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. A14450
San Francisco County Superior Court, Case No. CPF-14-513-434
Honorable Marla J. Miller, Judge

RESPONDENT CALIFORNIA STATE UNIVERSITY'S ANSWER TO BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES

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INTRODUCTION

As the respondent Universities explained in their answering briefs: sovereignty principles, as described in this Court's long-standing precedents, prevent the City and County of San Francisco from directing the Universities—state entities recognized under the state Constitution and exercising statewide mandates—to collect local parking taxes. (CSU Br. 28-32; Regents Br. 38-41; Hastings Br. 23-27.)[1] Characterizing the City's attempt to direct state entities as tax-related rather than regulatory does not change this result, because the validity of municipal taxing and regulatory powers must be evaluated using the same standard. (CSU Br. 14, 40; Regents Br. 21-23, 27; Hastings Br. 44-45, 48-50.) And, even under preemption principles, which generally should be applied only when the question is whether a state law displaces a local law as applied to non-state entities, the City cannot obtain an injunction requiring the respondent Universities to serve as its local tax collectors, because such a result would interfere with the Universities' statewide responsibilities and powers recognized in the state Constitution and detailed in comprehensive statutory schemes. (CSU Br. 49-62; see also Regents Br. 21-22, 43-44.)

Amicus curiae the League of California Cities asks this Court to adopt an "alternative legal framework" that, it asserts, would better serve policy and constitutional values. (League Br. 8, 10.)[2] While that framework is not completely clear (see *id.* at pp. 19-23), its primary objective seems to be to put a thumb on the scale in favor of municipal prerogatives. But the

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[1] Respondents are the Board of Trustees of the California State University (CSU), the Regents of the University of California (Regents), and the Board of Directors of Hastings College of Law (Hastings).

[2] CSU will note, as appropriate, certain points made by amicus curiae California Constitution Center, but this brief focuses primarily on responding to the arguments made by the League.

League does not even cite this Court's precedents that set out the governing framework—*In re Means* (1939) 14 Cal.2d 254 and *Hall v. City of Taft* (1956) 47 Cal.2d 177. Without saying so, the League is asking that the Court overrule *Means* and *Hall*. It should decline to do so. The rule of hierarchical sovereignty set out in these cases is grounded in the state Constitution, and reflects municipalities' politically subordinate, though important, role in state government. (See Cal. Const. Center Br. 11 ["Reversing here would upend decades of settled law."].)

The League also spends much of its brief arguing that the governmental-versus-proprietary distinction is outdated and unworkable. (League Br. 15-19.) This argument is beside the point. The Universities do not contend that the distinction should have any role in a sovereignty analysis or an alternative, preemption-type analysis, to the extent it applies. That distinction is not employed in *Means* or *Hall*, controlling precedents that have the benefit of drawing a bright-line against any local attempt to control the activities of state entities. And even if some activity might be so far removed from a state entities' mandate or charge that it would fall outside the rule of these cases, here it is beyond dispute that the Universities' provision of and control over parking serves the statewide mission of educational access.

The League further contends that affirming a decision in the Universities' favor, and refusing to require these state entities to act as local tax collectors in the absence of legislative consent, would disrupt local revenue streams. (League Br. 11-15.) But the League has not identified any city that receives revenue from parking taxes collected by state entities, nor are the Universities aware of any. The result the League and the City advocate thus would be not a restriction, but rather a significant *expansion* of municipal powers.

Finally, according to the League, this case would impact collection of other local taxes that are established and essential for local government operation. (League Br. 11.) That too is incorrect, as this case would have no impact on local tax ordinances that rely on private party collection, or state collection where the Legislature by statute has required state governmental cooperation (as in the case of local sales taxes). And this Court need not pass upon the basis for local governments to request or require local tax collection by special districts operating to serve localized objectives under their own particular statutory schemes, as this case presents only the limits of municipal power to direct the actions of state entities charged with clear statewide constitutional and statutory mandates.

This Court should reject the League's (and the City's) arguments, and affirm the decision below based on the rule of *Means* and *Hall* and fundamental sovereignty principles.

