CASE NO. S242835

SUPREME COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO,

Petitioner and Appellant,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Respondents.

After A Decision By The Court of Appeal
First Appellate District,
Division One
No. A144500

San Francisco Superior Court
(The Honorable Marla J. Miller)
No. CPF-14-513-434

PETITIONER AND APPELLANT CITY AND COUNTY OF SAN FRANCISCO'S REPLY BRIEF

DENNIS J. HERRERA, State Bar #139669
City Attorney
CHRISTINE VAN AKEN, State Bar #241755
Chief of Appellate Litigation
PETER J. KEITH, State Bar #206482
Chief Attorney, Neighborhood & Residential Safety Division
1390 Market Street, Sixth Floor
San Francisco, California 94102
Telephone: (415) 554-3908
Facsimile: (415) 437-4644
E-Mail: peter.keith@sfcityatty.org
Attorneys for Petitioner and Appellant
CITY AND COUNTY OF SAN FRANCISCO

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Facsimile: (415) 437-4644
E-Mail: peter.keith@sfcityatty.org
Attorneys for Petitioner and Appellant
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ISSUE PRESENTED FOR REVIEW

Can a city require state universities that operate paid parking lots within the city to collect and remit city parking taxes owed by their customers?

INTRODUCTION

The state universities do not dispute that their parking customers owe San Francisco parking taxes, but they argue that San Francisco cannot require them to collect and remit those taxes amounting to at least $4 million per year. The universities are wrong. California law does not countenance such tax avoidance.

Here, the universities' theory is that, notwithstanding San Francisco's constitutional power to tax and the absence of any constitutional provision or statute limiting it, they enjoy an implied superiority over California cities, which bars a city from obtaining their assistance in tax collection. But the universities' theory of "hierarchical sovereignty" is inconsistent with the California Constitution – and so is their absolutist position about city tax collection. "Hierarchical sovereignty" is not the rule in California; instead, the Constitution allocates the state's sovereign power between the Legislature, cities, and other state agencies. Under this framework, state universities are not the equivalent of the state itself; rather, like other state agencies including cities, the universities' share of California's sovereign power is defined by specific constitutional provisions and statutes. And charter cities themselves exercise California's sovereign power granted to them by the Constitution; and when they do so, they are not constitutionally subordinate to the

Legislature or other state agencies. When it comes to charter city revenue measures, this Court has consistently required any asserted limitation on city revenue power to be express – not implied from abstractions like "hierarchical sovereignty." And there is no express limitation here.

San Francisco's tax ordinance properly requires the state universities to undertake de minimis, ministerial steps to collect and remit city parking taxes owed by the universities' parking customers. This Court should direct that a writ of mandate be issued, ordering them to do so.

ARGUMENT

I. The universities' central argument for "hierarchical sovereignty" misunderstands California law – understating charter cities' share of the state's sovereign power, and overstating the universities' share.

In the Opening Brief (at 18-20), San Francisco explained that its parking tax and parking tax collection requirement were exercises of San Francisco's sovereign power granted by the California Constitution. And given the absence of an express conflict between parking tax collection and any other constitutional provision or statute, the state universities cannot assert sovereign immunity from collecting the taxes owed by their parking customers. (Opening Br. 21-29.)

In response, the state universities argue a theory of "hierarchical sovereignty" (CSU 38), under which the universities' purported sovereignty implicitly overrides any city tax collection requirement, because the universities are superior and synonymous with "the State" itself (Hastings 44) while cities are "subordinate political entit[ies]" (Regents 8). The universities' theory, however, is not supported by the California Constitution or this Court's decisions construing it.

A. In California, sovereignty belongs to the people – not any particular unit of government – and the people enacted a Constitution that allocates sovereign power between cities, the Legislature, and other state agencies like the universities.

From the abstract principle that sovereignty belongs to "the State," the universities have discerned an implied constitutional declaration that one kind of state agency – a state university – is always superior to another kind – a charter city. But that is not the case.

To begin with, under California law sovereignty is not the property of any particular branch or agency of California government. Rather, "the people" of the state have the ultimate "sovereign power." (*Oakland Paving Co. v. Hilton* (1886) 69 Cal. 479, 514; Gov. Code § 100 ["The sovereignty of the state resides in the people thereof...."].) And the California Constitution is the people's instrument for transmitting their sovereign power. "[T]he entire sovereignty of the people is represented in the [constitutional] convention." (*Livermore v. Waite* (1894) 102 Cal. 113, 117 [constitutional amendment procedures].) "The Constitution is the voice of the people speaking in their sovereign capacity, and it must be heeded." (*People v. Parks* (1881) 58 Cal. 624, 635 [applying single-subject rule to determine constitutionality of statute].)

Because all sovereign power is delgated through the Constitution, CSU's statement that "[a] city is not a sovereign, having only those powers expressly delegated to it" (CSU 35) is true only in the most trivial sense – because it applies to every agency and branch of California government. The Constitution defines and limits the power of the Legislature itself: "The power given to the legislature is a grant of power. It has it not without the constitutional provision. The grant is given to be exercised in the mode conferred on the legislature by the constitution. It is so limited by

the people acting in the exercise of their highest sovereign power." (*Oakland Paving Co., supra*, 69 Cal. at p. 514 [Legislature bound by constitutional provisions for municipal improvement contracts].)

Just as the Legislature is an instrumentality of the state but not itself the sovereign, neither are state universities: "'The university, while a governmental institution and an instrumentality of the state, is not clothed with the sovereignty of the state and is not the sovereign.'" (*Regents of Univ. of Cal. v. Superior Court (Regan)* (1976) 17 Cal.3d 533, 536, quoting *Estate of Royer* (1899) 123 Cal. 614, 624.)[1] Rather, the universities are agencies of the state whose powers are defined by the Constitution or statutes. In that regard, they are no different from cities. "All public corporations exercising governmental functions within a limited portion of the state—counties, cities, towns, reclamation districts, irrigation districts—are agencies of the state...." (E.g., *Union Trust Co. v. State of Cal.* (1908) 154 Cal. 716, 729 [State of California not liable on bonds just because bonds were issued by an agency exercising state power].)

The state universities' lack of territorial limits does not make them "more sovereign" than a territorially defined charter city. Even the Legislature is not superior to a charter city exercising its constitutional power: "Ordinances and regulations enacted by such city in pursuance of its charter have the same force and effect within the limits of the city as laws passed by the Legislature. They both spring from the same source – the state Constitution, enacted by the people in their sovereign capacity." (*Ex parte Zhizhuzza* (1905) 147 Cal. 328, 335–336 [validity of Oakland garbage collection requirements]; *Ex parte Braun* (1903) 141 Cal. 204, 209

[1] Two of the universities discuss *Regan* (Regents 45; Hastings 26) but neither addresses its rejection of the universities' claim to sovereignty.

