

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

STACY WHITE

Plaintiff,

v.

Case No.: 18-CA-11749

Division: J

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

Defendants.

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiff, Stacy White (Mr. White), by and through his undersigned attorneys, brings this action for declaratory judgment.

JURISDICTION AND VENUE

1. This is an action for a declaratory judgment pursuant to section 86.011, Florida Statutes (2018) to determine whether Article 11 of the Hillsborough County Charter is unconstitutional, invalid, or unenforceable, in whole or in part. This Court has jurisdiction of the subject matter of this complaint.

2. Venue is proper in Hillsborough County to perform such a judicial review of Article of Article 11 of the Hillsborough County Charter to determine these issues.

STANDING

3. Mr. White is a citizen, resident, and taxpayer of Hillsborough County.

4. He challenges the exercise of the taxing and spending authority established by Article 11 for each of the Defendants except for Intervenor on the ground that it exceeds specific limitations imposed on their taxing or spending powers by the Florida Constitution.

5. The Florida Constitution provides:

- a. In Article VIII, section 1(g) that: “Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.”
- b. In Article VIII, section 1(e) that: “Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years.”
- c. In Article VIII, section 1(b) that: “The care, custody and method of disbursing county funds shall be provided by general law.”
- d. In Article VII, section 1(a) that: “No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible

personal property. All other forms of taxation shall be preempted to the state except as provided by general law.”

- e. In Article VII, section 9(a) that: “Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.
- f. In Article V, section 1 that: “The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality.”

6. As alleged in greater detail in this amended complaint, Mr. White maintains that Article 11 of the Hillsborough County Charter subjects him to governance under local law that exceeds specific limitations imposed on these local governments’ taxing or spending powers by the Florida Constitution. Specifically, he is entitled to a transportation tax system that is created and restricted by the general law of Florida. That law requires that the BOCC have the duty and the responsibility to make appropriate decisions as to all uses of transportation surtax proceeds. Article 11, on its face, establishes a spending or appropriation structure that provides for specific allocations of surtax proceeds to various governmental agencies for a period of thirty years without the need of any vote by the BOCC ever, much less any proper decision-making process to exercise its discretion as to what uses, in whatever amounts, may be appropriate for the citizens of Hillsborough County. The Legislature delegated its power to tax to Hillsborough County under section 212.055(1), subject to the requirement that the BOCC have the duties and responsibilities of spending or appropriating those funds. The Legislature delegated its powers under a statutory

system that assured appropriate governmental decisions and accountability to the voters from representatives, whom they could retain or could replace in general elections. Article 11 deprives the BOCC of these powers and actually transfers some of these powers to an independent, unelected group of citizens. Article 11 is unconstitutional and deprives Mr. White, as a taxpayer and citizen of Hillsborough County, of a taxation system subject to the proper limitations guaranteed to him by the Florida Constitution and the general law of Florida.

7. Although unnecessary to establish standing as a taxpayer in this case, Mr. White has also sustained special damages as a result of Article 11:

- a. Unlike taxpayers in the other counties of Florida, due to his residency, he is subjected to taxation and government spending that is beyond the control of his representatives. The BOCC is implementing Article 11 without engaging in the deliberative process required to exercise reasoned discretion to select the appropriate uses of these surtax proceeds. The BOCC is doing this because it believes it must obey the conditions, restrictions, and limitations contained in Article 11 even though Article 11 was created by a private group of citizens and with no open, public process. Over his own personal protest, the BOCC is creating an independent, unelected body of citizens to perform functions that are the functions for which all citizens in Hillsborough County, like citizens in other counties, are constitutionally entitled to have performed by their BOCC.
- b. Mr. White has a legal responsibility to advocate for the citizens of Hillsborough County and especially those in District 4 who elected him to represent them in county government. Because the BOCC is abiding by the unconstitutional restrictions in Article 11, he cannot meaningfully advocate for the use of these

surtax funds for projects that would be appropriate under section 212.055(1), but are sharply restricted or impossible under Article 11. For example, he would advocate for the use of these funds, including funds that are now required to go to HART, for projects that widen Lithia Pinecrest Road, Big Bend Road, and 19th Avenue. These are projects that would be permitted projects under section 212.055(1), but are essentially impossible under Article 11.

