

# Municipal taxes are (almost) always municipal affairs

## Overview

The California Supreme Court has avoided bright-line rules when analyzing local ordinances under the Article XI, section 5 municipal affairs doctrine.[1]

For example, the most recent state high court case on municipal affairs endorsed an interest-balancing approach to determine whether an activity is a matter of local or statewide concern.[2]

But while the court disavows a categorical approach, one factor reliably predicts results in municipal affairs decisions: the court rules for the city in nearly every case that concerns local finance, especially taxes.

## Analysis

For this article we reviewed every California Supreme Court municipal affairs case from 1896 to the present.[3]

We omit cases that concerned only state preemption conflicts with the general local police power under Article XI, section 7. And we included only cases in which the municipal affairs issue was both squarely presented and actually resolved.[4]

This analysis follows on a recent post in which we surveyed 20 recent California Supreme Court municipal affairs decisions. Of the 20 cases we analyzed there, the state won 12, for a state/city win ratio of 3:2. We also found a clear pattern: all eight city wins concerned municipal tax or wage ordinances.

Of the 83 cases we considered for this article (see appended table) the state won 46, and the city won 37. This shows the state winning 55.42% and the city winning 44.58%. That is a higher city win rate than the previous, smaller sample results, where of 20 cases the state won

12 (60%) and the city won 8 (40%). But this larger sample confirmed our previous hypothesis that the state wins more Article XI, section 5 municipal affairs cases in the California Supreme Court.[5]

This review also confirmed our other finding:

the court almost always views municipal finances, especially local taxes, as municipal

affairs. Since 1896, charter cities have won nearly every case that concerned local taxes, bonds, or employee wages and benefits: of the 29 such cases we identified, the city won 26 (90%).[6]

The municipal finance cases are 34.9% of all cases we reviewed (29 of 83), and the city wins in those cases are 70.3% of all city wins (26 of 37). Previous case law also supports this conclusion. Although the court recently disavowed using bright-line rules in municipal affairs cases,[7]

it has expressly categorized local taxes[8]

and bonds[9]

as exclusively local matters.

The court held that taxes, bonds, and employment

are not municipal affairs in just three cases of the 29 that concerned those issues:

- In *Cal. Fed. Savings*, the court held that taxing certain financial corporations is a matter of statewide concern, defeating the city's proposed annual license tax on banks. The court reasoned that the need for centralized state and federal regulation over banks transcended local interests.[10]
- In *City of Santa Clara v. Von Raesfeld (1970)*, the court held that a local revenue bond for a sewage treatment facility was not a municipal affair. The local bond at issue, however, was for a large regional water pollution control facility that required several cities to coordinate financing. The court also noted that the sewage treatment facilities would affect the health of all San Francisco Bay Area inhabitants.[11] That weighed heavily in favor of extra-municipal interests.
- In *Barthel v. Board of Education (1908)* 153 Cal. 376, the court held that

electing and dismissing public school teachers was not a municipal affair. But the issue was not squarely presented. Although the city apparently argued that teachers were properly fired under San Jose's charter, the court noted that "it is not . . . claimed that the election and dismissal of teachers in the public schools are 'municipal affairs'." And public-school teachers are probably not best classified as municipal employees.[12]

These outliers are unsurprising; by its nature a case-by-case balancing test will inevitably produce some inconsistent results. But the fact that 90% of the cases we surveyed produced such predictable outcomes in municipal finance controversies seems to be as close to a bright line rule as one can hope for in this area of the law.

