S242835

# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

*Plaintiff and Petitioner,*

v.

**REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,**

*Defendants and Respondents.*

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

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

# ANSWER BRIEF ON THE MERITS

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## I. INTRODUCTION

Sixty-two years ago, in *Hall v. City of Taft* (1956) 47 Cal.2d 177, 183, this Court held that the State of California and its agencies, when engaged in sovereign activities, are "not subject to local regulations unless the Constitution says [they are] or the Legislature has consented to such regulation." The case now before the Court asks whether this principle of state immunity from local control remains good law. It does.

San Francisco imposes a 25% tax on the cost of renting parking spaces in the city and requires parking lot operators to collect the tax on its behalf. After decades of not enforcing its tax collection regulations against state universities, San Francisco recently instructed Respondent Board of Directors of Hastings College of the Law to collect the parking tax at UC Hastings' campus garage. The Board refused, believing that the tax would hamper its efforts to ensure that students, faculty, staff, and others have a safe and convenient way to travel to and from the college. The Court of Appeal, like the trial court before it, looked to *Hall* and agreed that UC Hastings cannot be compelled to act as San Francisco's tax collector.

In its opening brief, San Francisco barely mentions *Hall* or the many decisions that have followed it. Instead, San Francisco advocates for an entirely new rule that would allow charter cities to impose "reasonable" tax collection obligations on the State and its agencies as a matter of law.

The Court should reject this proposed rule and reaffirm its holding in *Hall*. *Hall* is the lodestar that courts have used for six decades to determine when state agencies must comply with local laws, and there is no need to change course now. Requiring state consent to local control reflects the fundamental fact that while the California Constitution grants charter cities significant political autonomy, only the State is sovereign. The people of California—acting through the Legislature or, if necessary, by initiative—may compel state universities to serve as local parking tax collectors. But

they haven't. Instead, the responsibility of managing UC Hastings, and furthering its educational mission, has been delegated by the Legislature to UC Hastings' Board of Directors, which has determined that collecting San Francisco's parking tax is not currently in the best interests of the college. It is not the Court's place, or San Francisco's, to veto this decision.

The opinion below is the latest iteration of an established principle: state agencies are exempt from local laws unless the State agrees to be bound by those laws. This rule is grounded in precedent; it respects the legislative nature of the immunity question; and it places the power to decide how state agencies operate where it belongs—with the State. Accordingly, the judgment of the Court of Appeal should be affirmed.

## II. STATEMENT OF FACTS

### A. San Francisco's parking tax ordinance.

San Francisco imposes a tax on "the rent" charged for parking spaces in the city, at a rate of 25% of the charge, and requires parking lot operators to collect the tax from "occupants" who use their lots. (CT 24-28, 54-55 [BTRC art. 9, §§ 601, 602, 602.5, 603, 604; art. 6, § 6.7-1].)[1] Operators must remit all collected taxes to San Francisco on a monthly basis and file monthly returns showing, if requested, the total number of taxed rental transactions and the amount of parking tax owed on each transaction. (CT 54-56, 58 [BTRC art. 6, §§ 6.7-1, 6.7-2(c), 6.9-3(a)(1)].)

In addition to these principal collection requirements, San Francisco has adopted rules addressing how operators must run their parking lots, the equipment they must use, the receipts they must provide, the records they

[1] Citations in this brief use the following format: "City's Br." refers to San Francisco's opening brief; "CSU's Br." and "Regents' Br." refer to the answering briefs filed by California State University and the UC Regents, respectively; "CT" refers to the Clerk's Transcript on Appeal; and "BTRC" refers to San Francisco's Business and Tax Regulations Code.

must keep, and the manner in which they must collect, account for, and remit the city's parking tax. (CT 26-29, 46-58, 95-96, 98-108 [BTRC art. 9, §§ 604, 607; art. 6, §§ 6.4-1, 6.6-1, 6.7-1, 6.7-2(c), 6.9-1(a), 6.9-3(a)(1); art. 22, § 2203; S.F. Police Code art. 17, §§ 1215-1215.7].) Although San Francisco recently exempted state universities and other public agencies from some of these rules, many continue to apply. (CT 11 [¶¶ 15-17].)

For instance, state universities that operate campus parking lots must maintain specified records for five years, including detailed information about lost tickets and claimed tax exemptions, and they must produce these records on demand. (CT 26-29, 46-47, 54 [BTRC art. 9, §§ 604(b)-(c), 607(d); art. 6, §§ 6.4-1, 6.7-1(a)(1)].) If instructed to do so, they must maintain special trust accounts for all collected taxes. (CT 54-55 [BTRC art. 6, § 6.7-1(f)].) And, critically, they must obtain a certificate of authority from San Francisco before operating a campus parking lot. (CT 48 [BTRC art. 6, § 6.6-1(b)].) In fact, no state university may operate a parking lot in the city unless it first obtains a certificate of authority from San Francisco, and San Francisco may refuse to issue, suspend, or revoke a certificate if the university violates "any provision of the Business and Tax Regulations Code ...." (CT 48-50 [BTRC art. 6, §§ 6.6-1(c), (f)-(g)].)

Moreover, state universities, like other operators, must remit all parking taxes that ***should have*** been collected in a particular month, whether or not those taxes are actually collected, and any uncollected taxes must be paid directly from school funds. (CT 46, 54-55 [BTRC art. 6, §§ 6.2-20.5, 6.7-1(d)].) If someone refuses to pay the tax, UC Hastings must pay it. If UC Hastings does not collect the parking tax based on an exemption and cannot prove to San Francisco's satisfaction that the exemption applies, it must pay the tax as well. (CT 28, 54 [BTRC art. 9,

§ 606; art. 6, § 6.7-1(a)].) And if UC Hastings cannot establish the amount or validity of a lost ticket transaction, it must pay the tax owed for a full value ticket. (CT 26-29 [BTRC art. 9, §§ 604(b)-(c), 607(d)].)

Uncollected taxes are deemed "a debt owed to" San Francisco and any failure to remit all taxes owed can result in a late payment penalty. (CT 54-55, 77-78 [BTRC art. 6, §§ 6.7-1(d), 6.17-1].) San Francisco can require state universities to deposit collateral for uncollected taxes, and to secure full payment of uncollected amounts, it can limit state universities' ability to sell or transfer their property and third parties' ability to return property owned, or pay debts owed to, a state university operator. (CT 64-65, 91 [BTRC art. 6, §§ 6.10-1, 6.10-2, 6.21-1].) Finally, if any administrative requirements are not fulfilled, San Francisco may impose penalties of $500 per day (in most cases), up to $25,000 per year (for each type of violation), and may enforce these penalties by placing liens on state universities' property. (CT 84-87 [BTRC art. 6, §§ 6.19-3, 6.19-4(d)].)

**B. UC Hastings' campus parking garage.**

UC Hastings, founded in 1878, is the oldest public law school in California. (CT 270 [¶ 3].) The college is "affiliated with the University of California, and is the law department thereof[,]" and its statutory purpose is to "afford facilities for the acquisition of legal learning in all branches of the law." (Ed. Code §§ 92201, 92202.) The "business of the college" is managed by a Board of Directors appointed by the Governor and approved by the Senate. (*Id.* §§ 92204, 92206.) The Board holds title to McAllister Tower, Snodgrass Hall, and Kane Hall, where the college's classrooms, faculty, administrative, and clinic program offices, library, cafeteria, academic research center, student housing, and recreational facilities are located. (*Id.* § 92205; CT 270 [¶ 4].) In 2014, UC Hastings had approximately 1,043 full-time students, 62 full-time faculty members, 150 adjunct faculty members, and 185 support staff. (CT 270 [¶ 3].)

Until recently, UC Hastings' only parking facility was an 18-space lot beneath Snodgrass Hall, used by faculty and staff. (CT 270-271 [¶¶ 4, 11].) To remedy this deficiency, and because its campus is in an urban area with limited street parking, UC Hastings began construction of a seven-story, 395-space garage in 2008, located on the same block as Kane Hall. (CT 270-271 [¶¶ 5, 10].) The garage, now built, is staffed by UC Hastings employees, and revenues and expenses are processed by UC Hastings employees as well. (CT 270 [¶ 6].) Security at the garage was originally provided by UC Hastings' Public Safety Department, and it is now handled by the UCSF Police Department. (*Ibid.*; see http://www.uchastings.edu/about/admin-offices/security/index.php (last accessed March 21, 2018).)

