

**S242835**

**IN THE  
SUPREME COURT OF CALIFORNIA**

---

**CITY AND COUNTY OF SAN FRANCISCO,**  
*Plaintiff and Appellant,*

*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

---

**ANSWER TO PETITION FOR REVIEW &  
JOINDER IN THE BOARD OF DIRECTORS OF  
HASTINGS COLLEGE OF THE LAW'S  
ANSWER TO PETITION FOR REVIEW**

---

**CALIFORNIA APPELLATE LAW GROUP LLP**

**Audra S. Ibarra** (No. 177464)  
96 JESSIE STREET  
SAN FRANCISCO, CA 94105  
TEL: (415) 649-6700 • FAX: (415) 649-6700  
audra@calapplaw.com

**UNIVERSITY OF CALIFORNIA  
OFFICE OF GENERAL COUNSEL**

**Margaret L. Wu** (No. 184167)  
1111 FRANKLIN STREET, 8TH FLOOR  
OAKLAND, CA 94607  
TEL: (510) 987-9747 • FAX: (510) 987-9757  
margaret.wu@ucop.edu

ATTORNEYS FOR DEFENDANT AND RESPONDENT  
**REGENTS OF THE UNIVERSITY OF CALIFORNIA**

**Certificate of Interested Entities or Persons**

There are no known entities or persons other than the named parties that have either (1) an ownership interest of 10 percent or more in the party filing this certificate (Cal. Rules of Court, rule 8.208(e)(1)), or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves.

Dated: July 24, 2017

**California Appellate Law Group LLP**

Audra S. Ibarra

**University of California**

**Office of General Counsel**

Margaret L. Wu

By /s/ Audra S. Ibarra

Audra S. Ibarra

*Attorneys for Respondents*

*Regents of the University of California*

## Table of Contents

Table of Authorities .....	4
Introduction.....	5
Statement of Facts .....	6
Argument.....	13
I.    The Regents Joins in All of Hastings’ Answering Brief. ....	13
II.   Supreme Court Review of the Court of Appeal’s Decision Is Not Warranted.....	13
A.   Review Is Not Necessary to Settle an Important Question of Law. ....	13
B.   Review Is Not Necessary to Secure Uniformity of Decision. ...	15
III.  The Regents’ Constitutional Autonomy Bars San Francisco from Compelling the Regents to Collect and Remit City Taxes. ....	16
IV.  The Regents Operates UCSF’s Parking Lots Within Its Governmental Capacity.....	17
Conclusion.....	19
Certificate of Word Count.....	20

## Table of Authorities

### Cases

<i>Hall v. City of Taft</i> (1956) 47 Cal.2d 177 .....	14
<i>Regents of University of California v. City of Santa Monica</i> (1978) 77 Cal.App.3d 130 .....	16, 17
<i>San Francisco Labor Council v. Regents of University of California</i> (1980) 26 Cal.3d 785 .....	16

### Constitutions

Cal. Const., art. IX, § 9 .....	16
---------------------------------	----

### Statutes

Welf. & Inst. Code, § 14166 .....	7
-----------------------------------	---

### Rules

Cal. Rules of Court, rule 8.200 .....	6, 13
Cal. Rules of Court, rule 8.500 .....	13, 15

### Other Authorities

Patient Care Overview, <a href="https://www.ucsf.edu/about/patient-care-overview">https://www.ucsf.edu/about/patient-care-overview</a> (last visited July 24, 2017) .....	8
The UC System, <a href="http://www.universityofcalifornia.edu/uc-system">http://www.universityofcalifornia.edu/uc-system</a> (last visted July 24, 2017) .....	7
UC Health, <a href="http://health.universityofcalifornia.edu/about">http://health.universityofcalifornia.edu/about</a> (last vistied July 24, 2017) .....	7
UCSF Overview, <a href="https://www.ucsf.edu/about/ucsf-overview">https://www.ucsf.edu/about/ucsf-overview</a> (last visited July 24, 2017) .....	8

## **Introduction**

San Francisco implicitly conceded for almost 30 years that it cannot compel the Regents of the University of California to collect and remit city taxes from users of the University's parking lots. San Francisco has had an ordinance that imposes a tax on parking lot users in private parking spaces in the city for over 40 years. Although parking lot operators are required to collect and remit the tax to San Francisco, the Regents has never collected nor remitted tax for the lots it operates at the University of California San Francisco (UCSF). When San Francisco tried to recover taxes for the UCSF lots in 1983, the Regents claimed immunity, and San Francisco gave up. (See Pet., p. 8.)

