S242835

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its Office of Treasurer and Tax Collector,

Plaintiff and Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Defendants and Respondents.

After a Decision by the Court of Appeal
First Appellate District, Division One, Case No. A144500

San Francisco Superior Court, Case No. CPF-14-513434
Honorable Marla J. Miller, Judge

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This Court has long recognized that the State of California and the agencies through which it operates, when engaged in sovereign activities, are "not subject to local regulations unless the Constitution says [they are] or the Legislature has consented to such regulation." (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 183.) Applying this "sovereign immunity" test, as it is generally known, the Courts of Appeal and this Court have held that absent a waiver of immunity by the State, state agencies are not subject to all types of local laws, including local building regulations, local employment ordinances, local zoning and parking rules, and local fees and taxes. The only exception to the rule is that the State's immunity does not apply when an agency is engaged in a purely "proprietary" activity.

In this case, San Francisco sought a writ of mandate compelling Respondent Board of Directors of Hastings College of the Law ("UC Hastings") to comply with provisions in the San Francisco Business and Tax Regulations Code that require operators of parking lots to collect from their customers a 25% tax on the cost of renting parking spaces in the City. UC Hastings declined to collect the tax at its campus garage, believing that doing so would interfere with its efforts to provide parking for its students, staff, faculty, and others who visit the college. A majority of the panel on appeal, like the trial court before them, applied the sovereign immunity test and agreed that UC Hastings could not be forced to act as San Francisco's tax collector. In the majority's view, UC Hastings' parking garage plays a critical role in maintaining a safe environment for the college's campus population and directly supports its educational function. (Opinion at 7-9.)[1]

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[1] As used herein, "Petition" refers to San Francisco's petition for review in this Court; "Opinion" and "Dissent" refer to the majority and dissenting opinions of the Court of Appeal, which are both attached to the

Since no state law requires state universities to collect local taxes at their campus parking lots—a point that San Francisco has never disputed—the majority held that the State's immunity from local control applies.

San Francisco, in its petition for review, again asks: "Can a city require state universities that operate paid parking lots within a city to collect and remit parking taxes owed by their customers?" But in supplying its suggested answer to this question, San Francisco barely mentions sovereign immunity or the many cases addressing it. In fact, at no point does San Francisco even set forth the elements of the sovereign immunity test applied by the majority. Instead, San Francisco advocates for an entirely new rule, applicable only to tax collection requirements, under which cities could impose "reasonable" tax collection obligations on state agencies whenever they want, with or without the State's consent.

San Francisco's request is not supported by any significant legal authority, and runs counter to this Court's instruction in *Hall*. Echoing the dissent, San Francisco claims that "'the majority's opinion leaves the law in some disarray.'" (Petition at 19; Dissent at 2.) However, the sovereign immunity test and the cases applying it are, as the majority explains, quite "straightforward[;]" any confusion stems not from the law, but because San Francisco refuses to acknowledge the critical element needed before a state agency must comply with local laws—the State's ***consent***. (Opinion at 6, 17.) The majority, in contrast, correctly recognizes that whether state agencies should act as local tax collectors is a policy question best answered by the Legislature or the State's voters, not the courts.

The majority opinion is simply the latest iteration of an established principle—state agencies engaged in sovereign activities are exempt from local laws, unless the state has expressly agreed to be bound by those laws.

Petition; "CT" refers to the Clerk's Transcript on Appeal; and "SFBTC" refers to the San Francisco Business and Tax Regulations Code.

Courts have applied this rule without difficulty for decades, and nothing suggests they will have any difficulty applying it in the future. Accordingly, this Court should deny San Francisco's petition for review.

II. STATEMENT OF FACTS

The facts in this case are largely undisputed. San Francisco imposes a 25% tax on the cost of renting parking spaces in the City and requires parking lot operators to collect that tax from their customers. (Opinion at 1; CT 24-28, 54-55 [SFBTC art. 9, §§ 601, 602, 602.5, 603, 604; art. 6, § 6.7-1].) In 1983, San Francisco tried to compel UCSF to collect the parking tax at its campus parking lots, but dropped the matter after the university objected on the basis of sovereign immunity. (CT 271-272, 275-284 [¶¶ 11-16, Ex. A-B].) San Francisco made no further effort to force any state university to collect the parking tax until it filed this lawsuit in 2014, seeking a writ of mandate that would require UC Hastings and the two other defendants, the University of California and California State University, to collect the tax. (CT 271-272 [¶¶ 11-16].) The trial court denied San Francisco's writ petition, and the Court of Appeal affirmed.

UC Hastings does not have any serious objections to San Francisco's full recitation of the facts and, for brevity's sake, will not restate those facts here. There are, however, two issues that UC Hastings would like to clarify before moving on to the substance of San Francisco's petition.

First, San Francisco suggests that UC Hastings' decision not to collect parking taxes at its campus garage distorts the market by allowing UC Hastings to undercut the prices charged by other parking lots in the City. (Petition at 3, 16-17.) Under the circumstances, this contention is misplaced. UC Hastings does not operate its parking garage to compete in the paid parking market, or even to make a profit. While open to the public, the garage is intended to serve the college's campus population.

