

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

**HILLSBOROUGH COUNTY
DEMOCRATIC EXECUTIVE
COMMITTEE,**

Plaintiff,

v.

CASE NO.

**HILLSBOROUGH COUNTY,
FLORIDA, AND CRAIG LATIMER,
HILLSBOROUGH COUNTY
SUPERVISOR OF ELECTIONS,
IN HIS OFFICIAL CAPACITY,**

Defendants.

COMPLAINT

COMES NOW the Hillsborough County Democratic Executive Committee (“Plaintiff” or “HCDEC”), by and through their undersigned counsel, and hereby files this Complaint against Hillsborough County, Florida, and Craig Latimer, Hillsborough County Supervisor of Elections, in his official capacity (collectively “Defendants”). As grounds therefore, Plaintiff states the following:

I.

INTRODUCTION

1. This is an action for declaratory, temporary and permanent injunctive relief, damages and other supplemental relief challenging the legal sufficiency of a proposed amendment to the Hillsborough County Charter (the “Charter”), as created by the Board of County Commissioners of Hillsborough County (“County Commission”) through the passage of a Hillsborough County Ordinance which seeks to make the elections for the independent county

constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections non-partisan (the “Ordinance”). Pursuant to the Ordinance, the County Commission's proposed amendment to the Charter is scheduled to be presented to the voters of Hillsborough County, Florida, in the general election to be held on November 6, 2018. To accomplish that time line, the ballots will need to be printed and military and overseas ballots mailed no later than September 22, 2018. *See* Section 101.62(4)(a), Florida Statutes (“No later than 45 days before each presidential preference primary election, primary election, and general election, the supervisor of elections shall send a vote-by-mail ballot as provided in subparagraph (c)2. to each absent uniformed services voter and to each overseas voter who has requested a vote-by-mail ballot.”) A copy of the Ordinance is attached as Exhibit 1.

2. The proposed Charter amendment, as adopted through the Ordinance, proposes to hide vital information from the voters regarding the candidates for independent county constitutional officers on the ballot in future elections and seeks to suppress voter turnout.

3. The manner in which the proposed Charter amendment was adopted conflicts both with Florida law and the Hillsborough County Charter, and proposes a ballot question that is unconstitutional under the Florida Constitution.

4. Upon information and belief, this proposed Charter amendment was adopted by the current Republican majority of the County Commission because they want to hide the political affiliation of the independent county constitutional officers in order to support Republican candidates. If the County Commission were really concerned about the partisan nature of local government, they would have proposed to make their own races non-partisan.

5. Further, the current Republican majority of the County Commission proposed to make non-partisan the elections for the independent county constitutional officers, which occur

during presidential election years when voter turnout is higher and Democratic candidates perform better, and proposes to retain the partisan nature of the County Commission races, the majority of which occur in non-presidential years when voter turnout is lower and Republican candidates typically perform better (as illustrated by the fact that the four County Commission seats up for election in 2018 are all currently occupied by Republicans).

6. The proposed Charter amendment is also an attempt to suppress the number of people who vote in the elections for the independent county constitutional officers. It is an established fact that in Hillsborough County fewer people vote in non-partisan elections and that even fewer people vote in primary elections.

7. Plaintiff requests pursuant to Fla. R. Jud. Admin. 2.545 a speedy hearing of this action given the fast-approaching general election and deadline to print and distribute overseas ballots.

II.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to Article V Section 5(b), Florida Constitution, and Section 26.012, Florida Statutes.

9. This is an action for declaratory judgment and supplemental relief pursuant to Chapter 86, Florida Statutes, to settle and afford relief from insecurity, uncertainty and unnecessary expense with respect to rights, status, and other equitable or legal relations. This Court has jurisdiction to grant declaratory relief pursuant to Article V, Section 5(b), Florida Constitution, Section 86.011, Florida Statutes, and injunctive relief pursuant to Article V, Section 5(b), Florida Constitution, and Section 26.012(3), Florida Statutes, and Rule 1.610, Florida Rules of Civil Procedure.

10. Venue is proper in Hillsborough County pursuant to Section 47.011, Florida Statutes.

III.

