

IN THE SUPREME COURT OF FLORIDA

Case Nos. SC19-1250, SC19-1343

ROBERT EMERSON, et al.,
Appellants/Cross-Appellees,

v.

HILLSBOROUGH COUNTY, FLORIDA, et al.,
Appellees/Cross-Appellants.

STACY WHITE, et al.,
Appellants/Cross-Appellees,

v.

HILLSBOROUGH COUNTY, FLORIDA, et al.,
Appellees/Cross-Appellants.

**ANSWER BRIEF/CROSS-INITIAL BRIEF OF HILLSBOROUGH
COUNTY, HILLSBOROUGH COUNTY METROPOLITAN PLANNING
ORGANIZATION, AND CITY OF TAMPA**

On Review of Final Orders of the
Circuit Court of the Thirteenth Judicial Circuit
L.T. Nos. 2019-CA-001382, 2019-CA-001382

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STATEMENT OF THE CASE AND FACTS

I. FACTUAL BACKGROUND

A. Relevant Provisions of Article 11

After years of neglect of the area's transportation infrastructure and after significant population growth, on November 6, 2018, the citizens of Hillsborough County voted to impose a 1% sales tax on themselves for a period of 30 years to fund critical transportation improvements. (A9. 198-99.) They did so by adding Article 11 to their Hillsborough County Home Rule Charter. The levying of such a local transportation surtax by charter amendment is authorized by section 212.055(1), Florida Statutes. That amendment is the subject of this appeal. (A11. 326-34.)

As stated in Article 11 itself, “[t]he purpose of the surtax levied . . . 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.” (A11. 326 (Art. 11, § 11.01).)

Significant to resolving the issues on appeal, Article 11 dictates the proceeds from the 1% surtax “shall be distributed and disbursed in compliance with F.S. 212.055(1) and in accordance with the provisions of” Article 11. (*Id.*)

Mirroring this stated purpose, the official ballot for the November 2018 election contained the following ballot title and summary:

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

(A9. 735.)

Sections 11.04 and 11.05 of Article 11 allocate fixed percentages of the proceeds from the tax among Hillsborough County, the three municipalities in Hillsborough County (the cities of Tampa, Temple Terrace and Plant City), the Hillsborough Transit Authority (“HART”), and the Metropolitan Planning Organization (“MPO”).

Sections 11.07 and 11.08 of Article 11 then enumerates the minimum percentage of the surtax proceeds to be distributed to the County and Tampa in the

General Purpose Portion, and to HART in the Transit Restricted Portion that must be spent on various transportation-related categories of expenditures. (A11. 329-32 (Art. 11, §§ 11.07(1)-(4), 11.08).) The remaining proceeds not spent on these categories may be spent on any transportation improvement projects consistent with section 212.055(1). (*Id.* (Art. 11, §§ 11.07(5), 11.08(3)).)

Section 11.10 of Article 11 establishes an independent oversight committee (“IOC”) that is generally charged with ensuring the County, municipalities, HART, and the MPO are expending the surtax proceeds consistent with Article 11. (A11. 332-34 (Art. 11, § 11.10).) The IOC is charged with (1) reviewing the project plans of the County, the municipalities, HART, and the MPO for compliance with Article 11, (2) providing a report on the Clerk’s annual audit of the use of the surtax proceeds, and (3) reviewing and passing along any projects proposed by the citizens of Hillsborough County. (*Id.* (Art. 11, § 11.10(1)-(4)).)

Finally, Section 11.11 includes two sections that address severability. (A11. 334.) Section 11.11(2) is specific to the expenditure categories applicable to the general purpose and transit portions set forth in Sections 11.07 and 11.08. It provides that in the event any of the expenditure categories listed in Sections 11.07 and 11.08 are found to be an impermissible use of surtax proceeds, the funds may be expended on any transportation project permitted by section 212.055(1) and Article 11. Section 11.11(3), in turn, requires Article 11 to be interpreted in a

manner consistent with the laws of Florida, and, in the event of a conflict between Article 11 and the laws of Florida, the laws of Florida prevail. (*Id.*)

Notably, Article 11 refers to section 212.055(1) in eleven places and repeatedly requires the surtax to be distributed or collected “in compliance with,” “in accordance with,” “as permitted by,” and “to the extent permitted by” section 212.055(1).

B. The County Commission’s Actions Following the Passage of the Charter Amendment

On February 6, 2019, the County Commission adopted Resolution No. R19-027 (the “Bond Resolution”) by a 6-1 vote—with White being the only commissioner to disapprove of the resolution. (A12. 34-77, 79-80.) The resolution deemed Article 11’s allocation and use of funds appropriate pursuant to section 212.055(1). It also authorized the issuance of bonds with the surtax pledged as security and the filing of a bond validation (A12. 34-77). That action was subsequently filed on February 7, 2019 (A10. 13-89).

Pertinent to this appeal, Section 25 of the Bond Resolution states:

Section 25. Appropriateness of Article 11 of the Hillsborough County Charter. Article 11, which was a citizens’ initiative to amend the Hillsborough County charter pursuant to Section 8.03 of the Hillsborough County Charter and Section 212.055(1)(a), Florida Statutes, was approved by a majority of the voters in the County on November 6, 2018. ***The provisions of Article 11, including the allocation and uses of the funds set forth therein, are hereby deemed appropriate pursuant to Section 212.055(1), Florida Statutes, by the Governing Body.***

(A11. 75 (emphasis added).)

The surtax became effective January 1, 2019. As contemplated by section 212.055(1)(d)(4), the County, Tampa, Temple Terrace, Plant City, HART, and MPO entered into an Interlocal Agreement. (A12. 21-33.)

The Interlocal Agreement requires the entities to abide by the terms of not only the agreement itself, but also section 212.055(1), Article 11, and the ballot language of the November 6, 2018, referendum. The parties explicitly ratified and *“deem[ed] appropriate the allocation, distribution and uses of Surtax Proceeds as provided for in the Charter Amendment.”* (A12. 23 (Interlocal Agreement at § 2) (emphasis added).)

The Interlocal Agreement also clarified that, pursuant to Article 11, the independent oversight committee would have the power and duty to: (1) review audits and make findings based on the results as to whether the Clerk, County, municipalities, HART, and the MPO complied with Article 11; (2) approve and certify that project plans comply with Article 11 (but not disapprove of project plans that comply with Article 11); (3) prepare an annual report to the Clerk, County, municipalities, HART, and the MPO presenting the auditor’s findings; and (4) review citizens projects and forward them for consideration. (A12. 23 (Interlocal Agreement at § 4(A)).)

