In the Supreme Court of the State of California

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff and Appellant,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Defendants and Respondents.

Case No. S242835

First Appellate District, Division One, Case No. A144500
San Francisco County Superior Court, Case No. CPF-14-513-434
Honorable Marla J. Miller, Judge

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INTRODUCTION

The City and County of San Francisco by ordinance requires that parking lot operators within the City "shall" collect a parking tax from lot users, and, if the lot operator fails to do so, it "shall" be liable to the City's Tax Collector for the parking taxes just as if the operator had collected them. (CT 27.) Although the parking tax ordinance has been in place since 1970, only recently has San Francisco attempted to enforce this ordinance against the State or state entities like respondent California State University (CSU), which operates parking facilities for staff and students on its San Francisco State University campus. Beginning in 2011, the City demanded that CSU begin collecting and paying over parking taxes. As the trial court and Court of Appeal correctly held, CSU cannot be unwillingly enlisted by the City to collect these local taxes.

San Francisco appears to concede, as it must, that even as a charter city with constitutional "home rule" powers over its municipal affairs, it cannot directly tax CSU, a state entity. (See OBM 14, 30.) Further, it has carefully avoided any attempt to enforce that part of its ordinance requiring a parking lot operator to pay over the amount due in taxes even where the operator does not collect taxes from lot users. (OBM 17; see also footnote 10, below.) And it appears to acknowledge that it lacks authority to *regulate* CSU. (See OBM 24.) But, San Francisco asserts, its authority to conscript CSU into its tax collection efforts is a natural result of its home rule power to raise revenues. It contends that a city may use its taxing power to force a state entity to collect local taxes and take other tax-related actions even where the city lacks regulatory power over that same entity.

San Francisco's bifurcated view of its home rule powers was rejected by this Court more than 25 years ago in *California Federal Savings*

& Loan Association v. City of Los Angeles (1991) 54 Cal.3d 1 (*California Federal*). As the Court there held, "charter city tax measures are subject to the same legal analysis and accumulated body of decisional law under" the constitutional home rule provision "as charter city regulatory measures." (*Id.* at p. 7.) Stated simply, the City cannot accomplish by a tax measure what it is prohibited from doing by regulation.

San Francisco attempts to avoid this result by relying on cases that support the taxation of private parties, and that express the limits of the intergovernmental taxation doctrine. These arguments are beside the point. The question is not whether third parties doing business with the State should be exempt from local taxes that the City could collect on its own, but whether CSU—a state entity carrying out a statewide mission under a comprehensive statutory scheme—can be required by city ordinance to hire staff, institute protocols, and collect and pay over local taxes from its students, staff, and others using state-owned parking lots. Under fundamental principles of sovereignty recognized by this Court in *In re Means* (1939) 14 Cal.2d 254 and *Hall v. City of Taft* (1956) 47 Cal.2d 177, it cannot. San Francisco, a municipal corporation, cannot control the actions of CSU, a state agency carrying out its charge under state statute, unless the Constitution requires that result (it does not) or the Legislature has consented (it has not).

That should end the inquiry. But even if this Court is inclined to consider the question presented through the lens of preemption (an analysis that should be reserved for consideration of local laws that apply only to private parties), the result is the same. The Constitution gives the state Legislature plenary control over education, and it has comprehensively regulated all aspects of CSU's operations, including parking facilities and

parking fees, occupying the field and leaving no room for San Francisco (or any other city) to impose additional requirements on CSU. Further, allowing the City to impose a 25 percent tax on top of parking fees that have been carefully set by CSU would interfere with CSU's funding prerogatives, and with student, staff, and visitor access to campus, standing as an obstacle to CSU's educational mission.

The Court of Appeal's judgment should be affirmed.

BACKGROUND

A. California's Constitutional Commitment to Public Education and the Role of the California State University System

California's longstanding, state-level commitment to public education is engrained in its Constitution. "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Cal. Const., art. IX, § 1.)[1] To that end, the Legislature has stated its commitment "to provide an appropriate place in California public higher education for every student who is willing and able to benefit from attendance." (Ed. Code, § 66201.) Higher education promotes the State's "economic, social, and cultural development" by "prepar[ing] all Californians for responsible citizenship and meaningful careers in a multicultural society." (Ed. Code, § 66002, subds. (f)(1), (f)(3).)

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[1] The quoted language first made its appearance in the Constitution of 1879; the Constitution of 1849 provided, similarly, that "[t]he Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement." (Cal. Const., art. IX, § 2 (1849).)

The California State University system is an essential component of the State's three-part system of higher education, together with the California Community Colleges and the University of California. (Ed. Code, § 66010.4; Cal. State Dept. of Ed., Master Plan for Higher Education (1960).)[2] The origins of the CSU system reach back to early statehood, beginning with a single school to train teachers. (See Gerth, The People's University: A History of the California State University (2010) pp. 3, 5.) As California's population and economy expanded, so did its need for affordable colleges offering a wider range of degrees. (*Id.* at pp. 63-64.) A decentralized network of state colleges grew in size, number, and diversification until, in 1960, the Master Plan for Higher Education recommended that they be consolidated into a single system of "California State Colleges," later renamed "The California State University." (Gerth, *supra*, at pp. 105-106, 629.) The Legislature implemented the Master Plan's findings and recommendations through the Donahoe Higher Education Act of 1960. (Ed. Code, § 66000 et seq.)

From its inception, CSU's mission to provide accessible, affordable, and high quality education has remained constant. (Gerth, *supra*, at p. 596.)[3] Today, CSU spans 23 campuses and enrolls some 479,000 students, making it the largest four-year public higher education institution in the

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[2] The Master Plan is available at http://www.lib.berkeley.edu/uchistory/archives_exhibits/masterplan/MasterPlan1960.pdf [as of March 23, 2018].

[3] See also CSU, The Mission of the California State University, <https://www2.calstate.edu/csu-system/about-the-csu/Pages/mission.aspx> [as of Mar. 23, 2018].

nation.[4] "One out of every 10 California employees is a California State University graduate, while one out of every 20 United States citizens with a college or university degree graduates from a campus of the California State University." (Ed. Code, § 67433, subd. (f).) In the 2015-2016 school year, CSU awarded 75 percent of California's degrees in agriculture, 60 percent in public administration, 51 percent in engineering, 50 percent in criminal justice, 44 percent in teaching, and 43 percent in nursing.[5]

Under state law, CSU is a state agency charged with the "management, administration, and control of the State College System of California." (Cal. Const., art. XX, § 23; see also Ed. Code, § 66606.2.) Acting through its Board of Trustees, CSU administers the system's campuses, including San Francisco State University. (Ed. Code, §§ 89001, subd. (a), 66600 et seq., 89000 et seq.) The Trustees include California's Governor, Lieutenant Governor, and Superintendent of Public Instruction, and other members appointed by the Governor and subject to confirmation by two-thirds of the California Senate. (*Id.*, § 66602, subd. (a).)

The Government and Education Codes vest the Board of Trustees with broad powers relevant to CSU's mission. It may adopt any rule or regulation for the governance of CSU consistent with state law. (Ed. Code, § 89030, subds. (a)(3), (d).) It has the power to construct or develop any building, facility, or improvement connected with the university (Ed. Code,

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[4] CSU, Fact Book 2017, <https://www2.calstate.edu/csu-system/about-the-csu/facts-about-the-csu/Documents/facts2017.pdf>; CSU History, <http://www.calstate.edu/explore/history.shtml> [as of March 23, 2018].

[5] CSU, Systemwide Information: The CSU's Value to Students, <http://www.calstate.edu/value/systemwide/> [as of March 23, 2018].

§ 66606); to acquire or sell university property (*id.*, § 89048); and to finance projects by issuing bonds (*id.*, § 90011 et seq.). The Board of Trustees may establish a university police force with statewide jurisdiction. (*Id.*, § 89560; Pen. Code, § 830.2.) And it may establish rules for "the maintenance of the buildings and grounds" of CSU, violation of which is punishable as a misdemeanor. (Ed. Code, § 89031.)

The Legislature also expressly addressed CSU parking facilities. Section 89701 authorizes CSU "to acquire ... real property and to construct, operate, and maintain motor vehicle parking facilities and other transportation facilities thereon for state university officers, employees, students or other persons." (Ed. Code, § 89701, subd. (a).) The Board of Trustees may prescribe the "terms and conditions of the parking, ... including the payment of parking fees" (*ibid.*), which it has done through regulation (Cal. Code Regs., tit. 5, § 42201). The Legislature provided that CSU is not authorized to run "a private parking program unrelated to state purposes in competition with private industry." (Ed. Code, § 89701, subd. (c).) Accordingly, all parking revenue must be deposited in a dedicated fund (*id.*, § 89701, subd. (b)(1)), which in turn may be used only for CSU-specific purposes: (1) the development or operation of parking facilities; (2) providing alternative transportation methods for students and staff; or (3) the acquisition of real property. (*Id.*, §§ 89701, subd. (b)(3), 89048, subd. (g).) In addition, the State University Revenue Bond Act permits the Board of Trustees to issue revenue bonds to finance university projects, secured by the anticipated future revenue from those projects. (*Id.*, § 90010 et seq.) Where the Board of Trustees finances the construction of a university facility in this way, it "shall" fix the parking fee at an amount "equal to

annual operating and maintenance expenses," including all redemption payments and interest charges on the revenue bonds. (*Id.*, § 90068.)

