

In the Supreme Court of the State of California

**CITY AND COUNTY OF SAN
FRANCISCO,**

Plaintiff and Appellant,

v.

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

Defendants and Respondents.

Case No. S242835

**SUPREME COURT
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INTRODUCTION

The City and County of San Francisco by ordinance requires that parking lot operators within the City “shall” collect a parking tax from lot users, and, if the lot operator fails to do so, it “shall” be liable to the City’s Tax Collector for the parking taxes just as if the operator had collected them. (CT 27.) Although the parking tax ordinance has been in place since 1970, only recently has San Francisco attempted to enforce this ordinance against the State or state entities like respondent California State University (CSU), which operates parking facilities for staff and students on its San Francisco State University campus. Beginning in 2011, the City demanded that CSU begin collecting and paying over parking taxes. As the trial court and Court of Appeal correctly held, CSU cannot be unwillingly enlisted by the City to collect these local taxes.

San Francisco appears to concede, as it must, that even as a charter city with constitutional “home rule” powers over its municipal affairs, it cannot directly tax CSU, a state entity. (See OBM 14, 30.) Further, it has carefully avoided any attempt to enforce that part of its ordinance requiring a parking lot operator to pay over the amount due in taxes even where the operator does not collect taxes from lot users. (OBM 17; see also footnote 10, below.) And it appears to acknowledge that it lacks authority to *regulate* CSU. (See OBM 24.) But, San Francisco asserts, its authority to conscript CSU into its tax collection efforts is a natural result of its home rule power to raise revenues. It contends that a city may use its taxing power to force a state entity to collect local taxes and take other tax-related actions even where the city lacks regulatory power over that same entity.

San Francisco’s bifurcated view of its home rule powers was rejected by this Court more than 25 years ago in *California Federal Savings*

& Loan Association v. City of Los Angeles (1991) 54 Cal.3d 1 (*California Federal*). As the Court there held, “charter city tax measures are subject to the same legal analysis and accumulated body of decisional law under” the constitutional home rule provision “as charter city regulatory measures.” (*Id.* at p. 7.) Stated simply, the City cannot accomplish by a tax measure what it is prohibited from doing by regulation.

San Francisco attempts to avoid this result by relying on cases that support the taxation of private parties, and that express the limits of the intergovernmental taxation doctrine. These arguments are beside the point. The question is not whether third parties doing business with the State should be exempt from local taxes that the City could collect on its own, but whether CSU—a state entity carrying out a statewide mission under a comprehensive statutory scheme—can be required by city ordinance to hire staff, institute protocols, and collect and pay over local taxes from its students, staff, and others using state-owned parking lots. Under fundamental principles of sovereignty recognized by this Court in *In re Means* (1939) 14 Cal.2d 254 and *Hall v. City of Taft* (1956) 47 Cal.2d 177, it cannot. San Francisco, a municipal corporation, cannot control the actions of CSU, a state agency carrying out its charge under state statute, unless the Constitution requires that result (it does not) or the Legislature has consented (it has not).

That should end the inquiry. But even if this Court is inclined to consider the question presented through the lens of preemption (an analysis that should be reserved for consideration of local laws that apply only to private parties), the result is the same. The Constitution gives the state Legislature plenary control over education, and it has comprehensively regulated all aspects of CSU’s operations, including parking facilities and

parking fees, occupying the field and leaving no room for San Francisco (or any other city) to impose additional requirements on CSU. Further, allowing the City to impose a 25 percent tax on top of parking fees that have been carefully set by CSU would interfere with CSU's funding prerogatives, and with student, staff, and visitor access to campus, standing as an obstacle to CSU's educational mission.

The Court of Appeal's judgment should be affirmed.

BACKGROUND

A. California's Constitutional Commitment to Public Education and the Role of the California State University System

California's longstanding, state-level commitment to public education is engrained in its Constitution. "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Cal. Const., art. IX, § 1.)¹ To that end, the Legislature has stated its commitment "to provide an appropriate place in California public higher education for every student who is willing and able to benefit from attendance." (Ed. Code, § 66201.) Higher education promotes the State's "economic, social, and cultural development" by "prepar[ing] all Californians for responsible citizenship and meaningful careers in a multicultural society." (Ed. Code, § 66002, subds. (f)(1), (f)(3).)

¹ The quoted language first made its appearance in the Constitution of 1879; the Constitution of 1849 provided, similarly, that "[t]he Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement." (Cal. Const., art. IX, § 2 (1849).)