The new garage allows students, faculty, and staff to conveniently access campus, and it is used by lawyers, alumni, and guests who patronize the UC Hastings' library and who attend lectures, symposia, receptions, and other events at the college. (CT 270 [¶ 7].) It also plays a key role in maintaining a safe campus environment. (CT 270-271 [¶ 8].) The college's library is open until 11:00 p.m., with extended hours during finals, but because the Tenderloin/Civic Center neighborhood is poorly lit and suffers from high levels of crime, many students do not feel safe leaving campus at night. (*Ibid.*) The garage, which has on-site security personnel and a state-of-the-art security system, offers a safe way for students to leave campus that is superior to the nearby, underground Civic Center garage, which does not provide the same level of security. (*Ibid.*)

UC Hastings financed the construction of the garage by issuing $25.1 million in tax-exempt general obligation bonds. (CT 271 [¶ 10]; Ed. Code §§ 92204, 92215.) The average annual debt service over the thirty years necessary to pay off these bonds, including principal and interest, is approximately $1,576,000. (CT 271 [¶ 10].) As of the 2013-14 fiscal year, UC Hastings was operating the garage at an annual loss of about $269,000,

with total expenses amounting to nearly $2,000,000. (CT 272-273 [¶ 17].) And yet, notwithstanding these costs, UC Hastings offers a substantial discount to its students—$210 per month or a maximum daily rate of $9. (CT 271 [¶ 9].) Although members of the public may also use the garage, they were, at the time this case was pending in the trial court, charged $260 per month or $11 to $26 for a stay lasting between 2 and 12 hours. (*Ibid.*)

**C. The parking tax collection dispute.**

When it was considering whether to incur the debt needed to construct its new garage, UC Hastings did not analyze the financial impacts of collecting San Francisco's parking tax. (CT 271 [¶ 11].) And with good reason; even though that tax has been on the books since the 1970s, San Francisco never required state universities to collect it. (CT 25-26.) UC Hastings has operated its 18-space parking lot beneath Snodgrass Hall since 1953, but it was never told to collect the tax at that lot. (CT 271 [¶ 11].) Moreover, in 1983, San Francisco tried to force UCSF to collect the parking tax at its campus lots, but UCSF objected on immunity grounds and the city did not pursue the matter. (CT 271-272, 275-284 [¶ 12, Ex. A-B].)

It therefore came as a surprise when, in 2011, UC Hastings received a letter from San Francisco's Tax Collector directing it to begin collecting the parking tax. (CT 272, 286-287 [¶ 13, Ex. C].) UC Hastings refused, explaining that San Francisco's demand impermissibly infringed upon the college's exclusive power to manage its affairs and property. (CT 272, 288-293 [¶ 14, Ex. D].) After this exchange, nearly two years passed before UC Hastings received a second letter stating that San Francisco had amended its parking tax ordinance and that UC Hastings was now obligated to collect the parking tax at its campus garage. (CT 272, 294-295 [¶¶ 14-15, Ex. E].) UC Hastings again refused. (CT 272, 296-298 [¶ 16, Ex. F].)

San Francisco subsequently filed suit, seeking a writ of mandate that would compel UC Hastings—as well as UCSF and CSU—to comply with

the city's parking tax collection regulations. (CT 7-21.) At the writ hearing, UC Hastings argued that in the absence of any state law to the contrary, San Francisco could not compel state universities to act as local tax collectors. (CT 243-267.) It also submitted uncontested evidence that it built its new garage on the assumption that San Francisco would continue its long-standing practice of not requiring state universities to comply with the city's parking tax ordinance. (CT 272-274 [¶¶ 17-21].) UC Hastings' Chief Financial Officer explained that the college, if forced to collect San Francisco's 25% parking tax, would end up absorbing most of that tax in the garage's operating budget—up to $364,000 per year, resulting in a total annual operating deficit of $633,000. (*Ibid.*) In light of statutory limitations on the use of student tuition and state appropriations, which comprised 80% of UC Hastings' budget in the 2013-14 fiscal year, it would be difficult to cover this kind of deficit. (CT 273-274 [¶ 20].) Nor could UC Hastings afford to continue operating its garage under such conditions; doing so would jeopardize its obligations to bondholders and threaten its creditworthiness and access to capital markets, rendering future capital projects infeasible or prohibitively expensive. (*Ibid.*) Thus, if compelled to collect San Francisco's parking tax, UC Hastings would likely have to sell the garage. (*Ibid.*) And if a sale did not extinguish all outstanding debt, UC Hastings might be forced to use funds currently allocated for other purposes to fulfill its debt service obligations. (CT 274 [¶ 21].)

The trial court denied San Francisco's writ petition, and a divided Court of Appeal affirmed. (CT 556-564; *City and County of San Francisco v. Regents of the University of California* (2017) 11 Cal.App.5th 1107 ["*CCSF*"].) Like the trial court before it, the Court of Appeal held that the operation of UC Hastings' campus garage is a sovereign function that directly supports the college's educational mission, and that in the absence of any statutory or constitutional provision requiring state universities to

collect local parking taxes, UC Hastings cannot be compelled to act as San Francisco's tax collector. This Court has now granted review.

## III. STANDARD OF REVIEW

On appeal from a judgment denying a petition for writ of mandate, the Court "defers to [the] trial court's factual determinations if supported by substantial evidence ...." (*Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1032, citations and quotation marks omitted.) In cases such as this, where "'the trial court's decision did not turn on any disputed facts[,]'" the Court is presented with a question of law that is "'subject to de novo review.'" (*Ibid.*, citations omitted; see *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1354.)

## IV. ARGUMENT

In the trial court, San Francisco sought a writ of mandate compelling UC Hastings to comply with the city's parking tax collection regulations. This remedy is only appropriate if UC Hastings has a "'"clear, present and ... ministerial duty'"" to collect the parking tax. (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 868, citations omitted.) And because there is no dispute that the city's parking tax ordinance, as written, instructs state universities to collect the tax, the central issue here is a more fundamental one: Does San Francisco have the power to compel state universities to act as local tax collectors? For the reasons set forth below, it does not.

### A. The State must provide affirmative consent before local governments may control the sovereign activities of state agencies, and that consent has not been given in this case.

*Hall v. City of Taft* is this Court's definitive statement regarding state agencies' immunity from local control, but the history of *Hall*'s immunity rule actually begins forty years earlier, with *Pasadena School District v. City of Pasadena* (1913) 166 Cal. 7. In that case, the Court held that school districts were required to comply with building regulations

imposed by the cities in which school facilities were located—including regulations requiring districts to submit building plans for approval, pay a fee, and obtain a permit. (*Id.* at 8-14.) The Court reasoned that by granting cities the power to make and enforce "all such local, police, sanitary and other regulations as are not in conflict with general laws[,]" the California Constitution gave cities the power to regulate any "independent governmental agency of the state" unless that power was withdrawn by "positive and general law ...." (*Id.* at 9-12; Cal. Const. art. XI, § 7.)

Two decades later, the Court began to walk back this holding. *In re Means* (1939) 14 Cal.2d 254, 255-57 involved an ordinance adopted by the City of Sacramento, pursuant to an express grant of authority in its charter, making it unlawful for any person to perform labor as a "journeyman plumber" without passing an examination, posting a bond, and obtaining a certificate from the city. The petitioner, a civil service employee engaged by the State to work as a plumber at the California State Fair, was arrested for failing to obtain a certificate and post the required bond. (*Ibid.*)

The petitioner challenged his arrest, and the Third District, relying on *City of Pasadena*, rejected the challenge. (*In re Means* (1939) 31 Cal. App.2d 290.) This Court reversed, holding that "[t]here can be no question concerning the power of the state in its proprietary capacity to lay down the qualifications for its employees. It acts in an exclusive field, and is not subject to the legislative enactments of subordinate governmental agencies." (*Means*, *supra*, 14 Cal.2d at 258.) In the Court's view, "[i]f one who has been employed by the state may not work on state property within a municipality without the consent of the municipality obtained after examination, the city has, in effect, added to the requirements for employment by the state, and restricted the rights of sovereignty." (*Ibid.*)

> 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 ... governs in the limited manner and territory that is expressly or by necessary implication granted to it by the state. 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 have ever 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 259, quoting *Kentucky Institution for Education of Blind v. City of Louisville* (Ky.Ct.App. 1906) 123 Ky. 767, 97 S.W. 402, 404.)

*Hall* was decided against this backdrop. In *Hall*, *supra*, 47 Cal.2d at 179, the City of Taft demanded that a contractor hired by a school district to construct school facilities obtain a building permit and follow the city's building ordinance. The trial court issued an injunction prohibiting enforcement of the city's ordinance against the district and its contractor, and this Court affirmed. (*Id.* at 179, 189.) In doing so, the Court overruled *City of Pasadena* and instead held that when a state agency engages in "such sovereign activities as the construction and maintenance of its buildings, as differentiated from enacting laws for the conduct of the public at large, it is not subject to local regulations unless the Constitution says it is or the Legislature has consented to such regulation." (*Id.* at 183-84.)

Subsequent courts have reaffirmed this rule on numerous occasions, holding that state agencies "enjoy immunity from local regulation" unless the State "consent[s] to waive such immunity." (*Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.* (1996) 43 Cal.App.4th 630, 635.) The Courts of Appeal, for instance, have found that state agencies need not comply with local waste disposal regulations (*City of Santa Ana v. Board of Education of the City of Santa Ana* (1967) 255 Cal.App.2d 178, 179-80; *Laidlaw*, *supra*, 43 Cal.App.4th at 635-41); local zoning and parking

ordinances (*Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 427-28; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 242-44); and local fees and taxes (*Regents of the University of California v. City of Santa Monica* (1978) 77 Cal.App.3d 130, 136; *Bame*, *supra*, 86 Cal.App. 4th at 1351-53, 1355-62). This Court, too, has applied the rule, albeit in dicta, noting that the City of Pomona could not stop Los Angeles County from prohibiting gun shows on county-owned land because "Pomona ... may not dictate how the County uses its property." (*Great Western Shows, Inc. v. County of Los Angeles* (2002) 27 Cal.4th 853, 871-72.)