B. CSU's San Francisco State University Campus

CSU's San Francisco campus educates approximately 30,000 students and employs some 3,700 faculty and staff. (CT 190 ¶¶ 9-10.) The campus is located on over 140 acres in the Outer Sunset District, a mixed residential-urban environment where parking is scarce. (CT 189 ¶ 7 & 191 ¶ 24.) Visitors, students, and employees of San Francisco State University (SFSU) are not permitted to park at the nearby shopping center, but must park in SFSU lots or on city streets. (CT 189 ¶ 7.) Virtually all available parking at the campus is used by students, faculty, and staff. (CT 190 ¶ 8.)

SFSU's parking facilities provide ready access to campus for commuting students and staff who cannot use public transportation. (CT 191 ¶ 25.) Visitors also use SFSU parking to attend meetings, lectures, arts performances and other campus events. (*Id.* at ¶ 26.) SFSU offers competitive rates to its students and staff in order to ensure their access to campus parking lots. (CT 192 ¶ 27.) SFSU's parking facilities operate at a loss. (See *id.* at ¶ 31.)

CSU owns and operates SFSU's nine parking lots, which together provide approximately 3,200 on-campus spaces. (CT 189-190 ¶¶ 7, 11 & CT 195.)[6] Each is staffed and operated by SFSU employees. (CT 191 ¶ 21.) Security is provided by SFSU police. (*Id.* at ¶ 22.)

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[6] See SFSU Campus Master Plan, Traffic, Circulation, and Planning Section at p. 4.11-9 <http://sfsumasterplan.org/eir/chapter_4.11.pdf> [as of March 22, 2018].

During weekday business hours, four lots are reserved for use by faculty and staff with valid parking permits. (CT 190 ¶¶ 11-16.) Three are reserved for employees and residents of specific campus housing facilities. (CT 191 ¶¶ 18-20.) The final two are open to commuter students and visitors. (CT 190-191 ¶¶ 14, 17.) CSU offers both short- and long-term permits, but only students, faculty, and staff may purchase permits for periods longer than two days.[7]

C. The City and County of San Francisco and its Parking Tax Ordinance

San Francisco is a consolidated city and county that has adopted a charter to govern its internal "municipal affairs." (See Cal. Const., art. XI, § 5, subd. (a); see also *id.*, art. XI, § 6, subd. (b).)[8] San Francisco is the State's only chartered city and county. Like all cities, San Francisco also possesses constitutional police powers. (See Cal. Const., art. XI, § 7.)[9]

First enacted in 1970, San Francisco's parking ordinance imposes a 25 percent tax on "the rent of every occupancy of parking space in a parking station in the City and County." (S.F. Bus. & Tax Regs. Code, art. 9,

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[7] For details on SFSU's student, staff, and faculty parking permits, see generally <https://parking.sfsu.edu/sfsu-parking> [as of March 22, 2018].

[8] Article XI, section 5, subdivision (a) provides: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith."

[9] Article XI, section 7 provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

§§ 602, 602.5.) The ordinance provides that every parking operator "shall" collect the tax from the parking occupant and remit it to the City on a monthly basis. (*Id.*, § 604, subd. (a); art. 6, § 6.7-2, subd. (a).) If an operator does not collect the tax, it "shall be liable to the Tax Collector ... the same as though the Parking Tax were paid by the Occupant." (*Id.*, § 604, subd. (a).) Any parking tax that the operator is required to collect "shall be deemed a debt owed to the City" by the parking operator. (*Id.*, art. 6, § 6.7-1, subd. (d).)

The ordinance requires all parking lot operators, public or private, to obtain a certificate of authority from the City, which the City may refuse to issue or revoke if, in the City's view, the operator violates "any provision of the Business and Tax Regulations Code ...." (S.F. Bus. & Tax Regs. Code, art. 6, § 6.6-1, subds. (c), (f)-(g).) Operators must keep parking tax records and preserve them for five years. (*Id.*, art. 9, §§ 604, subds. (b)-(c), 607, subd. (d); art. 6, §§ 6.4-1, 6.7-1, subd. (a)(1).) On request, an operator must produce these records for inspection and must appear before the tax collector. (*Id.*, art. 6, § 6.4-1, subds. (a)-(d).) Under threat of penalties and sanctions, the tax collector may demand an operator's financial information to verify or determine tax liability or tax-exempt status. (*Id.*, §§ 6.5-1, 6.5-2.)

The ordinance requires parking operators to file monthly parking tax returns along with the remittance. (S.F. Bus. & Tax Regs. Code, art. 6, §§ 6.9-3, subds. (a)(1), (c), 6.7-2.) When a return is filed without the full remittance, the unpaid amount is immediately due and payable to the City. (*Id.*, § 6.7-2, subd. (d).) The City may also impose a penalty. (*Id.*, § 6.17-1, subd. (a).) Finally, the ordinance authorizes the City to sue any operator

to collect any parking tax deficiency, along with interest and penalties. (*Id.*, § 6.10-3.)[10]

D. San Francisco's Enforcement Efforts Against CSU

SFSU has never collected city parking taxes. (CT 192 ¶ 28.) As originally enacted, the parking tax ordinance applied only to "a 'person' as defined" in the ordinance, which expressly *excluded* "'the United States of America, the State of California, and any political subdivision of either.'" (RJN Ex. A [Letter from City Attorney to Tax Collector re: File No. 228-70-1 (Nov. 27, 1970), at p. 1]; RJN Ex. B [S.F. Bus. & Tax Regs. Code, art. 9, former § 601, subd. (a) (1970)].) It also stated that "'[t]his Article shall not apply to any person as to whom ... it is beyond the power of the Board of Supervisors to impose the tax ....'" (RJN Ex. A at p. 2, Ex. B at p. 2.) According to San Francisco's City Attorney at the time, this earlier version of the ordinance reflected that "persons beyond the taxing power of the Board of Supervisors are exempt not only from the tax imposed by Article 9 [the parking tax] but also from all other provisions in Article 9, including specifically the duty to act as collection agent for the parking tax." (*Ibid.*)

More recently, the City amended its parking ordinance in an attempt to impose requirements on the State and state entities. The code has long provided that "nothing in [article 9 or other specified articles] shall be construed as imposing a tax upon ... [t]he State of California, or any county, municipal corporation, district or other political subdivision of the

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[10] The City argued below that because its writ petition "sought only to require respondents 'to collect and remit parking taxes' to San Francisco ....[,] it is not relevant whether other provisions of the ordinance could be enforced against respondents." (Court of Appeal OB 34, fn. 6, citing CT 19; see also Court of Appeal Reply 24-25.) But the provisions cited above apply to all operators.

State." (S.F. Bus. & Tax Regs. Code, art. 6, § 6.8-1, subd. (a)(2).) A 2010 amendment left that language unchanged, but it added subdivision (b) to provide that "[t]he foregoing exemption from taxation does not relieve an exempt party from its duty to collect, report, and remit third-party taxes." (RJN Ex. C [S.F. Ord. No. 291-10, File No. 101099 (approved Nov. 11, 2010)].)

After this amendment, in June 2011, the City Treasurer sent a letter demanding that SFSU collect and remit the parking tax. (CT 192 ¶ 29; CT 197.) Relying on this Court's decisions in *Hall* and *Means*, among others, CSU refused, asserting its constitutional immunity from local regulation. (CT 197-201.)

In 2013, the City again amended the parking tax, this time to exempt governmental entities from "revenue control equipment" and commercial parking permit requirements, leaving the tax collection and remittance requirements in place. (Compare S.F. Bus. & Tax Regs. Code, art. 22, § 2202, subd. (e), & S.F. Police Code, § 1215, with S.F. Bus. & Tax Regs. Code, art. 6, §§ 6.7-1, subd. (a), 6.8-1, subd. (b).) The City Treasurer then "directed [SFSU] to collect and remit San Francisco parking tax." (CT 203-204.) CSU restated its position that "the university is not obligated to collect any such tax." (CT 206.)

STATEMENT OF THE CASE

In January 2014, San Francisco filed suit seeking a writ of mandate directing CSU and the other state university defendants to collect and remit the City's parking tax, and restraining them from collecting "rent" for parking in San Francisco until they comply. (CT 19-20.) The petition also sought a declaration that each defendant is not exempt from the collection and remittance requirements. (*Ibid.*) The trial court denied the petition,

reasoning that the universities were constitutionally immune from the City's parking tax. (CT 556-564.)

The Court of Appeal affirmed. Relying on *Hall* and authorities applying *Hall*'s rule, the majority concluded that "the doctrine exempting state entities from local regulation prevents San Francisco from forcing the universities to collect and remit city taxes imposed on users of the universities' parking facilities." (Slip opn. 1, 17.) The court carefully considered and rejected all of the City's arguments, making clear that it was applying sovereignty-based principles (as set out in *Hall* and *Means*) rather than an analysis based on preemption of local law by state law. (See slip opn. 10-12.) Further, it rejected the City's invitation to apply a different and more permissive standard to local tax-related requirements such as tax collection, as compared to other local regulations. (*Id.* at p. 12.) The court concluded that "[w]hile there may be a value in having state entities collect and remit charter-city taxes, the doctrine incorporates readily available methods to implement any such value: state entities can voluntarily collect and remit those taxes, or the Legislature can tell them they must." (*Id.* at p. 17.)

The dissent acknowledged that requiring a state entity to collect a local tax brings the respective spheres of authority of the State and municipality within "harrowingly close proximity." (Dis. opn. 29.) But unlike the majority, the dissent found *Hall* largely inapplicable because in its view, requiring state entities to collect and remit the parking tax does not amount to impermissible "regulation" of the State. (*Id.* at pp. 9-12, 28-29.) The dissent would have resolved the case instead by looking to cases regarding a municipality's power to tax private parties and would have imposed the tax-collection requirement on CSU. (*Id.* at pp. 2, 9-28, 33.)