PARTIES

11. Hillsborough County Democratic Executive Committee is a county committee of a state political party pursuant to section 103.121 (1)(a), Florida Statutes. It is designated to receive a portion of all qualifying fees from Democrats in partisan elections in the County. Those funds are used to support party activities and provide voter information.

12. Defendant Hillsborough County (the “County”) is a body corporate and politic and, as such, shall be the party named and shall appear and participate in any legal actions against the county. *See* Section 125.15, Florida Statutes.

13. Defendant Hillsborough County Supervisor of Elections, Craig Latimer (the “Supervisor”), is the Supervisor of Elections of Hillsborough County, Florida, and serves as an independent county constitutional officer pursuant to Article VIII, Section 1(d) of the Florida Constitution. The Supervisor is sued only in his official capacity.

IV.

FACTS

A. Florida Constitution and Independent County Constitutional Officers

14. Article VIII, Section 1(d) of the Florida Constitution provides:

COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by

vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

15. Article VIII, Section (1)(g) of the Florida Constitution provides:

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.

B. Charter Can Not Affect Independent County Constitutional Officers

16. In September 1983, voters of Hillsborough County approved a home rule charter for Hillsborough County.

17. On May 28, 1985, the Charter government took effect in Hillsborough County.

18. The Charter provides in Section 1.02:

As used in this Charter, the term “the county government” means the government of Hillsborough County, but such term does not include and **this Charter does not affect ... any constitutional officer, as defined in Section I (d) of Article VIII, Florida Constitution: clerk of the circuit court, property appraiser, tax collector, sheriff or supervisor of elections;** ... and the relationship of the county government to them shall be the same as it would have been if this Charter had not been adopted.

(emphasis supplied)

19. Section 8.01 provides that the County Commission has the authority “to propose amendments to this Charter by ordinance approved by at least five (5) members”

20. However, the County Commission's authority to propose amendments is limited by Section 2.01 which provides “The county government shall have all powers of local self-government not inconsistent with general law.”

21. Thus, the Charter by its very terms cannot affect the independent county constitutional officers.

C. Voter Turnout is Lower for Non-Partisan Elections and Even Lower for Primary Elections

22. In Hillsborough County voter turnout is significantly lower for non-partisan elections and even lower for non-partisan elections decided in the primary election.

23. For example, according to the Supervisor of Elections, in the 2012 general election 545,134 total ballots were cast in Hillsborough County. There were 512,302 ballots cast in the contested property appraiser race and 501,778 in the contested race for supervisor of elections. The non-partisan district-wide school board District 7 had 428,695 ballots cast, which reflects 21% less voter participation.

24. Similarly, according to the Supervisor of Elections, in the 2016 general election 608,263 total ballots were cast in Hillsborough County. There were 570,667 ballots for the two main candidates for Clerk of the Circuit Court and 566,038 ballots for the two main candidates for Property Appraiser. The non-partisan district wide school board District 7 race had 474,135 ballots cast, which reflects 22% less voter participation.

25. Total turnout in primary elections is even lower. Only 111,693 people voted in the 2012 primary election and only 153,626 ballots were cast in the 2016 primary election in Hillsborough County.

26. Thus, it is indisputable that making the independent county constitutional offices non-partisan will result in far fewer people voting in these elections. No competent analysis to the contrary was presented to the County Commission before it voted to place the proposed amendment on the ballot.

27. The proposed amendment is also based upon a false premise, namely that voters are being prevented from voting in primary elections. In fact, voters who choose to not affiliate with a political party are making a choice, knowing that a consequence of that decision is that they will not be able to vote in partisan primary elections. If the County Commission really wanted to increase voter participation, they could encourage open primaries or simply require that voters affiliate with a political party, something that can be done online and easily changed.

D. Proposed Florida Constitutional Amendment 10 Conflicts with the Proposed Charter Amendment

28. The Florida Constitution Revision Commission has placed Amendment 10 on the November 6, 2018 general election ballot which, if passed, will significantly re-write Article VIII, Section 1(d) of the Florida Constitution.

29. The relevant portion of Amendment 10 amends Article VIII, Section 1(d) of the Florida Constitution by striking certain language and adding other language. (Words ~~stricken~~ are deletions; words underlined are additions.)