Until recently, UC Hastings' only parking facility was an 18-space lot used by faculty and staff. (CT 270-271 [¶¶ 4, 11].) This garage was wholly inadequate to serve the college's needs; in 2014, UC Hastings had 1,043 full-time students, 62 full-time and 150 adjunct faculty members, and 185 support staff, and its campus is located in a dense urban area with limited street parking. (CT 270 [¶ 3].) Accordingly, UC Hastings recently built a new 395-space campus garage. (CT 270-271 [¶¶ 5, 10].) It financed the construction of this garage by issuing $25.1 million in tax-exempt general obligation bonds, with an average annual debt service of $1,576,000, and has been willing to operate the garage at a loss even while charging discounted rates to its students. (CT 271 [¶¶ 9-10].)

As San Francisco concedes, the new garage allows students, faculty, and staff to conveniently access UC Hastings' campus, and is used by lawyers, alumni, and guests who patronize UC Hastings' library and attend lectures, symposia, receptions, and other events at the college. (Petition at 8; CT 270 [¶ 7].) The Tenderloin neighborhood where UC Hastings is located is poorly lit and suffers from high levels of crime, and the new garage, which has on-site security personnel and a state-of-the-art security system, creates a safe and easy way for students to leave campus that is superior to the nearby Civic Center garage, which is underground and dark and does not provide the same level of security. (CT 270-271 [¶ 8].)

San Francisco's concern about marketplace distortion rings particularly hollow in this case, since San Francisco—which operates 38 parking lots, including the Civic Center garage near UC Hastings—is one of the main players in the City's parking market. (CT 273 [¶¶ 18-19].) Although San Francisco theoretically collects parking taxes at these lots, all proceeds go to San Francisco, whether treated as "taxes" or the rental price of a parking space. (*Ibid.*) When a person pays $12.50 at the Civic Center garage, $2.50 may be called "tax," but all $12.50 goes to San Francisco; at

UC Hastings' garage, $2.50 will go to San Francisco and only $10 will go to UC Hastings. (CT 261, 273 [¶ 19].) Thus, San Francisco's dual status as taxing agency and market participant itself distorts the market, giving San Francisco a pricing advantage that UC Hastings does not enjoy. In fact, San Francisco ***expressly*** exempts many of its own customers from the parking tax, since it does not apply the tax at the thousands of metered parking spaces it operates in the City. (CT 28 [SFBTC art. 9, § 606(1)].)

Second, San Francisco's tax collection regulations are considerably more intrusive than its petition for review lets on. If subject to those regulations, UC Hastings must collect parking taxes from its students, faculty, staff, and others who might use its campus garage (CT 24-27, 54-55 [SFBTC art. 9, §§ 601, 604(a); art. 6, § 6.7-1]); submit monthly tax returns showing the number of transactions and the amount of tax due on each transaction, if requested (CT 55-56, 58 [SFBTC art. 6, §§ 6.7-2(c), 6.9-3(a)(1)]); and maintain extensive records for five years, including detailed information about lost tickets and claimed exemptions (CT 26-29, 46-47, 54 [SFBTC art. 9, §§ 604(b)-(c), 607(d); art. 6, §§ 6.4-1, 6.7-1]). UC Hastings may not operate its garage unless it receives a certificate of authority, which can be revoked if San Francisco believes that UC Hastings has not complied with any parking tax collection regulation. (CT 48-50 [SFBTC art. 6, §§ 6.6-1(a)-(g)].) San Francisco can also require UC Hastings to provide security and maintain a trust account for uncollected taxes. (CT 54-55, 64 [SFBTC art. 6, §§ 6.7-1(f), 6.10-1].)

Moreover, in the event that UC Hastings for any reason fails to collect the full amount of parking tax owed, it must pay that tax directly from its own funds. (CT 54-55 [SFBTC art. 6, § 6.7-1(d)].) If an occupant refuses to pay the parking tax, UC Hastings must pay it. If UC Hastings does not collect the parking tax based on an exemption and cannot prove to San Francisco's satisfaction that the exemption applies, it must pay the tax.

(CT 28, 54 [SFBTC art. 9, § 606; art. 6, § 6.7-1(a)].) And if UC Hastings cannot establish the amount or validity of a lost ticket transaction, it must pay the tax owed for a full value ticket. (CT 26-29 [SFBTC art. 9, §§ 604(b)-(c), 607(d)].) Any failure to remit all parking taxes owed or to comply with any other collection regulations can lead to the imposition of penalties, liens on UC Hastings' property, and restrictions on UC Hastings' ability to transfer or sell its garage.[2] (CT 64-65, 77-78, 84-87, 91-92 [SFBTC art. 6, §§ 6.10-2, 6.17-1, 6.19-3, 6.19-4(d), 6.21-1].)

III. ARGUMENT

UC Hastings does not dispute that San Francisco has the general authority to adopt laws requiring parking lot operators to act as city tax collectors. This case instead turns on a narrower question: Can San Francisco force state universities to comply with those laws when they provide campus parking for their students, staff, faculty, and others?