*Hall* compels the result reached by the Court of Appeal in this case. It is undisputed that UC Hastings is a state agency—namely, "the law department" of the University of California, a "constitutional department or function of the state." (See Ed. Code §§ 92201, 92204, 92206; *Goldberg v. Regents of the University of California* (1967) 248 Cal.App.2d 867, 874; *Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1024.) It is also undisputed that no constitutional or statutory provision requires UC Hastings to collect local parking taxes. Accordingly, UC Hastings need not comply with the tax collection requirements of San Francisco's parking tax ordinance.

### B. Operating a campus parking garage for UC Hastings' students, faculty, staff, and others is a sovereign activity.

Under *Hall*, the State's immunity from local laws applies when a state agency is engaged in "sovereign activities." (*Hall*, *supra*, 47 Cal.2d at 183.) Some courts interpreting this requirement have suggested that a state agency may be subject to local laws when it undertakes "a revenue-producing or proprietary activity not within its governmental functions." (*Bame*, *supra*, 86 Cal.App.4th at 1357.) In contrast, if an activity is one that "directly supports" a state agency's statutory function—as the Court of Appeal in this case put it—local laws do not apply. (*CCSF*, *supra*, 11 Cal.App.5th at 1116.) This "proprietary activity" exception has only been

employed by a court once—in a case where a state university argued that a private party leasing school property need not secure a city permit before operating a circus. (*Board of Trustees of the California State University and Colleges v. City of Los Angeles* (1975) 49 Cal.App.3d 45, 49-51.)

Towards the end of its brief, San Francisco argues that the operation of UC Hastings' campus garage is a proprietary activity subject to local control. Neither the trial court, the majority on appeal, nor the dissent found this argument tenable. (*CCSF*, *supra*, 11 Cal.App.5th at 1114-16, 1124; CT 559-562.) Ensuring adequate access to campus facilities is an essential task for any educational institution. (Cf. *Regents of the University of California v. Aubry* (1996) 42 Cal.App.4th 579, 582, 591 [providing housing for students and staff "involve[s] internal UC affairs vital to its core educational function"]; *Church Divinity School of the Pacific v. County of Alameda* (1957) 152 Cal.App.2d 496, 498, 503-05 [religious school's parking lot was used for educational purposes and therefore exempt from property tax].) The evidence in this case, which was not disputed below, showed that UC Hastings' campus is located in a poorly-lit, high-crime area with limited street parking; that its garage allows access to campus for those who cannot use public transportation; and that UC Hastings views the garage—with its on-site security personnel and state-of-the-art security system—as essential to ensuring a safe campus environment. (CT 270-271 [¶¶ 7-8].) As the trial court noted, "UC Hastings considers the garage important enough to its educational function that it is willing to operate it at a loss." (CT 562.) Even San Francisco conceded that providing parking "is essential to ensuring that all students, faculty ...[,] and guests can access" educational facilities. (CT 519.)

Citing *Regents of the University of California v. Superior Court (Regan)* (1976) 17 Cal.3d 533, 535-38—in which this Court held that the Regents are subject to the California Constitution's prohibition on usurious

lending when they invest the university's endowment—San Francisco argues that "public agencies engage[d] in commercial transactions in the same field as private entities" are, by definition, not acting in a sovereign capacity. (City's Br. at 42-43, 51-52.) *Regan*, however, has no bearing on this case; whether a state university must comply with the constitution is a much different question than whether it must comply with local ordinances. Nor is it true that UC Hastings, when providing parking for students, faculty, staff, and visitors, is "'acting in a capacity no different from' other parking operators ...." (City's Br. at 51.) UC Hastings operates its garage for the benefit of its campus population, not to compete for revenue in the marketplace. Indeed, by San Francisco's logic, UC Hastings is "'acting in a capacity no different from'" private, for-profit, universities when it offers educational services and therefore is never entitled to the State's immunity.

San Francisco also asks the Court to reject what it calls the Court of Appeal's "overly expansive view of what amounts to 'governmental' activity" by confining immunity to activities that are "closely related" to a state agency's "main purpose." (City's Br. at 52.) UC Hastings fails to see how ensuring adequate access to campus is not "closely related" to its "main purpose" of providing education, but even if it weren't, this cramped view of what constitutes a sovereign activity indulges in the same arbitrary line drawing that San Francisco itself criticizes. (City's Br. at 48.) Rather than rely on aging tort liability cases, which turned on abstract judicial determinations as to what activities are "in their nature essentially governmental[,]" the Court of Appeal here asked whether the provision of campus parking reasonably furthered UC Hastings' statutory mandate and did more than simply raise money for the college. (*Chafor v. City of Long Beach* (1917) 174 Cal. 478, 482; *CCSF*, *supra*, 11 Cal.App.5th at 1114-16.)

This formulation of the "sovereign activity" requirement does not produce "'illogical' results ...." (City's Br. at 48.) Instead, it gives

deference, as it should, to state agencies' views of how best to further the public interest; in a democracy, it is "the people—acting not through the courts but through their elected ... representatives—[who] have the power to determine as conditions demand, what services and functions the public welfare requires.'" (*Garcia v. San Antonio Metropolitan Transit Authority* (1985) 469 U.S. 528, 546, citations omitted.) It is, in fact, not all that different from the test for determining when property is used "exclusively for educational purposes" and therefore exempt from property taxation, which asks if the "facilities are reasonably necessary for the fulfillment of [an institution's] unique mission and primary purpose ...." (*Board of Trustees of the Leland Stanford Junior University v. County of Santa Clara* (1978) 86 Cal.App.3d 79, 83-85; see Cal. Const. art. XIII, § 3(e).)

In short, the provision of campus parking is a sovereign activity, and UC Hastings may undertake that activity free from local interference.

### C. *Hall*'s immunity test properly recognizes that adjusting the boundaries of state and local power is a job for the Legislature or the people of California, not the courts.

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

powers" that they may exercise. (*California Redevelopment Ass'n v. Matosantos* (2011) 53 Cal.4th 231, 255, citations omitted; *In re Sanitary Board of East Fruitvale Sanitary District* (1910) 158 Cal. 453, 457.)

*Hall* reflects this dynamic in two critical ways. First, it recognizes that defining the relationship between state agencies and cities is primarily a legislative task, to be undertaken by the Legislature or by the people through the exercise of the initiative power. Second, it acknowledges that any decision adjusting the boundaries of state and local power must be made by the State, not at the local level. Cities represent only a small subset of California voters. To allow the 850,000 people who live in San Francisco to dictate how an agency representing 39 million people must operate inverts basic principles of democratic decision-making. *Hall*, by requiring state consent to local control, ensures that all Californians have a voice in choosing the rules that govern the performance of state functions.

San Francisco suggests that this Court, instead of asking whether the State has consented to collect local parking taxes, should weigh the city's interest in receiving tax revenue against the sovereign interests of UC Hastings in the management of its own affairs and then decide for itself which interest, under the circumstances, is more important. This is not the Court's role. Instead, the balancing of interests that San Francisco demands must be undertaken by the Legislature, or directly by the people.

### 1. Adjusting the boundaries of state and local political authority is a legislative function.

Implicit in *Hall*'s immunity rule is an acknowledgement that adjustments to the boundaries of state and local authority must take place through the political process, not the courts. "[T]he judicial role in a democratic society[,]" this Court has said, "is fundamentally to interpret laws, not to write them.'" (*California Teachers Ass'n v. Governing Board of the Rialto Unified School District* (1997) 14 Cal.4th 627, 633, citations

omitted.) The Court of Appeal below understood this, noting that "[w]hile there may be a value in having state entities collect and remit [local] taxes, [*Hall*] incorporates readily available methods to implement any such value: state entities can voluntarily collect and remit those taxes, or the Legislature can tell them they must." (*CCSF*, *supra*, 11 Cal.App.5th at 1123.)

Other examples of judicial restraint in this area are not hard to find. For instance, in 1963, the Second District held that the City of Los Angeles could not compel Los Angeles County to comply with its building and zoning ordinances. (*Los Angeles County v. City of Los Angeles* (1963) 212 Cal.App.2d 160, 161-67.) The court conceded "that a situation could arise in which ... an injudicious exercise of its authority by a county by the erection in a city of a hospital or jail facility in a neighborhood zoned for residential use might cause undue hardship to residents of that community[,]" but noted that "problems of that nature are to be resolved by action of the Legislature when the need therefor arises ...." (*Id.* at 167.)