In summation, consistent with section 212.055(1), Article 11 was added to the Hillsborough County Home Rule Charter. By the Interlocal Agreement, the County, Tampa, Temple Terrace, Plant City, HART, and the MPO have agreed to adopt and follow the terms of Article 11. In both the Interlocal Agreement and the Bond Resolution, the County Commissioners have twice explicitly “deem[ed] appropriate” under section 212.055(1) the allocation and uses of the surtax proceeds as provided in Article 11. The County Commission, as well as the other municipalities and agencies subject to the IOC’s oversight, have also recognized the scope and continued legal viability of the IOC as provided for in Article 11.

C. Section 212.055(1)

As noted above, section 212.055(1)(a) authorizes charter counties to levy a sales surtax of up to 1% for transportation uses by charter amendment approved by the voters.¹ The statute further provides four general types of uses to which the surtax proceeds may be applied under section 212.055(1)(d):

(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

¹ Section 8.03 of the County Charter gives the citizens of the County the right to propose amendments to the charter by citizens’ initiative. (A11. 320-21.) The County Charter also does not restrict the citizens’ initiative power in any way and specifically does not exclude any powers of county government from the public’s reach through the initiative process. (*Id.*)

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.

§ 212.055(1)(d), Fla. Stat. (emphasis added).

Under the statute, county commissions in charter counties are empowered with expansive flexibility and discretion in determining whether and to what extent, as they “deem[] appropriate,” surtax proceeds may be allocated into these four general uses. Notably, this includes the decision to delegate complete discretion to a transit authority to spend surtax proceeds allocated under section 212.055(1)(d)2 without any input from the county commission.

This additional flexibility and discretion was not always present in the statute. For example, the 1987 version of section 212.055(1)(d) did not provide that surtax proceeds could be applied “*in whatever combination the county commission deems appropriate*” as in the current statute. Rather, the statute provided that “[p]roceeds from the surtax shall be”:

(1) Deposited by the county in the rapid transit trust fund and shall be used only for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, and related costs of a fixed guideway rapid transit system, *or*

(2) Remitted by the governing body of the county to an expressway or transportation authority created by law to be used, at the discretion of such authority . . . [for certain purposes]

§ 212.055(1)(d) (1987) (emphasis added). Thus, in this prior version of the statute, the county commission could only deposit the surtax proceeds in the rapid transit trust fund “or” remit them to an expressway or transportation authority. The county commission was not empowered with the flexibility to utilize multiple avenues for addressing transportation issues within charter counties.

Section 212.055(1)(d) was substantially changed in 1999 when for the first time county commissions were empowered to apply the surtax proceeds “to as many or as few of the uses enumerated below in whatever combination the county deems appropriate.” § 212.055(1)(d), Fla. Stat. (1999). By deleting the disjunctive “or,” and giving the county commission the authority to use any or all of the prescribed “uses,” the Legislature gave charter counties greater flexibility over the uses to which the surtax proceeds could be allocated.

Importantly, there is nothing in the text of the statute requiring a county commission’s direct participation in each and every decision made about spending the surtax proceeds. Notably, in both the early versions of the statute and the current version, the surtax proceeds may be allocated to a transportation authority to spend, at its own discretion, without any oversight from the county commission whatsoever. § 212.055(1)(d)2, Fla. Stat.

II. PROCEDURAL HISTORY

On December 4, 2018, shortly after Article 11 was approved by the voters, White—a sitting County Commissioner—brought an action seeking to invalidate Article 11. (A1.13.) White essentially asserted that Article 11 infringed on his absolute authority as a Hillsborough County Commissioner under section 212.055(1) to determine whether and how much of the surtax proceeds are spent on the transportation-related expenditures enumerated in the statute. (A1.19-A1.27; A1.488-496.) In other words, he argued Article 11 conflicted with section 212.055(1). He also asserted that: (1) Article 11 violated the County Charter’s single subject rule, and (2) the ballot summary did not meet the requirements of section 101.161, Florida Statutes. (A1.27-30; A1.497-504.) The latter two arguments were abandoned in this appeal.

As stated above, the County filed the bond validation on February 7, 2019 seeking to validate the issuance of surtax revenue bonds to finance the costs of transportation projects throughout the County with the surtax proceeds pledged as security for the repayment of the bonds. (A10. 13-89.) White’s lawsuit was partially consolidated with that bond validation. (A1. 245.) White and Emerson intervened in the bond validation. While White raised the same three arguments addressed above, Emerson only argued the terms of Article 11 conflicted with section 212.055(1). (A7. 98-158; A10. 92-128, 597-639; A11. 214-26.)

The trial court entered two separate final judgments mirroring one another. (A9. 747-54; A12. 807-23.) The final judgment in the bond validation validated the bonds, but found certain provisions of Article 11 to be in conflict with section 212.055(1). (A12. 807-23.) Invoking the severability doctrine, the trial court struck those provisions that it found conflicted with section 212.055(1) and upheld the validity of the remainder of Article 11. (A12. 812, 819-23.) The trial court rejected White's single subject and ballot summary claims in their entirety. (A12. 811; A9. 678-81) The final summary judgment in White's declaratory judgment action tracked the bond validation judgment. (A9. 747-54; *see also* A9. 673-93 (order on motions for summary judgment).)

The severed portions relate to three issues:

- Percentage allocations of the proceeds to the County, municipalities, HART, and the MPO and the designated percentages to employ towards more specific categories of expenditures;
- Specific actions, authority, and power granted to the IOC; and
- Prohibitions on use of proceeds to increase existing lane capacity, expansion of right of way within the interstate highway system, and construction of other facilities.

(A12. 819-23.)

The trial court reasoned that under section 212.055(1)(d), the Florida Legislature mandated that the County Commission be “exclusively responsible for determining which uses the surtax proceeds should be allocated to as well as the amount to be distributed to each use.” (A9. 683.) On this basis, the trial court struck the provisions in Article 11 it viewed as encroaching an area of exclusive responsibility and authority of the County Commission. (A9. 683-87; A12. 819-23.)

The trial court relied on language in section 212.055(1)(d) providing that the proceeds from a surtax “shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission *deems appropriate.*” (A9. 683 (emphasis added).) However, the trial court’s final judgments are silent as to the impact of the County Commission’s express determinations in both the Bond Resolution and Interlocal Agreement that the allocation, distribution and uses of the surtax proceeds as provided in Article 11 are “deem[ed] appropriate” as provided in section 212.055(1)(d).

The trial court nevertheless upheld the remaining provisions of Article 11 on the basis that these provisions would have been passed by the voters even without the stricken provisions. (A9. 687.) In support, the court noted that Section 9.05 of the County Charter provides that “if any section, subsection, sentence, clause term or word of this Charter is held invalid, the remainder of the Charter shall not be

affected.” (A9. 686.) Relying in part on the severability clause and supremacy clause in Section 11.11(2)-(3), the trial court further reasoned that it was clear that severability was anticipated by the voters. (A9. 687.) The trial court also found voters were provided with clear notice of severability because the full text of the amendment was available throughout the County prior to the election and the news coverage and political advertising provided additional information about the measure. (*Id.*)

White appealed both final judgments, and Emerson appealed the bond validation judgment. They argue the trial court could not sever the portions of Article 11 found to be in conflict with section 212.055(1), and the entirety of Article 11 should have been invalidated. White did not appeal the rejection of his single subject and ballot summary claims.

