IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO, Petitioner and Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Respondents.	Case No. S242835

California Court of Appeal, First District, Division One, No. A144500
San Francisco Superior Court, No. CPF-14-513-434
The Honorable Marla J. Miller, Judge

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STATEMENT OF THE ISSUE

Whether a municipality can direct an agency of the State of California to collect a tax on behalf of the municipality without the agency's consent.

INTRODUCTION

Petitioner City & County of San Francisco ("San Francisco" or the "City") asks this Court to grant it the power to control agencies of the State of California—in particular, respondents the Regents of the University of California (the "Regents"), the California State University ("CSU"), and the Board of Directors of Hastings College of Law ("UC Hastings") (collectively, the "Universities"). Respondents are each an agency of the State performing a sovereign function assigned to it by state law. For example, the California Constitution vests the Regents with the responsibility to oversee the public trust that is the University of California (the "University" or "UC"), and the Court has recognized that, in discharging that responsibility, the Regents is a statewide agency or branch of the State. As relevant here, none of respondents has consented to take direction from San Francisco's municipal law in performing its duties.

This case is thus about sovereignty and control of the organs of state government. A sovereign State acting through its agencies cannot be controlled by another entity—and certainly not by a subordinate political entity like a municipality. That principle ensures that state government carries out its statewide, sovereign functions in a way that is accountable to the *entire* people of the State, rather than at the direction of the political

community of a single municipality. The natural and desirable result is that the Regents, for example, can exercise its judgment in determining how to best fulfill its constitutional mandate and serve the People of the State across its statewide network of campuses, free of a patchwork of varied municipal instructions to pursue policies the Regents does not support.

In line with those principles, for over half a century California courts have recognized and applied the test laid out in *Hall v. City of Taft* (1956) 47 Cal.2d 177 (hereafter *Hall*): Absent its consent, the State is not subject to municipal control when pursuing its sovereign functions. That approach has engendered constructive political dialogue between the State and municipalities in a variety of contexts, including that of municipal tax-collection. That dialogue has produced political compromises in which the State, after weighing the various considerations, has consented to carefully delineated local control.

In this case, San Francisco urges this Court to upend that longstanding, clear, and workable approach, so that the City may conscript the Universities into serving as its tax collectors. To reach that result, the City has proposed two different yet equally flawed rules during this litigation: first, that the municipal revenue-raising power is so supreme that a municipality may categorically impose tax-collection obligations on unconsenting state agencies, or second, that municipalities have the power to impose "reasonable" tax-collection obligations on state agencies. Neither rule is founded in this Court's precedent. Indeed, both

approaches are contrary to this Court's longstanding recognition of the limited nature of municipal powers when faced with countervailing statewide concerns. Neither rule has a rational limiting principle. And by asking courts to decide what state agency functions can or cannot be subjugated to local control, the City's proposals would force courts to make what should be—and have been—quintessentially political decisions on issues in the revenue context and far beyond. Courts are ill-equipped to do so, as they cannot, in any individual clash between state and municipal interests, take into account the myriad and cumulative effects of local encroachments on state agencies. This Court should reject the City's proposals and confirm, as the courts did below, that a municipality cannot direct a state agency to collect a tax on behalf of the municipality without the agency's consent.

STATEMENT OF FACTS

The Regents offers this brief additional statement of facts to supplement the statements in the Answering Briefs filed by the Attorney General on behalf of CSU and by UC Hastings, to describe unique aspects of the Regents' status and the University of California San Francisco's ("UCSF") parking programs.

1. The Regents oversees a statewide educational structure that is spread out over ten campuses and includes over four hundred thousand employees and students. *The UC System*, Univ. of Cal., https://www.universityofcalifornia.edu/uc-system. That educational network includes five academic medical centers and eighteen health professional schools. *UC Health*, Univ. of Cal., http://www.ucop.edu/uc-health. The University's health

systems, which provided health services for almost five million outpatient visits across twelve hospitals in the past year, constitute the fourth-largest healthcare delivery system in the entire State. *UC Health*, Univ. of Cal., http://health.universityofcalifornia.edu/about. Each of the University's medical centers qualifies as a Disproportionate Share Hospital under Medicare, meaning that each center 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's hospitals is of critical importance to the health and welfare of the people of the state."].)

The Regents has broad discretion to pursue the University's educational, research, and public service mission under an expansive grant of authority in the California Constitution. Article IX vests the Regents with "full powers of organization and government," including "the legal title and the management and disposition of the property of the university and of property held for its benefit," and "all the powers necessary or convenient for the effective administration of [the University]." (Cal. Const., art. IX, § 9, subds. (a), (f).) The Regents is thus "a branch of the state itself . . . or a statewide administrative agency," and "the Regents as a constitutionally created arm of the state have virtual autonomy in self-governance." (*Miklosy v. Regents of Univ. of Cal.* (2008) 44 Cal.4th 876, 889–890 (hereafter *Miklosy*) (internal quotation marks and citations omitted).)

2. To fulfill its mission, the University must physically bring together students, faculty, patients, and supporting staff. To that end, the UC system's campuses must invest considerable resources in facilities that allow access to, and mobility within and among, campuses. UCSF is no exception. UCSF has four professional schools, all dedicated solely to health sciences: dentistry, medicine, nursing, and pharmacy. *UCSF Overview*, Univ. of Cal. San Francisco, https://www.ucsf.edu/about/ucsf-overview. UCSF has over 3,300 students in degree programs and 2,500 clinical residents and postdoctoral scholars. (*Ibid.*) Its Medical Center has three main clinical sites—Parnassus, Mount Zion, and Mission Bay—as well as many clinics throughout San Francisco and Northern California more broadly. (*Ibid.*) UCSF's Medical Center and Children's Hospitals alone see 1.2 million outpatient visits and 43,000 hospital admissions each year. *Patient Care Overview*, Univ. of Cal. San Francisco, https://www.ucsf.edu/patient-care.

Because UCSF is an extremely decentralized campus and its educational and healthcare facilities are located in a densely populated urban environment (Cox Decl. ¶ 22, 2 CT 342), University officials have determined that parking facilities are essential to the success of UCSF's educational, research, and public service mission. For example, UCSF faculty, students, and staff often have dual roles, fulfilling both educational and clinical duties at several medical or academic centers during any given day. They therefore need to travel among university facilities quickly and efficiently. (*Id.* ¶ 31, 2 CT 343.) Similarly, patients

and visitors to UCSF's various medical centers must be able to access convenient parking so that they can quickly receive the treatment that they need—services that are a key part of UCSF's teaching, research and public service mission. (*Ibid.*)

UCSF accordingly provides parking to the many faculty, staff, students, researchers, and patients who work, study, and receive medical care on its campus. (*Id.* ¶ 3, 2 CT 338.) It also makes parking available to visitors who are on campus for other University purposes. (*Ibid.*) UCSF does not operate the parking lots to make general profits for the campus. Rather, parking fees are used (1) to offset the millions of dollars required to build, operate, and maintain the parking facilities, and (2) to fund a University-run shuttle system that serves as an alternative to the use of personal vehicles and parking, by transporting students, faculty, and staff without charge among various campus buildings. (*Id.* ¶¶ 23, 28, 2 CT 342–343.) In all, that shuttle system transports 2.3 million passengers per year, allowing access among University facilities while easing congestion and promoting sustainability. (*Id.* ¶ 23, 2 CT 342.) In fiscal year 2013, these expenses of facilitating access to and mobility within the campus totaled $21.7 million, while UCSF's revenues from parking totaled only $17.1 million. (*Id.* ¶¶ 18–19, 2 CT 341.)