ARGUMENT

I. THIS COURT SHOULD NOT OVERRULE *MEANS* AND *HALL* BUT INSTEAD SHOULD REAFFIRM THE ESTABLISHED PRINCIPLE OF HIERARCHICAL SOVEREIGNTY

A. The Rule of Hierarchical Sovereignty Reflects the Structure of California Government and is Consistent with the State Constitution

As the Universities explained, this Court should decide this case based on the sovereignty principles set out in *In re Means* (1939) 14 Cal.2d 254, and *Hall v. City of Taft* (1956) 47 Cal.2d 177. (CSU Br. 28-33; Regents Br. 9, 38-40; Hastings Br. 21-24, 27-36; see also Cal. Const. Center Br. 12-15, 19-24.) The rule in these cases provides that the State, or a state entity—like the Universities here—carrying out its constitutional or statutory charge is not subject to the ordinances of a subordinate political body absent the State's consent. (*Hall, supra*, 47 Cal.2d at p. 183 ["When [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."].)[3] This applies even to a local government operating under a charter with home rule authority. (CSU Br. 28 [noting that *Means* involved a charter city]; see also *id.* at pp. 38-41; Cal. Const. Center Br. 15 ["A charter does not permit a city to regulate the sovereign state."].) The state sovereignty rule is firmly grounded in California law, accords with the hierarchical nature of state government, and is widely followed by the courts of appeal. (CSU Br. 28-37; Regents Br. 39-40.) These sovereignty principles apply with special force when state agencies are discharging their duties pursuant to a constitutionally recognized statewide interest, such as public education, and, as to CSU in particular, the Constitution charges the Legislature with creating a comprehensive statutory scheme to govern agency activities. (CSU Br. 30-33.) Sovereignty principles empower the Universities to exercise their judgment in determining how to fulfill their constitutional mandates and serve the people of California across a statewide network of campuses, free of a patchwork of municipal laws. (Regents Br. 9, 35, 48-50.) This rule sets a predictable baseline around

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[3] The League and the City would have the Court require a specific statute preserving the Universities' ability to provide and regulate parking without local interference. (See League Br. 21 ["Respondents identify no statute speaking to tax immunity generally, much less specifically prohibiting local taxes on third parties or a corresponding duty in State entities to collect such taxes."]; City Reply Br. 24 ["If the Legislature intended to limit city parking tax power, it would have done so . . ."].) But it is unreasonable to expect the Legislature to expressly prohibit cities from conscripting state agencies as local tax collectors where cities simply do not have that power in the first instance. The home rule analysis simply does not sufficiently account for state sovereignty.

which policy makers negotiate compromises regarding the allocation of state and municipal power, as was done in the wake of *Hall.* (Hastings Br. 27-31.) As it has played out in the nearly 80 years since *Means*, the rule of hierarchical sovereignty is administrable and provides a reliable test the courts can apply and around which the State and local governments can order their affairs.

The League has no response to *Means* and *Hall*; the League never cites these foundational cases at all.[4] As the amicus curiae brief of the California Constitution Center explained, the rule of state sovereignty—and the corollary that cities cannot commandeer state agencies—is a fundamental aspect of our state Constitution and system of government: "California is a sovereign state vested with governmental power superior to its political subordinates" such that charter cities "cannot bind branches of the sovereign state government." (Cal. Const. Center Br. 8.) That is because "California's sovereignty defines its relationship with its political subordinates. The state is supreme." (*Id.* at p. 13; see also *id.* at p. 23 ["[T]he state's sovereignty over the inferior municipality . . . prevents the government with less power from regulating the government with more power."]; CSU Br. 28-41.)

Indeed, a local government's power over municipal affairs ends when it attempts to direct the actions of a state entity because "any local ordinance that impairs the state's sovereignty is necessarily a *state* affair." (Cal. Const. Center Br. 11.) As CSU previously explained, cities are formed "for purposes of local government," and home rule authority was intended to grant authority only over matters that are essentially local in

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[4] The City, similarly, does not discuss these cases until deep into its reply brief, and attempts to dismiss them simply because they did not speak directly to local government taxing powers. (City Reply Br. 18-22.)

nature. (CSU Br. 35, quoting *Abbott v. City of Los Angeles* (1958) 50 Cal.2d 438, 467; *id.* at pp. 38-41.) And as the California Constitution Center detailed, a charter does not "provide a city legislative power against the state," because the "local autonomy" it grants "does nothing to reduce the state's supremacy . . . nor does it change the city's subordinate status." (Cal. Const. Center Br. 14-15; see also *id.* at p. 15 ["A charter does not permit a city to regulate the sovereign state."].)