[charter city's taxing power is "actually conferred upon it by the sovereign power"].)

B. The universities' concept of "hierarchical sovereignty" is not part of California law.

Because charter cities, the Legislature, and other state agencies are empowered by the same Constitution, California courts do not resolve disputes between them based on a theory of "hierarchical sovereignty." If they did, the proponents of the "higher" power would win every dispute. Instead, California courts rely on the text of the California Constitution. And if there is no genuine conflict between a constitutionally authorized local ordinance and a state statute or constitutional provision, then the local ordinance is enforceable. Even with a genuine conflict, this Court anchors its analysis in the term "municipal affairs," asking whether a conflicting statute embodies a "statewide concern" that transcends "municipal affairs" and is narrowly tailored to address that statewide concern. If not, the conflicting city law prevails. (E.g., *Johnson v. Bradley* (1992) 4 Cal.4th 389, 400, 404 [upholding charter city authority to adopt public financing election laws conflicting with state statute].)

In contrast, the universities' theory of implied "hierarchical sovereignty" relies on cases addressing state sovereignty under the *federal* Constitution. (Regents 38-40; Hastings 27, 44; CSU 34-35.) For example, the universities quote language from *Board of Supervisors of Sacramento County v. Local Agency Formation Comm'n of Sacramento County* (1992) 3 Cal.4th 903, that cities and counties "are mere creatures of the state and exist only at the state's sufferance." (*Id.* at p. 914.) But this language expressed a principle of *federal* equal protection law – namely, deference to

state constitutional procedures for local government formation. (*Id.* at pp. 914-916; see Cal. Const. art. XI, § 2.) Similarly, *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 6, observed that for purposes of federal equal protection, federal due process, and federal contract clause law, cities and counties are "subordinate political entities" without cognizable *federal* rights against the state. Cases construing other specific federal provisions are inapposite. (See *Printz v. United States* (1997) 521 U.S. 898, 918-919 [Tenth Amendment reserves state sovereignty]; *M'Culloch v. State* (1819) 17 U.S. 316, 361 [Supremacy Clause precludes direct state taxation of federal instrumentality].) Also unhelpful is *Johnson v. Gordon* (1854) 4 Cal. 368, 372 (CSU 34), an antebellum decision by this Court holding the Judiciary Act of 1789 unconstitutional because it allowed the United States Supreme Court to review the decisions of California state courts, in derogation of California's sovereignty. "'The war killed that decision as it did the one in the Dred Scott case, and both are buried in the same grave.'" (*Watkins v. State* (1945) 199 Ga. 81, 89-90, 33 S.E.2d 325, 331, quoting 1909 Report of Georgia Bar Association [discussing similar Georgia decision and *Johnson v. Gordon*].) Ultimately, these decisions are not relevant here, because they concern city-state relations under the federal Constitution. But under the California Constitution, only *some* subdivisions (such as redevelopment agencies) are limited to the powers conferred by the Legislature and genuinely "subordinate" (e.g., *California Redevelopment Ass'n v. Matosantos* (2011) 53 Cal.4th 231, 255-256, cited by Hastings 28), while others like charter cities have constitutionally conferred powers. The answer to the question here must come from the

California Constitution, not the universities' theory of implied "hierarchical sovereignty."[2]

C. No constitutional or statutory bar prohibits San Francisco from requiring the state universities to collect the city parking taxes owed by their customers.

San Francisco exercised its constitutional share of sovereign power to impose a tax on parking customers and to require parking operators – including the state universities – to collect parking tax.

Much about this exercise of power is not disputed by the universities. They have never disputed that San Francisco's ordinance by its terms requires them to collect parking taxes from their customers. Indeed, an oversight in San Francisco's original 1970 parking tax legislation was promptly corrected in 1971, with an amendment providing that parties exempted from paying parking tax – like the state universities – were nevertheless required to collect the parking tax from their customers, a requirement that still exists today, CT024. (S.F. Ord. No. 9-71 (1971), revised § 601; legislative history [*attached infra*, subject of Request for Judicial Notice].) It appears that CSU (at 23), in stating that San Francisco "recently" amended its ordinance to require tax collection by the universities, overlooked this 1971 amendment.

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[2] Some cases cited by the universities in support of their "hierarchical sovereignty" theory involve areas – unlike city parking taxes – where the Legislature enacted statutes to occupy the field in an area of statewide concern. (E.g., *Eastlick v. City of Los Angeles* (1947) 29 Cal.2d 661, 667 [tort claim statute preempted city's tort claim presentation requirements].) Other cases the universities cite have nothing to do with city power. (E.g., *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 467 [city not a "political subdivision of the State" under then-existing Civil Code § 3287 providing for recovery of prejudgment interest].)

And the universities have never asserted that San Francisco's filing of this writ action in 2014 was estopped in 1983, when the then-San Francisco Tax Collector's enforcement efforts against the Regents fizzled without explanation – a subject on which the universities dwell though it is without any consequence. (Regents 15; Hastings 19; CSU 24.)[3]

The state universities do not even dispute that it was a valid exercise of San Francisco's constitutional power to enact the parking tax and require tax collection. (Regents 17-20; Hastings 36; CSU 42.) Rather, all that the state universities dispute is whether San Francisco may exercise *its* constitutional power to require *them* to collect parking taxes owed by their San Francisco customers.

But the universities' arguments against San Francisco's taxing power sidestep a key legal principle highlighted in the Opening Brief (at 25). Namely, any limitations on a charter city's power of taxation must be stated "in express terms" in the Constitution or a statute, and will not be implied – as this Court has repeatedly held. (E.g., *Braun, supra*, 141 Cal. at pp. 209-210; *The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 660 ["Because the power to tax is fundamental, state intent to preempt it must be clear."]; *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 477 (*Ainsworth*) [constitutional limitations on "the plenary power of taxation possessed by a chartered municipality as an essential attribute of its existence ... should not

[3] An estoppel claim would be fruitless here, given that as a matter of law a taxing agency is not estopped from tax collection by previous errors by tax officials (e.g., *La Societe Francaise v. California Emp. Comm'n* (1943) 56 Cal.App.2d 534, 553) – let alone past officials' lack of appetite for years-long court battles like this one. Moreover, while Hastings (at 19) may not have planned to collect San Francisco parking tax when it built its new garage in 2008, there is no evidence of any affirmative representation by any San Francisco official that Hastings did not have to collect parking taxes from its customers – an essential element of an estoppel.

be extended beyond the express terms of the constitutional reservation"].) None of the universities offer a satisfactory rebuttal to this well-established rule of constitutional and statutory construction. The Regents (at 17) characterize the rule as something "argue[d]" by San Francisco – not a legal principle firmly grounded in this Court's precedent. Meanwhile, CSU (at 52-53) argues that this rule should not apply when state agencies are involved – without explaining why that makes a difference. And Hastings (at 42-43) wrongly asserts that *California Federal Savings & Loan Ass'n v. City of Los Angeles* (1991) 54 Cal.3d 1 (*California Federal*) "repudiated" this express statement rule – even though *California Federal* said no such thing, and the case involved an express statutory statement prohibiting a city tax on financial institutions.

