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

SUPREME COURT
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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