The League contends that the Universities "offer no workable rule to limit the power they seek . . . ." (League Br. 22; see also City Reply Br. 14 [arguing that under hierarchical sovereignty "the proponents of the 'higher' power would win every dispute"].) This misunderstands the Universities' argument, as there is at least one significant limitation. The State has considerable latitude to waive state sovereignty and consent to municipal control of state agencies—whether through the Legislature enacting a statute, the People by initiative, or a state agency exercising its proper authority. (CSU Br. 26, 28-29; Regents Br. 42; Hastings Br. 23-24.)[5] Indeed, when appropriate the Legislature has in fact waived state sovereignty and required certain state entities to comply with local ordinances, such as building and zoning requirements among others. (CSU Br. 29-30 fn.12; Hastings Br. 29-31.)[6] The League itself cites one such example of legislative consent. It cites Revenue & Tax Code section 7211, which requires the state Board of Equalization to administer local sales and use taxes for cities and counties, for the proposition that state immunity from tax collection is not "universal." (League Br. 14; see also CSU Br.

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[5] It is undisputed that the Universities here have never consented to having San Francisco's parking tax apply to them.

[6] These statutes were enacted as a legislative response to *Hall*, and make schools subject to certain local laws in specified circumstances. (CSU Br. 29-10 fn.12; Hastings Br. 29-31.)

29-30 fn.12 [noting similar statute].) The existence of a variety of state statutes requiring or authorizing state entities' compliance with local laws confirms the Universities' position that state-level consent is necessary before local governments can compel state entities to collect local taxes. The Legislature made that choice for local sales and use taxes. The Legislature has the power to make the same choice regarding local parking taxes to be collected at state facilities by certain state entities, but it has not done so, and it is ultimately a policy choice entrusted to the Legislature's judgment. (See Regents Br. 32-35; Hastings Br. 31-36.)

The closest the League gets in its brief to addressing *Means* and *Hall* is its argument that this Court should adopt the reasoning of *City of Modesto v. Modesto Irrigation District* (1973) 34 Cal.App.3d 504, and cases following it. (League Br. 19-20.) In that case, the court rejected the sovereignty arguments of two legislatively created irrigation districts objecting to a charter city ordinance compelling them to collect a utility users tax from electrical customers. (*City of Modesto*, *supra*, 34 Cal.App.3d at p. 506; CSU Br. 44.) As the Universities explained, the court in *Modesto* summarily dismissed the holdings of this Court's precedents in those cases, and instead built a faulty argument from other authorities that had nothing to do with hierarchical sovereignty. (CSU Br. 44-45; Hastings Br. 46-47.) The League does not respond to the defects in *Modesto*'s reasoning. This case offers the opportunity to clarify that, notwithstanding *Modesto* and the cases that cite it, the rule of hierarchical sovereignty described in *Means* and *Hall* remains controlling.[7]

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[7] The League is wrong that the irrigation districts in *Modesto* are "no different" from the Universities "in any way that matters for the constitutional values in issue here." (League Br. 19.) The districts were not state agencies charged by statute and the state Constitution with a statewide mandate. (See CSU Br. 44-45 fn.22.) It may be possible that a (continued...)

B. Hierarchical Sovereignty Does Not Turn on a Governmental-Versus-Proprietary Distinction

The League argues that the distinction between governmental and proprietary activities is unworkable and should be abandoned. (League Br. 15-19.) This argument is beside the point. The Universities do not argue in favor of applying this distinction to determine whether they should be subject to local law. The reason for that is simple: this Court has never held that sovereignty as recognized in *Means* and *Hall* turns on whether the state entity is acting in a proprietary or governmental capacity.