We also discovered some direct conflicts:

- In *Southern California Roads Co. v. McGuire* (1934), the state won on general law wage provisions. But in *State Building & Construction Trades Council of California v. City of Vista* (2012), the city won a on prevailing wage issue.
- In *Loop Lumber Co. v. Van Loben Sels* (1916) 173 Cal. 228, the city won after the court held sewage is a municipal affair. But 12 years later, in *City of Pasadena v. Chamberlain* (1928) 204 Cal. 653, the court held sanitation is not a municipal affair. *Chamberlain* is an anomaly because the court has since repeatedly held "the treatment and disposal of city sewage is a municipal affair, and bond issues to finance municipal sewer projects are therefore also municipal affairs." [13]
- In *Sunset Tel. & Tel. Co. v. City of Pasadena* (1911) 161 Cal. 265, the court held that telephone company rights to maintain and operate lines on city streets are a municipal affair. But in *Pacific Tel. & Tel. Co. v. City & Cty. of San Francisco* (1959), the court held that building and maintaining telephone lines on city streets was a matter of statewide concern.

These conflicting decisions may be explained by the court's view on an issue evolving with society. The court has acknowledged that changed circumstances over time can alter the interest

balance.[14]

Note the passage of time between each pair of decisions. Considered as a whole, the cases we reviewed show the court consistently balancing the interests in the city's favor on municipal finance — so consistently that it looks like a rule with just a few outlier exceptions.

We draw two conclusions from reviewing these cases.

First, the court was right to endorse an interest-balancing approach to the municipal affairs doctrine, which it explicitly did in *UC Regents*.<sup>[15]</sup>

Given the current understanding of this doctrinal area, interest-balancing is the best way to accommodate the inherent problem of categorizing the world's analog

problems into a state-local binary. Some things neatly fit one category (the color of a city gardener's uniform, regulating a statewide railway), but most things could be fairly defined as either. For example, in one case the court held that building and maintaining telephone lines on city streets was a matter of statewide concern.<sup>[16]</sup> In

another the court held that telephone company rights to maintain and operate lines on city streets is a municipal affair.<sup>[17]</sup>

A categorical approach only suits easy cases; the California Supreme Court sits to resolve the hard ones. Until someone finds a conclusive solution to the mystery of what the drafters intended "municipal affairs" to mean, interest balancing is a workable rule.<sup>[18]</sup>

And the California Supreme Court's longstanding practice of favoring the city in municipal finance issues is consistent with common sense and basic policy rationales. The local interest in municipal finance should (almost) always outweigh the state's concerns — it's the city's money. Just as the power to tax is the power to destroy,<sup>[19]</sup> taxes are the lifeblood of any government.<sup>[20]</sup>

This is no less true for a charter city: without taxes, "the municipality cannot exist, and the municipality alone is directly concerned in its

preservation.”[21]

Indeed, the *UC Regents* decision itself noted how rare it is for the court to hold that a charter city tax is not a municipal affair: “The only municipal tax case in which we have invalidated a city’s assertion of the power to tax parties regulated by or doing business with the state is *California Fed. Savings & Loan Assn. v. City of Los Angeles*.”[22]

The court’s decisions reflect a near-uniform record of holding that charter city taxes are municipal affairs, and the court itself has all but said that such taxes are definitively within the Article XI, section 7 charter power.

## **Conclusion**

The court endorsed an interest-balancing approach to municipal affairs cases in *UC Regents*. But the historical pattern is clear: a charter city’s interest in municipal finance is nearly always paramount, especially when the state challenges a municipal tax. On this record, the analysis nomenclature becomes irrelevant. Whether a court describes its approach as categorical, interest-weighting, preemption, or something else, it is almost certain to find that a local tax, bond, or wage matter is a municipal affair. Following the *UC Regents* decision, charter cities have good reason to be confident that an Article XI, section 5 tax will be insulated from state preemption. And following the *City of Upland* decision, those charter cities likely have an opportunity to enact such taxes by majority vote on the city ballot.

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Center research fellow Nicholas Cotter and senior research fellows the brothers Belcher contributed to this article, which is dedicated to the memory of our friend and colleague Buck Delventhal.

