Joint Meeting of the Citizens & Technical Advisory Committees
Monday, December 16, 2019 at 12:00 p.m.
Hillsborough County Center, 601 E. Kennedy Blvd, 26th Floor Conference Rooms

Please join us for a holiday lunch starting at noon!

I. Call to Order & Introductions

II. Public Comment - 3 minutes per speaker, please

III. Members’ Interests

IV. Approval of Minutes – November 13 CAC & November 18 TAC

V. Action Items
   A. Tampa Hillsborough Greenways and Trails Plan Update (Wade Reynolds, MPO staff)

VI. Status Reports
   A. Agency Project Plans for 2020 for Transportation Surtax (Johnny Wong, MPO staff)
   B. Fletcher Avenue Complete Street (Sara Beresheim, JTM and Julie Bond, CUTR)
   C. Government in the Sunshine and Public Records Refresher (Cameron Clark, MPO Attorney)
   D. Robert’s Rules of Order (Rich Clarendon, MPO Asst. Executive Director)

VII. Old Business & New Business
   A. Next meeting: January 15th CAC, January 27th TAC
   B. Updates to the interlocal agreement for the MPO Chair’s Coordinating Committee

VIII. Adjournment

IX. Addendum
A. MPO Meeting Summary & Committee Reports

B. Charter Surtax Litigation Reply Briefs

The full agenda packet is available on the MPO’s website, www.planhillsborough.org, or by calling (813) 272-5940.

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Si necesita servicios de traducción, el MPO ofrece por gratis. Para registrarse por estos servicios, por favor llame a Johnny Wong directamente al (813) 273-3774, ext. 370 con tres días antes, o wongj@plancom.org de cerro electronico. También, si sólo se puede hablar en español, por favor llame a la línea de ayuda en español al (813) 273-3774, ext. 211.

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I. CALL TO ORDER & INTRODUCTIONS

Chair Bill Roberts called the meeting to order at 9:55 am. The meeting was held at the Tampa Hillsborough Expressway Authority, 1104 E. Twiggs Street, Suite 300, Tampa, FL 33602. Member introductions were made.

Members present: Bill Roberts, Rick Fernandez, Sky White, Evangeline Linkous, Dennis LeVine, Cliff Reiss, Nicole Rice, Hoyt Prindle, Steven Hollenkamp, David Bailey, Dayna Lazarus, Luciano Prida, Vivienne Handy, Rick Richmond, Barbara Kennedy Gibson, Amy Espinosa, Terrance Trott, and Camilo Soto.

Members excused: Edward Mierzejewski, Cheryl Thole and Artie Fryer

Others present: Rich Clarendon, Cheryl Wilkening, Vishaka Shiva Raman, MPO staff, Lynda Crescentini and Shannon Haney, HART

II. PUBLIC COMMENT

There was no public comment.

Diane Stull, THEA, introduced herself and welcomed the CAC.

III. MEMBER’S INTERESTS

Amy Espinosa requested the DOB of the members to be redacted from their application when they apply to the CAC. Van Linkous had another concern about the question on the application if you seek public assistance.

Bill Roberts, Chair, summarized the MPO’s actions at the Public Hearing on the 2045 Plan.

Dayna Lazarus commented that it was her understanding that they changed the word from toll lanes to expressway lanes. Dayna Lazarus questioned if there was funding allocated for the CSX. Nicole Rice suggested making a Motion for the CAC to encourage FDOT to start negotiations for the CSX. Dayna Lazarus would like to know where the AFD lawsuit is now. Van Linkous asked if there has been discussion on the Temple Terrace Trail. Vivienne Handy advised there was rezoning in Wimauma. Terrance Trott suggested that road needs should be consider when approving new developments. Hoyt Prindle commented on the All for Transportation lawsuit and would like to see if the attorney for MPO would be available to give an update to the CAC. Rick Richmond would like to include in the presentation of land use who oversees mobility fees.

IV. APPROVAL OF MINUTES

Chairman sought a Motion to approve the October 16, 2019 minutes. Hoyt Prindle so moved, seconded by Rick Richmond. Amy Espinosa pointed out her name was misspelled on Page 7 and the
paragraph at the end of Page 8 to beginning of page 9 should say the allocation of funds should go to universal design not only lighting.

After noting those corrections, the Chairman called for a vote and the motion carried unanimously.

V. ACTION ITEMS

A. Amendment to Transportation Improvement Program and Unified Planning Work Program

Vishaka Raman, MPO staff, presented an amendment to the FY 2019 – 20 Unified Planning Work Program (UPWP). This is a two-year work program effective July 1, 2018 – June 30, 2020. It outlines major planning tasks, complies with federal and state rules, documents federal and state funding and coordinates federally funded planning tasks performed by the MPO, HART and FDOT. This amendment adjusts the FY20 Federal Transit Administration (FTA) Budget and contract and adds $500,000 in County funds to Task 2 in the UPWP to perform safety retrofit feasibility studies on eight high-crash corridors identified in the Vision Zero plan. Mrs. Raman presented Amendment 10 to the FY 2019-20 Transportation Improvement Program (TIP). This is an annual work program effective October 1, 2019 to September 30, 2020 that identifies, prioritizes and allocates anticipated local, state and federal funding to transportation projects by phase and year, over the next five years.

Vivienne Handy questioned if the Vision Zero primarily targets pedestrian issues. Terrance Trott ask if there is an office for Vision Zero or a Chair. Dayna Lazarus recognized from working as an intern with the MPO that Vision Zero is used as a policy tool. Camilo Soto wanted clarification on the acronyms on the TIP. Hoyt Prindle confirmed this is money authorized to study the corridors.

Chairman Roberts sought a Motion to approve and recommend the Amendment to the Transportation Improvement Program and Unified Planning Work Program to the MPO Board. Nicole Rice so moved and David Bailey seconded the motion. Motion carried.

B. Approve 2020 Meeting Calendar

Rich Clarendon pointed out that as proposed, the CAC’s June meeting was the morning after the TIP public hearing. He suggested a recess in June and meeting in July. He also noted that another idea is to push the meeting back to 9:30AM. Discussion ensued about holding a special meeting to delve into the TIP, before or after the public hearing. Bill Roberts agreed with scheduling a meeting in June and recess July with a workshop after the May 13th meeting and before the June 9th TIP hearing.

Chairman Roberts sought a Motion to keep the meeting at 9:00AM. Dennis Levine so moved and seconded by Rick Richmond. Chairman Roberts asked if there was any interest to try a one-time pilot test of a 9:30AM meeting start, at staff’s discretion to decide the date, which was so moved by Amy Espinosa and Rick Richmond seconded as an amendment to the original motion. Motion Carried with Hoyt Prindle and Camilo Soto opposed.

After further discussion, Camilo Soto offered a substitute motion to revise the proposed schedule to have a special evening meeting in May after the May 13th CAC meeting to address the items for the TIP Hearing on June 9th and to move the CAC June meeting to June 3rd and keep the recess in July. There will also be a 9:30 AM pilot start time at a date chosen by staff. David Bailey seconded the Motion. Motion carried, with Vivienne Handy opposed.

VI. Status Report
A. HART Flamingo Fare and One Bus Away Apps

Lynda Crescentini, HART, presented the Flamingo Fare Project. It is the electronic fare payment system and the ability to support/integrate with various new ways to pay for fares. Flamingo Fares system is an account-based system. No data is stored on the rider’s card. The system can support options such as contactless bank cards, fare-capping, auto loading, and balance protection, and even possible integration with other mobile applications like Uber/Lyft. This card allows users to gain day and monthly passes as they ride. Once the user has paid the equivalent of a day pass, they ride free the rest of that service day and once a user has paid the equivalent of a month pass, they ride free the rest of that calendar month. It will be installed in Hernando, Hillsborough, Pasco, Pinellas and Sarasota. The rider will tap their Flamingo Fare card or scan their mobile device to board the bus. It is currently in deployment testing, and in Fall 2019 there will be revenue and beta testing, then in Spring 2020 public launch.

Cliff Reiss asked if the app will include scheduling and who is the company behind the software. Nicole Rice commented on how easy it is to travel in other countries by bus and feels this application is not accessible to people riding the bus. Camilo Soto recognized two benefits which the first is you can travel from county to county using the same card and the fare capping. He questioned how much does it cost? Amy Espinosa wanted to know what other systems were considered and Camilo Soto wanted to know why an account based system.

Shannon Haney, HART, presented the One Bus Away overview. HART chose One Bus Away because it is open source, which allows multiple agencies to leverage the same resources, reduces risk of vendor lock-in, any vendor can deploy and support an open-source solution. One Bus Away is supported by open transit software foundation and it was deployed in 10 cities worldwide. It is used with iOS and Android. One Bus Away also provides multimodal information such as real-time info, trip planning, bikeshare and water taxi. It gives destination reminders and service alert management.

Nicole Rice questioned how does Google work with One Bus Away. Amy Espinosa asked whether there is a team at HART that works with One Bus Away. David Bailey commented on how great One Bus Away is and how it will get more people off the road. Mr. Bailey also wanted to know whether One Bus Away is working with the Express Authority and HART for bus times and technology to improve the process. Steven Hollenkamp wanted to know if there is a line in the works for Plant City. Nicole Rice questioned if there will be transit station kiosks to have the technology for riders instead of using phone or computer.

VII. Unfinished & New Business

A. Independent Oversight Committee update by Rick Fernandez: The IOC met in August to review duties, bylaws, election of officers and other administrative items. At the September Meeting, they approved the IOC Calendar and the Citizen-Initiated Projects Review Process. They heard reports on the Transportation Project development process, start to finish and the MPO 2045 Needs assessment and compliance. At the October Meeting there was an overview of the surtax annual auditing process and the Transportation Surtax Project Plans for CY 2020. At the November Meeting they will review updates on the Transportation Surtax Project plans for CY 2020 and begin addressing Motions to certify them.

B. CAC & TAC Joint Meeting on Monday December 16 at 12:00 pm in the 26th Floor Conference Rooms A&B.

VIII. Adjournment

There being no further business, the meeting adjourned at 12:06 pm.
A full recording of this meeting is available upon request.
The Metropolitan Planning Organization (MPO) Technical Advisory Committee (TAC), Hillsborough County, Florida, met in Regular Meeting, scheduled for Monday, November 18, 2019, at 1:30 p.m., in Hillsborough Rooms A and B, 15th Floor, Frederick B. Karl County Center, Tampa, Florida.

The following members were present:

Jeffrey Sims, Chairman
Rachel Chase
Vincenzo Corazza
Leland Dicus
Robert Frey
Anthony Garcia
Mark Hudson for Julie Ham
Calvin Hardie for Danni Jorgenson (arrived at 1:43 p.m.)
Nicole McCleary
Christopher DeAnnuntis for Brian Pessaro
Jonathan Scott
Michael Williams (arrived at 1:38 p.m.)

The following members were absent:

Jay Collins
Amber Dickerson
Michael English
Gina Evans

I. CALL TO ORDER

Chairman Sims called the meeting to order at 1:37 p.m.

II. PUBLIC COMMENT – None.

III. APPROVAL OF MINUTES – OCTOBER 21, 2019

Mr. Corazza spoke on the corrections for the September 2019 and October 2019 minutes. Chairman Sims sought a motion to approve the October 2019
meeting minutes with the notation that the correction to the September 2019 minutes should reflect “mid-blocks” instead of “grid-locks.” Mr. Corazza moved to approve the minutes with page one corrected to say mid-blocks, seconded by Mr. Scott, and carried eleven to zero. (Mr. Hardie had not arrived; Members Collins, Dickerson, English, and Evans were absent.)

IV. ACTION ITEMS

A. Amendment to Transportation Improvement Program (TIP) and Unified Planning Work Program (UPWP)

Ms. Vishaka Shiva Raman, MPO, delivered a presentation. Ms. Sarah McKinley, MPO, touched on the eight identified high crash corridors from the presentation. Chairman Sims sought a motion. Mr. Scott moved to approve amendment of the following items to fiscal year (FY) 2019-2020 UPWP, one, FY 2020 budget adjustments and contract documentation, and two, update Task 2 to the UPWP, seconded by Mr. Hardie, and carried twelve to zero. (Members Collins, Dickerson, English, and Evans were absent.) Following remarks; Mr. Corazza moved to approve the amendment for the policy FY 2019-2020 TIP, Amendment 10 to the FY 2019-2020 TIP, seconded by Mr. Scott, and carried twelve to zero. (Members Collins, Dickerson, English, and Evans were absent.)

B. Approve 2020 Meeting Calendar

Ms. McKinley highlighted the calendar. Dialogue ensued on the MPO TAC 2020 meeting calendar schedule. Chairman Sims sought a motion to approve the proposed calendar. Mr. Garcia so moved, seconded by Mr. Scott, and carried twelve to zero. (Members Collins, Dickerson, English, and Evans were absent.) Mr. Williams requested staff send out the schedules, which Ms. McKinley addressed.

V. STATUS REPORTS

A. Vision Zero Speed Management Study Update

Ms. Gena Torres, MPO, presented the item. Mr. Hardie inquired about speed cameras and possible round-a-bout pop-up locations. Mr. Corazza remarked on the pop-up round-a-bouts.
B. HART Flamingo Fare and One Bus Away Apps

Ms. Lynda Crescentini, HART, gave a presentation covering the HART Flamingo Fare app. Members asked about use of cash and integrability. Ms. Crescentini continued with a presentation on One Bus Away. Ms. McKinley commented on the One Bus Away app and its accessibility from other states and open platforms.

VI. OLD BUSINESS AND NEW BUSINESS

A. Citizens Advisory Committee (CAC) and TAC Joint Meeting: NOTE DAY AND LOCATION – Monday, December 16, 2019, 12:00 p.m., 26th Floor, Conference Rooms A and B

Chairman Sims reminded members the next meeting would be the CAC and Joint meeting and location.

VII. ADDENDUM

A. MPO Meeting Minutes and Standing Committee Reports

B. Announcements

Survey for TBARTA Regional Transit Development Plan

U.S. 41 CSX Overpass Public Workshop, November 19, 2019

Survey for Florida Department of Transportation’s Florida Transportation Plan
VIII. ADJOURNMENT

There being no further business, the meeting was adjourned at 2:25 p.m.

READ AND APPROVED: ____________________________________
CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _______________________
Deputy Clerk

ms
Board & Committee Agenda Item

**Agenda Item**
Tampa-Hillsborough Greenways and Trails Plan Map Update

**Presenter**
Wade Reynolds, MPO Staff

**Summary**
The Tampa-Hillsborough Greenways and Trails Master Plan underwent a major update to combine the Tampa and Hillsborough plans into a single document in 2016. The proposed map changes are to update the map with regard to funding status as projects have been moved forward and to correct alignments to reflect small changes to the trail routes.

**Recommended Action**
Recommend approval of map changes to the MPO Board

**Prepared By**
Wade Reynolds, MPO Staff

**Attachments**
Proposed map changes and overall map.
Harney Rd-US 301 Change

Existing

Proposed

Old Fort King Trail/US 301

Trails
- Existing
- Planned - Funded
- Planned - Studied
- Conceptual
- Side Path - Existing
- Side Path - Studied
- Green Spine
- Complete Street
- Proposed Complete Street
Hillsborough River State Park – Bypass Canal Change

**Existing**

**Proposed**

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[Image: Map of Hillsborough River State Park, showing existing and proposed bypass canal changes.]

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[Image: Legend for trails, including existing, planned, conceptual, and other types of trails.]
US 41 at Alafia River Change

Existing

Proposed

 Trails
- Existing
- Planned - Funded
- Planned - Studied
- Conceptual
- Side Path - Existing
- Side Path - Studied
- Green Spina
- Complete Street
- Proposed Complete Street

planhillsborough.org
US 301 – Manatee County Connection Change
SR 674 Addition

Existing

Proposed

![Map of SR 674 Addition](image)

**Trails**
- Existing
- Planned - Funded
- Planned - Studied
- Conceptual
- Sidewalk - Existing
- Sidewalk - Studied
- Green Space
- Complete Street
- Proposed Complete Street

[planhillsborough.org](planhillsborough.org)
Van Dyke Road Addition

Existing

Proposed

Upper Tampa Bay Trail
Other Changes:
- South Coast Greenway Phase 1 Status Change – Funded
- Howard Frankland Bridge – Funded
- Gandy Bridge – Planned
- Corrected status of Old Fort King Trail
- Added Apollo Beach Blvd/Paseo al Mar
- Added Memorial Hwy
Board & Committee Agenda Item

**Agenda Item**
Overview of Agency Project Plans for CY2020 Transportation Surtax

**Presenter**
Johnny Wong, MPO Staff

**Summary**
On November 21, 2019, the Independent Oversight Committee for the Transportation Sales Surtax certified that all Agency Project Plans submitted for CY2020 comply with governing law. With that action, HART, Hillsborough County, and the cities of Tampa, Temple Terrace and Plant City may begin work on the projects listed in their respective plans.

