

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL DIVISION**

**CLASS REPRESENTATION**

Case No.: \_\_\_\_\_

ROBERT EMERSON,  
on behalf of himself and all others  
similarly situated,

Plaintiffs,

v.

FLORIDA DEPARTMENT OF REVENUE,  
and HILLSBOROUGH COUNTY, a charter county  
of the State of Florida, and CINDY STUART, in her  
official capacity as Hillsborough County  
Clerk of Court and Comptroller,

Defendants.

\_\_\_\_\_ /

**CLASS ACTION COMPLAINT**

Plaintiff Robert Emerson brings this lawsuit to obtain relief for himself and the numerous taxpayers that were subjected to the Hillsborough County Charter’s Article 11, “Surtax for Transportation Improvements” (hereinafter “Surtax” or “Article 11”), which the Florida Supreme Court has now invalidated as contrary to the Florida Constitution and Florida Statute § 212.055 in a consolidated appeal from a declaratory judgment action and bond-validation proceeding, in which Plaintiff Emerson intervened. *See Emerson v. Hillsborough County*, Nos. SC19-1250 & SC19-1343 (Fla. Feb. 25, 2021) (opinion attached hereto as Exhibit A).

Despite the pending legal challenges to the Surtax’s constitutionality, Defendant Florida Department of Revenue (“DOR”) has, since January 1, 2019, administered, collected, and enforced the Surtax; charged administrative fees; and distributed the tax proceeds minus the

administrative fees to Defendant Hillsborough County (“County”). By and through Defendant Cindy Stuart in her official capacity as the Hillsborough County Clerk of Court and Comptroller (“Clerk”), the County received proceeds of the Surtax and has distributed certain of those proceeds to entities within the County pursuant to the unlawful provisions of Article 11. Even upon the issuance of the Florida Supreme Court’s opinion, DOR has continued to collect the tax. DOR also holds taxes that it collected but has not yet distributed to the County. The next distribution is scheduled to occur shortly after March 31, 2021.

Now that the Surtax has been ruled unconstitutional, Defendants must stop collecting the tax and refund any tax proceeds to the taxpayers. To hold otherwise would sanction an unlawful confiscation. Through this lawsuit, Plaintiff, on behalf of himself and all others who paid the Surtax, seeks to enjoin Defendants from continuing to administer, collect, and enforce the unlawful tax; to freeze the funds that Defendants already unlawfully obtained; and to obtain a refund of those unlawfully obtained proceeds through a judicially administered process.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action because it “involv[es the] legality of [a] tax assessment.” Fla. Stat. § 26.012. This Court has jurisdiction to enter an injunction pursuant to Fla. Stat. § 26.012(3). It has jurisdiction to award damages, in the form of a tax refund, under the authority of *Department of Revenue v. Nemeth*, 733 So. 2d 970, 971 (Fla. 1999) (“[W]e expressly hold that a taxpayer’s claim based solely upon the tax being unconstitutional may be filed in the appropriate court rather than with the Comptroller.”).

2. Venue is proper in Leon County because the Florida Department of Revenue is a Defendant and it maintains its principal headquarters there. *See, e.g., Florida Dep’t of Revenue v. Hardy*, 697 So. 2d 954, 955 (Fla. 5th DCA 1997) (“In a civil action against the state or one of

its agencies, the Florida common law home venue privilege provides that venue is proper in the county where the state, agency or subdivision maintains its principal headquarters.”).

### **NAMED PARTIES**

3. Named Plaintiff Robert Emerson is a taxpaying resident of Hillsborough County, Florida.

4. Defendant Florida Department of Revenue is an agency of the State of Florida with its principal headquarters in Leon County. The Department of Revenue is the agency responsible for administering, collecting, and enforcing the unconstitutional Surtax. *See* Fla. Stat. § 212.054(4)(a).

5. 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.

6. Defendant Cindy Stuart is the current Hillsborough County Clerk of Court and Comptroller. The Clerk serves as the chief financial officer of the County. The Clerk’s official responsibilities include receiving the proceeds of the Surtax after they are collected by DOR, and holding those proceeds as trustee until disbursing them in accordance with Article 11.

### **CONSTITUTIONAL AND STATUTORY BACKGROUND**

7. The Florida Constitution guarantees that “[n]o tax shall be levied except in pursuance of law.” Fla. Const. Art. VII, § 1(a). In addition to flatly banning certain kinds of state-levied ad valorem taxes (*i.e.*, property taxes), it provides that “[a]ll other forms of taxation shall be preempted to the state except as provided by general law.” *Id.* Accordingly, “except for an ad valorem tax [which local governments are authorized to impose under a separate constitutional provision, Fla. Const. Art. VII, § 9], a municipal tax which is not authorized by general law is unconstitutional.” *Ingraham v. City of Miami*, 388 So. 2d 305, 306 (Fla. 3d DCA

1980) (citing *City of Tampa v. Birdsong Motors, Inc.*, 261 So.2d 1, 3 (Fla. 1972)). County taxes not authorized by general law are similarly unconstitutional. *See Birdsong Motors, Inc.*, 261 So.2d at 3. In this context, general law means “the general laws of Florida.” *See id.* at 4.

8. Section 212.055 of the Florida Statutes, in turn, authorizes counties to implement specific and limited kinds of local sales surtaxes. This section is the sole authority for such taxes under the general laws of Florida. *See Fla. Stat. § 212.054(1)* (“No general excise tax on sales shall be levied by the governing body of any county unless specifically authorized in s. 212.055.”). One form of permitted tax is the “charter county and regional transportation system surtax,” which is authorized by paragraph (1) of section 212.055. That paragraph allows a charter county to implement a sales tax increase of up to one percent to fund transportation projects. *See id.* § 212.055(1). Such a surtax must be approved by a majority of the electorate of the county. *See id.* § 212.055(1)(a). Once approved by voters, the surtax is levied “on all transactions occurring in the county” that are “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by this chapter and communications services as defined for purposes of chapter 202.” *Id.* § 212.054(2)(a). In practical terms, such a tax applies to a broad range of transactions, large and small – from the sale of consumer products to the rental of living accommodations. Proceeds from the surtax can be applied to a variety of enumerated uses (such as the development of a countywide bus system, or the construction of roads) “in whatever combination the county commission deems appropriate.” *Id.* § 212.055(1)(d).