- c. Mr. White cannot advocate on behalf of the citizens of District 4 that HART be required to present a reasoned project plan deemed appropriate by the BOCC and addressing the concerns of the citizens of District 4 before it spends billions of tax dollars on bus services. This would be permitted advocacy under section 212.055(1), but is prohibited under Article 11, which automatically distributes the funds to HART.
- d. He cannot attempt to advocate and negotiate with the Florida Department of Transportation to use these funds to widen State Road 674 (Sun City Center Blvd), which would be permitted advocacy under section 212.055(1), but is essentially impossible under Article 11.

PARTIES

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

9. The Hillsborough Area Regional Transit Authority (HART) is a transportation authority chartered pursuant to Chapter 163, Florida Statutes. In Article 11, HART is described

as an “Agency” and is entitled to receive 45% of the surtax proceeds each year without the BOCC voting annually—or ever—to remit this amount.

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

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

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

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

14. Pat C. Frank is the Clerk of the Circuit Court of Hillsborough County. The Clerk is named in her official capacity. The Clerk is responsible for receiving the proceeds of the surtax

challenged in this Complaint from the Florida Department of Revenue and distributing those proceeds. Under the terms of Article 11, the Clerk is required to distribute funds to HART, and the several municipalities in predetermined proportions without any authorization from the BOCC. The Clerk is required to obey the IOC if it orders a suspension of distributions to Agencies or overrides the BOCC. The Clerk is also required to select an attorney as a member of the IOC.

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

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

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

THE BASIC CONTROVERSY

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

19. Article 11 of the Hillsborough County Charter, the “Surtax for Transportation Improvements,” was submitted to the Hillsborough County voters by initiative petition In November 2018 and was approved by a majority of those voters. A true and accurate copy of Article 11 is attached to this amended complaint as Exhibit B.

20. Every section of Article 11 with the exception of section 11.11 contains content that directly conflicts with the provisions in section 212.055(1).

21. The Defendants, including the Intervenors, deny that Article 11 conflicts with section 212.055(1) and are implementing Article 11 in its entirety without first even attempting to remove all of the provisions that violate state law.

22. Mr. White maintains that he has the rights of any other citizen in Florida to have a taxing and expenditure system in accord with the Florida Constitution and Florida general law, and that the Defendants are proceeding to create a system that deprives the citizens and taxpayers of Hillsborough County of the same rights possessed by other Floridians.

23. This legal disagreement between the parties is a constitutional disagreement of the variety that has been resolved by the process of judicial review since the beginning of our state. No other person, except a duly qualified state judge, may resolve this dispute in a fashion that is binding on all parties.

THE CREATION OF ARTICLE 11

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

25. Article 11 was drafted by undisclosed private citizens. This amendment to Hillsborough County’s Charter was accomplished by “initiative” under Section 8.03 of the

Charter. A true and accurate copy of Article 11, as presented on the “County Charter Amendment Petition Form” is attached hereto and incorporated herein as Exhibit B.

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

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

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

COUNT 1

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

29. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.

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

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

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

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

- a. For a period of 30 years, section 11.05(2) mandates that 45% of the proceeds of the surtax, an amount that in total will likely exceed \$4 billion, must be distributed annually to HART without any vote of the BOCC;
- b. For a period of 30 years, section 11.05(1) mandates that 54% of the proceeds of the surtax must be distributed to Hillsborough County and the above-referenced municipalities based on a “distribution formula” and without any vote of the BOCC.
- c. For a period of 30 years, section 11.05(3) mandates that 1% of the proceeds of the surtax, an amount that in total will likely exceed \$90 million, must be distributed annually to the MPO without any vote of the BOCC.
- d. For a period of 30 years, section 11.07(8) restricts the BOCC’s statutory right to use a substantial percentage of the proceeds of the surtax to add additional lanes for automobile traffic to existing roads and to build new roads and streets.
- e. For a period of 30 years, section 11.07, including all subparts, gives the right to make decisions on uses to the Agencies, when section 212.055(1) requires those decisions to be made by the BOCC. Moreover, it places conditions, limitations, and restrictions on the Agencies’ decisions concerning uses that would violate general law even if the BOCC were free to make the decisions on uses.