Certification by the IOC marks an important first step toward fulfilling the wishes of Hillsborough County voters. This presentation will provide an overview of the projects in each Agency’s Plan and what to expect in the year 2020.

**Recommended Action**
None; for information only

**Prepared By**
Johnny Wong, MPO Staff

**Attachments**
1. [HART's Transportation Surtax Project Plan for CY2020](#)
2. [Hillsborough County's Transportation Surtax Project Plan for CY2020](#)
3. [City of Tampa's Transportation Surtax Project Plan for CY2020](#)
4. [City of Temple Terrace's Transportation Surtax Project Plan for CY2020](#)
5. [City of Plant City's Transportation Surtax Project Plan for CY2020](#)
Board & Committee Agenda Item

**Agenda Item**
Fletcher Avenue Complete Street – Before & After

**Presenter**
Sara Beresheim, JMT and Julie Bond, CUTR

**Summary**
Two much anticipated before and after studies have been completed on Fletcher Avenue: a review of the traffic-related results of the complete street conversion and a behavioral assessment of road users. As the MPO allocates funds to study and build complete streets, studies like these support why redesigning roads can be successful at slowing traffic without necessarily diverting drivers to adjacent roads or causing excessive delay. The added look into whether there is compliance by the users – cyclists using the bike lane, pedestrians crossing in designated locations and pushing the button, and motorists stopping as required was helpful to confirm that changing behaviors is possible and a needed complement to the infrastructure changes in reducing serious and fatal crashes.

**Recommended Action**
None. For information only.

**Prepared By**
Gena Torres, MPO staff

**Attachments**
None.
Board & Committee Agenda Item

Agenda Item
Sunshine Law and Public Records Requirements

Presenter
Cameron Clark, MPO Attorney

Summary
MPO committees are subject to the requirements outlined in the Sunshine Law. In general, the law is in place to ensure transparency in government and does so by requiring meetings to be open to the public, notices to be provided, and minutes to be taken. There is also guidance on committee members discussing topics that could come before their board for action. The MPO’s attorney will provide insight on both of these topics.

Recommended Action
None. For information only.

Prepared By
Cheryl Wilkening, MPO Staff

Attachments
1. Memo from Cameron Clark, MPO Attorney
2. Link to information about The “Sunshine” Law
TO: MPO Governing Board

FROM: Cameron S. Clark, MPO Attorney

DATE: November 20, 2019

SUBJECT: Frequently Asked Questions about the Sunshine Law and Public Records

- **What is the Sunshine Law?**
  Florida’s Government-in-the-Sunshine law provides a right of access to governmental proceedings at both the state and local levels. It applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There is also a constitutionally guaranteed right of access. Virtually all state and local collegial public bodies are covered by the open meetings requirements with the exception of the judiciary and the state Legislature which has its own constitutional provision relating to access.

- **What are the requirements of the Sunshine law?**
  The Sunshine law requires that 1) meetings of boards or commissions must be open to the public; 2) reasonable notice of such meetings must be given, and 3) minutes of the meeting must be taken.

- **What agencies are covered under the Sunshine Law?**
  The Government-in-the-Sunshine Law applies to “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision.” Thus, it applies to public collegial bodies within the state at both the local as well as state level. It applies equally to elected or appointed boards or commissions.

- **Does the Sunshine Law apply to members-elect?**
  Members-elect of public boards or commissions are covered by the Sunshine law immediately upon their election to public office.

- **What qualifies as a meeting?**
  The Sunshine law applies to all discussions or deliberations as well as the formal action taken by a board or commission. The law, in essence, is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some
matter on which foreseeable action will be taken by the public board or commission. There is no requirement that a quorum be present for a meeting to be covered under the law.

- **Can a public agency hold closed meetings?**
  There are a limited number of exemptions which would allow a public agency to close a meeting. These include, but are not limited to, certain discussions with the board’s attorney over pending litigation and portions of collective bargaining sessions. In addition, specific portions of meetings of some agencies (usually state agencies) may be closed when those agencies are making probable cause determinations or considering confidential records.

- **Can a citizen’s right to speak at a meeting be restricted?**
  Public agencies are allowed to adopt reasonable rules and regulations which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of the public attending. This includes limiting the amount of time an individual can speak and, when a large number of people attend and wish to speak, requesting that a representative of each side of the issue speak rather than everyone present.

- **Can a private citizen videotape a public meeting?**
  A public board may not prohibit a citizen from videotaping a public meeting through the use of nondisruptive video recording devices.

- **Can a board vote by secret ballot?**
  No. The Sunshine law requires that meetings of public boards or commissions be “open to the public at all times.” Thus, use of preassigned numbers, codes or secret ballots would violate the law.

- **Can two members of a public board attend social or professional functions together?**
  Members of a public board are not prohibited under the Sunshine law from meeting together socially or attending the same functions, provided that those members do not discuss with each other any matters that may come before their public board.

- **Can members of a public board communicate with each other via proxy about board business?**
  No, members of a public board cannot communicate with each other in any way about a matter that is, or may come before, their board. This includes communication through intermediaries.

- **What is a public record?**
  The Florida Supreme Court has determined that public records are all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge. They are not limited to traditional written documents. Tapes, photographs, films and sound recordings are also considered public records subject to inspection unless a statutory exemption exists.

- **Does an agency have to explain why it denies access to public records?**
  A custodian of a public record who contends that the record or part of a record is exempt from inspection must state the basis for that exemption, including the statutory citation. Additionally, when asked, the custodian must state in writing the reasons for concluding the record is exempt.
• **When does a document sent to a public agency become a public document?**
  As soon as a document is received by a public agency, it becomes a public record, unless there is a legislatively created exemption which makes it confidential and not subject to disclosure.

• **Can an agency refuse to allow public records to be inspected or copied if requested to do so by the maker or sender of the documents?**
  No. To allow the maker or sender of documents to dictate the circumstances under which documents are deemed confidential would permit private parties instead of the Legislature to determine which public records are public and which are not.

• **Is an agency required to give out information from public records or produce public records in a particular form as requested by an individual?**
  The Sunshine Law provides for a right of access to inspect and copy existing public records. It does not mandate that the custodian give out information from the records nor does it mandate that an agency create new records to accommodate a request for information.

Source: Florida Attorney General’s Office
(http://myfloridalegal.com/pages.nsf/Main/321B47083D80C4CD8525791B006A54E3)
Board & Committee Agenda Item

Agenda Item
Robert's Rules of Order

Presenter
Rich Clarendon, MPO Asst. Executive Director

Summary
As spelled out in the MPO bylaws, boards and committees operate under parliamentary procedure as spelled out in Robert's Rules of Order. It would be helpful for all MPO committee members to be familiar with Robert's Rules of Order particularly as they apply to acting on agenda items. A few highlights are attached.

Recommended Action
None. For information only.

Prepared By
Rich Clarendon, MPO Staff

Attachments
Parliamentary Procedure highlights
**Basic parliamentary procedures**

Parliamentary procedure refers to the practices used in meetings to keep things orderly and give everybody a fair chance to be heard. Robert's Rules is generally regarded as the codification (or systematic arrangement) of these procedures.

Parliamentary procedure is based on parliamentary law. Specifically, parliamentary procedure is the parliamentary law you follow in your organization along with any special rules of order you make just for your group. The broad concept of parliamentary law, although not actually law in the sense of statutes and jurisprudence, is the body of accepted rules and practices of deliberative assemblies of all types and sizes.

1) **Quorum.** A majority of committee members constitutes a quorum. In the absence of a quorum, the following actions may be taken.
   - Adjournment
   - Fix time to which adjourn
   - Take steps to obtain a quorum

2) **Motions.** No matter may be officially acted upon unless a motion has been made by a council member to take such action and said motion has been seconded by another council member. Once a motion has been made and seconded by another member, the presiding officer shall conduct debate on the merits of the motion. Once debate ends, the presiding officer shall call for a vote. Debate can also be closed upon motion to Call the Question approved by a vote of two-thirds of the council members present.

3) **Amending a motion.** Motions may be amended by any council member by a motion to amend which must be seconded and approved by a majority of the members present. Motions to amend a motion are voted on before the main motion is decided.

4) **Substitute motions.** When a council member desires to make significant changes to a motion, he/she may offer a substitute motion which will be treated in the same manner as a motion to amend.

5) **Reconsideration.** When a council member desires to reconsider an action of the council at the same meeting in which it was originally passed or failed, he/she is making a motion to reconsider. The motion to reconsider may only be made by a council member who voted on the prevailing side. A simple majority is necessary to approve a motion to Reconsider.

6) **Renewal.** Since each meeting of the Animal Advisory Council is a separate “session”, anyone can make a motion to Renew a motion that failed at a previous meeting. A simple majority is necessary to approve a motion to renew.

7) **Rescind.** A motion to Rescind is a motion by which a previous action can be canceled. It strikes out an entire motion that has been adopted at some previous time. It requires either a two-thirds vote, a majority vote when notice of the motion is provided at the previous meeting or in the call of the meeting, or a vote of a majority of the entire Council. It can be made by any Council member regardless of how the Council member
voted on the original question. There is no time limit on making this motion after the adoption of the measure to which it is applied.

8) **Amend Something Previously Adopted.** A motion to Amend Something Previously Adopted is a motion used if a Council member desires to change only a part of the text or to substitute a different version. It requires either a two-thirds vote, a majority vote when notice of the motion is provided at the previous meeting or in the call of the meeting, or a vote of a majority of the entire Council. It may be moved by any Council member regardless of how the Council member voted on the original question. There is no time limit on making this motion after the adoption of the measure to which it is applied.

**Public Comment.** Committees may choose to take public comment at the beginning of each meeting. As with the Board of County Commissioners’ meetings, comments may be limited to three minutes each for a total of forty-five minutes for the public comment period. The purpose of public comment is to give the public the opportunity to voice opinions on matters to be discussed by the assembly. It is not a time to engage the public in debate. It is a time to receive input in an orderly fashion.
ADDENDUM ITEMS
The Metropolitan Planning Organization (MPO), Hillsborough County, Florida, met in Regular Meeting and Public Hearing, scheduled for Tuesday, November 5, 2019, at 6:00 p.m., in the Boardroom, Frederick B. Karl County Center, Tampa, Florida.

The following members were present:

Lesley Miller Jr., Chairman
Charles Klug for Paul Anderson
Joseph Citro
Steve Cona
Theodore Trent Green
Pat Kemp
Janet Scherberger for Joe Lopano (arrived at 6:15 p.m.)
Rick Lott (arrived at 6:04 p.m.)
Guido Maniscalco
David Mechanik
Kimberly Overman
Mariella Smith
Luis Viera (arrived at 6:23 p.m.)
Joseph Waggoner (arrived at 6:04 p.m.)

The following members were absent:

Ken Hagan
Mel Jurado

I. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND INVOCATION

Chairman Miller called the meeting to order at 6:02 p.m., led in the pledge of allegiance to the flag, and gave the invocation.

II. APPROVAL OF MINUTES – OCTOBER 1, 2019, AND OCTOBER 9, 2019, WORKSHOP

Chairman Miller sought a motion to approve the minutes. Councilman Maniscalco so moved, seconded by Mr. Cona, and carried twelve to zero. (Members Scherberger and Viera had not arrived; Members Hagan and Jurado were absent.)
III. COMMITTEE REPORTS

Mr. William Roberts, MPO Citizen Advisory Committee, and Ms. Gena Torres, MPO, expounded on the reports.

IV. CONSENT AGENDA

Committee Appointments

Letter requested by Bicycle Pedestrian Advisory Committee regarding U.S. Highway 41 CSX Grade Separation

Chairman Miller sought a motion to accept the Consent Agenda. Commissioner Smith moved to accept, seconded by Commissioner Kemp, and carried twelve to zero. (Members Scherberger and Viera had not arrived; Members Hagan and Jurado were absent.)

V. ACTION ITEMS

Letter of Comment on Florida Department of Transportation (FDOT) Tentative Work Program

Ms. Sarah McKinley, MPO, delivered a presentation and asked the MPO to approve the letter to be forwarded to FDOT for comments. Chairman Miller sought a motion. Mr. Cona motioned, seconded by Commissioner Kemp, and carried twelve to zero. (Members Scherberger and Viera had not arrived; Members Hagan and Jurado were absent.)

VI. PUBLIC HEARING FOR DRAFT 2045 LONG-RANGE TRANSPORTATION PLAN (LRTP)

Summary of Comments Received During 30-Day Public Comment Period

Ms. Lisa Silva, PC, relayed the summary of public comments.

Ms. Linda Martin left a voicemail in support of improving County roads. The following individuals made various electronic statements in opposition of the item: Attorney Ricardo Fernandez, Mr. Shane Ragiel, Ms. Helen Anne Travis, Mr. Gregory Gall, and Ms. Lauren O’Neill.

Letters were shared by Tampa Downtown Partnership and The WestShore Alliance Incorporated in support for the 2045 LRTP. Ms. Sharon Calvert wrote questions to MPO staff involving the cost assessments and how the revenues were allocated.
Overview of 2045 Plan and Revisions to the Comment Period Draft

Mr. Todd Brauer, MPO Consultant, presented the item.

Public Comments

Mr. Nicholas Glover, Vice President, Advocacy, for Greater Tampa Chamber of Commerce Incorporated (Chamber), reiterated the Chamber’s backing for the 2045 LRTP.

Mr. James Davidson spoke against the 2045 LRTP.

Ms. Ann Kulig, The WestShore Alliance Incorporated, requested the MPO Board support the 2045 LRTP.

Mr. Adam Metz asked the MPO Board to remove the toll lanes from West Tampa and strike the Quick Fix.

Mr. Richard Homans, CEO, Tampa Bay Partnership Incorporated, favored multimodel improvements.

Mr. Connor MacDonald asked for the removal of Line Items S-3, S-27, S-28, and S-29 from the 2045 LRTP.

Attorney Ronald Weaver plead to the MPO Board to not remove “Malfunction Junction” from the Quick Fix of the 2045 LRTP.

Ms. Michelle Cookson supported prioritizing transportation and putting the people first.

Mr. Joshua Frank implored the MPO Board to work towards removing cars from the road.

Ms. Trinity Miller, Vice President, Student Advocates for Progressive Planning at University of South Florida (USF), called on the MPO Board to remove S-3, S-27, S-28, and S-29 from the 2045 LRTP.

Ms. Lynda Remund, president/CEO, Tampa Downtown Partnership Incorporated, was in favor of the 2045 LRTP.

Mr. Tyler DeMond, Student Advocates for Progressive Planning, USF, urged the removal of S-3, S-27, S-28, and S-29 from the 2045 LRTP.
Mr. Christopher Vela and Ms. Laurel Urena opposed the 2045 LRTP.

Ms. Kelly Grimsdale asked the MPO Board to keep in mind the rich historic atmosphere of Ybor City.

Board Discussions and Action

Following observations, Commissioner Overman moved to remove 27, 28, and 29 from the LRTP, seconded by Commissioner Smith. Commissioners Kemp and Smith favored the motion. Mayor Lott opposed to the motion due to the need of widening State Road 60. The motion carried twelve to two; Mayor Lott and Mr. Waggoner voted no. (Members Hagan and Jurado were absent.)

Upon comments, Commissioner Overman moved the MPO formally request State and federal support for HART’s plan negotiation with CSX to begin with the competitive process for the New Starts transit program and add that to the local MPO’s recommendation as a top priority for the Tampa Bay region. After remarking on being able to accomplish the Westshore interchange as a top priority and believing it was critical to add that a New Starts project in Hillsborough County lead the way towards a regional and transit system that included discussions with CSX in terms of right of way, rail, or usage, Commissioner Overman wanted to add the request/item to the LRTP, seconded by Councilman Viera. Subsequent to appreciative remarks, the motion carried fourteen to zero. (Members Hagan and Jurado were absent.)

Mr. Mechanik moved to approve the LRTP as recommended, with the two amendments that were just previously approved by the MPO Board, seconded by Mr. Cona. Regarding the toll express lanes from the 2045 LRTP, Commissioner Smith made an amendment to have them described in the LRTP only as express lanes. After comments, Commissioner Smith restated the motion was to amend the adoption of the LRTP by making all eight of those items refer only to express lanes, they could be HART lanes, they could be express lanes, they could be anything, but not toll lanes, seconded by Commissioner Kemp. Councilman Viera questioned the motion in relation to the amount funded by the MPO, which District Secretary David Gwynn, FDOT, addressed.

Mr. Mechanik inquired if the amendment precluded toll lanes. Commissioner Smith reiterated the amendment. Ms. Scherberger sought further clarification S-1 and S-2 were the Westshore Interchange, which Commissioner Smith addressed. Mr. Edward McKinney, FDOT, touched on concerns involving express toll lanes. Dialogue ensued on toll/express lanes in the 2045 LRTP.
Mr. Cona stressed the importance of accomplishing the 2045 LRTP and opposed the motion. Councilman Viera shared concerns over unintended consequences.