(d) COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; ~~except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office.~~ Unless ~~When not otherwise provided by county charter or special law approved by vote of the electors or pursuant to Article V, section 16,~~ the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds. Notwithstanding subsection 6(e) of this article, a county charter may not abolish the office of a sheriff, a tax collector, a property appraiser, a supervisor of elections, or a clerk of the circuit court; transfer the duties of those officers to another officer or office; change the length of the four-year term of office; or establish any manner of selection other than by election by the electors of the county.

30. Thus, if Amendment 10 passes, the manner of selection for Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections, and Clerk of the Circuit Court must be through a partisan election process, as the proposed amended Article VIII, Section 1(d) does not contain any reference to non-partisan elections.

31. In separate lawsuits pending in Leon County Circuit Court, Borward and Volusia counties are asking the court to invalidate Amendment 10 asserting that it misleads voters.

E. Background on the Proposed Amendment

32. On April 4, 2018, the County Commission discussed a proposed ordinance that, if passed by the voters, would amend the Charter and convert the races for the independent county constitutional officers to non-partisan races. The motion to have the county attorney draft a proposed ordinance did not pass, with both Republican and Democratic commissioners voting no.

33. On May 18, 2018, the Republican members of the County Commission “renewed” the vote on the issue and voted to have the county attorney draft a proposed ordinance that, if passed by the voters, would amend the Charter and convert the races for the independent county constitutional officers to non-partisan races.

34. On June 6, 2018, the Republican members of the County Commission voted to conduct a public hearing on the proposed amendment to the Charter which would convert the races for the independent county constitutional officers to non-partisan races placed on the ballot.

35. On June 20, 2018, the Republican members of the County Commission voted to have the proposed amendment to the Charter, which would convert the races for the independent county constitutional officers to non-partisan races, placed on the ballot.

36. The very next day, June 21, 2018, Sandra Murman, the Republican Chair of the County Commission, filed to run for Hillsborough County Clerk of Court in 2020.

F. Text of the Proposed Amendment

37. The Whereas provisions of the Ordinance read as follows:

WHEREAS, from 2008 to 2018, the number of registered voters who do not identify with any party went up 86%; and

WHEREAS, under current State law, registered voters with no party affiliation cannot vote for constitutional officers in the Primary election; and

WHEREAS, the Board of County Commissioners desires to allow the voters in Hillsborough County the opportunity to decide whether or not to require that election of the County's five constitutional officers shall be on a non-partisan basis.

38. Section 1 of the Ordinance sets forth the language the County Commission desires to add to the Charter in a new Section 7.01 - 7.04 of the Charter. The language reads:

Section 7.01 - County constitutional officers.

The constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections shall remain as elected constitutional officers, and their powers, duties and functions will not be altered by this Home Rule Charter.

The constitutional officers shall perform their executive and administrative functions as specified by law.

Section 7.02 - Non-partisan election.

Non-partisan offices. Commencing with the primary and general elections in the year 2020, the offices of Clerk of Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector shall be nonpartisan.

Non-partisan election procedures. If three or more candidates, neither of whom is a write-in candidate, qualify for such office, the names of those candidates shall be placed on a non-partisan ballot at the first primary election. If no candidate for such office receives a majority of the votes cast for such office in the first primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot.

Section 7.03 - Qualification by petition.

A candidate for non-partisan office may qualify for election to such office by means of the petitioning process provided in general law.

Section 7.04 - Other provisions.

In all respects not expressly provided in this charter, non-partisan elections shall be governed by the procedures set forth in general law for non-partisan elections; provided that nothing therein shall impair the constitutional rights of candidates to freedom of expression and association.

Section 7.05 – Effective Date of the Charter Amendment.

This Amendment to the Charter of Hillsborough County shall go into force and effect on the second Tuesday following the general election at which the Charter is amended.

39. To put the County Commission's proposed Charter Amendment on the ballot,

Section 2 of the Ordinance provides:

The proposed amendment to the Charter of Hillsborough County, Florida shall be presented to the Hillsborough County electorate by placing the question of whether to adopt the amendment to the Charter on the ballot at the next scheduled general election.