And under this express statement rule, none of the constitutional provisions, statutes, or cases cited by the universities limit San Francisco's constitutional power to require the universities to collect and remit parking taxes owed by their customers.

1. *Hall v. City of Taft* and *In re Means* do not create an implied constitutional bar on city taxation or city tax collection on state property.

The universities argue for an implied constitutional limitation on city power to require a state agency to do *anything*, based on this Court's decisions in *Hall v. City of Taft* (1956) 47 Cal.2d 177 (*Hall*) and *In re Means* (1939) 14 Cal.2d 254 (*Means*). (Regents 26-27, 40; Hastings 21-24; CSU 28-33.) But these cases had nothing to do with taxation or tax collection (whether in holding or dicta), and this Court has never relied on these cases (or the statutes they construed) to limit city taxing power. They fall far short of creating an express limitation on city revenue power.

Means held that constitutional and statutory provisions setting out "a comprehensive plan for the selection of state employees" preempted city licensing regulation of state-employed plumbers. (*Means, supra*, 14 Cal.2d at p. 257.) Like *Means*, other decisions affirm government power to internally regulate its employees. (E.g., *Miklosy v. Regents of Univ. of Cal.* (2008) 44 Cal.4th 876; Opening Br. 26.) But a state agency's employee management prerogatives have never been construed to bar city taxation of state employees, or a city tax collection requirement. To the contrary, this Court upheld city taxation of state employees in *Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 398 (*Weekes*) (albeit without deciding the tax collection issue).[4] City taxation of state employees is not regulation of state employees.

Turning to *Hall*, that decision held that the Legislature's comprehensive statutory framework regulating the construction of school buildings manifested a statewide concern, precluding a charter city from enforcing its building code regulations against school buildings. (*Hall, supra*, 47 Cal.2d at p. 184 ["The Education Code sets out a complete system for the construction of school buildings."].) *Hall* also stated that the construction and maintenance of school buildings (which were beneficially

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[4] CSU (at 42-43) mistakenly argues that *Weekes'* holding that state employees were subject to a charter city tax was a result of Revenue & Taxation Code section 17041.5's granting power to Oakland to tax state employees. But CSU misreads both *Weekes* and section 17041.5. The source of Oakland's taxing power was the Constitution – not section 17041.5. (*Weekes, supra*, 21 Cal.3d at pp. 390, 392) And *Weekes* did not rely on section 17041.5 to uphold city taxation of state employees – it relied on *Graves v. People of State of New York ex rel. O'Keefe* (1939) 306 U.S. 466, 486-487, an intergovernmental taxation decision. (*Weekes, supra*, 21 Cal.3d at p. 398.) Section 17041.5 did not grant taxing power, it rather prohibited city income taxes, with a carve-out for city occupation taxes that were "otherwise authorized" by law. (*Weekes, supra*, 21 Cal.3d at p. 391.) Oakland's tax merely fell within the carve-out – but its tax was "otherwise authorized" by Oakland's charter city power. (*Id.* at pp. 393-398.)

owned by the state) was a sovereign activity which cities could not regulate. (*Id.* at p. 183.) Legislation has since superseded *Hall*'s absolute ban on the enforcement of city building and zoning regulations against state buildings, but a state agency nevertheless retains authority to make "the fundamental decision as to how [its] property will be used." (*Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 869 [Gov. Code § 23004 empowered county to ban gun shows on county property within a city; no conflicting city ordinance].)[5]

But this Court has never construed property management authority to bar city taxes on (or city tax collection from) private parties doing business with the state on state property. Without citing *Hall*, this Court reached the opposite conclusion in *Weekes*, holding that cities do not offend state sovereignty by taxing private parties (state employees) transacting with the state, on state property. And the courts of appeal have upheld city taxation and tax collection on state property, rejecting *Hall*-based arguments for immunity. (Opening Br. 27-28, discussing *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623 (*Oakland Raiders*) [taxation of activities on Regents property]; *City of Los Angeles v. A.E.C. Los Angeles* (1973) 33 Cal.App.3d 933, 940 (*A.E.C. Los Angeles*) [taxation of

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[5] Several court of appeal decisions cited by the universities do no more than follow *Hall* in holding that state buildings are not subject to city building and zoning regulations (*City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 244 [zoning regulation of number of parking spaces]; *Vagim v. Bd. of Supervisors of Fresno County* (1964) 230 Cal.App.2d 286, 294-295; *Los Angeles County v. City of Los Angeles* (1963) 212 Cal.App.2d 160, 167; *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 428; see also *City of Santa Cruz v. Santa Cruz City School Bd. of Education* (1989) 210 Cal.App.3d 1, 5) or city maintenance regulations for trash disposal (*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.* (1996) 43 Cal.App.4th 630, 637; *Del Norte Disposal, Inc. v. Dep't of Corrections* (1994) 26 Cal.App.4th 1009, 1015; *City of Santa Ana v. Bd. of Educ. of City of Santa Ana* (1967) 255 Cal.App.2d 178, 180).

contractors working on state buildings]; see also *City of Modesto v. Modesto Irrigation Dist.* (1973) 34 Cal.App.3d 504, 506-507 (*City of Modesto*) [tax collection by state agency].)[6] These decisions were correct, because imposing a city tax on private parties arising from certain transactions that happen to occur on state property – and requiring tax collection – is not the equivalent of city regulation of state property.

These decisions undercut the universities' claim that the regulatory-revenue distinction is merely "a preemption doctrine that is not relevant to the immunity analysis." (Hastings 39-42.) To the contrary, courts apply similar principles in both analyses. (E.g., *A.E.C. Los Angeles, supra*, 33 Cal.App.3d at p. 940.) And that is to be expected. Both preemption and immunity claims involve asserted conflicts between state and local authority; and when a genuine conflict exists, courts must determine the relative authority of state and local legislators. Most significantly, just as the existence of a genuine, irresolvable conflict is the starting point for preemption analysis, it is the starting point for immunity analysis. And there is no conflict between *Hall* and charter city tax collection measures, because arguments for implied state sovereignty are insufficient to strip cities of their constitutional power to tax. (*City of Modesto, supra*, 34 Cal.App.3d at p. 508 [explaining that a state agency "must submit to a constitutional mandate; the California Constitution is the paramount

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[6] By contrast, when a city tax was imposed directly on an instrumentality of the state, one court of appeal decision held it a regulation of the state barred by *Hall*. (*Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1357-1358; see Opening Br. 49-50.) Two other decisions cited by the universities (Hastings 24; CSU 36-37) relied on *Hall* to bar (non-tax) city charges directly against state property – which the parking tax is not. (See *Regents of Univ. of Cal. v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 136 [city building department fees]; see also *County of Santa Barbara v. City of Santa Barbara* (1976) 59 Cal.App.3d 364, 376 [city special assessment against county property].)

authority to which even sovereignty of the state and its agencies must yield"]; Attorney General Opinion No. 81-506, 65 Ops.Cal.Atty.Gen. 267, 268 (1982) [charter city constitutionally empowered to require state agency or its agent to collect transient occupancy tax[7]].)