Commissioner Kemp requested clarification on the segments involved with the Westshore interchange project, which Mr. McKinney and Commissioner Smith responded. The amendment to the motion failed three to eleven; Chairman Miller and Members Klug, Cona, Green, Scherberger, Lott, Maniscalco, Mechanik, Overman, Viera, and Waggoner voted no. (Members Hagan and Jurado were absent.) Commissioner Kemp suggested an amendment that simply described the segments that the MPO Board just spoke about that would not affect any future funding now as would special use lanes be appropriate or simply express lanes for those lanes for that time. Following comments, Ms. Alden clarified the lanes involved were S-12, S-13, S-17, S-18, and S-19.

Commissioner Kemp made an amendment to look at those as express lanes, seconded by Mr. Waggoner, and carried fourteen to zero. (Members Hagan and Jurado were absent.) Upon roll call vote, the main motion carried thirteen to one; Commissioner Smith voted no. (Members Hagan and Jurado were absent.)

VII. EXECUTIVE DIRECTOR’S REPORT

Gulf Coast Safe Streets Summit – November 14, 2019, 2:00 p.m to 8:00 p.m.

Temporary relocation of Plan Hillsborough Staff, starting November 18, 2019, to 700 East Twiggs Street, Sixth Floor, no change to phone numbers

Board officer elections at next meeting: December 3, 2019, at 9:00 a.m., 26th Floor

Ms. Alden delivered the report.

VIII. OLD AND NEW BUSINESS

Commissioner Kemp asked the MPO Board to start to generate/look at how the MPO Board could generate categories of measurement, included equity as the MPO Board move forward and include reducing single occupancy vehicle use and a climate resiliency mechanism of measurement as well, and perhaps an environmental air quality, also, as well.

Commissioner Overman requested the MPO consider putting together a Vision Zero plan developing specific specs for the County.
IX. ADDENDUM

A. Announcements

Gulf Coast Safe Streets Summit, November 14, 2019

U.S. Highway 41 (50th Street) CSX Overpass Public Workshop, November 19, 2019

Survey for FDOT’s Florida Transportation Plan

Survey for Tampa Bay Area Regional Transit Authority Regional Transit Development Plan

B. Project Fact Sheets and Updates

FDOT Interstate (I) 4 Weigh Station Access Improvements

FDOT I-75 Ramp Reconfiguration and Interchange Modification from south of Dr. Martin Luther King Jr. Boulevard to I-4

Florida MPO Advisory Council (MPOAC) Legislative News, October 19, 2019

Florida MPOAC Legislative News, October 26, 2019

C. Correspondence

To FDOT Secretary Gwynn regarding: Tampa Interstate Study, Supplemental Environmental Impact Statement

To Center for Urban Transportation (CUTR) regarding: C-TEDD Grant Match from Hillsborough MPO

To Center for Transportation, Equity, Decisions, and Dollars (C-TEDD) supporting CUTR Proposal, “Protecting the Most Vulnerable in the Face of Disaster: Investigating Evacuation Dynamics and Its Implications for Planning

To South Atlantic Regional Research Competition supporting University of Florida’s Regional Sea Grant application

From FDOT Secretary Gwynn on Traffic Fatalities September 9 through 22, 2019

From FDOT Secretary Gwynn on Traffic Fatalities September 25, 2019, through October 7, 2019

D. Articles Relating to MPO Work
TUESDAY, NOVEMBER 5, 2019

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:01 p.m.

READ AND APPROVED: ______________________________

CHAIRMAN

ATTEST:
PAT FRANK, CLERK

By: _______________________

Deputy Clerk

ms
Meeting of the Citizens Advisory Committee (CAC) on November 13

Under Action items, the CAC approved and forwarded to the MPO Board:

✓ Amendment to Transportation Improvement Program and Unified Planning Work Program
✓ 2020 Meeting Calendar

The CAC heard a status report on:
• HART Flamingo Fare and One Bus Away Apps

Meeting of the Technical Advisory Committee (TAC) on November 18

The TAC approved and forwarded to the MPO Board:

✓ Amendment to Transportation Improvement Program and Unified Planning Work Program
✓ 2020 Meeting Calendar

The TAC heard status reports on:
• Vision Zero Speed Management Study
• HART Flamingo Fare and One Bus Away Apps

Meeting of the Bicycle/Pedestrian Advisory Committee (BPAC) on November 13

The BPAC approved and forwarded to the MPO Board:

✓ Tampa Hillsborough Greenways and Trails Plan Update –Map Cleanup
✓ 2020 Calendar

The BPAC heard status reports on:
• Vision Zero Speed Management Study Update

Meeting of the Livable Roadways Advisory Committee (LRC) on November 20

The LRC hosted Leah Shahum, Vision Zero Network as a special guest speaker.

The LRC approved and forwarded to the MPO Board:

✓ 2020 Meeting Calendar
The LRC heard status reports on:

- Hillsborough County Public Works Performance-Based Landscaping Maintenance
- Vision Zero Speed Management Study

**Meeting of the Transportation Management Area (TMA) Leadership Group on November 8**

A video of this meeting can be viewed on YouTube. The group undertook a lengthy discussion of transportation priorities:

- The priority list is typically taken up for discussion in February, but due to the Chairs Coordinating Committee adopting its priorities in December, the list was put on the agenda earlier this year.
- Because the Westshore interchange had received $1.4B from the governor, it was removed from the priority list and placed on the funded list.
- Remaining on the top regional unfunded priority list were I-75 at Gibsonton, I-75 at Overpass, Central Avenue BRT, and I-275 Operational Improvements north of downtown Tampa.
- Hillsborough County Commissioner Pat Kemp asked to add an item to the list: support for HART as it begins to explore and negotiate with CSX for joint use or purchase of the rail lines from downtown Tampa to USF for passenger service.
- The other Hillsborough representatives in attendance, Commissioner Kim Overman and Tampa Councilmember Luis Viera, were supportive of the ask, as was Pasco County Commissioner Jack Mariano.
- The Hillsborough MPO board had unanimously agreed to support HART’s negotiations with CSX at its meeting that week.
- Pinellas County Commissioner Dave Eggers, as well as St. Petersburg Councilmember Darden Rice, expressed concern that the project was not well-defined enough to receive FDOT funding in the near future.
- Additionally, they expressed surprise at the last-minute nature of the request and wanted to seek additional input from the full Forward Pinellas Board.
- FDOT Modal Development Administrator Ming Gao said he felt HART was in a poor position to negotiate without a clearly defined project for the CSX tracks.
- Hillsborough MPO Executive Director Beth Alden said Hillsborough has several studies on the CSX corridor, including a completed Environmental Impact Statement, and that the issue in the past had not been studies, but funding.
- Now, with the Hillsborough sales tax for transportation, that funding is close to being available.
- She also said that she felt if the priority list discussion was delayed until the next TMA meeting in March, it would be a missed opportunity to ask for legislative and FDOT assistance with the negotiations.
Alden reiterated that the ask was for moral support as a region to begin the process of negotiating, which can take several years before reaching agreement.

Councilmember Rice made a substitute motion to add both the HART ask and support for the 41-mile TBARTA Regional Rapid Transit project to the priority list, saying that it would be counterintuitive to speak to legislators about the CSX lines and not the RRT project.

While also not yet a fully defined project, Rice noted the RRT project has been in discussions for years, with legislative funding for the PD&E study currently underway and would be confusing if not included.

This motion passed unanimously.

Scott Pringle of WSP consulting gave an update on the TBARTA RRT study:

- TBARTA is studying the 41-mile rapid transit on I-275, targeting summer 2021 for FTA submittal.
- Of 21 original proposed station locations, the study group decided to keep seven, remove five, and prioritize nine.
- The seven must-have stations were:
  - In Pinellas:
  - 4th Street in St. Petersburg
  - Tropicana Field
  - Gateway/Carillon
  - In Hillsborough:
  - Westshore
  - Downtown Tampa
  - USF Area
  - In Pasco:
  - SR 56
- Going forward, the study team will recommend five alternatives to enter the 10% design phase.
- Commissioner Kemp, who had previously been critical of the study, said fewer stations was a move in the right direction and reiterated her opposition to creating more parking in service to the project.
- HART and the study team have already scheduled meetings to discuss how current service intersects with the proposed service.

FDOT District Seven staff gave an update on TBNex projects.
Transportation Development Director Richard Moss lauded the group’s prioritization of the Westshore Interchange, noting that a $1.4B funding lump sum is unheard of.

The Tampa Bay next projects that are already at least partially funded in the work program - the Gateway Expressway, Howard Frankland Bridge, I-275 North Corridor, the Westshore Interchange, and I-275 in Pinellas - amount to $3.2B in funding.

Construction on the Westshore Interchange will begin in late 2023.

Still awaiting funding:
- I-275 north of Hanna Avenue
- The I-275/I-4 Interchange
- Sections of I-75 and I-4

Staff members provided an overview of proposed changes to TMA and Chairs Coordinating Committee Operating Procedures:

- Procedure changes include:
  - MPOs now providing staff support to the CCC, with responsibility rotating quarterly with a different MPO “chair”
  - The TMA being incorporated as a subcommittee of the Chairs Coordinating Committee
  - A yearly elected chair and vice chair of the TMA
  - Several staff teams under the CCC, including a multi-use trails team, Transportation Regional Incentive Program (TRIP) Team, and Regional Big Data Working Group

Group members did not have comments, and each MPO in the CCC will receive the procedure changes on its board meeting agenda for approval.

The TMA Leadership Group will select a chair and vice chair at its first meeting in 2020.

HART staff discussed plans for its investments with the All for Transportation Surtax, which is currently being collected but has spending on hold due to legal battles.

HART has three buckets of projects that will be funded by the surtax:
- 45% goes to enhancing bus service
- 35% goes to expanding fixed-guideway public transit options
- 35% goes to expanding fixed-guideway public transit options
- This will focus on corridor assessments, future streetcar extensions, CSX evaluation, InVision Tampa Streetcar, and Marion Transitway corridor assessment
• 20% to remaining funds
• Highlights of planned investments in 2020:
  • $32M to frequency improvement and service expansion, including 86+ route miles of restored service
  • $5.9M in amenity improvements for customers
  • $6.6M to a regional electronic payment system
  • $46M to buying vehicles
Case No. SC19-1250

SUPREME COURT OF FLORIDA

Robert Emerson, Et Al.,

Appellants/Cross-Appellees,

v.

Hillsborough County, Florida, Etc., Et Al.,

Appellees/Cross-Appellants.

On Appeal from the Circuit Court, Thirteenth Judicial Circuit,
in and for Hillsborough County, Florida
(Lower Tribunal Case No. 2019-CA-001382)

REPLY BRIEF OF APPELLANT/CROSS-APPELLEE
ROBERT EMERSON

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November 12, 2019
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PRELIMINARY STATEMENT

Appellees’ effort to square state law with Article 11 impermissibly rewrites both. At bottom, Appellees contend that because § 212.055(1) would have authorized the Hillsborough County Commission to “deem[] appropriate” the spending regime that referendum voters imposed through Article 11, that statute does not conflict with Article 11. But Appellees cannot overcome the Legislature’s clear answer to the prior question: Who decides?

As the circuit court correctly held, as Emerson has shown (at 3-5), and as both houses of the Legislature have reaffirmed (at 5-6), § 212.055(1) definitively structures power and accountability for spending transportation surtax proceeds: “Proceeds from the surtax shall be applied to as many or as few of the uses enumerated” in the statute “in whatever combination the county commission deems appropriate.” § 212.055(1)(d), Fla. Stat. (emphasis added). Neither home-rule generalities (see Intervenor-Appellees’ Br. at 31-32) nor a county charter’s ability to limit a county commission’s power in other ways (see Local Gov’t Br. at 35-37) can override state law’s explicit constraint on a county’s spending authority. As the Legislature has explained (at 6), although § 212.055(1) gives county voters a “choice,” that choice concerns only “whether to levy the surtax; they do not get to vote on how the proceeds will be spent.”
Nor do county voters get to empower a new Independent Oversight Committee (“IOC”) to control the Commission’s exercise of its spending authority. As Intervenor-Appellees admit (at 35), that is precisely what Article 11 purports to do: the IOC may both “‘approve’ Project Plans submitted by each Agency” and “suspend the distribution of funds if an Agency has not complied with Article 11.” The Local Governments’ attempt to avoid this conflict by construing the IOC’s powers more narrowly (at 43) distorts Article 11’s text, and, in any event, does nothing to cure the IOC’s fatal flaw: a body professing to constrain a county commission’s surtax-spending decisions has arrogated to itself power that the Legislature delegated to the commission.

Appellees’ argument that these unconstitutional features can be severed from Article 11 caricatures its purpose. The notion that voters set out simply to improve transportation – regardless what projects would be funded, how much money what projects would receive, and who would control spending – is belied by the redline the circuit court substituted for the as-adopted text: to make Article 11 lawful, the circuit court had to alter its operation in fundamental respects. Further, Appellees’ argument is inconsistent with Article 11’s own severability clause, which makes clear that the unconstitutional features were integral to Article 11’s design. That textual evidence alone confirms that Article 11 is unlawful in its entirety – a
conclusion confirmed by the history that Appellees largely do not dispute, but (incorrectly) ask the Court to ignore.

**CROSS-APPEAL STATEMENT OF THE CASE AND FACTS**

Emerson relies on his statement of the case in his initial brief, and incorporates it here by reference.

**SUMMARY OF THE ARGUMENT**

Article 11 conflicts with state law because it divests the Hillsborough County Commission of spending discretion conclusively entrusted to it by state law. Section 212.055(1) grants the power to “deem[]” the spending of transportation surtax proceeds “appropriate” to “the county commission.” Article 11 conflicts with that statute in two respects the circuit court identified: Article 11 both sets out a rigid allocation scheme governing what projects will receive what funding and empowers an Independent Oversight Commission to further superintend the Hillsborough County Commission’s exercise of spending discretion. Accordingly, Article 11 is unlawful.

**STANDARD OF REVIEW**

This Court reviews questions of the interpretation and constitutionality of a statute and questions of severability de novo. See Searcy, Denney, Scarola, Barnhart & Shipley, Etc. v. State, 209 So. 3d 1181, 1188-89, 1196-97 (Fla. 2017).
ARGUMENT ON CROSS-APPEAL

I. ARTICLE 11 CONFLICTS WITH STATE LAW

A. State Law Grants “The County Commission” the Power to “Deem[]” the Spending of Transportation Surtax Proceeds “Appropriate”

Appellees’ position that Article 11 does not conflict with § 212.055(1) rests on the premise that although state law constrains permissible uses for spending taxpayer money, it does not resolve who chooses among those uses. That is wrong: Section 212.055 expressly grants that power to county commissions, not referendum voters.

Appellees’ invocation of charter counties’ “powers of self-government,” Local Gov’t Br. at 32-33, 37; see also Intervenor-Appellees’ Br. at 31-32, frames the question upside-down, because it overlooks basic limits on those powers. As Emerson’s opening brief established (at 3-5), Florida’s default regime entirely precludes counties from imposing a tax like the one at issue. See Art. VII, § 1(a), Fla. Const. (“All other forms of taxation” – that is, other than those the state flatly bans – “shall be preempted to the state except as provided by general law.”).

Appellees’ rhetoric aside, counties enjoy the power to impose these taxes only at the Legislature’s grace. Charlotte Cty. Bd. of Cty. Comm’rs v. Taylor, 650 So. 2d 146, 148 (Fla. 2d DCA 1995) (“We realize, and appreciate, that as President Abraham Lincoln said in his address at Gettysburg that our government is one of
the people, by the people, and for the people. We also appreciate that a majority of the people who voted on this amendment in Charlotte County wanted the tax cap amendment. It must also be realized, however, that a majority of the electors of the state wanted the Florida Constitution and that those voting for home rule in Charlotte County adopted a charter which is subject to that constitution.

See also City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1, 3 (Fla. 1972) (statutes granting power to tax “are to be strictly construed”).

Section 212.055(1)’s text conditions its exception to the default rule on particularized accountability, providing that the proceeds “shall be applied to as many or as few of the uses enumerated” in the statute “in whatever combination the county commission deems appropriate.” § 212.055(1)(d), Fla. Stat. And no Appellee contests Emerson’s account of the eminent sense that makes: because the county commission holds authority over a wide spectrum of public business, it is uniquely positioned to decide what “combination” is most “appropriate” as a given county’s needs evolve – and to be held politically accountable for those decisions.