The League correctly explains that this Court long ago abandoned the attempt to distinguish between governmental and proprietary activities for purposes of determining a state entity's liability in tort. (League Br. 15-19.) The Court has continued to use the distinction in a much different context: as an interpretive aid to determine whether a *state* statute or constitutional provision should be read to apply to state entities. In *Regents of University of California v. Superior Court* (1976) 17 Cal.3d 533, 536, for example, the Court held that the University was subject to usury laws embodied in the state Constitution. The Court acknowledged the canon of construction that "neither the state nor its subdivisions are included within the general words of a statute" unless the statute expressly says so (*id.* at p. 536), but recognized an exception to that rule because the University was acting in a capacity "no different from a private university" (*id.* at p. 537). (See also *People v. Crow* (1993) 6 Cal.4th 952, 959 [applying canon to

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(...continued)
different result might obtain where principles of hierarchical sovereignty are applied to entities recognized only in state statutes serving only localized interests. That question should be left for another day and considered in light of the particular statute that governs the entity at issue.

determine that government agencies could be considered "victims" under restitution statute].)

This canon of construction cannot be applied to determine the reach of *local* laws, however, because it presupposes the enacting body's power to regulate state entities if it chooses to. Absent a constitutional bar, both the state Legislature by statute and the People by the Constitution, amended by initiative, possess that power. But a charter city in the first instance lacks authority to regulate state entities, as *Hall* and *Means* squarely hold. The Universities are aware of no subsequent decision of this Court that limits the rule to situations where the state entity is deemed by a court to be acting in a "governmental" capacity.

Granted, a few courts of appeal have concluded that state entities are immune from local regulation only when "the state is operating in a governmental capacity." (*Board of Trustees v. City of Los Angeles* (1975) 49 Cal.App.3d 45, 49; see also *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1357; 8 Witkin, Summary of Cal. Law (11th Ed. 2018) Constitutional Law § 1113 [summarizing *City of Los Angeles*, *supra*].) These cases generally recognize—correctly—that state contractors should not be confused with the State or state entities for purposes of applying the sovereignty principles of *Hall* and *Means*. But they are wrong to suggest that these principles require courts to engage in an ad hoc inquiry into whether the regulated activity is sufficiently "governmental."

These courts of appeal may have been led astray by reading certain language in *Hall* out of context—specifically, the observation that state immunity from local regulation applies to the State's "sovereign activities." (See, e.g., *City of Los Angeles*, *supra*, 49 Cal.App.3d at p. 50 [quoting this language from *Hall* in discussing the governmental-proprietary distinction].) But as CSU explained in its answering brief (CSU Br. 29 fn. 11), the Court in *Hall* was not distinguishing between activities that are

"sovereign" or "governmental," on the one hand, and those that are not (that is, are merely proprietary), but rather between the State's activities as sovereign, which are never subject to local control, and its regulatory power, which must sometimes yield to charter cities' home rule authority if it intrudes on municipal affairs. (See, e.g., *State Building & Construction Trades Council of Cal. v. City of Vista* (2012) 54 Cal.4th 547, 555-556.) The full quote in *Hall* makes that clear: "When [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." (47 Cal.2d at p. 183.) *Hall* therefore concluded that *Means*, not home rule preemption cases, was "most pertinent" for demarcating local regulatory authority because only *Means* involved "attempted regulation of a *state activity*." (*Id.* at p. 184, italics added.)[8]

Under the rule of *Hall* and *Means*, the Universities' activities as state entities—an expression of state-level sovereign power—should not be parsed and categorized into those that are governmental and free of local regulation, and those that are proprietary and can be interfered with at the discretion of the State's hundreds of local governments. The Universities acknowledge that it may be that a state entity's activity could be so far from its constitutional charge or statutory mandate that local regulation should reach it, perhaps on a theory that the action is unauthorized. Wherever that

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[8] The court in *City of Los Angeles* also proceeded from the unsupported premise that "[t]he state's immunity from local regulations is merely an extension of the concept of sovereign immunity." (49 Cal.App.3d at p. 49.) That is not quite right. As the California Constitution Center explained, the two doctrines have distinct origins and purposes. (Cal. Const. Center Br. 22-23.)

hypothetical line might be, however, the Universities' activities in providing and regulating parking do not approach it. Parking for students, staff, and visitors is essential to the University's mission to provide access to education and related services, such as medical care. (See Slip opn. 7-9; Dis. opn. 2; CT 559-562.)