This Court granted review.

STANDARD OF REVIEW

On review of denial of a petition for writ of mandate where—as in this case—the trial court's decision did not turn on any disputed facts, the Court considers the questions of law presented de novo. (*Prof. Engineers in Cal. Gov. v. Kempton* (2007) 40 Cal.4th 1016, 1032.)

SUMMARY OF ARGUMENT

Under fundamental sovereignty principles, the City cannot enforce its parking tax ordinance against CSU. The principle, expressed in *In re Means* (1939) 14 Cal.2d 254 and *Hall v. City of Taft* (1956) 47 Cal.2d 177, is straightforward: the State, or a state entity carrying out its statutory charge, is not subject to local ordinances unless the state Legislature says it is. There is only one supreme sovereign, and only its lawmaking body—the state Legislature—can authorize the taxation or regulation of state entities carrying out the State's work. Over the decades and in the main, the courts of appeal have hewed to these early precedents and correctly held that municipalities relying only on their constitutional powers cannot enforce their local laws, including tax ordinances, against the State or state entities.

That San Francisco is a charter city with both "home rule" and police powers does not change the analysis. CSU is a state agency with a constitutionally recognized mandate to operate a public higher-education system, serving the constitutionally recognized statewide interest in education—a subject matter over which, as the Constitution provides, the state Legislature has plenary control. And the Legislature has exercised that control, regulating CSU's operations even as to the construction and operation of parking facilities, and the fees that may be charged for parking.

Stated simply, taxing or regulating CSU exceeds San Francisco's home rule and police powers.

Assuming for the sake of argument that the Constitution might in some instances leave room for charter cities to regulate the actions of state entities acting within their statutory mandates—a point that CSU does not concede—there is no valid argument that the City may tax or regulate CSU, in general or in relation to parking. Principles of preemption would prevent this result. As this Court has recognized in cases such as *Hall*, and more recently in *American Financial Services Association v. City of Oakland* (2005) 34 Cal.4th 1239, 1252, the Legislature may "impliedly fully occup[y] the field of regulation" and thereby preempt local attempts at regulation. Here, the Legislature's comprehensive statutory scheme governing the CSU system has fully occupied the field, leaving no room for local control of CSU or its campuses. Further, local laws stray into the "supramunicipal" and must give way when they "interfere with interests which transcend the municipality." (*California Federal*, *supra*, 54 Cal.3d at pp. 7, 13.) This may occur where, as in this case, the local law interferes with or stands as an obstacle to achieving the statewide education-related interests of the Legislature and state entity—here, in ensuring access to campus, and preserving SFSU's discretion to set campus parking fees to meet a variety of campus objectives, including funding parking facilities and transportation options. Whether viewed through the lens of sovereignty or preemption, the City's parking ordinance cannot be enforced against CSU.

ARGUMENT

I. UNDER FUNDAMENTAL SOVEREIGNTY PRINCIPLES, SAN FRANCISCO CANNOT REGULATE OR TAX CALIFORNIA STATE UNIVERSITY

A. Legal Framework: The Rule of *Means* and *Hall*

1. A Subordinate Governmental Entity Cannot Control a State Entity Carrying Out Its Statutory Charge

This Court's opinions in *In re Means* (1939) 14 Cal.2d 254 and *Hall v. City of Taft* (1956) 47 Cal.2d 177 recognize the inherent limits on a city's authority to apply its laws against state entities acting under state statute.

In *Means*, the Court held that Sacramento, a charter city, could not enforce its plumber certification ordinance on a state employee working on state property because that would "restrict[] the rights of sovereignty." (14 Cal.2d at p. 258.) It explained that "'[t]he municipal government is but an agent of the state, not an independent body. It governs in the limited manner and territory that is expressly or by necessary implication granted to it by the state.'" (*Id.* at p. 259, citation omitted.) "'[T]he state, when creating municipal governments, does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control,'" such as a state agency. (*Ibid.*, citation omitted.) "'From the nature of things'" a city simply cannot have "'a superior authority to the state over the latter's own property, or in its control and management.'" (*Ibid.*, citation omitted.) *Means* reasoned that Sacramento's ordinance was "inapplicable" to the State given the hierarchical nature of city-state relations: "Either the local regulation is ineffective [as to the state] or the state must bow to the requirement of its governmental subsidiary. Upon fundamental principles, that conflict must

be resolved in favor of the state." (*Id.* at pp. 259-260.) In short, the State "is not subject to the legislative enactments of subordinate governmental agencies." (*Id.* at p. 258.)

Similarly, in *Hall*, this Court held that the building ordinances of Taft, a general law city, did not apply to the construction of a public school. (47 Cal.2d at pp. 179, 189.) In addition to discussing the statewide nature and constitutional underpinnings of education (see Part I.A.2 below), *Hall* echoed *Means*'s hierarchical principles. The Court noted that no constitutional or statutory provision made school district buildings or their construction "any more amenable to regulation by a municipal corporation than structures which are built and maintained by the state generally for its use." (*Hall, supra*, 47 Cal.2d at pp. 182-183.) And "[w]hen [the State] engages in such sovereign *activities* as the construction and maintenance of its buildings, as differentiated from *enacting laws* for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (*Id.* at p. 183, italics added; see also *id.* at p. 184 [noting that preemption cases were not on point, and that *Means* was "most pertinent" because it involved "attempted regulation of a state activity"].)[11] And the rule of *Hall* remains good law today. (See *Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 871-872 [citing *Hall* with approval].)[12]

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[11] The Court in *Hall* thus was not distinguishing between state actions that were "sovereign" and those that were not, but rather between the State's operational aspect—its activities—and its regulatory aspect—its lawmaking.

[12] In response to *Hall*, the Legislature enacted statutes requiring that certain specified agencies created by state statute "shall comply" with the building and zoning ordinances of cities and counties in which they are

(continued...)

Means and *Hall* stand for the proposition that local governments relying only on their constitutional authority cannot control the activities of the State or state entities.[13]

2. Sovereignty Principles Apply with Special Force in Areas of Constitutionally Recognized Statewide Concern

In both *Means* and *Hall*, it was also significant that the state Constitution defined the underlying subject matter as one of statewide concern—in *Means*, the civil service system for state employees, and in *Hall*, the statewide system of common public schools—and charged the Legislature with enacting a comprehensive statutory scheme to carry out the constitutional mandate.[14]

(...continued)
situated. (Gov. Code, §§ 53090-53091, see also *id.*, §§ 53092-53095; *City of Lafayette v. East Bay Mun. Utility Dist.* (1993) 16 Cal.App.4th 1005, 1013 and fn. 4 [water district]; *City of Santa Cruz v. Santa Cruz School Bd. of Ed.* (1989) 210 Cal.App.3d 1, 6-7 [school district]; *Modesto Irr. Dist. v. City of Modesto* (1962) 210 Cal.App.2d 652, 656 [irrigation district].) Other examples of legislative consent to local regulation include Public Resources Code sections 30600, subdivision (a), and 30111 (coastal development permits); Public Resources Code section 5783.5, subdivision (b) (delegating to cities and counties the authority to appoint the board of supervisors of certain park districts); and Water Code section 22476 (requiring city consent to certain actions by irrigation districts). (See also Rev. & Tax. Code, § 7203, subds. (d) & (h)(4) [granting state consent for the Board of Equalization to administer local sales tax ordinances on behalf of municipalities]; Hastings Br. at Part IV.C.1 [explaining it is the Legislature's prerogative to waive immunity of its agencies]; Regents Br. at I.C. [explaining why consent-based rule is judicially administrable].)

[13] The evolution and nature of cities' police powers, and charter cities' home rule authority are further discussed at Part I.C.3, below.

[14] The dissent below expressed concern that any rule that would immunize the universities from local tax collection responsibilities would
(continued...)

Means examined former article XXIV, section 1 of the state Constitution setting out civil service requirements. (14 Cal.2d at p. 256.) It explained that "[t]he State Civil Service Act ... [was] adopted pursuant to the constitutional [provision and] provides in detail the method by which persons may secure and retain employment by the state." (*Ibid.*) *Means* reasoned that together, these authorities "provide a comprehensive plan for the selection of state employees"; the city plumbing certification ordinance was impermissible because it would interfere with the state constitutional and legislative scheme. (*Id.* at pp. 257-258.)

Hall also examined the state Constitution and legislative scheme governing public schools. It recognized that "their establishment, regulation and operation are covered by the Constitution" and that the Legislature's powers on this topic are "comprehensive." (47 Cal.2d at p. 179.) *Hall* collected numerous constitutional provisions, including article IX, section 6, providing that "[n]o school or college or any other part of the Public School System shall be ... placed under the jurisdiction of any authority other than one included within the Public School System." (*Id.* at p. 180.) The Court in particular emphasized article IX, section 1, then and now providing that "the *Legislature* shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (*Id.* at p. 179, italics in original.) These constitutional

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(...continued)
apply with equal force to legislatively-created local agencies such as irrigation and water districts. (Dis. opn. 16-17.) CSU notes that such entities generally do not share the attributes of the universities—operating under a comprehensive statutory scheme to carry out a statewide constitutional mandate. (See also Part I.C.4 below, discussing *City of Modesto*.)

provisions evidenced that "[t]he public school system is of statewide supervision and concern ...." (*Id.* at p. 181.)[15]

B. Under Principles of Hierarchical Sovereignty, San Francisco Cannot Compel CSU to Serve as Its Parking Tax Collector

Under these sovereignty principles, San Francisco, a subordinate governmental entity, cannot apply its parking tax to CSU or conscript it as a municipal tax collector. California's Constitution recognizes that CSU is a "state agency" vested with "the management, administration, and control" over the statewide college system providing "public higher education." (Cal. Const., art. XX, § 23; see also Ed. Code, § 66606.2.) Providing public education is a sovereign prerogative firmly grounded in the state Constitution and subject to the Legislature's exclusive control.