In all, UCSF provides about 7,000 parking spaces within San Francisco. (*Id.* ¶ 9, 2 CT 339.) All but two of the UCSF parking facilities at issue here are located adjacent to buildings owned or operated by the Regents, in which the University

provides services for its faculty, staff, students, patients and visitors. (*Id.* ¶ 15, 2 CT 341.) The other two parking facilities are within two blocks of UCSF medical centers, and access to those facilities is limited to faculty, staff, students, and patients. (*Ibid.*)

Parking at most UCSF facilities is only available by permit, and those permits are issued only to faculty, staff, and students. (*Id.* ¶ 19, 2 CT 341.) And all parking facilities have signs making it clear that the facilities are for use by UCSF students, staff, and faculty. (*Id.* ¶ 21, 2 CT 342.) Other parking facilities apportion permit and non-permit parking in order to best accommodate the varying needs of University employees, students, and patients. For example, the Millberry Union Garage at the Parnassus campus, which is UCSF's administrative center and its main educational campus, contains 1,000 parking spaces that primarily accommodate patients and visitors to UCSF's Medical Center. (*Id.* ¶¶ 11, 14, 2 CT 339–340.) Because UCSF must optimize the use of that facility, parking permits are available at this garage for staff, students, and faculty on weekends, holidays, and non-peak times on weekdays, but such permits are not available for mid-day parking during the week (i.e., peak periods) in order to ensure that there are enough spaces for patients and visitors to the Medical Center. (*Id.* ¶ 14, 2 CT 340.) That approach to managing UCSF's resources is particularly important because many of the patients and visitors seeking medical attention at UCSF's various medical centers are not local and come from outside the city for medical treatment. (*Id.* ¶ 26, 2 CT 342–343.) Ultimately, other than students, faculty, and

staff, the only people who are likely to use UCSF's parking facilities are patients seeking treatment at the University's medical facilities and visitors who are on campus for University purposes. (*Id.* ¶ 26, 2 CT 342.)

3. For decades, San Francisco has acted in a manner consistent with the Regents' view—confirmed by the Court of Appeal's decision below—that UCSF's operations of its facilities (and its parking operations in particular) are a function of state government, such that the City cannot control those operations. On October 7, 1983, the City issued a notice to UCSF requesting that UCSF pay $584,558.91 under the City's parking tax ordinance. (See Schnetzler Decl. ¶ 3, Ex. A, 2 CT 347, 350.) The Regents responded via letter the next month, detailing why the Regents was constitutionally not subject to the tax ordinance. (*Id.* ¶ 4, Ex. B, 2 CT 347, 352 ["The City and County of San Francisco is without legal authority to compel the University of California to act as collector of the parking tax."].) The City chose not to take any further action on the parking taxes for close to thirty years. (*Id.* ¶ 5, 2 CT 347.)

Then, in 2011, the City sent the Regents another letter, requesting that it "perform its obligations as a parking operator." (*Id.* Ex. C, 2 CT 360.) The Regents again explained that it was not obligated to follow the City's instructions; nearly two years later, the City responded, claiming that it had amended its ordinances to address some of the Regents' concerns. (*Id.* Exs. D–E, 2 CT 364–375.) The Regents replied, explaining that the amendments "fail[ed] to address the fundamental managerial

obligations that the City improperly and illegally attempts to require from the University. The City has no right to unilaterally obligate the University to act as a *pro bono* tax collector on behalf of the City." (*Id.* Ex. F, 2 CT 378.)

The City then brought this suit, seeking traditional mandamus against the Regents, CSU, and UC Hastings. Both the Superior Court and Court of Appeal rejected the City's arguments. (See *City & County of S.F. v. Regents of Univ. of Cal.* (2017) 11 Cal.App.5th 1107, 1110 (hereafter *CCSF v. Regents*) [affirming the Superior Court's denial of the City's petition for a writ of mandate].)

STANDARD OF REVIEW

Because the trial court denied San Francisco's petition for a writ of mandate without resolving any disputed facts, this case presents a question of law subject to de novo review by this Court. (See, e.g., *Prof. Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1032.)

ARGUMENT

I. Municipal Law Controls the Activity of a State Agency Performing Sovereign Functions if—but Only if—the State Agency Has Consented to Such Control

This case calls on this Court to choose among three basic approaches that have been offered throughout the litigation, addressed by the Court of Appeal majority and dissent, and raised again in the briefing in this Court. *First*, the City principally argues that a municipality's power to enact revenue-raising measures gives it conclusive authority to direct the

activities of a state agency necessary to collect revenue. *Second*, the City has sometimes argued that a municipality may direct a state agency to engage in "reasonable" municipal revenue-collection measures, with "reasonableness" assessed through ad hoc judicial balancing of the municipality's and the state agency's interests. *Third*, as the Universities have explained and the Court of Appeal correctly held, a municipality may direct the activity of a state agency performing a sovereign function only when the state agency has consented to take direction from the municipality. Among these options, the first two are unsound and inconsistent with this Court's precedents, while the last supplies an administrable rule that properly respects the allocation of the State's sovereign authority.

A. San Francisco's primary claim that municipal revenue law necessarily controls the activity of a state agency is unsound and contrary to this Court's precedents

San Francisco's primary argument is that as a charter city, its revenue power, which includes not only the power to tax but also the power to "[r]equir[e] sellers to collect taxes from their customers," (CCSF Op. Br. 19), presumptively applies against even arms of the State of California itself (*id.* at p. 21). The City claims that this unyielding revenue power, which it locates in the "municipal affairs clause" of Article XI, section 5 of the California Constitution, has none of the limits placed on the City's police powers. (*Ibid.*) Notably, San Francisco argues that "*any* limitation on [its] revenue power must be expressly stated" or it has no effect. (*Ibid.*) This rule, the City claims, supersedes all

limitations based in other legal and constitutional doctrines, including the special status held by arms of state government performing sovereign functions. In short, the City would ask whether a revenue measure is a municipal affair under charter city principles, and treat an affirmative answer as conclusively establishing its power to direct a state agency to collect revenue raised under the measure. This approach would allow a small group of Californians—here, the residents of San Francisco—to control the activities of entities that are legislatively (and in the case of the Regents, constitutionally) intended to serve the people of the *entire* State. Such a result would be counter to fundamental principles of self-governance. (See also UC Hastings Br. 28 ["To allow the 850,000 people who live in San Francisco to dictate how an agency representing 39 million people must operate inverts basic principles of democratic decision-making."].) That approach is flawed and contrary to this Court's precedent.

1. The basic conceptual defect with the City's proposal is that it treats state agencies no differently from private actors, regardless of the fact that state agencies are typically engaged in sovereign functions. By proposing a framework that does not even accommodate consideration of the fact that a state agency—not a private actor—is being asked to perform functions assigned to it by a municipality, San Francisco sidesteps the central question whether such municipal control over a state agency is proper.