Opening Br. at 4-5, 30. Neither the parties’ agreement that “the uses provided in Article 11 complied with” the statute (Local Gov’t Br. at 40) nor the fact that the statute “does not provide any particular form of action the county commission must take to deem the surtax uses appropriate” (id. at 34-37) answers the core point: the statute quite clearly does provide that the “commission” is the entity that
“deems” combinations of uses “appropriate,” and it so provides for good reason. See The Federalist No. 10 (James Madison) (explaining that representative democracy limits the manipulative influence of local factions).¹

The Local Governments’ attempt to qualify that power fails. They point to a provision explaining that one of the “uses” to which “the county commission” may put surtax proceeds is those proceeds’ remittance “to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for” various maintenance purposes. See Local Gov’t Br. at 38 (citing § 212.055(1)(d)(2), Fla. Stat.). But that language simply empowers a commission to yield some of its own power to another body; it in no way suggests that referendum voters can strip the commission of its power.

The history of the statute points the same direction. As the Local Governments ably explain (at 8-9, 39-40), in 1999, the Legislature revised § 212.055’s predecessor to give county commissions more discretion over spending. But that revision reinforces Emerson’s view and refutes theirs: it is that widened discretion that, as explained next, Article 11 purports to take away.

¹ Alexander Hamilton, to whom Emerson’s opening brief incorrectly attributed Federalist No. 10 (at 30), shared this view. See 1 Alexander Hamilton, The Works of Alexander Hamilton 431 (Henry Cabot Lodge ed., 1885) (“Experience has proved, that no position in politics is more false than” the view “that a pure democracy, if it were practicable, would be the most perfect government.”).
B. Article 11 Unlawfully Constrains the Commission’s Power to “Deem[ ]” the Spending of Transportation Surtax Proceeds “Appropriate”

The parties agree that if a “local enactment conflicts with a state statute,” it is unlawful. Sarasota All. for Fair Elections Inc. v. Browning, 28 So. 3d 880, 885-86 (Fla. 2010). As the circuit court held, Article 11 includes multiple provisions that “fly directly in the face” of § 212.055(1). Summ. J. Order (A9.683). That conflict arises in two respects.

1. Article 11’s Rigid Allocation Scheme Conflicts With State Law, Which Vests Spending Discretion in the Commission

Article 11 contains multiple provisions that “dictate the uses” that the Commission “may apply the proceeds to as well as how much of the proceeds” the Commission “may apply to each one.” (A9.684) (emphasis omitted). The circuit court’s explanation of the import of those sections’ merits reading in full:

Section 5 mandates how the proceeds will be distributed; section 6 requires IOC to approve all Agency project plans and amendments to said plans before the Agency may utilize the proceeds towards the project; section 7 mandates how each Agency must expend their allocated proceeds; section 8 specifies how HART must allocate their portion of proceeds to specific uses, and; section 9 states that if a two-thirds majority of IOC determines an Agency is not in compliance with Article 11 and if the Agency fails to correct the noncompliance, IOC may direct the Clerk to suspend distribution of proceeds to the Agency until such time as they come into compliance. (A9.683). The circuit court correctly rejected this “usurpation of powers” as inconsistent with § 212.055. (A9.684) (emphasis omitted).
a. Appellees’ principal argument to the contrary – that Article 11 “merely supplement[s,] rather than contradict[s],” that statute, Local Gov’t Br. at 34-35 – finds no support in their cases, none of which held a comparable usurpation lawful. State v. Sarasota County found no conflict between state statutes that require counties to use gas tax revenues only for certain purposes and a charter provision that required a county to seek approval by referendum before issuing bonds of a certain size. 549 So. 2d 659, 660-61 (Fla. 1989). Phantom of Brevard, Inc. v. Brevard County found that a state statute providing that “a county must require at least a $500 bond from” those who receive a license to display fireworks outdoors did not conflict with a county charter provision requiring those who sell fireworks to obtain liability insurance. 3 So. 3d 309, 314-15 (Fla. 2008). And City of Kissimmee v. Florida Retail Federation, Inc., saw no conflict between a statute protecting the owners of shopping carts “found on public property” from paying certain costs and a local ordinance requiring retailers to develop a system keeping shopping carts on their property. 915 So. 2d 205, 209 (Fla. 5th DCA 2005). In none of these cases did a local government try to take decision-making discretion away from the governmental entity to which the Legislature had delegated it.

But that did occur in Intervenor-Appellees’ remaining conflict case, Sarasota Alliance for Fair Election – and the Court rejected the gambit for reasons that condemn Article 11, as well. The case generally concerned potential conflicts
between the Election Code and a county charter amendment. The Court first found no conflict between the Election Code’s “minimum statutory requirements” regulating voting machines and one provision of that amendment requiring voting machines to provide a voter verified paper ballot. 28 So. 3d at 888. But in a portion of the case Intervenor-Appellees ignore, the Court went on to find a conflict between the Election Code’s “specification that the county canvassing board must certify the election results” and the amendment’s provision “for an independent auditing firm to complete the required audits before the election results may be certified.” Id. at 889-90. Article 11 conflicts with § 212.055(1) in much the same way: it purports to re-allocate the power over use of tax funds in a manner inconsistent with state statute.

b. Appellees’ view that Article 11 “simply cannot conflict with” § 212.055(1) in this respect because it includes language acknowledging § 212.055(1)’s supremacy (Intervenor-Appellees’ Br. at 33; see also Local Gov’t Br. at 39-40) gets things backward. The voters’ agreement that “in the event of any conflict between the provisions of this Article 11 and the laws of Florida, the laws of Florida shall prevail,” § 11.11(3), provides all the more reason that Article 11 should yield to state law given the existence of a clear conflict. The voters were not trying to override state law, nor could they have even if they had tried. See
Art. VIII, § 1(g), Fla. Const. ("The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law.").

This Court has never endorsed Appellees’ view that such a clause – much less language incanting that various acts should be done “in compliance with,” “in accordance with,” or as “permitted by” state law – allows local law to proceed despite being in obvious conflict with state law. For that startling proposition the Local Governments cite no case at all (see at 39-40), and Intervenor-Appellees cite none (at 34; but see id. at 35 (retreating)) that support it. In D’Agastino v. City of Miami, the Court held that a municipal entity could not use its general subpoena power to compel the interrogation of a police officer in an investigation, because a state statute granted such an officer rights that that application of that power “would impermissibly countermand.” 220 So. 3d 410, 426 (Fla. 2017). Relying on the validity canon, the Court went on to explain that a different ordinance requiring the municipal entity to carry out its duties in accord with state law – including the conflict holding it had just issued – would be “an adequate means of ensuring the subpoena power, as it applies to non-officers, may continue to exist undisturbed.” Id. That modest holding follows from the peculiar relationship
between those particular ordinances; it does not support Appellees’ view that counties may exempt charter provisions from conflict analysis using magic words.\(^2\)

Intervenor-Appellees’ contention (at 33) that Article 11’s references to state law prevent any conflict because “if the County Commission were ever to deem appropriate another set of allocations, they would supersede those provided in Article 11 to the extent of any conflict,” is beside the point. Intervenor-Appellees’ concession that if some future Commission were to deem appropriate some allocation other than Article 11’s, that allocation would trump Article 11’s, does not cure the conflict: because the Commission did not set even Article 11’s initial allocation, Article 11 conflicts with state law.

c. The Local Governments’ position (at 37-38) that a different statute, § 125.86(8), Fla. Stat., authorizes referendum voters to take away the power § 212.055(1) delegated to county commissions misreads § 125.86(8). The latter explains that a county commission has (among other powers and duties) those “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), Fla. Stat. The rule the Local Governments draw from that language – that it “specifically authorizes the voters of charter counties to

\(^2\) Neither does *Miami-Dade County v. Dade County Police Benevolent Ass’n*, which did not rely on any similar supremacy clause. 154 So. 3d 373, 380 (Fla. 3d DCA 2014).
limit the county commission’s authority,” regardless what powers state law elsewhere grants county commissions (at 37) – appears nowhere in its text, and would be a radical proposition to bury in the last phrase of a residual clause. Cf. *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001) (Congress “does not, one might say, hide elephants in mouseholes.”) What is more, it proves far too much: if it were correct, Florida courts could never hold that a charter’s limitation on a county commission’s taxation authority is invalid because it conflicts with state law. *But see Ellis v. Burk*, 866 So. 2d 1236, 1237 ( Fla. 5th DCA 2004) (Under Florida’s “state constitution and statutory scheme, the power to limit a county commission’s ability to raise revenue for the county’s operating needs by way of ad valorem taxation is effectively and exclusively lodged in the legislature.”); *Charlotte Cty. Bd. of Cty. Comm’rs*, 650 So. 2d at 148 (similar).

2. **Article 11’s Creation of an Independent Oversight Committee To Control the Commission’s Exercise of Its Spending Discretion Likewise Conflicts With State Law**

The circuit court correctly identified a second conflict between Article 11 and state law: its creation of an independent body, the IOC, empowered to police the County Commission’s exercise of its discretionary spending authority:

[S]ection 6 requires IOC to approve all Agency project plans and amendments to said plans before such Agency may utilize the proceeds towards the project[; and] section 9 states that if a two-thirds majority of IOC determines an Agency is not in compliance with Article 11 and if such Agency fails to correct the non-compliance, IOC may direct the Clerk to suspend distribution of proceeds to the
Agency until such time as they come into compliance. . . . Among IOC’s responsibilities mandated in section 10 is the approval of Agency project plans. (A9.685). The court went on to explain that these duties “are not supplementary and instead have the effect of depriving the county commission of its statutory authority and duties mandated in section 212.055(1).” (Id.; see also A9.685-86 (“[T]he stricken portions prescribe duties to IOC, which have the effect of relieving BOCC of the following duties: determining [to] which uses the proceeds will be applied; determining in which combination the proceeds may be applied, or [sic]; final approval and payment thereof.”)) (emphasis omitted)).

Appellees fail to show otherwise. The Local Governments contend (at 41) that this “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.” Intervenor-Appellees, for their part, similarly state that the IOC (at 35) “simply adds another layer of review to the process the statute contemplates.” Both characterizations embrace, rather than cure, Article 11’s basic flaw: it grants an independent entity the ability to control the Commission’s exercise of discretion the Legislature gave to it. However desirable Appellees may find that feature of Article 11, it conflicts with state law for the reasons already explained. See supra pp. 8-9 (citing Sarasota All. for Fair Elections, 28 So. 3d at 890).
The Local Governments attempt to reduce this conflict by offering an implausible limiting construction of the IOC’s powers. On their telling (at 43), although Article 11 grants the IOC the power “to approve project plans only based on a finding that they comply with Article 11 and Florida law[, ] . . . the IOC does not have the authority to reject an otherwise compliant project plan merely because it dislikes it for some other reason.” As Intervenor-Appellees’ contrary position (at 35) suggests, however, that view conflicts with the language of Article 11, which grants the IOC the power to “[a]pprove Project Plans and approve and certify as to whether the projects therein comply with this article.” § 11.10(2). And even if the Local Governments’ reading were right, it would not salvage Article 11: because Article 11 still would empower the IOC to constrain the Commission’s spending discretion, it still would conflict with state law granting that discretion.

3. The Commission’s Putative Ratification of Article 11 Does Not Cure the Conflict

Appellees’ view (Intervenor-Appellees’ Br. at 32-33; Local Gov’t Br. at 44-46) that the Commission has validly ratified Article 11 is incorrect. It is true that the Commission has purported to “deem[] appropriate” “the provisions of Article 11” when it authorized the issuance of the bonds. (A11.75.) It is likewise true that the Commission and various other entities entered into an interlocal agreement purporting to “deem[] appropriate the allocation, distribution and uses of Surtax Proceeds as provided for in the Charter Amendment.” (A12.23.)
But charter amendments that are void from the start cannot be revived *nunc pro tunc*.  *Cf. State ex rel. Ervin v. Mellick*, 68 So. 2d 824, 827 (Fla. 1953) (“[A]n invalid or illegal ordinance is wholly inoperative.”).  Just as an after-the-fact “validation act cannot validate a lack of power in a city or county to act in the first instance,” *Broward Cty. v. Plantation Imports, Inc.*, 419 So. 2d 1145, 1148 (Fla. 4th DCA 1982), an after-the-fact Commission vote cannot validate a lack of power to act via referendum in the first place.  That rule follows from black-letter agency law:  although an act of ratification can “authorize that which was unauthorized,” it “cannot . . . give legal significance to an act which was a nullity from the start.”  *Newman v. Schiff*, 778 F.2d 460, 467 (8th Cir. 1985).

Further, the Commission cannot ratify what it could not have lawfully authorized in the first place.  *See City of Coral Gables v. Giblin*, 127 So. 2d 914, 919 (Fla. 3d DCA 1961);  *see also* 2 Fla. Jur. 2d *Agency and Employment* § 84 (Sept. 2019 update).  Although the Commission (again) could have authorized the uses to which Article 11 dedicates these funds, for the same reasons referendum voters could not strip the Commission of the duties § 212.055(1) assigns it, the Commission could not itself abdicate those duties in favor of a popular referendum.  *Cf. P.C.B. P’ship v. City of Largo*, 549 So. 2d 738, 741 (Fla. 2d DCA
1989) (city lacked authority to “contract[] away the exercise of its police powers”).

II. THE UNCONSTITUTIONAL FEATURES OF ARTICLE 11 CANNOT BE SEVERED FROM THE CONSTITUTIONAL PROVISIONS

Appellees agree that whether the features of Article 11 gutting the Commission’s spending discretion can be severed largely turns on whether the as-severed version would accomplish Article 11’s purpose such that it would have become law in that form. See Cramp v. Bd. of Pub. Instruction, 137 So. 2d 828, 830-31 (Fla. 1962). But Appellees’ characterization of that purpose – as merely funding transportation projects in Hillsborough County – depends on a blinkered reading of Article 11’s text. As explained below, that text shows that Article 11’s unlawful spending-discretion restrictions were integral to its operation and fundamental to its purpose. Further, that conclusion – sufficient in its own right to require Article 11’s complete invalidation – is reinforced by all other available proof of Article 11’s purpose.

3 Notably, the interlocal agreement purports (see A12.23) to incorporate the incorrect limiting construction of the IOC’s powers that the Local Governments endorse, but Intervenor-Appellees reject, see supra p. 14 – a conclusion that hardly bolsters its validity.
A. Article 11’s Text Is Replete With Unconstitutional Features, Showing Their Centrality To Its Purpose

1. Appellees defend Article 11 primarily by attempting to extract a stand-alone purpose from a few provisions from which the circuit court did not strike language. Those provisions state the purpose of the surtax (§ 11.01), levy it (§ 11.02), explain that it will last for thirty years (§ 11.03), and detail the duties of the clerk (§ 11.04). From these four provisions Appellees contend that the voters’ intent can faithfully be reduced “to fund[ing] transportation projects in Hillsborough County.” Local Gov’t Br. at 25-29; see also Intervenor-Appellees’ Br. at 15-18 (similar).

   But Appellees’ view that those provisions can be neatly separated from the six the circuit court altered – those that govern how the proceeds are to be distributed or how that distribution is to be overseen4 – overlooks those provisions’ interdependence. Section 11.01 states: “The proceeds of the surtax shall be distributed and disbursed . . . in accordance with the provisions of this Article 11.” Section 11.02 similarly provides: “Any other provision of this Charter to the contrary notwithstanding, all proceeds from the Transportation Surtax . . . shall be

expended only as permitted by this Article 11.” Section 11.03 states that “The Transportation Surtax authorized by this Article 11 . . . shall remain in effect for a period of thirty (30) years.” And § 11.04 states that the clerk must, among other things, arrange for an annual audit of “the Clerk’s and each Agency’s compliance with the provisions of this Article relating to the distribution and expenditure of Surtax Proceeds.”

Even these four facially unchanged provisions therefore draw meaning from the balance of Article 11. Put differently, by excising many of “the provisions of [Article 11] relating to the distribution and expenditure of Surtax Proceeds” – the restrictions subject to which Article 11 “authorized” this surtax – the circuit court necessarily changed what it means to say the proceeds must be spent “in accordance with” or “as permitted by” Article 11. It blinks reality to conjure an account of Article 11’s purpose from these four provisions alone while ignoring their dependence on the unlawful provisions. See Larimore v. State, 2 So. 3d 101, 106 (Fla. 2008), as revised on denial of reh’g (Jan. 29, 2009) (“Related statutory provisions must be read together to achieve a consistent whole, and where possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.” (alterations omitted)).

A similar flaw afflicts Appellees’ reliance on § 11.01’s statement of purpose. See Local Gov’t Br. at 25; Intervenor-Appellees’ Br. at 16-17. To start, the
provision addresses the “Purpose of [the] surtax,” § 11.01 (emphasis added), rather than the relevant severability question – “the overall legislative intent of” Article 11 as a whole. *E. Air Lines, Inc. v. Dep’t of Rev.*, 455 So. 2d 311, 317 (Fla. 1984).