2. The constitutional and statutory provisions cited by the universities do not bar city taxation or city tax collection on state property.

To avoid tax collection, the universities also rely on various constitutional and statutory provisions granting them powers of internal governance and property management. (Cal. Const. art. IX, § 9 [Regents]; Ed. Code § 92204 [Hastings]; Ed. Code §§ 66606, 89031, 89048 [CSU].) But, as explained in the Opening Brief (at 25-27), none of these provisions expressly limits city taxing power, and none has ever been construed to limit city power to tax (or to require tax collection from) private parties doing business with a university on its property. (See *Oakland Raiders, supra*, 65 Cal.App.3d at p. 626 [rejecting argued limit on city taxing power].)

Hastings refers to Cal. Const. art. IX, § 6, providing that "No school or college or any other part of the Public School System shall be ... placed

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[7] CSU (at 45-46) misreads this Attorney General opinion. CSU asserts the opinion "conflat[es]" the tax collection duties of a state agency and a private concessionaire, thereby not recognizing the full scope of immunity due a state agency. But the opinion does the opposite – it treats a concessionaire as enjoying the full immunity of the state, then concludes that state immunity does not preclude city tax collection. (65 Ops.Cal.Atty.Gen. at pp. 268-271.) A partial quotation from the opinion in CSU's brief does not support CSU's erroneous view: "We express no opinion ... whether the ordinance ... applies to the state or its agents." (CSU 46, quoting 65 Ops.Cal.Atty.Gen. at p. 269, n.5, alterations by CSU.) Rather, once the ellipses are replaced, and the subsequent sentence is added, it is clear that this language served to clarify the opinion's focus on questions of charter city taxing authority, not statutory interpretation of a particular city's ordinance: "We express no opinion as to whether the ordinance by its terms applies to the state or its agents. The inquiry is simply whether the city may adopt such an ordinance." (*Ibid.*)

under the jurisdiction of any authority other than one included within the Public School System." (Hastings 42.) But requiring tax collection is not a transfer of jurisdiction over public schools to the taxing authority; if it were, the Franchise Tax Board would be unable to require withholding of state university employees' income taxes (see Rev. & Tax. Code § 18662(a)). This is not the law, and the cases cited by Hastings are inapposite. (See *Butt v. State of California* (1992) 4 Cal.4th 668, 681-682 [state's duty to fund local school district]; *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1196-1197 [public entities are not "persons" suable under the California False Claims Act].)

CSU makes two statutory preemption arguments, both of which lack merit. First, CSU (at 49-55) argues that the "comprehensive statutory scheme for governing the CSU system" preempts the field of city parking taxation at CSU parking lots. But that argument contradicts this Court's repeated holdings that state statutes setting out a "comprehensive...scheme" for regulation do not preempt city taxation. (*Pines, supra*, 29 Cal.3d at p. 660; Opening Br. 22-24.) Indeed, CSU cites only decisions involving regulatory statutes preempting city *regulations* – not city *taxation*. (See *American Financial Services Ass'n v. City of Oakland* (2005) 34 Cal.4th 1239, 1252 [predatory lender regulations]; *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 [Penal Code vehicle forfeiture regulations].) And CSU's parking fee-setting authority (Ed. Code § 89701) does not preempt city parking taxes, just like the PUC's exclusive rate-setting authority did not preempt city utility taxes in *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 139 (*Rivera*), disapproved on another ground in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 9. That is because parking charges and parking taxes

are not the same thing, as held in *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank* (1998) 64 Cal.App.4th 1217, 1227 – a holding which CSU (at 58-60) overlooks. If the Legislature intended to limit city parking tax power, it would have done so; the Legislature knows how to express an intention to limit taxation of private parties doing business with CSU. (See, e.g., Ed. Code §§ 89912, 90054 [interest on CSU-issued bonds exempt from certain taxes].)

CSU's second preemption argument (at 56-60) is that parking tax collection is an obstacle to CSU's mission, because taxes increase the total cost of parking for students and faculty. But that rationale is just a new spin on long-discredited arguments for tax immunity. (Opening Br. 30-38.) Under modern tax law, CSU's constituents do not have a special right to avoid paying their fair share of taxes that fund the city services they enjoy. In 1978, this Court rightly rejected the same argument from state employees in *Weekes, supra*, 21 Cal.3d at p. 398. Forty years later, that argument remains outdated.

3. There are fundamental differences between city regulation of state agencies, and requiring city tax collection from private parties doing business with state agencies.

Both *Ainsworth* and *Rivera* rejected arguments, like the universities' here, that a state bar on city regulation also bars a city tax collection requirement. The universities argue that both cases are distinguishable because they involved private entity tax collectors, not state agencies. (Regents 20-22; Hastings 39-42 & 45-47; CSU 42.) But the universities ignore the rationale of these decisions: that there are fundamental differences between a city regulation, and a city tax collection requirement.

Just because a tax collection requirement requires that a selling entity *do something*, does not mean that a tax collection "requirement conflicts in the sense of 'regulation' such as the constitutional provision reserves to the state and withdraws from the municipality." (*Ainsworth, supra*, 34 Cal.2d at p. 476.)

These decisions and others (Opening Br. 22-24) reflect this Court's practice of carefully distinguishing between city regulations and city taxation. That sensible practice serves two important purposes.

First, it minimizes judicial invalidation of duly enacted city and state laws, allowing courts to "avoid making such unnecessary choices [between state and local power] by carefully insuring that the purported conflict is in fact a genuine one, unresolvable short of choosing between one enactment and the other." (*California Federal, supra*, 54 Cal.3d at p. 17.) Here, of course, San Francisco has been arguing for coexistence between the state universities' freedom from city regulation of their property and their academic affairs, and city parking tax collection. The universities cannot show that any statute or constitutional provision would be negated by upholding San Francisco's parking tax collection requirement. Nevertheless, they ask the Court to invalidate San Francisco's parking tax collection requirement. The universities are not practicing the judicial minimalism that they preach. (Regents 42-46; Hastings 28-29.)