As *Hall* explained, the public schools are of statewide rather than local concern, and the state Constitution gives the Legislature "comprehensive powers" over their operation. (47 Cal.2d at p. 179; see also *ibid.*, quoting Cal. Const., art. IX, § 1.) The constitutionally recognized "public school system" to which *Hall* referred included the "state colleges" that would later become the state universities constituting today's CSU system. (See *id.* at p. 180, citing Cal. Const., art. IX, § 6; see also Ed. Code, § 89005 [providing that references to "state colleges" refer to CSU].) And the Legislature has enacted comprehensive regulations related to the operations of CSU. (Ed. Code, §§ 89000-90520.) Indeed, as noted, even in operating its parking facilities, the Legislature has provided

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[15] *Hall*'s alternative holding—that the Legislature had occupied the field—is discussed in *Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.* (1996) 43 Cal.App.4th 630, and in Part II.A, below.

that CSU must serve the statewide educational mission by prohibiting CSU from operating "a private parking program unrelated to state purposes in competition with private industry." (Ed. Code, § 89701, subd. (c).)[16]

In the words of *Hall*, where, as here, a state entity "engages in such sovereign activities ... it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (47 Cal.2d at p. 183.) As was the case for the general law city in *Hall* and the charter city in *Means*, San Francisco offers no argument that the Legislature has augmented the City's authority to allow regulation or taxation of CSU, or waived state immunity. Without such legislative consent, as a subsidiary governmental entity, San Francisco cannot tax, regulate, or enforce its ordinances against a state agency like CSU carrying out its constitutional and statutory duties.[17] Requiring CSU, a state agency engaged in a sovereign statewide activity, to collect a local tax exceeds the City's power to govern its "municipal affairs."

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[16] For a discussion of how local regulation of CSU, including of CSU's parking facilities, would stand as an obstacle to CSU's mission, see discussion at Part II.D, below. (See also Regents Br. at Part II.A.2-3 and Hastings Br. at Part IV.B [explaining that the universities operate parking facilities to further sovereign purposes not to compete in market for revenue].)

[17] Assuming CSU could itself consent without the Legislature's permission, it has not. Rather, CSU has at all times objected to San Francisco's attempt to collect the parking tax. (See Background, Part D, above.)

C. San Francisco's Attempts to Avoid the Rule of *Means* and *Hall* Must Be Rejected

San Francisco's opening brief largely fails to engage with principles of sovereignty. It mentions *Hall* in passing, noting only that it "said nothing about limits on city revenue power" (OBM 27; see also OBM 11, 46, 47), and makes no reference to *Means*. The City in reply may argue that these cases are outdated, or should be rejected. But, as discussed below, the sovereignty principles expressed in these cases were—and continue to be—solidly grounded. Reaffirming the rule of *Means* and *Hall* will not cause significant disruption, as the intervening body of intermediate appellate case law is generally consistent with these precedents.

Turning to San Francisco's affirmative arguments, in addition to arguing that it can regulate CSU under cover of its taxing powers—an argument that cannot be squared with this Court's decision in *California Federal*, *supra*, 54 Cal.3d 1812 (see discussion Part I.C.3, below)—San Francisco relies heavily on cases where courts have upheld municipal regulation of non-governmental third parties (OBM 18-24), and where principles of intergovernmental tax immunity have not precluded taxation of third parties (OBM 29-38). These authorities do not support the City's position that it is empowered to compel CSU to collect local parking taxes from students, staff, and visitors for actions taking place on its campuses.

1. Hierarchical Sovereignty is Solidly Grounded

State sovereignty is an attribute of statehood. As this Court recognized in *Johnson v. Gordon* (1854) 4 Cal. 368, 369, "States are original Sovereigns, with all powers of sovereignty not expressly delegated by the Federal Compact" to the federal government. That compact, in turn,

"preserves the sovereign status of the States" by "reserv[ing] to them a substantial portion of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status." (*Alden v. Maine* (1999) 527 U.S. 706, 714.)

By contrast, cities are not sovereign. "[I]n California as elsewhere they are mere creatures of the state and exist only at the state's sufferance." (*Bd. of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914; Cal. Const., art XI, §§ 1, subd. (a), 2, subd. (a).) They are "subordinate political entities" that possess only those powers "delegated" to them by law. (*Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 6.) "'[A] municipal corporation is an incorporation of the inhabitants of a specified region for purposes of *local government*'" and they are unlike counties which are a "'political subdivision of the state, organized for purposes of exercising some functions of the state government.'" (*Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 467, italics added and citation omitted.)

A city is not a sovereign, having only those powers expressly delegated to it, and being subject to the State's general laws for any matter that is not a municipal concern. As the Court noted in *Eastlick v. City of Los Angeles* (1947) 29 Cal.2d 661, 665, "a city, by adopting a charter, becomes independent of general laws only as to 'municipal affairs,' ... in matters of general statewide concern the general law is paramount." Indeed, article XI, section 5 of the state Constitution provides that "in respect to other matters [charter cities] shall be subject to general laws," and section 7 similarly provides that police powers may not "conflict with general laws." Municipal affairs are not specifically defined but, "[g]enerally, the term 'municipal affairs' has reference to the internal

business affairs of a city." (45 Cal.Jur.3d (2018) Municipalities, § 188; see also *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394-398 [discussing evolution of home rule powers]; *County of Santa Barbara v. City of Santa Barbara* (1976) 59 Cal.App.3d 364, 374 [home rule powers limited to municipal affairs]; *Wilkes v. City & County of San Francisco* (1941) 44 Cal.App.2d 393, 395 [same].) Imposing tax collection duties on a state agency serving a statewide mission (like education) is never a municipal concern.

2. Intermediate Appellate Court Decisions Generally Reflect These Sovereignty Principles

Courts regularly apply the principles from *Means* and *Hall* in cases involving public schools and universities, recognizing these entities operate under the state Legislature's direction and are not subject to municipal control without legislative consent. (See, e.g., *Regents of University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 136-137 [U.C. Regents not subject to municipal building permits and zoning]; *Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.* (1996) 43 Cal.App.4th 630, 637 [school district not subject to charter city's exclusive trash hauling agreement]; *City of Santa Ana v. Board of Ed. of City of Santa Ana* (1967) 255 Cal.App.2d 178, 180 [school district not subject to local garbage collection ordinances]; *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 428 [school site location and acquisition not subject to local control]; see also *City of Santa Cruz v. Santa Cruz City School Bd. of Education* (1989) 210 Cal.App.3d 1, 6 [where district exercised statutory right under Government Code to exempt itself from local zoning ordinances, city could not regulate lighting on school football field].)

These sovereignty principles are not limited to the education context. Courts of appeal have invoked them to prevent cities from attempting to enforce local regulations and taxes against other types of state entities serving statewide interests. (See, e.g., *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 244 [local parking ordinance could not be enforced against state employment insurance office]; *Del Norte Disposal, Inc. v. Department of Corrections* (1994) 26 Cal.App.4th 1009, 1013, 1016 [local waste collection ordinances inapplicable to state prison]; *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1351, 1355, 1358 [charter city could not tax state agricultural district agents].) And the rule applies equally to counties carrying out statewide functions, as subdivisions of the State. (See, e.g., *Los Angeles County v. City of Los Angeles* (1963) 212 Cal.App.2d 160, 166 [county not subject to city zoning regulations]; see also *Vagim v. Board of Supervisors of Fresno Co.* (1964) 230 Cal.App.2d 286, 293-295 [charter city could not hinder construction of courthouse on county land].)

The few cases to consider state immunity from municipal tax ordinances, reasonably, have followed the sovereignty principles of *Means* and *Hall*. In *County of Santa Barbara v. City of Santa Barbara*, for example, the court of appeal rejected the city's attempt to impose a parking district tax assessment on county property. (59 Cal.App.3d at pp. 370-372; see also *Bame*, *supra*, Cal.App.4th at pp. 1351, 1358 [city tax unenforceable against agricultural district agents engaged in statutorily authorized activities].)

3. Sovereignty Principles Limit Local "Home Rule," Taxing, and Regulatory Authority

That San Francisco acts under a charter does not allow it to avoid the natural results of state sovereignty. This Court's discussion of the nature of "home rule" in *Johnson v. Bradley*, *supra*, 4 Cal.4th 389, sheds additional light on this principle, which in *Means*, was summarily—and reasonably—characterized as "fundamental." (*Means*, *supra*, 14 Cal.2d at p. 260.) Under California's original 1849 Constitution, all cities were directly subject to the state Legislature's control. (*Johnson*, *supra*, 4 Cal.4th at pp. 394-395.) Over the ensuing 65 years, culminating in the 1914 amendments to the state Constitution, the Legislature proposed and the voters adopted constitutional amendments to grant cities authority to adopt charters governing "municipal affairs." (*Id.* at pp. 395-397; former Cal. Const., art XI, §§ 6, 8.)