Although this issue is certainly important to the parties, and likely to other state universities that provide similar parking facilities and the cities in which those universities are located, it is not an issue that needs to be "settled" by this Court. (Cal. Rules of Court, Rule 8.500(b)(1).) A well-established legal test provides the framework used to determine whether UC Hastings must collect San Francisco's parking tax—a state agency,

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[2] In a footnote, San Francisco claims that it only wants UC Hastings to "collect[] and remit[] parking tax" and that the Court need not consider any other parking tax collection regulations. (Petition at 22-23 n.3.) The trial court, however, found that San Francisco "seeks to impose all of the applicable provisions of the [parking tax] ordinance on Respondents, not just some of them." (CT 563.) Indeed, San Francisco amended its parking tax ordinance in 2013 to exempt public agencies from various regulatory requirements but specifically left its collection regulations in place. (CT 16 [Petition ¶ 52].) San Francisco's assertion that any challenge to these regulations is not ripe seems to be a litigation tactic to minimize the appearance that its parking tax ordinance intrudes on the State's sovereignty while still holding out the threat of future enforcement.

when engaged in sovereign activities, is "not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (*Hall, supra*, 47 Cal.2d at 183.) This sovereign immunity test is grounded in important policy considerations, and it has been applied by California courts for many decades. There is no need to revisit it now.

A. The majority opinion applies well-established principles of sovereign immunity in finding that San Francisco cannot compel UC Hastings to collect parking taxes at its campus garage.

In our nation's federal system, states are considered sovereign entities that may exercise all powers of governance not delegated to the federal government or prohibited by the federal constitution. (*Printz v. United States* (1997) 521 U.S. 898, 918-19; U.S. Const. amend. X.) The people of California, through the State's constitution, have chosen to allow cities to exercise some political autonomy within their borders. (Cal. Const. art. XI, §§ 5, 7.) But cities are not sovereign; "in California as elsewhere they are mere creatures of the state and exist only at the state's sufferance." (*Board of Supervisors of Sacramento County v. Local Agency Formation Commission of Sacramento County* (1992) 3 Cal.4th 903, 914.)

With these principles in mind, this Court, in *Hall v. City of Taft*, held that "[i]t is competent for the state to retain to itself some part of the government even within [a] municipality, which it will exercise directly, or through the medium of other selected and more suitable instrumentalities." (*Hall, supra*, 47 Cal.2d at 184, citations and quotation marks omitted.) Thus, when a state agency engages in a "sovereign activity" such as constructing or maintaining its buildings or managing its operations and employees, "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 183; *In re Means* (1939) 14 Cal.2d 254, 255-60.) State agencies, in short, "enjoy

immunity from local regulation" except when the State has "consented to waive such immunity." (*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.* (1996) 43 Cal.App.4th 630, 635.) Only when a state agency is engaged in a purely "proprietary" activity does the State's immunity not apply. (*Board of Trustees of the California State University and Colleges v. City of Los Angeles* (1975) 49 Cal.App.3d 45, 49-51.)

This test reflects the underlying political dynamics that arise when a city tries to impose legal requirements on a state agency. Whether it is in the public interest for state agencies to assist in the collection of local taxes, and whether the benefits of doing so outweigh the burdens, is a quintessentially legislative decision. (Opinion at 6-7; see *City of Santa Ana v. Board of Education of the City of Santa Ana* (1967) 255 Cal.App.2d 178, 179-80.) But who should make that decision? State agencies perform governmental functions on behalf of the entire State, and must be politically responsive to all California voters or the officials who represent them. Cities, in contrast, represent only a small subset of California voters. To allow the 850,000 people who live in San Francisco to dictate how an agency representing 39 million people must operate inverts the most fundamental principles of democratic decision-making. The sovereign immunity test, by focusing on State consent to local control, ensures that the State has a voice in choosing rules that might have a statewide impact.

Courts applying the sovereign immunity test have found that local laws of all stripes cannot be applied to state agencies without the State's consent. Early on, this Court held that state agencies are not subject to local building regulations and employment laws. (*Hall*, *supra*, 47 Cal.2d at 182-84; *Means*, *supra*, 14 Cal.2d at 255-60.) And in the years since *Hall*, the Courts of Appeal have held that state agencies need not comply with local garbage collection rules (*City of Santa Ana*, *supra*, 255 Cal.App.2d at 179-80; *Laidlaw*, *supra*, 43 Cal.App.4th at 635-41); local zoning and

parking ordinances (*Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 427-28; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 242-44); and local fees and taxes (*Regents of the University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 136; *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1351-53, 1355-62).

The majority opinion is entirely consistent with this precedent. Having concluded that the operation of UC Hastings' campus parking garage is not a proprietary activity and that the State has not waived its immunity from local control in this area, the majority correctly holds that San Francisco may not force UC Hastings to collect its parking tax. And while the majority closes its opinion by noting that "there may be . . . value in having state entities collect and remit charter city-taxes," it properly explains that "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." (Opinion at 17.)

B. Displacing the sovereign immunity test with a new test allowing cities to impose "reasonable" tax collection obligations, as San Francisco suggests, ignores the purpose of the immunity rule.