This avoidance is most evident from San Francisco's extensive reliance on cases involving taxation of private parties or regulation of private parties' collection and remittance of revenue. (See UC Hastings Br. 44–45; CSU Br. Part I.C.4–5.) For example, the City discusses at length cases concerning the indirect effects that taxes on private persons might have on a government. (See CCSF Op. Br. Part III.A–B.) In particular, *United States v. New Mexico* (1982) 455 U.S. 720, dealt with state taxation of *private* contractors; *United States v. Fresno County* (1977) 429 U.S. 452, with state taxation of *private* individuals employed by the federal government; *Timm Aircraft Corp. v. Byram* (1950) 34 Cal.2d 632, with a county tax on an *independent contractor's* property; *Weekes v. City of Oakland* (1978) 21 Cal.3d 386 (hereafter *Weekes*), with a city license fee on *individuals* employed in the city; *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623, with a professional sports licensing tax on events by a *private* sports team; and *City of Los Angeles v. A.E.C. Los Angeles, Inc.* (1973) 33 Cal.App.3d 933, with a city business tax on a *private independent contractor*. As the City acknowledges, these cases are about the "difficulties that inevitably arise when two sovereigns have concurrent jurisdiction and taxing power, and the tax of one sovereign affects the activities of the other." (CCSF Op. Br. 21.) But such cases about the *indirect* effects that a state entity may feel from taxes imposed on third parties do not answer the question whether the City can *directly control* the activity of a state entity.

The City has suggested (CCSF C.A. Op. Br. 32–33; cf. CCSF Op. Br. 30–31) that *Weekes* approved the City of Oakland's imposition of a requirement that state agencies collect Oakland's employee license fee from their employees working within city limits. But *Weekes*—like the cases discussed above—held only that Oakland could "impos[e] its license tax upon state employees"; it says nothing about the obligations of state agencies. (*Weekes*, *supra*, 21 Cal.3d at p. 398.) Unlike the Universities here, the parties challenging the tax in *Weekes* were "potential taxpayers" (not potential tax-collectors) and the issue presented was whether Oakland had the power to "levy" (rather than direct the collection of) the tax in question. (*Id.* at p. 390.)

Similarly uninformative are the City's cases regarding the authority of a municipality to direct a private party to collect a tax from a third party. (See CCSF Op. Br. 19–20, 23–24.) In particular, *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 477 (hereafter *Ainsworth*), involved a tax-collection requirement imposed on "retailer[s] of intoxicating liquor," and *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 134, addressed tax-collection requirements imposed on "utility companies." Such cases about municipal power to directly control the tax-collection activity of a *private party* do not answer the question whether the City can control the activity of a *state entity*.

2. Nor does San Francisco offer a foundation in precedent for its approach of ignoring state concerns in questions of municipal power. (See also CSU Br. Part I.C.3 [explaining the circumscribed nature of a charter city's municipal powers].) To

the contrary, an inquiry that starts *and ends* with an examination of municipal power is inconsistent with this Court's approach in *Ainsworth* and *California Federal Savings & Loan Association v. City of Los Angeles* (1991) 54 Cal.3d 1 (hereafter *California Federal*). In *Ainsworth*, this Court examined whether imposing a municipal tax-collection requirement on liquor retailers conflicted with the State's exclusive power under the Constitution to regulate liquor production and sales. (34 Cal.2d at pp. 467–468.) The *Ainsworth* Court did not end its analysis with its conclusion that the City and County of San Francisco had the power, under the municipal affairs clause, to impose taxes for revenue purposes. (*Id.* at p. 469.) As the Court stated, once the municipality's potential authority is established, "the question arises as to whether there has been reserved exclusively to the state, insofar as concerns intoxicating liquor . . . the power of taxation exemplified by the [challenged] ordinance." (*Id.* at pp. 469–470.) The Court then went on to analyze the scope of power reserved to the State, ultimately concluding that San Francisco's ordinance did not "enter into the field of taxation preempted by the state." (*Id.* at p. 475.)

Similarly, in *California Federal*, this Court did not end its inquiry after answering the question of municipal power. In concluding that a state law prevented a city from imposing a license tax on certain financial institutions (54 Cal.3d at pp. 6–7), this Court described at length how courts should go about analyzing conflicts between municipal ordinances and statewide

interests (*id.* at pp. 15–18). Notably, *California Federal* explained that:

> Although municipal taxation is a "municipal affair" within the meaning of article XI, section 5(a), in that it is a necessary and appropriate power of municipal government, aspects of local taxation may under some circumstances acquire a "supramunicipal" dimension, transforming an otherwise intramural affair into a matter of statewide concern . . . . In the event of a true conflict between a state statute reasonably tailored to the resolution of a subject of statewide concern and a charter city tax measure, the latter ceases to be a "municipal affair" to the extent of the conflict and must yield.

(*Id.* at p. 7.) In short, the scope of municipal powers cannot be understood without reference to statewide interests. (See *id.* at p. 17 ["As applied to state and charter city enactments in actual conflict, 'municipal affair' and 'statewide concern' represent, Janus-like, ultimate legal conclusions rather than factual descriptions."].)

Although both *Ainsworth* and *California Federal* were preemption cases, and the appropriate inquiry into sovereignty principles differs in certain respects, those cases nonetheless reflect this Court's conclusion that the determination whether an issue is a municipal affair is not dispositive when there are other interests that could potentially go unvindicated by a blind application of municipal law. In those cases, the other potential interest was a statewide constitutional or legislative policy; here, the relevant interest is the intrinsically statewide interest in a state agency's performance of the State's sovereign functions.

The inconsistency between the City's approach and this Court's 1991 decision in *California Federal*, in particular, explains the error in the City's reliance on the Court of Appeal's 1973 *Modesto* decision and the Attorney General's 1982 opinion, Opinion No. 81-506. (See CCSF Op. Br. 39.) Both truncated their analysis with the conclusion that revenue collection is a municipal affair. (See *City of Modesto v. Modesto Irrigation Dist.* (1973) 34 Cal.App.3d 504, 508 [noting that charter cities have the power to tax under the "municipal affairs" clause and concluding, from that premise alone, that "the collection requirement of respondent's ordinance, though applicable to state agencies, is a reasonable exercise of the city's constitutional power to tax for revenue purposes."]; 65 Ops.Cal.Atty.Gen. 267, 271 (1982) [quoting *Modesto* at length, omitting discussion of state interests, and "conclud[ing] that the City of Pacific Grove may require the collection by the state or its agent of a transient occupancy tax for the occupation of rooms [at a conference center]."].) By confining their analysis to municipal powers, both are inconsistent with *California Federal*'s subsequent explanation that this Court requires a more searching analysis.

Indeed, San Francisco cites no post-*California Federal* case from any court that analyzes a question of municipal power potentially implicating statewide interests, but which does not evaluate those state-level interests. The only arguable exception is *Eastern Municipal Water District v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, but the question of statewide sovereignty interests apparently went uncontested because the

parties believed *Modesto* was controlling on that point. (See *id.* at p. 29 [emphasizing the factual similarities between the case and *Modesto*]; *id.* at p. 30 ["Appellant here does not claim that the ordinance impinges on the state's sovereignty; the District contends only that there was no statute which authorized the City to impose the collection requirements upon the District."].)