## **Municipal affairs cases (1896-1970)**

**STATE WINS:**

1. ***McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613** State wins: home rule provisions do not limit the legislature's authority to prescribe procedures governing claims against chartered local government entities.
2. ***O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061** State wins: city vehicle forfeiture ordinance preempted.
3. ***American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239** State wins: charter city ordinance is preempted because legislature impliedly fully occupied the field of regulation of predatory practices in home mortgage lending.
4. ***Cal. Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1** State wins: taxing financial corporations was a matter of statewide concern that preempted city's attempt to impose annual license tax on financial corporations.
5. ***Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491** State wins: legislature may bar local initiatives regarding funding and construction of major highways, a matter of statewide importance.
6. ***People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591** State wins: charter city could not avoid to meet and confer requirement by relying on its charter powers.
7. ***Baggett v. Gates* (1982) 32 Cal.3d 128** State wins: peace officers bill of rights statute applied to charter cities.
8. ***Societa Per Azioni De Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446** State wins: city ordinance directly conflicts with the general law.
9. ***County of Los Angeles v. City of Alhambra* (1980) 27 Cal.3d 184** State wins: ordinance preempted by the Vehicle Code because parking meter regulation is a form of traffic control, a matter of statewide concern.
10. ***Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848** State wins: ordinance preempted to the extent that it permits removing billboards without compensation.
11. ***City of Santa Clara v. Von Raesfeld* (1970) 3 Cal.3d 239** State wins: revenue bonds for sewage treatment facilities that would affect the health of all San Francisco Bay Area inhabitants is not a municipal affair.
12. ***Baron v. City of Los Angeles* (1970) 2 Cal.3d 535** State wins: ordinance

to extent it purports to govern practice of law and invades a field of regulation preempted by state law.

13. ***Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276** State wins: that statutes relating to organizational rights of fire fighters dealt with matter of state concern, rather than municipal concern, and applied to charter city.
14. ***Ex Parte Lane* (1962) 58 Cal.2d 99** State wins: city ordinance attempting to make sexual intercourse between persons not married to each other criminal conflicted with state law and was void, where Legislature adopted a general scheme for regulating subject of sexual activity.
15. ***Pacific Tel. & Tel. Co. v. City & Cty. of San Francisco* (1959) 51 Cal.2d 766** State wins: construction and maintenance of telephone lines in streets and other public places within a city was not a municipal affair, but a matter of statewide concern; thus, city could not exclude such lines essential to furnishing of communication services to people throughout the state from streets.
16. ***Wilson v. Beville* (1957) 47 Cal.2d 852** State wins: power of eminent domain is a matter of statewide concern, not a municipal affair, which cannot be abrogated by a municipality; it must be exercised in accordance with state law.
17. ***Hall v. City of Taft* (1956) 47 Cal.2d 177** State wins: state had preempted the field of regulating public school building construction so that construction of such building by school districts is not subject to building regulations of municipal corporation within which building is erected.
18. ***Mallon v. City of Long Beach* (1955) 44 Cal.2d 199** State wins: income acquired by the City of Long Beach in tidelands was acquired not as a 'municipal affair,' but subject to a public trust to develop its harbor and navigation facilities for the benefit of the entire state, and was therefore subject to the control of the legislature.
19. ***Northwestern Pac. R. Co. v. Superior Court in and for Humboldt County* (1949) 34 Cal.2d 454** State wins: the establishment of a railroad crossing which will substantially interfere with use of railroad facilities is a matter of statewide concern rather than a "municipal affair" under control of city, and Public Utilities Commission has exclusive jurisdiction to make the

primary determination of the necessity and advisability of the change.