The California State University system is an essential component of the State's three-part system of higher education, together with the California Community Colleges and the University of California. (Ed. Code, § 66010.4; Cal. State Dept. of Ed., Master Plan for Higher Education (1960).)² The origins of the CSU system reach back to early statehood, beginning with a single school to train teachers. (See Gerth, *The People's University: A History of the California State University* (2010) pp. 3, 5.) As California's population and economy expanded, so did its need for affordable colleges offering a wider range of degrees. (*Id.* at pp. 63-64.) A decentralized network of state colleges grew in size, number, and diversification until, in 1960, the Master Plan for Higher Education recommended that they be consolidated into a single system of "California State Colleges," later renamed "The California State University." (Gerth, *supra*, at pp. 105-106, 629.) The Legislature implemented the Master Plan's findings and recommendations through the Donahoe Higher Education Act of 1960. (Ed. Code, § 66000 et seq.)

From its inception, CSU's mission to provide accessible, affordable, and high quality education has remained constant. (Gerth, *supra*, at p. 596.)³ Today, CSU spans 23 campuses and enrolls some 479,000 students, making it the largest four-year public higher education institution in the

² The Master Plan is available at http://www.lib.berkeley.edu/uchistory/archives_exhibits/masterplan/MasterPlan1960.pdf [as of March 23, 2018].

³ See also CSU, *The Mission of the California State University*, <<https://www2.calstate.edu/csu-system/about-the-csu/Pages/mission.aspx>> [as of Mar. 23, 2018].

nation.⁴ “One out of every 10 California employees is a California State University graduate, while one out of every 20 United States citizens with a college or university degree graduates from a campus of the California State University.” (Ed. Code, § 67433, subd. (f).) In the 2015-2016 school year, CSU awarded 75 percent of California’s degrees in agriculture, 60 percent in public administration, 51 percent in engineering, 50 percent in criminal justice, 44 percent in teaching, and 43 percent in nursing.⁵

Under state law, CSU is a state agency charged with the “management, administration, and control of the State College System of California.” (Cal. Const., art. XX, § 23; see also Ed. Code, § 66606.2.) Acting through its Board of Trustees, CSU administers the system’s campuses, including San Francisco State University. (Ed. Code, §§ 89001, subd. (a), 66600 et seq., 89000 et seq.) The Trustees include California’s Governor, Lieutenant Governor, and Superintendent of Public Instruction, and other members appointed by the Governor and subject to confirmation by two-thirds of the California Senate. (*Id.*, § 66602, subd. (a).)

The Government and Education Codes vest the Board of Trustees with broad powers relevant to CSU’s mission. It may adopt any rule or regulation for the governance of CSU consistent with state law. (Ed. Code, § 89030, subds. (a)(3), (d).) It has the power to construct or develop any building, facility, or improvement connected with the university (Ed. Code,

⁴ CSU, Fact Book 2017, <<https://www2.calstate.edu/csu-system/about-the-csu/facts-about-the-csu/Documents/facts2017.pdf>>; CSU History, <<http://www.calstate.edu/explore/history.shtml>> [as of March 23, 2018].

⁵ CSU, Systemwide Information: The CSU’s Value to Students, <<http://www.calstate.edu/value/systemwide/>> [as of March 23, 2018].

§ 66606); to acquire or sell university property (*id.*, § 89048); and to finance projects by issuing bonds (*id.*, § 90011 et seq.). The Board of Trustees may establish a university police force with statewide jurisdiction. (*Id.*, § 89560; Pen. Code, § 830.2.) And it may establish rules for “the maintenance of the buildings and grounds” of CSU, violation of which is punishable as a misdemeanor. (Ed. Code, § 89031.)

The Legislature also expressly addressed CSU parking facilities. Section 89701 authorizes CSU “to acquire ... real property and to construct, operate, and maintain motor vehicle parking facilities and other transportation facilities thereon for state university officers, employees, students or other persons.” (Ed. Code, § 89701, subd. (a).) The Board of Trustees may prescribe the “terms and conditions of the parking, ... including the payment of parking fees” (*ibid.*), which it has done through regulation (Cal. Code Regs., tit. 5, § 42201). The Legislature provided that CSU is not authorized to run “a private parking program unrelated to state purposes in competition with private industry.” (Ed. Code, § 89701, subd. (c).) Accordingly, all parking revenue must be deposited in a dedicated fund (*id.*, § 89701, subd. (b)(1)), which in turn may be used only for CSU-specific purposes: (1) the development or operation of parking facilities; (2) providing alternative transportation methods for students and staff; or (3) the acquisition of real property. (*Id.*, §§ 89701, subd. (b)(3), 89048, subd. (g).) In addition, the State University Revenue Bond Act permits the Board of Trustees to issue revenue bonds to finance university projects, secured by the anticipated future revenue from those projects. (*Id.*, § 90010 et seq.) Where the Board of Trustees finances the construction of a university facility in this way, it “shall” fix the parking fee at an amount “equal to

annual operating and maintenance expenses,” including all redemption payments and interest charges on the revenue bonds. (*Id.*, § 90068.)