On appeal, San Francisco did not argue that any of the prior cases applying the sovereign immunity test were incorrectly decided. Instead, according to San Francisco, there is one narrow field—the ***collection*** of local taxes—in which sovereign immunity does not apply. San Francisco justified this claim by drawing a distinction between local "regulatory" measures, which it concedes do not apply to state agencies, and local "revenue" measures, which purportedly do apply to the State.

As both the majority opinion and the dissent note, however, the distinction between "regulatory" and "revenue" measures developed as a way to determine when state law preempts charter city ordinances; it never had anything to do with sovereign immunity. (Opinion at 12; Dissent at 21-

23.) Moreover, this Court repudiated the distinction over 25 years ago in *California Federal Savings & Loan Ass'n v. City of Los Angeles* (1991) 54 Cal.3d 1 ("*Cal Fed*"), flatly rejecting the idea that "the subject of charter city taxation should merit treatment different from charter city regulatory measures." (*Id.* at 6-7, 15.) Although it is true, the Court explained, "that the power to govern—whether local or state—means little without the coordinate power to tax," this fact "fails to explain why, among all other municipal powers, the power to tax should be singled out as specially protectable, as uniquely unyielding to transcendent interests." (*Id.* at 15.)

San Francisco's petition for review subtly shifts focus. Rather than relying on an abstract distinction between "regulatory" and "revenue" measures, San Francisco simply asks this Court to adopt a blanket rule that a city's imposition of "reasonable" tax collection obligations on state agencies never interferes with those agencies' sovereign activities, at least where the city reimburses the agencies for the costs they incur in collecting a local tax. (Petition at 3.) It offers this proposed rule as a supposedly more "predictable" alternative to the sovereign immunity test—or, to be more precise, that portion of the sovereign immunity test that says only governmental, rather than proprietary, activities are entitled to immunity. (*Ibid.*) For the reasons set forth below, this contention lacks force.

1. The sovereign immunity test properly allows the political branches of the State to determine when a local law might interfere with sovereign activities; San Francisco's proposed rule would transfer this power to the courts.

Immunity from local laws applies when a state agency is engaged in "sovereign" activities. (*Hall, supra*, 47 Cal.2d at 183.) To implement this requirement, courts have held that "the state's exemption from local regulation 'is limited to situations where [a state entity] is operating in its governmental capacity' as opposed to engaging in a 'proprietary activity.'" (Opinion at 7, citing *Bame, supra*, 86 Cal.App.4th at 1356.) The majority

opinion holds, and UC Hastings agrees, that "an activity is not necessarily governmental just because it generates revenue used to support a state entity's purpose." (*Id.* at 9.) Nevertheless, when the activity in question "directly supports" an agency's central function, immunity applies. (*Ibid.*)

Drawing a distinction between governmental and proprietary activities is a way to ask if a state agency is acting as the "sovereign" when undertaking a particular activity. But once this question is answered in the affirmative, it is left to the Legislature or the State's voters to determine whether a local law might interfere with that activity. (See *City of Santa Ana*, *supra*, 255 Cal.App.2d at 180.) The debate over whether UC Hastings should act as San Francisco's tax collector is, at its core, a debate over how state agencies should be run. Such debates rightfully belong in the political arena, not the courts. Thus, straight out of the gate, there is a problem with San Francisco's petition for review. It ignores the most important part of the sovereign immunity test—State ***consent*** to local control.

San Francisco's proffered rule would eradicate this central tenet of the sovereign immunity test, shifting the power to determine whether a local law disrupts a state agency's administration of its own affairs to the courts. Indeed, San Francisco claims, as does the dissent, that "it is the difficult but inescapable duty of the court to . . . 'allocate the governmental powers under consideration in the most sensible and appropriate fashion.'" (Petition at 18; Dissent at 29.) San Francisco's reliance on this language is a telling indication of how far its analysis strays from the established rules in this area. The quote comes from this Court's *Cal Fed* decision, a case that involved preemption, not sovereign immunity. It has no bearing here.

The preemption test in California is rooted in the State's constitution, which provides that any city "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const. art. XI, § 7.) Under this

provision, "'[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.'" (*Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 860-61, citations omitted.) However, the preemptive effect of state law on charter cities is limited by the "home rule" provision of the California Constitution—article XI, section 5. Under their "home rule" authority, charter cities may "adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a 'municipal affair' rather than one of 'statewide concern.'" (*Trader Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 45.) In contrast, when a charter city ordinance conflicts with a state statute that is "reasonably related" to a matter of "statewide concern," state law is paramount.[3] (*Cal Fed, supra*, 54 Cal.3d at 17.)

Cal Fed's statement that courts must "'allocate the governmental powers under consideration in the most sensible and appropriate fashion'" is not, as San Francisco and the dissent read it, an invitation for courts to legislate from the bench. (*Ibid.*, citations omitted.) Instead, it is a reflection of the "ambiguity" inherent in identifying when a law addresses a "municipal affair" or a "statewide concern," labels which are not "fixed or static" and which must be given meaning on an "ad hoc" basis. (*Id.* at 15-18.) Although sometimes difficult, this analysis is ultimately just an exercise in constitutional interpretation, properly left to the judiciary.