20. ***Pipoly v. Benson* (1942) 20 Cal.2d 366** State wins: the regulation of traffic upon city streets is not a municipal affair over which the local authorities are given a power superior to that of the Legislature; state Vehicle code “covers” the use of public roadways by pedestrians, there is no scope for supplementary local regulation; thus, an ordinance prohibiting pedestrians to cross public roadways other than by crosswalks in a central or business district is invalid.
21. ***Wilson v. Walters* (1941) 19 Cal.2d 111** State wins: statute authorizing garnishment of salaries of public officers was applicable to salary of judge of municipal court of charter city, even though it incidentally affected a municipal affair, because courts and judicial salaries are fixed by the legislature.
22. ***Asbury Rapid Transit System v. Railroad Commission* (1941) 18 Cal.2d 105** State wins: statute subjecting to the jurisdiction of the Railroad Commission corporations conducting both intra-city and inter-city operations does not violate charter city’s ability to control municipal affairs.
23. ***Los Angeles Ry. Corp. v. City of Los Angeles* (1940) 16 Cal.2d 779** State wins: The regulation and operation of street cars in city of Los Angeles was a matter of general public concern and not a “municipal affair” within constitutional grant to chartered municipal corporations of complete autonomy with respect to municipal affairs, and hence initiative ordinance requiring two-man operation of street cars, even if considered as a police regulation, was ineffective as against conflicting order, permitting one-man operation, of Railroad Commission which had paramount power in the matter and whose order acquired force of law.
24. ***Department of Water and Power of City of Los Angeles v. Inyo Chemical Co.* (1940) 16 Cal.2d 744** State wins: statute dealing with the subject of the enforcement of civil judgments by levy upon persons ‘owing money’ to the judgment debtor, and as such it is a statute which clearly relates to a matter of statewide concern as distinguished from a purely municipal affair.
25. ***City of San Mateo v. Railroad Commission* (1937) 9 Cal.2d 1** State wins: Railroad Commission has authority under Constitution and statutes to



abolish hazardous and unnecessary grade crossings with railroad performing state-wide service.

26. ***Douglass v. City of Los Angeles* (1935) 5 Cal.2d 123** State wins: liability of municipalities, counties, and school districts for the tortious acts or omissions of their servants is a matter of general state concern, and not a municipal affair.
27. ***Southern California Roads Co. v. McGuire* (1934) 2 Cal.2d 115** State wins: contract let by municipality for improvement of city street, constituting part of state highway system must comply with wage provisions of general law, since improvement was not a “municipal affair”.
28. ***Riedman v. Brison* (1933) 217 Cal. 383** State wins: procedure for withdrawing from a state-created water district is not a municipal affair.
29. ***Young v. Superior Court of Kern County* (1932) 216 Cal. 512** State wins: improvement plan to part of the state highway system, which was designed and constructed in part under the supervision of the department of public works, is a matter of general concern.
30. ***City of Pasadena v. Charleville* (1932) 215 Cal. 384** State wins: state policy of prohibiting the sale of agricultural lands in the state to ineligible aliens is a matter of general state concern and thus binding on a freeholders’ charter city.
31. ***Rafferty v. City of Marysville* (1929) 207 Cal. 657** State wins: the city’s obligation to make its highways reasonably safe for general use cannot be chartered away.
32. ***City of Pasadena v. Chamberlain* (1928) 204 Cal. 653** State wins: that sanitation is not a municipal affair; thus the legislature has authority to provide governmental agencies or districts by general laws.
33. ***Ex parte Daniels* (1920) 183 Cal. 636** State wins: regulation of traffic upon the streets of a city is not one of those municipal affairs in which by the constitution chartered cities are given a power superior to that of the state legislature, but that such power is subject to the general laws of the state, and ordinances inconsistent therewith are invalid.
34. ***Civic Center Ass’n of Los Angeles v. Railroad Com’n of California* (1917) 175 Cal. 441** State wins: the right and power of the Railroad Commission to require state railroads to establish viaducts or subways at

street crossings is a matter of general state concern.