The legislative history of former article XI, section 6 confirms the important, but ultimately circumscribed, nature of charter cities' municipal powers:

> The amendment as a whole is designed ... to encourage municipalities to proceed unhampered in the development of measures of *local and municipal concern*. The sovereignty and integrity of the state, acting through the legislature and by direct legislation on the part of the people, is rigidly safeguarded, while local enterprise and initiative in local matters is directly authorized.

(Ballot Pamp., Gen. Elec. (Nov. 3, 1914) argument in favor of Assembly Constitutional Amendment No. 81, italics added [amending former Cal. Const., art. XI, § 6].) It further notes that, "if a city should attempt to transcend the limits of a 'municipal affair,' its act will be declared void, for the determination of what are 'municipal affairs' and what are 'state affairs'

will remain, as now, a matter for judicial construction." (*Ibid.*) Former sections 6 and 8 were subsequently combined and approved by the voters in 1970, and are now found in article XI, section 5. (*Johnson*, *supra*, 4 Cal.4th at p. 397.)

Nothing in the home rule provision, article XI, section 5, suggests that charters authorize cities to enforce their laws against the State or its entities acting under state statute. The section enumerates a non-exclusive list of "municipal affairs," focusing on city operations and local government. (Cal. Const., art. XI, § 5, subd. (b) [listing provision of police force, "subgovernment," city elections, and appointment of "municipal officers and employees"].) As these examples suggest, and as this Court has observed, home rule powers essentially give force to "the general principle of local self-governance." (*Johnson*, *supra*, 4 Cal.4th at p. 397.) "Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs." (*State Bldg. and Const. Trades Council of Cal., AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 555.) The Constitution thus grants charter cities only "all powers *appropriate* for a municipality to possess." (*California Federal*, *supra*, 54 Cal.3d at p. 12, italics added, citation omitted.) Even within its own borders, a charter city's home rule authority ends where state prerogatives begin. So, for example, while "the regulation of plumbing is a municipal affair, the rule to be applied is not entirely a geographical one" because a municipal "act relating to [state] property within a city may be of such general concern that local regulation concerning municipal affairs is inapplicable." (*Means*, *supra*, 14 Cal.2d at p. 259 [collecting cases]; see also Regents Br. at Part I.A.2-3.)

In the decades since *Means* and *Hall*, the courts of appeal applying these cases have held that home rule powers do not extend to taxing the State or its entities. (See, e.g., *County of Santa Barbara*, *supra*, 59 Cal.App.3d at p. 371 [holding that city could not impose parking district tax assessment against county]; *Bame*, *supra*, 86 Cal.App.4th at pp. 1351, 1355 [charter city could not tax state agricultural district agents]; see also Part I.C.2, above [collecting cases precluding municipal regulation of state entities].) San Francisco attempts to avoid this line of authority by arguing that a city's taxing power allows it to control a state entity in ways that it cannot under its regulatory authority. (See OBM 22-24.) This argument finds no support in the law.

In *California Federal*, this Court expressly rejected the contention that there is any "immutable ... power of charter cities to levy taxes[.]" (54 Cal.3d at p. 14 [city ordinance taxing savings banks preempted by contrary state statute].) Although *California Federal* did not involve a city's attempt to control a state entity, and thus the Court there engages in a preemption-type analysis (see Part II, below), its discussion of the limits of local taxation powers is relevant here. It recognizes that local taxation power is subject to constraint due to the limited delegation of power to cities, and is subject to the State's overriding interests. (*California Federal*, *supra*, 54 Cal.3d at pp. 14-15, 23.) And it further held that "charter city tax measures are subject to the same legal analysis and accumulated body of decisional law under" the constitutional home rule provision "as charter city regulatory measures." (*Id.* at p. 7.) San Francisco's argument that its taxation powers are unconstrained or broader than its regulatory powers thus should be rejected.

Further, *Hall* held that the constitutional grant of local police powers did not relinquish the State's control over state entities operating within a city. (47 Cal.2d at pp. 183-184 [collecting cases].) As explained in *Laidlaw*, *supra*, 43 Cal.App.4th at p. 638, the sovereignty analysis is the same for charter and general law cities. The court of appeal rejected the proposition that charter cities' home rule authority gave them broader authority to impose waste ordinances on a state agency than did the police powers exercised by charter and general law cities alike. (*Id.* at pp. 638-639.) The court agreed that every city "[u]nquestionably" has "authority over garbage collection within its city limits," but that was largely beside the point:

> [T]he issue is whether state agencies are exempt from local trash collection regulations under the doctrine of sovereign immunity.... [I]t makes no difference whether the local governmental entity is a charter city as opposed to some other form of local government.

(*Id.* at p. 638.) Neither San Francisco's police powers, nor its charter powers, authorize it to impose tax collection duties on CSU.

4. Cases Concerning Local Taxation of Third Parties Are Inapposite

As this Court in *Hall* recognized, cases addressing the municipal "regulation[] of the members of the public" provide little guidance where the issue is "the attempted regulation of a state activity by a city." (47 Cal.2d at p. 184 [rejecting cases generally involving private parties as "not helpful"; relying on *Means*]; see also *Vagim*, *supra*, 230 Cal.App.2d at p. 293 [ordinances designed to regulate general public not binding on county].)

Many of San Francisco's principal authorities involve municipal tax collection requirements imposed on private parties (see OBM 22-24); these cases are unhelpful for the same reason expressed in *Hall*. (See, e.g., *In re Groves* (1960) 54 Cal.2d 154, 155-156 [tax collected from ice cream maker]; *The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 658 [tax collected from private condominium developer]; *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 467 [tax collected from liquor retailer]; *Board of Trustees v. City of Los Angeles* (1975) 49 Cal.App.3d 45, 47-48 [tax collected from circus operator]; *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623, 626 & fn. 1 [tax collected from professional football team]; *City of Los Angeles v. A. E. C. Los Angeles* (1973) 33 Cal.App.3d 933, 935, 940 [tax collected from independent contractor].) Relatedly, the tax challenge in *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, was brought by "utility users" and did not involve a state entity asserting sovereignty interests against the city's tax collection requirement. (*Id.* at p. 134.) Although San Francisco builds much of its argument on such third party cases, at most these authorities demonstrate that the rule of state sovereignty should not extend to private parties; they do not suggest that sovereign principles do not apply in this case.

Neither does *Weekes v. City of Oakland* (1978) 21 Cal.3d 386 (per curiam), stand for the proposition that the State must collect local taxes owed by third parties. In that case, the Court held that the City of Oakland's license fee, imposed on certain professions, was not a local income tax barred by the first paragraph of Revenue and Tax Code section 17041.5, but instead was an occupation tax "expressly authorized by the final paragraph of section 17041.5." (*Id.* at pp. 390-391.) The Court also upheld Oakland's authority to enforce the license fee against state

employees. (*Id.* at p. 398.) Given that the local tax was authorized by statute, the Court expressly did "not, reach the further question whether the Legislature is prevented by the home rule provision of the California Constitution from imposing an absolute ban upon revenue-raising measures of this nature enacted by chartered cities." (*Id.* at p. 391.)

Both the majority and dissent below observed that the ordinance at issue in *Weekes* required employers to withhold the local tax and remit it to the City. (Slip opn. 16-17; dis. opn. 20.)[18] The dissent therefore viewed *Weekes* as "inferentially suggest[ing] that collecting a valid local tax is not an impingement of the state's sovereignty." (Dis. opn. 20.)[19] This misreads *Weekes*.

Weekes does not suggest that the State actually objected to withholding Oakland's occupation tax—provided that the tax was authorized by law. The withholding aspect of Oakland's ordinance thus was not at issue, and a decision does not stand for a proposition not considered by the court. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 320.)[20]

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[18] Unlike the parking ordinance at issue here, the occupation tax ordinance in *Weekes* placed the ultimate responsibility to remit on the employee—if the employer failed to withhold and remit, the employee was obliged to file an annual return. (*Weekes*, *supra*, 21 Cal.3d at p. 391.)

[19] The majority and dissent were responding to an argument San Francisco raised below, but did not raise in its opening brief here. Citing Oakland's withholding requirement, San Francisco misread *Weekes* as holding that it was "reasonable to impose these local tax collection obligations on the state and its agencies" as employers. (Court of Appeal OB 33.)

[20] Further, the State was not a party to the matter. The Franchise Tax Board and the Department of Finance participated as amicus curiae. (*Weekes v. City of Oakland* (1976) 64 Cal.App.3d 907 [134 Cal.Rptr. 858, 861], hrg. granted and opn. vacated, *Weekes*, *supra*, 21 Cal.3d at p. 390.)

And any failure of the State in *Weekes* to object to the withholding requirement may simply indicate that, in those circumstances, it voluntarily agreed to follow that aspect of Oakland's ordinance—perhaps for the administrative convenience of its employees.[21] A state entity can "follow such [local] regulations as well as those of the state but [is] not bound to do so." (*Hall, supra*, 47 Cal.2d at p. 188.)

Further, while San Francisco relies on it heavily, the Fifth District's poorly reasoned decision in *City of Modesto v. Modesto Irrigation Dist.* (1973) 34 Cal.App.3d 504 is of little assistance in resolving this case. That case rejected the sovereignty arguments of two legislatively created irrigation districts objecting to a charter city ordinance compelling them to collect a utility users fee from electrical customers. (*Id.* at p. 506.) The court declared the sovereignty arguments "counter to the doctrine of stare decisis," citing *Yolo v. Modesto Irr. Dist.* (1932) 216 Cal. 274, and *Rivera v. City of Fresno* (1971) 6 Cal.3d 132. (*Id.* at p. 506.) But *Yolo* was a tort case that did not examine the ability of local governments to conscript state entities. And, as noted above, *Rivera* did not involve a governmental entity asserting a sovereignty interest.[22]

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[21] The Legislature has provided that the State Controller "may render service pertinent to ... taxation problems and procedures for any county, city, city and county, any other political subdivision, or any district of the State upon such terms and conditions as may be agreed upon between the Controller and the governing body of such county, city, city and county, other political subdivision or district." (Gov. Code, § 12424; see also Hastings Br. at Part IV.E.2 [legislative body should set the terms and conditions of tax collection].)