### **FACTUAL ALLEGATIONS**

9. The voters of Hillsborough County approved an amendment to Article 11 of their County Charter on November 6, 2018, relying on misrepresentations about the constitutionality

of the amendment. A true and accurate copy of Article 11 (entitled, “Surtax for Transportation Improvements”), is attached to this complaint as Exhibit B.

10. The amendment authorized a one-percent sales tax increase, Article 11.02, for a period of 30 years beginning on January 1, 2019, Article 11.03. It purported to be authorized by and consistent with section 212.055(1). *See* Article 11.02 (“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.”); Article 11.01 (“The proceeds of the surtax shall be distributed and disbursed in compliance with F.S. § 212.055(1) and in accordance with Article 11.”).

11. Despite these recitations, however, Article 11 in fact imposed a number of additional and novel restrictions on the use of the Surtax’s proceeds. These restrictions violate section 212.055, which, as mentioned, reserves discretion over the use of surtax proceeds to the county commission. *See* Fla. Stat. § 212.055(1)(d).

12. There are three significant restrictions, all of which were to remain in effect for the entire 30-year life of the Surtax.

13. *First*, Article 11 requires the proceeds of the Surtax to be automatically allocated according to a pre-set formula: 54% is distributed to the County and the municipalities within it, 45% to the Hillsborough Area Regional Transit Authority (“HART”), and 1% to the Hillsborough metropolitan planning organization. *See* Article 11.05. The commission has no ability to modify this formula in response to future needs or contingencies.

14. *Second*, Article 11 forbids a large portion of the proceeds – the vast majority of funds allocated to the County and municipalities – from being used to (1) construct new roads or (2) add additional lanes to existing roads, unless those lanes are for the narrow purpose of

“intersection capacity improvement.” *See* Article 11.07(8). Again, the county commission has no discretion to overturn or limit this prohibition. This restriction is particularly significant because the construction of roads is one of the specifically enumerated uses authorized by section 212.055(1).

15. *Third*, Article 11 creates a separate governance structure (the “Independent Oversight Committee,” or “IOC”), an innovation wholly outside the contemplation of section 212.055. The IOC is an unelected body that must approve any use of Surtax proceeds. *See* Article 11.06, 11.10. The IOC also has authority to suspend the distribution of funds to a particular recipient agency (such as HART or the County itself) if it determines that the recipient has failed to comply with *any* term or condition of Article 11. *See* Article 11.09. The county commission – which is, in fact, the “governing body” of Hillsborough County under the Florida Constitution, Art. VIII, §1(e) – has no authority to overturn a decision of the IOC or otherwise pursue a Surtax-funded project without IOC approval. *See* Article 11.06.

16. Because of these restrictions on the discretion of the county commission, the Florida Supreme Court held in *Emerson v. Hillsborough County* that Article 11 exceeds the specific and limited authority granted to the County by section 212.055(1) and therefore violates Fla. Const. Art. VII, § 1(a). It held: “Article 11’s elaborate scheme to control the distribution and use of surtax proceeds cannot be reconciled with the authority granted to the county commission by section 212.055(1)(d). All of the arguments offered to avoid this conclusion are unavailing. The constitutional violation is manifest.” Exh. A at 17.

17. The Florida Supreme Court also held that the invalid provisions of Article 11 could not be severed from the remainder of the Surtax. Accordingly, it held: “Core provisions of article 11 are inconsistent with the surtax statute. Because those invalid provisions and the

remaining provisions of the article form an interlocking plan, article 11 is unconstitutional in its entirety. The bond validation judgment is reversed, and the declaratory judgment is reversed to the extent that it upheld the validity of any portion of article 11.” Exh. A at 21. No party timely sought rehearing of the Florida Supreme Court’s decision. The mandate issued on March 15, 2021, and a final judgment will be entered in due course declaring Article 11 unconstitutional.

18. DOR has collected taxes pursuant to Article 11 since January 1, 2019. As of March 1, 2021, the amount collected totals more than \$500 million.<sup>1</sup> Since January 1, 2019, DOR has charged administrative fees under Fla. Stat. § 212.054(4)(b), and has made periodic distributions of tax proceeds minus the administrative fees to the County under § 212.054(4)(b)-(c). The Clerk has received those tax proceeds and has distributed and/or disbursed at least a portion of those proceeds to municipalities within the County and/or HART. Upon information and belief, DOR retains tax proceeds that have been collected but not yet distributed to the County.

19. After the Florida Supreme Court’s ruling, the County’s Board of County Commissioners (“BOCC”) acknowledged that it may not retain any proceeds from the Surtax. As BOCC Commissioner Ken Hagan put it, those funds are “fruit from a poisonous tree.”<sup>2</sup> On March 3, 2021, the BOCC unanimously passed a motion proposed by Commissioner Hagan to “direct[] staff to work with the Department of Revenue and the Clerk’s Office and any other body to create the judicial process to refund the money collected from the Transportation Sales

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<sup>1</sup> See C.T. Bowen, *Hillsborough county transportation tax refund spurs more questions than answers*, Tampa Bay Times (Mar. 9, 2021), <https://www.tampabay.com/news/hillsborough/2021/03/09/hillsborough-transportation-tax-refund-spurs-more-questions-than-answers/>.

<sup>2</sup> See C.T. Bowen, *County to refund sales tax money*, Tampa Bay Times (Mar. 4, 2021), [https://tampabaytimes-fl.newsmemory.com/?publink=1ecdb49e2\\_1345ca4](https://tampabaytimes-fl.newsmemory.com/?publink=1ecdb49e2_1345ca4).