35. ***People ex rel. Scholler v. City of Long Beach* (1909) 155 Cal. 604** State wins: annexation of territory to a city is not a municipal affair within the meaning of section 6, but is a matter pertaining to the state at large and within its general powers and functions, and hence that the general law upon that subject controls.
36. ***Scholler v. City of Long Beach* (1909) 155 Cal. 604** State wins: that annexation of territory to a city is not a municipal affair, but rather a matter pertaining to the state at large.
37. ***People ex rel. Peck v. City of Los Angeles* (1908) 154 Cal. 220** State wins: that annexation of territory to a municipality is not a municipal affair, as that term is used in the constitution, and is subject to general law.
38. ***Barthel v. Board of Education* (1908) 153 Cal. 376** State wins: election and dismissal of teachers in the public schools are not “municipal affairs,” but rather controlled by state law.
39. ***Los Angeles City School District v. Longden* (1905) 148 Cal. 380** State wins: public school system is a statewide concern, so school and charter city have equal power to issue bonds separately; charter city bond authority is not exclusive.
40. ***Hancock v. Board of Ed. of City of Santa Barbara* (1903) 140 Cal. 554** State wins: the school system is a matter of general concern, and not a municipal affair.
41. ***German Savings and Loan Society v. Ramish* (1902) 138 Cal. 120** State wins: a scheme for street improvements provided by the city charter is inconsistent with the general laws and therefore void.
42. ***Banaz v. Smith* (1901) 133 Cal. 102** State wins: city charter provisions delegating authority of a contractor for public improvement is in conflict with the Vrooman Act, a general state law, and thus void.
43. ***Blanchard v. Hartwell* (1900) 131 Cal. 263** State wins: mode/procedure of amending freeholders charter cannot deviate from manner prescribed by the legislature.
44. ***Fragley v. Phelan* (1899) 126 Cal. 383** State wins: that the adoption of a city charter is not a municipal affair.
45. ***Miller v. Curry* (1896) 113 Cal. 644** State wins: general law prescribing

requirements for legal fees in civil actions supersedes city charter.

46. ***City of Los Angeles v. Teed* (1896) 112 Cal. 319** State wins: the funding of municipal indebtedness is peculiarly a matter pertaining to municipal organizations.

## **CITY WINS: 37**

1. ***State Building & Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547** City wins on prevailing wage issue.
2. ***Johnson v. Bradley* (1992) 4 Cal.4th 389** City wins: state law prohibiting candidates for municipal office from accepting public funds was not narrowly tailored to state interest in election process integrity, and did not preclude city charter from adopting a partial public financing measure.
3. ***People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476** City wins: legislature has not preempted local regulation of pesticide use.
4. ***The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656** City wins: ordinance imposes a revenue tax that does not conflict with the state scheme for regulating subdivisions.
5. ***Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296** City wins: the determination of the wages paid to employees of charter cities as well as charter counties is a matter of local rather than state-wide concern.
6. ***Weekes v. City of Oakland* (1978) 21 Cal.3d 386** City wins: statute prohibiting municipal taxes “upon income” neither conflicts with nor bars city’s employee license fee.
7. ***A.B.C. Distributing Co. v. City and County of San Francisco* (1975) 15 Cal.3d 566** City wins: payroll expense tax on liquor distributors is not preempted.
8. ***Bishop v. City of San Jose* (1969) 1 Cal.3d 56** City wins: setting and payment of wages for the city’s own year-round, full-time, civil service employees were purely municipal affairs to which the prevailing wage law as set forth in the Labor Code was inapplicable.
9. ***City of Redondo Beach v. Taxpayers* (1960) 54 Cal.2d 126** City wins: taxes and bonds are municipal affairs.