Second, there is a genuine difference between city regulation and city taxation; and contrary to the universities, this distinction is highly "principled" (Regents 25-27; Hastings 36-42). The two powers are distinct, as this Court observed in *City of Glendale v. Trondsen* (1957) 48 Cal.2d 93, 103, a case which the universities do not address. The purposes of these two powers are different. Regulation controls and monitors conduct for the

benefit of public health, safety, and welfare. Taxation, by contrast, raises money so that government can exist; the power to tax is "fundamental" (*Pines, supra*, 29 Cal.3d at p. 662) and an "essential attribute" of charter cities (*Ainsworth, supra*, 34 Cal.2d at p. 472). And the effects of city regulation and city taxation are different when it comes to state agencies. City regulation has the potential to usurp state agencies' fundamental management decisions. But city taxation of state agency customers, and requiring city tax collection, do not have the same effect on state agencies. Private parties are the focus of the tax, and the collecting state agency is only incidentally affected. The universities' complaints about these incidental effects ring hollow. They assert an injury to their sovereign dignity from tax collection; but there is "nothing in this burden which frustrates" the universities' self-governance. (*Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation* (1976) 425 U.S. 463, 483 (*Moe*).)[8] The only concrete benefit of immunity assert by the universities is the economic benefit of tax avoidance for themselves and their customers.[9] Until eighty years ago, that argument had weight; it does not now. (Opening Br. 31 n.5.)

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[8] The universities (Regents 33) also complain that different campuses may be subjected to different city parking tax rates, creating complication and confusion. But the universities already conform their campuses' retail operations with the varying sales and use tax rates that apply in different counties. (Rev. & Tax. Code §§ 6006, 6015). In any case, as in *City of Modesto, supra*, 34 Cal.App.4th at pp. 508-509, the Court can mitigate any administrative burden by ordering the deduction of any additional clerical and accounting expenses from parking tax remittances.

[9] Contrary to the Regents (at 50), the term "customers" is appropriate here, just as it was appropriate to call state employees in *Weekes* "employees" as far as their liability for city tax was concerned. No matter how elevated their station or constitutional role, all Californians bear their fair share of the tax burden. The Governor himself, who is vested with the "supreme executive power of this State" (Cal. Const. art. V, § 1), receives income and a W-2 for his trouble – making him just another "employee" in the view of the Franchise Tax Board.

San Francisco's writ petition does not seek improper regulation of the universities; it seeks proper city tax collection. Here, the universities made a considered management decision to use various parcels of their property to sell parking, which they determined would serve their educational and clinical needs. San Francisco does not seek to regulate these decisions. But having decided to sell parking, the universities have customers whose city parking taxes are due and owing, just like anyone else who pays to park in San Francisco. All San Francisco wants is that the universities collect and remit the parking taxes owed by their customers, just like any other parking operator in San Francisco. There is no constitutional provision or statute that would be violated by city tax collection, and there is no good reason for the universities not to collect the taxes their customers owe.

II. The rule of decision urged by San Francisco will work in this case and others.

A. San Francisco's taxing power has limits – but requiring parking tax collection by the state universities is well within those limits.

According to the universities, San Francisco is arguing "that its taxation powers are unconstrained" (CSU 40) and for a "blind application of municipal law" (Regents 22) which "absolutely supersedes the State's interests" (Regents 27) and will "plac[e] state agencies presumptively under municipal control" (Regents 42). But that is not the rule of decision proposed by San Francisco. Rather, the rule that follows from the Constitution and this Court's past decisions is: A charter city may exercise its municipal affairs taxing power to enact a generally applicable tax and reasonable tax collection requirements, including that a seller collect and remit taxes owed by its private party customers; and it is both reasonable

and a proper exercise of municipal affairs power to require a state university to collect and remit city parking taxes owed by its customers. This rule is not "unyielding" (Regents 17) to legitimate statewide interests. Rather, it simply recognizes that there is no legitimate statewide interest in state university parking lots refusing to collect city parking taxes owed by their customers.

1. A city cannot use its revenue power to impose a tax that is a regulation in disguise – and San Francisco has not done so.

A city cannot bypass limitations on city regulatory power by enacting a measure that is nominally a revenue measure, but has as its primary object the control and regulation of conduct. Thus, a tax can be so confiscatory and punitive that a court will deem it an exercise of regulatory power, not revenue power. (*Oakland Raiders, supra*, 65 Cal.App.3d at pp. 627-628 [business license tax held not to be a regulation].) But here, the universities do not argue that the parking tax itself is confiscatory and punitive; they simply object that a requirement to collect it is a "regulation" – notwithstanding *Ainsworth* and *Rivera*'s holding that requiring tax collection is not a regulation, but rather an exercise of revenue power with the purpose of ensuring revenue is collected.

This regulatory-revenue distinction also answers two more of the universities' complaints about San Francisco's rule. The universities assert the rule is not "judicially administrable" (Regents 28-32) – but the revenue-regulatory distinction is one courts routinely make, in preemption cases as well as other areas of legal analysis (Opening Br. 29 & n.4), including tax immunity cases (*Jefferson County, Ala. v. Acker* (1999) 527 U.S. 423, 439-440 (*Acker*)). As for the universities' claim that a decision in San

Francisco's favor won't stop with the revenue power (Regents 25-27; Hastings 38-39) – under San Francisco's rule, it does.

2. Tax collection requirements must be reasonable – and San Francisco's tax collection requirement is reasonable as to private and public parking operators whose customers owe parking tax.

A city's revenue power permits it to enact tax collection measures that are reasonable. The universities do not dispute that it is reasonable to require a private parking operator to collect and remit its customers' parking tax payments. It is no less reasonable to require a public agency parking operator to collect and remit city parking taxes owed by its customers. Without such a requirement, tax avoidance on a massive scale occurs. (Opening Br. 38-46.)

Perhaps recognizing this, the universities do not argue that it is unreasonable to require them to collect and remit city parking tax owed by their customers. Instead, they attack the reasonableness test. (Regents 28-35; Hastings 14, 31-36, 45-46.) But their criticisms are unwarranted.

The universities assert that a reasonableness test involves "free-form" and "ad hoc" judgments that courts are ill-equipped to make. (Regents 28-35; Hastings 28, 38-39.) But courts routinely rule on the reasonableness of tax collection measures. As already discussed, *Ainsworth*, *Rivera*, and *City of Modesto* held it reasonable to require a seller to collect taxes owed by its customers. Other decisions have held reasonable various other measures aiding tax collection. (See, e.g., *Western Oil & Gas Ass'n v. State Bd. of Equalization* (1987) 44 Cal.3d 208, 214 [subpoena for financial information]; *Ainsworth, supra*, 34 Cal.2d at p. 476 [requirement that seller maintain records, file returns, and obtain

registration certificate]; *People v. Skinner* (1941) 18 Cal.2d 349, 356 [use of judgment lien for collection].)