- f. For a period of 30 years, section 11.08, including all subparts, gives the right to make certain decisions on uses to HART when section 212.055(1) requires the BOCC to make decisions on funds that may be remitted to HART. Moreover, it places conditions, limitations, and restrictions on HART's decisions concerning uses that would violate general law even if the BOCC were free to make the decisions on uses.

34. In authorizing a local transportation surtax, the Legislature specified that the duly elected members of the BOCC, as the constitutional "governing body" of Hillsborough County must have the duty and the responsibility, when the BOCC deems it appropriate, to "remit" surtax proceeds to HART as a transportation authority. By creating a compulsory distribution of 45% of the proceeds, Article 11 prevents the BOCC from exercising its judgment to fulfill its statutory duties and responsibilities established by the Legislature in the express text of section 212.055(1).

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

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

judgment to fulfill its statutory duties and responsibilities established by the Legislature in the express text of section 212.055(1).

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

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

Requested Relief

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

- a. Declaring that Article 11 of the Charter, as a whole or, in the alternative, in many of its subparts, conflicts with section 212.055(1) and that the mandatory distribution of surtax proceeds created in section 11.05 of the Charter is unconstitutional, invalid, and unenforceable;
- b. Declaring that Article 11 of the Charter, as a whole or, in the alternative, in many of its subparts, conflicts with section 212.055(1) and that the conditions, limitations, and restrictions placed on the uses of the surtax in section 11.07 and 11.08 are unconstitutional, invalid, and unenforceable;
- c. Declaring that Article 11 of the Charter, as a whole or, in the alternative, in many of its subparts, conflicts with section 212.055(1) and that the prohibition on the use of proceeds for additional traffic lanes for automobile traffic and the prohibition on

the use of proceeds for the creation of new roads and streets in section 11.07(8) of the Charter is unconstitutional, invalid, and unenforceable;

- d. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the provisions in sections 11.07(6) and 11.07(9) giving redistribution powers to the IOC and the municipalities are unconstitutional, invalid, and unenforceable;
- e. Declaring that any transportation surtax in Hillsborough County must provide the BOCC with the duties and responsibilities specified in section 212.055(1)(d) and that Article 11 does not so provide; and
- f. Declaring that the invalid portions of Article 11 described in the preceding subparagraphs are so central to Article 11— both as presented to the voters and as it is to be implemented for the next 30 years – that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11 or under the constitutional doctrine of severability, and that Article 11 in its entirety is unconstitutional, invalid, and unenforceable.

COUNT II

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

- 39. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.
- 40. Section 11.04 of Article 11 requires the Clerk to receive the proceeds of the surtax from the Florida Department of Revenue and to distribute those proceeds to the “Agencies” within five business days of receipt.
- 41. The Clerk is required to distribute the proceeds in accordance with section 11.05, which contains the compulsory distributions discussed in Count I.

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

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

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

Requested Relief

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

- a. Declaring that Article 11 of the Charter conflicts with section 212.055(1) and that the distribution duties created for the Clerk in section 11.04, in the absence of any prior vote to distribute by the BOCC, is unconstitutional, invalid, and unenforceable; and
- b. Declaring that the invalid portions of Article 11 described in the preceding subparagraph, independently and also coupled with those described in Count I are so central to Article 11— both as presented to the voters and as it is to be implemented for the next 30 years — that they cannot be severed from Article 11 under the narrow severability clause in section 11.11(2) of Article 11 or under the constitutional doctrine of severability, and that Article 11 in its entirety is unconstitutional, invalid, and unenforceable.

COUNT III

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

45. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.