10. ***City of Glendale v. Trondsen* (1957) 48 Cal.2d 93** City wins: the levy of taxes for city purposes, and the collection, treatment and disposal of city sewage by a chartered city, are municipal affairs.
11. ***Tevis v. City and County of San Francisco* (1954) 43 Cal.2d 190** City wins: retroactive grant of vacation rights to employees of municipality governed by freeholder's charter was a municipal affair and not subject to constitutional prohibitions against gift of public funds and against granting of extra compensation to public servants for past services.
12. ***Ainsworth v. Bryant* (1949) 34 Cal.2d 465** City wins: city taxes are a municipal affair.
13. ***City of Oakland v. Williams* (1940) 15 Cal.2d 542** City "wins." The city, trying to avoid a charter provision that could prevent its desired action, argues that the action is a state concern. SCOCA holds that the action is a proper municipal expenditure. So the city loses because the action is a municipal affair.
14. ***West Coast Advertising Co. v. City and County of San Francisco* (1939) 14 Cal.2d 516** City wins: levy of taxes for city purposes is a municipal affair.
15. ***Butterworth v. Boyd* (1938) 12 Cal.2d 140** City wins: while insurance may be a matter of general concern, the health and efficiency of city employees is a municipal affair; and a plan established by charter to safeguard the health, peace of mind and working efficiency of such employees is validly applied to them, though it might be entirely improper if applied to objects beyond the scope of municipal power.
16. ***City of San Jose v. Lynch* (1935) 4 Cal.2d 760** City wins: opening, laying out, and improving streets and regulation of manner of their use are "municipal affairs" upon which home-rule charter, in so far as it makes provision therefor, is paramount to general law.
17. ***Rand v. Collins* (1931) 214 Cal. 168** City wins: selection of municipal officers and fixing their terms of office is a municipal affair.
18. ***Los Angeles Gas & Elec. Corp. v. City of Los Angeles* (1922) 188 Cal. 307** City wins: sale and distribution of electrical energy manufactured by a city is a municipal affair, and one over which the legislature has no control.
19. ***City of Los Angeles v. Central Trust Co. of New York* (1916) 173 Cal.**

**323** City wins: the opening, laying out, and improving of streets within a city, and the regulation of the manner of their use, are matters of much greater concern to its inhabitants than to the people of the state at large, and they are clearly municipal affairs, the control of which has always been deemed within the proper scope of municipal powers.

20. ***Loop Lumber Co. v. Van Loben Sels* (1916) 173 Cal. 228** City wins: the collection, treatment and disposal of city sewage and the making of contracts are municipal affairs, and neither may be held to be circumscribed except as expressly limited by the charter provisions.
21. ***Sunset Tel. & Tel. Co. v. City of Pasadena* (1911) 161 Cal. 265** City wins: telephone company rights to maintain and operate a telephone line on the streets of a city is a municipal affair, and thus not extended by state statute.
22. ***Craig v. Superior Court* (1910) 157 Cal. 481** City wins: says that removal process of municipal officers is a municipal affair.
23. ***Fleming v. Hance* (1908) 153 Cal. 162** City wins: that a state statute cannot require city to pay appointed prosecutors out of city treasury.
24. ***Rothschild v. Bantel* (1907) 152 Cal. 5** City wins: charter provisions prohibiting certain uses of municipal moneys, requiring the municipal officers to keep the same in their possession, and prescribing the manner in which they shall keep them, relate purely to municipal affairs and are not subject to general law.
25. ***Ex Parte Helm* (1904) 143 Cal. 553** City wins: imposition of a license tax on a business or occupation is a municipal affair as to which a town organized by special act prior to the adoption of the Constitution is not controlled by general law.
26. ***Law v. San Francisco* (1904) 144 Cal. 384** City wins: The issuance of bonds for the repair of existing schoolhouses and for new schoolhouses is for a "municipal affair," and supercedes conflicts with existing general law.
27. ***Ex parte Jackson* (1904) 143 Cal. 564** City wins: a provision in a charter authorizing a municipality to impose a license tax for purposes of municipal revenue is a "municipal affair," and within the proper scope of a municipal charter.
28. ***Ex parte Lemon* (1904) 143 Cal. 558** City wins: a municipal corporation

existing under a special act adopted prior to the constitution of 1879, which authorized it to impose a license tax for revenue, is not affected by general laws.