To the same point, the "ad hoc" approach criticized by the universities is the precise approach endorsed by this Court for "municipal affairs" questions: "the task of determining whether a given activity is a 'municipal affair' or one of statewide concern is an ad hoc inquiry." (*California Federal, supra*, 54 Cal.3d at p. 16.) This case-by-case approach "avoid[s] the error of 'compartmentalization,' that is, of cordoning off an entire area of governmental activity as either a 'municipal affair' or one of statewide concern." (*Id.* at p. 17.) The universities here fall into that error, with their demand for an absolute rule that a city can never require a state university to do anything (a rule the Regents, at 38-46, creatively call "consent-based").

The universities also mistakenly claim that the reasonableness rule presumes that every sort of tax collection measure that is reasonable for private entities is also reasonable for public entities. (Regents 18, 22-23, 29; Hastings 31.) Not so. Because the power to enact reasonable tax collection measures is an outgrowth of municipal affairs power, *Ainsworth, supra*, 34 Cal.2d at p. 476, the reasonableness test necessarily accommodates the potential for statewide interests. Thus, if there were a "transcendent interest" (*California Federal, supra*, 54 Cal.3d at p. 15) in state agency parking operators not collecting and remitting valid city taxes their customers owe, that would constrain San Francisco's municipal affairs power. But plainly, there is no transcendent state interest in aiding private parties in avoiding city parking taxes – let alone a statute or constitutional provision providing for it. For that reason, it is reasonable to require state agencies selling parking to undertake the threshold duty to collect and remit

taxes, because if they do not do so, their customers will avoid paying the taxes they owe.

3. In this petition, San Francisco seeks no more than an order that the universities collect and remit city parking taxes owed by their customers, and the Court need not rule on any other tax or tax enforcement provision.

The universities devote a substantial portion of their briefs to the hypothetical validity of other provisions of San Francisco's parking tax ordinances that are not before the Court. (Regents 30-31 & 34-35; Hastings 15-17 & 50; CSU 21-22 & 59-60.) But as the universities acknowledge (CSU 23 n.10), all that San Francisco's writ seeks to require is that the universities "collect and remit parking taxes" to San Francisco (CT019) – not compliance with every provision of the San Francisco tax code that might apply now or in the future. (CT011, 018, 019.)

Questions about other provisions of San Francisco's tax code are not before the Court and are not ripe for decision; and because San Francisco's tax code has a severability provision (S.F. Business & Tax Regulations Code art. 6, § 6.23-1 [CT093]), the potential inapplicability of more onerous tax enforcement provisions does not affect the state universities' basic duty to collect and remit parking tax. (*Acker, supra*, 527 U.S. at pp. 440-441 & n.11 [finding no need to rule on "hypothetical" tax enforcement actions county had not undertaken, and relying on severability clause]; *City of Modesto, supra*, 34 Cal.App.3d at p. 509 [declining to rule on penalty provisions in tax ordinance].)

Likewise, the Court need not rule on the hypothetical question whether San Francisco could impose its parking tax directly on a state

agency (Regents 24-25; CSU 46-47), since San Francisco expressly does not do so.

4. San Francisco's parking tax and parking tax collection requirement conforms with intergovernmental taxation law.

As explained in the Opening Brief (at 29-38), under intergovernmental taxation law, the employees, customers, and contractors of Government A cannot claim immunity from taxation by Government B – regardless whether they are performing "governmental" functions for Government A, and regardless of the increased costs to Government A caused by Government B's tax. Government A's constituents still must pay their fair share of Government B's taxes, just like everyone else who lives and works under Government B and enjoys its services. Under this law, the universities' extended discussions of their educational and clinical missions, and the usefulness of their parking lots, are irrelevant. (Regents 10-14, 46-51; Hastings 24-27; CSU 17-21, 56-57.[10]) Where *Weekes* held a city tax on wages paid to state employees did not offend state sovereignty, it cannot seriously be argued that San Francisco's parking tax on state university parking customers does so.

These principles are equally applicable to tax collection. Indeed, the central insight from the tribal cases cited in the Opening Brief (at 40-41) is that requiring Government B's taxes to be collected from Government A's customers who owe them is not a "gross interference" with Government

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[10] In these discussions, the universities cite several internet sources that are not in the record and are not properly before the Court, and should be disregarded. (*Ragland v. U.S. Bank Nat. Ass'n* (2012) 209 Cal.App.4th 182, 193 ["While we may take judicial notice of the existence of the audit report, Web sites, and blogs, we may not accept their contents as true."].)

A's sovereignty – rather, it prevents illegitimate tax avoidance by Government A's customers, and the evils that go with it. (*Moe, supra*, 425 U.S. at pp. 482-483.) That principle applies here, notwithstanding the differences between federal tribal law and California law.

The universities suggest that the federal-state analogy is helpful to them, because – they argue – a state cannot require the United States to collect a state tax, and they stand in the same position as the United States vis-à-vis cities. (Hastings 47-51; CSU 46-48.) But as the universities observe (Hastings 48), the United States Supreme Court has never held that the United States cannot be required to collect a state or local tax; and given federal statutes mandating cooperation with state and local tax authorities,[11] it is unlikely the issue will come to a head. (*Acker, supra*, 527 U.S. at p. 441 & n.11.) Moreover, the United States' position is not analogous. There is a Supremacy Clause in the United States Constitution ensuring federal superiority, and its Tenth Amendment does not grant any power to states, it merely reserves it. By contrast, the California Constitution contains no Supremacy Clause, and its article XI, section 5 expressly grants a share of California's sovereign power to charter cities – which they exercise concurrently with other agencies and branches of California government (see *supra* Part I). (See also *Board of Trustees of CSU v. City of Los Angeles* (1975) 49 Cal.App.3d 45, 49 ["There is no provision in the law of California which creates enclaves on property owned by the state

[11] Just like these federal statutes, the California statutes cited by the universities providing for state agencies' collection of city sales taxes, telephone taxes, and documentary transfer taxes (Hastings 32) underscore the reasonableness of intergovernmental tax collection.

comparable to the federal enclaves of exclusive federal jurisdiction which exist within the several states."].)[12]

Finally, San Francisco's parking tax is nondiscriminatory, consistent with the requirements of intergovernmental taxation law. It applies to hundreds of parking lots and garages throughout the city, and there is no evidence that San Francisco has targeted state agencies or their customers for discriminatory taxation (unlike in *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1357-1358; see Opening Br. 49-50). Against all of this, Hastings is wrong to claim that the parking tax discriminates in San Francisco's favor, on the grounds that "the tax does not apply to the thousands of metered parking spaces owned and operated by San Francisco." (Hastings 50-52.)