Likewise, in 1967, the Fourth District held that the City of Santa Ana could not compel a school district to use the city's preferred garbage collection service. (*City of Santa Ana*, *supra*, 255 Cal.App.2d at 179-80.) Santa Ana claimed, as San Francisco does here, that the city's garbage regulations would only have "an indirect effect upon the activities of the school system" and that the overall impact on the district "would be minimal, if at all ...." (*Id.* at 180.) The court rejected this argument, holding that "any change in the state-local government relationship regarding garbage collection should be made by the Legislature." (*Ibid.*)

The State's legislative response to *Hall* provides a particularly cogent example of how this process is supposed to work. As noted above, in *Hall*, this Court held that local building laws cannot be applied to state agencies without the State's consent. Seven years later, the Court of Appeal reached a similar conclusion with respect to local zoning laws.

(See *Town of Atherton*, *supra*, 159 Cal.App.2d at 427-28.) These decisions prompted the State to adopt legislation that waived, ***in part***, its immunity from local control. (*San Jose Unified School District v. Santa Clara County Office of Education* (2017) 7 Cal.App.5th 967, 977-79.)

Under these statutes, now codified as sections 53090 to 53097.5 of the Government Code, all state agencies created "for the local performance of governmental or proprietary function[s] within limited boundaries" must comply with the building and zoning laws of the county or city in which they are located. (Gov't Code §§ 53090(a), 53091(a).) However, cities, counties, rapid transit districts, and some rail transit districts are not subject to this rule, and neither is the State or "statewide agencies," including the Regents. (*Id.* § 53090(a); *City of Santa Monica*, *supra*, 77 Cal.App.3d at 137.) And the State's waiver of immunity is qualified. Facilities for "the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy" are exempt from local building ordinances and, in certain cases, local zoning ordinances. (Gov't Code §§ 53091(d)-(e); *Baldwin Park County Water District v. Los Angeles County* (1962) 208 Cal.App.2d 87, 95-97.) The governing body of a local agency can also vote to exempt some additional facilities from local zoning ordinances when compliance with those ordinances is not feasible. (Gov't Code § 53096.)

As this statutory scheme suggests, decisions about whether, when, and how to waive state agencies' immunity from local control can be quite complex. Nowhere is this more evident than with respect to school districts, which can, by a two-thirds vote of the school board, exempt certain school facilities from local zoning ordinances. (*Id.* § 53094; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1056-63.) The scope of this power has evolved considerably over the years, as views about the proper role of school districts' immunity have changed—shifting from a broad

authorization to assert immunity from all local zoning laws to the current, more limited, power to exempt instructional facilities. (Compare Stats. 1959, Ch. 2110, § 1, p. 4909 [all facilities]; Stats. 1965, Ch. 1538, § 1, pp. 3629-30 [eliminating power to exempt nonclassroom facilities not located on or adjacent to classroom facilities]; Stats. 1976, Ch. 760, § 1, pp. 1797-98 [eliminating power to exempt any nonclassroom facility].) In short, "rather than grant absolute immunity from or give unqualified consent to local control, the Legislature ... struck a balance, though not equal, between State educational and local regulatory interests and control[,]" and it has since repeatedly "fine-tuned this balance." (*City of Santa Cruz v. Santa Cruz City School Board of Education* (1989) 210 Cal.App.3d 1, 6.)

**2. Decisions about whether, and how, state universities should collect local parking taxes involve policy trade-offs that are best made through the political process.**

Rather than make its case to the Legislature or the people, as *Hall* requires, San Francisco has come to this Court instead. It insists that the problem presented by this case is a simple one—how best to collect the city's parking tax—and so asks the Court to balance the city's interests against the State's and find that the balance favors forcing state universities to comply with all "reasonable" local tax collection requirements.

Most problems, however, when subjected to the crucible of legislative decision-making in a democracy, are not as simple as they seem. Legislative solutions inevitably involve trade-offs that favor some policy goals over others. And "reasonableness and necessity ... are not abstract ideas or theories[;]" they are concepts that turn on facts, context, even ideology. (*Ayres v. City Council of the City of Los Angeles* (1949) 34 Cal.2d 31, 41.) Whether it is in the public interest for state universities to help collect local taxes and, if so, what "'ways and means'" should be used

to further that interest, are not always easy questions. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1431, citations omitted.)

In fact, there are many situations in which the State ***has*** agreed, by statute, to collect local taxes. But these legislative agreements are almost always qualified in significant—and often substantive—respects.

For instance, the Documentary Transfer Tax Act (Rev. & Tax. Code §§ 11901 *et seq.*) provides that if a city adopts a local transfer tax, the county in which that city is located will collect the city's tax—but only if the tax complies with the requirements of the Act, including the use of a specified tax rate of 27½ cents per each $500 of the transferred property's value. (*Id.* §§ 11911(b)-(c), 11931.) If a city imposes a tax on transfers of real property that is "not in conformity" with the Act, it must collect that tax on its own. (Rev. & Tax. Code § 11931(3); see *926 North Ardmore Avenue, LLC v. County of Los Angeles* (2017) 3 Cal.5th 319, 340 n.2.)

The Local Prepaid Mobile Telephony Services Collection Act, adopted by the State in 2014, provides that the State Board of Equalization will collect local utility users taxes on prepaid mobile phone cards sold in retail outlets. (Rev. & Tax. Code §§ 42101.5, 42103(a).) But in exchange for assuming this responsibility, the State placed limitations on the tax rates cities may charge—including a hard cap of 9%—and exempted low-volume retailers. (*Id.* § 42101.7, 42102.) Cities must also compensate the Board for any collection costs it incurs. (*Id.* §§ 42020(e), 42107.)

Other statutory schemes are less restrictive of local autonomy but nonetheless embody protections that the State has deemed necessary before it will agree to act as a local tax collector. The State, for example, will collect local "transactions and use" taxes adopted under Division 2, Part 1.6 of the Revenue and Taxation Code, but only pursuant to a contract in which the local agency agrees that it will hold the State "harmless from any and all costs, losses, or refunds of any kind whatsoever." (*Id.* § 7270.)

The same considerations could come into play here. San Francisco's parking tax is quite steep—25% of the cost of renting a parking space. In a legislatively-negotiated resolution of the parties' dispute, the State could agree that state universities will collect a smaller tax, or that they will collect the 25% rate if students are relieved of payment obligations. Likewise, the State could require cities to hold state universities harmless for errors made in the collection process, rather than subject them to liability and penalties, as San Francisco's ordinance does. (CT 54-55, 77-78 [BTRC art. 6, §§ 6.7-1(d), 6.17-1].) And the State could also exempt state universities from tax collection responsibilities when, like UC Hastings, they incur substantial debt obligations to finance a new garage or they determine that collecting parking tax will threaten the financial stability of their parking operations. (CT 271-274 [¶¶ 10-11, 17-21].)

Ultimately, however, the State need not make any of these concessions. That is what sovereignty means—the power to choose. To be sure, this power encompasses the ability to choose how state agencies should spend their time and resources; "[a]utonomy with regard to the expenditure of public funds lies at the heart of what it means to be an independent governmental entity." (*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 562.) But even if San Francisco actually took some legislative or administrative action to ensure that UC Hastings is reimbursed for its collection costs—something that has not been done, despite the repeated suggestion that no costs will be imposed on UC Hastings under the parking tax ordinance—that concession could not overcome the State's sovereignty. If the people of California or the Legislature feel as UC Hastings does, that imposing a tax on access to educational facilities is just plain bad policy, they cannot be compelled to support that policy against their will.

### 3. *Cal Fed* does not give courts the authority to balance state and local interests in the manner San Francisco proposes.

Taking a cue from the dissenting opinion below, San Francisco argues that this Court has already approved a judicial balancing of state and local interests in immunity cases. San Francisco is mistaken. The only support offered on this point is a statement in *California Federal Savings & Loan Ass'n v. City of Los Angeles* (1991) 54 Cal.3d 1, 17 ["*Cal Fed*"], to the effect that it is "'the difficult but inescapable duty of the court to ... 'allocate ... governmental powers ... in the most sensible and appropriate fashion.'" (City's Br. at 45-46.) *Cal Fed*, however, addresses a different issue than the one presented here—state preemption of local laws—and the Court's observation about allocating governmental powers was tied to the analytical framework that governs preemption cases. In short, when understood in its context, *Cal Fed* provides no aid to San Francisco.

Within the geographic boundaries of a municipality, the State and the city exercise "concurrent jurisdiction" over private parties. (*Great Western Shows*, *supra*, 27 Cal.4th at 870-72.) If a law adopted by the city conflicts with state law, one must by necessity prevail over the other. The preemption test is the mechanism used to resolve this conflict.

For cities, the preemption doctrine is rooted in article XI, section 7 of the California Constitution, which states that any city "may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Under this provision, "'[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.'" (*Great Western Shows*, *supra*, 27 Cal.4th at 860-61, citations omitted.) The preemptive effect of state law on cities that have adopted a charter is, however, limited by a different constitutional provision—article XI, section 5—which authorizes charter cities to "adopt and enforce ordinances that conflict with general state laws, provided the

subject of the regulation is a 'municipal affair' ....'" (*Trader Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 45.) Only when a charter city ordinance or regulation actually conflicts with a state statute that is "reasonably related" to a matter of "statewide concern" does state law remain paramount. (See *Cal Fed*, *supra*, 54 Cal.3d at 17.)