Surtax as quickly as practical.” Recap of March 3, 2021 BOCC Meeting (Mar. 5, 2021), at 6, available at <https://eagenda.hillsboroughcounty.org/portal/PTL29560/open/OBJ7QY422>. This case is the appropriate “judicial process” by which the proceeds of the unlawful Surtax should be refunded.

### **CLASS REPRESENTATION ALLEGATIONS**

20. Plaintiff brings this action on behalf of himself and a Class, pursuant to Florida Rules of Civil Procedure 1.220(b)(2) and 1.220(b)(3).

21. The Class consists of all persons who have paid the unconstitutional Surtax. The Class has a common interest in a permanent injunction against any further actions to administer, collect, or enforce the unconstitutional Surtax, and in return of funds already collected pursuant to that Surtax. Plaintiff, who has paid and continues to be subject to the Surtax, has the right to represent the Class. *See Dep’t of Revenue v. Kuhnlein*, 646 So. 2d 717, 719 (Fla. 1994) (approving class action seeking refund of unconstitutional tax).

22. While the exact number of Class members is unknown at this time, Plaintiff estimates that the vast majority of Hillsborough County residents have engaged in at least one taxed transaction since the Surtax went into effect on January 1, 2019. In 2017, the United States Census Bureau estimated that population of Hillsborough County was 1,408,566. Many other persons who do not reside in Hillsborough County have also paid the Surtax. Given the population of Hillsborough County, whose residents comprise only a part of the Class, it is clear that Class members are so numerous that separate joinder of each member is impracticable.

23. The action poses questions of law and fact that are common to and affect the rights of all members of the Class. The common questions of law or fact include:

- Whether Plaintiffs are entitled to an injunction enjoining Defendants from continuing to administer, collect, and enforce the Surtax;
- Whether Plaintiffs are entitled to an injunction requiring Defendants to freeze any proceeds of the Surtax pending further order of this Court; and
- Whether Plaintiffs are entitled to a refund of Surtax proceeds collected or received by Defendants.

24. Plaintiff's claims are typical of the claims of the Class. Like other Class members, he has paid the unconstitutional Surtax. In particular, Plaintiff's claim is typical because *all* taxpayers that paid the tax have had their rights under Fla. Const. Art. VII, § 1(a) and Fla. Stat. § 212.055 violated, and are entitled to injunctive relief as well as a refund. That is true irrespective of whether Class members are residents of Hillsborough County or whether they voted for or against the enactment of the Surtax: because the Florida Supreme Court has declared that "the whole of article 11 is invalid," Exh. A at 19, all Class members share a common interest in obtaining a return of the funds unlawfully collected by Defendants.

25. Plaintiff will fairly and adequately protect the interests of each member of the Class. There is no conflict of interest with or among other Class members because all Class members share a common interest in obtaining relief against the imposition of the unconstitutional Surtax. That, too, is true irrespective of whether Class members are residents of Hillsborough County or whether they voted for or against the enactment of the Surtax: they all share the same interest now that the Surtax has been declared invalid. Plaintiff is fully aware of his responsibilities as Class representative and has retained qualified and experienced counsel to pursue this action.

26. Plaintiff brings this action under F.R.C.P. 1.220(b)(2) because, by administering, collecting, and enforcing the unconstitutional Surtax; by charging administrative fees on the Surtax; by distributing Surtax proceeds minus the administrative fees to the County; and by retaining Surtax proceeds that have yet to be distributed to the County, DOR has acted on grounds generally applicable to all members of the Class. Moreover, by adopting the unconstitutional Surtax, and by disbursing or retaining the Surtax proceeds distributed to it by DOR, the County and the Clerk have also acted on grounds generally applicable to all members of the Class. As a result, injunctive relief concerning the Class as a whole is appropriate.

27. Also, a class action is appropriate under F.R.C.P. 1.220(b)(3) because the questions of law or fact common to the claim or defense of the representative party and the claim or defense of each member of the Class predominate over any question of law or fact affecting only individual members of the Class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy. *See Kuhnlein*, 646 So. 2d at 719 (rejecting the State’s argument that a refund claim cannot be brought as a class action); *Discount Sleep of Ocala, LLC v. City of Ocala*, 245 So. 3d 842, 851 (Fla. 5th DCA 2018) (“Individualized damage inquiries will . . . not preclude class certification.”) (citation omitted).

28. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. Especially given that the Surtax has already been declared unconstitutional, there will be no difficulty in the management of this action as a class action.

## COUNT ONE

### CLAIM FOR INJUNCTIVE RELIEF

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

30. As the Florida Supreme Court has held in *Emerson v. Hillsborough County*, Article 11 exceeds the County's authorization granted by Fla. Stat. § 212.055(1), and it is therefore unconstitutional.

31. Because the Surtax is unconstitutional, Plaintiffs are entitled to a permanent injunction against further administration, collection, and enforcement of the Surtax. Plaintiff has a clear legal right and an inadequate remedy at law, and irreparable harm will arise absent injunctive relief. *See Liberty Counsel v. Fla. Bar Bd. of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009). Plaintiffs have a clear legal right not to be subject to the Surtax because it has been conclusively determined to be unconstitutional. *See supra* ¶¶ 15-16. The continued collection of the Surtax in violation of Plaintiffs' constitutional rights constitutes irreparable harm that cannot be adequately remedied at law. *See, e.g., Smith v. City of Winter Haven*, 18 So. 2d 4 (Fla. 1944) (injunction available to property owner subject to unlawful tax assessment).

32. Plaintiffs are also entitled to a permanent injunction requiring Defendants to freeze any Surtax proceeds pending further proceedings in this Court. Those tax proceeds were unlawfully collected, and should be returned to taxpayers. Permitting Defendants to continue to treat taxpayers' money as if it is their own or to determine unilaterally what to do with those funds in light of the invalidation of Article 11 creates a serious risk that taxpayers whose constitutional rights were violated will be unable to obtain refunds of those tax payments. Those funds should thus be frozen pending further orders of this Court directing Defendants with respect to the disposition of those funds.