3. The City's approach of focusing exclusively on municipal power would, moreover, produce anomalous results across other areas of municipal law.

To begin with, San Francisco's analysis logically points to the conclusion that a city not only has the power to direct a state agency to *collect* a tax, but also has the power to *directly tax* that state agency—a result that is contrary to settled precedent and one which San Francisco itself disavows. San Francisco argues that the power to direct the collection of a tax is merely an incident of the power to impose the tax in the first instance. That is, both the power to *order collection* of a tax and the power to *impose* the tax are a single municipal power that derives from the "municipal affairs" clause of Article XI of the California Constitution. (See CCSF Op. Br. 21–22 [citing Cal. Const., art. XI, § 5, subd. (a)].) If those tax-related powers flow from the same source, and that source confers a power that is supreme over a state agency, then the City's argument here about tax collection should equally sustain the *imposition of a municipal tax directly* on the Universities' operation of facilities that fulfill their educational mission. Yet San Francisco concedes, as it must, that it is settled law that a municipality cannot directly tax

the State or its agencies, including the Universities in this case. (See CCSF Op. Br. 30 ["[O]ne government may not impose its tax directly upon another."].)

Moreover, the implications of San Francisco's position go far beyond the taxation context. (See UC Hastings Br. 38 ["Absent some compelling reason why tax collection obligations should be considered special, it is hard to see San Francisco's argument as anything other than the first step towards a complete repudiation of *Hall*, with courts stepping in to play arbiter in a host of everyday conflicts between state and local agencies."].) San Francisco does not explain how the revenue power could be distinguished from other municipal-affairs powers, and no principled distinction appears to exist. Indeed, the "municipal affairs" clause of Article XI makes no specific mention of revenue powers. (Cal. Const., art. XI, § 5, subd. (a) [speaking only of "municipal affairs"].) This Court has explained that "municipal affairs" "is not a fixed or static quantity . . . [but one that] changes with the changing conditions upon which it is to operate." (See *State Bldg. & Construction Trades Council of Cal., AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 557 [quoting *Pac. Tel. & Tel. Co. v. San Francisco* (1959) 51 Cal.2d 776, 771 (some alterations in original)]; *California Federal, supra*, 54 Cal.3d at p. 6 ["[T]hose 'wild words' [of Article XI] have defeated efforts at a defining formulation of the content of 'municipal affairs.' "].) Accordingly, accepting the City's position here would entail embracing an open-ended field in which municipal enactments would control the activities of state agencies.

Furthermore, San Francisco's position would only generate further contradictions if applied to other traditional subjects of municipal law such as building codes or occupational regulations. Although those are generally proper subjects of municipal law with respect to private parties, this Court has squarely held that a municipality may not control state agencies' activity in those fields. For example, in *Hall*, this Court rejected the supremacy of municipal building codes over the State's interest in the construction of its facilities, holding "[w]hen [the State] engages in such sovereign activities as the construction and maintenance of its buildings . . . it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 183.) The Court of Appeal has recognized that the logic of *Hall* fully extends to insulate the Regents' decisions about the University's facilities from municipal control. (See *Regents of Univ. of Cal. v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 136.) *Hall*, in turn, relied on this Court's holding that a city could not impose an employment-related registration requirement on a state employee. (See *In re Means* (1939) 14 Cal.2d 254, 255, 260 (hereafter *In re Means*); *id.* at p. 259 ["How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it cannot have."].) The municipalities in those cases surely had the power to control the activities of private actors in like circumstances—i.e., to establish codes for the construction of private buildings and to set occupational requirements for private

workers. (Cf. *Hall*, *supra*, 47 Cal.2d at p. 184 [noting the relevance of *Means* "as it involves the attempted regulation of a state activity by a city, *as distinguished from* regulations of the members of the public"], italics added.) But this Court correctly concluded that municipal authority yields when a state agency is performing sovereign functions.

San Francisco would distinguish *Hall* (and presumably *Means*) by arguing the City has special powers in the revenue context that it lacks in the "regulatory" context in which *Hall* and *Means* arose. (See CCSF Op. Br. 27 ["*Hall* said nothing about limits on city revenue power."].) But in truth, all the anomalies above—whether related to taxation, other municipal affairs, or regulations more broadly—disappear upon rejecting San Francisco's mistaken original premise that its revenue power enjoys a special status that absolutely supersedes the State's interests. As this Court has recognized, a charter city's reliance on the truism that the power to tax is integral to the power to govern "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." (*California Federal*, *supra*, 54 Cal.3d at p. 15.) As it did in *California Federal*, this Court should reject the City's invitation to single out the municipal taxation power.

B. San Francisco's alternative proposal that courts should engage in ad hoc balancing of a municipality's interest in controlling the activity of a state agency, against the state agency's interest in controlling its own affairs, is unsound and unworkable

In its Petition for Review, the City proposed that any "reasonable" tax-collection measure could be imposed on a state agency, notwithstanding that municipalities generally lack the power to control the activities of a state agency performing sovereign functions. (See CCSF Pet. for Rev. 3, 21.) That view, which Justice Banke urged in her dissenting opinion below, rests on the premise that state sovereignty "is not impinged by collecting a general local tax imposed on third parties" if the collection requirement has certain features. (See *CCSF v. Regents*, *supra*, 11 Cal.App.5th at p. 1146 (dis. opn. of Banke, J.).) In its brief on the merits before this Court, the City continues to allude to this alternative "reasonableness" or "balancing" argument. (See CCSF Op. Br. 39–40 [relying on *City of Modesto*'s analysis for the proposition that a municipality can subject state agencies to "reasonable tax collection measures"]; *id.* at pp. 42–46 [alternatively urging this Court to "balance" the effect of the tax on the Universities' sovereign interests against San Francisco's interests in tax collection].) The City thus invites this Court—and lower courts in myriad future cases—to reach a policy conclusion about whether a particular municipal revenue-collection requirement imposes a reasonable burden on a given state agency, in view of that state agency's functions and the

municipality's interest in using the state agency as its tax collector for the particular revenue measure.

Like the City's principal argument that the municipal interest absolutely prevails, this ad hoc reasonableness approach comes without a sound explanation for why municipal revenue measures should be accorded a unique degree of supremacy over state agencies. (See *ante* Argument Part I.A.) Worse yet, a loose "reasonableness" standard is not calculated to protect a State's interest in performing sovereign functions without interference; a sovereign performs the functions that *it* has determined are appropriate (through established legislative and executive channels), not the functions that *somebody else* has determined are reasonable (through municipal lawmaking and judicial balancing). Decisions about which sovereign interests to pursue and in what fashion are quintessential matters of policymaking better suited to the legislative role. Moreover, San Francisco's "reasonableness" proposal comes without support in this Court's cases, and the City's analogies to federal cases involving the United States or Indian Tribes are especially flawed.

1. As an initial matter, it is not clear that an ad hoc reasonableness approach would, in practice, produce results any different from San Francisco's primary test that posits that state agencies must comply with municipal revenue measures on the same terms as private parties. Revenue collection measures always must be reasonable, regardless of what entity is assigned the task of revenue collection—that is, a municipality cannot impose *un*reasonable revenue measures, even on private parties.