Initially, Hastings waived this claim by failing to raise it in Superior Court, after the universities were ordered "to show cause, if they have any, as to why a peremptory writ of mandate should not issue as requested." (CT156.) All Hastings did was remark in a footnote that San Francisco had *chutzpah* to argue that Hastings sought to turn its own tax immunity into a competitive market advantage, where San Francisco operated "thousands of on-street metered parking spaces" and "metered parking in San Francisco is explicitly exempted from the parking tax." (CT261.) But Hastings

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[12] The universities (Regents 41; Hastings 54) cite decisions from two other states that, unlike California, adopt the anomalous position that state law can fully authorize a city to enact a valid tax applicable to a state agency's customers, yet impose no obligation whatsoever on the selling agency to collect the valid city taxes owed by its customers. (See *City of Boulder v. Regents of Univ. of Colo.* (Colo. 1972) 501 P.2d 123, 127; *City of Chicago v. Bd. of Trustees of the Univ. of Illinois* (Ill.Ct.App. 1997) 689 N.E.2d 125, 130.) And these decisions can be further distinguished. The Colorado decision did not involve a tax on parking, but rather a tax on admission to university events. As for the Illinois decision, this Court observed that Illinois cities do not have the extensive powers of California cities. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140.)

nowhere claimed this was impermissible "discrimination." To the contrary, at oral argument Hastings commented that the "discriminatory or nondiscriminatory" character of the tax was a "red herring" and "really does not make a difference." (CT645-646.)

Not only that, Hastings' discrimination claim is hypothetical. There is no evidence here that Hastings has metered parking at which its customers would be subject to taxation, where customers at similar meters operated by San Francisco would not. (See *United States v. Nye County, Nevada* (9th Cir. 1999) 178 F.3d 1080, 1088 [Nevada tax exemption for contractors with "state-supported educational institutions" did not discriminate against federal government "because Nevada has no federally-supported educational institutions"].)

Regardless, the tax classification for metered parking is not impermissible tax discrimination. A tax classification may be supported by "'significant differences between the two classes'" at issue. (*Davis v. Michigan Dep't of Treasury* (1989) 489 U.S. 803, 816 (*Davis*), quoting *Phillips Chemical Co. v. Dumas Independent School Dist.* (1960) 361 U.S. 376, 383 (*Phillips*).) And here, there are significant differences between metered street spaces, versus garage and lot parking. Unlike off-street parking, the central purpose of metered parking is the regulation of traffic on public streets. "We think there can be no serious question but that parking meters function primarily as an aid to traffic control. They have long been recognized judicially as a legitimate aid to traffic regulation." (*Mervynne v. Acker* (1961) 189 Cal.App.2d 558, 561.) The unique traffic control function of parking meters is reflected by the fact that the various provisions of state law concerning local cities' and counties' authority to establish metered parking and charge fees (Vehicle Code §§ 22508,

22508.5, 22511.3, 22511.5) are interspersed with other traffic regulations for "Stopping, Standing, and Parking" in the public right of way. (Vehicle Code, div. 11, ch. 9, §§ 22500-22526.) This traffic management function is a proper, nondiscriminatory reason for the different classification of parking meters. This classification is nothing like the unmistakable discrimination in the cases cited by Hastings. (See *Davis, supra*, 489 U.S. at pp. 814-818 [where state exempted its own retired employees' pension benefits from state income tax, it could not tax retired federal employees' pension benefits]; *Phillips, supra*, 361 U.S. at pp. 377-387 [where state exempted lessees of state property from property tax, it could not tax lessees of federal property].)

And common sense supports the conclusion that there is no discrimination here. The differential treatment of street spaces does not specially benefit any fixed category of individuals: anyone can park in a street space and not pay the tax, including Hastings students; and anyone can park in a garage and pay the tax, including San Francisco employees. If this is discrimination in favor of San Francisco, it is not very effective.

Lastly, Hastings complains that San Francisco enjoys an unfair economic advantage by virtue of its status as a market participant and taxing agency, which means both parking fees and parking taxes end up going into San Francisco's treasury. But the same structural complaint could be raised in any intergovernmental tax case. After all, the State of California receives California income taxes from its employees, then gets to use the same money to pay those employees; but that is not grounds for federal employees to cry foul.

B. The "proprietary vs. governmental" rule does not provide an appropriate or reliable solution to this taxation question.

As explained in the Opening Brief (at 46-49), the "proprietary vs. governmental" rule advocated by the universities has two significant shortcomings: it conflicts with the law that taxes may properly be levied even on "governmental" activities such as paying public employees, as in *Weekes*; and its results are unpredictable. The universities do not address the first issue; and their cure for unpredictability (Hastings 26-27) is to expand the definition of "governmental" activity to include any public entity activity authorized by law and benefiting the entity, other than purely revenue-raising activity.

And while San Francisco's position on this test remains the same – that it is not suited to taxation – if it applies here, San Francisco prevails because selling parking is a proprietary activity. (Opening Br. 51-53.) The universities' contrary arguments conflate their governmental authority to construct and operate parking garages, with the proprietary activity of selling parking to private customers. (Regents 51; Hastings 36.) As this Court explained in *Regan*, only an activity that is "closely related" to core university functions is considered governmental; but financial transactions that support core government functions are not governmental, especially when – as here – "the University is acting in a capacity no different from a private" seller of parking. (*Regan, supra*, 17 Cal.3d at p. 537.) Immunity should remain carefully cabined. And here, the accounting and clerical tasks associated with tax collection do not impinge on the universities' academic and clinical activities.

CONCLUSION

This Court should reverse, and direct that a writ of mandate be issued directing the state universities to collect San Francisco parking tax from their customers and to remit those funds to San Francisco.

Dated: June 8, 2018

DENNIS J. HERRERA
City Attorney
CHRISTINE VAN AKEN
Chief of Appellate Litigation
PETER J. KEITH
Chief Attorney, Neighborhood & Residential Safety Division

By: _____
PETER J. KEITH
Attorneys for Plaintiff/Appellant
CITY AND COUNTY OF SAN FRANCISCO

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 8392 words up to but not including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on June 8, 2018.