**COUNT TWO**

**CLAIM FOR REFUND**

33. Plaintiff repeats paragraphs 1 through 32 as if fully set forth herein.

34. Because the Surtax is unconstitutional, Plaintiffs are also entitled to a judicially administered refund of the tax proceeds that Defendants have collected or received pursuant to the unconstitutional Surtax. *See, e.g.*, Fla. Stat. § 215.26; *Nemeth*, 733 So 2d at 973 (“[W]here the plaintiff is challenging the constitutionality of an involuntarily paid tax and seeking a refund for the same the taxpayer need not comply with the ‘administrative’ requirements in section 215.26.”); *Kuhnlein*, 646 So. 2d at 726 (holding that, after a state tax was found to be unconstitutional, “[t]he only clear and certain remedy is a full refund to all who have paid this illegal tax”).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests:

1. A permanent injunction against Defendants (a) prohibiting any further administration, collection, or enforcement of the Surtax; and (b) requiring Defendants to account for and secure all of the proceeds of the unconstitutional Surtax in appropriate trust or escrow accounts for the protection of the parties entitled to its return until a final disposition of the proceeds is resolved.
2. A refund of all tax proceeds collected under the unlawful authority of Article 11.

Dated: March 16, 2021

Respectfully submitted,

/s/ Howard Coker

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# **Exhibit A**

# Supreme Court of Florida

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No. SC19-1250

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**ROBERT EMERSON, et al.,**  
Appellants.

vs.

**HILLSBOROUGH COUNTY, FLORIDA, etc., et al.,**  
Appellees.

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No. SC19-1343

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**STACY WHITE,**  
Appellant.

vs.

**HILLSBOROUGH COUNTY, FLORIDA, etc., et al.,**  
Appellees.

February 25, 2021

CANADY, C.J.

In these consolidated cases we consider the constitutional validity of an amendment to the Hillsborough County Charter that was adopted in an initiative election. Through that charter amendment the voters approved both a

transportation surtax and elaborate directives for allocating the tax proceeds. But the spending directives are unconstitutional in that they conflict with a state law that gives the county commission the authority to allocate such funds. Because it cannot reasonably be said that the voters would have approved the tax without the accompanying spending plan, we must strike the charter amendment in its entirety.

### **I. Background**

The charter amendment enacted a one percent transportation sales surtax coupled with various provisions governing the distribution and use of the proceeds of the tax. Subsequently, the Hillsborough County Commission entered an interlocal agreement “deem[ing] appropriate” the allocation of funds provided for in the charter amendment. The commission then authorized the issuance of bonds to be funded by a portion of the proceeds of the surtax. We have for review a judgment of the circuit court validating the bonds. *See* art. V, § 3(b)(2), Fla. Const. And we have accepted pass-through jurisdiction—based on the Second District Court of Appeal’s certification that the case involved issues of great public importance requiring immediate resolution by this Court—of a judgment of the circuit court in a declaratory judgment action brought by opponents of the charter amendment, which upheld the surtax levy but invalidated portions of the charter amendment governing the use and distribution of surtax proceeds. *See id.* art. V, § 3(b)(5).

The circuit court based its invalidation of portions of the charter amendment on a conflict between the amendment and section 212.055(1), Florida Statutes (2018), the statute authorizing enactment of the local transportation surtax by referendum, which specifically grants the county commission discretion concerning the application of surtax proceeds within the statutory framework. Although the circuit court invalidated significant portions of the charter amendment related to the allocation and use of tax proceeds, it nonetheless upheld the validity of the surtax and certain other elements of the amendment, reasoning that the surtax and the other provisions it found valid could properly be severed from the invalid portions.

Contending that the trial court erred in its decision to sever the surtax and other provisions of the amendment from those parts of the amendment that it determined to be unconstitutional, the Appellants seek reversal of both trial court judgments. Hillsborough County and Appellees/Cross-Appellants contend that the trial court should have upheld the charter amendment in its entirety, arguing in the alternative that the portions of the amendment severed and upheld by the trial court—most importantly, the surtax levy—should not be disturbed.

We conclude that the charter amendment transgresses the authority reserved to the county commission by the surtax statute and that no portion of the amendment could properly be severed. Therefore, we reverse the declaratory

judgment to the extent that it upholds any portion of the charter amendment, and we reverse the bond validation judgment, which necessarily falls with the invalidation of the surtax.

## II. The Surtax Statute

Section 212.055(1)(a) authorizes charter counties to “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.” The discretionary surtax may be levied at a rate “up to 1 percent,” § 212.055(1)(b), and any “proposal to adopt a discretionary sales tax . . . must be approved in a referendum held at a general election,” § 212.055(1)(c)1. Of crucial importance to the issues presented in this case is the provision of section 212.055(1)(d) that the “[p]roceeds from the surtax shall be applied to as many or as few of the uses enumerated” specifically in the statute “in whatever combination the county commission deems appropriate.” (Emphasis added.) A wide range of permitted transportation related uses are set forth in subsections 1 through 4 of section 212.055(1)(d).

The statutory provisions related to the surtax must be viewed against the backdrop of the specific recognition in the Florida Constitution of the Legislature’s authority over taxation in the state. Article VII, section 1, subsection (a) of the Florida Constitution provides that “[n]o tax shall be levied except in pursuance of

law,” that “[n]o state ad valorem taxes shall be levied on real estate or tangible personal property,” and that “[a]ll other forms of taxation shall be preempted to the state except as provided by general law.” Moreover, counties shall “be authorized by law to levy ad valorem taxes and may be authorized by law to levy other taxes, . . . except ad valorem taxes on intangible personal property and taxes prohibited by [the] constitution.” Art. VII, § 9(a), Fla. Const. So it is clear that the Legislature has plenary authority regarding the surtax.