40. The County Commission's ballot title set forth in Section 2 of the Ordinance states:

PROPOSED AMENDMENT TO THE HILLSBOROUGH COUNTY
CHARTER PROVIDING FOR NONPARTISAN ELECTIONS OF
COUNTY CONSTITUTIONAL OFFICERS

41. The County Commission's ballot summary set forth in Section 2 of the Ordinance states:

Shall the Hillsborough County Charter be amended to provide for the election of the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections and Clerk of Court and Comptroller on a nonpartisan basis, which means an office for which a candidate is prohibited from campaigning or qualifying for election based on party affiliation, instead of the current process of campaigning or qualifying for election based on party affiliation?

_____ Yes for Approval

_____ No for Rejection

42. The Ordinance, in Section 3, states:

This Amendment to the Charter of Hillsborough County shall become effective when and only if approved by a “yes” vote by a majority of those voting on the question posed at the next general election. If a

majority of those voting shall not vote “yes” to the question posed, the proposed amendment shall not be adopted.

43. The Ordinance, in Section 4, states:

If any clause, sentence, paragraph, subdivision or other part of this Ordinance or applications shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or otherwise invalidate the remainder of this Ordinance which shall remain in full force and effect except as limited by such order or judgment.

44. The Ordinance, in Section 6 provides that any municipality can opt-out of the provisions of the Ordinance. Specifically, it states,

All provisions of this Ordinance shall be applicable throughout the incorporated and unincorporated areas of the Hillsborough County where there is no existing conflict of law, municipal ordinances concerning this matter, or unless any municipality determines to opt-out of this Ordinance's provisions.

45. Section 101.161(1), Florida Statutes, provides in pertinent part:

Whenever a constitutional amendment or other public measure is submitted to the vote of the people, a ballot summary of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word “yes” and also by the word “no,” and shall be styled in such a manner that a “yes” vote will indicate approval of the proposal and a “no” vote will indicate rejection. The ballot summary of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. The ballot summary of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. This subsection does not apply to constitutional amendments or revisions proposed by joint resolution.

46. The ballot title and summary required by section 101.161(1), Florida Statutes, must advise the electorate of the true meaning, and ramifications, of an amendment.

G. Standing of HCDEC to Challenge the Amendment

47. The HCDEC is the county executive committee of the Democratic Party of Florida organized under the laws of Florida.

48. The HCDEC has a substantial interest in the voters of Hillsborough County being aware of the political affiliation of the independent county constitutional officers of Hillsborough County.

49. In addition, disclosing to the voters the political affiliation of the independent county constitutional officers of Hillsborough County is consistent with the values of HCDEC of having an informed and educated electorate.

50. Further, because non-partisan elections have materially lower turnout and civil engagement, they are not consistent with goal of the HCDEC of having more eligible voters participating in the electoral process.

51. The HCDEC has an interest in being able to inform voters of which candidates believe in concepts that are consistent with the messages of the Democratic Party, namely that

- a good education is a basic right of all Americans no matter the zip code;
- affordable healthcare is a fundamental right of every citizen;
- workers deserve a living wage and equal pay for equal work;
- climate change is a real and urgent threat;
- corporations and the wealthy should pay their fair share in taxes;
- we must finally take sensible action to address gun violence;
- everyone should be treated equally under the law no matter whom we love;

- a strong military welcomes and honors all Americans who want to serve; and
- extreme levels of income and wealth inequality make our county weaker.

52. Pursuant to Sections 99.092 and 103.121, Florida Statutes, the candidate paid qualifying fee is 6 percent of the annual salary for each independent county constitutional office made up of a 3 percent filing fee, a 1 percent election assessment and a 2 percent party assessment, which is provided to the applicable party's county executive committee.

53. Thus, the HCDEC will suffer a real and substantial loss if the independent county constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections are non-partisan positions because the HCDEC receives a portion of the qualifying fee paid by members of the Democratic Party who are qualified candidates for these independent county constitutional offices.

V.

COUNTS I - III

Count I: The Proposed Amendment is Unconstitutional Due To Legislative Preemption

54. Plaintiff re-alleges and incorporate by reference all allegations contained in paragraphs 1 - 53 above as if fully set forth herein.