(Cf. *Sivertsen v. City of Menlo Park* (1941) 17 Cal.2d 197, 203 [analyzing the reasonableness of a city license fee ordinance]; *Equi v. City & County of S.F.* (1936) 13 Cal.App.2d 140, 142 ["The judgment declaring invalid the $40 license tax imposed by the . . . ordinance upon the ground that said tax was unreasonable, oppressive, and discriminatory finds support in the record."].) If "reasonableness" as to a state agency is satisfied whenever the revenue-collection measure is validly imposed on private parties, it adds nothing to the analysis.

Certainly, San Francisco correctly observes that it "does excuse public entity operators from several requirements imposed on private parking operators." (CCSF Op. Br. 14.) But the City does not explain whether its decision to "excuse" state agencies was a matter of municipal grace or of constitutional limitations. On the one hand, a purely discretionary decision by a single municipality to "excuse" state agencies from certain obligations says nothing about what the California Constitution requires. On the other hand, assuming San Francisco "excused" state agencies for constitutional reasons, the City nonetheless fails to offer a principled basis on which a *court* could have come to the same conclusion. For example, the City does not offer a judicially administrable principle (or, indeed, any principle) upon which to conclude that it is constitutionally *unreasonable* for a municipality to require a state agency to use "devices to properly track . . . parking taxes" (something the City does *not* require of the Universities, CCSF Op. Br. 15 [discussing S.F. Bus. & Tax Regs. Code, art. 22, § 2202]), but constitutionally *reasonable* to

require that same state agency to properly "collect the tax" and "file returns" (something the City *does* require of the Universities, CCSF Op. Br. 14 [discussing S.F. Bus. & Tax Regs. Code, art. 6, § 6.7-1 to § 6.7-2].)

2. Such judicially imponderable distinctions exemplify two related ways in which an ad hoc "reasonableness" approach is an unsound way to resolve this case and others like it. First, nothing about a free-form "reasonableness" test is calibrated to vindicate the constitutional value at stake here, which is the State's ability to determine for itself what sovereign functions its agencies will perform, and how they will perform them. And second, this lack of fit would leave courts at sea if they were tasked with distinguishing between permissible and impermissible municipal revenue-collection measures imposed on state agencies.

As to the first problem, if sovereignty means anything, it means not being subjected to the control of another actor's commands—not even sometimes, not even when those commands might be deemed "reasonable" in some casual sense. (See, e.g., *Printz v. United States* (1997) 521 U.S. 898, 935 ["[C]ommands [requiring a sovereign or its officers to conduct themselves in a particular way] are fundamentally incompatible with our constitutional system of dual sovereignty."]; Black's Law Dictionary (7th ed. 1999) p. 1401 *s.v.* sovereign state ["[a] state that possesses an independent existence . . . without being merely part of a larger whole to whose government it is subject"].) San Francisco cites no controlling authority holding that the State's

sovereignty gives way whenever it seems reasonable (as measured by some unarticulated yardstick). (See also UC Hastings Br. 34–35 [explaining that *California Federal* provides no support for courts' authority to balance state and local interests as San Francisco proposes].)

Second, even assuming that notions of good government counsel that California's sovereignty ought to give way when a state agency could reasonably acquiesce in municipal control of its activities, courts are poorly equipped to decide when it is and is not reasonable for a state agency to do so. As UC Hastings discusses in greater detail (see UC Hastings Br. 27–33), the question of which state agencies can be subjected to what degree of municipal control without compromising the State's ability to perform sovereign functions through those agencies will inevitably entail policy judgments of a political or legislative character. Although such judgments may be unavoidable in some close cases, this Court should craft rules that tend to minimize the need for courts to arbitrate those quintessentially policy-based disputes. (See *id.* at p. 29 [citing cases in which California courts explicitly recognized that the Legislature should resolve such disputes].)

3. A "reasonableness" approach is especially problematic where, as here, courts generally lack the tools for flexibly resolving municipal-state conflicts through compromise positions. As this case illustrates, courts will be asked to render a binary judgment upholding or rejecting the particular revenue-collection measure adopted by the municipality. In a legislative

setting, by contrast, an infinitely varied universe of compromises is possible, under which the state agency might offer to cooperate with the municipality on specific terms. As UC Hastings explains, actual experience bears this out: The Legislature has repeatedly engaged with municipalities to provide carefully tailored frameworks within which state agencies will participate in municipal tax collection. (See UC Hastings Br. 32.) Such compromises are unattainable within the framework of litigation of the sort San Francisco pursues here.

Furthermore, courts will only be presented with such questions on a municipality-by-municipality and agency-by-agency basis. But in a statewide legislative setting, compromises can be made uniform across the State, which is especially important to many state agencies, which—like the Regents—carry out sovereign functions across California, not just in one city. In its brief, San Francisco specifically identifies just a few cities in which the Universities are located that already impose parking taxes. (CCSF Op. Br. 45.) But the implication of the City's position is vastly larger than parking taxes in a few cities: The approach San Francisco urges would apply to *any* municipal revenue measure. The reach of that rule to California's 100+ charter cities would create staggering practical problems of its own—each of the State's fifteen largest cities is a charter city. Indeed, when Justice Banke asked at oral argument in the Court of Appeal if the City's counsel believed that the City's position would "effectively mean that it would be open season for every single charter city in the State of California to collect parking tax

on every single parking space that accesses a state governmental facility," the City's counsel responded, "Yes, I do, your honor." (Mar. 1, 2017 Oral Argument at 10:01:10 AM.) And, in fact, the consequences would reach even farther because, as San Francisco acknowledges (CCSF Op. Br. 40, fn. 6), its analysis would presumptively apply to the hundreds of other general law cities that are treated by statute in many respects as possessing the same powers as charter cities.

No court could adequately take into account the cumulative effects on a statewide agency from such a patchwork of locally varied requirements. Here, for example, the Regents has explained that compliance with San Francisco's regulations would, at a minimum, require the University to hire two additional full-time employees and implement and operate new accounting computer systems to process and remit the parking taxes to San Francisco. (Cox Decl. ¶ 30, 2 CT 343.) This process would be uniquely tailored to *San Francisco's* particular requirements: The Universities would be required to obtain certificates of authority from *San Francisco* in order to operate their facilities. (See S.F. Bus. & Tax Regs. Code art. 6, § 6.6-1, subd. (b).) They would be required to file monthly tax returns in the form *San Francisco* prescribes (*id.* § 6.7-2, subd (b)), and bear the burden of justifying lost tickets to *San Francisco* authorities' satisfaction (*id.* art. 9, § 604, subd. (c)). The Universities would be liable for any tax they failed to collect in accordance with the procedures *San Francisco* prescribes. (See *id.* § 604, subd. (a).) And the Universities would be liable for taxes on unaccounted-for

tickets if *San Francisco* "in its sole discretion" was unsatisfied with the Universities' evidence that the tickets were in fact unaccounted for. (See *id.* § 604, subd. (b).)

This would be burdensome enough on its own. But if—as San Francisco would have it—*every* city could apply its own particularized requirements on the Universities at their various campuses, the cumulative result would be a patchwork of locality-specific requirements that would be far more disruptive and burdensome than any one municipality's regulations might seem in isolation. (Cf. *Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.* (1996) 43 Cal.App.4th 630, 633, 640 [concluding that school districts are not bound to follow a city's waste collection requirements and noting that a different outcome would result in "administrative problems" and inefficiencies for school districts operating in multiple localities].) Even if any one set of requirements seemed "reasonable" in isolation, no court hearing an individual case would be properly situated to weigh the cumulative effects of such requirements on a statewide university. By contrast, a legislative process could account for those cumulative effects and bring necessary consistency to the Universities' statewide operations.