[22] Unlike this case, *City of Modesto* did not involve a state agency charged by statute and constitution with a statewide mandate. It is of course possible that the Legislature in creating entities with more locally

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City of Modesto's alternative holding, cited by San Francisco (and the dissent below), was that "the collection requirement of respondent's ordinance, though applicable to state agencies, is a reasonable exercise of the city's constitutional power to tax for revenue purposes." (34 Cal.App.3d at p. 508.) This conclusion rests on two faulty premises: first, that "the power to tax" is "meaningless" without "the corollary power to use reasonable means to effect its collection"—even if that means controlling the activities of state entities (*ibid.*); and second, that municipal power delegated from the state Constitution was superior to any sovereign interest of legislatively-created entities (see *ibid.*). As to point one, this Court rejected a similar argument (that the power to govern includes the power to tax) in *California Federal* as "a truism" that "fails to explain why ... the power to tax should be singled out as specially protectable[.]" (54 Cal.3d at p. 15.) And as to point two, the Legislature's lawmaking power, of course, also flows from the state Constitution, and is itself an exercise of state sovereign power. (See Cal. Const., art. IV, § 1.)[23]

San Francisco also relies on Attorney General Opinion No. 81-506 (65 Ops.Cal.Atty.Gen. 267 [1982 WL 156064] (1982)), but the opinion contains little analysis and unquestioningly follows *City of Modesto*'s alternative holding (*id.* at pp. *2-3)—which, as discussed, is defective. Additionally, the opinion's answers to the questions presented conflate the

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(...continued)
focused mandates might consent to local regulation; the court in *City Modesto* did not discuss or analyze this possibility.

[23] *Eastern Mun. Water Dist. v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, 30, relied on by San Francisco and cited by the dissent, followed *Modesto*'s alternative holding; its analysis is wrong for similar reasons.

state entities with the concessionaires (*id.* at p. *1); the discussion is clear that state entities were not directly collecting the municipal hotel tax, paying the tax, or paying any potential tax penalty. (*Id.* at pp.*1-2 & fn. 5 ["We express no opinion ... whether the ordinance ... applies to the state or its agents"].)

In any event, these outlying authorities show only the need for a clearer statement of the law.

5. Cases Concerning Intergovernmental Tax Immunity Do Not Apply or Support San Francisco

San Francisco's reliance on cases involving federal, state, and tribal intergovernmental tax immunity, and allowing taxation of third parties even where a sovereign might be affected, is similarly misplaced. The City is not a sovereign in relation to the State in the same sense as a State is in relation to the federal government. (See Part I.C.1, above.) Regardless, under this doctrine, the States could not, as the City suggests, require the federal government (the analogue to CSU) to collect state taxes (the analogue to the city parking tax) without legislative consent.

San Francisco concedes, as it must, that "one government may not impose its tax directly upon another." (OBM 30.) Indeed, States cannot directly tax the federal government. (*South Carolina v. Baker* (1988) 485 U.S. 505, 523.) This limit on state power is not unique to taxation: it is merely a particular application of the bedrock principle that a "state regulation is invalid ... if it regulates the United States directly." (*North Dakota v. United States* (1990) 495 U.S. 423, 435 [citing tax cases].) Neither can cities—not sovereign and in any event subordinate—tax the

State. (See, e.g., Cal. Const., art. XIII, § 3, subd. (a); *Webster v. Board of Regents of University of Cal.* (1912) 163 Cal. 705, 708.)

The City is generally correct that under federal intergovernmental tax principles, the States have considerable leeway to tax third parties doing business with the federal government. (*Alabama v. King & Boozer* (1941) 314 U.S. 1, 9 [vendors selling goods to the federal government]; *James v. Dravo Contracting Co.* (1937) 302 U.S. 134, 157, 161 [same re services]; *United States v. City of Detroit* (1958) 355 U.S. 466, 473 [private party's use of land leased from the federal government]; see also *Graves v. New York* (1939) 306 U.S. 466 [federal employees].)[24] But in every case where the U.S. Supreme Court has upheld such a tax, it was "collected from private parties." (See *Baker*, *supra*, 485 U.S. at p. 521 [collecting cases]; accord, dis. opn. 31; see also *Jefferson County, Alabama v. Acker* (1999) 527 U.S. 527, 441, fn. 11 ["burdens ... impose[d] directly on the Federal Government," including "obligations to withhold [a] tax," may well "exceed constitutional limits," but declining to reach the issue because such burdens were "hypothetical" in that case].)

Indeed, the statute the City cites, 5 U.S.C. § 5517 (see OBM 40), confirms that any federal government assistance in the collection of state taxes due from third parties must be required or authorized by Congress. Section 5517, for example, authorizes federal government employers to withhold state income taxes. This statute confirms that without congressional authorization, States could not unilaterally force the federal

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[24] San Francisco relies heavily on *Graves* (OBM 33-35), but that case merely stands for the proposition that federal employees are not immune from state taxation; it says nothing about a State's authority to conscript the federal government for tax collection.

government to collect state taxes from third parties. Whatever the "reasonableness of one sovereign collecting the taxes due to another sovereign" (OBM 40), section 5517 confirms the need for federal legislative authorization.

San Francisco's only support for its proposed contrary rule is a body of federal law holding that States may tax cigarettes sold by Indian tribes to non-Indians on reservation land, and further require Indian retailers to collect the tax. (See, e.g., *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation* (1976) 425 U.S. 463, 481-482; *Oklahoma Tax Com. v. Citizen Band Potawatomi Indian Tribe* (1991) 498 U.S. 505, 512-513.)[25] But unlike the States, the City is not a sovereign, making federal precedent resolving competing claims of separate sovereigns inapposite. Further, tribal sovereignty is of a "unique and limited character," informed both by the tribes' historical status as independent nations and Congress's plenary power to regulate state-tribal relations. (*Rice v. Rehner* (1983) 463 U.S. 713, 719.) Resort to tribal-immunity law in this context is both unhelpful and unnecessary.

Under the hierarchical sovereignty principles set out in *Means* and *Hall,* San Francisco cannot enforce its parking tax ordinance against CSU.

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[25] Notably, although States may enact statutes requiring tribes to collect third-party taxes, tribal immunity bars states from holding tribes liable for any uncollected amount. (*Oklahoma Tax Com., supra,* 498 U.S. at p. 514.) Accordingly, States must either "collect the ... tax from ... wholesalers" or "*enter into agreements* with the tribes to adopt a mutually satisfactory regime for the collection of [the] tax." (*Ibid.*, italics added.)

II. ALTERNATIVELY, UNDER PREEMPTION PRINCIPLES, SAN FRANCISCO'S PARKING TAX ORDINANCE CANNOT APPLY TO THE CALIFORNIA STATE UNIVERSITY

This case can and should be resolved solely on principles of sovereignty. (See Regents Br. and Hastings Br., generally.) But if there is any question on that point, principles of preemption provide an equally solid bar to application of the City's parking ordinance to CSU.[26]

Here, the Legislature's comprehensive statutory scheme governing the CSU system has fully occupied the field, leaving no room for the City to attempt to control CSU or its facilities, including parking. In addition, the City's ordinance when applied to CSU interferes with and stands as an obstacle to important statewide education-related interests. For these additional reasons, the City's parking tax ordinance cannot be enforced against CSU.

A. Under *Hall*'s Alternative Holding, Local Ordinances Are Preempted Where the Legislature Has Occupied the Field

In *Hall*, the Court held that there was an "additional ground" prohibiting the city from imposing its building codes on public school districts. (47 Cal.2d at p. 184.) *Hall* recognized that "[t]he Education Code sets out a complete system for the construction of school buildings" such that "the state has completely occupied the field by general laws" leaving no room for "local regulations [that] conflict with such general laws." (*Id.* at pp. 184-186 [collecting numerous statutes].) Given the

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[26] Under federal law, by analogy, the types of preemption are express, field, and conflict, with conflict having two species: impossibility and obstacle preemption. (See, e.g., *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 372.) As discussed below, the preemption concepts relevant for displacement of local ordinances under state law are field- and conflict-based.

comprehensiveness of the legislative scheme, there was no need to "compar[e] in detail" the municipal ordinance with the state statutes because "the state has occupied the field." (*Id.* at p. 188; see also *Means*, *supra*, 14 Cal.2d at pp. 257-258, 260 [charter city's ordinance could not be applied to State due to the comprehensive legislative scheme for civil service and "fundamental" hierarchy principles].)

More recently, this Court has confirmed that "State regulation of a subject may be so complete and detailed as to indicate an intent to preclude local regulation. In this connection it may be significant that the subject is one which ... requires uniform treatment throughout the state." (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252 [citations omitted].) In *American Financial*, the Court held that Oakland's anti-predatory lending ordinance was preempted by state statutes on the same subject, even though the statutes included "no express preemption language." (*Id.* at p. 1252.) The Court held that "the Legislature has impliedly fully occupied the field of regulation of predatory practices in home mortgage lending, and hence the Ordinance is preempted on this ground." (*Id.* at p. 1252.) And as the Court explained in *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068, "'[w]here the Legislature has manifested an intention, expressly or by implication, wholly to occupy the field ... municipal power [to regulate in that area] is lost.'" (*Ibid.*, quoting 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p. 551; see also *id.* at p. 1076 [holding vehicle forfeiture ordinance preempted by state laws].)