*Cal Fed*'s statement that courts must "'allocate the governmental powers under consideration in the most sensible and appropriate fashion'" is not, as San Francisco reads it, an invitation for courts to legislate from the bench. (*Ibid.*, citations omitted.) Instead, it is a reflection of the "ambiguity" inherent in identifying when a law addresses a "municipal affair" or a "statewide concern," labels that are not "'fixed or static'" and that must instead be given meaning on a case-by-case basis. (*Id.* at 15-18, citations omitted.) Although often difficult, the allocation of governmental powers that *Cal Fed* speaks of is ultimately nothing more than an exercise in constitutional interpretation, a task properly undertaken by the judiciary. The term "municipal affair"—imprecise though it may be—is the textual anchor that allows courts to attempt a balancing of state and local interests.

No such anchor exists in the immunity context. Indeed, the balancing of state and local interests that San Francisco proposes would, by design, only take place when no statute or constitutional provision has resolved the immunity question already. Nor can the preemption concepts of "municipal affair" and "statewide concern" effectively mediate disputes over the application of local laws to state agencies. After all, a statewide interest is ***always*** present in such cases—the State's interest in controlling its administrative subdivisions, either directly or through governing boards specially charged with implementing state policy. As a result, rather than attempt a balancing of interests that is unmoored from any legislatively-established standard, this Court has simply held that cities, in the absence of state law to the contrary, have no jurisdiction over state agencies and "may

not dictate" what those agencies can or cannot do. (*Great Western Shows*, *supra*, 27 Cal.4th at 871-72.) This rule, not *Cal Fed*, is what governs here.

### D. UC Hastings' immunity from local control does not turn on the fact that San Francisco's parking tax ordinance is an exercise of its constitutional power to tax or on a characterization of San Francisco's tax collection regulations as "revenue" measures.

San Francisco has conceded, as it must, that no state law directly requires UC Hastings to collect local parking taxes. It nevertheless argues that the general "home rule" power to tax afforded to charter cities by the California Constitution is sufficient to overcome any claim of immunity by a state agency, both due to the constitutional source of that power and its allegedly special importance. This argument is flawed, and it finds no support in the authorities that San Francisco has cited to the Court.

#### 1. San Francisco's power to tax does not include the power to impose tax collection obligations on state universities.

UC Hastings does not dispute that San Francisco has the general power to impose a tax on the rental of parking spaces or the corollary power to require third parties to collect that tax. (City's Br. at 18-19.) San Francisco is a charter city, and under article XI, section 5 of the California Constitution, it may impose taxes and provide for their collection. But the fact that San Francisco has the power to adopt a law does not mean that the State must submit to that law. (See Regents' Br. at I(A)(2).) San Francisco's taxing power extends only to those over whom it may exercise legal authority. This Court recognized as much in *Means*, *supra*, 14 Cal.2d at 255-59, when it held that a city, lawfully acting pursuant to its charter, could not apply otherwise valid licensing requirements to state employees.

Nothing in the text of article XI, section 5 suggests that the people of California, in giving charter cities the authority to make and enforce all laws "in respect to municipal affairs[,]" intended to subject state agencies to that authority. "[A]bsent express words to the contrary, governmental

agencies are not included within the general words of a statute" if such inclusion "'would result in an infringement on sovereign governmental powers ....'" (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1192.) Article XI, section 5 "'enable[s] municipalities to conduct their own business and control their own affairs to the fullest possible extent'" through the exercise of "'all powers appropriate for a municipality to possess ....'" (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-96, citations omitted; *Cal Fed*, *supra*, 54 Cal.3d at 12, citations omitted.) But to read it as granting charter cities the power to manage the business and affairs of other public agencies, or the State itself, is a step too far. (See CSU's Br. at I(C)(3) [discussing the legislative history of article XI, section 5].)

Indeed, San Francisco concedes, as it has throughout this litigation, that the rule in *Hall* applies to ***most*** charter city laws—just not the law at issue here. At the highest level, San Francisco asserts that state agencies enjoy immunity from local "regulatory" laws enacted under the "police power" but remain subject to local "revenue" laws enacted under a charter city's home rule power to tax. (City's Br. at 21-24.) Yet this claim, which will be addressed in detail below, isn't an entirely accurate formulation of San Francisco's view of the law, because San Francisco readily admits that charter cities may not use their "revenue" powers to directly tax state agencies. (City's Br. at 30; see *Bame*, *supra*, 86 Cal.App.4th at 1357-62.) Accordingly, San Francisco's argument appears to be that charter cities can impose tax collection obligations on the State, but nothing else.

Why should local laws trump state sovereignty in this, and no other, area? As the Court explained in *Cal Fed*, *supra*, 54 Cal.3d at 15, when claiming shelter from state preemption, it is not enough for a charter city to assert that "the power to govern ... means little without the coordinate power to tax ...." (See City's Br. at 44.) While undoubtedly true, this fact "fails to explain why, among all other municipal powers, the power to tax

should be singled out as specially protectable, as uniquely unyielding to transcendent interests." (*Cal Fed*, *supra*, 54 Cal.3d at 15.) The power "to enact laws to promote the public health, safety, morals and general welfare" is, after all, "so important that it is deemed an inherent attribute of political sovereignty." (*Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 206; *Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001) 91 Cal.App.4th 678, 689.) Nevertheless, state agencies may engage, unburdened by local laws, in many activities that cities can otherwise constitutionally regulate. (See Regents' Br. at I(A)(3).)

San Francisco also argues that the costs imposed on UC Hastings will be minimal compared to the revenue the city will lose if its parking tax is not collected. For the reasons set forth above, UC Hastings disagrees; in its view, the financial viability of its campus garage is at stake in this case. (CT 272-274.) Moreover, no immunity decision has turned on the cost of complying with a local law. The judges sitting in *Means*, *supra*, 14 Cal.2d at 255-59, *Hall*, *supra*, 47 Cal.2d at 179-89, and *Laidlaw*, *supra*, 43 Cal. App.4th at 633-42 could have easily held that local registration of a state plumber, compliance with local building codes, and the use of a locally-designated waste hauler would impose only minimal burdens on state agencies, but none of them undertook such an analysis, because evaluating the State's costs of complying with local laws is a legislative task, not a judicial one. As San Francisco puts it, "judicial indifference as to the merits of governmental spending extricates courts from making classically legislative judgments about the best uses of money." (City's Br. at 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, forced to make *ad hoc* policy judgments

about which agency's interests are more compelling and what types of regulations are too intrusive. The Court should not go down this path.

### 2. The distinction between "revenue" and "regulatory" measures invoked by San Francisco is a preemption doctrine that is not relevant to the immunity analysis.

San Francisco next argues that charter cities may compel state agencies to collect local taxes because the State is only immune from local "regulatory" laws, and "tax collection is not regulation." (City's Br. at 22-24.) "[E]ven if a city lacks power to regulate an entity," says San Francisco, it may nonetheless "exercise its revenue power to require that entity to collect third-party taxes owed by its customers." (*Id.* at 23.)

However, at its core, the word "regulate" simply means control, and the State, "when creating municipal governments, does not cede to them any control" over "property which the State has authorized another body or power to control." (*Means*, *supra*, 14 Cal.2d at 259; see *Morrison v. Viacom, Inc.* (1997) 52 Cal.App.4th 1514, 1523 ["'regulate' means '[t]o fix, establish, or control'"]; Black's Law Dictionary (10th ed.) at 1475 ["regulation" means "[c]ontrol over something by rule or restriction"].) In this basic sense, a legal compulsion to collect San Francisco's parking tax is as much a "regulation" of state agencies as any other local law is.

The "revenue/regulatory" distinction that San Francisco identifies has nothing to do with *Hall*'s immunity test. Instead, it is a framework that courts have sometimes used to determine when local taxes are preempted by state law—and in particular, to determine whether a charter city can tax private businesses or activities that are heavily regulated by the State.

For instance, in *The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 658-64, condominium builders argued that a charter city tax on new condominiums was preempted by the Subdivision Map Act, a state statute governing the subdivision of property. The Court noted that the State's

preemption of "a field of statewide concern for purposes of regulation does not itself prevent local taxation of the persons or activities regulated[,]" and could discern nothing in the language or purpose of the Subdivision Map Act that would prohibit the challenged local tax. (*Ibid.*) Likewise, in *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 467-71, a retailer challenged a sales tax on liquor imposed by San Francisco, claiming that the State had the sole power to regulate the sale of liquor and to collect liquor license fees and occupation taxes. The Court, however, held that San Francisco's tax "[did] not, when applied to the sale of intoxicating liquors, enter into the field of taxation preempted by the state ...." (*Id.* at 475, 477; see also *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 134-35, 139, disapproved on other grounds by *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1; *In re Groves* (1960) 54 Cal.2d 154, 155-59.)