46. Section 212.055(1) makes no reference to an “Independent Oversight Committee.” It provides no powers or authority to any such committee. It does not authorize a County to create such a committee or to delegate the BOCC’s constitutional and statutory decision-making authority to such a committee. No general law gives the power of judicial or quasi-judicial review to any such committee, no matter the credentials of its unelected members, and Article V of the Florida Constitution expressly forbids this.

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

- a. Each municipality is required to appoint at least one member of the IOC;
- b. The Property Appraiser, the Tax Collector and the County Clerk are each required to appoint one member;
- c. The Board of Directors of HART are required to appoint two members; and
- d. The BOCC is required to appoint four members.

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

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

50. Section 11.06 of Article 11 discusses “Agency Project Plans.” During the annual planning process, each project plan “must be approved by the governing body of the applicable Agency and by a majority vote of the Independent Oversight Committee.” The proposed uses of the surtax proceeds of the other Agencies are submitted, not to the BOCC for its decision as required by section 212.055(1), but rather to the IOC.

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

52. While section 212.055(1) vests authority in the BOCC to make the decisions it deems appropriate for the annual use of the proceeds from the surtax, Section 11.06 requires that each project plan approved by the BOCC must also be approved by a majority vote of the IOC. Thus, the IOC can effectively veto a project that has been approved by the BOCC. The IOC can do so despite the fact that: (1) its existence is not authorized by the constitution or any statute, (2) a majority of its members are not selected by the BOCC, (3) its members are not elected or otherwise accountable to the local residents, and (4) Article 11 creates no standards for the IOC to apply or obey in deciding to veto a project approved by the BOCC. Instead, the IOC is empowered to “make and adopt such by-laws, rules and regulations for its own guidance and for the oversight of the Transportation Surtax as it may deem expedient and not inconsistent with this Charter.” The Agencies, much less the BOCC, are not given any power to restrain or regulate the independence of the IOC.

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

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

Requested Relief

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

- a. Declaring that section 11.10 of Article 11 of the Charter, by creating the IOC and authorizing it to perform duties of the BOCC, conflicts with section 212.055(1) and is unconstitutional, invalid, and unenforceable;
- b. Declaring that section 11.09 of Article 11 of the Charter, by vesting unauthorized judicial power in the IOC, conflicts with general law including section 212.055(1) and is unconstitutional, invalid, and unenforceable;
- c. Declaring that section 11.06 of Article 11 of the Charter, in requiring the BOCC to obtain the approval of the IOC before the BOCC can deem a project to be an

acceptable use of the surtax proceeds and apply those proceeds to the project as a valid use, conflicts with section 212.055(1) and is unconstitutional, invalid, and unenforceable; and

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

COUNT IV

The Proposed Article 11 is an Invalid Amendment under Article 8.03 of the Hillsborough County Charter because it Embraces More than One Subject.

55. Article 8.03 restricts a citizens' initiative petition to a single subject. Specifically, it states: "Each petition shall embrace but one subject and matter properly connected therewith."

56. The Ballot Title for this amendment provided: "Funding for Countywide Transportation and Road Improvements by County Charter Amendment."

57. "Funding" is a broad concept, and that term was used to address two subjects: 1) the adoption of a transportation surtax as authorized by section 212.055(1), Florida Statutes; and 2) the creation of a spending or appropriation system containing mandatory recipients who receive mandatory amounts of the surtax proceeds, coupled with conditions, limitations, and restrictions on the uses otherwise authorized by section 212.055(1) to be decisions within the sound discretion of the BOCC.

58. The first subject of the proposed Article 11 was an appropriate subject for an amendment. Standing alone, it could have been described by a ballot title stating roughly: “Establishing a 30-year, 1% sales tax for Hillsborough County transportation projects.” The ballot summary could have explained that the BOCC would have discretion to fund a list of uses authorized by Florida law.