After decades of inaction, the City and County of San Francisco filed this pending litigation to compel the Regents to collect and remit taxes from its parking lots at UCSF. But San Francisco was correct to relent almost 30 years ago. The superior court denied San Francisco's petition for writ of mandate, and the First District Court of Appeal affirmed. The majority decision, written by Presiding Justice Humes and joined by Justice Margulies, followed "long-recognized doctrine" and a "straightforward" analytical

framework in holding that San Francisco cannot insert itself into the governmental functions of state entities and compel those entities to act as its tax collectors. (Opn., pp. 1, 6, 17.)

San Francisco wants this court to review the court of appeal's decision. However, review is not appropriate. For the reasons below and in the Answer to Petition for Review of the Board of Directors of Hastings College of the Law (which the Regents joins in entirety), the court of appeal correctly decided the issue, and there is no ground for review. San Francisco's petition should be denied.

### **Statement of Facts**

The Regents joins in the entire answering brief filed by Hastings, including its statement of facts. (Hastings' Brief, pp. 11-14; Cal. Rules of Court, rule 8.200(a)(5).) Because, however, constitutional autonomy and UCSF's parking needs and operations are unique to it, the Regents also adds the facts below.

The University of California is a constitutionally created entity that serves the people of the State of California through its mission of teaching, research, and public service. It is comprised of 10 campuses across the state, serves more than 238,000 students,

and employs more than 198,000 faculty and staff. (The UC System, <http://www.universityofcalifornia.edu/uc-system> (last visited July 24, 2017).)

The University is also the fourth largest health-care provider in California, operating 12 hospitals and each year providing medical services during approximately 167,000 inpatient admissions and 4,900,000 outpatient visits, including about 368,000 emergency room visits. (UC Health, <http://health.universityofcalifornia.edu/about> (last visited July 24, 2017).) Each of the University's medical centers qualifies as a Disproportionate Share Hospital under Medicare, meaning that each provides a significant amount of care to uninsured and underinsured patients. (See Welf. & Inst. Code, § 14166, subd. (b)(1) ["The preservation of . . . the University of California hospitals is of critical importance to the health and welfare of the people of the state."].) The parking facilities at issue in this case relate to the UCSF campus, but the principles of autonomy at stake in this case relate to all the University's operations and have implications for all its campuses.

UCSF is dedicated solely to graduate education, health sciences research, and patient care. UCSF has

approximately 3,300 students enrolled in degree programs, 1,500 residents, and 1,000 postdoctoral scholars. It is the second-largest employer in San Francisco with approximately 22,000 staff and 3,000 faculty. (UCSF Overview, <https://www.ucsf.edu/about/ucsf-overview> (last visited July 24, 2017).) UCSF hospitals see about 43,000 admissions and 1,200,000 outpatient visits per year. (Patient Care Overview, <https://www.ucsf.edu/about/patient-care-overview> (last visited July 24, 2017).)

UCSF operates three major, multi-building campus sites within San Francisco: Parnassus, Mount Zion, and Mission Bay. In addition, numerous major programs and departments are located at UCSF-owned or leased sites scattered throughout the city. UCSF faculty also work at affiliated facilities at San Francisco General Hospital and San Francisco Veterans Affairs Medical Center. (2 CT 339:20-24.)

UCSF provides parking to faculty who teach at the campus; staff who work there; students who take classes or are in clinical practice; researchers who conduct their research in the laboratories; patients who receive both outpatient and inpatient care at the clinics and hospitals, many of whom are not local and



come from great distances to seek UCSF's expert care; and other visitors to the campus, who are there for UCSF or University purposes.

Virtually all of UCSF's parking lots are adjacent to (and all are within 1-2 blocks of) a campus facility and are operated for the benefit of the faculty, staff, students, researchers, patients, and other visitors who need to access the campus. Access to nearby parking is critical to providing services to UCSF patients seeking medical attention as well as to their visitors. (2 CT 341:2-7, 342:25-27.) The locations of the parking lots are such that the only members of the public likely to use these facilities are patients and visitors who receive services from or have some other affiliation with UCSF. Moreover, some of these facilities are available only to faculty, staff, and students. (2 CT 341:2-7, 342:24-25.)