Hillsborough County and most of the remaining parties filed notices of cross-appeal to challenge the trial court finding that provisions of Article 11 conflict with section 212.055(1). The bond validation was directly appealed to this Court under Fla. R. App. P. 9.030. The Second District Court of Appeal certified White’s appeal to this Court under Fla. R. App. P. 9.125. This Court accepted jurisdiction and consolidated both actions.

SUMMARY OF ARGUMENT

As argued on cross-appeal, Article 11, as approved by the citizens of Hillsborough County, is consistent with section 212.055(1); thus, Article 11 is not contrary to general law and should be upheld in its entirety.

Article 11, by its terms, requires compliance with general law, including specifically section 212.055(1). The contention that Article 11 directly conflicts with general law is contradicted by the plain language of Article 11 itself. Indeed, the parties below stipulated that the uses provided in Article 11 complied with Florida law.

Section 212.055(1)(d) provides that the county commission may utilize various “uses” for the surtax proceeds” as it “deems appropriate.” Consistent with section 212.055(1), the County Commission has twice “deem[ed] appropriate” the allocation and uses of the surtax proceeds, and reiterated the scope of the duties and authority of the IOC as contained in Article 11. In so doing, the County Commission has determined that the provisions of Article 11 are an appropriate use, distribution and allocation of the surtax proceeds. No other action or determination by the County Commission is required by section 212.055(1).

Furthermore, the provisions of Article 11 merely supplement, rather than contradict, the provisions of section 212.055(1). Unlike the detailed and mandated processes found in the millage statutes, for example, section 212.055(1) does not

provide a particular form of action that must be taken by a county commission to “deem[] appropriate” the various uses for the transportation surtax proceeds. In fact, while the introductory language to the statute provides that its intent is to provide “the purpose for which the proceeds may be expended,” the statute says absolutely nothing about the process by which those uses are determined.

White and Emerson’s contention that section 212.055(1) requires the County Commission to directly allocate every surtax dollar itself should also be rejected because it requires the Court to rewrite the statute and ignore the evolution of the legislation. Section 212.055(1)(d)2 expressly contemplates that, once surtax proceeds are allocated, all decision-making could be provided to a local transportation authority to use “at the discretion of such authority.” Under those circumstances, a county commission would have no input on spending decisions whatsoever.

The evolution of section 212.055(1) also demonstrates that the current version of the statute is intended to empower charter counties with expansive flexibility to determine as it “deems appropriate” how surtax proceeds may be allocated for transportation-related needs. The language was never intended to mandate the county commission must make spending decisions about every surtax dollar collected.

Finally, the trial court also erred in striking provisions of Article 11 providing for the IOC's ability to "approve and certify" project plans submitted by the County and other agencies and to prohibit distribution of funds where the County or other agencies are not in compliance with Article 11. The trial court's error was premised on its misinterpretation of Fla. Stat. § 212.055(1) as well as the terms of Article 11.

The core function of the IOC is to verify that the surtax proceeds are spent compliant with the terms of Article 11 and section 212.055(1). The trial court misconstrued Art. 11, § 11.10 as granting the IOC the power to reject project plans for any reason, even if the project plans are compliant with Article 11. Read in conjunction with the other terms of Article 11, including the supremacy clause in Art. 11, 11.11(3), it is clear that the IOC has the authority to approve project plans only based on a finding that they comply with Article 11 and Florida law.

Alternatively, as addressed in the Answer Brief, the trial court's final orders may be affirmed because even without the severed provisions of Article 11, the charter amendment accomplishes its overall purpose: to levy a 1% sales surtax to fund certain transportation projects in Hillsborough County. To the extent certain provisions struck by the trial court are deemed invalid, this Court should nevertheless uphold Article 11 because, under the controlling four-part test in *Cramp v. Board of Public Instruction*, 137 So. 2d 828 (Fla. 1962), the overall

purpose of the charter amendment remains in the absence of the severed provisions.

The four-part test in *Cramp* applies to citizens-initiated charter amendments in accordance with the principles of self-government recognized in Florida's Constitution and Hillsborough County's Home Rule Charter. White and Emerson's attempt to create an entirely new severability test and to shift the burden of proof to the "sponsors who placed the constitutionally defective measure on the ballot" undermines the very democratic principles on which citizens initiatives are built and on which the severability doctrine is applied.

Applying the correct burden of proof, White and Emerson argue that without the severed language, the overall purpose of the charter amendment has been lost. In support, they rely on a failed citizens' initiative that did not garner enough support in 2010 to essentially argue that the Hillsborough County voter casting a ballot in favor of Article 11 in 2018 would not have done so without the existence of the severed provisions.

White and Emerson's speculative argument aside, Florida courts have recognized that the overall purpose of an initiative is determined from the language of the initiative itself and its ballot summary. Under this standard, the overall purpose of Article 11 is to adopt a 1% sales tax to fund certain transportation projects in Hillsborough County. The remaining provisions of Article 11 clearly

provide that a 1% sales surtax will be applied to certain transportation projects in Hillsborough County; thus, the overall purpose of Article 11 remains despite the elimination of the severed provisions.

Notably, severability was contemplated by the drafters and voters of Article 11. Both the terms of Article 11 itself and other provisions of the County Charter explicitly recognize that the doctrine of severability should be applied to uphold a charter amendment. Thus, the Court may affirm the trial court's orders upholding Article 11 but severing certain provisions because the overall purpose of the charter amendment, approved by an overwhelming majority of Hillsborough County voters, remains.

ANSWER

ARGUMENT

I. THE TRIAL COURT'S FINAL ORDERS SHOULD BE AFFIRMED BECAUSE, EVEN WITHOUT THE SEVERED PROVISIONS OF ARTICLE 11, THE CHARTER AMENDMENT ACCOMPLISHES ITS OVERALL PURPOSE.

A. Standard of Review

The Court reviews orders determining the constitutionality of a county charter amendment based on *de novo* review. *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1241 (Fla. 2006).

B. The four-part test in *Cramp* applies to citizens-initiated charter amendments in accordance with the principles of self-government recognized in Florida’s Constitution and Hillsborough County’s Home Rule Charter.

Twenty years ago, this Court recognized that “the initiative power of fully informed citizens to amend the Constitution must be respected as an important aspect of the democratic process.” *Ray v. Mortham*, 742 So. 2d 1276, 1281 (Fla. 1999). The doctrine of severability recognizes “the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions.” *Id.* at 1280. Courts must “preserve constitutionality of enactments where it is possible to do so.” *Id.* at 1281.