Under the sovereign immunity test, once a court decides that an activity is governmental rather than proprietary, its task is also interpretive. But the question it must answer is different, and considerably narrower:

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[3] As the majority opinion correctly explains, "the law governing preemption has little to do with the doctrine exempting state entities from local regulation." (Opinion at 12.) Preempted local measures are void under state law; sovereign immunity, in contrast, exempts state agencies from having to comply with otherwise valid local measures. (*Id.* at 11-12.)

Has the State consented to local control? The balancing test used in "home rule" preemption cases is not in any way relevant to this inquiry.

None of the sovereign immunity cases reflects the approach suggested by San Francisco and the dissent. A fair-minded judge could easily have concluded that it would be reasonable to let cities choose which waste hauler should service local schools (*Laidlaw*, *supra*, 43 Cal.App.4th at 633-34), or that local registration of a plumber working on state property imposes only a minimal burden (*Means*, *supra*, 14 Cal.2d at 254-55, 259). Courts applying the sovereign immunity test, however, have left these decisions—and others like them—to the Legislature or the voters. (See also *City of Santa Ana*, *supra*, 255 Cal.App.2d at 180.) The majority showed the same deference here, as the sovereign immunity test requires.

2. San Francisco exaggerates the alleged problems created by the "governmental vs. proprietary activity" test and understates the difficulties associated with its proposed rule allowing "reasonable" tax collection requirements.

San Francisco's view that the "governmental vs. proprietary activity" test creates intolerable uncertainty for cities trying to collect local taxes is overstated. No court applying this test has expressed any difficulty in sorting out which activities are entitled to immunity and which are not. Whatever problems might have arisen when a similar rule was used in the tort liability context, where courts struggled with who could seek compensation for injuries caused by a public agency, courts addressing the State's immunity from local control have steered clear of "cramped" and artificial dividing lines and instead looked to the statutory authority and fundamental purposes of an agency to determine when immunity should apply. (Petition at 19-21; Opinion at 7-9; *Bame*, *supra*, 86 Cal.App.4th at 1357-58; *City of Los Angeles*, *supra*, 49 Cal.App.3d at 49-51.) The majority in this case certainly had no trouble concluding that the evidence presented to the trial court "established that providing parking for students,

faculty, staff, and visitors is integral to the universities' educational . . . purposes." (Opinion at 7-8.) Even the dissent seems to recognize that providing campus parking is a governmental activity. (Dissent at 2.)

This holding does not represent a grave threat to cities' ability to collect local taxes. Private businesses and other non-state entities must still comply with local tax collection obligations, as must state agencies engaged in proprietary activities. While San Francisco expresses concern about the collection of taxes on hotel occupancy, water, and electricity, the provision of these services raises different issues under the "governmental vs. proprietary activity" test than this case. (Petition at 3-4, 15-16.) Indeed, *City of Modesto v. Modesto Irrigation District* (1973) 34 Cal.App.3d 504, cited extensively by San Francisco, suggests that state agencies providing utility services are engaged in a proprietary activity and may very well have to serve as local tax collectors. Likewise, if UC Hastings operated a garage as a purely profit-making enterprise, it could not claim immunity. But it doesn't; instead, it built its garage to ensure that students, faculty, staff, and visitors have safe and easy access to a campus that is located in a congested urban area with limited street parking. (CT 270-271 [¶¶ 7-8].)

Moreover, San Francisco has never offered any evidence to support the claim that it "'has no practical []or economical means" of collecting its parking tax without UC Hastings' cooperation. (Petition at 4, citing *City of Modesto*, *supra*, 34 Cal.App.3d at 508.) What was impractical or uneconomical in the 1970s, when *City of Modesto* was decided, may not be so today, when bridge tolls can be invoiced by mail to commuters crossing the Golden Gate Bridge using pictures taken of their license plates by high-speed automated cameras. ("Toll Payment Options at the Golden Gate Bridge," http://goldengate.org/tolls/tollpaymentoptions.php [last accessed July 7, 2017].) And of course, San Francisco may always lobby the Legislature or otherwise seek a change in the law to secure the State's

consent to collect local taxes at state universities—the very remedy the sovereign immunity test envisions for San Francisco's supposed dilemma.

Nor is San Francisco's proposed rule free of difficulties itself. The dissent, for instance, agrees that "San Francisco cannot tell the universities . . . how much of their property they can use for parking, or how much they can charge, or how they can spend their parking revenue." (Dissent at 2.) And yet, the dissent seems perfectly comfortable with San Francisco telling State employees that they must spend their time logging parking transactions, cataloguing lost tickets, and filling out monthly tax returns, or with San Francisco forcing state agencies to hire people to administer its parking tax. Why is the former prohibited, but not the latter?

The dissent also suggests that immunity can be overcome if San Francisco reimburses UC Hastings' costs of collecting the parking tax. (Dissent at 3.) San Francisco's parking tax ordinance, however, does not authorize such reimbursements. Moreover, none of the sovereign immunity cases hold that an offer of reimbursement can overcome the State's immunity; San Francisco cannot force UC Hastings to comply with its building codes or use its preferred garbage collectors by reimbursing UC Hastings' costs of compliance. Again, why is tax collection different?