In any event and again, the provision answers that question in a way that supports Emerson: it provides that the “proceeds of the surtax shall be distributed and disbursed . . . in accordance with the provisions of this Article 11.”

That Article 11’s text is so permeated by unlawful features confirms that it flunks this Court’s severability standards. *Lawnwood Medical Center, Inc. v. Seeger*, 990 So. 2d 503 (Fla. 2008), makes the point particularly clear. Again (see Opening Br. at 24-25), the Court there held that because the relevant “statutory scheme” was “replete with” unconstitutional features, the statute could not be said to “be an act complete in itself, once the invalid portions are severed, that would accomplish what the [voters] so clearly intended by the many different” unlawful “provisions.” *Lawnwood Med. Ctr.*, 990 So. 2d at 519. The same is true here, as the results that follow from the circuit court’s revisions vividly show. *See* Opening Br. at 24-26 (cataloging how “the circuit court’s revisions granted the Hillsborough County Commission power voters denied it – free rein to use surtax monies in any otherwise legal way”). Remarkably, Appellees do not address *Lawnwood Medical Center’s* severability analysis: the Local Governments do not so much as cite the case, and Intervenor-Appellees’ single-sentence encounter with it (at 24) recites
one element of its constitutionality reasoning while ignoring its severability holding. The first is irrelevant; the second is dispositive.

No case Appellees cite on this score (see Local Gov’t Br. at 27; Intervenor-Appellees’ Br. at 17-18, 20) undermines this conclusion. In Florida Hospital Waterman, Inc. v. Buster, the Court held that a medical-records statute explicitly designed to implement a medical-records constitutional provision furthered that purpose even without certain provisions that had narrowed rights granted by that constitutional provision. 984 So. 2d 478, 494 (Fla. 2008) (per curiam) (quoting statute’s “Purpose” section). And in Hall v. Recchi America Inc., the First District held that a single provision of a drug-free workplace statute establishing an unconstitutional evidentiary presumption could be severed without threatening the statute’s goals of “discouraging drug abuse and maximizing industrial productivity by eliminating ‘the costs, delays, and tragedies associated with work-related accidents resulting from drug abuse by employees.’” 671 So. 2d 197, 202-03 (Fla. 1st DCA 1996) (quoting statute’s “Legislative intent” provision), aff’d, 692 So. 2d 153 (Fla. 1997)). In neither these cases nor the other two Intervenor-Appellees identify (at 20)\(^5\) was a constitutional flaw nearly as integral to the statute as the stripping of spending discretion is to Article 11.

\(^5\) See Presbyterian Homes of Synod of Fla. v. Wood, 297 So. 2d 556, 557 (Fla. 1974) (severing three interrelated provisions that together “mistakenly
And Ray v. Mortham (as relevant here) rejects a legal argument Emerson does not make – that if a proposed constitutional amendment complies with the single-subject requirement of the Florida Constitution, see Art. IX, § 3, it necessarily follows that no provision of that amendment can be severed from it. 742 So. 2d 1276, 1282 (Fla. 1999) (per curiam). The single-subject requirement is not the reason Article 11’s unconstitutional provisions are not severable. They are not severable because ordinary tools of textual interpretation compel that outcome.

**B. Article 11’s Severability Clause Excludes Its Unconstitutional Features**

Although Appellees are correct that “the voters here had clear notice of severability,” Intervenor-Appellees’ Br. at 9; see also Local Gov’t Br. at 29-31, they received that notice from a provision that excluded the language at issue. Article 11 specifically provided for the severance of “any mandated expenditure category set forth in section 11.07 or 11.08,” Petition Form, art. 11, § 11.11(2) (A10.802); it did not provide for the severance of other provisions. That omission necessarily implies that provisions other than those listed – including provisions now at issue – are too integral to the statute to be severed. See Moonlit Waters exceeded” constitutional rule concerning tax exemption); Tropical Park, Inc. v. Dep’t of Bus. Regulation, Div. of Pari-Mutuel Wagering, 433 So. 2d 1329, 1332 (Fla. 3d DCA 1983) (single provision unlawfully delegating legislative power to executive branch was severable, particularly in light of applicable severability clause).
Apartments, Inc. v. Cauley, 666 So. 2d 898, 900 (Fla. 1996) (“Under the principle of statutory construction, expressio unius est exclusio alterius, the mention of one thing implies the exclusion of another.”).

Appellees offer the Court no contrary construction of this clause. They instead retreat (see Intervenor-Appellees’ Br. at 25; Local Gov’t Br. at 30) to the principle that “severability can occur whether or not the enactment contains a severability clause.” Schmitt v. State, 590 So. 2d 404, 415 n.12 (Fla. 1991) (per curiam). But that principle undermines their position: the fact that Article 11 explicitly limits the default breadth of severability doctrine does not show that voters intended “to save as much of Article 11 as possible in the event of a conflict” (Intervenor-Appellees’ Br. at 26), but the opposite.

Neither Article 11’s supremacy clause (see § 11.11(3)) nor the Hillsborough County Charter’s general severability clause shows otherwise. Again, see supra pp. 9-11, the supremacy clause merely restates that state law preempts conflicting local law – a truism that salvages nothing in Article 11. And (also again, see Opening Br. at 29 n.13) the ordinary rule that specific language controls over general language dictates that the County Charter’s general severability clause is controlled by Article 11’s specific severability clause. Intervenor-Appellees’ passing suggestion (at 27) that charter provisions are exempt from that black-letter rule of textual interpretation is simply not the law. See Barry v. Garcia, 573 So. 2d
932, 936 (Fla. 3d DCA 1991) (“The Miami City Charter specifically prescribes the several methods of subpoena power delegation and it is a general rule, that specific requirements of a special act or charter, will control to the exclusion of a general grant of authority.”).

C. All Other Evidence Reaffirms That Article 11’s Unconstitutional Features Are Integral To Its Purpose

All other evidence confirms the same outcome. First, Appellees’ view that the ballot summary characterizes Article 11’s purpose as merely “to pass a 30-year, one-cent surtax to fund transportation improvements in Hillsborough County” (Intervenor-Appellees’ Br. at 10; see also Local Gov’t Br. at 25) is belied by its text:
(A1.39.) That text confirms that the ballot initiative’s purpose was to fund specific projects; that the fund in which the proceeds would be held would be subject to “independent oversight”; that the revenues would be “shared” subject to a particular “population-based formula”; and that “the Charter Amendment” would “govern[]” expenditures. *Id.* Although the Local Governments are surely correct (at 26) that the summary does not detail all of Article 11’s unlawful features, that neither is a surprise (it is, after all, a summary) nor supports their view: fairly read,
the ballot text highlights exactly the unlawful limitations Article 11 put on the Commission’s spending discretion.6

Second, Appellees do not meaningfully dispute Emerson’s exhaustive account of how the unlawful features of Article 11 distinguished it from its unsuccessful predecessor. See Opening Br. at 21-23.7 Appellees instead contend (see Local Gov’t Br. at 27-28 & n.6; Intervenor Appellees’ Br. at 22-23) that the Court should ignore it.

But that position conflicts with this Court’s severability jurisprudence. The Court has long looked outside the four corners of a statute in performing the

6 Intervenor-Appellees’ quibble (at 18-19) with Emerson’s colloquially describing the final two sentences as part of the ballot summary lacks merit: that is entirely sensible shorthand for language on a ballot that summarizes an initiative’s financial impact – language that appears half an inch below the ballot question and is the final English-language text before the ovals with which voters were to mark their vote. (See A11.83.) And Intervenor-Appellees’ suggestion that this text yields no evidence of purpose rests on the strange view that voters would have stopped reading at the question mark that closed the ballot question about whether to raise taxes – ignoring the very next two sentences explaining how the tax proceeds would be spent.

7 Appellees’ complaint (at 23; see also Local Gov’t Br. at 28-29 n.6) that public statements made by Intervenor All for Transportation (“AFT”) are outside the record overlooks basic principles of judicial notice. § 90.202(12), Fla. Stat.; Oken v. Williams, 23 So. 3d 140, 148 n.2 (Fla. 1st DCA 2009), quashed on other grounds, 62 So. 3d 1129 (Fla. 2011) (per curiam) (“Many Florida appellate courts have taken judicial notice of internet materials that cannot be reasonably questioned to support their arguments and, thus, … this court’s reliance on the underlying materials does not violate binding precedent.” (collecting cases, including from this Court). Notably, AFT does not deny that it made these statements.
inherently counter-factual exercise that severability doctrine entails – determining what the enacting body would have done without the offending language. *E.g.*, *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1186, 1196-97 (Fla. 2017) (per curiam) (recounting context and lobbying background of claims bill addressing particular person’s injuries and, in addressing severability, explaining: “we are loathe to strike the entire claims bill, which is clearly intended to provide critical compensation for [a particular person’s] injuries in this case”); *Richardson v. Richardson*, 766 So. 2d 1036, 1041 (Fla. 2000) (relying in part on legislative history to reject severance). The evidence on that issue here is among the best likely to exist in any case about an initiative, rather than a statute. Any inexactitude in fit between that evidence and statutory severability precedent would not be a reason to reject the former; it would be a reason to reconsider whether the latter applies unmodified to initiatives to begin with, as Stacy White has encouraged the Court to do.

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8 Contrary to the Local Governments’ view (at 28 n.6), *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), does not hold that the Court must blind itself to political context in “determining an initiative’s chief purpose.” In relevant part, that case merely acknowledges that a ballot summary’s failure to explain an amendment’s chief purpose remains fatal even if that purpose had arguably been “disseminated via public hearings, pre-election publication, and other means.” *Id.* at 20 (citing *Wadhams v. Bd. of Cty. Comm’rs*, 567 So. 2d 414, 417 (Fla. 1990)).
In truth, the failure of Appellees’ rejoinder reflects the conceptual tension between severability doctrine’s quest for purpose and modern statutory-interpretation principles – that is, the view that legislation is “the art of compromise, the limitations expressed in statutory terms often the price of passage, and no statute yet known pursues its stated purpose” – indeed, any single purpose – “at all costs.” *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017) (alterations omitted). That tension has prompted thoughtful jurists to consider whether to abandon the doctrine,⁹ and White to question how a Court can coherently deploy it to salvage any partly-unlawful initiative.

But the Court need not go nearly so far here. The circuit court’s blue-penciled Article 11 puts Hillsborough County voters on the hook for billions of dollars in taxes to be raised over thirty years and spent without the comprehensive restrictions that the voters chose, unlawful though they are. It is work enough for this case to know that established severability law bars the judiciary from assuming that quintessentially legislative role.

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⁹ *See Murphy v. NCAA*, 138 S. Ct. 1461, 1485 (2018) (Thomas, J., concurring) (explaining that the U.S. Supreme Court “should take another look at our severability precedents” for similar reasons); *Collins v. Mnuchin*, 938 F.3d 553, 610-11 (5th Cir. 2019) (en banc) (Oldham and Ho, JJ., concurring in part and dissenting in part) (A court “should not rewrite [a] statute while pretending such legislative activity is the most modest judicial remedy.”), *petitions for cert. pending*, Nos. 19-422 and 19-563 (U.S. docketed Sept. 30 and Oct. 29, 2019).
CONCLUSION

The judgment should be reversed in relevant part and Article 11 should be held unconstitutional in full.

Respectfully submitted,

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November 12, 2019
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been filed and served to all counsel of record via the State of Florida’s electronic filing portal this 12th day of November 2019.

/s/ Derek T. Ho
CERTIFICATE OF COMPLIANCE

I certify that the font used in this brief is Times New Roman 14 point and in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Derek T. Ho
IN THE SUPREME COURT OF FLORIDA

ROBERT EMERSON, et al.                                              Case No.: SC19-1250
    Appellants,                                                   

v.                                                                 


_________________________________________________________________

STACY WHITE,                                                     Case No.: SC19-1343
    Appellant,                                                   

v.                                                                 


_________________________________________________________________

CROSS-ANSWER and REPLY BRIEF of
STACY WHITE

On Appeal from the Thirteenth Judicial Circuit
Hillsborough County, Florida
Case Nos.: 18-CA-11749 and
19-CA-1382

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PRELIMINARY STATEMENT

The answer/cross-appeal brief filed by All For Transportation, Keep Hillsborough Moving, Inc., and Tyler Hudson will be cited as “(AFT p.*),” and those parties will be referred to collectively as “AFT.” The answer/cross-appeal brief of Hillsborough County, Hillsborough County Metropolitan Planning Organization, and the City of Tampa, which has been adopted by HART, the City of Plant City, The Clerk of Court, and the State Attorney’s Office for the State, will be cited as “(LG p. *), and referred to collectively as “Local Government.”

In the circuit court, the Property Appraiser, the Tax Collector, and the City of Temple Terrace were all originally parties to Mr. White’s action for declaratory relief, but they were voluntarily dismissed before entry of the final judgment. They have not filed briefing in this appellate proceeding. The Florida Department of Revenue is a party, but it has taken no position throughout the litigation.

The record will be cited as in Mr. White’s initial brief.

All emphasis is counsel’s unless otherwise noted.
CROSS-ANSWER STATEMENT OF THE CASE AND FACTS

Mr. White will rely upon his statement of the case and facts in his initial brief for most purposes in this cross-answer brief. Two factual matters warrant a fuller explanation in light of the arguments by AFT and Local Government in the cross-appeal.

A. Article 11’s restrictions on the County Commission expressed in dollar amounts.

The Local Government brief claims that Mr. White wants the County Commission to have total control of every dollar spent on transportation over the next 30 years from this $9 billion tax. (LG p.15). As explained later in the argument, that is not true. But it is helpful to understand factually the size of the monetary restrictions placed on the County Commission by the unconstitutional restrictions in Article 11.

Factually, $5.4 billion of the $9 billion conservatively expected to be generated in surtax proceeds must go to the other governmental “Agencies” without any vote of the County Commission under the provisions in Article 11 that were held unconstitutional by the circuit court.¹

¹ 45% goes to HART; 1% goes to the MPO; and under current census numbers 26.18% of the 54% of the funds allocated to the General Fund or 14.14% of the overall surtax proceeds goes to the three municipalities. (A. 4:112). This totals 60.14%.
Of the remaining $3.6 billion that is received by Hillsborough County, 100% of this entire amount is received without any vote of the County Commission determining that this application of tax proceeds is appropriate.

Of this amount, 85% of these surtax proceeds are subject to the restrictions, conditions, and limitations in section 11.07. Thus, only $729 million or $24.3 million per year is available to the County Commission for projects it actually deems appropriate independent of the constraints of Article 11.

Because section 11.07(8) prevents the County Commission from spending 73% of the allocation of General Revenue funds on projects that build new roads or widen existing roads, only a total of $1.31 billion or $43.74 million per year can be spent by the County Commission on building new roads or widening existing roads.

45% of the surtax proceeds, or $4.05 billion, must go to HART to be spent as directed in section 11.08. Not only does the County Commission have no discretion to apply these funds to uses it deems more appropriate, but HART is denied the discretion given to it in section 212.055(1) to apply surtax proceeds to transit uses that it deems more appropriate. Thus, HART must spend 45% of the funds it receives on “enhancing bus services.” This amount is $1.82 billion. An additional 35% or $1.42 billion must be spent on “expanding public transit options.” Thus, under the unconstitutional provisions, HART would be allowed to use its discretion to spend only $810 million or $27 million per year during the 30-year period. The
County Commission—today and throughout the entire 30-year term of the tax—would have no authority whatsoever to deem any of this compulsory spending “appropriate.”

**B. The References to Section 212.055(1) in Article 11.**

AFT is correct that it inserted a reference to section 212.055(1) eleven times in Article 11. Given that the Legislature decided the County Commission “shall” be required select the uses under section 212.055(1), it is also noteworthy that AFT used the word “shall” 56 times in Article 11 to mandate the outcomes it desires.

Specifically, references to section 212.055(1) occur in Sections 11.01, 11.02, 11.07, 11.08, and 11.11. On 7 of these occasions, a reference to the statute is in a phrase where it is joined by the conjunction “and” to a reference to Article 11. On 3 occasions Article 11 requires the selection of a project by an “Agency” “to the extent permitted by” the statute. On a final occasion, the reference to the statute is in a phrase joining it to a reference to Article 11 by the conjunction “or.”

1. **11.01:**

Section 11.01 states the purpose of the surtax. Section 11.01 references section 212.055(1) one time. It states that “[t]he 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.” Thus, 11.01 states that the disbursement of
proceeds from the surtax shall comply with both section 212.055(1) and Article 11, which was impossible until the circuit court removed 14 sections from Article 11.

2. 11.02:

Section 11.02 is the provision providing for the levying of a one percent sales tax. Section 11.02 references section 212.055(1) two times.

- Section 11.02 states that “[t]he 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.”