55. As detailed above, Defendants seek to present a proposed amendment to the Charter that seeks to make the independent county constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections non-partisan offices.

56. Article VI, section 1 of the Florida Constitution requires elections to be "regulated by law"—meaning a statute enacted by the Legislature. *See Grapeland Heights Civic Ass'n v. City of Miami*, 267 So.2d 321, 324 (Fla. 1972).

57. Section 97.0115, Florida Statutes expressly provides that all matters set forth in the Florida Election Code were preempted to the Legislature:

Preemption.—All matters set forth in chapters 97–105 are preempted to the state, except as otherwise specifically authorized by state or federal law. The conduct of municipal elections shall be governed by s. 100.3605.

58. Chapter 105, Florida Statutes set forth provisions and procedures specific to non-partisan elections and does not authorize non-partisan elections for independent county constitutional officers.

59. In *Orange Cty. v. Singh*, 230 So. 3d 639, 642 (Fla. 5th DCA 2017), *review granted*, No. SC18-79, 2018 WL 2069415 (Fla. Apr. 6, 2018) the Fifth District Court of Appeals held that the trial court correctly struck down that portion of a virtually identical Orange County charter amendment that provided for the non-partisan election of its county constitutional officers because it was preempted by state law and cannot enact an ordinance that conflicts directly with a state statute.

60. Under Florida law, where only one district court of appeal has spoken on an issue, a trial court is required to follow the decision of the district court. *See Pardo v. State*, 596 So. 2d 665, 667 (Fla. 1992); *Brannon v. State*, 850 So. 2d 452, 458 n.4 (Fla. 2003)(“If there is no controlling decision by this Court or the district court having jurisdiction over the trial court on a point of law, a decision by another district court is binding.”).

61. In this case, there is clear, binding case law that provides that the proposed ballot language is inconsistent with general law. The Hillsborough County Commission is aware of this clear, binding case law precedent but ignored it in its vote.

62. For these reasons, the proposed amendment may not lawfully be placed on the ballot for the 2018 general election.

63. Plaintiff therefore seeks a judicial determination to resolve any doubt as to whether the proposed ballot question adopted by the County Commission in the Ordinance is valid.

64. There exists a bona fide, actual, present, and practical need for the declaration and supplemental relief because the Ordinance proposes a ballot question is inconsistent with the Florida Constitution, Florida law, and the Charter.

65. Plaintiff is entitled to have such doubt removed through a judicial determination of the matters in dispute.

66. Plaintiff will suffer immediate and irreparable harm if the proposed amendment is placed on the ballot for the November 2018 general election. Among other things, Plaintiff will be required to expend funds and volunteer energy resisting the illegal proposal. Further, if the ballot measure is approved, Plaintiff will lose the significant funding of the 2% party assessment.

67. Plaintiff has no adequate remedy at law, and it is in the public interest to ensure that Florida voters are accurately informed as to the true effect of proposed amendments to the Charter.

Count II: The Proposed Amendment is Inconsistent with The Charter

68. Plaintiff re-alleges and incorporate by reference all allegations contained in paragraphs 1 - 53 above as if fully set forth herein.

69. As detailed above, Defendants seek to present a proposed amendment to the Charter that seeks to make the independent county constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections non-partisan offices.

70. The Charter provides in Section 1.02:

As used in this Charter, the term “the county government” means the government of Hillsborough County, but such term does not include and **this Charter does not affect ... any constitutional officer, as defined in Section I (d) of Article VIII, Florida Constitution: clerk of the circuit**

court, property appraiser, tax collector, sheriff or supervisor of elections; ... and the relationship of the county government to them shall be the same as it would have been if this Charter had not been adopted.

(emphasis supplied)

71. The County Commission's authority to propose amendments is limited by Section 2.01 which provides "The county government shall have all powers of local self-government not inconsistent with general law."

72. Thus, the Charter by its very terms cannot affect the independent county constitutional officers.

73. In this case, there is clear, binding law that provides that the proposed ballot language is inconsistent with general law, namely the Charter, which prohibits the County Commission from regulating the independent constitutional officers.