Indeed, although San Francisco insists that tax collection ***is*** different, it is hard to see how its proposed rule would not quickly spread beyond its confines, inserting courts into everyday conflicts between local and state agencies. While UC Hastings agrees that securing revenue is "'absolutely vital for a municipality[,]'" this Court has already held that the power to tax cannot be "singled out as specially protectible, as uniquely unyielding to transcendent interests." (Petition at 17; *Cal Fed*, *supra*, 54 Cal.3d at 15.) The power "to enact laws to promote the public health, safety, morals and general welfare" is, after all, considered "so important that it is deemed an inherent attribute of political sovereignty[,]" and yet state agencies may

engage, unburdened by local laws, in activities that cities can otherwise constitutionally regulate. (*Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 206; *Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001) 91 Cal.App.4th 678, 689.)

In short, it is only by disregarding the governing legal framework that San Francisco can present this Court with a choice between an "illogical" governmental vs. proprietary activity test and a "predictable" rule allowing cities to impose "reasonable" tax collection obligations on state agencies whenever they want. (Petition at 2-3.) The former rule is only illogical if one ignores the structural underpinnings of the sovereign immunity test, and the latter is only predictable if one assumes that all judges will reach the same conclusions about when a local law might intrude on the State's sovereignty. The current test tasks courts with identifying when a state agency is engaged in a sovereign activity but leaves the more difficult question of whether local law might interfere with that activity to the Legislature or the voters. This allocation of authority has held for more than 60 years. It should not be disturbed now.

C. There is no significant conflict between the majority opinion and the authorities, both state and federal, cited by San Francisco.

San Francisco attempts to justify its request for review by claiming that the majority opinion "creates a troublesome conflict about the role of state agencies in collecting and remitting city taxes that their customers owe." (Petition at 2.) No such conflict exists. Only *City of Modesto* provides a glimmer of support for the rule San Francisco wants the Court to adopt, in a cursory "alternative" holding that was not necessary to reach, was not supported by law, and has not been followed by any court since. No other case cited by San Francisco bears on the question at hand.

1. Other than *City of Modesto*'s unnecessary and erroneous "alternative" holding, the majority opinion is consistent with California cases addressing tax collection obligations.

San Francisco first cites a number of cases addressing the imposition of tax collection obligations on private parties, other non-state entities, and state agencies engaged in proprietary activities. These cases are largely irrelevant, and do not create a conflict warranting this Court's intervention.

For instance, in *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 476-77, this Court held that San Francisco could require liquor retailers to collect a local sales tax on alcohol, and in *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 139, disapproved on other grounds by *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, it held that Fresno could require private utility companies to collect utility users taxes from their customers. UC Hastings does not dispute that cities have considerable leeway to impose tax collection obligations on private businesses. But businesses are not state agencies, and do not exercise sovereign powers.

In *Eastern Municipal Water District v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, the court held that a city could require a municipal water district to collect taxes from its customers. (*Id.* at 26-31.) However, the district did not claim that the city's collection requirement "impinge[d] on the state's sovereignty[,]" only that no statute authorized the city to impose the requirement in the first place. (*Id.* at 30.) This concession is understandable; municipal water districts are not state agencies, but rather "quasi-municipal corporations" created by local voters pursuant to state law. (Water Code §§ 71060, 71120-71196; *Fuller v. San Bernardino Valley Municipal Water District* (1966) 242 Cal.App.2d 52, 62.) Because *Moreno Valley* does not involve a public agency that is entitled to the State's immunity, it presents no conflict with the majority opinion.

That leaves *City of Modesto*. The court in *City of Modesto*, *supra*, 34 Cal.App.3d at 505-08, held that an irrigation district engaged in the sale of electricity was required to collect Modesto's tax on the use of electricity. The district argued that it was exempt from Modesto's tax collection rules under the sovereign immunity test, but the court rejected this argument, concluding that "an irrigation district which manufactures, distributes and sells electrical energy, in competition with public service corporations, is engaged in a proprietary activity." (*Ibid.*) Since state agencies operating in a proprietary capacity are not immune from local laws, this holding was sufficient, by itself, to resolve the case. (Opinion at 13-14.)

Nevertheless, *City of Modesto* went on to posit, in a two-paragraph "alternative" holding, that because Modesto is a charter city and charter cities derive their power to tax from the State's constitution, Modesto's taxing power—and the concomitant power to require third parties to collect a local tax—trumped any immunity enjoyed by the irrigation district. (*City of Modesto*, *supra*, 34 Cal.App.3d at 508.) Not one of the three cases cited by *City of Modesto* actually stands for this proposition. *Ainsworth*, *supra*, 34 Cal.2d at 476-77 and *Rivera*, *supra*, 6 Cal.3d at 139 are both preemption cases that addressed whether cities could impose tax collection obligations on private businesses. And while the court did correctly cite *West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516, 518-26, for the principle that charter city taxation is generally considered a "municipal affair," that case—which also centered on questions of preemption—involved a private party that sought to avoid paying local taxes, not a state agency invoking its immunity from local control.