As to CSU in particular, the Legislature has already decided that providing parking is important to the mission of the university, and its authorizing statute does not limit parking to students and employees so long as CSU is furthering "state purposes" and not "in competition with private industry." (Ed. Code § 89701, subd. (c); CSU Br. 32-33.) As to the Regents and Hastings, the state Constitution gives them plenary authority over the management of their property, including parking, such that they too are properly exercising sovereign power. (Regents Br. 46-51; Hastings Br. 24, 42-43; see also Cal. Const. Center Br. 16-19.) That should end the analysis. The City cannot compel the Universities to collect the City's taxes.

II. EVEN UNDER A PREEMPTION-OF-HOME-RULE ANALYSIS, THE UNIVERSITIES' STATEWIDE MANDATES COMPEL A DECISION IN THEIR FAVOR

This case should be decided on sovereignty principles. As CSU's answering brief explained, conflict preemption principles do not map well onto the questions presented by this case and apply at best by analogy. (CSU Br. 15, 29, 49.) A preemption-of-home-rule analysis is designed to assess "claim[s] that the state Legislature is prohibited . . . from enacting legislation which will affect a chartered city." (*Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 292-93 fn. 11.)[9] As

[9] This brief uses the term "preemption" to refer to the four-prong test applied in *California Federal Savings & Loan Assn. v. City of Los Angeles* (continued...)

amicus the California Constitution Center explains, home rule preemption "is the wrong frame for state-city power contests" because city charters "only permit a city to protect itself from the legislature, not to regulate branches of the state government. A charter is a shield, not a sword." (Cal. Const. Center Br. 8, 20.) This Court made a similar point in *Hall*, noting that conflict preemption cases were not particularly helpful for resolving city-state disputes because none involved "attempted regulation of a *state activity* by a city." (*Hall, supra*, 47 Cal.2d at p. 184.) And when the State "engages in such sovereign *activities* . . . , 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.) Because this case involves a city's efforts to control state activities, *Hall* and *Means*, not conflict preemption, provide the correct framework.

Still, the League appears to advocate for some type of modified preemption-based "balancing test" that would weigh the respective state and municipal interests. (See, e.g., League Br. 11, 23-24.) But, in analogous circumstances, this Court has rejected such a test because it is inappropriate where, as here, the Legislature has already "balanced the competing concerns." (CSU Br. 55, citing, *inter alia*, *California Federal, supra*, 54 Cal.3d at p. 24, and *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1257-1258].)

(...continued)
(1991) 54 Cal.3d 1, discussed in CSU's answering brief at pages 53 to 60, and raised by the League in its brief at pages 20 to 22. According to the League, *City of Vista* "freshly states" this four-part framework (League Br. 20), but the test in fact comes from *California Federal*, as *City of Vista* itself notes. (See *City of Vista, supra*, 54 Cal.4th at p. 556.)

Conflict preemption principles, properly applied, do not change the result in this case. The League concedes that "autonomous State educational institutions are a worthy statewide concern" (League Br. 22), and were the Court to apply preemption principles, correctly applied, they favor the Universities. CSU's answering brief previously detailed why, under the preemption principles drawn from *California Federal*, the City cannot require CSU to act as its tax collector, and is briefly summarized below. (CSU Br. 53-60.)[10, 11]

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[10] This Court summarized the home rule preemption test as follows in *City of Vista*: "In *California Fed. Savings* . . . we set forth an analytical framework for resolving whether or not a matter falls within the home rule authority of charter cities. First, a court must determine whether the city ordinance at issue regulates an activity that can be characterized as a 'municipal affair.' Second, the court 'must satisfy itself that the case presents an actual conflict between [local and state law].' Third, the court must decide whether the state law addresses a matter of 'statewide concern.' Finally, the court must determine whether the law is 'reasonably related to . . . resolution' of that concern and 'narrowly tailored' to avoid unnecessary interference in local governance. 'If . . . 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 [and not unduly broad in its sweep], 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.'" (*City of Vista*, *supra*, 54 Cal.4th at p. 556 [brackets and ellipses original; citations omitted].)