- Further, 11.02 states that “[a]ny 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 . . . .” Thus, this provision itself requires mandatory compliance with both Article 11 and section 212.055(1), and it requires compliance with section 11.01, which also requires compliance with both. Again, this was impossible until the circuit court removed 14 sections from Article 11.

3. 11.07:

Section 11.07 establishes restrictions on the uses the General Purpose Fund. Section 11.07 references section 212.055(1) five times. All five occasions are in
sentences in which AFT mandated something that the Legislature in section 212.055(1) left to the discretion of the County Commission.

- First, 11.07 provides that “[f]or 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 . . . to the extent permitted by F.S. § 212.055(1) . . . .”

- Section 11.07(4) states that at least 12% of the General Purpose Fund “shall” be utilized for bicycle or pedestrian infrastructure “to the extent permitted by F.S. § 212.055(1).”

- Section 11.07(5) provides that any remaining portion of the General Purpose Fund “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.”

- Further, 11.07(7) provides that an Agency that receives less than five percent of the General Purpose Fund in a calendar year, “is not required to expend its share of General Purposes Portion on the categories set forth in Section 11.07(1) through (5) . . . 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).”
• Section 11.07(9) references section 212.055(1) by stating, “upon receipt 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.”

4. 11.08:

Section 11.08 establishes mandatory percentages of the Transit Restricted Portion of the Surtax that HART must spend on particular uses. Section 11.08 references section 212.055(1) twice.

• Section 11.08 provides, “[t]he TransitRestricted 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 . . . to the extent permitted by F.S. § 212.055(1), and include expenditures in the following categories:” The “following categories” compel HART to spend 80% of the funds for 30 years on projects—without any vote by either the County Commission or HART to deem them appropriate.

• Additionally, section 11.08(3) references section 212.055(1) by providing that any remaining funds in the Transit Restricted Portion “shall be spent
on any project to improve public transportation permitted by F.S. § 212.055(1) or this Charter.”

5. 11.11:

Section 11.11(2) contains the narrow severability clause. It provides, “[t]o 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.” Thus, even these funds are not returned to the County Commission for it to apply as it deems appropriate.

It is noteworthy that there is no reference to section 212.055(1) in section 11.05, which is the core provision that mandates all distributions to the “Agencies” and to the MPO without any decision by the County Commission.
SUMMARY OF MR. WHITE’S CROSS-APPELLEE ARGUMENT

The Legislature, to whom the field of sales tax is preempted by the Constitution, has decided that a charter county can have a transportation surtax so long as the tax is used for uses described in section 212.055(1)(d), Florida Statutes, and so long as the surtax proceeds are applied to authorized uses that are deemed appropriate by the county commission, as a charter county’s governing body.

Article 11, as drafted by AFT, determined that the municipalities in Hillsborough County must receive a specific allocation of the surtax proceeds to use as each municipality deems appropriate, subject to the veto power of the Independent Oversight Committee. It determined that HART must receive 45% of the surtax proceeds to be used largely for uses specified by AFT, including the replacement of the downtown streetcar as an “expansion of transit options.” Any discretionary use selected by HART need not be approved by the County Commission, but can be disapproved by the IOC. Article 11 determined that the MPO, which is an entity mandated by federal law, must receive 1% of the local funds. And it mandated that 100% of the surtax proceeds must be allocated in this manner for every year of the 30-year tax. All of these determinations were made without any action by the County Commission to select the uses it deemed appropriate.

45% of the written content of Article 11 creates conditions, restrictions, and limitations directly overruling the Legislature’s clear requirement in section
212.055(1), that the County Commission shall apply the surtax proceeds as it deems appropriate. The application of these surtax funds involves complex, public-policy decisions concerning the best uses of the proceeds—in conjunction with other scarce tax resources available for transportation uses. These decisions will require both vision today and the common sense to allow future governing bodies the flexibility to select and adjust appropriate uses based on changing circumstances over a 30-year period. The Legislature wisely decided the elected governing body of a charter county “shall” make these difficult decisions and be accountable for them to the people they represent.

This is not a case where a definition, or a phrase, or even a sentence or a subsection was in direct conflict with the sales tax law enacted by the Legislature. It is hard to imagine a more flagrant and intentional violation of general law in a proposed charter amendment, short of one in which the entire amendment was unconstitutional. The circuit court correctly struck 14 parts of Article 11 as violations of supremacy, and it should have stricken more.

But AFT and Local Government claim that all of this language is constitutional. They claim it is constitutional because the people voted for requirements that were unconstitutional on their face when AFT first filed this amendment with the Supervisor of Elections. They claim that this supremacy violation is constitutional due to after-the-fact actions by Local Government to pass
inferior laws—a resolution, an inter-governmental agreement, and a recent ordinance—all designed to cede the County Commission’s duty to the Legislature to make the tough decisions. What is worse, if AFT’s complex plan does not pan out over time, these after-the-fact inferior laws give elected officials the ability to place future responsibility for these decisions on “the people,” who clearly did not know they were voting for an unconstitutional transportation plan.

The Court should affirm the circuit court’s decision to strike major portions of Article 11 and should strike the additional offending language. It should strike the remaining language levying a tax that was inextricably intertwined with the unconstitutional plan. The voters should be given a fair opportunity to vote for a transportation tax that is actually authorized by the Legislature.
CROSS-APPELLEE ARGUMENT

I. The sections of Article 11 declared unconstitutional by the circuit court are in irreconcilable, direct conflict with Florida general law.

This brief follows the outline of the brief submitted by Local Government, using different wording in the headings.

A. The Standard of review.

There is no dispute that the constitutionality of Article 11 of the Hillsborough County Charter is an issue reviewed de novo by this Court. This local law is presumed to be constitutional. However, when there is doubt about whether a local law will affect the operation of a state statute, the doubt must be resolved in favor of the statute and against the local law. See Metropolitan Dade County v. Chase Federal Housing Corp. 737 So. 2d 494, 504 (Fla. 1999).

B. The people exercised their inherent political power to declare that general law is superior to local law, and that sales tax issues are preempted to the state.

Mr. White has acknowledged from the inception of this litigation that it is his burden of persuasion to overcome the well-recognized presumption of constitutionality that applies in this context. He met that burden in the circuit court and he will do so here.

But AFT and Local Government seem to believe there is some super presumption that arises from the political power of the people of Hillsborough County. Hillsborough County relies on Citizens for Responsible Growth v. City of...
St. Pete Beach, 940 So. 2d 1144, 1149 (Fla. 2d DCA 2006), which merely held that a citizens’ initiative could be placed on the ballot because it was not entirely unconstitutional on its face.

Mr. White does not dispute that the Florida Constitution begins with the declaration of the following right:

All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.

Art. I, § 1, Fla. Const.

But the people of Florida have exercised their inherent political power to establish a constitution that prudently requires local governments, including charter counties like Hillsborough County, to obey Florida general laws. It is the people who declared that charter counties can create no law that is “inconsistent with general law.” Art. VIII, §1(g), Fla. Const.

Likewise, it is the people of Florida who declared that the subject of sales tax is “preempted to the state except as provided by general law.” Art. VII, §1(a), Fla. Const. It is the people who gave the Legislature the power to decide that a local transportation tax can exist only if the “uses” of those tax proceeds are selected by the county commission. See §212.055(1)(d), Fla. Stat.

And it is the people who decided that the governing body of a charter county would be the duly elected, representative board of county commissioners, politically
accountable to the people for its decisions, unless the people expressly provided otherwise in their county charter. See Art. VIII, §1(e), Fla. Const. Although Local Government argued below that the Independent Oversight Committee or the people, as a pure democracy, had replaced the County Commission as the representative, governing body of Hillsborough County for the application of these tax proceeds, they are no longer making that dubious argument here. (A. 1:565-66; 3:264; 7:164-67).

Simply put, “power to the people” is not a presumption that warrants keeping provisions in a county charter that flagrantly violate general state law. It is not a presumption that justifies salvaging a tax that was sold to the people based on a private plan that the county commission can only obey if it abandons its duty, and that of future commissioners, to make complex, fact-intensive, policy-based judgments for the appropriate use of $9 billion of the taxpayers’ money.

C. The detailed funding plan in Article 11 conflicts with 212.055(1).

Mr. White, in his initial brief, has already discussed and explained the provisions of Article 11 that, in the words of the circuit court, “fly directly in the face of general law as enunciated in section 212.055.” (W. IB p. 30-35). He continues to maintain that the circuit court should have removed all of the content of section 11.05, 11.07 and 11.08 because the remaining content is still a restriction upon the judgment and the decisions of the County Commission.
To avoid repetition, Mr. White will not discuss those arguments again. He will also rely upon the portions of Mr. Emerson’s cross-answer brief that discuss this issue.

All this Court needs to do is read Article 11 to appreciate that the County Commission cannot obey both Article 11 and the mandate of section 212.055(1)(d) that it apply the surtax proceeds to as many or as few of the uses enumerated in the statute, in whatever combination, as it deems appropriate. Indeed, AFT and Local Government cannot deny that under sections 11.04, 11.05, 11.07 and 11.08 of Article 11, all of the tax proceeds are distributed automatically by the Clerk to the “Agencies” for the entire 30-year term of the tax, largely to be spent on uses determined without any role whatsoever for the County Commission.

1. Mr. White does not argue that the statute requires the County Commission to directly allocate “every surtax dollar itself.”

Mr. White maintains that the Legislature has wisely concluded that each county commission representing a charter county with a transportation tax must be responsible for making the difficult decisions about the uses of these tax proceeds. Subsection 212.055(1)(d) contains four sub-subsections in which the Legislature delineates a wide range of uses for the tax proceeds. Some of those uses can be undertaken directly by the County for projects that are budgeted and managed by the County. See §212.055(1)(d)(1), Fla. Stat. Some are uses that can be undertaken by a transit authority. See §212.055(1)(d)(2), Fla. Stat. And some are uses that
contemplate improving transportation problems in municipalities that may exist within a county. See §212.055(1)(d)(4), Fla. Stat.

As a result of the many optional uses of these tax proceeds, county commissioners are faced with hard issues, where demand for resources is great and the supply of tax proceeds is limited. In deciding to apply these surtax proceeds and other tax proceeds available for application to transportation uses, the scarcity of these economic resources should lead to many hard questions over a thirty-year period. For example, in a county where only a small percentage of the population now rides buses, before committing $1.8 billion to a bus system, a county commission might need to know whether the transit authority had a valid strategy with an acceptable likelihood of success to increase ridership to 20% of the population in 10 or 15 years. Or are we simply buying more buses that will continue to be operated without many passengers?

If we spend $1.4 billion on enhancing public transit options that must begin by replacing the downtown streetcar, will this help solve commuter problems for workers who live in Brandon, Town ‘n’ Country, or Sun City, or are there other options to address the needs of beleaguered commuters that would warrant applying these scarce resources to other uses? In the short-term, should we spent a higher percentage of this money on new and expanded roads that might be a long-term solution if self-driving electric cars evolve as predicted? Good questions for a county
commission to ponder—but matters that Article 11 removed from the table for discussion by the Hillsborough County Commission.

The county commission of such a county can allocate tax proceeds to municipalities within the county. But the transportation needs of each municipality will likely be different. The competence of each city council to budget a project and perform successfully will vary. Their needs are unlikely to be the same every year, and the need for a significant degree of flexibility over a thirty-year period might seem very important to a county commissioner today, or ten years from now. Before deciding upon a population-based, thirty-year automatic distribution plan, the county commission might want to consider whether a less arbitrary allocation was more appropriate. But Article 11 gave the Hillsborough County Commission no power whatsoever to reflect upon this allocation of scarce resources.

The brief of the Amici who support AFT and Local Government primarily presents material that is totally outside the record, but it demonstrates the type of information that the Legislature contemplated citizens would present to the County Commission when it decided to apply available tax proceeds. It is not information that justifies the imposition of a complex, 30-year fixed plan in accord with the undisclosed core political strategy of AFT, divorced from the statutory role and responsibility of the County Commission.
A county’s future depends on wise growth management. And that includes, but only in part, the management of traffic. Commissioners who study problems deeply, who have vision, and who spend scarce resources well, will be re-elected and remembered in history. Those who do not, will not. The Legislature understood this human dynamic when it wisely mandated these decisions be made by an elected, representative county commission.

With its preemptive authority over taxation, the Legislature clearly did not intend the unambiguous language of section 212.05(1) to compel billions of dollars to be spent on projects mandated by the undisclosed authors of a charter amendment designed to remove authority from the County Commission and to give some of that authority to an unelected, unbonded Independent Oversight Committee.

Mr. White would hope that every dollar of tax money is spent as carefully as possible. But he is not claiming that the County Commission must authorize every check written from these surtax proceeds. Article 11 is in irreconcilable conflict with the general law announced in section 212.055(1), not because of the power to sign checks, but because it eliminates the County Commission’s responsibility to make fundamental, public-policy decisions about the appropriate uses of these scarce public resources.
2. **Article 11 is not constitutional because it is “more stringent.”** When a general law requires a governing body to make discretionary decisions, “more stringent” local requirements create conflict.

Local Government argues that an amendment is not unconstitutional if it is “more stringent than a statute,” citing *City of Kissimmee v. Fla. Retail Federation, Inc.*, 915 So. 2d 205, 209 (Fla. 5th DCA 2005) (LG p.33). As in *Kissimmee*, that typically occurs where an ordinance regulating the conduct of people or businesses has requirements in addition to those in a general statute. In that context, usually the additional local regulation can “coexist” with the general law. *See Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1020 (Fla. 2d DCA 2005).

But section 212.055(1), Florida Statutes, requires that the County Commission have full discretion to choose the “appropriate” uses for the tax proceeds. Full discretion cannot coexist with more stringent local requirements that eliminate discretion and compel uses of surtax proceeds without the deliberation of a county commission. It cannot coexist with local laws that give power to an unelected Independent Oversight Commission to override the County Commission’s discretionary decisions.

AFT and Local Government do not argue that the phrase “deem appropriate” is ambiguous, but they try to minimize the mandatory role of the County Commission in applying surtax proceeds “to as many or as few of the uses
enumerated below in whatever combination the county commission deems appropriate."

It is worth reflecting on the fact that literally hundreds of statutes, rules, and judicial opinions give judges and governmental bodies the power to make decisions they “deem appropriate.” For example, Section 255.515, Florida Statutes, gives the Division of Bond Finance the authority to “use such method of financing or combination of methods of financing as it deems appropriate to result in cost-effective financing.”

In deciding the need to increase or decrease judicial circuits, this Court has imposed upon itself the obligation to “consider the assessment committee's recommendations within a timeframe it deems appropriate.” Fla. R. Jud. Admin. 2.241(b)(7).

In awarding restitution, a trial court considers “such other factors which it deems appropriate.” State v. Hawthorne, 573 So. 2d 330, 332–33 (Fla. 1991). And in making the difficult decisions involved in releasing autopsy photographs, a circuit court “upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy or to listen to or copy an audio recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate.” §406.135(4)(a), Florida Statutes.
When there is a fact-based, complex decision that depends on “all the circumstances,” the Legislature and the courts often use this phrase in designating a decision-maker to whom the discretion is given to judge those circumstances and to select the best decision that appears reasonable to the decision-maker under the circumstances.

Simply stated, the unconstitutional provisions in Article 11 override the Legislature’s decision as to who would be the decision-maker and how that discretionary decision would be made. They prevent the County Commission from evaluating all of the circumstances, and they supplant that open-ended decision-making process with the detailed plan drafted by the unknown authors of Article 11.

3. **Article 11 does not merely “supplement, rather than contradict” the provisions of section 212.055(1).**

Local Government argues that Article 11 merely “supplements” the requirements of section 212.055(1). It avoids quoting the language of section 212.055(1)(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.”

As demonstrated above, the sections of Article 11 that are unconstitutional plainly blocked the County Commission from performing this task for all but a small percentage of the tax proceeds. No one explains how these provisions are a
supplementary help to the County Commission in performing the difficult discretionary, policy-based task of selecting the appropriate uses for a $9 billion tax.

Remarkably, again without quoting the language in section 212.055(1)(d), Local Government declares that nothing in the statute “preclude[s] the voters from placing parameters on the distribution and expenditure of transportation sales tax revenues.” (LG p.36). It also argues that, while section 212.055 requires the Legislature itself to state the purpose for a surtax in the statute creating the tax, “the statute says nothing about the process by which those uses are determined.” (LG p.36). But that “process” is unambiguously explained in section 212.055(1)(d) and it clearly requires the County Commission to be the decision-maker, and to make its decision based on its assessment of the uses “appropriate” for these scarce resources.

Local Government argues that other surtaxes permitted by the Legislature in section 212.055 provide “other requirements” beyond what is required in section 212.055(1). (LG p. 36, including footnote 8). The relevance of this circumstance is unclear. However, it is noteworthy that the other enumerated surtaxes must be initiated by the “governing body” of the county or by a school board.