Moreover, no decision since *City of Modesto* has agreed with the theory that the State's immunity from local laws can be subordinated by charter cities. This Court has already rejected the idea, in the preemption context, that charter city status grants local tax laws special protection from

overriding state interests. (*Cal Fed*, *supra*, 54 Cal.3d at 15.) And as the majority notes, subsequent decisions have confirmed that "[t]he sovereign immunity of a state agency from local regulation does not depend upon the source of the local governmental entity's authority to make regulations, it depends upon whether consent to regulation has been expressly stated by the Legislature or in the state Constitution." (Opinion at 10-11; *Laidlaw*, *supra*, 43 Cal.App.4th at 638-39; *Bame*, *supra*, 86 Cal.App.4th at 1355-56.) Indeed, in *Hall*, this Court specifically stated that legal requirements imposed by a charter city cannot be applied to state agencies. (*Hall*, *supra*, 47 Cal.2d at 183; see *Means*, *supra*, 14 Cal.2d at 258.) The *City of Modesto* court's statement to the contrary was simply wrong.

In short, the majority opinion is consistent with decades of precedent; *City of Modesto*'s perfunctory alternative holding is not. As that holding has had virtually no impact in the 45 years since *City of Modesto* was published, the Court need not grant review to address it now.[4]

2. The majority opinion does not conflict with federal cases involving tribal sovereignty, and is consistent with cases from sister states that address efforts by "home rule" cities to impose tax collection obligations on state agencies.

San Francisco next contends that the majority opinion conflicts with a trio of federal decisions holding that states can require Native American tribes to collect taxes from non-tribal customers buying cigarettes on reservations. (Petition at 29.) Read properly, these cases provide no

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[4] Attorney General Opinion No. 81-506 (1982) 65 Ops.Cal.Atty. Gen. 267 did follow *City of Modesto*'s alternative holding in opining that a non-profit corporation operating a hotel and conference center in a state park was required to collect a charter city's tax on hotel occupancy. This opinion was not subject to judicial review, is not binding, and presents no independent analysis of the immunity issue beyond quoting *City of Modesto*; accordingly, its existence does not warrant review in this case. (*Public Utilities Commission v. Energy Resources Conservation & Development Commission* (1984) 150 Cal.App.3d 437, 446-47.)

assistance to San Francisco. (Opinion at 17 n.4.) The majority opinion, on the other hand, is supported by two sister-state decisions addressing circumstances that are virtually identical to the facts here—efforts by a "home rule" city to impose tax collection obligations on state universities.

Tribal immunity from state regulation is a matter of federal preemption. (*Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation* (1976) 425 U.S. 463, 481 n.17.) However, because the relationship between Native American tribes, states, and the federal government is unusually complex, the United States Supreme Court has firmly emphasized that "[t]ribal reservations are not States, and the differences in the form and nature of their sovereignty make it treacherous to import to one notions of pre-emption that are properly applied to the other." (*White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136, 143.) Native American tribes are "not . . . possessed of the full attributes of sovereignty," but they are "a separate people, with the power of regulating their internal and social relations[,]" such that when a state seeks to apply its laws on reservations, courts must "reconcile the plenary power of the States over residents within their borders with the semi-autonomous status of Indians . . . ." (*McClanahan v. State Tax Commission of Arizona* (1973) 411 U.S. 164, 165, 173, citations omitted.) "[E]ven on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law." (*Mescalero Apache Tribe v. Jones* (1973) 411 U.S. 145, 148.)

In short, the federal tribal immunity preemption test is fundamentally different than the sovereign immunity test used in California to determine when state agencies must comply with local laws. It should not be surprising that the results in the tribal tax collection cases are different as well. If anything, these cases present a legal question that is the reverse of the question presented here. Native American tribes operate as

islands of limited sovereignty within states in a manner that is somewhat similar (although not identical) to how charter cities in California operate as islands of limited sovereignty. Accordingly, while efforts to draw an analogy to the tribal tax collection cases might help answer whether the State can compel local governments to collect state taxes, it says little about whether local governments can compel the State to collect local taxes.

In contrast, the majority opinion is in accord with two cases from sister states that directly address attempts by "home rule" cities to impose tax collection obligations on state universities. In *City of Boulder v. Regents of the University of Colorado* (Colo. 1972) 501 P.2d 123, 124-27, the Colorado Supreme Court held that Boulder could not force the University of Colorado to collect an admissions tax at university events because "a city, even though a home rule city, has no power to interfere with the management or supervision of the activities of the University of Colorado. If the City of Boulder was allowed to impose duties on the University, such duties would necessarily interfere with the functions of the state institution." And in *City of Chicago v. Board of Trustees of the University of Illinois* (Ill.Ct.App. 1997) 689 N.E.2d 125, 129-30, the Illinois Court of Appeal held, like the majority does in this case, that Chicago could not compel the University of Illinois to collect parking taxes because "such a requirement would interfere with the state's constitutional mandate to operate a statewide educational system." As the court explained, "any attempt by a home rule municipality to impose burdens on [state-operated educational] institutions, in the absence of state approval, is unauthorized." (*Id.* at 130.) This rationale applies with equal force here.