B. CSU’s San Francisco State University Campus

CSU’s San Francisco campus educates approximately 30,000 students and employs some 3,700 faculty and staff. (CT 190 ¶¶ 9-10.) The campus is located on over 140 acres in the Outer Sunset District, a mixed residential-urban environment where parking is scarce. (CT 189 ¶ 7 & 191 ¶ 24.) Visitors, students, and employees of San Francisco State University (SFSU) are not permitted to park at the nearby shopping center, but must park in SFSU lots or on city streets. (CT 189 ¶ 7.) Virtually all available parking at the campus is used by students, faculty, and staff. (CT 190 ¶ 8.)

SFSU’s parking facilities provide ready access to campus for commuting students and staff who cannot use public transportation. (CT 191 ¶ 25.) Visitors also use SFSU parking to attend meetings, lectures, arts performances and other campus events. (*Id.* at ¶ 26.) SFSU offers competitive rates to its students and staff in order to ensure their access to campus parking lots. (CT 192 ¶ 27.) SFSU’s parking facilities operate at a loss. (See *id.* at ¶ 31.)

CSU owns and operates SFSU’s nine parking lots, which together provide approximately 3,200 on-campus spaces. (CT 189-190 ¶¶ 7, 11 & CT 195.)⁶ Each is staffed and operated by SFSU employees. (CT 191 ¶ 21.) Security is provided by SFSU police. (*Id.* at ¶ 22.)

⁶ See SFSU Campus Master Plan, Traffic, Circulation, and Planning Section at p. 4.11-9 <http://sfsumasterplan.org/eir/chapter_4.11.pdf> [as of March 22, 2018].

During weekday business hours, four lots are reserved for use by faculty and staff with valid parking permits. (CT 190 ¶¶ 11-16.) Three are reserved for employees and residents of specific campus housing facilities. (CT 191 ¶¶ 18-20.) The final two are open to commuter students and visitors. (CT 190-191 ¶¶ 14, 17.) CSU offers both short- and long-term permits, but only students, faculty, and staff may purchase permits for periods longer than two days.⁷

C. The City and County of San Francisco and its Parking Tax Ordinance

San Francisco is a consolidated city and county that has adopted a charter to govern its internal “municipal affairs.” (See Cal. Const., art. XI, § 5, subd. (a); see also *id.*, art. XI, § 6, subd. (b).)⁸ San Francisco is the State’s only chartered city and county. Like all cities, San Francisco also possesses constitutional police powers. (See Cal. Const., art. XI, § 7.)⁹

First enacted in 1970, San Francisco’s parking ordinance imposes a 25 percent tax on “the rent of every occupancy of parking space in a parking station in the City and County.” (S.F. Bus. & Tax Regs. Code, art. 9,

⁷ For details on SFSU’s student, staff, and faculty parking permits, see generally <<https://parking.sfsu.edu/sfsu-parking>> [as of March 22, 2018].

⁸ Article XI, section 5, subdivision (a) provides: “It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.”

⁹ Article XI, section 7 provides: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

§§ 602, 602.5.) The ordinance provides that every parking operator “shall” collect the tax from the parking occupant and remit it to the City on a monthly basis. (*Id.*, § 604, subd. (a); art. 6, § 6.7-2, subd. (a).) If an operator does not collect the tax, it “shall be liable to the Tax Collector ... the same as though the Parking Tax were paid by the Occupant.” (*Id.*, § 604, subd. (a).) Any parking tax that the operator is required to collect “shall be deemed a debt owed to the City” by the parking operator. (*Id.*, art. 6, § 6.7-1, subd. (d).)

