

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

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

Plaintiff,

v.

Case No.: 18-CA-11749

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

Division: J

Defendants.

**RESPONSE IN OPPOSITION TO HILLBOROUGH COUNTY'S MOTION
FOR SUPPLEMENTAL RELIEF**

The Plaintiff, STACY WHITE, by and through his undersigned attorney responds to Hillsborough County's motion for supplemental relief. In opposition, Mr. White shows to this Court that:

1. The Florida Supreme Court, on pass through from the Second District Court of Appeal, reversed the final summary judgment in this case and held that Article 11 is unconstitutional in its entirety. All that remains to be done on the amended complaint filed by Stacy White, as the only plaintiff, is to enter a judgment in conformance with the mandate of the Supreme Court of Florida.

2. Hillsborough County is a defendant in this action. It has never sought relief from this Court except to have Mr. White's claim dismissed with prejudice. Its motion is not entitled a motion to amend its answer, but that appears to be what it is since the County has no affirmative pleading currently seeking relief from any party. Its motion should be denied as procedurally unauthorized.

3. Hillsborough County is seeking to hijack this case to become the plaintiff in an action for declaratory relief under section 86.061. There are many problems with this odd request.

4. First, as a defendant, Hillsborough County, prior to the end of a civil case and with leave of court, can file a counterclaim, a cross-claim, or perhaps a third-party claim against someone from whom it would need relief if it lost the main claim. This motion does not seek the right to amend to allege any of these authorized claims.

5. Second, the motion claims that all of the parties necessary to determine how to refund the unlawful tax proceeds to the people who paid the tax are already parties to this action. That simply is not so. Not a single person who paid the tax is a party to this proceeding except for Mr. White. Mr. White is a taxpayer, but he is also a Hillsborough County Commissioner elected by the voters in one district of this County. He is not willing to be, and cannot properly be, a class representative for the people who paid this tax. He will take no position on how to refund the proceeds of a tax that he did not wish to see collected in the first place. Simply put, Hillsborough County is seeking to create an action for declaratory relief in which it has no adversary.

6. Third, many of the parties to this action, including Mr. White, do not need to be, and probably should not be allowed to be, parties to any determination as to how to refund the proceeds of the unconstitutional tax. Section 86.091 provides that: "When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected

by the declaration.” Most of the parties to this lawsuit can claim no legal interest that should be affected by any future declaration:

- a. All for Transportation and Keep Hillsborough Moving, Inc., are non-governmental entities that created this mess. Hillsborough County did not create this tax. After this lawsuit was filed, All for Transportation publicly represented that it had obtained legal opinions that this tax was constitutional. The County apparently relied upon that assurance to levy the tax rather than to ask this Court to delay its collection. In discovery, it was determined that no such written opinion had been obtained from any independent lawyer or scholar. These entities have no right to be involved in any action to refund the proceeds of their unconstitutional citizen’s initiative. If anything, the County should seek to obtain reimbursement from these entities for the expenses that they have caused the County in this matter.
 - b. Hillsborough County, HART, the MPO, and the several municipalities have apparently received some of the unlawful proceeds from the former clerk of court as the “agencies” described in Article 11. These agencies now possess money that does not belong to them, and they simply need to give it back to the Clerk. They have no need or reason to be involved in the process of returning these proceeds when their only role was to be the agencies who would spend the money, which now cannot be spent.
7. Under Article 11, the former clerk received the tax proceeds from DOR and was obligated, essentially as a ministerial task, to transmit those proceeds to the various “agencies” for them to spend. Since it is now clear that the clerk had no lawful authority to disperse these funds, when the agencies return these funds to her, she simply needs hold them as a neutral

trustee or escrow agent until she receives some lawful direction either from DOR or from a court that has before it the proper parties to make such a determination.

8. If this were an action for declaratory relief to determine how to return the money to the people, the Clerk might need to be a party if she remains the neutral custodian of the funds. DOR might logically be the only party needed to help determine what to do with the money. Sales taxes are pre-empted to the state, and the Legislature has designated DOR to be the administrator and collector of this tax. *See § 212.054, Fla. Stat.* As part of its administrative duties it could help solve this problem, and it is the only current party to this action that has maintained a neutral stance. But Mr. White does not need or want to be a plaintiff in that action, and the action should not be cluttered with parties that have no legal interest in its outcome.

9. It may be that a lawsuit is necessary to determine how to fairly and efficiently return these funds. But that requires a lawsuit where the people have notice and an opportunity to be represented. That is not the lawsuit Mr. White filed. Hillsborough County can surely afford the filing fee to file its own lawsuit if it thinks it has standing to participate in this process. But in this case, Mr. White is entitled to the entry of a final judgment and to recover the small amount of costs recoverable in this case.

Respectfully submitted,

/s/ Chris W. Altenbernd

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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 18th day of March, 2021 to:

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