Florida courts have applied a four-part severability test to citizen’s initiatives, proposed constitutional amendments, and other legislative enactments. That four-part test provides that a charter amendment will be permitted to stand despite its severed provisions where: (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*, 137 So. 2d at 830. *See also Ray*, 742 So. 2d at 1280-81; *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002).

This four-part test applies to local enactments, including county charter amendments. *Village of Wellington v. Palm Beach Cnty.*, 941 So. 2d 595, 600-01(Fla. 4th DCA 2006). It also applies to an amendment to the Florida Constitution adopted by voters through a citizens' initiative. *Ray*, 742 So. 2d at 1281. Critically, the burden is on the party challenging the enactment to establish that the invalid language is not severable and that the entire enactment must be invalidated. *Ray*, 742 So. 2d at 1281.

Despite this well-settled case law applying the *Cramp* test to citizens' initiatives, White urges the Court to adopt one of two new severability tests to be used exclusively for local legislation adopted through the citizen initiative process. First, White asserts where there is any conflict between the language in a charter amendment adopted through the citizens' initiative process and a state statute—no matter how minor—the entire amendment must be invalidated. (White Initial Br. 47.)² In other words, White proposes that the severability doctrine not be applicable to citizens' initiatives at all.

² The Florida House of Representatives' Amicus Brief argues that the four-prong severability test does not apply to charter amendments proposed by citizens' initiative. (House Br. 12.) It reasons that the four-prong test only applies where necessary to avoid judicial encroachment on a constitutionally allocated power, which it asserts is not present here. (*Id.*) Putting aside that this argument was never raised in the trial court and is therefore not appropriately before this Court, the argument also fails because there is no authority for this proposition.

Second, White argues, without support, that the Court should shift the burden of proof from the party challenging the enactment, to the “sponsors who placed the constitutionally defective measure on the ballot.”³ (White Initial Br. 48.) Under this proposed test, the entire amendment must be invalidated unless “the sponsors establish, clearly and convincingly, that the ‘good’ part of their initiative . . . would have been adopted by the voters if it had been presented as a stand-alone measure with a fair and accurate ballot summary describing only the subject contained in the good part.” (*Id.*)

While seemingly forgetting that the “sponsors” are “the people,” his proffered standards ignore Florida law and the well-recognized principles of self-government embodied in the Florida Constitution and Hillsborough County’s Home Rule Charter. The very first line of the Florida Constitution could not be clearer: “All political power is inherent in the people.” Art. I, § 1, Fla. Const. *See also Seminole Cnty. v. City of Winter Springs*, 935 So. 2d 521, 529 (Fla. 5th DCA 2006) (recognizing “[a]ll political power is inherent in the people” and the Florida Constitution “grants the electorate the right” to amend their county charters). The County Charter similarly provides: “The power to propose amendments to this

³ It is a mischaracterization to state that it is the “sponsor” “who place[s]” a citizens’ initiative “on the ballot.” Under the County Charter, as with the charters of many Florida local governments, a charter amendment proposed by initiative is *not* placed on the ballot by the person who filed the initiative petition. Whether the measure is placed on the ballot is determined by the people through a petition drive. (A11. 320-21 (Charter, VIII, § 8.03).)

Charter by initiative is vested in the people.” (A11. 320-21 (Charter, VIII, § 8.03).)

Pursuant to this power reserved to the citizens by the Florida Constitution and the County Charter, the County’s citizens have a clear legal right to adopt charter amendments directly through an initiative. Florida courts cannot infringe on this right. *See Telli v. Broward Cnty.*, 94 So. 3d 504, 513 (Fla. 2012) (recognizing courts cannot infringe on “the ability of counties to govern themselves as that broad authority has been granted to them home rule power through the Florida Constitution”). And, in assessing the constitutionality of a charter amendment to a home rule charter, the court “must presume that it is constitutional” where possible. *Charlotte Cnty. Bd. of Cnty. Comm’rs v. Taylor*, 650 So. 2d 146, 148 (Fla. 2d DCA 1995).

In light of this well-settled authority, White’s undemocratic contention that citizens’ initiatives to amend county charters are somehow entitled to less deference than laws passed by the Florida Legislature, the County Commission, and statewide citizens’ initiatives must be rejected. (White Initial Br. 45-46.) A local enactment adopted directly by the citizens has no less force and effect than an enactment of the County Commission, citizens of the entire State of Florida, or Florida’s Legislature.

This Court implicitly adopted this approach in *Ray v. Mortham* when it 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 initiative process, this Court confirmed that the burden should be on the challenger seeking to invalidate the popular will of the citizens of Florida. *Id.*⁴

The law is clear and well-settled. The four-prong severability test applicable to state statutes also applies to local enactments, including county charter amendments, and legislation enacted through the citizens’ initiative process. *Village of Wellington*, 941 So. 2d at 600-01 (four-prong test applies to county charter amendments); *Ray*, 742 So. 2d at 1281 (four-prong test applies to citizens-initiated constitutional amendments). Because White and Emerson concede that Article 11 meets the requirements of the first and fourth prongs (White Initial Br. 25-26; Emerson Initial Br. 24-25), the County directs its arguments below to the

⁴ White asserts that the holding in *Ray* should be limited to citizens’ initiated constitutional amendments, which he perceives as less vulnerable to “defects” and “election abuses” due to the “pre-ballot judicial review procedure” afforded to constitutional amendments. (White Initial Br. 44-48.) White also testified that he had concerns regarding the validity of Article 11 before the election. (A1. 300.). What White fails to acknowledge is that he could have challenged the constitutionality of Article 11 before the November 6, 2018, election, and addressed any “election abuses” at that time, but instead allowed the election to proceed unchallenged.

second and third prongs of *Cramp*: whether Article 11’s overall purpose cannot be fulfilled without the severed provisions and whether the severed provisions are so inseparable that voters would not have passed Article 11 without them. *Cramp*, 137 So. 2d at 830 (outlining four-part severability test).

C. The overall purpose of Article 11 is to adopt a 1% sales tax to fund transportation projects in Hillsborough County; the severed portions do not affect Article 11’s overall purpose and can be separated from the remaining provisions.

As White correctly recognizes, the most important factor in determining severability is the “overall legislative intent” of those who adopted the enactment, or, stated another way, the enactment’s “overall purpose.” *Ray*, 742 So. 2d at 1280-82. *See also E. Air Lines, Inc. v. Dep’t of Revenue*, 455 So. 2d 311, 317 (Fla. 1984) (“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.”).

Once the overall purpose is determined, “[t]he test is whether “[t]he unconstitutional provisions of th[e] amendment can be stricken without disrupting the integrity of the remaining provisions.” *Ray*, 742 So. 2d at 1283. If “[t]he offending subsections can be separated without any adverse effect on its remaining portions,” the unconstitutional provisions may be severed. *Florida Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 494 (Fla. 2008).