### **III. The Charter Amendment**

The “surtax for transportation improvements” amendment to the Hillsborough County Charter at issue here—codified as article 11 of the charter—was adopted in a referendum conducted in the 2018 general election based on a citizens’ initiative proposal. *See* Hillsborough County, Fla., Revised Charter art. XI (2018). Article 11 contains a detailed scheme for managing the distribution and use of the proceeds of the one percent sales surtax. *Id.* As stated in article 11’s purpose section, the “purpose of the surtax” is identified as funding a variety of categories of “transportation improvements throughout Hillsborough County.” *Id.* § 11.01. In connection with this broadly stated purpose, article 11 states that “[t]he proceeds of the surtax shall be distributed and disbursed in compliance with [section 212.055(1), Florida Statutes,] and in accordance with the provisions of . . . article 11.” *Id.*

The provision establishing the levy of the surtax specifies that all proceeds of the tax “shall be expended only as permitted by this article 11, [section 212.055(1), Florida Statutes], and in accordance with the purpose set forth” in the amendment. *Id.* § 11.02. The surtax, which had an effective date of January 1, 2019, “shall remain in effect for a period of thirty (30) years.” *Id.* § 11.03.

Article 11 contains an elaborate scheme with provisions governing the distribution to various entities of surtax proceeds, provisions governing the use by those entities of the funds distributed, and provisions establishing and empowering an independent oversight commission (IOC). The proceeds of the tax are designated for distribution in three “portions”—the general purpose portion, the transit restricted portion, and the planning and development portion. *See id.* § 11.05. Under the distribution formula, 54% of the tax proceeds—the general purpose portion—are to be “distributed to the [c]ounty and each [m]unicipality in accordance with their relative populations” pursuant to a statutory formula set forth in section 218.62, Florida Statutes (2018), to be expended “in accordance with” article 11. *Id.* § 11.05(1).

The transit restricted portion consists of 45% of the proceeds, which are designated for distribution to the Hillsborough Area Regional Transit Authority (HART) to “be expended by HART in accordance with” article 11. *Id.* § 11.05(2). Finally, one percent of the proceeds are designated for the planning and

development portion, which is to be distributed to “the metropolitan planning organization [MPO] . . . whose jurisdiction includes Hillsborough County,” and “shall be expended by the MPO on planning and development purposes” to assist the other entities receiving funds and the IOC “in carrying out the purpose set forth” in the purpose section of article 11. *Id.* § 11.05(3).

Each agency receiving proceeds is required to submit an annual agency “Project Plan” governing its use of proceeds, which must be approved by the IOC. *Id.* § 11.06. Detailed provisions establish the specific transportation-related uses to which the general purpose portion and the transit restricted portion of the proceeds are to be devoted. *See id.* §§ 11.07-11.08. The specific details governing use of the proceeds are of no moment to the issues presented in this case.

The IOC is established to provide “independent oversight of the distribution and expenditure” of the proceeds of the surtax. *Id.* § 11.10. The IOC is given the duty to review an annual audit provided for by article 11 and to “make findings” concerning compliance “with the terms of” article 11, including a determination of whether the proceeds “have been distributed as provided” in the article, and whether the proceeds “have been expended in compliance with applicable state law, [the] Article, and any additional requirements that [a receiving entity] may have lawfully adopted.” *Id.* § 11.10(1). In addition, the IOC may, by a two-thirds majority vote, direct the suspension of proceeds (other than any portion of such

proceeds “encumbered by bond indebtedness”) if it determines “that an [a]gency has failed to comply with any term or condition of . . . article 11” and the noncompliance remains uncorrected for a specified period. *Id.* § 11.09.

Two additional provisions of article 11 are related to arguments presented in this case. One provision specifically addresses the issue of severability, and the other recognizes the supremacy of state law. The severability provision is as follows:

To the extent that any mandated expenditure category set forth in [s]ection 11.07 or 11.08 is deemed by a court of competent jurisdiction to be an impermissible use of [s]urtax [p]roceeds, the funds allocated to such impermissible use shall be expended by the applicable [a]gency on any project to improve public transportation permitted by [section 212.055(1), Florida Statutes,] and this Article.

*Id.* § 11.11(2). The provision of article 11 regarding state law supremacy states, “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.” *Id.* § 11.11(3).

The issue of severability is also addressed in a separate provision adopted when the Hillsborough County Charter was initially enacted. That provision states, “It is the intent of the electorate in adopting this Charter that if any section, subsection, sentence, clause, term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.” *Id.* § 9.05.

#### **IV. The Arguments**

The opponents of article 11 contend that the circuit court erred in severing the surtax provision and certain other provisions of article 11 from the portions it declared unconstitutional. According to the opponents, the purpose of the surtax was to fund the transportation plan in accordance with the distribution formula and use restrictions. According to the opponents, once crucial elements of the structure established by article 11—including the distribution formula—were recognized to violate the authority of the Hillsborough County Commission to decide how surtax proceeds should be spent, the fundamental design of article 11 was vitiated, and it therefore must be judged unconstitutional in its entirety.

The proponents of article 11 argue that no inconsistency exists between article 11 and the requirements of the surtax statute and that the circuit court therefore erred in declaring any portion of article 11 unconstitutional. They contend that article 11 merely supplements the requirements of the statute rather than contradicting them. To resolve any inconsistency between the charter amendment and the surtax statute, they also rely on provisions of article 11 that refer to compliance with state law as well as the supremacy clause contained in article 11. They argue that these provisions allow any unconstitutional elements to be read out of article 11, leaving the rest of the article undisturbed. And they contend that any such inconsistency is cured by the county commission's approval

of the interlocal agreement deeming the allocation of funds under article 11 to be appropriate. The proponents of article 11 also argue that the challenged provisions of article 11 are justified by a statutory provision that authorizes charter limitations on the broad general legislative powers granted to the county commissions of charter counties.

