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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

Plaintiff and Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Defendants and Respondents.

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

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

ANSWER 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