The Legislature has authorized the transportation tax to be created by charter amendment. And the Hillsborough County Charter, in turn, authorizes amendment by citizens’ initiative. After the Legislature amended section 212.055(1) to provide the extensive list of potential uses, it was completely logical for the Legislature to
conclude that it must add the language giving mandatory control of the application of the surtax proceeds to a county commission. That was necessary so the allocation of these scarce resources, in conjunction with other available tax proceeds, over the life of the surtax could be decided by elected, accountable representatives evaluating all the local circumstances. It was needed to prevent the type of manipulation of the tax proceeds by citizens’ initiative that occurred in this case.

Nothing in the other sections of section 212.055—each being a different surtax added at a different time—would cause anyone to believe that the unambiguous mandatory language of section 212.055(1)(d) means anything other than what it says: The county commission, as the governing body of the county, must make the decisions as to the application of the surtax proceeds to the optional uses.

4. Section 125.86, Florida Statutes, does not support Hillsborough County’s argument.

Local Government argues that the “electorate was empowered by general law to limit its County Commission’s authority.” (LG p. 37). This is a scaled-down version of the argument made to the circuit court that Article 11 had actually changed the governing body of the county for purposes of this tax from the county commission to either the people or the Independent Oversight Commission. (A. 1:565-66, 3:264, 7:164-67). It is based primarily on the language of section 125.86, Florida Statutes.
Section 125.86 enumerates the legislative powers of a county commission in a charter county. It empowers the county commission, for example, to “approve the annual operating and capital budgets and any long-term capital or financial program” of the county. See §125.86(4), Fla. Stat. This statute ends with a provision that gives the county commission:

*All 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.*

This statute, of course, is based on the Florida Constitution, which states:

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

Article VIII, §1(g), Fla. Const.

Simply put, nothing in this statute or in the Florida Constitution gives “the people” the power to override the unambiguous requirement of a general law. Nothing in this statute gave AFT a good-faith legal basis to draft Article 11 with any of its unconstitutional provisions.
5. The many references to 212.055(1) in Article 11 probably demonstrate that its author knew it had constitutional problems, but they do not insulate Article 11 from those problems.

AFT and Local Government argue that Article 11 is constitutional in its entirety because it repeatedly referred to a need to comply with general law, and specifically with section 212.055(1). This is a curious argument.

Imagine if the citizen’s initiative had said in 1970: “It shall be lawful for the citizens of Hillsborough County, as a charter county, to organize and operate Bolita games in accordance with section 849.09, Florida Statutes.” Or perhaps more recently: “The County Commission, in compliance with Article I, section 3 of the Florida Constitution, shall prohibit the free exercise of the Muslim faith in Hillsborough County.” No one would suggest that incorporating a reference to a supreme law in clear conflict with a charter amendment somehow made the amendment okay.

Although it is common to have at least one reference to a supreme law in an inferior ordinance or charter provision, it is totally unnecessary. The supreme law has supremacy whether the inferior law mentions it or not.

As demonstrated in the statement of the facts, many of the references to section 212.055(1) are in sentences where the statute is paired with a reference to Article 11 under circumstances in which obedience to both is impossible. It almost seems as though the unknown author had a guilty conscience about the fact that he
or she was writing an amendment that did not comply with the supreme general statute. The references to the statute simply make it more obvious that the conflict exists, and that the County Commission cannot obey section 212.055(1)(d) in the context of the many “shall” requirements in the charter amendment that eliminate the County Commission’s role under section 212.055(1)(d).

The charter’s “supremacy clause” in section 11.11(3) likewise fails to preserve anything in the sections that were found unconstitutional by the circuit court. That clause states:

*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.*

Again, such a clause is common in a county charter, but it is totally unnecessary. The interpretation called for in the clause will occur because of Article VII, section 1(g) of the Florida Constitution, not because that supreme law was acknowledged in Article 11 itself.

But the eleven references to the controlling general law by the framers at AFT tell us something else. Article 11 was drafted with the intent to save the tax after all of the attractive window dressing was removed by the circuit court as unconstitutional fabric. The framers were not so obtuse that they could not see the open and obvious conflict between Article 11 and section 212.055(1). They were
preparing for the argument that has developed. They knew that, if all of the provisions in section 11.05, 11.07, 11.08, and the provisions giving superpowers to the IOC were removed by the circuit court, they could still argue that a valid tax remained due to their many references to the general statute.

What AFT and Local Government are arguing is that the ballot summary and section 11.01 could promise the voters that certain uses were guaranteed and that a plan with something in it for everyone would be fulfilled, and then when all of these unconstitutional promises to the people were stripped from the charter amendment by the circuit court, they were still legally entitled to collect the taxpayers’ money for thirty years. It would be a mockery of the doctrines of supremacy and severance if this Court were to permit this legal argument and this election strategy to work.

D. **The circuit court properly removed the powers of the Independent Oversight Committee that made it far more than an advisory board.**

To be clear, Mr. White is not opposed to an advisory board. He believes that any board providing advice for a transportation surtax should be created by the county commission, and that its members should thereby qualify as “volunteers” under section 125.9501- 125.9506, Florida Statutes. But the inclusion of an ordinary advisory board in Article 11 would not have been sufficient by itself to warrant a ruling that all of Article 11 was unconstitutional.
That said, the three portions of Article 11 removed by the circuit court that relate to the IOC were clearly unconstitutional.

Section 11.10 is the primary section in Article 11 creating the IOC. As provided for in that section, the IOC members are selected by the municipalities, HART, the Clerk, the Property Appraiser, the Tax Collector, as well as by the County Commission. Once selected, the IOC is truly independent. It “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 Chapter.”

Section 11.10 states that the IOC “shall have only those powers and duties specifically vested in it by this Section 11.10. The powers stricken by the circuit court include one power stated in section 11.10, and two that seem expressly stated only in other sections.

First, section 11.10(2) gave the IOC the power to “Approve Project Plans and approve and certify as to whether the projects therein comply with this Article.”

Section 11.06 further explains this power:

*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 meeting.*
“Project Plan” is defined earlier in section 11.06 as:

*a 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.*

Local Government takes the position that these two provisions in Article 11 give the IOC the power merely to ensure consistency with the allocations mandated in Article 11. (LG. p.42). But it still maintains that the IOC has the power to suspend distribution of the tax proceeds for plans approved by the Agencies—including plans approved by the County Commission. AFT, on the other hand, seems to maintain that the IOC was actually given the same power to “approve” a project plan as the “Agencies,” including the County Commission. (AFT p. 35).

The language in section 11.06 in the above-quoted sentence uses the word “approved” once to describe the function of the governing body of the applicable Agency and the function of the IOC. Textually, it is hard to believe that this one word has two different meanings in this short sentence. If the IOC were a mere advisory board, then the county commission would “approve” plans and the IOC would only decline to “certify” them for the purpose of creating political pressure on the county commission.

Because of the text of this one short sentence, it was clear to the circuit court that Article 11 gave the IOC the power to disapprove project plans after the County
Commission, as the governing body of the county, had voted to apply the surtax proceeds to the project plan. Thus, the IOC could override the County Commission’s vote by disapproving the project. It could do the same to HART. And AFT told the voters as much before the election in its political advertisements that claimed the IOC would keep the commissioners out of the “cookie jar.” (W.A. p.44, A. 8:64).

In short, until the circuit court struck these unconstitutional provisions, the County Commission was only given the power to approve the projects within the limited portion of the General Fund that was automatically allocated to the county—and the IOC could override that approval. The IOC, on the other hand, was given the power to override the approval of all Agencies. Only the MPO received allocations that were unreviewed by the IOC. Thus, Article 11, when it was submitted to the Supervisor of Elections by AFT, gave far more power to the unelected IOC to deem uses appropriate than it gave to the County Commission.

Second, section 11.07(9) gave the power to reallocate expenditure categories to the IOC. Thus, if the County Commission wanted to reallocate funds from any one of the first three mandated categories in section 11.07, it had no power to do so. The County Commission could only reallocate funds with a 75% vote of the IOC. Not only does this conflict with section 212.055(1), but it does not appear to be a power enumerated in section 11.10. The circuit court was clearly within its power to strike this language.
Finally, section 11.08 was stricken by the circuit court in its entirety. It frankly is unconstitutional or illegal for several reasons. We can start with the fact that it is not a power specifically vested in the IOC by section 11.10, so it is invalid on the face of Article 11 itself.

But section 11.08 gives the IOC the power to “determine” by a two-thirds vote that an Agency, including the County Commission, “has failed to comply with any term or condition of this Article 11. . . .” If it makes this factual determination and, if the Agency is still in “non-compliance” after ninety days, the IOC is given the power to order the Clerk to “suspend” the payment of surtax proceeds to the Agency.

This is a judicial or quasi-judicial power granted to an unelected, unsworn group of people, who may not even qualify as “volunteers” under Chapter 125. The IOC can effectively issue a cease and desist order to the Clerk. Hopefully, that order would be reviewable by common law certiorari to the circuit court, but nothing in Article 11 states this. And the IOC makes its own rules and by-laws independent of the “Agencies.”

Not only does this directly conflict with the power of the County Commission to apply these tax proceeds to the uses it deems appropriate, but it extends judicial or quasi-judicial powers to a body that is not governed by Article V of the Florida Constitution or by Chapter 120 of the Florida Statutes.
That Local Government can claim that the circuit court erred in striking section 11.09 as unconstitutional is amazing. That AFT’s undisclosed framers of Article 11 could insert this into a charter amendment with any good-faith belief that it was constitutional is equally amazing.

E. The actions of the County Commission and the other “Agencies” in “deeming appropriate” AFT’s plan during this litigation are no solution to a charter amendment that violates the supremacy of Florida general law.

1. The Actions during the Litigation in the Circuit Court.

Both AFT and Local Government argue that it is important for this Court to consider the votes of the County Commission when it passed the Bond Resolution in February 2019 and when it agreed to an Interlocal Agreement later in 2109. It may be useful for this Court to consider the circumstances of those votes, but they hardly solve the constitutional problem for several reasons.

First, the conflict with general law that creates a violation of the doctrine of supremacy and, thereby, an unconstitutional local law exists in this case between a statute enacted by the Legislature and an amendment to a county charter. In the pecking order of supremacy, a bond resolution, an ordinance, and an interlocal agreement are each inferior to the charter, as well as to the general laws of Florida and the Florida Constitution. A county commission or a municipality cannot eliminate a supremacy issue, which existed on the face of a charter amendment when
it was presented to the voters, by passing inferior laws or signing local agreements after the fact.

Second, both the Bond Validation and the Interlocal Agreement were voted on prior to the circuit court’s order declaring 14 parts of Article 11 unconstitutional. At the time the commissioners voted, counsel for Hillsborough County was advising the County Commission that everything in Article 11 was constitutional. Counsel for Hillsborough County is still making that argument today.

The commissioners who followed the advice of their counsel were compelled to deem appropriate the contents of Article 11 because Article 11 left them no choice. They were bound by the county charter, and according to their lawyers that charter required that the tax proceeds be applied as specified in section 11.05, subject to the conditions, restrictions and limitations in section 11.07 and 11.08.

Local Government cannot argue that these commissioners were exercising the policy-based discretion to “deem appropriate” uses, as expected by the Legislature, when they deemed appropriate a plan that was based on the undisclosed core political strategy of AFT—a plan that had not even been properly studied in the statutorily required “performance audit” available to the commissioners on the County’s website.

Third, the “deem appropriate” language was placed in the Bond Resolution and in the Interlocal Agreement as surplus language purely for use in this litigation.
This Court regularly reviews orders approving bond validations. This Court will find no other bond resolution with this language. Hillsborough County did not need $10 million in bonds to supplement the other tax proceeds being used to rework the East 131st Avenue Improvement Project; a project selected in April 2019 to avoid the ambiguous language in the earlier bond resolution describing only a “2019 Project” as the use for the funds. (A. 9:199, 10:22-23). That project was selected at the end of this process because the County needed a test case to determine the constitutionality of Article 11.

Mr. White is not suggesting that the test case was inappropriate. But the bond resolution could have been issued without a finding “deeming appropriate” – not the application of tax proceeds to a particular use— but the entire thirty-year plan allocating funds to other “Agencies.” This includes funds distributed to other “Agencies” that may or may not be the source of revenue for any local bonds. The County Commission had the audacity to attempt to bind all future commissions for the entire thirty years to the “appropriateness” of this overall plan in the context of seeking $10 million in bonds. It did this when even Article 11 envisioned that future county commissions would vote annually to approve “project plans.” See Article 11, §11.06.

Finally, it is noteworthy that Hillsborough County wants to rely solely on the few pages of records created and maintained by the Clerk to explain this action. (A.
12:78-84). While it would seem that the Clerk, as the trustee of the funds, would need to take a neutral position in this litigation, the Clerk was an active opponent of Mr. White in the circuit court. The Clerk remains an active opponent in this Court. Indeed, it was the Clerk who first maintained that the text of Article 11 had replaced the County Commission as the governing body of Hillsborough County for purposes of applying these tax proceeds and had given these powers to the people or the IOC. (A. 1:565-66).

In the trial court, Mr. White submitted transcripts of the two relevant county commission meetings that had been transcribed by a court reporter from the videotaped county commission meetings that are available to the world at the County’s website.² (A. 8:75). He requested that either the video or the transcripts be considered by the circuit court. (A. 9:630). But the proponents of Article 11 claimed the actual discussions of the commissioners were not under oath, inadmissible hearsay, and that only the Clerk’s minutes could be considered by the circuit court. (A. 9:829-841). They further argued that the “deemed appropriate” portions of these documents were not being presented to the circuit court as “resolving

² https://www.youtube.com/watch?v=vbmCzANxBsI&list=PLZwNyAnHaDIvd8eW965yyITjVR0oNHgzR&index=23&t=0
https://www.youtube.com/watch?v=pX2seUEnjQI&list=PLZwNyAnHaDIvd8eW965yyITjVR0oNHgzR&index=19&t=0s

But now Local Government does want to use its after-the-fact activities as evidence that there is no conflict. Mr. White submits that the transcripts or the County’s own online video of those meetings are the best evidence of the County Commission’s actions in this context. This is not evidence equivalent to testimony under oath. This is the County’s own public “surveillance video” of the events that actually occurred in sunshine. *Cf. McKeehan v. State,* 838 So. 2d 1257, 1259 (Fla. 5th DCA 2003)(a surveillance video is the best evidence of a collateral crime because, as codified by statute, if the original evidence is available, no evidence should be received which is merely “substitutionary in nature.”) Here, the severely edited minutes prepared by an adverse party do not reflect the limited discussion at the meetings where the County Commission deemed everything appropriate for thirty years.

**2. The Actions of the County Commission while this case is pending on appeal.**

AFT, but not the Local Government, wants this Court to hold that the circuit court erred in ruling that parts of Article 11 were unconstitutional as violations of the supremacy of section 212.055(1), Florida Statutes, because, *while this appeal was pending,* the County Commission passed an ordinance. (AFT p. 5, 33). Suffice it to say, there is no precedent to support such a holding.
Mr. White admits that, outside the record, the County Commission on September 18, 2019 enacted an ordinance that takes all of the unconstitutional conditions, limitations, and restrictions of Article 11, except for the superpowers of the IOC, and reinstates them as an ordinance. Obviously, the constitutionality of that ordinance has not yet been challenged.

But, knowing: (1) that AFT was unwilling to explain why there were specific percentages in the unconstitutional provisions; (2) that the performance audit on its own webpage did not study whether the unconstitutional provisions could achieve any of the goals that had been promised the voters over a thirty-year period, and (3) that “expanding public transit options” on “guideways” covertly required funding a replacement of the downtown streetcar, which had never been disclosed to the voters, the County Commission nevertheless chose to adopt whole-cloth AFT’s very restrictive plan to control future uses and bar future commissioners from exercising their discretion unless those future commissioners repeal the ordinance.

Like the earlier Bond Resolution and the Inter-Local Agreement, this ordinance is inferior to the county charter, which is inferior to section 212.055(1). Its adoption is not a legal reason for the Court to reinstate provisions to the county charter that conflict with the general law of Florida.
Like the earlier Bond Resolution and the Inter-Local Agreement, this ordinance was adopted while the County Commission’s lawyers are telling them the circuit court was wrong.

Like the earlier Bond Resolution and the Inter-Local Agreement, this is a litigation tactic trying to convince this Court to salvage an unconstitutional tax. AFT argues that the recent adoption of this ordinance demonstrates that the unconstitutional provisions in Article 11 do not conflict with the general law because “they require compliance with it.” (AFT p. 32-33). It maintains this recent vote by the County Commission should cause this Court to reinsert the provisions that deprive the County Commission of the power and obligation to make the hard discretionary choices the Legislature intends for it to make.