4. San Francisco also fails to offer persuasive legal authority for the proposition that intrusions into a state agency's sovereign functions can be accommodated on the basis of ad hoc "reasonableness" determinations.

The first example it gives is the United States' statutory consent to collect certain state taxes from federal employees.

(See CCSF Op. Br. 40 [citing 5 U.S.C. § 5517].) The City fails to acknowledge the most obvious feature of this scheme, which is that the federal government *explicitly consented* via *legislative enactment* to collect those taxes. And in doing so, the federal government made such consent conditional, depending on the features of the state tax scheme. (See 5 U.S.C. § 5517(b) ["This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section."].) That arrangement proves the Universities' point: If those statutes did not exist, a State would have no right to compel the United States to collect taxes on its behalf in the name of reasonableness. Furthermore, as UC Hastings documents, Congress incrementally expanded the scope of its consent to collect state and local taxes over the course of several decades. (See UC Hastings Br. 48–49.) The statutes thus manifest the United States' consent, and further demonstrate that sovereigns do actually weigh and carefully spell out the contours of their acquiescence to local control.

The second example San Francisco offers is the U.S. Supreme Court's varied caselaw regarding the interactions between States and Indian Tribes. As UC Hastings and CSU explain at greater length, those cases do not support San Francisco's proposal here. (See UC Hastings Br. 52–53; see also CSU Br. Part I.C.5.) This case involves the allocation of control by one sovereign—the People of the State of California—while

those cases involve the interaction between two sovereigns. Cases involving Indian Tribes are an especially poor guide for deciding the question here because a *third* sovereign—the United States—would have had essentially plenary authority to prescribe rules of decision for those cases by preemptive legislation under the Indian Commerce Clause (U.S. Const., art. I, § 8, cl. 3), and its power to abrogate tribal sovereign immunity (see *Michigan v. Bay Mills Indian Community* (2014) 134 S.Ct. 2024, 2030). In those cases, the U.S. Supreme Court's analysis of the relevant state tax-collection provisions entailed arbitrating between state and tribal interests in the interstices where Congress had not clearly and definitively spoken. By contrast here, San Francisco does not advance a "reasonableness" theory as a stopgap measure while the Universities and the City await judgment from some authoritative decisionmaker; rather, it advances "reasonableness" as the ultimate test, and this Court as the ultimate arbiter of that test.

In all events, in none of those tribal-state cases did the U.S. Supreme Court approve a State's attempt to control a Tribe's *sovereign* activities—those of governing members of the Tribe. Rather, in each case, the relevant state tax-collection requirement sustained by the Supreme Court extended only to the Tribe's relationship with persons who were *not* members of the Tribe, as to whom the Tribe's interactions would not best be understood as undertaken as a sovereign function. (See *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation* (1976) 425 U.S. 463, 483 [upholding "[t]he State's requirement

that the Indian tribal seller collect a tax validly imposed *on non-Indians*"], italics added; *Oklahoma Tax Com. v. Citizen Band Potawatomi Indian Tribe of Oklahoma* (1991) 498 U.S. 505, 507 ["We conclude that under the doctrine of tribal sovereign immunity, the State may not tax such sales to Indians, but remains free to collect taxes on *sales to nonmembers* of the tribe."], italics added; *Washington v. Confederated Tribes of Colville Indian Reservation* (1980) 447 U.S. 134, 159 ["[W]e therefore hold that the State may validly require the tribal smokeshops to affix tax stamps purchased from the State to individual packages of cigarettes prior to the time of *sale to nonmembers* of the Tribe."], italics added.) San Francisco itself concedes that point. (See CCSF Op. Br. 41, fn. 7 ["[T]he federal cases discussed here involve state excise taxes that are valid as to non-tribal members."].) Accordingly, those cases are not even loosely analogous authority for the proposition that an agency *performing sovereign functions* is subject to external control.

C. Conditioning municipal control of state agencies on state agency consent is a judicially administrable rule grounded in this Court's precedents that protects state agencies' performance of sovereign functions

Unlike the approaches San Francisco has advanced in this case, the rule applied by the lower courts here—that a municipality may direct the sovereign activities of a state agency only by consent—is consistent with the usual principles of sovereignty. This Court should adopt and apply it here.

1. A core attribute of sovereignty is that a sovereign is not subject to the control or direction of another entity without its

consent. The "sovereign" is the body "whose will must be expected to prevail, who can get [its] own way." (Black's Law Dictionary, *supra*, at p. 1402 *s.v.* sovereignty [quoting James Bryce, *Studies in History and Jurisprudence* (1901), pp. 504–505].) That principle applies even when the entity seeking to control the sovereign is itself sovereign in some sense (as San Francisco claims to be, but see CSU Br. Part I.C.1 [explaining why cities are not in fact sovereign].) For example, "the Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." (*Printz*, *supra*, 521 U.S. at p. 935.) And conversely, the States may not impose direct obligations on the federal government or its agencies absent federal consent. (See UC Hastings Br. 49–50; CSU Br. Part I.C.5.)

This principle of sovereignty and consent is especially clear where the relationship of a California state agency and a municipality is concerned. As this Court has explained, "states are sovereign but cities and counties are not; in California as elsewhere they are mere creatures of the state and exist only at the state's sufferance." (*Bd. of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 914 (hereafter *Local Agency Formation*); see *Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 6 [describing municipalities as "subordinate political entities" within the State].)

In rejecting a charter city's efforts to "add[] to the requirements for employment by the state, and [thus] restrict[]

the rights of sovereignty" (*In re Means*, *supra*, 14 Cal.2d at p. 258), this Court further explained:

> "The principle is that the state, when creating municipal governments does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control. The municipal government is but an agent of the state, not an independent body. . . . It is competent for the state to retain to itself some part of the government even within the municipality, which it will exercise directly, or through the medium of other selected and more suitable instrumentalities. How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it cannot have."

(*Id.* at p. 259 [quoting *Kentucky Institution for Education of Blind v. City of Louisville* (1906) 123 Ky. 767].) In this context, therefore, it is especially apparent that a state agency performing sovereign functions, and thus fulfilling the duties entrusted to it by the People of the State of California, cannot be controlled by a city that "exist[s] only at the state's sufferance." (*Local Agency Formation*, *supra*, 3 Cal.4th at p. 914; see also CSU Br. Part I.A.1. [explaining that this Court's precedents "reasonably treat[ed] the hierarchical nature of city-state relations—and the corresponding inability of cities to enforce their laws against the State or state entities engaged in sovereign, statewide activities—as axiomatic"].)

Contrary to San Francisco's suggestion (CCSF Br. 45, fn. 8), reimbursing a state agency's costs of compliance with municipal law would not solve this problem. State agency

personnel are not workers-for-hire at municipal pleasure. The Universities' central objection in this case is not about the administrative overhead costs of being subject to the City's ordinance. Rather, the Universities rest on the structural imperative that a state agency performing sovereign functions cannot have its affairs directed by a municipality, and certainly need not actively cooperate in municipal policies that it does not wish to support, such as San Francisco's policy of levying a tax on the means by which many members of the University community come together.