B. The Legislature's Comprehensive Statutory Scheme Governing All Aspects of CSU's Operations Preempts the Parking Ordinance as Applied to CSU

Just as in *Hall*, where the Court held that the Legislature had "occupied the field related to school construction" (47 Cal.2d at p. 184), here, the Legislature has enacted a complete statutory scheme regarding the management, administration, and control of CSU, including its facilities and grounds. State statutes address the CSU Board of Trustees' powers related to acquisition and disposition of real property, and revenue generation and use—in general and even as they relate to the details of university parking lots. (See, e.g., Ed. Code, §§ 66600. et seq. [vesting control of CSU in Board of Trustees]; 89000 et seq. [setting out powers of Board of Trustees]; 89048, subds. (f) & (g) [pertaining to transactions related to real property acquired from CSU parking program revenues]; 89701, subd. (a) [authorizing Board of Trustees to acquire real property to "maintain motor vehicle parking facilities" and setting out considerations for parking fees]; 89701, subd. (b) [setting out how parking revenue may be used and invested]; 89031 [authorizing Trustees to establish rules and regulations concerning buildings and grounds; making violation of regulations a misdemeanor].)

Focusing so specifically on parking fees, the legislative scheme provides, among other things, that "[t]he trustees" are empowered to "prescribe the terms and conditions of the parking ... including the payment of parking fees in the amounts and under the circumstances determined by the trustees," in their discretion. (Ed. Code, § 89701, subd. (a).) Significantly, the Legislature even directs the Board of Trustees to establish "[v]arying rates of parking fees" and to "consider the rates charged" by others to students and employees "in the same locality." (Ed.

Code, § 89701, subd. (a).) Further, the Legislature has conferred rulemaking power on CSU (Ed. Code, § 89030), and CSU has promulgated regulations governing parking facilities and fees. (Cal. Code Regs., tit. 5, §§ 42200-42203.)

The Legislature has comprehensively regulated the field of CSU's educational mandate and its control over its facilities and property, including parking lots, and there is no room for additional municipal controls. Through this comprehensive legislative scheme "the state has completely occupied the field by general laws" such that allowing San Francisco to impose a parking tax collection requirement on SFSU would "add[] to the requirements [established] by the state, and restrict[] the rights of sovereignty." (See *Hall*, *supra*, 47 Cal.2d at pp. 184, 189.) San Francisco's police powers and home rule authority do not extend that far.

The City quotes *In re Groves*, *supra*, 54 Cal.2d at p. 156, for the proposition that "[w]hether or not state law has occupied the field of regulation, cities may tax *businesses* carried on within their boundaries and enforce such taxes by requiring *business* licenses for revenue and by criminal penalties." (OBM 22, italics added.) This is true, of course, but in this case, San Francisco is seeking to tax the students, staff, and visitors of a state agency, not a private business, and, more importantly, it is seeking to compel action by—that is, is seeking to regulate—a state entity. *Groves* thus is not on point.

San Francisco argues that "[b]ecause the tax power is so fundamental, state intent to preempt it [by a regulatory scheme] must be clear." (OBM 25, quoting *Pines*, *supra*, 29 Cal.3d at p. 662, 664 [holding that Subdivision Map Act did not preempt local development tax].) As noted above, *Pines* is distinguishable in that it involved a tax imposed on private developers,

and no attempt to commandeer a state agency in collection. (29 Cal.3d at pp. 658-659.) In *Pines*, where the state regulatory statute and local fee on private parties could comfortably co-exist, this Court reasonably required a clear statement of the Legislature's intent to preempt the fee. But a similar requirement for an express statement of preemptive intent should not apply when a city attempts to impose local tax *collection* requirements on state entities—that is, to regulate those entities—operating under comprehensive statutory schemes.

Because the Legislature has completely and thoroughly occupied the field relating to CSU and its operations and facilities, CSU is not subject to the City's parking tax ordinance.

C. In Addition, Local Ordinances Are Preempted Where They Stand as an Obstacle to Accomplishing State Interests

In addition, under this Court's decision in *California Federal*, San Francisco's parking tax ordinance so interferes with CSU's educational mission that the ordinance is preempted under principles of conflict preemption.

In *California Federal*, the Court rejected the contention that "charter city tax measures are inflexibly 'municipal affairs' and thus invariably are immune from state legislative supremacy." (54 Cal.3d at pp. 6-7; see also *id.* at p. 14 [no "immutable" local taxing power].) It explained that "aspects of local taxation may under some circumstances acquire a 'supramunicipal' dimension, transforming an otherwise intramural affair into a matter of statewide concern ...." (*Id.* at p. 7; see also *Means*, *supra*, 14 Cal.2d at p. 260 [ordinances intruding on statewide interests no longer address municipal affairs].) Local ordinances cannot stand as obstacles to

accomplishing legitimate statewide purposes reflected in a statutory scheme.

California Federal reasoned that the home rule provision of the state Constitution "implicitly recognizes state legislative supremacy" where a municipality's "activities interfere with interests which transcend the municipality." (54 Cal.3d at p. 13 [noting that a "'statewide concern' [i]s a conceptual limitation on the scope of 'municipal affairs'"]; see also *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170 [municipal charter and laws are subject to "preemptive state law"]; *Means*, *supra*, 14 Cal.2d at p. 260 [applying similar analysis to home rule and police powers].)

The Court further explained that "the question of statewide concern is the bedrock inquiry through which the conflict between state and local interests is adjusted." (*California Federal*, *supra*, 54 Cal.3d at p. 17.) When state and municipal law conflict, as long as "the court is persuaded that the subject of the state statute is one of statewide concern and that the statute is reasonably related to its resolution, then the conflicting charter city measure ceases to be a 'municipal affair' pro tanto and the Legislature is not prohibited by article XI, section 5(a), from addressing the statewide dimension by its own tailored enactments." (*Ibid.*)

Since the reason for the state legislation is "the starting point for analysis," *California Federal* examined the nature and purposes of the constitutional and legislative scheme regarding state taxation of savings banks. (See *California Federal*, *supra*, 54 Cal.3d at pp. 7-11, 18-24.) These interests included ensuring "the uniform statewide regulation of banks and financial corporations," and maintaining "an equivalent tax burden" among financial institutions to "promote the continued existence"

of savings banks. (*Id.* at p. 10.) The local ordinance was incompatible with these interests, thus "ending the inquiry." (*Id.* at pp. 23-24.)

This Court described the analysis as reflecting "a principle of deference": "we defer to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution." (*California Federal*, *supra*, 54 Cal.3d at p. 24.) Any "doubt ... 'must be resolved in favor of the legislative authority of the state.'" (*Ibid.*, quoting *Bagget v. Gates* (1982) 32 Cal.3d 128, 140.) Based on this rationale, the Court rejected the argument—akin to the argument San Francisco raises (OBM 42-46)—that the Court should weigh the respective state and municipal interests: "we decline for pragmatic and intellectual reasons to ... require[e] a comparative 'weighing' of the competing interests of the state and charter cities in a given area." (*California Federal*, *supra*, 54 Cal.3d at p. 25.) As this Court subsequently explained in *American Financial*—where it found Oakland's mortgage ordinance was preempted by state statutes on predatory lending—the Legislature has already "balance[d] the[] competing concerns." As such, a local "[o]rdinance, and the possibility of other divergent and competing local measures throughout California, upsets that balance. By analogy to federal preemption law, the [municipal] [o]rdinance 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the Legislature." (*American Financial*, *supra*, 34 Cal.4th at pp. 1257-1258, quoting *Volt Information Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.* (1989) 489 U.S. 468, 477.)

D. Enforcing the Parking Tax Ordinance Against CSU Would Stand as an Obstacle to CSU's Mission

Under the principles of *California Federal*, enforcing San Francisco's tax against CSU would stand as an obstacle to fulfilling its educational mission and function.

As discussed above (at Background, Part B), the Legislature established CSU pursuant to a constitutional mandate to further the statewide goal of accessible public higher education, and it has enacted a comprehensive set of statutes furthering that goal, including providing on-campus parking. These statutes address facilities, parking, parking fees, and the Board of Trustees' powers over the same. Education Code section 66606.2 reflects that the Legislature is particularly concerned about the potential for even state laws to interfere with CSU's "unique mission and function." For state laws, the Legislature asks courts to inquire whether such laws are "compatible" with CSU's mission, and it has essentially imposed a requirement on itself that more recent, generally applicable laws must "expressly provide[]" that the statute applies to CSU. (Ed. Code, § 66606.2.) Courts should bear the Legislature's concern in mind when examining local laws that apply to CSU for their potential to interfere with this important state agency.

Allowing San Francisco to enlist CSU in order to tax its students, staff, and visitors using state property stands as an obstacle to achieving CSU's educational mission. As the Court of Appeal observed—and as the trial court found—operating parking lots on the University's campus directly supports CSU's educational mission by enabling access to the University's programs and facilities: "the operation of nine parking facilities on the SFSU campus constitutes an activity that is integral to

CSU's educational mission and bears a direct and necessary relationship to its functioning. SFSU is located in an urban environment where available parking for students, staff and visitor[s] i[s] scarce. Each of CSU's parking stations provides ready access to campus facilities for those who cannot use public transportation to get there." (Slip opn. 8, internal brackets omitted; CT 560; Ed. Code, § 89701, subd. (c); cf. *Church Divinity Sch. v. County of Alameda* (1957) 152 Cal.App.2d 496, 502-505 [college parking lots exempt from local property tax because reasonably necessary to "the fulfillment of a generally recognized function of a complete modern college"].)