74. For these reasons, the proposed amendment may not lawfully be placed on the ballot for the 2018 general election.

75. Plaintiff therefore seeks a judicial determination to resolve any doubt as to whether the proposed ballot question adopted by the County Commission in the Ordinance is valid.

76. There exists a bona fide, actual, present, and practical need for the declaration and supplemental relief because the Ordinance proposes a ballot question is inconsistent with the Florida Constitution, Florida law, and the Charter.

77. Plaintiff is entitled to have such doubt removed through a judicial determination of the matters in dispute.

78. Plaintiff will suffer immediate and irreparable harm if the proposed amendment is placed on the ballot for the November 2018 general election. Among other things, Plaintiff will be required to expend funds and volunteer energy resisting the illegal proposal.

79. Plaintiff has no adequate remedy at law, and it is in the public interest to ensure that Hillsborough voters are accurately informed as to the true effect of proposed amendments to the Charter.

Count III: Failure to Inform of Chief Purpose and Effect and Affirmatively Misleading

80. Plaintiff re-alleges and incorporate by reference all allegations contained in paragraphs 1 - 53 above as if fully set forth herein.

81. As detailed above, Defendants seek to present a proposed amendment to the Charter that proposes to make the independent county constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections non-partisan offices.

82. The ballot summary fails to comply with section 101.161, Florida Statutes, which requires any “public measure . . . submitted to the vote of the people” to include “a ballot summary of such . . . public measure” which “shall be printed in clear and unambiguous language on the ballot” and shall include “an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure.” § 101.161, Fla. Stat.

83. These requirements are mandatory, and require an explanatory statement of the proposed amendment that informs the public of the chief purpose of that amendment. *See, e.g., Wadhams v. Bd. of Cnty. Commissioners of Sarasota Cnty.*, 567 So. 2d 414, 416 (Fla. 1990) (citing *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982)).

84. Evaluation of whether ballot language conforms to the mandatory requirements of section 101.161, Florida Statutes, “includes consideration of the amendment's true meaning, and ramifications,” and functions “as a kind of 'truth in packaging' law for the ballot.” *Fla. Dep't of State v. Fla. State Conference of NAACP Branches*, 43 So. 3d 662, 667 (Fla. 2010). “Reduced to colloquial terms, a ballot title and summary cannot 'fly under false colors' or 'hide the ball' with

regard to the true effect of an amendment.” *Id.* at 667-668 (explaining that voters “must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that it is neither less nor more extensive than it appears to be”) (citing *Fla. Dep't of State v. Slough*, 992 So. 2d 142 (Fla. 2008); *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000)).

85. The ballot title and summary for the proposed amendment do not, in clear and unambiguous language, fairly inform the voters of a chief purpose of the amendment and instead are affirmatively misleading.

86. The Ordinance falsely suggests that the purpose of the Ordinance is to increase participation by voters when it will in fact have precisely the opposite effect.

87. Currently, the independent constitutional officers are elected in the general election, when voter turnout is substantially higher. Changing the election of constitutional officers to a non-partisan race shifts this decision to the primary election, when voter turnout is much lower. Accordingly, the true legal effect of making the independent constitutional officers non-partisan is to ensure they are elected outright in the first primary, when voter turnout is much lower, unless a qualifying candidate fails to receive a majority of the votes cast, in which case there would be a runoff only between the two candidates receiving the most votes in the primary election.

88. The ballot title and summary were deliberately crafted so as to fail to inform voters that the amendment will result in significantly fewer voters actually casting a ballot for the independent county constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk Of The Circuit Court, and Supervisor of Elections.

89. The ballot title and summary fail to inform voters that a chief purpose of the amendment is to allows Republican politicians like Sandra Murman, the Republican chair of the

County Commission, who immediately after voting to place this amendment on the ballot, filed to run for Hillsborough County Clerk of Court in the 2020, to hide their party affiliation.

90. The fact that a significantly higher number of individuals vote in the current partisan independent constitutional officer races than in the non-partisan school board races shows that voters value the information about the party affiliation of the candidates. This applies to members of all political parties, a point made by a group of Republicans who opposed this change because they only want to vote for identified Republicans.