29. ***Ex parte Helm* (1904) 143 Cal. 553** City wins: that imposition of a license tax for revenue is a “municipal affair.”
30. ***Ex Parte Braun* (1903) 141 Cal. 204** City wins: provision of a city charter authorizing license taxes for revenue is a municipal affair.
31. ***People ex rel. Lawlor v. Williamson* (1902) 135 Cal. 415** City wins: the board of health created by San Francisco Charter and the power to control the sanitary condition of the city and to look after the health of the inhabitants constitute municipal affairs.
32. ***Fritz v. San Francisco* (1901) 132 Cal. 373** City wins: that issuance of bonds is a municipal affair.
33. ***Byrne v. Drain* (1900) 127 Cal. 663** City wins: opening and widening of streets are “municipal affairs” within the meaning of the constitution.
34. ***Popper v. Broderick* (1899) 123 Cal. 456** City wins: that general state law regulating salaries of firemen and policemen in cities of the first class does not apply to San Francisco, because it was incorporated under a private charter.
35. ***Miner v. Justices Court* (1898) 121 Cal. 264** City wins: state legislature’s attempt to create a new court for the city of Berkeley is superseded by the city charter’s creation of municipal courts.
36. ***Croly v. City of Sacramento* (1897) 119 Cal. 229** City wins: that appointment and removal of municipal officers, even through judicial process, is a municipal affair.
37. ***Morton v. Broderick* (1897) 118 Cal. 474** City wins: compliance with state law mandating the signature of the mayor is not required in order to the validity of a tax levy made by its board of supervisors; levying of taxes is a municipal affair.

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[1] “Courts

should avoid the error of ‘compartmentalization,’ that is, of cordoning off an entire area of governmental activity as either a ‘municipal affair’ or one of

statewide concern. Beginning with the observation in *Pac. Tel. & Tel. Co. v. City and County of S.F.*, that ‘the constitutional concept of municipal affairs is not a fixed or static quantity . . . [but one that] changes with the changing conditions upon which it is to operate,’ our cases display a growing recognition that ‘home rule’ is a means of adjusting the political relationship between state and local governments in discrete areas of conflict. When a court invalidates a charter city measure in favor of a conflicting state statute, the result does not necessarily rest on the conclusion that the subject matter of the former is not appropriate for municipal regulation. It means, rather, that under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city.” *Cal.*

*Fed. Savings v. Los Angeles* (1991)  
at 17–18.

[2] *City*

*and County of San Francisco v. UC Regents* (2019) 7 Cal.5th 536 (hereinafter “*UC Regents*”).

[3] *Cases*

on the Article XI, section 5 municipal affairs issue only date from 1896, because before then the state constitution allowed cities to adopt “a charter for its own government,” but those charters remained “subject to and controlled by general laws.” This limitation on city charters was lifted when the voters adopted Amendment 4 in the November 3, 1896 election, which exempted “municipal affairs” from the control of the general laws. See Grodin et al., *Oxford Commentaries on Cal. Constitution* (2011) at 281.

[4]

For example, we omitted *Fisher*

*v. City of Berkeley* (1984) because the municipal affairs issue was not squarely presented and the decision fits better with the general preemption category under Article 1, section 7 rather than the charter city powers cases under Article 1, section 5. See *id.* at 704: “defendants now do not claim that provision for rent withholding in section 15, subdivision (a), is a municipal affair that

overrides general state law. Instead, defendants assert their power to implement the rent withholding provision based on the right of all cities to regulate matters not in conflict with general laws. Thus, assuming without deciding that the ordinance's rent withholding provisions do not relate to a 'municipal affair,' we turn to whether defendants' regulation is in conflict with, and hence preempted by, state law."

[5] The state's win rate may be skewed by the fact that the state won the first 10 municipal affairs cases we analyzed. This is probably due to the climate of the day. Immediately after the home rule provision's adoption in 1896 many cases arose to litigate the meaning of "municipal affairs." The constitution's charter city provision was new, and there could have been some lingering pro-state bias on the court.

[6] We are not the first to identify this truism. See, e.g., *Weekes v. City of Oakland* (1978) at 426-27 (Thompson, J., dissenting): "It has been asserted that numerous subjects found to be of statewide concern over the past 80 years all involved activities essentially regulatory in nature. In contrast, on the specific issue of taxation for revenue only, numerous cases declare without equivocation or qualification that imposing taxes for revenue purposes is a municipal affair."

[7] See *supra* note 1.