Parking lots are especially critical to UCSF because it is located in a densely populated urban environment and because it is a very decentralized campus, with facilities scattered throughout the city. Indeed, San Francisco readily admits that UCSF's parking operations "help ensure that individuals associated with [the institution] — whether faculty,

students, employees, or visitors [or patients] — have a safe, convenient place to park near the various campuses and facilities . . . .” (Pet., p. 8.) Further, many faculty, staff, and students have multiple roles with educational and clinical responsibilities that require them to be at more than one medical and/or academic center during a single day. It is critical to their responsibilities that they have quick access to the various campuses, and thus they require easy parking at each. To ease parking congestion and promote sustainability, UCSF operates a shuttle service for students, faculty, and staff between its various locations, including San Francisco General Hospital and the San Francisco Veterans Affairs Medical Center. The shuttle transports 2,300,000 passengers each year. (2 CT 342:10-12, 344:25-345:2.)

It bears emphasis that the Regents does not operate the UCSF parking lots as a general profit-making enterprise, and parking fees are used only to support transportation system-related expenses, such as construction and maintenance of parking facilities and operation of the shuttle. (2 CT 343:8-9.) For fiscal year 2013, such expenses totaled \$21.7 million, while UCSF parking revenues totaled only \$17.1 million. (2

CT 341:9-25.) Parking is paid either by the purchase of a permit (available to faculty, staff, and students) or by individually-transacted fees (which include faculty, staff, and students who do not have permits). (2 CT 341:20-21.) Parking at more than half of the UCSF facilities is available only by permit. (2 CT 341:22.)

The Regents' ability to increase its parking fees is limited by, among other things, systemwide collective bargaining agreements of union-represented employees. Approximately 40 percent of UCSF permits sold in fiscal year 2013 were to individuals in bargaining units. (2 CT 342:20-23.) At the time of the superior court proceedings, of the University's 13 bargaining units, four had employment contracts that limit the parking rate increase for each contract year to no more than 10 percent, and the contracts of two other bargaining units had been ratified and sent to the unions for final review with the 10 percent cap. (2 CT 385:10-11, 385:14-386:1, 386:16-25.) The employment contracts of four additional bargaining units are subject to a "meet and discuss" requirement for parking rate increases. (2 CT 386:2-15.)

Requiring UCSF to become a municipal tax collector for San Francisco would affect many

functions and operations. Besides added personnel and computer systems (2 CT 343:17-20), a 25 percent increase in parking costs would interfere with the access of UCSF's services and facilities by its students, faculty, staff, and patients. (2 CT 342:24-343:5, 343:26-344:4, 344:25-345:3.) And if UCSF were unable to pass on the full increase of parking resulting from the tax to those who use its parking facilities (because of collective bargaining agreements or otherwise) and had to absorb any portion of this loss, the level of service that UCSF could provide to the public would be greatly impacted.

As the court of appeal and the superior court concluded, UCSF's "parking facilities are used for staff, faculty, students, researchers, patients receiving inpatient and outpatient care, and visitors. Parking facilities are critical to UCSF because it is located in a densely populated urban environment and is a very decentralized campus. UCSF's parking facilities are important in meeting [its] clinical and life-safety mission,' and 'UCSF uses its parking fee revenue to fund a shuttle bus service for students, faculty[,] and staff between its various locations, including San Francisco General and the VA Hospital.'" (Opn., p. 8,

original brackets.) The dissent did not dispute this finding.

## **Argument**

### **I. The Regents Joins in All of Hastings' Answering Brief.**

The Regents joins in the entire answering brief filed by Hastings, including all arguments, as they are equally applicable to the Regents. (Hastings' Brief, pp. 14-32; Cal. Rules of Court, rule 8.200(a)(5).) In addition, the Regents makes the arguments below.

### **II. Supreme Court Review of the Court of Appeal's Decision Is Not Warranted.**

Contrary to San Francisco's claims (Pet., pp. 14, 18), review is not necessary to settle an important question of law or to secure uniformity of decision.

#### **A. Review Is Not Necessary to Settle an Important Question of Law.**

This court may grant review “[w]hen necessary . . . to settle an important question of law.” (Cal. Rules of Court, rule 8.500(b)(1).)