91. The ballot title and summary fail to inform voters that the proposed amendment is unconstitutional under *Orange Cty. v. Singh*, 230 So. 3d 639, 642 (Fla. 5th DCA 2017), *review granted*, No. SC18-79, 2018 WL 2069415 (Fla. Apr. 6, 2018) and also conflicts with the Hillsborough Charter itself.

92. The ballot title and summary fail to inform voters that the proposed amendment will conflict with Amendment 10 which amends Article VIII, Section 1(d) of the Florida Constitution and therefore will be unconstitutional.

93. Moreover, including the proposed amendment and Amendment 10 on the same ballot is inherently confusing to voters.

94. For these reasons, the proposed amendment may not lawfully be placed on the ballot for the 2018 general election.

95. Plaintiff therefore seeks a judicial determination to resolve any doubt as to whether the proposed ballot question adopted by the County Commission in the Ordinance is valid.

96. There exists a bona fide, actual, present, and practical need for the declaration and supplemental relief because the Ordinance proposes a ballot question is inconsistent with the Florida Constitution, Florida law, and the Charter.

97. Plaintiff is entitled to have such doubt removed through a judicial determination of the matters in dispute.

98. Plaintiff will suffer immediate and irreparable harm if the proposed amendment is placed on the ballot for the November 2018 general election. Among other things, Plaintiff will be required to expend funds and volunteer energy resisting the illegal proposal.

99. Plaintiff has no adequate remedy at law, and it is in the public interest to ensure that Florida voters are accurately informed as to the true effect of proposed amendments to the Charter.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

a. Declare that the proposed amendment is unconstitutional due to legislative preemption as set forth in *Orange Cty. v. Singh*, 230 So. 3d 639, 642 (Fla. 5th DCA 2017), *review granted*, No. SC18-79, 2018 WL 2069415 (Fla. Apr. 6, 2018);

b. Declare that the proposed amendment is inconsistent with general law, namely the Charter which prohibits the County Commission from regulating the independent constitutional officers;

c. Declare that the ballot title and summary language do not accurately inform Hillsborough County, Florida voters of the true effect of the proposed amendment, and affirmatively mislead voters;

d. Enjoin temporarily and permanently the Supervisor and all persons and entities acting under his direction or in concert with him, from placing the proposed amendment on the ballot for the November 2018 general election and in all Vote by Mail ballots;

- e. Award monetary damages to the Plaintiff of the lost qualifying fees and money spent campaigning against this unlawful proposed amendment;
- f. Award to Plaintiff the attorneys' fees, expenses, and costs incurred in prosecuting this action under the private attorney general doctrine; and
- g. Order such other and further relief as this Court may deem appropriate.

Respectfully submitted,

/s/ Ryan D. Barack

Ryan D. Barack

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EXHIBIT 1

ORDINANCE 18-_____

AN ORDINANCE PROPOSING TO THE ELECTORATE OF HILLSBOROUGH COUNTY BY MEANS OF A REFERENDUM THE QUESTION OF AMENDING THE HOME RULE CHARTER FOR THE GOVERNANCE OF HILLSBOROUGH COUNTY, FLORIDA; PROVIDING THAT ELECTIONS OF THE FIVE CONSTITUTIONAL OFFICERS SHALL BE ON A NON-PARTISAN BASIS; PROVIDING THAT THIS AMENDMENT TO THE CHARTER SHALL BECOME ADOPTED ONLY IF A MAJORITY OF THOSE HILLSBOROUGH COUNTY ELECTORS VOTING IN THE REFERENDUM SHALL VOTE “YES”; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, from 2008 to 2018, the number of registered voters who do not identify with any party went up 86%; and

WHEREAS, under current State law, registered voters with no party affiliation cannot vote for constitutional officers in the Primary election; and

WHEREAS, the Board of County Commissioners desires to allow the voters in Hillsborough County the opportunity to decide whether or not to require that election of the County’s five constitutional officers shall be on a non-partisan basis.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HILLSBOROUGH COUNTY, FLORIDA THIS _____ DAY OF _____, 2018:

SECTION 1.