Although the Court found the exercise of local taxing power in these cases valid, it did not do so because "revenue" laws are somehow different than "regulatory" laws. Instead, it applied straightforward preemption principles and concluded that there was no "genuine conflict" between the State's regulatory system and the challenged local tax. (*Cal Fed, supra*, 54 Cal.3d at 16.) Accordingly, the local tax was not preempted by state law.

As San Francisco notes, in some of these cases, the Court also concluded that the imposition of tax collection obligations on regulated private parties did not conflict with state law. But these holdings were, again, based on preemption principles, not on the abstract notion that "tax collection is not regulation." (City's Br. at 24.) For instance, in *Ainsworth, supra*, 34 Cal.2d at 468-76, the Court held that even though article XX, section 22 of the California Constitution gave the State the "exclusive right and power to ... regulate" the sale of alcohol, San Francisco's tax collection rules did not "conflict[] in the sense of 'regulation' ***such as the constitutional provision reserves to the state and withdraws from the***

***municipality***." And in *Rivera*, *supra*, 6 Cal.3d at 139, the Court held that imposing tax collection obligations on privately-owned utility companies "does not constitute ***forbidden or conflicting*** regulation of the utility" within the meaning of former article XII, section 23 of the California Constitution, which gave the predecessor of the California Public Utilities Commission regulatory power over such utilities. (Stats. 1915 at pp. lv-lvi; see also Cal. Const. art. XII, § 8 ["A city ... may not regulate matters over which the Legislature grants regulatory power to the Commission."].)

In short, the best that can be said of the distinction between "revenue" and "regulatory" measures is that it tries to capture the idea that local taxes, and local tax collection requirements, usually do not conflict with state laws that comprehensively regulate private conduct. "Because the tax power is so fundamental, state intent to preempt it must be clear[,]" and a local tax will only be preempted if it "is in direct and immediate conflict with a state statute or statutory scheme." (*The Pines*, *supra*, 29 Cal.3d at 662; *Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 392.)

Like most rules of thumb, however, the revenue/regulatory "test" has its limits, and in *Cal Fed*, this Court repudiated the reasoning that San Francisco now invokes. *Cal Fed* held that a charter city tax on savings banks was preempted by state law because the State had an overriding interest in achieving tax rate parity between different financial institutions. (*Cal Fed*, *supra*, 54 Cal.3d at 11, 18-25.) The Second District found no preemption because the tax was a "revenue" measure, but this Court held that there is "no reason ... why the subject of charter city taxation should merit treatment different from charter city regulatory measures." (*Id.* at 6-7, 15.) Instead, when a conflict exists "between a charter city measure—whether tax or regulatory—and a state statute," the "hinge of the decision is the identification of a convincing basis for legislative action originating in

extramunicipal concerns," not whether the local law can be characterized, in the abstract, as "revenue" or "regulatory" in nature. (*Id.* at 18.)

In any event, whatever utility these cases might have as a way to determine if a local tax conflicts with state law, they shed no light on *Hall*'s central concern—ensuring state consent to local control. When San Francisco commands UC Hastings to collect its parking tax and UC Hastings' Board of Directors, the body charged with managing "[t]he business of the college," says no, a conflict exists. (Ed. Code § 92204; see *Baldwin Park*, *supra*, 208 Cal.App.2d at 96-97.) And once a conflict exists, the purported distinction between "revenue" and "regulatory" measures no longer has any analytical value. Instead, the question is simply: which agency prevails? Under *Hall*, absent an express waiver of the State's immunity, it is the Board, and not San Francisco, whose decision controls.

### 3. San Francisco's "home rule" powers may not intrude on the State's exclusive control over public schools.

San Francisco's reading of article XI, section 5 also conflicts with this Court's repeated statements that "[p]ublic education is an obligation which the State assumed by the adoption of the Constitution[,]" such that the "'[m]anagement and control of the public schools is a matter of state, not local, care and supervision ....'" (*Butt v. State of California* (1992) 4 Cal.4th 668, 680-81, citations and brackets omitted.) "[T]he state retains plenary power over public education" and its "ultimate responsibility for public education cannot be delegated to any other entity ...." (*Wells*, *supra*, 39 Cal.4th at 1195; *Butt, supra*, 4 Cal.4th at 681; *Matosantos*, *supra*, 53 Cal.4th at 255 n.8.) The Constitution could hardly be more explicit on this point: "No school or college or any other part of the Public School System shall be ... placed under the jurisdiction of any authority other than one included within the Public School System." (Cal. Const. art. IX, § 6.)

Charter cities' "home rule" power to tax must operate within the limits of these other constitutional principles. (See CSU's Br. at I(C)(2).) Accordingly, absent some state law to the contrary, the decision to collect, or not to collect, San Francisco's parking tax rests with UC Hastings.

**4. The structural principles underlying the State's immunity from local control are more important than any problems San Francisco might face when collecting its parking tax.**

San Francisco's fundamental argument, when stripped of its legal trappings, is really quite simple: the Court of Appeal, in holding that UC Hastings cannot be compelled to collect the city's parking tax, effectively granted "de facto tax immunity" to people parking in UC Hastings' campus garage. (City's Br. at 44.) Of course, San Francisco has never offered any proof that no alternative means of collection are available; instead, it simply alleged, in its writ petition, that this was the case. (CT 18 [¶ 68].) But even if San Francisco were correct, the fact that the city might be limited in its ability to enforce its tax laws at UC Hastings' campus garage is nothing more than the natural result of the State's immunity from local control.

The same issue exists when a public agency or Native American tribe is immune from suit. "In every instance where some form of immunity bars suit, an alleged wrong will go without a remedy." (*People ex rel. Owen v. Miami Nation Enterprises* (2016) 2 Cal.5th 222, 251.) Nevertheless, "'sovereign immunity is not a discretionary doctrine that may be applied ... depending on the equities of a given situation ....'" (*Warburton/Buttner v. Superior Court* (2002) 103 Cal.App.4th 1170, 1182, citations omitted.) The limitations that immunity imposes on other rights and powers exist because they serve a more fundamental purpose, one that transcends the principles that might otherwise govern in a particular dispute. (Cf. *Miami Nation Enterprises*, *supra*, 2 Cal.5th at 235-36.)

The State's immunity from local control serves to ensure that the entire State, rather than one community, chooses the rules that govern the performance of state functions. At its most basic level, State immunity reflects the "difference ... which always exists, and always must exist, between the action of the whole on a part, and the action of a part on the whole ...." (*M'Culloch v. State of Maryland* (1819) 17 U.S. 316, 435-36.) If San Francisco believes that the issue is important enough, it may always lobby the Legislature or otherwise seek a change in the law to require state universities to collect local parking taxes—the very remedy that *Hall* envisions. But it may not force the State to act against its will.

### E. Except for one appellate opinion that conflicts with *Hall*, the authorities cited by San Francisco either support the judgment below or do not speak to the issue presented here.

San Francisco cites a range of state and federal authorities in its opening brief which, in its view, compel the conclusion that cities may impose tax collection obligations on state universities. A careful review of these authorities reveals only one that aids San Francisco, in a cursory alternative holding that conflicts with *Hall* and runs counter to modern decisions addressing the State's immunity from local control: *City of Modesto v. Modesto Irrigation District* (1973) 34 Cal.App.3d 504. Most of San Francisco's cases are irrelevant to the issue at hand, and some support UC Hastings' immunity defense. These decisions are addressed below.

#### 1. The Court of Appeal's opinion in this case is consistent with other California authorities, with the sole exception of *Modesto*'s erroneous alternative holding.

San Francisco first cites a number of California cases addressing the imposition of tax collection obligations on private parties and non-state entities. Because state agencies are not in the same position as private parties and other non-state entities, these cases are not relevant here.

For instance, in *Rivera*, *supra*, 6 Cal.3d at 139, this Court held that Fresno could require utility companies to collect utility users taxes from their customers, and in *Ainsworth*, *supra*, 34 Cal.2d at 476-77, it held that San Francisco could require liquor retailers to collect a local sales tax. UC Hastings does not dispute that cities have considerable leeway to impose tax collection obligations on private businesses. But private businesses are not state agencies, and they do not exercise any sovereign powers.

In *Eastern Municipal Water District v. City of Moreno Valley* (1994) 31 Cal.App.4th 24, the court held that a general law city could require a municipal water district to collect taxes from its customers. (*Id.* at 26-31.) The district, however, did not claim that collecting the tax would "impinge[] on the state's sovereignty[,]" only that no statute authorized the city to impose the requirement in the first place. (*Id.* at 30.) Although the opinion gives no indication as to why this concession was made, municipal utility districts are considered "quasi-municipal corporations," not state agencies, and therefore were not entitled to full governmental immunity under the old common-law tort liability rules. (*Fuller v. San Bernardino Valley Municipal Water District* (1966) 242 Cal.App.2d 52, 62; *Morrison v. Smith Bros., Inc.* (1930) 211 Cal. 36.) In any event, whatever the reason, *Moreno Valley* did not address the immunity question presented here.

*Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623 and *City of Los Angeles v. A.E.C. Los Angeles* (1973) 33 Cal.App.3d 933 held that third parties cannot avoid paying a local tax by virtue of their business relationship with state agencies. Neither case, however, addressed whether state agencies must collect a local tax from third-party contractors. Likewise, in *Weekes*, *supra*, 21 Cal.3d at 398, this Court held that the City of Oakland could impose a license fee on state employees. Although Oakland required employers to withhold the fee from employees' paychecks, the Court did not address whether this requirement could be

applied to the plaintiff's state employer, who was not a party to the lawsuit. (*Id.* at 391.) In fact, under Oakland's law, if an employer did not collect the tax, employees were required to file tax returns themselves. (*Ibid.*)

That leaves *Modesto*. In *Modesto*, *supra*, 34 Cal.App.3d at 505-08, the Fifth District held that a charter city could require a state irrigation district selling electricity to collect a local tax on electricity use from its customers. The district argued that as a state agency, it was exempt from Modesto's tax collection rules, but the court disagreed. (*Ibid.*)

In the first part of its opinion, the court concluded that it was bound by this Court's decision in *Yolo v. Modesto Irrigation District* (1932) 216 Cal. 274, which held, in the context of applying the old common-law tort liability rules, that "an irrigation district which manufactures, distributes and sells electrical energy, in competition with public service corporations, is engaged in a proprietary activity." (*Modesto*, *supra*, 34 Cal.App.3d at 506.) Whatever the merits of this conclusion—by the time *Modesto* was decided, the Court had already abrogated the tort liability rules applied in *Yolo*—it is at least nominally consistent with *Hall*'s progeny, which, as explained above, hold that state immunity does not apply to "proprietary" activities. (*Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211.)

The court, however, went on to posit, in a two-paragraph alternative holding, that the irrigation district must comply with Modesto's tax collection rules because the city's "home rule" power to tax trumped any immunity from local control that the district might otherwise enjoy. (*Modesto*, *supra*, 34 Cal.App.3d at 508.) "While irrigation districts may be state agencies," said the court, "they are nevertheless creatures of the Legislature, and like the Legislature must submit to a constitutional mandate; the California Constitution is the paramount authority to which even sovereignty of the state and its agencies must yield." (*Ibid.*)

Not one of the cases cited by *Modesto* stands for this proposition. *Ainsworth*, *supra*, 34 Cal.2d at 476-77, and *Rivera*, *supra*, 6 Cal.3d at 139, addressed the imposition of tax collection obligations on private businesses, and *West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516, 518-26, involved a private party trying to avoid paying local taxes, not a state agency invoking immunity from local control. Moreover, no subsequent court has agreed that state sovereignty can be overruled by a charter city when it exercises its constitutional "home rule" powers under article XI, section 5. Instead, every court that has considered the issue has held that the "immunity of a state agency from local regulation does not depend upon the source of the local governmental entity's authority to make regulations," but rather on "whether consent to regulation has been expressly stated by the Legislature or in the state Constitution." (*Laidlaw*, *supra*, 43 Cal.App.4th at 638-39; see also *Bame*, *supra*, 86 Cal.App.4th at 1355-56; *CCSF*, *supra*, 11 Cal.App.5th at 1116-18; but see Attorney General Opinion No. 81-506 (1982) 65 Ops.Cal. Atty.Gen. 267.) Indeed, in *Means*, *supra*, 14 Cal.2d at 258, this Court specifically held that charter city laws cannot be applied to state agencies.

*Modesto*'s alternative holding amounts, in short, to a repudiation of this Court's decision in *Means*, a partial repudiation of *Hall* as applied to charter cities, and the adoption of a rule that the California Constitution authorizes charter cities to regulate and tax state agencies however they might desire. For the reasons set forth above, the Court should hew to its prior precedent and reject *Modesto*'s solution to the problem at hand.

### 2. Federal immunity cases support the conclusion that UC Hastings need not collect San Francisco's parking tax.

San Francisco also cites a number of "federal immunity" cases, which provide, in broad terms, that the federal government cannot be taxed by the states, but that those who do business with it can—even if the

economic impact of the tax is "passed through" to the government. (See *United States v. New Mexico* (1982) 455 U.S. 720, 735; *State of Alabama v. King & Boozer* (1941) 314 U.S. 1, 9.) San Francisco argues that the same rule should apply here, and that it may therefore impose a tax on students, faculty, staff, and others who park in UC Hastings' campus garage.

Assuming, for the sake of argument, that the relationship between the federal government and the states is analogous to that between the State and its political subdivisions, federal immunity decisions still provide no basis for concluding that cities may impose tax collection obligations on state agencies without the State's consent. Whether individuals or companies who do business with the federal government must pay a tax is a different question than whether the federal government may be forced to collect that tax, and accordingly, none of San Francisco's authorities are on point. Although the United States Supreme Court has hinted that imposing tax collection requirements on federal agencies could "exceed constitutional limits" on states' ability to enforce their tax laws, it has yet to decide the issue. (*Jefferson County, Alabama v. Acker* (1999) 527 U.S. 423, 441 n.11 [maj. opinion], 452-54 [conc. and dis. opinion of Breyer, J.].)

San Francisco does note that Congress has adopted statutes requiring the federal government to withhold state and local income taxes owed by federal employees. (5 U.S.C. §§ 5516-17, 5520; 2 U.S.C. §§ 4555, 4594.) These statutes exemplify how immunity disputes are supposed to be resolved—through the political process, not the courts. Congress can always ***agree*** to collect state taxes. But Congress, not the states, sets the terms of the agreement. For instance, when first codified in 1952, federal consent to withhold income taxes only covered federal agencies, excluding the military, and it applied to taxes imposed by states and territories, not political subdivisions. (Pub. L. 82-587, 66 Stat. 765.) It was extended in the 1970s to the Senate (Pub. L. 93-371, § 2, 88 Stat. 427), the House of

Representatives (Pub. L. 94-440, Title II, § 101, 90 Stat. 1448), and the military (Pub. L. 94-455, § 1207, 90 Stat. 1704; Pub. L. 100-180, § 505, 101 Stat. 1086). In 1956, it was modified to apply to income taxes imposed by the District of Columbia (Pub. L. 84-460, 70 Stat. 77), and in the 1970s, to city and county income taxes (Pub. L. 93-340, § 1, 88 Stat. 294; Pub. L. 95-30, § 408, 91 Stat. 157). This is not the behavior of a government that believes it can be compelled to collect state and local taxes.

In anything, federal immunity cases suggest not only that San Francisco cannot compel UC Hastings to collect the city's parking tax, but that the tax itself is invalid. This result flows from the fact that the federal government is not just immune from state taxes; it is immune from ***all*** state legislation. Absent express congressional consent, state regulations, like state taxes, are invalid "if [they] regulate[] the United States directly or discriminate[] against the Federal Government or those with whom it deals." (*North Dakota v. United States* (1990) 495 U.S. 423, 435, plur. opinion.) San Francisco's tax runs afoul of both of these principles.

**a. Under federal law, San Francisco could not impose tax collection obligations directly on UC Hastings.**

Federal courts have long recognized that states may not impose direct obligations of any kind on federal agencies. For example, federal agencies are not required to secure a state permit before emitting air pollutants (*Hancock v. Train* (1976) 426 U.S. 167, 198-99); cities cannot prohibit the military from recruiting minors (*United States v. City of Arcata* (9th Cir. 2010) 629 F.3d 986, 990-92); and states cannot impose environmental cleanup requirements on federal nuclear facilities (*Boeing Co. v. Movassaghi* (9th Cir. 2014) 768 F.3d 832, 839-42). While "[t]here are matters of local concern ... which in the silence of Congress may be regulated" and "federal activities which in the absence of specific Congressional consent may be affected by state regulation[,]" when

"governmental action is carried on by the United States itself and Congress does not affirmatively declare its instrumentalities or property subject to [state] regulation or taxation," the "federal function must be left free" from all state control. (*Mayo v. United States* (1943) 319 U.S. 441, 446-48.) Immunity, in other words, "is inherent in sovereignty." (*Id.* at 447.)

As in these cases, San Francisco's parking tax ordinance directly regulates UC Hastings—it forces UC Hastings to prepare returns, track tickets, maintain records, and, of course, collect the tax. Compliance will cause UC Hastings to incur costs; UC Hastings must itself pay any tax that is not properly collected; and San Francisco holds out the threat of penalties and liens on state property if UC Hastings' administration of the tax does not meet with the city's approval—an intrusion that federal courts have also specifically refused to enforce. (See *Knight v. United States* (Fed. Cir. 1993) 982 F.2d 1573, 1577-79.) Federal immunity law would not sanction the imposition of these obligations, and this Court should not do so either.[2]

**b. San Francisco's parking tax discriminates against people who park in UC Hastings' campus garage.**

As noted above, state regulations and state taxes also may not "discriminate[] against the Federal Government or those with whom it deals." (*North Dakota*, *supra*, 495 U.S. at 435; *Phillips Chemical Co. v.*

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[2] In fact, under federal immunity law, states also enjoy considerable protection from federal control. For instance, the United States Supreme Court in *Printz*, *supra*, 521 U.S. at 931-32, 935, held that the federal government may not "command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program"—even one that "'serves very important purposes, is most efficiently administered by [states][,] ... and places a minimal ... burden upon state officers.'" Just last year, in a high-profile dispute with the federal government, San Francisco relied on *Printz* to argue that it cannot be forced to administer federal immigration law. (*County of Santa Clara v. Trump* (N.D. Cal. 2017) 250 F.Supp.3d 497, 533-34.) If this is true, why can San Francisco force state universities to administer local tax laws?