To determine an amendment’s overall purpose, the court “analyzes the text . . . and identifies the proposed amendment’s chief purpose based on the results of that analysis.” *Dep’t of State v. Fla. Greyhound Assoc.*, 253 So. 3d 513, 521 (Fla. 2018). The purpose of Article 11 is identified in Art. 11, § 11.01:

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 . . .

(A11. 326.)

This Court has also recognized that voter intent in the passage of a citizens’ initiative can be discerned from the law’s ballot summary language. *Graham v. Haridopolos*, 108 So. 3d 597, 605 (Fla. 2013) (finding ballot summary is “indicative of voter intent”). Here, Article 11’s ballot summary provided to voters on November 6, 2018, essentially mirrors Section 11.01 above. It asked voters whether the categories of transportation improvements outlined in Section 11.01 should be funded through “a one-cent sales surtax levied for 30 years and deposited in an audited trust fund with independent oversight.” (A9. 735.)

It is undisputed that, as found by the trial court, this ballot summary language⁵ appropriately identifies the “chief purpose” of the measure consistent with section 101.161. (A12. 811.) That chief purpose, as clearly stated in the ballot summary and section 11.01, is to levy a 1% sales surtax to fund transportation projects in Hillsborough County. The ballot summary did not list the percentage allocations of surtax proceeds to be provided for particular uses under Sections 11.07 and 11.08 or describe the individual powers and duties of the IOC, which were stricken by the trial court, because they were not the amendment’s chief or overall purpose.

Rather than looking to the “overall purpose” of Article 11 as identified in both the charter amendment and the voter intent as identified in the ballot summary, White and Emerson attach great importance to ancillary details. First, they essentially make the same argument that was rejected in *Ray*—that the overall “purpose of the amendment cannot be accomplished without *all* the provisions.” 742 So. 2d at 1281 (emphasis original). They also incorrectly suggest that, rather than looking to the “overall purpose,” the Court should look to the number of words in Article 11 that were stricken.

⁵ White’s fleeting contentions regarding the single subject rule and ballot summary are not preserved before this Court and therefore should not be considered. *Duest v. Dugger*, 555 So. 2d 849, 852 (Fla. 1990).

White's and Emerson's attempted misdirection should be rejected. Again, "[t]he test is whether "[t]he unconstitutional provisions of th[e] amendment can be stricken without disrupting the integrity of the remaining provisions." *Ray*, 742 So. 2d at 1283. If "[t]he offending subsections can be separated without any adverse effect on its remaining portions," the unconstitutional provisions may be severed. *Florida Hosp. Waterman, Inc.*, 984 So. 2d at 494. Nothing about the stricken provisions here, which address particular allocations of surtax proceeds, restrictions on spending, and certain aspects of the IOC's power, are affected by the trial court's use of the severability doctrine.

The remaining text of the charter amendment, which accomplishes the chief intent of Article 11 to fund transportation projects in Hillsborough County, was left undisturbed. This is particularly true given that no words were stricken from Sections 11.01, 11.02, and 11.03. Again, Section 11.01 identifies the purpose of the surtax is to fund transportation projects. And, as White concedes, Sections 11.02 and 11.03 provide "almost everything required" to establish the surtax itself. (White Initial Br. 11.)

Finally, the other cornerstone of White's and Emerson's severability analysis is that voters would not have approved Article 11 without the severed provisions. The basis for their argument is the contention that the intent of the voters who voted in favor of the charter amendment in 2018 should be determined

by what voters in 2010 rejected under completely different circumstances. But time did not standstill for eight years in Hillsborough County. The population changed and grew by almost 500,000 people. (A12. 274-75.) The County's demographics also changed. As White readily admits, eight more years of underfunded transportation needs in the County compounded the problem. (A12. 667-72.) Finally, the 2010 referendum was a totally different proposal; it called for 75% of the funds to be dedicated to transit improvements and 25% to roads.

As this Court did in *Ray*, White's and Emerson's "conjecture and speculation" as to what voters may have done based on what the 2010 voters were thinking should be rejected. 742 So. 2d at 1283 (rejecting argument that "it is more likely that the people would not have voted" for state legislature term limits had the issue of federal term limits not been on the ballot as "nothing more than conjecture and speculation").⁶

⁶ Emerson seeks to bolster this argument by citing to campaign literature of Article 11's sponsor, including documents outside the record below. (*See* Emerson's Initial Br. 22-23). Even White admits to having doubts whether political campaign materials are a viable source of information relevant to the Court's severability analysis. (*See* White's Initial Br. at 41). Political campaign material is not relied upon by the Court when analyzing ballot summaries and determining an initiative's chief purpose. *Armstrong v. Harris*, 773 So. 2d 7, 20 (Fla. 2000). It similarly should not be relied on to determine the voter's intent in a severability analysis. Moreover, the material from All For Transportation reprinted in Emerson's brief (Emerson Initial Br. 23) and included in Emerson's Appendix, was not admitted into evidence in the bond validation hearing below, at which Emerson appeared as an intervenor-defendant. This document should be stricken from Emerson's Appendix and Emerson's efforts to buttress its specious argument

Thus, the overall purpose of Article 11 is to fund transportation projects in Hillsborough County. Both the plain language of Article 11 and the ballot summary confirm that the voter intent was to enact a 1% surtax over a 30 year period to address transportation needs of the area’s growing population. Because the severed provisions do not “disrupt the integrity of the remaining provisions,” Article 11, as severed, should be upheld. *Ray*, 742 So. 2d at 1283.

D. Severability was contemplated by the drafters and voters of Article 11, further supporting the trial court’s finding that the overall purpose of Article 11 is accomplished without the severed provisions.

An “initiative petition . . . specifically contain[ing] a severability clause . . . is persuasive of the fact that the framers intended severability to save the amendment in case portions of it were declared invalid.” *Ray*, 742 So. 2d at 1283. As the trial court recognized, severance of certain provisions of Article 11 was something the drafters of the charter amendment were aware of and made known to the citizens of Hillsborough County. Inclusion of this provision to address this contingency further demonstrates Article 11 as severed should not be declared invalid. In fact, as in *Ray*, 74 So. 2d at 1283, the full text of Article 11 was provided to voters when petitions were being collected to get the initiative on the

that the intent of the voters in 2018 is interchangeable with the will of the voters in 2010 should be rejected.

ballot, thus providing them notice of the severability provisions contained in the charter amendment. (A9. 687.)

White and Emerson assert that the severability clause contained in Section 11.11(2) is not controlling as it does not address the majority of the stricken provisions. They rely on the assertion that the severability clause only applies to Sections 11.07 and 11.08.