The proponents of article 11 further contend that even if portions of the measure are unconstitutional, the trial court's severability analysis was correct, and the validity of the surtax and the other portions of article 11 severed and preserved by the circuit court should therefore be upheld. In brief, they contend that severance was appropriate because the primary purpose of article 11 was to provide funding to meet the needs for transportation infrastructure in Hillsborough County and that purpose can be carried out even without the portions of article 11 invalidated by the circuit court. They also contend that the specific severability clause in article 11, as well as the general severability clause in the county charter, require preservation of the tax levy.

## **V. The Constitutional Violation**

Our constitution provides that “[c]ounties operating under county charters shall have all powers of local self-government not inconsistent with general law” and that “[t]he governing body of a county operating under a charter may enact

county ordinances not inconsistent with general law.” Art. VIII, § 1(g), Fla. Const.

As we said in *State v. Sarasota County*, 549 So. 2d 659, 660 (Fla. 1989):

A charter provision or ordinance of a charter county will be unconstitutional under article VIII, section 1(g) of the Florida Constitution, if it is “inconsistent with general law.” We have consistently construed this phrase to mean “contradictory in the sense of legislative provisions which cannot coexist.” *Laborers’ Int’l Union of North America, Local 478 v. Burroughs*, 541 So. 2d 1160 (Fla. 1989); *State ex. rel. Dade County v. Brautigam*, 224 So. 2d 688, 692 (Fla. 1969).

A local ordinance or charter provision that interferes with the operation of a statute “cannot coexist” with that statute. In brief, the Florida Constitution prohibits any charter county from supplanting or overriding state law through either an ordinance or a charter provision.

Core provisions of article 11 directly clash with the surtax statute’s assignment to county commissions of authority to direct the application of surtax revenues to various permitted uses. Under the statute, “[p]roceeds from the surtax shall be applied to as many or as few of the uses enumerated” specifically in the statute “in whatever combination the county commission deems appropriate.” § 212.055(1)(d), Fla. Stat. Most saliently, this statutory provision is inconsistent with the provisions in sections 11.05, 11.06, 11.07, 11.08, 11.09 and 11.10 of article 11, which together establish a detailed scheme governing and enforcing the distribution and use of surtax proceeds. These provisions of article 11 “cannot coexist” with section 212.055(1)(d). All these provisions of the article fly in the

face of the commission’s statutory authority. Because the charter provisions are “inconsistent with general law,” they are unconstitutional. Art. VIII, § 1(g), Fla. Const.

The situation here is not one in which “the county simply chose to legislate in an area where the Legislature chose to remain silent.” *Phantom of Brevard, Inc. v. Brevard Cnty.*, 3 So. 3d 309, 315 (Fla. 2008). Nor is it a situation in which the charter merely adopted “additional standards . . . without being in conflict with the *minimum* statutory requirements established by the Legislature.” *Sarasota All. for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 888 (Fla. 2010). Likewise, this is not a charter amendment that is invalid in a particular application but valid in other applications. *See D’Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017).

The offending charter provisions do not merely supplement or complement the statute. And they cannot sometimes be validly applied. If given effect, these provisions of article 11 would supplant the authority of the county commission established by the statute. And none of our decisions uphold any such displacement by a charter provision of county commission authority specifically conferred by statute.<sup>1</sup>

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1. *Sarasota All. for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010), is not to the contrary. It appears that a charter provision in question there provided for “voter-imposed restrictions on the Sarasota County Board of Commissioners not permitted by the statute.” *Id.* at 893 (Polston, J., concurring in part and dissenting in part). But the majority opinion did not address the conflict

The Legislature could have allowed the proceeds of the surtax to be allocated based on provisions of a charter amendment, just as it allowed the surtax to be adopted by charter amendment. But that is not the choice the Legislature made in the surtax statute. Our constitution does not allow the displacement of the choice the Legislature made in the statute.

Contrary to the contention of the proponents, neither article 11's provision recognizing the supremacy of state law nor its repeated references to compliance with the surtax statute can be flourished like a magic wand to conjure away the conflict between article 11 and the statute. The magic does not work.

It is not reasonable to read article 11 provisions such as section 11.01—which requires that “proceeds of the surtax . . . be distributed and disbursed in compliance with [section 212.055(1), Florida Statutes,] *and* in accordance with the provisions of . . . article 11”—as obliterating provisions of article 11 that compose the greater part of its text. (Emphasis added.) Section 11.01 as well as other similar provisions of article 11 plainly contemplate that the distribution and disbursement of surtax tax revenues “in compliance with” the statute can be accomplished at the same time that distribution and disbursement is made “in accordance with” article 11. There is no hint in this provision that anything in

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with county commission authority and in fact concluded that any dispute over the relevant charter provision had been rendered moot by subsequent legislation.

article 11 would be required to yield to a conflicting provision of state law. On the contrary, given the mandate in article 11 to comply with the provisions of *both* the statute and the charter, section 11.01 and other similar provisions must be understood to presume the harmonious operation of the surtax statute and the provisions of article 11 governing the allocation and use of surtax proceeds. Rather than the interpretation advanced by the proponents of article 11, it is most reasonable to understand the references to the surtax statute in section 11.01 and elsewhere in article 11 as designed to ensure that funds only be applied to uses within the scope of the uses enumerated in the statute. *See* § 212.055(1)(d)1.–4., Fla. Stat.

