

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

KAREN JAROCH,

Plaintiff,

v.

Case No.: 22-CA-007158

HILLSBOROUGH COUNTY, a charter  
county of the State of Florida, and CRAIG  
LATIMER, in his official capacity as  
Supervisor of Elections for Hillsborough  
County, Florida,

Division: E

Defendants.

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**ORDER GRANTING PLAINTIFF KAREN JAROCH'S MOTION  
TO VACATE AUTOMATIC STAY PENDING APPEAL**

With just days left until the November 8, 2022 election, a measure currently on the ballot has been found to be misleading, the related ordinance has been invalidated, and the Supervisor of Elections has been enjoined to notify voters that the referendum has been removed from the ballot. Despite this, voting continues. Hillsborough County voters have not been notified that the measure was stricken from the ballot based on a finding that it is misleading. Members of the same Hillsborough County Commission (the “**County Commission**”) that placed the misleading measure on the ballot are telling voters that “[e]ven a first grader could’ve understood the language,” stating that another judge from the Thirteenth Circuit ruled that the ballot language is valid, actively encouraging voters to continue voting on the measure, and referring to Plaintiff Karen Jaroch’s litigation—and perhaps by extension, this Court’s ruling in her favor—as effectively a “voter suppression tactic.” *See, e.g.*, dkt. 46 (County Commissioner Kimberly Overman, tweeting “If you

planned on voting for the Hillsborough County transportation surtax, then vote on it. You still can. The legal challenge is a voter suppression tactic. Don't miss your opportunity to weigh in on our transportation needs. Don't let them steal your vote."); *id.* (Hillsborough County, tweeting "There is currently no legal prohibition to voting on Hillsborough County's transportation surtax referendum, and voters may continue to cast their ballots."); dkt. 42, p. 3 ("[e]ven a first grader could've understood the language."); *id.* ("[K]eep voting for this while it's on the ballot now.").

The County is correct that Commissioners were "exercising their right of free speech," *see* dkt. 45, and "[a]n elected official of the local government may express 'an opinion on any issue at any time.'" § 106.113(3), Florida Statutes. Moreover, as a matter of law, although the Court ruled that the ballot measure is misleading and it was stricken from the ballot, the County filed a Notice of Appeal. Under the Florida Rules of Appellate Procedure, the Court's ruling was automatically stayed.

The question before the Court today is whether that stay should be vacated. Ms. Jaroch asserts that lifting the automatic stay is necessary to put an end to the deception. Voters are being encouraged to vote on a misleading ballot measure with no notice that it has been found to be misleading and stricken from the ballot. Ms. Jaroch's concern is that if voters, misled by the language, approve the surtax then the County will begin collecting the tax and once it's gone, it's gone. *See generally, Emerson v. Hillsborough County*, 312 So. 3d 451 (Fla. 2021).

The County says this is much ado about nothing. It asserts that the stay should remain in place because if this Court's Order is affirmed on appeal, Ms. Jaroch and other voters are not harmed. They can "keep their sales receipts" and "pursue a refund." If someone decides

not to pursue a refund—because getting the government to return money seems more troublesome than returning tchotchkes to Homegoods, or for some other reason—then that just “simply confirms the *de minimus* nature of any claimed harm.” (Dkt. 45, p. 12).

## **I. BACKGROUND**

Final summary judgment was granted in Ms. Jaroch’s favor by entry of an Order dated October 18, 2022. That final summary judgment found that a ballot summary placed on the ballot for the November 8, 2022 election is misleading. The Order struck it from the ballot and enjoined the Supervisor of Elections to notify voters that the referendum has been removed from the ballot. The County then immediately filed a Notice of Appeal and a Notice of Automatic Stay of Judgment.

On October 21, 2022, Ms. Jaroch filed her Motion to Vacate Automatic Stay Pending Appeal (the “**Motion**”). In the Motion, she requested expedited consideration. The County promptly joined in the request for an expedited hearing. The County asked that the hearing be briefly delayed until such time that it could file a written response to the Motion.