A consent-based approach is, moreover, consistent with how courts in other States have resolved the conflict between municipal attempts to compel state universities to collect taxes and those public universities' interest in controlling their own affairs. (See UC Hastings Br. 54; *City of Boulder v. Regents of Univ. of Colo.* (1972) 179 Colo. 420, 425 ["Even with all the powers granted home rule cities under [the Colorado constitution,] a home rule city is still a subdivision of the State. We hold that no municipality, absent statutory authority, can compel the State or its officials to collect municipal taxes."]; *City of Chicago v. Bd. of Trustees of Univ. of Ill.* (1997) 293 Ill.App.3d 897, 904 ["Therefore, a municipality's home rule power does not authorize it to require state educational institutions to collect and remit city taxes because such a requirement would interfere with the state's constitutional mandate to operate a statewide educational system."].)

2. A rule that insulates a state agency from municipal control—unless and until the agency consents—also encourages deliberate legislative and executive compromises around when and how a state agency should give that consent. As explained above, negotiated compromises are very much available to policymakers, and indeed, a number of such compromises exist today in state law. (See *ante* Argument Part I.B.3.) When those compromises are enacted into law, courts can administer them with relative ease: consent to municipal control needs to be expressed clearly, and thus a court's task is simply a matter of statutory interpretation. (See *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1358–1359.)

San Francisco effectively proposes an inverted version of a consent-based approach, under which state agency consent is presumed unless it is withdrawn. (See CCSF Op. Br. 21.) But San Francisco points to no manifestation of this presumed consent; the City simply implies that the generalized grant of municipal affairs power includes this consent, despite saying nothing on the subject. Moreover, placing state agencies presumptively under municipal control would be impracticable and undesirable. The State would have to explicitly spell out—in every context, and for every agency and arm of the state—that the agency is shielded from municipal regulation (whether related to revenues or other municipal matters deemed to presumptively control state agency action). The values of sovereignty and predictability would both be disserved by putting state agencies—especially geographically dispersed agencies like

the Universities—in the unenviable position of racing to catch up with, and countermand, a proliferation of municipal enactments scattered across the State.

Even if a state agency is required to manifest a lack of consent to municipal control, a state agency's open and continuing refusal to carry out municipal law in the face of municipal objection surely qualifies. Indeed, exactly that happened here for decades when the Regents openly refused to act as San Francisco's tax collector. No more can sensibly be required: It makes no sense to distinguish between, on the one hand, a scenario in which University officials, acting on behalf of the Regents and exercising authority delegated to them by the Regents, have rejected San Francisco's attempt to assign tax-collection tasks to them, and, on the other hand, a scenario in which the Regents exercises its quasi-legislative powers to adopt (as it well might) a policy directing University officials to reject San Francisco's attempt to assign tax-collection tasks to them.

3. A rule focused on sovereign consent would also be consistent with the principles animating this Court's preemption analysis in *California Federal* and *Ainsworth*. In those cases, this Court explained that the determinative question in resolving a potential state-municipal conflict is whether a matter of statewide concern exists, and is in conflict with the municipal law. If so, the municipal law is subordinate to the statewide concern. (See *California Federal, supra*, 54 Cal.3d at p. 17; *Ainsworth, supra*, 34 Cal.2d at pp. 475–477.) Although this Court does not need to resolve how preemption principles would

operate here, and the preemption inquiry is distinct from the sovereignty one, the general contours of this Court's preemption analysis point to a consent-based approach. When a state agency is involved, the sovereign functions of that state agency are intrinsically matters of statewide concern. And because the controversy arises here precisely because the Universities' refusal to act as municipal tax-collectors conflicts with San Francisco's desires, a conflict exists. Accordingly, the state agency's position on the activities that its personnel will (and will not) conduct should be determinative, and it should control over contrary direction from the municipality.

4. Finally, a rule that a state agency is not subject to municipal control without the agency's consent can be limited in at least three important ways.

First, a state agency's consent to carry out municipal law could be manifested either by legislative direction or by agency officials determining, in an exercise of their delegated authority, that it is appropriate for the agency to carry out municipal law. Depending on the particular circumstances and the state agency involved, that legislative consent could appropriately come from the Legislature itself (which it has provided on many occasions, see *ante* Argument Part I.B.3), or from the exercise of quasi-legislative powers of an agency's governing body, such as the Regents. Because those same decision-makers determine state agency policy and practices in general, they are best situated to determine whether carrying out a particular municipal law is consistent with the agency's broader obligations. And the

structures that make those decision-makers politically accountable for agency policy in general will likewise ensure they will be responsive to municipal concerns when appropriate.

Second, a consent-based approach to *municipal* control over the activities of a state agency engaged in sovereign functions would not determine the outcome of cases in which the state agency's activity is potentially in conflict with a generally applicable *statewide* mandate. The question whether a state agency is subject to such a requirement poses a different set of questions. For example, this Court has upheld the application of statewide usury rules (adopted by popular initiative and constitutional amendment) to the Regents' management of the University's endowment. (See *Regents of Univ. of Cal. v. Superior Court* (1976) 17 Cal.3d 533, 537.) That decision is fully consistent with a consent-based approach to *municipal* control over the activities of state agencies.

Third, because a consent-based approach is calibrated to reflect the fact that the state agency in question is engaging in sovereign functions, that approach naturally accommodates potentially different results if the agency appears to be operating wholly outside of its legislative or constitutional charge. Such cases would turn on the relevant statutes and constitutional provisions, the agency's understanding of how the challenged municipal regulation affects its sovereign functions, and the particular factual context. Employing the consent-based approach taken by the courts below would not commit this Court to any particular result in such closer cases. But as discussed

below, this is not a close case: The University functions at issue here directly support the very presence at UCSF of the very people making up the UCSF community. (See *post* Argument Part II.A.)

II. San Francisco's Revenue Law Cannot Control the Regents' Administration of Programs to Provide Student, Faculty, Employee, and Patient Access to the University's Facilities

Applying the principles above, the Regents' choices about how to carry out the sovereign function of operating the University—and in particular, facilitating the University community's access to University facilities through parking and related transportation measures—are not subject to municipal control. The University operates a set of programs, including the parking on which San Francisco imposes a tax, that are designed to allow the people who make up the University community—students, faculty, staff, and the patients who receive services at the University's teaching and research facilities—to access the University campus and facilities. Without those individuals' presence, the University could not carry out its educational, research, and public service mission. The operation of the University's parking functions is thus a sovereign function. It cannot be placed under municipal control without the Regents' consent, and the Regents has withheld that consent.

A. The activity at issue is a sovereign function carried out by the Regents as a branch of the State

1. The Regents is an arm of the State of California that governs the University of California under a grant of

constitutional authority empowering it to pursue the University's educational, research, and public service mission. The California Constitution vests the Regents with extensive powers, including "full powers of organization and government," including "the legal title and the management and disposition of the property of the university and of property held for its benefit," and "all the powers necessary or convenient for the effective administration of [the University of California]." (Cal. Const., art. IX, § 9, subds. (a), (f).)