The ordinance requires all parking lot operators, public or private, to obtain a certificate of authority from the City, which the City may refuse to issue or revoke if, in the City’s view, the operator violates “any provision of the Business and Tax Regulations Code” (S.F. Bus. & Tax Regs. Code, art. 6, § 6.6-1, subs. (c), (f)-(g).) Operators must keep parking tax records and preserve them for five years. (*Id.*, art. 9, §§ 604, subs. (b)-(c), 607, subd. (d); art. 6, §§ 6.4-1, 6.7-1, subd. (a)(1).) On request, an operator must produce these records for inspection and must appear before the tax collector. (*Id.*, art. 6, § 6.4-1, subs. (a)-(d).) Under threat of penalties and sanctions, the tax collector may demand an operator’s financial information to verify or determine tax liability or tax-exempt status. (*Id.*, §§ 6.5-1, 6.5-2.)

The ordinance requires parking operators to file monthly parking tax returns along with the remittance. (S.F. Bus. & Tax Regs. Code, art. 6, §§ 6.9-3, subs. (a)(1), (c), 6.7-2.) When a return is filed without the full remittance, the unpaid amount is immediately due and payable to the City. (*Id.*, § 6.7-2, subd. (d).) The City may also impose a penalty. (*Id.*, § 6.17-1, subd. (a).) Finally, the ordinance authorizes the City to sue any operator

to collect any parking tax deficiency, along with interest and penalties. (*Id.*, § 6.10-3.)¹⁰

D. San Francisco's Enforcement Efforts Against CSU

SFSU has never collected city parking taxes. (CT 192 ¶ 28.) As originally enacted, the parking tax ordinance applied only to “a ‘person’ as defined” in the ordinance, which expressly *excluded* “the United States of America, the State of California, and any political subdivision of either.” (RJN Ex. A [Letter from City Attorney to Tax Collector re: File No. 228-70-1 (Nov. 27, 1970), at p. 1]; RJN Ex. B [S.F. Bus. & Tax Regs. Code, art. 9, former § 601, subd. (a) (1970)].) It also stated that “[t]his Article shall not apply to any person as to whom ... it is beyond the power of the Board of Supervisors to impose the tax” (RJN Ex. A at p. 2, Ex. B at p. 2.) According to San Francisco’s City Attorney at the time, this earlier version of the ordinance reflected that “persons beyond the taxing power of the Board of Supervisors are exempt not only from the tax imposed by Article 9 [the parking tax] but also from all other provisions in Article 9, including specifically the duty to act as collection agent for the parking tax.” (*Ibid.*)

More recently, the City amended its parking ordinance in an attempt to impose requirements on the State and state entities. The code has long provided that “nothing in [article 9 or other specified articles] shall be construed as imposing a tax upon ... [t]he State of California, or any county, municipal corporation, district or other political subdivision of the

¹⁰ The City argued below that because its writ petition “sought only to require respondents ‘to collect and remit parking taxes’ to San Francisco[,] it is not relevant whether other provisions of the ordinance could be enforced against respondents.” (Court of Appeal OB 34, fn. 6, citing CT 19; see also Court of Appeal Reply 24-25.) But the provisions cited above apply to all operators.

State.” (S.F. Bus. & Tax Regs. Code, art. 6, § 6.8-1, subd. (a)(2).) A 2010 amendment left that language unchanged, but it added subdivision (b) to provide that “[t]he foregoing exemption from taxation does not relieve an exempt party from its duty to collect, report, and remit third-party taxes.” (RJN Ex. C [S.F. Ord. No. 291-10, File No. 101099 (approved Nov. 11, 2010)].)

After this amendment, in June 2011, the City Treasurer sent a letter demanding that SFSU collect and remit the parking tax. (CT 192 ¶ 29; CT 197.) Relying on this Court’s decisions in *Hall* and *Means*, among others, CSU refused, asserting its constitutional immunity from local regulation. (CT 197-201.)

In 2013, the City again amended the parking tax, this time to exempt governmental entities from “revenue control equipment” and commercial parking permit requirements, leaving the tax collection and remittance requirements in place. (Compare S.F. Bus. & Tax Regs. Code, art. 22, § 2202, subd. (e), & S.F. Police Code, § 1215, with S.F. Bus. & Tax Regs. Code, art. 6, §§ 6.7-1, subd. (a), 6.8-1, subd. (b).) The City Treasurer then “directed [SFSU] to collect and remit San Francisco parking tax.” (CT 203-204.) CSU restated its position that “the university is not obligated to collect any such tax.” (CT 206.)

STATEMENT OF THE CASE

In January 2014, San Francisco filed suit seeking a writ of mandate directing CSU and the other state university defendants to collect and remit the City’s parking tax, and restraining them from collecting “rent” for parking in San Francisco until they comply. (CT 19-20.) The petition also sought a declaration that each defendant is not exempt from the collection and remittance requirements. (*Ibid.*) The trial court denied the petition,