3. The majority opinion does not conflict with decisions holding that third parties doing business with the government cannot claim immunity from taxation.

Finally, San Francisco contends that the majority opinion "'disregards the authority upholding local taxes imposed on third parties doing business with the state . . . .'" (Petition at 25; Dissent at 28-29.) This contention is not accurate. The majority opinion acknowledged that cases cited by San Francisco, including *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623 and *City of Los Angeles v. A.E.C. Los Angeles* (1973) 33 Cal.App.3d 933, held that third parties cannot avoid paying a local tax "by virtue of their business relationship" with state agencies, but pointed out—correctly—that neither case addressed whether state agencies "are exempt from collecting and remitting" a local tax. (Opinion at 12-13.)

Likewise, in *Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 398, this Court held that Oakland could impose a license fee on state employees. Although Oakland required employers to withhold the fee from employees' paychecks, the Court did not address whether this requirement could be applied to the plaintiff's state employer, who was not a party to the lawsuit. (*Id.* at 391.) In fact, under Oakland's law, when an employer did not collect the tax, employees were required to file returns themselves. (*Ibid.*)

Plaintiff's reliance on federal "intergovernmental tax immunity" cases is similarly misplaced. Under these authorities, the federal government is immune from state taxation (*M'Culloch v. State of Maryland* (1819) 17 U.S. 316, 436-37), but individuals or companies that do business with the federal government generally cannot claim immunity. (See *United States v. New Mexico* (1982) 455 U.S. 720, 735; *State of Alabama v. King & Boozer* (1941) 314 U.S. 1, 9.) Whether a private party doing business with the federal government must pay a state tax is a different question than whether a state may compel the federal government to collect that tax. A

number of cases have answered the first question in the affirmative; San Francisco has cited no case that answers "yes" to the latter.

San Francisco also notes that federal statutes generally require the federal government to collect state income taxes. (See 2 U.S.C. § 4555; 5 U.S.C. § 5517; cf. 2 U.S.C. § 4594.) This is precisely the point of the sovereign immunity test; it is legislators, not courts, who determine when the laws of a subordinate government should apply. Congress can always ***agree*** to collect state taxes. But states, and the courts, cannot force it to.

San Francisco believes that the cases it cites conflict with the majority opinion because applying the sovereign immunity test "grants de facto tax immunity to the universities' parking customers." (Petition at 25.) What good is the power to tax, says San Francisco, if a tax cannot be collected? But, as explained above, San Francisco has presented no evidence supporting the idea that it lacks practical alternatives for collecting its parking tax. And San Francisco may always take its case to the Legislature or the voters, as it is supposed to do in this situation.

In any event, the fact that San Francisco might be limited in its ability to enforce its tax laws at UC Hastings' garage is not a conflict in the authorities; it is a natural result of the State's immunity from local control. The same issue exists when sovereign immunity prevents individuals from suing the state or a Native American tribe. Just last year, this Court explained that "[i]n every instance where some form of immunity bars suit, an alleged wrong will go without a remedy." (*People ex rel. Owen v. Miami Nation Enterprises* (2016) 2 Cal.5th 222, 251.) Nevertheless, "'sovereign immunity is not a discretionary doctrine that may be applied as a remedy depending on the equities of a given situation . . . .'" (*Warburton/ Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1182, citations omitted.) The limitations that immunity imposes on otherwise important rights and powers exist because they serve a more fundamental purpose,

one that transcends the principles that might otherwise govern a particular dispute. (Cf. *Miami Nation Enterprises*, *supra*, 2 Cal.5th at 235-36.)

IV. CONCLUSION

The sovereign immunity test set forth in *Hall* has been settled law in California for decades. In pressing for a special exception to the State's immunity from local control, applicable only to tax collection obligations and nothing else, San Francisco asks the Court to jump headfirst into an area that, until today, it has left in the hands of the Legislature and the people of California. The Court should decline San Francisco's invitation.

The majority applied the appropriate test, and it applied that test correctly. Accordingly, UC Hastings respectfully asks that this Court deny San Francisco's petition for review and allow the majority opinion to stand.

JARVIS, FAY, DOPORTO & GIBSON, LLP

Dated: July 24, 2017

By: /s/ Benjamin P. Fay
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CERTIFICATE OF WORD COUNT

I certify that this brief contains a total of **7,744 words** as indicated by the word count feature of the Microsoft Word computer program used to prepare it (excluding tables, caption, signature block, and this certification).

Dated: July 24, 2017

/s/ Benjamin P. Fay .
Benjamin P. Fay

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States and employed in the County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is Jarvis, Fay, Doporto & Gibson, LLP, 492 Ninth Street, Suite 310, Oakland, California 94607.

On July 24, 2017, I served the within

ANSWER TO PETITION FOR REVIEW

on the parties in this action, by placing a true copy thereof in a sealed envelope(s), each envelope addressed as follows:

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I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail to be mailed by First Class mail at Oakland, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 24, 2017, at Oakland, California.

/s/ Chelsea Torres .
Chelsea Torres