In particular, allowing San Francisco (and indeed every city that has a CSU campus) to add on additional charges to CSU's parking fees would interfere with the operation of Education Code section 89701, which vests the Board of Trustees with authority to set the "terms and conditions of the parking ... including the payment of parking fees." (See also Cal. Code Regs., tit. 5, § 42201, subd. (a) [parking fees "shall be in accordance with schedules approved by the Trustees"].) If a municipal tax is added to the parking fee and passed along to students or staff, it could interfere with the Board of Trustees' ability to set "[v]arying rates of parking fees" based on its "consider[ation of] the rates charged" by others. (Ed. Code, § 89701, subd. (a); see also Hastings Br. at Part IV.E.2.b.) Further, if CSU, in order to ensure that parking remains affordable to its constituency, reduces its parking fees to compensate for the local tax, that would reduce the

dedicated fund that helps to finances parking facilities and alternative campus transportation. (*Id.*, § 89701, subd. (b)(1); CT 192-193 ¶ 32.)[27]

Further, in accordance with the legislative scheme, SFSU operates its parking lots to enable affordable access to campus. (See CT 190-192; Ed. Code, § 89701, subd. (a).) Parking prices at SFSU have increased since 2014 when the matter was before the trial court, and currently commuter student parking permits range from $256 to $640 per semester, and staff and faculty permits range from $228 to $780 annually.[28] San Francisco's 25 percent parking tax would impose significant additional charges and require CSU either to pass those along to the university's constituency (making access more expensive) or to absorb the cost (pulling funds from CSU's other obligations). These are not insignificant financial burdens, particularly given the strong state interest in providing affordable access to education. The University does not operate its parking lots for profit or to raise revenue. (Ed. Code, § 89701, subd. (b).)[29] And CSU's representative testified that "the expenses required to operate and maintain SFSU's parking stations exceed the amount of its parking revenue." (CT 192 ¶ 31.)

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[27] Moreover, if San Francisco's parking tax ordinance as applied to SFSU is upheld, it may encourage additional fees and taxes imposed by San Francisco, and by other cities with CSU campuses.

[28] See <https://parking.sfsu.edu/sfsu-parking/parking-permits/student-permits> [commuter student permits] and <https://parking.sfsu.edu/sfsu-parking/parking-permits/staff-permits> [staff and faculty permits] [as of March 22, 2018].

[29] The municipal airport authority in *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank* (1998) 64 Cal.App.4th 1217, unlike CSU, was not a state entity operating on state land, nor was it charged with keeping parking affordable to further a statewide mission. (See *id.* at p. 1227.)

When the City imposes a tax that increases the cost of parking on campus, it directly interferes with CSU's mission.[30]

The City's tax ordinance also imposes administrative responsibilities that are not only burdensome and divert resources from CSU's educational mission, but also potentially subject CSU to a patchwork of local parking taxes statewide. (*California Federal*, *supra*, 54 Cal.3d at p. 10 ["uniform statewide regulation" is legitimate interest]; *American Financial*, *supra*, 34 Cal.4th at p. 1252 [similar].) For example, under San Francisco's ordinance CSU would also have to: maintain business records of tax amounts for which users of parking facilities are liable; produce those records for inspection; and appear before the City to provide information relevant to tax compliance. Under the threat of penalty, CSU would bear the burden of providing financial information that may be relevant to determining any parking occupant's tax liability. Finally, CSU would be required to prepare and file parking tax returns with the City on a monthly basis, and remit the parking tax by a specified date, under threat of a court action for any deficiency, including interest and penalties. (See Background, Part C, above.) And any parking tax not collected and remitted becomes a "debt owed to the City" that CSU would have to pay. (S.F. Bus. & Tax Regs. Code, art. 6, § 6.7-1, subd. (d).)[31] Other cities

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[30] Indeed, this demonstrates an additional reason why the City's argument that a municipality may tax parties "doing business" with the state is inapposite. (See OBM 23-24.) Here, the City is attempting to tax the recipients of a state service, rather than persons "doing business" with the State.

[31] The City's non-binding offer to reimburse CSU for its administrative costs (OBM 45, fn. 8) does not cure the infirmities of its tax ordinance, and presumes the parties can agree on the amount to be

(continued...)

could, of course, develop their own various ordinances with divergent requirements—forcing CSU to administer as many as 23 different municipal tax schemes across the state and diverting from its educational mission. (See also Regents Br. at Part I.B.3 [explaining difficulties inherent in patchwork of local laws on statewide university system].)

San Francisco's arguments that forcing CSU to become its tax collector "does not impact the universities' discretion to operate their garages as they see fit" and that "tax collection is not regulation" are both incorrect. (OBM 24 [citing *Ainsworth*, *supra*, 34 Cal.2d at p. 477]; *id.* at 27 [citing *Burbank-Glendale-Pasadena Airport Auth.*, *supra*, 64 Cal.App.4th 1217].) *Ainsworth* did not involve a city imposing a collection requirement on a state entity, making its principles regarding tax collection from private parties inapplicable here. (See Part I.C.4, above.) Further, as discussed, its attempted distinction between tax and regulatory measures does not comport with *California Federal*. (54 Cal.3d at p. 7; see Part I.C.3, above.)

Thus, while, in general, imposing a local parking tax to generate revenues is, of course, a valid municipal endeavor, it ceases to be so when applied to CSU, interfering with CSU's statutory mandate, its regulations, and its relationship with its students, staff, and faculty. As such, San Francisco's parking tax ordinance when applied to CSU "transcend[s] ... municipal interests" and becomes "supramunicipal" (see *California Federal*, *supra*, 54 Cal.3d at p. 17) and thus unenforceable.

(...continued)
reimbursed. If the City refuses to fully reimburse CSU, it may have to file suit. More pointedly, reimbursement from the City is of no moment because CSU is entitled to control its own affairs without interference from the City. (See also Hastings Br. at Part IV.D.1 [state immunity does not turn on cost of compliance with municipal law].)

E. Exempting CSU, Hastings, and the U.C. Regents from the Parking Tax Ordinance Leaves San Francisco's Home Rule Powers Fundamentally Intact

The City invites the Court to balance the interests of the City and the state educational entities in this case. (OBM 42-46.) Such an approach is inappropriate for the reasons *California Federal* explained: the Legislature has already conducted that balancing and this Court "defer[s] to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution." (54 Cal.3d at pp. 24-25 [rejecting "a comparative 'weighing' of the competing interests of the state and charter cities in a given area"]; see also Regents Br. at Part I.B [explaining why balancing test is unworkable].) Still, CSU acknowledges that under a preemption-type analysis, a court may legitimately inquire into whether failure to enforce a local ordinance might work some fundamental violence to a city's home rule authority. (See *id.* at pp. 25-26.) Here, it will not.

CSU is one of three public universities in this case, and "[a]mong the universe of municipal taxpayers subject to the City's [parking] tax" "these taxpayers [would] collectively contribute a comparatively small sum to the City's annual budget." (*California Federal*, *supra*, 54 Cal.3d at pp. 24-25.)[32] For almost 50 years, the City has managed its budget without

[32] Although San Francisco contends that "if the immunity claimed by the state universities is extended to other state agencies selling other services taxed by cities, the dollar impact on city tax revenue will be staggering" (OBM 45), it does not explain how it or any other city currently have any authority to commandeer state agencies as their tax collectors in any context. To the extent the Legislature has delegated such authority or waived its sovereignty by allowing state agencies to agree to collect local taxes, these statutes and agreements would remain in place.

collecting any parking tax revenue from CSU or the other universities. It is undisputed that the City does not currently receive any revenue from state university parking lots, so they are not a current source of income that the City depends on. But even if they were, the collective $4.5 million in "annual lost parking tax revenue" claimed by San Francisco (OBM 45) is a comparatively small sum to the City's $10 billion annual budget.[33] Further, San Francisco remains free to continue to impose its parking tax on privately operated parking facilities such that affirming the lower court's ruling that the City could not impose a collection requirement on CSU still "leaves the City's taxing authority fundamentally intact." (*California Federal*, *supra*, 54 Cal.3d at pp. 24-25.)

CONCLUSION

For all these reasons, this Court should affirm.

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[33] See San Francisco Mayor's 2017-2018 & 2018-2019 Proposed Budget at p. 11, <http://sfmayor.org/sites/default/files/CSF_Budget_Book_2017_Final_CMYK_LowRes.pdf> [as of March 22, 2018].)

Dated: March 27, 2018

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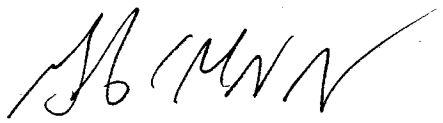

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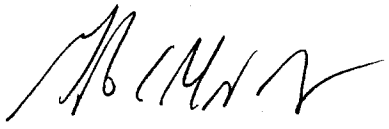
CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWERING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 13,853 words.

Dated: March 27, 2018

XAVIER BECERRA
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: City and County of San Francisco v. Regents of the University of California, et al.
Case No.: **S242835**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 27, 2018, I served the attached **ANSWERING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 27, 2018, at San Francisco, California.

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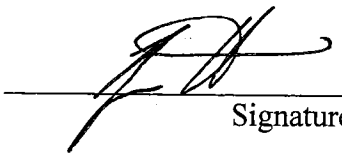

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