[11] As explained in CSU's answering brief, field preemption principles may offer an additional, alternative framework to resolve this case with respect to CSU. (CSU Br. 49-53.) The Legislature has enacted a comprehensive statutory scheme controlling the management, administration, and control of CSU's facilities, including parking facilities (*id.* at pp. 51-53), signaling the Legislature's intent to "completely occup[y] the field by general laws." (*Hall*, *supra*, 47 Cal.2d at p. 184; see also *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 62-63 [applying field preemption principles to charter city home rule analysis].)

First, while a parking tax may *generally* be characterized as governing a municipal affair, local taxes are not "inflexibly 'municipal affairs'" and "local taxation may . . . acquire a 'supramunicipal' dimension." (CSU Br. 53, quoting *California Federal*, *supra*, 54 Cal.3d at pp. 6-7; Regents Br. 20-24.) Local tax ordinances stray into the "supramunicipal" where, as here, they interfere with significant statewide interests such as furthering higher education by enabling access to university facilities. Second, although the League argues there is "no conflict between state and local law" (League Br. 21), the Universities explained that complying with the City's tax ordinance stands as an obstacle to their statewide educational mission. (CSU Br. 56-60; Regents Br. 34-35; Hastings Br. 19-21, 24-27.)[12]

Third, in determining whether a statewide concern exists, the "nature and purposes of the constitutional and legislative scheme" regarding public higher education are central considerations. (CSU Br. 54.) The statewide interest here is access to public higher education, as enshrined in the state Constitution and state statutes. As the Universities have previously explained, to further this interest the state Constitution grants the Regents and Hastings plenary control over most of their operations (Regents Br. 46-48; Hastings Br. 24, 42-43); and, as to CSU, not only does this state interest have constitutional foundations, but the Legislature has enacted a comprehensive statutory framework that includes express authorization for parking, and recognition that even legislatively-enacted laws must be consistent with its educational mission (CSU Br. 51-60). Additional

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[12] The statute authorizing CSU's control over parking facilities is instructive. (Ed. Code, § 89701; CSU Br. 51.) Through this statute, the Legislature established that CSU has discretion 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).) Adding local taxes directly conflicts with this power.

statewide interests include "uniform statewide regulation," to foreclose being subjected to a patchwork of conflicting requirements imposed by local governments. (See CSU Br. 54.) Fourth, these state laws, constitutional and statutory, are reasonably related to furthering the broad state interest in public education, and no broader than necessary to achieve the Universities' purposes of providing public higher education. (Cf. *California Federal*, *supra*, 54 Cal.3d at p. 24 ["[W]e defer to legislative estimates regarding the significance of a given problem and the responsive measures that should be taken toward its resolution"].)

By contrast, the League errs at each step of the analysis. Its arguments on the first two prongs are barred by *California Federal*. First, the League contends that local tax ordinances, as revenue-raising measures, are necessarily municipal affairs. (League Br. 20.) Second, it argues that because "the local parking tax is not a regulation," there is "no conflict" between the parking tax and state law—echoing the City's argument that there are "fundamental differences between a city regulation, and a city tax collection requirement." (League Br. 21, quoting City Reply Br. 24.)[13] But these points ignore *California Federal*'s teaching that local tax ordinances can become "supramunicipal" when they implicate matters of statewide concern, and that "charter city tax measures are subject to the same legal analysis and accumulated body of decisional law . . . as charter city regulatory measures." (*California Federal*, *supra*, 54 Cal.3d at p. 7; Cal. Const. Center Br. 24.) The League, like the City, has no response to these

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[13] The League also does not explain why, if there is no such conflict, the rest of the home rule preemption test would even apply. (See *California Federal*, *supra*, 54 Cal.3d at p. 16 ["[A] court asked to resolve a putative conflict between a state statute and a charter city measure initially must satisfy itself that the case presents an actual conflict between the two. If it does not, a choice between the conclusions 'municipal affair' and 'statewide concern' is not required."].)

points from *California Federal*. (See League Br. 20-22; see generally City Reply Br.)