*Dumas Independent School District* (1960) 361 U.S. 376, 387.) Applying this rule, the United States Supreme Court in *Phillips*, *supra*, 361 U.S. at 377-87, refused to enforce a state-authorized property tax against a lessee of federal property because the state provided exemptions for lessees of state property that were not made available to federal lessees. And in *Davis v. Michigan Dep't of Treasury* (1989) 489 U.S. 803, 805, 814-18, the Court held that Michigan could not apply its income tax to federal retirement benefits because it exempted state and local retirement benefits from taxation—even though federal employees were treated the same as private employees, whose retirement benefits were also taxed. "The danger that a State is engaging in impermissible discrimination against the Federal Government is greatest[,]" said the Court, "when the State acts to benefit itself and those in privity with it." (*Id.* at 814-16 & n.4.) Accordingly, absent some compelling justification, states may not impose "a heavier tax burden on those who deal with one sovereign than is imposed on those who deal with the other ...." (*Ibid.*, citations and brackets omitted.)

Much like the states in *Phillips* and *Davis*, San Francisco exempts many of its own customers from paying the city's parking tax. In particular, no tax is imposed at any of San Francisco's metered parking spaces. (CT 28 [BTRC art. 9, § 606(1)].) Under the federal immunity rule, this kind of preferential tax treatment is not permitted. Students, faculty, staff, and others who rent a parking space in UC Hastings' campus garage cannot be taxed when a person who rents one of the thousands of metered parking spaces owned and operated by San Francisco is not.

Moreover, San Francisco's dual status as taxing agency and market participant gives it a pricing advantage that allows it to subsidize its renters' tax obligations in a way UC Hastings cannot. San Francisco operates 38 parking garages in the city, one of which is only a block away from UC Hastings. (CT 273 [¶¶ 18-19.].) When a person pays $12.50 at San

Francisco's Civic Center garage, $2.50 of the payment may be called a "tax," but all $12.50 is received by the city; at UC Hastings' garage, $2.50 goes to San Francisco and only $10 is paid to UC Hastings. (CT 261, 273 [¶19].) Whatever right San Francisco may have to give itself this kind of advantage when it competes in the market with private parties, it cannot use its taxing power in a manner that interferes with state functions. Instead, San Francisco must "treat those who deal with [UC Hastings] as well as it treats those with whom it deals itself." (*Phillips*, *supra*, 361 U.S. at 385.)

San Francisco's parking tax is, in short, discriminatory—both on its face, and in effect. If the federal immunity rule did apply here, that tax could not be collected from anyone who uses UC Hastings' campus garage.

### 3. Tribal immunity from state regulation is not analogous to the State's immunity from local control.

Finally, San Francisco argues that the Court should look to a trio of federal decisions holding that states can require Native American tribes to collect taxes from non-tribal customers buying cigarettes on reservations—*Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation* (1976) 425 U.S. 463, *Washington v. Confederated Tribes of Colville Indian Reservation* (1980) 447 U.S. 134, and *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma* (1991) 498 U.S. 505. Read properly, these cases provide no assistance here.

Native American tribes are "'not ... possessed of the full attributes of sovereignty,'" but they are "'a separate people, with the power of regulating their internal and social relations ....'" (*McClanahan v. State Tax Commission of Arizona* (1973) 411 U.S. 164, 165, 173, citations omitted.) Accordingly, when a state seeks to apply its laws to members of a tribe or to activities on a reservation, courts must "reconcile the plenary power of the States over residents within their borders with the semi-autonomous status of Indians ...." (*Ibid.*) "[E]ven on reservations, state laws may be

applied unless such application would interfere with reservation self-government or would impair a right granted or reserved by federal law." (*Mescalero Apache Tribe v. Jones* (1973) 411 U.S. 145, 148.)

Any attempt to analogize these cases to the present situation treads on precarious ground. "The unique historical origins of tribal sovereignty make it generally unhelpful to apply to federal enactments regulating Indian tribes those standards of pre-emption that have emerged in other areas of the law." (*White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136, 143.) Cities are creatures of the State; tribes are quasi-sovereign entities that exercise federally-guaranteed, and federally-limited, independence from state control. (*Id.* at 142-43.) Accordingly, the structural dynamics that underlie the application of state law to tribes are fundamentally different from those at issue in this case. Nothing highlights this fact more than *Moe*'s separate holding that states cannot tax the sale of cigarettes from one member of a tribe to another—a result that, if applied here, would cast doubt on San Francisco's claim that it may tax students, faculty, staff, and others associated with UC Hastings. (*Moe*, *supra*, 425 U.S. at 480-81.) And, of course, because Native American tribes enjoy immunity from suit under federal law, states lack the power to enforce their tax collection requirements in court, even though doing so would be "the most efficient remedy ...." (*Oklahoma Tax Commission*, *supra*, 498 U.S. at 511-14.)

In any event, to the extent an analogy is possible, these cases present a legal question that is the reverse of the question presented here. Tribes operate as islands of limited sovereignty within states in a manner that is somewhat similar to how charter cities in California operate as islands of limited sovereignty within the State. Thus, while the tribal tax cases might help answer whether the State can compel cities to collect state taxes, they say little about whether cities can compel the State to collect local taxes.

### 4. Two sister states have held that "home rule" cities cannot force state universities to collect local taxes.

In closing, UC Hastings notes that two sister states have addressed attempts by "home rule" cities to impose tax collection obligations on state universities, and in both instances, the state university prevailed.

In 1972, the Colorado Supreme Court held that Boulder could not force the University of Colorado to collect an admissions tax at university events because "a city, even though a home rule city, has no power to interfere with the management or supervision of the activities of the University of Colorado." (*City of Boulder v. Regents of the University of Colorado* (Colo. 1972) 501 P.2d 123, 124-27.) "If the City ... was allowed to impose duties on the University," said the court, "such duties would necessarily interfere with the functions of the state institution." (*Ibid.*)

Likewise, in 1997, the Illinois Court of Appeal held that Chicago could not compel the University of Illinois to collect the city's parking tax because "such a requirement would interfere with the state's constitutional mandate to operate a statewide educational system." (*City of Chicago v. Board of Trustees of the University of Illinois* (Ill.Ct.App. 1997) 689 N.E.2d 125, 129-30.) In the court's view, "any attempt by a home rule municipality to impose burdens on [state-operated educational] institutions, in the absence of state approval, is unauthorized." (*Id.* at 130.)

These decisions are consistent with California law, and for the reasons set forth above, the Court should reach a similar result here.

## V. CONCLUSION

This Court has long recognized 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.'" (*Means*, *supra*, 14 Cal.2d at 259, citations omitted.) The immunity that the State and its agencies enjoy

from local laws does not turn on the source of a city's power to act, or abstract distinctions between "revenue" and "regulatory" measures, or even the supposed reasonableness of the local law at issue. It turns on whether the State has consented to local control. In pressing for a special exception to this established rule, applicable only to tax collection obligations and nothing else, San Francisco asks this Court to jump headfirst into an area that, until today, it has wisely left in the hands of the Legislature and the people of California. The Court should decline San Francisco's invitation.

UC Hastings built its garage to serve its campus population, and it did so with the understanding that San Francisco, in conformance with long-standing practice, would not require it to collect the city's parking tax. San Francisco's recent about-face poses a threat to the garage's financial viability, and will, if successful, make it more difficult for students, faculty, staff, and others to access UC Hastings' educational services. Whether these consequences are outweighed by San Francisco's desire for a simpler way to secure tax revenue is a decision for the State, not San Francisco, to make. The judgment of the Court of Appeal should be affirmed.

JARVIS, FAY, DOPORTO & GIBSON, LLP

Dated: March 26, 2018 By: _____

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## CERTIFICATE OF WORD COUNT

I certify that this brief contains a total of **13,901 words** as indicated by the word count feature of the Microsoft Word computer program used to prepare it (excluding tables, caption, signature block, and this certification).

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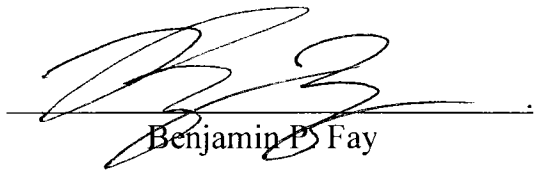

Benjamin P. Fay

## DECLARATION OF SERVICE

I, the undersigned, declare as follows:

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

On March 26, 2018, I served the within

**ANSWER BRIEF ON THE MERITS**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 26, 2018, at Oakland, California.

Katherine Carr James