This Court has accordingly recognized that the Regents has a "unique constitutional status" which includes "excercis[ing] quasi-legislative powers"; the Regents has been described "as a branch of the state itself . . . or a statewide administrative agency . . . and [i]t is apparent that the Regents as a constitutionally created arm of the state have virtual autonomy in self-governance." (*Miklosy, supra*, 44 Cal.4th at pp. 889–890 (internal quotation marks and citations omitted) (alterations in original); see also *Hamilton v. Regents of Univ. of Cal.* (1934) 293 U.S. 245, 257 ["[B]y the California Constitution the [R]egents are . . . fully empowered in respect of the organization and government of the University which . . . is a constitutional department or function of the state government."].) And lower courts have recognized that the Regents' powers, unlike that of cities, are plenary. (See *Regents of Univ. of Cal. v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 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. . . . [T]he authority of a charter city to regulate municipal affairs [however] is not plenary."].)

2. The Universities' parking operations are critical to their ability to fulfill their legislatively (and, in the case of the Regents, constitutionally) mandated missions. With respect to the Regents, the UCSF parking operations are one of several programs designed to ensure that the individuals who are necessary to the University's functioning can physically access its facilities. As described above in greater detail, UCSF operates across a decentralized campus and its educational and healthcare facilities are located in a densely populated urban environment, making parking facilities for students, faculty, staff, patients, and visitors an essential part of UCSF's functions—much like the other components of its physical plant that support teaching, research, and patient care. Parking is, moreover, treated by UCSF as only one component of its transportation needs; revenues from parking are used to subsidize the alternative transportation offered by the UCSF's shuttle system, which transports students, faculty, and staff among campus buildings, easing congestion and promoting sustainability. In all, that shuttle system transports 2.3 million passengers per year. (See *ante* Statement Part 2.)

The parking facilities run by the Regents are designed and intended for individuals who are essential to furthering UCSF's mission. Parking at the majority of UCSF facilities is only available by permits limited to faculty, staff, and students—and

other facilities are operated specifically to ensure that space is available for patients and other visitors. All UCSF parking facilities are adjacent to (or very near) buildings owned or operated by the Regents, and all have signs making it clear that they are for use by UCSF students, staff, and faculty. In short, the only people likely to use UCSF's parking facilities are students, faculty, staff, patients, and visitors who are on campus for University purposes. (See *ante* Statement Part 2.)

UCSF's parking facilities are thus vital to the success of its mission. As California courts have long-recognized, "adequate parking facilities" are important in many contexts, and—as relevant here—play a key role in furthering schools' educational missions. (See *Church Divinity School of Pacific v. Alameda County* (1957) 152 Cal.App.2d 496, 503; accord *Garage or Parking Lot as Within Tax Exemption Extended to Property of Educational, Charitable, or Hospital Organizations* (1970) 33 A.L.R.3d 938, 941 ["[T]he courts recognized that to properly operate a modern university or hospital, adequate facilities to store automobiles belonging to the staff, students and visitors is imperative."].) And courts have affirmed that the Regents' ability to ensure adequate access to its campuses for faculty, students, and staff "involve internal UC affairs vital to its core educational function." (*Regents of Univ. of Cal. v. Aubry* (1996) 42 Cal.App.4th 579, 591 [reaching that conclusion with respect to University housing].) The point should be obvious: Universities like UCSF with a teaching, research, and public service mission succeed because they physically bring together faculty, students,

staff, and patients. That cannot happen if those people cannot conveniently access the University's facilities. As the Court of Appeal below correctly concluded, "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." (*CCSF v. Regents*, *supra*, 11 Cal.App.5th at p. 1115.)

3. San Francisco tries to characterize all this as nothing more than a base commercial transaction, repeatedly referring to people who come to UCSF by car as "customers." (See CCSF Op. Br. 11–13, 15, 17–18, 21, 26, 29–30, 32–33, 35, 38, 43–46, 52–53.) But the members of the UCSF community using the parking facilities at issue are not "customers" of the University—any more than the Members and staff of this Court, the attorneys, and the interested citizens who participate in and observe this Court's proceedings are "customers" of this Court. All are brought together to participate in activities that the California Constitution assigns to particular branches and agencies of the State. (Cf. *Regents of Univ. of Cal. v. Superior Court* (Cal., Mar. 22, 2018, No. S230568) 2018 WL 1415703, at *8 ["Colleges provide academic courses in exchange for a fee, but a college is far more to its students than a business. Residential colleges provide living spaces, but they are more than mere landlords."].)

San Francisco apparently proposes to protect from municipal control, at most, what it regards as the one "core function" of an agency. (See CCSF Op. Br. 52 [proposing a "closely related" test yet basing its argument on its conclusion

that "[t]he universities' core function is not to sell parking"].) The City does not explain how courts would decide what activities are within an agency's "core function"—why, for example, is parking not a "core function" if, as the Regents has determined, it is necessary and appropriate for executing the University's mission?

Ultimately, San Francisco's argument proves too much: If it is not part of a university's "core function" to construct and operate parking facilities to support teaching, research, and public service, then neither is building and operating other campus facilities part of the university's "core function." Yet even San Francisco must and does concede that such construction is a function of state government. (See *Hall*, *supra*, 47 Cal.2d at p. 183 [describing a state's construction of its buildings as a sovereign activity]; CCSF Op. Br. 47 [acknowledging *Hall*].) And not even the dissenting Justice below adopted what the majority accurately described as "San Francisco's cramped view that the universities' governmental role is to provide education but nothing related to it." (*CCSF v. Regents*, *supra*, 11 Cal.App.5th at p. 1116; see *id.* at p. 1124 (dis. opn. of Banke, J.).)

B. The Regents has not consented to municipal control

The Regents has not consented to San Francisco's efforts to compel University officials to act as the City's tax-collectors. San Francisco does not suggest otherwise. Indeed, the Regents has been clear for decades that it refuses to consent. The City attempted to apply its parking tax ordinance against the Regents thirty-five years ago (Schnetzler Decl. ¶ 3, Ex. A, 2 CT 347, 350), but desisted for decades after the Regents made it clear that it

was not subject to municipal control. (*Id.* ¶ 4, Ex. B, 2 CT 347, 352–358 ["The City and County of San Francisco is without legal authority to compel the University of California to act as collector of the parking tax."].) Because the Regents' parking operations in support of the University's mission are a sovereign function, and the Regents has not consented to collecting taxes on behalf of San Francisco, San Francisco's ordinance does not control the Regents' performance of its duties.

CONCLUSION

For the reasons given above and in the Answering Briefs of the California State University and UC Hastings, the judgment of the Court of Appeals should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rules 8.204(b) and 8.520(c)(1), I certify that the foregoing ANSWERING BRIEF ON THE MERITS is produced using 13-point Roman type including footnotes and contains 11,330 words, which is less than the 14,000 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

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CITY AND COUNTY OF SAN FRANCISCO v.
REGENTS OF THE UNIVERSITY OF CALIFORNIA

Case No: S242835

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

I, Susan Ahmadi, am employed in the City of San Francisco, San Francisco County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 560 Mission Street, 27th Floor, San Francisco, CA 94105.

On March 26, 2018, I served the foregoing document(s) described as:

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Susan B. Ahmadi

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CALIFORNIA SUPREME COURT CASE NO. S242835

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