This argument ignores the supremacy clause contained in Section 11.11(3) immediately below the severability clause, which provides that, in the event of a conflict between Article 11 and Florida law, Florida law will prevail—clearly contemplating the possibility that certain provisions of the charter amendment might be severed. Moreover, the County Charter provides “that if any section, subsection, sentence, clause term or word of this Charter is held invalid, the remainder of the Charter shall not be affected.” (A11. 323 (Art. 9, § 9.05).) These other provisions of the County Charter further support finding that the intent of the drafters and voters was to sever any invalid provisions and otherwise uphold the remainder of Article 11.

More fundamentally, a severability clause is not needed to uphold a trial court’s severance of invalid provisions; such clauses merely provide additional support for severance. *See Dade Cnty. v. Keyes*, 141 So. 2d 819, 821 (Fla. 3d DCA 1962) (noting it is “the duty of the court to preserve” the remaining provisions of a

statute or ordinance after severance “whether or not a severability clause was included” in the statute or ordinance).

Because the purportedly unconstitutional provisions of Article 11 can be severed from the remainder of the charter amendment under the *Cramp* test, and the overall purpose of Article 11 has been preserved, the charter amendment, as revised, should be upheld.

II. THE ARGUMENTS OF THE AMICUS BRIEFS SHOULD BE DISREGARDED BECAUSE THEY WERE EITHER NOT RAISED BY WHITE OR EMERSON BELOW OR HAVE BEEN ABANDONED ON APPEAL.

The County, Tampa and the MPO adopt the arguments of Intervenor-Appellees/Cross-Appellants Tyler Hudson, Keep Hillsborough Moving, Inc. and All for Transportation regarding the failure of White or Emerson to raise in the court below the arguments addressed by the amicus briefs submitted by the Florida House of Representatives and Florida Senate and the Associated Industries of Florida. (Intervenors’ Ans./Cross-Appeal Br. 37-39.)

CROSS-APPEAL

ARGUMENT

I. ARTICLE 11 IS CONSTITUTIONAL BECAUSE IT DOES NOT DIRECTLY CONFLICT WITH SECTION 212.055(1); THEREFORE, THE ENTIRE CHARTER AMENDMENT SHOULD BE UPHELD.

Although the trial court's final judgments may be affirmed on the basis of the severability doctrine, the Court should uphold Article 11 in its entirety because none of its provisions directly conflict with section 212.055(1).

A. Standard of Review

A lower court's determination of the constitutionality of a county charter amendment is reviewed *de novo*. *City of Hollywood*, 934 So. 2d at 1241.

B. Charter amendments are presumed constitutional and must be interpreted as constitutional wherever possible.

Under the Florida Constitution, charter counties have broad powers of self-government. *Phantom of Brevard, Inc. v. Brevard Cnty.*, 3 So. 3d 309, 314 (Fla. 2008). As a result, charter counties may exercise all powers of local self-government and enact local legislation that is "not inconsistent with general law." Art. VIII, § 1(g), Fla. Const.

In determining whether a charter amendment is "not inconsistent with general law" under Article VIII, § 1(g), the Court "begin[s] with the premise that 'all political power is inherent in the people and that we must, if possible, interpret the amendment as constitutional.'" *Citizens for Responsible Growth v. City of St.*

Pete Beach, 940 So. 2d 1144, 1146 (Fla. 2d DCA 2006) (quoting *Charlotte Cnty.*, 650 So. 2d at 148). By enacting section 212.055(1), the Florida Legislature expressly authorized charter counties to adopt up to a 1% transportation sales surtax. Thus, the only issue is whether there is a direct conflict between Article 11 and section 212.055(1), not whether the County had the authority to tax.

A charter amendment does not directly conflict merely because it is “more stringent than the statute.” *City of Kissimmee v. Fla. Retail Fed., Inc.*, 915 So. 2d 205, 209 (Fla. 5th DCA 2005). “There is a conflict between a [charter amendment] and a state statute” only where the charter amendment “cannot coexist with the state statute.” *Phantom*, 3 So. 3d at 314; *see also State of Fla. v. Brautigam*, 224 So. 2d 688, 692 (Fla. 1969). In other words, Article 11 is only unconstitutional if compliance with its provisions requires a violation of section 212.055(1). *See Phantom*, 3 So. 3d at 314.

Because none of the provisions of Article 11 severed by the trial court directly conflict with section 212.055(1), the charter amendment is constitutional and should be upheld in its entirety.

C. The allocation provisions of Article 11 do not directly conflict with section 212.055(1).

The trial court struck provisions of Article 11 that provided for specified funding percentages for certain categories of transportation-related uses and prohibited the spending of surtax proceeds in certain circumstances. (A12. 819-23.)

The trial court and White and Emerson’s reasoning should be rejected because: (1) the provisions of Article 11 merely supplement rather than contradict the provisions of section 212.055(1), (2) section 125.86, Fla. Stat. authorizes voters of charter counties to limit the county commission’s authority, and (3) the term “deems appropriate” does not require a county commission to directly determine how every dollar of surtax proceeds are spent.

- i. **The language in section 212.055(1)(d) providing that the county commission may utilize as many or few of the enumerated uses as it “deems appropriate” does not mandate that the county commission directly allocate every surtax dollar itself.**

The trial court’s ruling and White’s and Emerson’s contention that the spending and allocation provisions in Sections 11.04-11.09 of Article 11 conflict with section 212.055(1) is premised on an erroneous interpretation of section 212.055(1)(d). (A9. 682-86.) Again, that provision of the statute states:

(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*:

Id. (emphasis added). Section 212.055(1)(d)1-4 then outlines the four general types of uses to which the surtax proceeds can be applied.

The trial court reasoned that the word “shall” means the Florida Legislature intended that the “county commission be exclusively responsible for determining which uses the surtax proceeds should be allocated to as well as the amount to be

distributed to each use.” (A9. 683.) White similarly argues that, in effect, he and the other County Commissioners were granted absolute authority to determine the uses to which surtax proceeds may be spent and must be involved in every budgetary decision. (White Initial Br. 3.) This interpretation is wrong for at least three reasons.

First, the provisions of Article 11 merely “supplement, rather than contradict, the provisions” of section 212.055(1). *Phantom*, 3 So. 3d at 314. The trial court’s conflict analysis relied on the Second District’s decision in *Charlotte County Board of County Commissioners v. Taylor*. That case involved a county charter amendment that placed a cap on the county’s ad valorem millage rate. 650 So. 2d at 148. Unlike the surtax authorized under section 212.055(1), ad valorem tax statutes provide for a detailed, and extensive process for adopting the county’s budget and millage rate. Those statutes, for example, expressly require that the millage rate be set only by ordinance or resolution adopted by the county commission. § 200.001, Fla. Stat. As a result, ad valorem statutes provide the exclusive manner for setting county millage rates. *Dade City v. Wilson*, 386 So. 2d 556, 560 (Fla. 1980).