The proponents of article 11 get no more traction with their argument based on the supremacy clause found in section 11.11(3), which provides that article 11 “shall at all times be interpreted in a manner consistent with the laws of Florida” and that “in the event of any conflict” “the laws of Florida shall prevail.” To the extent that this provision recognizes that state law prevails over any conflicting provision of article 11, it constitutes nothing more than a meaningless truism. To the extent that the provision establishes a rule of interpretation, it is simply a restatement of the presumption of validity, which requires that ambiguities in a text be resolved in favor of a reasonable reading that avoids a determination of invalidity. *See State v. Fuchs*, 769 So. 2d 1006, 1008 (Fla. 2000) (“It is well

established that, where reasonably possible, a statute will be interpreted in a manner that resolves all doubts in favor of its constitutionality.”); *State v. Lick*, 390 So. 2d 52, 53 (Fla. 1980) (“[W]here the statute is reasonably susceptible of two interpretations, one of which would render it invalid and the other valid, we must adopt the constitutional construction.”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 66 (2012) (“An interpretation that validates outweighs one that invalidates (*ut res magis valeat quam pereat*).”). This is a rule of *interpretation*—not, as the proponents of article 11 would have it, a rule of *revision*. And as a rule of interpretation, it cannot justify the wholesale excision of the bulk of article 11.

We reject the argument that the Hillsborough County Commission could cure the constitutional infirmity in article 11 by entering the interlocal agreement “deem[ing] appropriate” the allocation of funds mandated by article 11. The attempt by way of the interlocal agreement to ratify and cure an unconstitutional measure is as ineffectual as the unconstitutional measure itself. A county commission cannot legalize a measure that is “inconsistent with general law.” To approve such a course of action would be in derogation of the constitutional authority of the Legislature. It would incentivize the manipulation and coercion of the exercise of county commission authority by way of an unconstitutional charter

provision. That would make a mockery of the surtax statute. Notwithstanding the interlocal agreement, the taint of unconstitutionality remains.

We are also unpersuaded by the argument offered by proponents of article 11 based on the statutory provision that authorizes charter limitations on the broad general legislative powers granted to county commissions. This provision is found in section 125.86, Florida Statutes (2019), a statute establishing general legislative powers of the county commissions in charter counties. After enumerating a number of powers, the statute provides that the legislative powers of county commissions extend to “[a]ll other powers of local self-government not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the county charter.” § 125.86(8). This merely recognizes that a charter provision may limit the exercise by a county commission of unenumerated “powers of local self-government not inconsistent with general law.” But the power of the county commission at issue here—that is, the power to allocate the proceeds of the surtax—does not fall within the scope of such unenumerated “powers of local self-government.” Rather, it is a specific power conferred directly on the county commission, as distinct from the county, in a statute that authorizes the enactment of the surtax—but not the allocation of funds—by charter amendment. Nothing supports the conclusion that the general provisions of section 125.86 defeat the specific provisions of the surtax statute.

Article 11's elaborate scheme to control the distribution and use of surtax proceeds cannot be reconciled with the authority granted to the county commission by section 212.055(1)(d). All of the arguments offered to avoid this conclusion are unavailing. The constitutional violation is manifest.

## **VI. The Non-Severability of the Tax Levy**

We come now to the question of whether the trial court correctly determined that the one percent sales surtax should be severed and preserved. On this point, we conclude that the trial court's conclusion cannot be sustained.

Our Court long ago laid out the basic principles governing severability analysis in the context of unconstitutional statutory provisions:

The rule is well established that the unconstitutionality of a portion of a statute will not necessarily condemn the entire act. 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 legislative 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 Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

*Cramp v. Bd. of Pub. Instruction of Orange Cnty.*, 137 So. 2d 828, 830 (Fla. 1962).

In brief, "[t]he question is whether the taint of an illegal provision has infected the entire enactment, requiring the whole unit to fail." *Schmitt v. State*, 590 So. 2d 404, 414 (Fla. 1991).

In employing the *Cramp* factors, we have recognized the cardinal principle of severability analysis: “The 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.” *E. Air Lines, Inc. v. Dep’t of Revenue*, 455 So. 2d 311, 317 (Fla. 1984) (emphasis added). In *Ray v. Mortham*, 742 So. 2d 1276, 1283 (Fla. 1999), we applied the *Cramp* severability analysis to a constitutional amendment adopted through the citizen initiative process, concluding that the valid portion of the amendment (term limits for state officials) could be severed from the invalid portion (term limits for federal legislators) because they were “functionally independent.” The same framework for determining severability can appropriately be used in this case.

Here, the opponents of article 11 readily meet the “burden . . . placed on the challenging party” to establish that the measure is not severable. *Ray*, 742 So. 2d at 1281. The portions of article 11 that violate the authority of the county commission under the surtax statute are not “functionally independent” from the portion of article 11 imposing the sales surtax. It is clear that a surtax can be applied without provisions like the offending provisions of article 11 and that “an act complete in itself,” *Cramp*, 137 So. 2d at 830, would remain after excision of the offending provisions. But it is equally clear that “the legislative purpose expressed in the valid provisions” cannot “be accomplished independently of those

which are void” and that the valid and invalid elements of article 11 are therefore “so inseparable in substance” that it cannot be said that the voters would have adopted “the one without the other.” *Id.*

Article 11 manifests a dual purpose to impose a surtax and to require that the proceeds of the surtax be distributed and used in accordance with the elaborate and detailed scheme established in the article. One element of that dual purpose cannot reasonably be divorced from the other. The unconstitutional provisions of article 11 therefore are not merely ancillary to the surtax but are integral to the overall purpose of the surtax initiative. The tax and the distribution scheme form an interlocking plan. They are functionally dependent. The purpose of the voters in levying a tax that is designed to be distributed and used in a specified manner—with elaborate provisions to implement and enforce that design—is thwarted if the tax is levied but the provisions approved by the voters governing the distribution and use of the tax are set aside. The voters supported taxing with controls on spending the proceeds of the tax. They should not be saddled with the taxing without having the benefit of the controls. Given the functional dependence of the valid and the invalid provisions, the “taint of [the] illegal provision[s] has infected the entire enactment.” *Schmitt*, 590 So. 2d at 414. So the whole of article 11 is invalid.

We reject the argument presented by proponents of article 11 based on the severability provisions in section 11.11(2) of article 11 and in section 9.05 of the general provisions of the county charter. Neither provision is applicable to the issue presented here.