A hearing on the Motion was held on October 27, 2022. Samuel J. Salario, Esq. and Joseph T. Eagleton, Esq. appeared for Ms. Jaroch. Raymond T. Elligett, Jr. and Amy S. Farrior, Esq. appeared for the County. Robert E. Brazel, Esq. appeared for the Hillsborough County Attorney’s Office. Colleen O’Brien, Esq. appeared for the Hillsborough County Supervisor of Elections. On review of the Motion, the County’s written response dated October 25, 2022, and various other written materials submitted, and following a lengthy oral argument, the Court orally granted the Motion.

This Order memorializes that oral ruling.

## II. LEGAL STANDARD

Pursuant to Rule 1.310(b)(2), “[t]he timely filing of a notice shall automatically operate as a stay pending review . . . when the state, any public officer in an official capacity, board, commission, or other public body seeks review” and “[o]n motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.” As is clear from the plain text of the Rule, such a stay can be dissolved. *Mitchell v. State*, 911 So. 2d 1211, 1216 (Fla. 2005) (“Importantly, however, while rule 9.310(b)(3) is effectively automatic in its initial application, a stay entered pursuant to the rule may be dissolved.”). When asked to do so, a trial court has discretion to vacate the stay “when ‘compelling circumstances’ require.” *Reform Party of Fla. v. Black*, 885 So. 2d 303, 306 n.3 (Fla. 2004)

When taking up a request to vacate the automatic stay, a trial court must principally consider two issues. One, what is the likelihood that the party seeking to maintain the stay will succeed on the merits of its appeal? *Id.* at 1219. And two, is there a likelihood of irreparable harm if the stay is not granted? *Id.*

## III. ANALYSIS

Considering the legal standard and taking the case and the facts as it they have been presented today, it is appropriate to exercise the Court’s discretion to dissolve the stay for the reasons that follow.<sup>1</sup>

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<sup>1</sup> This Order has been prepared in an expedited fashion so that the parties can pursue appellate relief as promptly as they deem appropriate. An effort is made here to address key issues, but to be clear the Motion was also granted for the reasons articulated in the Motion and during argument. The decision not to treat each of those arguments is a recognition of the importance of a prompt rendition of this Order rather than a rejection of any specific point.

**A. The County is Unlikely to Succeed on the Merits of Its Appeal.**

The County is unlikely to succeed on the merits of its appeal. The County's effort to argue this issue was limited. But "[a]n order in a declaratory judgment action is generally accorded a presumption of correctness on appellate review." *Reform Party of Fla. v. Black*, 885 So. 2d 303, 310 (Fla. 2004); *Tampa Sports Authority v. Johnston*, 914 So. 2d 1076 (Fla. 2d DCA 2005) (referencing "the traditional appellate principle" that "the order on appeal is presumed correct unless or until the appellant demonstrates otherwise."). And, as Ms. Jaroch notes, even if the district court disagrees with one part of the Court's reasoning, the Order on summary judgment articulates six other bases to affirm. The Supreme Court's recent guidance on many of the same issues in *Emerson*, the extent of this Court's reliance on that reasoning, and other precedent involving the issue of misleading ballot language, *see, e.g., Wadhams v. Bd. Of County Commissioners of Sarasota County*, 567 So. 2d 414 (Fla. 1990) ("Deception of the voting public is intolerable and should not be countenanced."), also weigh in favor of finding that the County is unlikely to succeed on its appeal.

**B. The County is Not Likely to Suffer Irreparable Harm if the Stay is Vacated.**

Vacating the stay will not result in irreparable harm to the County. Vacating the stay results in a return to the *status quo*. It is important to recognize what the *status quo* is. This case is about money that does not presently belong to the County. The County has no present ownership interest in the surtax proceeds. It had no right to or guarantee of a "yes" vote. Lifting the stay does not leave the County destitute and unable to make ends meet, nor does it deprive the citizens of Hillsborough County of transportation improvements. If the County Commission deems it necessary to make transportation improvements between now and the 2024 election, it has a \$17 billion budget. If the County is harmed in any sense by not being

able to ask the voters for more money, the harm is a result of the County's decision to put a measure on the ballot that misleadingly described the Surtax Ordinance. It is worth noting that the County's motives and who is at fault are immaterial. Those issues have no bearing on whether any harm is irreparable.