In contrast to the detailed and mandated process found in the millage statutes,⁷ section 212.055(1) does not provide any particular form of action the

⁷ See Chapters 129 and 200, Florida Statutes.

county commission must take to deem the surtax uses appropriate. It does not require an ordinance or resolution; it does not state when or how the county commission deems the uses and allocation appropriate; it does not establish strict public hearing and notice requirements. Other subsections of section 212.055 provide such additional requirements for enactment of other surtaxes beyond what is required in section 212.055(1).⁸ And, importantly, it also does not preclude the voters from placing parameters on the distribution and expenditure of transportation sales tax revenues. Indeed, the introductory language to section 212.055 provides that each subsection authorizing a sales surtax is to provide “the purpose for which the proceeds may be expended.” § 212.055, Fla. Stat. The statute says nothing about the process by which those uses are determined.

Thus, like the statute authorizing a county to pledge the gas tax revenues in *State v. Sarasota County*, 549 So. 2d 659, 661 (Fla. 1989), section 212.055(1) does not prohibit the voters through a charter amendment from imposing restrictions

⁸ For example, other subsections of section 212.055 specify that the levy must be made by the governing body itself by ordinance or resolution. The local government infrastructure surtax, section 212.055(2) provides that “[t]he levy of the surtax shall be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax.” *See also* § 212.055(6), Fla. Stat. (school capital outlay surtax); § 212.055(7), Fla. Stat. (indigent care surtax); § 212.055(8) (emergency fire rescue services and facilities surtax); §212.055(9) (pension liability surtax).

upon the county commission's ability to use the sales tax proceeds.⁹ As such, Article 11's parameters "supplement, rather than contradict the provisions" of section 212.055(1). *See Phantom*, 3 So. 3d at 310.

Second, section 125.86, which enumerates the legislative powers of county commissions of charter counties, provides that county commissions have all "powers of 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), Fla. Stat. (emphasis added). Because county charters can only be adopted and amended by the county's electorate, this provision specifically authorizes the voters of charter counties to limit the county commission's authority. Art. VIII, § 1(c), Fla. Const. Thus, even to the extent Article 11 impacts the authority of the County Commission at all,¹⁰ Hillsborough County's electorate was empowered by general law to limit its County Commission's authority.

⁹ In *State v. Sarasota County*, also a bond validation proceeding, this Court held a charter amendment adopted through an initiative that required the county commission to obtain referendum approval for bonds exceeding \$10 million, and where county taxes were pledged as security for the bonds, could co-exist with the statutory authority granted the county commission to pledge the gas tax revenues. 549 So. 2d 659 (Fla. 1989). The court explained that "[t]he charter does not prevent the county from pledging gas tax revenues for bond issues but merely requires voter approval if the bond issue is sufficiently large. Likewise, the statute does not prohibit a county from imposing restrictions upon its own ability to pledge tax revenues." *Id.* at 660-61.

¹⁰ White complains that Article 11 effectively excludes the County Commission from "the local decision-making process." (White Initial Br. 2.) That is not correct. The County has direct control, subject to the terms of Article 11, of a

Third, White’s overly restrictive construction of section 212.055(1) requires this Court to read into the statute terms that do not exist and effectively rewrite the legislation. On its face, the statute does not require a county commission to retain exclusive, direct oversight of all transportation-related expenditures or otherwise involve itself in expenditure decisions of other recipients of surtax proceeds. Section 212.055(1)(d)2 plainly contemplates that, once the county commission allocates funds, all decision-making authority regarding the use and distribution of surtax proceeds could be provided to a local expressway, transit or transportation authority to use “at the discretion of such authority” however it sees fit consistent with the statute. White’s construction of section 212.055(1) is thus contradicted by the statute’s plain language.

The legislative evolution of section 212.055(1)(d) also demonstrates White’s and Emerson’s construction is incorrect. The current version of the statute gives charter counties expansive flexibility and discretion in determining whether and to what extent, as they “deem[] appropriate,” surtax proceeds may be allocated to four broad, general uses. It also reinforces that charter counties would be provided with the authority to determine what they will “deem[] appropriate.”

That flexibility and discretion did not exist in early versions of the statute. For example, the 1987 version provided that the “[p]roceeds from the surtax shall

significant portion of the surtax revenues, so long as the County complies with the parameters of Article 11 and section 212.055(1)(d).

be” allocated to one of two uses. § 212.055(1), Fla. Stat. (1987). A county commission of a charter county was not previously empowered to use multiple vehicles for addressing transportation issues. However, even under the 1987 version of the statute, a transportation authority could be provided with complete discretion to allocate surtax proceeds as it wished, without any oversight from the county commission whatsoever. § 212.055(1)(d), Fla. Stat. (1987).

The 1999 revision to the statute provided a wider array of potential and optional “uses” for the surtax proceeds. The revisions did not require the county commission make spending decisions about every surtax dollar collected. Instead, it vested charter counties with more flexibility in addressing their transportation needs, not less. It also vested charter counties with flexibility and discretion in determining when and how they would “deem[] appropriate” the use, allocation and distribution of surtax proceeds.

- ii. The terms of Article 11 require compliance with general law, including specifically section 212.055(1); thus, Article 11 does not directly conflict with section 212.055(1).**

The plain language of Article 11 also contradicts the contention that the allocation provisions directly conflict with section 212.055(1). This charter amendment expressly requires compliance with general law—not a violation of it, as required to find a direct conflict. *See Phantom*, 3 So. 3d at 314.

To assure general law is not violated, Article 11 mandates compliance with general law at least a dozen times. In fact, the charter amendment mandates that the surtax be collected and distributed “in compliance with,” “in accordance with,” as “permitted by,” and “to the extent permitted by” section 212.055(1). (A11. 326-34.) In addition, Section 11.02 expressly requires the surtax to “be levied and imposed in accordance with F.S. §§ 212.054 and 212.055(1)” and that all proceeds “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.” (A11. 326-27.)

Finally, Section 11.11(3) also contains a supremacy clause requiring that Article 11 be interpreted in a manner consistent with general law. It provides:

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.

(A11. 334.)

It is undisputed that, according to its own terms, Article 11 must be interpreted, construed and applied in a manner that does not conflict with general law. As such, there can be no conflict between the terms of Article 11 and section 212.055(1) with respect to the use, allocation, and distribution of tax proceeds levied pursuant to the charter amendment. Indeed, the parties below stipulated that the uses provided in Article 11 complied with section 212.055(1)(d). (A10. 738 at ¶ 20.)

D. The duties and authority provided to the Independent Oversight Committee do not directly conflict with section 212.055(1).

The trial court erred in striking certain provisions in Sections 11.06, 11.09, and 11.10 providing for the IOC's ability to "approve and certify" project plans submitted by the County and other agencies and to prohibit distribution of funds where the County or other agencies are not in compliance with Article 11. Its finding of a direct conflict with general law is premised on an erroneous interpretation of both section 212.055(1) and the scope of the IOC's duties and powers as provided in Article 11.