It is plain from the terms of section 11.11 that it deals only with defects arising from the “mandated expenditure categor[ies]” in article 11 which result in “an impermissible use of [s]urtax proceeds.” It simply provides for funds to be redirected from an impermissible use—as determined by a judicial judgment—to a permissible use. But the problem here cannot be cured by simply allowing receiving entities to redirect funds to permissible uses. Indeed, although labeled as a severability provision, section 11.11 is not structured as a typical severability clause. It does not in any manner address the provisions governing the allocation of proceeds to different entities and the directives regarding the three “portions” of the proceeds. The issue here is not “an impermissible use of surtax proceeds” but an impermissible shift of authority to determine how funds will be allocated to various entities and among permissible uses. Section 11.11 simply has nothing to say about a defect arising from provisions authorizing such a shift in the authority to allocate funds.

Section 9.05 speaks to the “intent of the electorate” at the time the charter—with its many disparate elements—was first adopted. It does not reflect the intent

of the electorate in subsequently adopting the integrated provisions of article 11. Indeed, the intent of the electorate with respect to the severability of article 11 is expressed by the specific, narrow—and inapposite—terms of section 11.11. Section 9.05 therefore has no bearing on the severability issue here.

## VII. Conclusion

Core provisions of article 11 are inconsistent with the surtax statute. Because those invalid provisions and the remaining provisions of the article form an interlocking plan, article 11 is unconstitutional in its entirety. The bond validation judgment is reversed, and the declaratory judgment is reversed to the extent that it upheld the validity of any portion of article 11.

It is so ordered.

POLSTON, LAWSON, and MUÑIZ, JJ., concur.  
LABARGA, J., dissents with an opinion.  
COURIEL and GROSSHANS, JJ., did not participate.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND,  
IF FILED, DETERMINED.

LABARGA, J., dissenting.

This Court's jurisprudence on bond validation has properly established a reluctance to overturn the will of the voters in a home rule charter county unless absolutely necessary, and then, only to the extent necessary. *See Phantom of Brevard, Inc. v. Brevard Cnty.*, 3 So. 3d 309, 314 (Fla. 2008); *Telli v. Broward County*, 94 So. 3d 504, 513 (Fla. 2012); *D'Agastino v. City of Miami*, 220 So. 3d

410, 427 (Fla. 2017). To that end, our precedent has set a high bar for declining severability. *See Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999); *see also City of Kissimmee v. Fla. Retail Fed'n, Inc.*, 915 So. 2d 205, 209 (Fla. 5th DCA 2005) (calling on appellate courts to “indulge every reasonable presumption in favor of an ordinance’s constitutionality.”).

A presumption of constitutionality should be the starting point for this Court’s analysis. *Citizens for Responsible Growth v. City of St. Pete Beach*, 940 So. 2d 1144, 1146 (Fla. 2d DCA 2006) (stating that courts must, “if possible, interpret the amendment as constitutional”); *see also Telli*, 94 So. 3d at 513 (recognizing courts cannot infringe on “the ability of counties to govern themselves as that broad authority has been granted to them by home rule power through the Florida Constitution”).

Here, as noted by the circuit court, a majority of voters in Hillsborough County expressed their desire to improve their transportation assets at the ballot box by approving this amendment to their charter. The majority, however, concludes that “[c]ore provisions of article 11 are inconsistent with the surtax statute. Because those invalid provisions and the remaining provisions of the article form an interlocking plan, article 11 is unconstitutional in its entirety.” Majority op. at 21. The majority reasons that because the valid and invalid elements of article 11 are “so inseparable in substance, it cannot be said that the

voters would have adopted ‘the one without the other.’ ” Majority op. at 19. I disagree.

The amendment presented to the voters, despite the invalidation of significant portions of its provisions, still adequately defined its primary purpose: to provide funding for transportation infrastructure. A majority of voters in Hillsborough County understood it as such and expressed their desire to support it.

In addition, the majority’s focus of casting doubt on whether article 11 would have passed without the stricken provisions is a test more akin to what this Court rejected in *Ray v. Mortham*. In *Ray*, this Court rejected an argument that the challenger of a citizens-initiated constitutional amendment “need only cast doubt on whether the amendment would have passed” and that unless the sponsor of the amendment “can ‘prove’ that the voters would have adopted the amendment,” it must be stricken. 742 So. 2d at 1281. Concluding that the proffered test “would be an inappropriate burden to place on” the party defending an enactment adopted through the citizens’ initiative process, this Court confirmed that the burden should be on the challenger seeking to invalidate the popular will of the voters. *Id.* The majority’s analysis therefore goes against “the purpose underlying severability—to preserve the constitutionality of enactments where it is possible to do so.” *Id.*

Given our jurisprudence to “indulge every reasonable presumption in favor of an ordinance’s constitutionality,” *City of Kissimmee*, 915 So. 2d at 209, and the high bar we have set for declining severability, I respectfully dissent.

An Appeal from the Circuit Court in and for Hillsborough County – Bond Validations

Rex Martin Barbas, Judge - Case No. 292019CA001382A001HC

And Certified Judgments of Trial Courts in and for Hillsborough County –

Rex Martin Barbas, Judge - Case No. 292019CA001382A001HC – An Appeal from the District Court of Appeal – Second District, Case No. 2D19-2740

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Florida, and Marilyn Mullen Healy of Akerman LLP, Tampa, Florida,

for Amici Curiae the Greater Tampa Chamber of Commerce, the Tampa Bay  
Partnership, and the Tampa Hillsborough Economic Development  
Corporation

# **Exhibit B**

# 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

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: \_\_\_\_\_

\_\_\_\_\_

<p><b>RETURN TO:</b> All for Transportation 610 S Boulevard Tampa, FL 33606</p>
<p>For Official Use Only Serial Number: _____ Date Approved: _____</p>