The following will become Article VII, Sections 7.01-7.04 of the Hillsborough County Charter, as set forth in Part A of the Hillsborough County Code of Laws and Ordinances, and along with Articles VIII- X, shall be renumbered to accommodate this amendment:

November 2018 Charter Amendment.

Section 7.01 - County constitutional officers.

The constitutional offices of Sheriff, Property Appraiser, Tax Collector, Clerk of the Circuit Court, and Supervisor of Elections shall remain as elected constitutional officers, and their powers, duties and functions will not be altered by this Home Rule Charter.

The constitutional officers shall perform their executive and administrative functions as specified by law.

Section 7.02 - Non-partisan election.

Non-partisan offices. Commencing with the primary and general elections in the year 2020, the offices of Clerk of Circuit Court, Property Appraiser, Sheriff, Supervisor of Elections, and Tax Collector shall be nonpartisan.

Non-partisan election procedures. If three or more candidates, neither of whom is a write-in candidate, qualify for such office, the names of those candidates shall be placed on a non-partisan ballot at the first primary election. If no candidate for such office receives a majority of the votes cast for such office in the first primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot.

Section 7.03 - Qualification by petition.

A candidate for non-partisan office may qualify for election to such office by means of the petitioning process provided in general law.

Section 7.04 - Other provisions.

In all respects not expressly provided in this charter, non-partisan elections shall be governed by the procedures set forth in general law for non-partisan elections; provided that nothing therein shall impair the constitutional rights of candidates to freedom of expression and association.

Section 7.05 – Effective Date of the Charter Amendment.

This Amendment to the Charter of Hillsborough County shall go into force and effect on the second Tuesday following the general election at which the Charter is amended.

SECTION 2. **Placement on the Ballot**

The proposed amendment to the Charter of Hillsborough County, Florida shall be presented to the Hillsborough County electorate by placing the question of whether to adopt the amendment to the Charter on the ballot at the next scheduled general election.

The title and question on the ballot shall be as follows:

Ballot Title

**PROPOSED AMENDMENT TO THE HILLSBOROUGH COUNTY
CHARTER PROVIDING FOR NONPARTISAN ELECTIONS OF COUNTY
CONSTITUTIONAL OFFICERS**

Ballot Question

Shall the Hillsborough County Charter be amended to provide for the election of the Sheriff, Tax Collector, Property Appraiser, Supervisor of Elections and Clerk of Court and Comptroller on a nonpartisan basis, which means an office for which a candidate is prohibited from campaigning or qualifying for election based on party affiliation, instead of the current process of campaigning or qualifying for election based on party affiliation?

_____ Yes for Approval

_____ No for Rejection

SECTION 3. **Effective Date**

- (a) This Amendment to the Charter of Hillsborough County shall become effective when and only if approved by a "yes" vote by a majority of those voting on the

question posed at the next general election. If a majority of those voting shall not vote "yes" to the question posed, the proposed amendment shall not be adopted.

- (b) This Amendment to the Charter of Hillsborough County shall go into force and effect on the second Tuesday following the general election at which the Charter is amended.

SECTION 4. Severability

If any clause, sentence, paragraph, subdivision or other part of this Ordinance or applications shall be adjudged by a Court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or otherwise invalidate the remainder of this Ordinance which shall remain in full force and effect except as limited by such order or judgment.

SECTION 5. Inclusion in the code of laws and ordinances

The provision of this Ordinance shall be included and incorporated in the Hillsborough County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Hillsborough County Code, once established. The recitations contained in the "WHEREAS" clauses are incorporated herein by reference, but are not required to be reproduced and included in the Code.

SECTION 6. Applicability

All provisions of this Ordinance shall be applicable throughout the incorporated and unincorporated areas of the Hillsborough County where there is no existing conflict of law, municipal Ordinances concerning this matter, or unless any municipality determines to opt-out of this Ordinance's provisions.

SECTION 8. EFFECTIVE DATE OF ORDINANCE

STATE OF FLORIDA)

COUNTY OF HILLSBOROUGH)

WITNESS my hand and official seal this _____ day of _____, 2018.

BY: _____
Deputy Clerk

By: Mary Helen Farris, General Counsel