59. But the citizens behind All For Transportation, who created the proposed Article 11 in their petition, wanted to deprive the BOCC of its statutory powers. Thus, they created an elaborate funding structure, including the IOC. This second subject of “Funding” is not only a separate subject, it is also, in its entirety, an unconstitutional restriction upon the powers given to the BOCC by the Legislature in section 212.055(1). The Legislature authorized charter counties to have this taxing power, but only if the BOCC would be responsible for and accountable for the appropriations made, and the uses approved, once the surtax was in place.

60. Thus, the proposed Article 11 had two “chief purposes.” One chief purpose was to establish the transportation tax authorized by the Legislature. The other chief purpose was to establish a mandatory spending or appropriation structure for the tax proceeds that deprived the BOCC of the powers given to it by the Legislature, and that assured the tax money would go to fund the users and the projects that the citizens behind the initiative favored.

61. Even if the second purpose were constitutional, it would violate the requirement that an initiative petition must contain only one subject. The fact that the second subject is unconstitutional simply makes the one-subject violation more harmful.

Requested Relief

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

- a. Declaring that the proposed Article 11 violates section 8.03 of the Hillsborough County Charter by including more than a single subject; and
- b. Declare that Article 11 is unconstitutional, void, and unenforceable because it was not approved by the voters as two separate initiatives.

COUNT V

The Ballot Summary was Clearly and Conclusively Defective and Did Not Provide the Voters with Fair Notice of the Contents of the Proposed Initiative.

62. Mr. White repeats paragraphs 1 through 28 as if fully set forth herein.

63. The ballot summary states:

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

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

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

64. This summary is misleading in at least five respects:

- a. The summary does not tell voters that HART will always receive 45% of the proceeds of the surtax even if the BOCC thinks that percentage is too high or too low in any given year.
- b. It expressly lists Brandon, Town ‘n’ Country, and Sun City along with Tampa, Plant City and Temple Terrace, even though these communities are not municipalities, are not given a member on the IOC, and have no special part in the distribution

formula. The residents of these communities have no rights that are any different from the voters in any other precinct of unincorporated Hillsborough County, such as precincts in Wimauma, Progress Village, or Lutz. But the voters were led to believe that they had special rights.

- c. It lists many projects that might be funded with the surtax, but fails to mention the extreme 30-year limitation in section 11.07(8) preventing general purpose funds from being used to add additional lanes for automobile traffic or to build new roads. Additional lanes and new roads are the types of projects that voters undoubtedly expected the new taxes to fund given that the first use of proceeds suggested by the summary is to “improve roads and bridges.” These are projects that the BOCC has authority to fund under section 212.055(1), but Article 11 prevents the BOCC from exercising its discretion to fund these projects even if safety is the primary concern.
- d. The ballot summary lists “expand public transit options,” but fails to mention the conditions on use of existing right-of-ways that will favor some regions and may make it very difficult to build such transit to many neighborhoods including the ones specially identified in the ballot summary. Nothing in the summary would cause a voter to feel it necessary to read the proposed Article 11 to learn about the provisions limiting the areas for public transit expansion. There are so many provisions in this complex article that a fair, single “chief purpose” may be impossible to articulate, but if the voters were being asked to spend more than 1.4 billion dollars on public transit that must utilize “exclusive transit right-of-way for at least 75% of the length of the applicable service,” and must favor the use of

existing fixed guideways and right-of-ways, they needed some notice that these conditions were tucked away inside the lengthy article.

- e. The creation and powers of the IOC are explained to the voters, if at all, only with the ambiguous phrase “an audited trust fund with independent oversight.” This phrase may actually have been intended only to describe the responsibilities of the auditing CPAs under section 11.04. The IOC has oversight over far more than the “audited trust fund.” The voters are not told that this committee can effectively veto projects approved by the county commission and the several city councils. Its extensive powers and the sizable budget required to staff and perform those powers are not mentioned.

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

- 66. The ballot summary could have stated, for example:

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

67. The ballot language in this case is defective for what it does say and for what it does not say. It does not reveal that the chief purpose of the many provisions in Article 11 was to deprive the BOCC of its duties and responsibilities under section 212.055(1) to spend and otherwise appropriate and distribute the surtax proceeds. It fails the applicable accuracy

requirements of applicable Florida law. The fact that a majority of the voters approved the amendment when presented with this defective ballot language does not cure the error created by the language.