First, the trial court and White and Emerson seek to rewrite the statute. Section 212.055(1) does not prohibit creation of an independent oversight committee with the authority to "approve and certify" that the expenditures of the surtax proceeds are compliant with Article 11 or prohibit distribution of surtax proceeds where the governmental entity is not in compliance with the terms of Article 11. The IOC's oversight function simply provides additional assurance that the surtax proceeds are spent on categories of transportation projects that are both consistent with section 212.055(1) and Article 11.

Second, the trial court misinterpreted certain terms of Article 11 and misconstrued the function of the IOC. The IOC's core function is to ensure that the County, municipalities, HART, and the MPO spend the surtax proceeds in a manner compliant with Article 11 and section 212.055(1). All of the IOC's duties,

powers and authorities are premised on its core function of ensuring consistency with the voter's express intention regarding the allocation of the surtax proceeds for badly needed transportation projects in Hillsborough County.

That is why the IOC is vested with the power to suspend the distribution of surtax proceeds when the County or other agencies are not in compliance with Article 11. (A11. 332 (Art. 11, § 11.09).) And that is why the IOC prepares an annual report stating the results of an annual audit and its findings regarding whether the surtax proceeds are being spent consistent with the terms of Article 11. (A11. 332-34 (Art. 11, §§ 11.10(1), (3)).) This annual report is published in local newspapers and is available online so that the citizens of Hillsborough County are informed whether their tax dollars are being spent as the clear majority of Hillsborough County voters intended when adopting Article 11.

The trial court misconstrued Section 11.10 as granting the IOC the authority to not only ensure compliance with Article 11 and section 212.055(1), but also empowering it to reject project plans the IOC deems unworthy for whatever reason—even if the project plans meet the requirements of the charter amendment and general law. (A9. 685.) This overly expansive interpretation is apparently based on the trial court's construction of the IOC's power to “[a]pprove [p]roject [p]lans and approve and certify as to whether the projects therein comply with this Article.” (A11. 334 (Art. 11, § 11.10(2)).)

Read in context with the remaining terms of Article 11 and the supremacy clause contained in Section 11.11(3), the IOC has the authority to approve project plans only based on a finding that they comply with Article 11 and Florida law. But the IOC does not have the authority to reject an otherwise compliant project plan merely because it dislikes it for some other reason.¹¹ This construction is consistent with the Interlocal Agreement executed by the County, Tampa, Temple Terrace, Plant City, HART, and the MPO. That agreement explicitly recognizes that the IOC does not have the power to reject a project plan that meets the requirements of Article 11. (A12. 23 (Interlocal Agreement at § 4(A)).)

Thus, none of the provisions of Article 11 addressing the duties, powers and authority of the IOC directly conflict with section 212.055(1). And because those provisions are not inconsistent with general law, they should be upheld.

¹¹ To the extent the Court might agree that Section 11.10(2) directly conflicts with general law because it provides the IOC with the authority to reject project plans for any reason, even if the plans comply with Article 11, the Court should nevertheless uphold the IOC's authority to approve and certify project plans on the basis of their compliance with Article 11 and Florida law, particularly in light of the supremacy clause contained in Section 11.11(3). *See D'Agastino v. City of Miami*, 220 So. 3d 410, 425-27 (Fla. 2017) (finding that while subpoena power granted to independent oversight committee was preempted by general law, the remaining authorities, powers and duties of the independent oversight committee survived because the core function of independent oversight remained).

E. Consistent with section 212.055(1), the County Commission has expressly “deem[ed] appropriate” the terms of Article 11.

Finally, not only are the terms of Article 11 not inconsistent with section 212.055(1), but the County Commission has now twice “deem[ed] appropriate” the allocation and uses of the surtax proceeds. It has also reiterated the scope of the duties and authority of the IOC, as contained in Article 11. Thus, the contention that Article 11 has improperly removed some element of the County Commission’s decision-making authority over the allocation and use of the surtax proceeds is contradicted by the County Commission’s express approval of the use, distribution and allocation framework outlined in Article 11.

The County Commission expressly states in its Bond Resolution authorizing the issuance of the bonds and the filing of this bond validation that “[t]he provisions of Article 11, including the allocation and uses of the funds set forth herein, are hereby *deemed appropriate pursuant to Section 212.055(1), Florida Statutes.*” (A11. 75 (emphasis added).) The Bond Resolution was passed by the County Commission by a 6-1 vote, with White casting the lone dissenting vote. (A12. 79-80.)

More importantly, in compliance with section 212.055(1), the County Commission reiterated this determination when it entered into the Interlocal Agreement with Tampa, Temple Terrace, Plant City, HART, and the MPO ratifying and approving of the terms of Article 11. Besides clarifying the scope of

the power and duties of the IOC, the Interlocal Agreement “*deem[ed] appropriate the allocation, distribution and uses of Surtax Proceeds as provided for in the Charter Amendment.*” (A12. 23 at § 2 (emphasis added).) The Interlocal Agreement was effective January 1, 2019—the same day the surtax went into effect.

Section 212.055(1) does not specify *when*, how, or what standards apply to the County Commission’s determination that the uses and allocation of the surtax proceeds are “deem[ed] appropriate.” Even giving the benefit to White’s tortured interpretation of “deems appropriate” in section 212.055(1) and its purported requirement of total and exclusive involvement by county commissions in all spending decisions, the County Commission in this case has twice approved and ratified the provisions of Article 11. In so doing, the County Commission has determined that the provisions of Article 11, which were passed with clear support from Hillsborough County’s voters, provides for appropriate uses, distribution and allocation of the surtax proceeds. No other action or determination by the County Commission is required.¹²

The County Commission’s actions deeming the uses and allocation of Article 11 appropriate did not violate either section 212.055(1)(d) or Article 11.

¹² This Court has ruled that where there is no legislative directive relating to a specific method or means of taxation, that procedure may be controlled by local law, such as Article 11. *Wilson*, 386. So. 2d at 559.

Thus, like in *Sarasota County*, the charter amendment and the tax statute can co-exist.

As such, the trial court's finding that certain provisions of Article 11 directly conflict with section 212.055(1) should be reversed. Article 11 is not inconsistent with general law. It should be upheld in its entirety, as properly interpreted,¹³ consistent with the vote of Hillsborough County's electorate.

CONCLUSION

For the foregoing reasons, this Court should reverse the final judgments of the trial court and remand for entry of final judgments validating the bonds and upholding uphold Article 11, as properly interpreted, in its entirety. Alternatively, the Court should affirm the trial court's judgments and uphold the modified Article 11 under the severability doctrine.

¹³ See discussion *supra* at 42-43.

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Pursuant to Florida Rule of Appellate Procedure 9.210, I certify that this brief complies with the type size and style requirements and has been prepared in Times New Roman, 14 Point Font.

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