However, as explained in Hastings' answering brief, the relevant case law holding that state entities are exempt from local regulations when they act within their governmental capacity was settled by this

court over 60 years ago in *Hall v. City of Taft* (1956) 47 Cal.2d 177, 183 (*Hall*). (Hastings' Brief, pp. 9, 14-17, 32.) Consistent with prior law, the majority correctly found that the universities in this case are "exempt from the ordinance" at issue in this case (Opn., p. 7), irrespective of whether the ordinance is characterized as a "revenue" or "regulatory" measure (Opn., p. 9). The majority explained that San Francisco's purported distinction of these measures "draws from the law governing state preemption, but that law is largely inapplicable, and even under that law, the distinction between tax and regulatory measures has been abandoned." (Opn., p. 10.) As the majority noted, "Our state Supreme Court has never endorsed extrapolating such a distinction to the doctrine exempting state entities from local regulation, and we decline to do so for the first time here." (Opn., p. 10.) The majority relied on the doctrine recognized by this court in *Hall* and found "no need to craft a judicial exception to the doctrine." (Opn., p. 17; *Hall, supra*, 47 Cal.2d 177, 183.)

This court need not grant review to repeat a doctrine it recognized over half a century ago.

**B. Review Is Not Necessary to Secure Uniformity of Decision.**

This court may also grant review “[w]hen necessary to secure uniformity of decision . . . .” (Cal. Rules of Court, rule 8.500(b)(1).) But again, such review is not necessary here.

As discussed in Hastings’ answering brief, the majority explained and reconciled relevant law. (Hastings’ Brief, pp. 24-32.) Contrary to San Francisco’s suggestion, the majority’s decision does not conflict with existing law.<sup>1</sup> (Pet., p. 21.) Instead, the majority clearly and correctly distinguished the authorities cited by San Francisco and the dissent as “conflat[ing] principles of preemption with the doctrine exempting state entities from local regulation.” (Opn., p. 11.) As the majority explained, “The consequence of the preemption of a local measure is that the measure is unenforceable against anyone. In contrast, the consequence of the application of the doctrine exempting state entities from local regulation is that the measure is unenforceable only against state entities.” (Opn., pp. 11-12, emphasis omitted.) Thus, the analysis in preemption cases, finding that certain

---

<sup>1</sup>The majority did not “acknowledge” any conflict – it instead distinguished the cases and noted certain “dicta.”

municipal measures are not voided altogether by state law, cannot be blindly imported into the analysis of whether those measures can nonetheless be enforced against a particular state entity given its governmental status.

This court does not need to grant review because the relevant case law can be harmonized.

### **III. The Regents' Constitutional Autonomy Bars San Francisco from Compelling the Regents to Collect and Remit City Taxes.**

The Regents has unique and substantial power under the state Constitution that limits even the Legislature's power to regulate the Regents. Under article IX, section 9 of the California Constitution, the Regents is vested with "full powers of organization and government, subject only to such legislative control as may be necessary" and "vested with the legal title and the management and disposition of the property of the university." (Cal. Const., art. IX, § 9, subs. (a), (f); see also *San Francisco Labor Council v. Regents of University of California* (1980) 26 Cal.3d 785, 788.) This constitutional authority has specifically been held to bar a city's attempt to regulate construction and to collect permit fees for a university building from the Regents. (*Regents of University of California v.*



*City of Santa Monica* (1978) 77 Cal.App.3d 130, 135-136 [“In view of the virtually plenary power of the Regents in the regulation of affairs relating to the university and the use of property owned or leased by it for educational purposes, it is not subject to municipal regulation.”].)

The Regents’ constitutional autonomy is a separate and independent ground supporting the majority’s conclusion below.

#### **IV. The Regents Operates UCSF’s Parking Lots Within Its Governmental Capacity.**

Contrary to San Francisco’s claim that “the governmental vs. proprietary’ analysis could have gone either way” (Pet., p. 20), the majority and the superior court found “the *undisputed* evidence established that providing parking for students, faculty, staff, and visitors is integral to the universities’ educational and, in the case of the UCSF hospitals, clinical purposes.” (Opn., pp. 7-8, emphasis added.) The superior court’s specific findings included:

- Parking facilities are “critical” to UCSF because of its dense urban environment and decentralized campus facilities, and are “important in

meeting the clinical and life-safety mission of UCSF” (2 CT 561:3-5);

- “[U]ndisputed” evidence showed UCSF does not operate parking as a general profit-making enterprise, and parking fees are not used to support non-transportation system related expenses (2 CT 561:7-9); and

- San Francisco’s taxation of UCSF’s parking facilities “would affect a number of the University’s functions and operations,” including requiring it to hire new employees and to implement new computer systems to process and remit the taxes. UCSF would also be required to increase parking and transportation costs and to absorb any costs that could not be passed on to users “because of collective bargaining agreements or otherwise” (2 CT 561:9-16).