68. Article 11 was proposed by Keep Hillsborough Moving, Inc. (KHM), and/or All For Transportation (AFT) which themselves did not exist until approximately June 8, 2018, and June 11, 2018 respectively.

69. AFT did not submit the ballot petition to the Supervisor of Elections until June 14, 2018. The Supervisor provided official certification for the petition drive on June 15, 2018.

70. Because this petition was submitted so late in the election cycle, the Supervisor could not provide the maximum 6 months for the petition drive. Instead, in order to have adequate time to process the petition and add that proposal to the November ballot, the Supervisor required the petitions to be in the Supervisor's office by 5 p.m. on July 27, 2018.

71. Mr. White does not know whether the petitions were timely filed, but All For Transportation does not claim that it filed the petitions prior to July 27, 2018, and the Supervisor did not notify the BOCC that the proposal would be on the ballot until August 8, 2018.

72. Mr. White does not know when the Supervisor began the printing of the ballots, but mail or absentee ballots were mailed as early as October 2, 2018, and early voting began on October 22, 2018.

73. Mr. White admits that he was aware of the content of the ballot petition in June 2018 and had, at least, general concerns about its substance and legality during the summer. But even if All For Transportation had conceded the substantive and form errors in its petition then, which it is not what it is doing in this action now, it did not have time to resubmit a revised petition

to the Supervisor and restart the petition drive in the accelerated time line that it had created for itself.

74. Unlike the process for the proposed constitutional amendments by the Constitutional Revision Commission, which were prepared under the Sunshine Laws of Florida in February and March 2018 with adequate time allotted for the Florida Supreme Court to approve or reject them prior to the preparation of the ballot for the fall election, this petition was prepared in secrecy and there was less than 60 days between the date when the Supervisor announced that it would be on the ballot and the date when the Supervisor began mailing ballots to voters.

75. Even if Mr. White had understood the problems with the ballot summary on August 8, 2018, and had had the resources to retain an attorney to file a challenge to the ballot summary, any lawsuit to challenge the ballot summary prior to the election could not have been resolved prior to the election. There is no legal prejudice caused by Mr. White's filing of this objection to the ballot language at this time. The prejudice, if any, was created by All For Transportation's decision to delay the petition process to the last possible moment.

76. Mr. White's objection to the language of the ballot summary is not merely a technical question of form. As demonstrated by the other counts of this pleading, it is intermingled with concerns about the substance of Article 11. The adequacy of the ballot summary depends, in part, upon which portions, if any, of Article 11 are unconstitutional due to their conflict with general law. Thus, these intermingled issues were not a proper subject for resolution until Article 11 became law by virtue of the election.

77. If this Court determines that the ballot language that was selected by the group of private citizens did not provide fair notice of the content of Article 11 to the voters, but instead misled those voters as measured by the applicable accuracy requirements of Florida law, then the

Defendants, who are governmental bodies, do not have standing to claim that this tax and spending system must exist for thirty years despite the fact the voters were misled.

78. The fact that this action was filed a few weeks after the election, but prior to the effective date of the tax, is not a legal or equitable basis for governmental bodies to claim that the votes of citizens, who were given legally insufficient information at the voting booth, established “the will of the voters” to be burdened with an unconstitutional transportation surtax system. This is especially true of a fully mandated system that cannot be altered over the next thirty years by the vote of future members of the BOCC even if those future commissioners “deem appropriate” projects radically different from the uses mandated by the many sections of Article 11 that were never disclosed to the voters when they voted.

Requested Relief

WHEREFORE, Mr. White respectfully requests this Court enter an order disapproving the bond validation and:

- a. Declaring that the ballot language for Article 11 was legally insufficient, that Mr. White was not compelled to challenge this language prior to the election, and that, accordingly, Article 11 was not validly approved by the voters and is unconstitutional, null, and void; or, in the alternative,
- b. Declaring that the insufficiencies in the ballot even if not timely challenged prior to the election are an additional reason to determine that the inconsistent provisions of Article 11, described in Section A of these defenses and objections, cannot be severed and that all of Article 11 must be declared unconstitutional and unenforceable under the general law of Florida.