In contrast, the irreparable harm to Plaintiff (and other taxpayers) is obvious. If the stay remains in place and the ballot measure is approved by the voters, the surtax will be levied on January 1, 2023. The County shown no inclination or willingness to direct the Department of Revenue to abate collection of the surtax until the appeal concludes. The County is confident that the Second District will rule before January 1, 2023. But the tail doesn't wag the dog and this Court does not give the Second District deadlines or make suggestions about when appellate rulings should or would be made. There is no guarantee that this case would be disposed of before January 1, 2023.

What all of this means is that Plaintiff has only Hobson's choices to avoid irreparable harm. Come January 1, 2023, she could choose to not purchase any goods subject to the surtax in Hillsborough County. But the range of things subject to this surtax is exceedingly broad. Should Ms. Jaroch drive out of the County to buy what she needs just to avoid paying an illegal transportation surtax, pending resolution of this appeal? That is preposterous.

Another option-that-is-not-really-an-option is that come January 1, 2023, she could purchase goods subject to the surtax, save her receipts for each and every purchase, and hope she will succeed in pursuing a refund process. Problems with the County's idea of a refund process as Ms. Jaroch's remedy are numerous, but the low-hanging fruit is that *it does not exist*. And the *White* case calls into reasonable doubt whether it ever could or would. Even

four years later, there is no process by which taxpayers can get their money back from the wrongfully-assessed 2018 surtax.

To assert Ms. Jaroch would not be irreparably harmed because maybe there will be a refund process is just whistling in the dark. Who would administer the refund process? What documentation would be required? When would the documentation be due? How would the process be communicated to those entitled to pursue it? Would administration of the refund process itself require the expenditure of taxpayer dollars? Where will those taxpayer dollars come from? If the taxpayers must fund the process to receive their own refunds, are there services the County will cease to fund the refund process? Or will it seek to impose a new tax to pay for the refund of this surtax?

Cases must be taken as they come. In this one, there is no refund process. With no process to consider, there is no basis to find that it would save Ms. Jaroch from the irreparable harm of having the government take money to which it is not entitled. The non-existence of a refund process weighs in favor of vacating the stay. *See Tampa Sports Authority v. Johnston*, 914 So. 2d at 1083.

Balancing the interests involved, vacating the stay results in maintenance of the *status quo*. Under the *status quo*, the County suffers no irreparable harm and the same cannot be said with the alternative.

### **C. Compelling Circumstances Justify Vacating the Stay.**

There is some discussion about whether the “compelling circumstances” test applies. If it applies, Ms. Jaroch sails over the hurdle. The equities tilt overwhelming in her favor. Here we have ballot language that does not pass Florida’s “truth in packaging” requirement for ballot measures. *Armstrong v. Harris*, 773 So. 2d 7, 13 (Fla. 2000). And as a function of

the circumstances surrounding this case—among other things, caused by the timing, the automatic stay, media coverage of the Court’s original ruling, and the County Commissioners’ public statements and Tweets—it seems beyond doubt that voter confusion exists among the electorate in Hillsborough County today.

Even if the circumstances had not contributed to the likelihood of voter confusion in this way, the Florida Supreme Court has already addressed the practical and civic danger posed by this scenario: “No one can say with any certainty what the vote of the electorate would have been if the voting public had been given the whole truth, as mandated by the statute, and had been told ‘the chief purpose of the measure.’” *Wadhams*, 567 So. 2d at 417.

#### **IV. CONCLUSION**

Today’s ruling is not a shot at the County Commission. While the ballot language is misleading and “[d]eception of the voting public is intolerable and should not be countenanced,” *id.* at 418, the Court has conducted no inquiry into the motives of anyone involved. In other words, no malice by the County Commission is presumed. The basis for this ruling is that Ms. Jaroch met the burden the law requires her to carry. The County will not suffer irreparable harm if the stay is vacated. The County is unlikely to succeed on the merits of its appeal. Compelling circumstances justify vacating the stay.

Having made those findings, it is appropriate to vacate the stay.

Accordingly, it is now

#### **ORDERED and ADJUDGED that:**

1. Ms. Jaroch’s Motion to Vacate Automatic Stay Pending Appeal is **GRANTED**; and
2. The automatic stay is **VACATED**.



**DONE** and **ORDERED** in Chambers at Hillsborough County, Florida this 27th day of  
October 2022.

22-CA-007158 10/27/2022 8:39:55 PM

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HONORABLE ANNE-LEIGH GAYLORD MOE  
CIRCUIT COURT JUDGE

Copies to counsel of record