Only in a George Orwell novel would a vote on such an ordinance create a justification to reinsert language into a county charter when that language irreconcilably conflicts with general law. Those provisions require compliance with the undisclosed political strategy of the framers of Article 11 at AFT, not with the Legislature’s clear and unambiguous requirement in section 212.055(1) that commissioners make decisions for which they will bear ultimate responsibility.

The circuit court’s order striking fourteen parts of Article 11 should be affirmed, and this Court should strike the remainder of the offending language.
REPLY ARGUMENT

I. After striking an unconstitutional transportation improvement plan from the County Charter, the circuit court erred by severing a 30-year tax intended by its framers to provide the revenue to fulfill that plan.

A. The standards of review and the decision-making process in this case.

All parties agree that this issue is reviewed de novo.

B. The circuit court erred in its application of the doctrine of severance.

Neither AFT nor Local Government directly responds to this part of Mr. White’s argument. AFT begins its argument with the proposition that an initiative petition containing a severability clause demonstrates that its framers intended severability. (AFT p. 13). Local Government makes a similar argument in section I. D of its brief. (LG p. 29-30).

But Mr. White’s point is that the severability clause in section 11.11(2) addressed only the problem of a “mandated expenditure category” in section 11.07 or 11.08 being impermissible under section 212.055(1). It did not address what happens when sections 11.07 and 11.08 (and section 11.05) are held unconstitutional. Contrary to the argument of Local Government, Mr. White did not suggest that the severability clause in section 11.11(2) applied to a minority of the stricken provisions. (LG p. 30). Section 11.11(2) simply has no relevance to the issue at hand. It did not even hint to the voters that the tax would be levied after all of these sections of Article 11 were declared unconstitutional.
Thus, it cannot be denied that the circuit court’s reasoning for severing the tax is incorrect. This issue comes to this Court with no presumption of correctness. It must be analyzed correctly by this Court for the first time using either the Cramp tests or a newly stated test better suited for such local citizens’ initiatives.

C. **The circuit court facilitated its decision to save a tax by striking only the percentages used in the “formula” while keeping the text that created mandatory uses and restrictions.**

Again, neither AFT nor Local Government directly responds to this part of Mr. White’s argument. Local Government appears to mention this argument in only one sentence at the bottom of page 26 of its brief, where it questions whether the “number of words” stricken is relevant to the issue on appeal. AFT, in contrast, argues that only 500 of 3,050 words were stricken. (AFT. 16). It then addresses this issue in a little more detail later in its brief. (AFT p. 23-25).

AFT argues that none of the remaining words “poses any challenge to the County Commission’s authority.” (AFT p. 24). But if one examines all of the highlighted text in Article 11 on pages 39-41 of Mr. White’s appendix to his initial brief, that text mandates some level of funding to “each Municipality,” which means the County Commission must create an interlocal agreement. It mandates local funding of the MPO for thirty years whether such funding is actually needed or not. It mandates funding HART. It places lots of restrictions on the County Commission albeit they can be obeyed with the expenditure of less money. No party has argued
to this Court that an unconstitutional provision that involves a smaller amount of money can be retained in Article 11 under some rule of law that overlooks small constitutional violations.

AFT next argues that just because the circuit court’s edit may create an ambiguous document with numerous grammatical errors does not warrant removing the full text of these restrictions, conditions, and limitations. It cites Schmitt v. State, 590 So. 2d 404, 415 (Fla. 1991). That case was not deciding how much to strike from an unconstitutional law. It applied the Cramp tests to a criminal statute after the Court removed only a phrase within the definition of “sexual conduct” because it was unconstitutionally overbroad. Thus, it was not addressing how much to remove, but whether the overall statute could survive following the removal of a phrase in one definition. The mandatory requirements left by the circuit court are both unconstitutional and grammatically incorrect. They would require the inclusion of additional words to make sense.

And if the full text of sections 11.05, 11.07, and 11.08 is properly removed by this Court, then approximately 1400 of the 3,050 words of Article 11 are removed. Mr. White agrees this is not a Scrabble game, but unlike the cases cited by AFT and Local Government, we are not evaluating the doctrine of severance where a phrase or a sentence or even a subsection is removed. 45% of the words in this lengthy amendment are in the paragraphs that create unconstitutional content. Even with the
circuit court’s minimalist approach, most of the operative effect of 45% of this amendment has been removed. When such a substantial part of the text that was submitted to the voters is stricken, it ought to raise serious questions about whether the voters would have voted for the tax that remains. AFT now claims that the basic provisions creating a tax were the “heart of Article 11,” (AFT p. 16), but it is the stricken promises in the plan on which AFT expended the bulk of the words in its ballot summary. The unconstitutional plan was the heart of both Article 11 and the ballot language.

D. **Using the text of Article 11 to determine the framers’ intent and to address the two *Cramp* tests**

Local Government, and especially AFT, have confused the “chief purpose” test used in determining the adequacy of ballot language with the two *Cramp* tests at issue in this case. AFT claims that Mr. White must demonstrate “that the Amendment ‘in its entirety’ violates general law,” citing to *Dade County v. Dade Cty. League of Municipalities*, 104 So. 2d 512, 515 (Fla. 1958). (AFT p. 14). That pre-*Cramp* case discussed whether a proposed charter amendment could be placed on the ballot when its opponents claimed it was unconstitutional. The Court allowed the matter to be placed on the ballot because it was not entirely unconstitutional, expressly pointing out that the constitutionality of the challenged portions of the amendment could be determined later if it was enacted. *Id.* at 518. AFT and Local
Government cited *Wright v. Frankel*, 965 So. 2d 365, 373 (Fla. 4th DCA 2007), for this same proposition in the circuit court, and Mr. White explained this error in reasoning in the circuit court as well. (A. 8:357, 371). The many ballot cases cited in their briefs are simply addressing a different issue. Likewise, the cases on statutory construction do not resolve this issue; they merely confirm that section 212.055(1) is clear and unambiguous.

The *Cramp* issue is not whether the ballot language adequately described the proposed Article 11—including all of its unconstitutional provisions. Instead, the issue under the third *Cramp* test is whether the tax that remains after the detailed transportation plan is eliminated is “not so inseparable in substance” from the detailed plan that the voters would have passed the tax without the plan. Mr. White maintains that a read of the text of Article 11 demonstrates that the framers created an amendment in which the eliminated plan and the tax were inextricably intertwined. *See Allen v. Butterworth*, 756 So. 2d 52, 65 (Fla. 2000)(“the remaining sections cannot be logically separated from the unconstitutional sections, as these sections are inextricably intertwined”).

Today both Local Government and AFT maintain that the voters really just wanted the tax for any transportation improvement that the County Commission might deem appropriate and that the detailed plan with all of its percentages and restrictions was unimportant. One has to wonder why AFT placed all of the
extensive unconstitutional planning restrictions in Article 11 if they just thought the
voters wanted a transportation tax for the County Commission to spend prudently.

Although as discussed in the initial brief, this Court has made clear that the
issue is more a matter of legislative intent than legislative purpose, Local
Government’s brief is much closer to the mark when it argues that the question is
whether the “overall purpose” of Article 11 as presented to the voters can be
achieved without sections 11.05, 11.07, 11.08, and the superpowers of the IOC. (LG
26). In Ray v. Mortham, 742 So. 2d 1276, 1283 (Fla. 1999), when addressing the
removal of the handful of federally elected officials from the long list of term-limited
state officials, the Court explained:

Likewise, we find that the portions of this amendment are functionally
independent. The unconstitutional provisions of this amendment can be
stricken without disrupting the integrity of the remaining provisions. Further, the overall purpose of limiting political terms can
still be accomplished after the unconstitutional portion is stricken.

Likewise, in Florida Hospital Waterman, Inc. v. Buster, 984 So. 2d 478, 494
(Fla. 2008) the Court explained the offending subsections could be separated
“without any adverse effect on its remaining portions.”

But the overall purpose of Article 11 was clearly explained in section 11.01:

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.

Simply put, Local Government and AFT cannot deny that, if the County Commission, now and in the future is free to use its own judgment to select any use from section 212.055(1) it deems appropriate (as the Legislature mandated), then the overall purpose promised to the voters in the underlined portion of Article 11 above is not achieved. The removal of even that part of Article 11 removed by the circuit court “disrupts” the “integrity” of the amendment submitted to the voters. It has a major “adverse effect” upon achieving what AFT promised the remaining portions would achieve. Using only the text of Article 11, the Cramp tests do not permit the tax to be severed.

E. Using the text of the ballot title and summary to determine intent and the two Cramp tests

Both AFT and Local Government appear to recognize that the ballot title and summary may be relevant in resolving the two Cramp tests, but they do not directly respond to this argument, including the excellent discussion in the amicus brief filed by Associated Industries.

In the circuit court, Mr. White challenged the ballot language because he believed it was inadequate to explain the entirety of proposed Article 11 on the ballot. This included the portions that he also believed to be unconstitutional. But
once the circuit court removed the unconstitutional provisions, there was little reason to challenge in this Court the circuit court’s determination that the language had been adequate to describe the entire proposed amendment.

When considering ballot language for a Cramp analysis, the question should be two-fold: 1) Did the original ballot summary describe an overall purpose that is not achieved by what remains, and 2) would a substantially different ballot summary be necessary to objectively describe the overall purpose of the remainder if the voters were voting only on that part? The answer to both questions in this case is clearly yes.

Just as the purpose in section 11.01 is not achieved by what remains, the list of guaranteed uses of the tax proceeds in the ballot summary is no longer guaranteed by the text of Article 11. It is now a tax to be applied as the County Commission deems appropriate. It is not a tax for projects in Town ‘n’ Country, Brandon, and Sun City nor for the attractive list of projects promised in the ballot summary.

AFT relies on a brief quote from a case that warrants quotation in full:

**The citizen initiative constitutional amendment process relies on an accurate, objective ballot summary for its legitimacy. Voters deciding whether to approve a proposed amendment to our constitution never see the actual text of the proposed amendment. See § 101.161(1), Fla. Stat. They vote based only on the ballot title and the summary. Therefore, an accurate, objective, and neutral summary of the proposed amendment is the sine qua non of the**
citizen-driven process of amending our constitution. Without it, the constitution becomes not a safe harbor for protecting all the residents of Florida, but the den of special interest groups seeking to impose their own narrow agendas.

In re Advisory Opinion to the Atty. Gen. re Additional Homestead Tax Exemption, 880 So. 2d 646, 653–54 (Fla. 2004).

The ballot summary drafted by AFT was not sufficient to legitimize the vote on the tax that remains. Using the ballot title and summary of Article 11, the Cramp tests do not permit the tax to be severed because the legislative purpose contained in the ballot summary is not achieved by the tax that remains.

F. Considering the Political Campaign.

No party seems to believe that a fact-based trial to determine the impact of these changes on the voters is a good idea. Mr. White is not certain, however, that the campaign material identified by Mr. Hudson in his deposition is entirely irrelevant to the Cramp determination by this Court. This Court does not appear to have so held.

AFT cites to Williams v. Smith, 360 So. 2d 417, 420 n.5 (Fla. 1978) for the proposition that intent in this context should focus on voters more than framers. (AFT p. 23). That footnote states:

In analyzing a constitutional amendment adopted by initiative rather than by legislative or constitution revision commission vote, the intent
of the framers should be accorded less significance than the intent of the voters as evidenced by materials they had available as a predicate for their collective decision. An absence of debate and recorded discussion marks the development of an initiative proposal. To accord the same weight to evidences of the intent of an amendment's framer as is given to debates and dialogue leading a proposal adopted from diverse sources would allow one person's private documents to shape constitutional policy as persuasively as the public's perception of the proposal. This we cannot permit.

Mr. White fully agrees with the Court on this point. The voters, for example, undoubtedly did not understand the intent of AFT in the provision “expanding public transit options.” But the question remains: What materials are included in the “materials [the voters] had available as a predicate for their collective decision?”

Clearly the ballot title and summary were available to them. The text of Article 11 could be located by a determined voter, but it would be an exaggeration to say it was readily available. The campaign mailers by AFT, on the other hand, were delivered to homes of voters and were quite available.

The mailers identified by Mr. Hudson that are in Mr. White’s appendix never once use the word “tax” or “surtax” or “1%” or “30 years.” They make promises about plans. They assure the voters that the IOC can keep the commissioners out of the “cookie jar.” (W.A. p. 43-46).
AFT and Local Government do not want this information considered because it only hurts their arguments. It demonstrates that the tax was not “the heart of Article 11.” Mr. White does not think it should be the end-all of this case, but it is not unreasonable for it to play some role in the Court’s legal resolution of the Cramp issues.

II. When substantial portions of a citizen’s initiative amending a county charter are declared unconstitutional, this Court should determine the issue of severability using a test that better assesses this local political process than the “legislative” tests in Cramp.

Mr. White is not asking this court to “discard” the Cramp test for its proper use in testing statutes enacted by the Legislature. Indeed, it would seem to be appropriate for ordinances passed by county commissions. It is merely a misfit for a local citizen’s initiative that is substantially unconstitutional at the time its framers first submit it to the Supervisor of Elections to begin the process of obtaining voter signatures.

AFT and Local Government argue that Mr. White’s proposal is anti-democratic, that it disregards the political power given to the people under our constitution, and that it is “unworkable.” It is none of these.

Local Government argues that Mr. White is forgetting that the “sponsors” are “the people.” (LG p.21). But the real “sponsors” of article 11 are the people of AFT who framed this proposed amendment, and who moved to intervene in the circuit
court to defend their proposal. (A. 1:60). If there had been a procedure for a pre-election review in this Court, they would have defended their proposal in that advisory proceeding.

Article 11 was not written by the people at a New England town meeting. If it had been written by the people at such a meeting, certainly at least a few of the people in attendance would have read section 212.055. They would have pointed out that the Legislature had given them the power to tax themselves, but not to control the particular transportation uses to which the tax proceeds would ultimately be applied.

But AFT, sponsored by a handful of major donors, wrote a proposed amendment to the Hillsborough County Charter that repeatedly creates restrictions and mandatory funding decisions that are in blatant conflict with the applicable general statute. The undisclosed authors of Article 11 have refused to disclose the “core political strategy” that caused them to place the many conditions, restrictions, and limitations upon the County Commission. They have refused to disclose why they allocated more than $1.4 billion to “expanding public transit options,” when the generic words are carefully designed to rebuild a downtown streetcar system that will greatly benefit the landowners and businesses adjacent to that discrete route, but will have little impact upon the transportation woes of “the people” of Hillsborough County in places like Brandon and Town ‘n’ Country.
AFT knew full well that it was free to incorporate all of these unconstitutional conditions, restrictions and limitations into Article 11, and that so long as some portions of the charter amendment were constitutional, the unconstitutional provisions could only be challenged after the election. See Dade County v. Dade Cty. League of Municipalities, 104 So. 2d 512, 515 (Fla. 1958). As its brief demonstrates, even though it did not need to state that the charter amendment must be in compliance with section 212.055, it included this phrase 11 times. It hopes that it can salvage the tax because it repeatedly told the voters that this plan would be implemented in accordance with the terms of Article 11 and in accordance with the terms of section 212.055, when AFT had to know from the beginning that this was a legal impossibility.

It is not Mr. White’s position that any minor defect in a citizen initiative petition should cause an entire amendment to fail. It is Mr. White’ position that when a citizen’s initiative contains “substantial constitutional violations when submitted to the voters,” it should be assumed (or presumed) that the unconstitutional provisions did affect the outcome of the election. The amendment should be declared unconstitutional in its entirety unless those who placed it on the ballot can demonstrate that the unconstitutional parts did not affect the election.

There is nothing undemocratic about placing a burden of persuasion on the issue of severability upon the framers of a citizens’ initiative when it included
provisions—attractive to the voters—that were facially unconstitutional when those framers submitted the proposal to the Supervisor to begin collecting signatures.

The power of self-governance that is given to the people under a county charter is an awesome freedom akin to the Ninth Amendment. But that power needs to be protected from the corrupting potential of small groups with undisclosed self-interests that can manipulate the process by presenting petitions containing substantial unconstitutional provisions that are not examined by the judiciary prior to an election.

In this case, there really can be no question that the ballot language selected by AFT for its unconstitutional version of Article 11 would be misleading ballot language for the portion that remains. Clearly, a constitutional defect in a citizens’ initiative is “substantial” when it would require a different ballot summary to fairly present the remainder to the voters.

Once the “bad” mandatory transportation plan” is removed from Article 11, given that it was this plan that AFT marketed to the voters, it should not be Mr. White’s burden to disprove that the voters would have adopted the “good” tax anyway. The burden to prove that the voters would have adopted the tax alone should fall on those who drafted and promoted the constitutionally defective citizens’ initiative. That is not undemocratic; it is an appropriate burden to protect the democratic process.
Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above and foregoing was filed and served on this 12th day of November, 2019, using the Florida Courts e-Filing Portal upon:

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