Respectfully submitted,

/s/ Chris W. Altenbernd

Chris W. Altenbernd, Esq.

Florida Bar No: 197394

BANKER LOPEZ GASSLER P.A.

501 East Kennedy Blvd., Suite 1700

Tampa, FL 33602

Telephone: (813) 221-1500

Fax No: (813) 222-3066

Email: caltenbernd@bankerlopez.com

Service Email: service-caltenbernd@bankerlopez.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was filed and served
via the State of Florida's E-Filing Portal on this 22 day of March, 2019 to:

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

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

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

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

Robert E. Brazel, Esq.
Chief Assistant County Attorney
P.O. Box 1110
Tampa, FL 33601

David L. Smith, Esq.
Robert E. Johnson, Esq.
Julia C. Mandell, Esq.
GrayRobinson, P.A.

Email: brazelr@hillsboroughcounty.org
Email: matthewsl@hillsboroughcounty.org
Email: johnsonni@hillsboroughcounty.org
*Attorney for Doug Belden, Hillsborough
County Tax Collector*

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

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

Ben H. Hill, III, Esq.
Robert A. Shimberg, Esq.
J. Logan Murphy, Esq.
Hill Ward Henderson, P.A.
101 E. Kennedy Blvd., Suite 3700
Tampa, FL 33602
Email: ben.hill@hwhlaw.com
robert.shimberg@hwhlaw.com
logan.murphy@hwhlaw.com
debra.whitworth@hwhlaw.com
regina.bigness@hwhlaw.com
tina.mcdonald@hwhlaw.com
*Attorneys for Keep Hillsborough Moving and
All for Transportation*

401 E. Jackson St., Suite 2700
Tampa, FL 33602
Email: david.smith@gray-robinson.com
Email: rjohnson@gray-robinson.com
Email: Julia.mandell@gray-robinson.com
Email: Valerie.taylor@gray-robinson.com
Attorneys for HART

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

Pamela D. Cichon, Esq.
City of Temple Terrace
11250 N. 56th St.
Temple Terrace, FL 33617
Email: pcichon@templeterrace.com
Attorney for City of Temple Terrace

/s/ Chris W. Altenbernd
Chris W. Altenbernd, Esq.

The 2018 Florida Statutes

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11.11. Miscellaneous.

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

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

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

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: _____

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

- Instructions: To vote, fill in the oval completely ● next to your choice. Use black ballpoint pen.
 - If you make a mistake, ask for a new ballot. Do not cross out or your vote may not count.
 - To vote for a candidate whose name is not printed on the ballot, fill in the oval, and write in the candidate's name on the blank line provided for a write-in candidate.
 - Instrucciones: Para votar, rellene completamente ● el óvalo próximo a su selección. Use bolígrafo negro.
 - Si comete un error, solicite una nueva boleta. No borre o realice otras marcas, o su voto puede no ser computado.
 - Para votar por un candidato cuyo nombre no está impreso en la boleta, rellene el óvalo, y escriba el nombre del candidato en la línea en blanco que se provee para un candidato agregado.
-

RELEVANT PORTION OF EXHIBIT ON NEXT PAGE

EXHIBIT C

**No. 2 Hillsborough County Referendum
N.º 2 Referéndum del Condado de Hillsborough**

**Funding for Countywide Transportation and Road Improvements
by County Charter Amendment**

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

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

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

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

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

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

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

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

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

- ☐ Yes / Si
☐ No / No

*** Official Results ***
CERTIFICATE OF COUNTY CANVASSING BOARD
HILLSBOROUGH COUNTY

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

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

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

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

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

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

FUNDING FOR COUNTYWIDE TRANSPORTATION AND
ROAD IMPROVEMENTS BY COUNTY CHARTER
AMENDMENT

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

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

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

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

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