DENNIS J. HERRERA
City Attorney

By: _____
PETER J. KEITH
Attorneys for Plaintiff/Appellant
CITY AND COUNTY OF SAN FRANCISCO

ATTACHMENTS
(Rule 8.520(h))

FILE NO. 228-70-5 ORDINANCE NO. 9-71

AMENDING ARTICLE 9, PART III OF THE SAN FRANCISCO MUNICIPAL CODE BY AMENDING SECTION 601 THEREOF, RELATING TO IMPOSITION OF A TAX ON THE PARKING OF MOTOR VEHICLES IN PARKING STATIONS, TO REVISE THE DEFINITIONS OF THE TERMS "PERSON" AND "OPERATOR" AND BY AMENDING SECTION 616 THEREOF TO CLARIFY THE STATUS OF GOVERNMENTAL AGENCIES.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Sections 601 and 616 of Article 9 of Part III of the San Francisco Municipal Code are hereby amended to read as follows:

Sec. 601. Definitions. When used in this Article the following terms shall mean or include:

(a) "Person." A natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the State of California, any political subdivision of the State of California, the United States, any instrumentality of the United States, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to corporations and business entities shall mean the officers thereof.

(b) "Operator." Any person operating a parking station in the City and County of San Francisco, including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, mortgagee in possession, licensee or any other person otherwise operating such parking station. A person who otherwise qualifies as an operator as herein defined shall not, by reason of the fact that he was exempt from the tax herein imposed, be exempted from the obligations of an operator hereunder.

(c) "Occupant." A person who, for a consideration, uses, possesses or has the right to use or possess any space for the parking of a motor vehicle in a parking station under any lease, concession, permit, right of access, license to use or other agreement or otherwise.

(d) "Occupancy." The use or possession or the right to the use or possession of any space for the parking of a motor vehicle in a parking station.

(e) "Parking Station." The term "parking station" shall include, but is not limited to: (1) any outdoor space or uncovered plot, place, lot, parcel, yard or enclosure, or any portion thereof, where motor vehicles may be parked, stored, housed or kept, for which any charge is made; (2) any building or structure, or any portion thereof in which motor vehicles may be parked, stored, housed or kept, for which any charge is made.

(f) "Motor Vehicle." The term "motor vehicle" includes every self-propelled vehicle operated or suitable for operation on the highway.

(g) "Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

(h) "Return." Any return, filed or required to be filed as herein provided.

(i) "Tax Collector." The Tax Collector of the City and County of San Francisco.

(j) "Controller." The Controller of the City and County of San Francisco.

(k) "City and County." The City and County of San Francisco.

(l) "Tax." The tax imposed by this Article.

(m) "Parking Meter." Any device which, when the recording device thereof is set in motion, or immediately following the deposit of any coin, shall register the period of time that any motor vehicle may be parked adjacent thereto.

Sec. 616. Saving Clause. Nothing in this ordinance shall be construed as requiring the payment of any tax by the United States of America, or by the State of California, or by any municipal corporation, or by any of their subdivisions; nor shall this ordinance be construed as requiring the payment of any tax prohibited by the Constitution of the United States or by the Constitution of the State of California.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

APPROVED AS TO FORM:

THOMAS M. O'CONNOR, City Attorney

By S/John J. Doherty
Deputy City Attorney

328-70-5

CITY AND COUNTY OF SAN FRANCISCO

DEPARTMENT OF FINANCE AND RECORDS

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
1970 DEC 18 AM 11:31
BY

OFFICE OF
TAX COLLECTOR
CITY HALL
SAN FRANCISCO, CALIF. 94102
TEL.: 558-6161

December 17, 1970

SUBJECT: Parking Tax Ordinance

Through Thomas J. Mellon,
Chief Administrative Officer

Honorable
Board of Supervisors
Room 235, City Hall
San Francisco, California

Attention: Robert J. Dolan,
Clerk of the Board

Gentlemen:

Please find attached a proposed amendment to the Parking Tax Ordinance which mandates that non-taxable entities such as governmental agencies collect parking charges from their employees or the general public if they are parking their automobiles in parking stations owned or operated by such entities and are paying a parking charge for such privilege of parking.

For your additional information please find attached copies of correspondence from the Vice Chancellor in charge of administration for the University of California, San Francisco, a letter from the Tax Collector to the City Attorney asking for an opinion and an opinion from the City Attorney outlining the reasons therefore and his suggested amendment for the correction of this deficiency.

Very truly yours,

Virgil L. Elliott

Approved by: Virgil L. Elliott,
DIRECTOR, FINANCE & RECORDS

Thad Brown

TB:gc

Thad Brown,
TAX COLLECTOR

PROOF OF SERVICE

I, CATHERYN M. DALY, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On June 8, 2018, I served the following document(s):

PETITIONER AND APPELLANT CITY AND COUNTY OF SAN FRANCISCO'S REPLY BRIEF

on the following persons at the locations specified:

California Court of Appeal
350 McAllister Street
Division One
San Francisco, CA 94102

Robert E. Asperger
Deputy Attorney General
Gonzalo C. Martinez
Deputy Solicitor General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Email: Gonzalo.Martinez@doj.ca.gov
Email: bob.asperger@doj.ca.gov
Counsel for Respondent The Board of Trustees ***of the California State University***

Margaret L. Wu, Managing Counsel, Litigation
University of California
Office of the General Counsel
1111 Franklin St., 8th Floor
Oakland, CA 94607
Tel: (510) 987-9747
Fax: (510) 987-9757
Email: Margaret.Wu@ucop.edu
Counsel for Respondent Regents of the University of California

Elise Traynum, General Counsel
University of California
Hasting College of the Law Office of the General Counsel
200 McAllister Street
San Francisco, CA 94102-4978
Tel. (415) 565-4787
Email: traynume@uchastings.edu
Counsel for Respondent Board of Directors of Hastings College of the Law

Benjamin P. Fay, Esq.
Gabriel McWhirter, Esq.
Jarvis Fay Doporto & Gibson, LLP
492 Ninth Street, Suite 310
Oakland, CA 94607
Tel. (510) 238-1400
Fax (510) 238-1404
Email: bfay@jarvisfay.com
Email: gmcwhirter@jarvisfay.com
Counsel for Respondent Board of Directors of Hastings College of the Law

Bradley S. Phillips
Benjamin J. Horwich
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105-2907
Tel. (415) 512-4000
Email: Ben.Horwich@mto.com
Email: Brad.Phillips@mto.com
Co-Counsel for Respondent Regents of the University of California

Dila Mignouna
Munger, Tolles & Olson LLP
1155 F Street N.W., Seventh Floor
Washington, DC 20004-1357
Tel: (202) 220-1100
Email: Dahlia.Mignouna@mto.com
Co-Counsel for Respondent Regents of the University of California

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE**: I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery ☐ is attached** or **☐ will be filed separately with the court.**

☐ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through **TrueFiling** in portable document format ("PDF") Adobe Acrobat.

☐ **BY FACSIMILE**: Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number Fax #' to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and **a copy of the transmission report ☐ is attached** or **☐ will be filed separately with the court**.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed June 8, 2018, at San Francisco, California.

CATHERYN M. DALY