[8] *City of Glendale v. Trondsen* (1957) at 98 ("The levy and collection of taxes by a city having a charter under our Constitution is a municipal affair."); *Ainsworth v. Bryant* (1949) at 469 ("It is well settled that the power of a municipal corporation operating under a



freeholders' charter . . . to impose taxes 'for revenue purposes, including license taxes, is strictly a municipal affair'"); *West Coast Advertising Co. v. City and County of San Francisco* (1939) at 524 ("No doubt is entertained upon the proposition that the levy of taxes by a municipality for revenue purposes, including license taxes, is strictly a municipal affair.").

[9] *City of Redondo Beach v. Taxpayers et al.* (1960) at 137 ("Taxes and bond issues for municipal purposes are clearly municipal affairs.").

[10] *Mallon v. City of Long Beach* (1955) looks at first glance like another exception. There, the state successfully prevented Long Beach from profiting from oil and gasoline that was harvested on state-gifted land. But that decision was dictated by the state constitutional provisions on the state coastline and the public trust doctrine, not the municipal affairs dispute.

[11] *Los Angeles City School District v. Longden* (1905) 148 Cal. 380 is another possible bond case exception. It held that a trustee of a general school district board could issue bonds despite a conflicting municipal charter provision. But this is probably better viewed as turning on the statewide nature of public schools than on the fact a bond was involved, and the court held that both entities have bond-issuing powers.

[12] The California Supreme Court has repeatedly held that the public school system is a matter of statewide concern. "The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the Constitution and the state Legislature is given comprehensive powers in relation thereto." *Hall v. City of Taft* (1956) at 179; *Roman*

*Catholic Welfare Corp. of San Francisco v. City of Piedmont* (1955) at 332 (school system has been

held to be a matter of general concern, rather than a municipal affair, and consequently is not committed to the exclusive control of local governments); *Hancock*

*v. Board of Ed. of City of Santa Barbara* (1903) 140 Cal. 554, 561 (school system is a matter of general concern, not a municipal affair).

[13] *Von*

*Raesfeld, supra*, at 246 (citations omitted). See also *City of Grass Valley v. Walkinshaw* (1949)

at 599 (“the collection, treatment and disposal of city sewage and the making of contracts therefor are likewise municipal affairs”), citing *Loop Lumber Co. v. Van Loben Sels* (1916) 173 Cal. 228, 232 (“That street and sewer work in a municipality and the making of contracts therefor on the part of the municipality are ‘municipal affairs’ within the meaning of the constitutional provision cannot be doubted.”). Also see *City*

*and County of San Francisco v. Boyd* (1941)

at 618 (“assuming for the present purposes that sewage disposal generally is a municipal affair as distinguished from a state affair”).

[14] See,

e.g., *Pacific*

*Tel.*,

*supra*, at 776 (relying on “a vast change in conditions” related to telephone service over the previous 50 years to conclude that placing telephone lines in city streets “is not at the present time a municipal affair but is a matter of statewide concern”).

[15] *UC Regents, supra*

note

2.

[16] *Pacific*

*Tel.*, *supra* note 14.

[17] *Sunset*  
*Tel., supra.*

[18]

See *Ex parte Braun* (1903) 141 Cal. 204, 214 (McFarland, J., dissenting):  
“The section of the Constitution in question uses the loose, undefinable, wild words, ‘municipal affairs,’ and imposes upon the courts the almost impossible duty of saying what they mean. This court has not undertaken, and probably will not undertake, to give a general definition of the words, so as to bring all future cases within the two categories of what is and what is not a municipal affair.” Justice McFarland, in dissent, both coined the enduring description of municipal affairs and originated the interest balancing approach that *UC Regents* unanimously endorsed.

[19] *Bueneman*  
*v. City of Santa Barbara* (1937) at  
415.

[20] *People*  
*v. Skinner* (1941) at 356.

[21] *UC*  
*Regents, supra* note 15, at 545, quoting *Ex parte Braun* (1903)  
141 Cal. 204, 210.

[22] *Id.*  
at 549 (citation omitted).