The League's application of the third and fourth prongs is premised on its misframing of the statewide interest at issue here as "confer[ring] tax immunity" on private parties. (League Br. 22; see also *id.* at pp. 14, 21.) But the Universities are not seeking to prevent the City from collecting taxes or otherwise creating "islands of immunity" from local taxes. (*Id.* at p. 23; CSU Br. 61-62.) Nor are they, as in *People v. Miami Nation Enterprises* (2016) 2 Cal.5th 222, 240, selling tax immunity to the students, staff, and others who use their parking lots. Instead, the Universities simply argue that they cannot be made to act as the City's parking tax collector absent legislative consent.

At bottom, San Francisco's tax ordinance is incompatible with the Universities' fulfillment of legitimate and significant statewide interests, thus "ending the inquiry." (*California Federal*, *supra*, 54 Cal.3d at pp. 23-24.) In so far as the ordinance is enforced against the Universities, it directly conflicts with the relevant constitutional and statutory framework, and is an obstacle to fulfilling the Universities' mission. Stated simply, the ordinance interferes with the Universities' autonomy and fulfillment of their statewide mandates. And should there be any doubt, it "must be resolved in favor of the . . . authority of the state" as opposed to the City. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 140.)

III. THE LEAGUE IS WRONG THAT THIS CASE WILL ADVERSELY IMPACT EXISTING CITY PARKING REVENUES, OR TAX COLLECTION BY PRIVATE, NON-GOVERNMENTAL PARTIES

The League's contention that affirming the decision below will cause catastrophic results for local governments is unsupported. The League asserts that parking taxes account for a "significant fraction" of many cities' general funds and that the power "to collect taxes . . . from customers and

guests of State . . . agencies is fundamental to their ability to fund municipal services." (League Br. 9, 12.) The League also implies that failing to enlist the Universities in local tax-collection will deprive California cities of revenue. But an affirmance here will not threaten to disrupt local budgets. The League offers no example of a state entity that is collecting a local government's parking tax and would be excused from that role by a decision in this case. Affirming the Court of Appeal would not deprive any city of revenue; it would merely ratify the status quo, leaving it to the proper organs of state government to decide whether to require state entities to support local government parking tax collection efforts. (See CSU Br. 23-24, Regents Br. 15-16; Hastings Br. 19-20.)

And contrary to the League's repeated assertions, this case is not about the power of cities to collect taxes from "customers and guests" of the Universities or other state entities (League Br. 9), nor the power of those entities to "confer . . . tax immunity on third parties" (*id.* at p. 14). This case presents a much narrower question: whether a charter city can, relying on its own powers, require state universities to collect local taxes. As already explained, principles of hierarchical sovereignty or, alternatively, preemption, demonstrate that the answer is no. In essence, the League, like the City, ask this Court to grant cities across the State a power they do not currently have: the authority to direct state agencies unilaterally to collect municipal taxes on their behalf.

Finally, to the extent the League argues that affirming the Court of Appeal would deprive cities of revenue from other third-party taxes, such fears are unfounded. The state sovereignty concerns here mean this case has limited impact on private, third-party tax collection by non-governmental actors, who have no similar sovereignty interest. (See League Br. 15; CSU Br. 41-46, 62.) As such, this case will have no impact

on cities' authority to collect taxes from private vendors who collect the bulk of local taxes.

CONCLUSION

For all these reasons, this Court should reject the League's arguments and affirm the judgment of the Court of Appeal.

Dated: August 21, 2018

Respectfully submitted,

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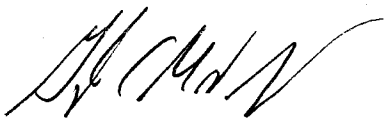

GONZALO C. MARTINEZ
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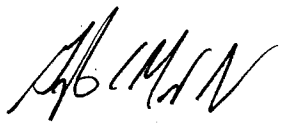
CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT CALIFORNIA STATE UNIVERSITY'S ANSWER TO BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES uses a 13 point Times New Roman font and contains 5470 words.

Dated: August 21, 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 August 21, 2018, I served the attached **RESPONDENT CALIFORNIA STATE UNIVERSITY'S ANSWER TO BRIEF OF AMICUS CURIAE LEAGUE OF CALIFORNIA CITIES** 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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San Francisco, CA 94102
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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 August 21, 2018, at San Francisco, California.

M. Campos
Declarant

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Signature

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