To the extent San Francisco argues that “marketplace” considerations warrant a review of the law (Pet., pp. 14-17), the record in this case is simply not the vehicle to review that argument.

## **Conclusion**

For the reasons above and in Hastings' answering brief, further review of the majority's carefully reasoned decision is not warranted, and the petition should be denied in its entirety.

**Certificate of Word Count**  
(California Rule of Court 8.204(c)(1))

The text of this brief consists of 2,563 words as counted by the Microsoft Word program used to generate this document.

Dated: July 24, 2017

/s/ Audra S. Ibarra  
Audra S. Ibarra

## Proof of Service

I, A. Kathryn Parker, declare as follows:

I am employed in the County of San Francisco, State of California and am over the age of eighteen years. I am not a party to the within action. My business address is 96 Jessie Street, San Francisco, CA 94105. I am readily familiar with the practice of the California Appellate Law Group LLP for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, such correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid, the same day I submit it for collection and processing for mailing. On July 24, 2017, I served the within document entitled:

**ANSWER TO PETITION FOR REVIEW &  
JOINDER IN THE BOARD OF DIRECTORS OF  
HASTINGS COLLEGE OF THE LAWS  
ANSWER TO PETITION FOR REVIEW**

on the below by placing a true copy thereof in an envelope addressed as follows:

San Francisco Superior Court  
400 McAllister Street  
San Francisco, CA 94102

and, following ordinary business practices of the California Appellate Law Group LLP by sealing said envelope and depositing the envelope for collection and mailing on the aforesaid date by placement for deposit on the same day in the United States Postal Service at 96 Jessie Street, San Francisco, California.

Additionally, I caused the within document to be electronically served on all parties and the First District Court of Appeal through TrueFiling, which will prepare a separate proof of service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 24, 2017 at San Francisco, California.

/s/ A. Kathryn Parker  
A. Kathryn Parker

**STATE OF CALIFORNIA**  
 Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
 Supreme Court of California

Case Name: **SAN FRANCISCO, CITY AND COUNTY OF v. REGENTS OF THE UNIVERSITY OF CALIFORNIA**

Case Number: **S242835**

Lower Court Case Number: **A144500**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **audra@calapplaw.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
ANSWER TO PETITION FOR REVIEW (WITH ONE TIME RESPONSIVE FEE)	Answer to Petition for Review Joinder
ASSOCIATION OF ATTORNEYS	Association of Counsel

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
Audra Ibarra California Appellate Law Group LLP 177464	audra@calapplaw.com	e-Service	07-24-2017 8:02:00 PM
Benjamin Fay Jarvis Fay Doport & Gibson, LLP 178856	ben@jarvisfay.com	e-Service	07-24-2017 8:02:00 PM
Benjamin Fay Jarvis, Fay, Doport & Gibson, LLP 178856	bfay@jarvisfay.com	e-Service	07-24-2017 8:02:00 PM
Chelsea Torres Jarvis, Fay, Doport & Gibson, LLP	ctorres@jarvisfay.com	e-Service	07-24-2017 8:02:00 PM
Elise Traynum University of California, Hasting College of the Law 127965	traynume@uchastings.edu	e-Service	07-24-2017 8:02:00 PM
Gabriel McWhirter Jarvis, Fay, Doport & Gibson, LLP 280957	gmcwhirter@jarvisfay.com	e-Service	07-24-2017 8:02:00 PM
Jennifer Dent Jarvis, Fay, Doport & Gibson, LLP	jennifer@jarvisfay.com	e-Service	07-24-2017 8:02:00 PM
Kathryn Parker California Appellate Law Group LLP	kathryn@calapplaw.com	e-Service	07-24-2017 8:02:00 PM
Margaret Wu University of California 184167	margaret.wu@ucop.edu	e-Service	07-24-2017 8:02:00 PM
Peter Keith San Francisco City Attorney's Office	peter.keith@sfgov.org	e-Service	07-24-2017 8:02:00 PM

206482			
Robert Asperger Office of the Attorney General 116319	bob.asperger@doj.ca.gov	e- Service	07-24-2017 8:02:00 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

07-24-2017

Date

/s/Audra Ibarra

Signature

Ibarra, Audra (177464)

Last Name, First Name (PNum)

California Appellate Law Group LLP

Law Firm

