers intended severability to save the amendment in case portions of it were declared invalid. Voters were provided with a clear notice of severability because: the full text of the amendment, including the severability and supremacy clause, was available throughout the county prior to the election; there was substantial news coverage regarding the proposed Article 11 being on the November ballot, and; there were various forms of political advertising for and against the measure prior to the election.

As such, the Court finds that the amendment survives the severability analysis and should not be stricken.

SUMMARY

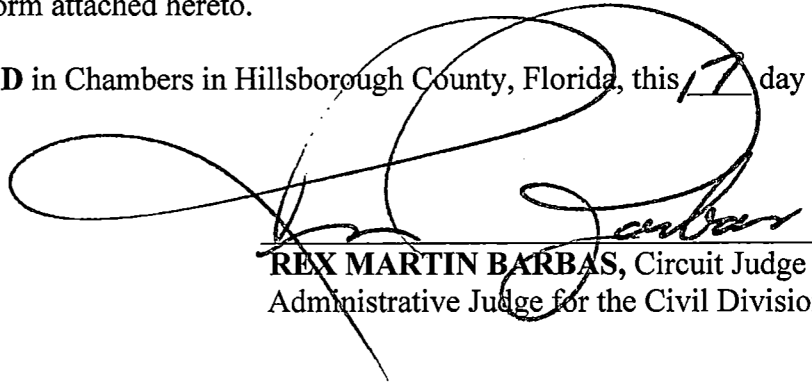
It is evident that the voters of Hillsborough County desire to improve transportation needs. It is further obvious to this Court that the electorate made their desires clear. The Constitution gives the power to apply sales taxes. The legislature has given certain counties the right to issue sales taxes under certain conditions. Therefore, those conditions must be followed if we are to be governed by law.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that

1. Plaintiff's Motion for Summary Judgment is hereby **GRANTED, IN PART, and DENIED, IN PART**, as set forth above.

2. Defendants' Motion for Summary Judgment is hereby **GRANTED, IN PART**, and **DENIED, IN PART**, as set forth above.
3. Article 11, of the Hillsborough County Charter, shall be amended as reflected in the Amended Petition Form attached hereto.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this 17 day of June, 2019.



A large, stylized handwritten signature in black ink, appearing to read 'Rex Martin Barbás', is written over a horizontal line. The signature is highly cursive and loops around itself.

REX MARTIN BARBAS, Circuit Judge
Administrative Judge for the Civil Divisions

Copies furnished via JAWS

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~~

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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~~

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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

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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.

DATE OF SIGNATURE

X _____
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: _____