

# Fresno Unified files petition on leaseback to state Supreme Court

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The Fresno Unified School District is asking the California Supreme Court to reverse a recent appellate court opinion criticizing its use of a no-bid contract, saying it could negatively impact hundreds of school districts and contractors across the state.

Fresno Unified attorneys said in the [petition](#), filed earlier this week, that a 5th District Court of Appeal [opinion](#) released last month concerning a leaseback contract with Harris Construction has far-reaching consequences for the way school districts handle building projects.

“The Court of Appeal’s opinion and the issues presented by this petition impact hundreds of school districts and contractors who have participated, either currently or in the past, in hundreds of millions of dollars of lease-leaseback contracts on thousands of projects throughout the state,” the petition says. “The lease-leaseback arrangement between FUSD and Harris was structured exactly the same way as other school districts throughout California have structured their lease-leasebacks for years.”

Leaseback agreements were designed to allow cash-strapped districts to build schools by going outside of the traditional competitive bidding process and handpicking consultants who will front the cost of a project and then be repaid by the district in increments over time.

Contractor Stephen Davis took Fresno Unified to court, alleging that its contract with Harris Construction to build the \$37 million Rutherford B. Gaston Middle School was not a true leaseback because the district had the money to pay for the project upfront. Davis also alleges the district broke state conflict-of-interest laws by allowing Harris Construction to provide [pre-consulting services](#) for a project it was ultimately awarded. Davis is asking that Harris Construction pay back the money to the school district.

The 5th District Court of Appeal’s opinion affirmed Davis’ claims and invalidated previous court decisions that upheld leaseback contracts like Fresno Unified’s. The opinion leaves room for others to question when leaseback agreements should actually be used and if they create a risk of conflicts of interest.

The court made it clear that corporate consultants like Harris Construction — not just elected officials and government employees — are subject to state law that prohibits employees from having financial interests in contracts they’ve made. In the petition, though, Fresno Unified claims the court opinion conflicts with a statutory exception for consultants who provide planning services on state projects and “opens the door to potential scrutiny of all agency contracts with outside consultants in a variety of contexts.”

School board members and administrators have drunk the Kool-Aid and are so enamored with these contractors that they’re not making good, independent business decisions for their school districts.

Kevin Carlin, attorney for Stephen Davis

The petition also says that while the court affirms Davis’ claims that the Harris Construction deal was not a “true and genuine” leaseback deal, it leaves many questions unanswered about what specific details do make a leaseback deal legitimate. Fresno Unified attorneys said the opinion creates uncertainty for school districts across the state, and asks the Supreme Court to review whether leaseback arrangements are genuine if they use a short-term lease or have fully paid for a project upon its completion.

The petition claims Fresno Unified had the right to prepay the lease payments in full — even though that was not the

original intent of the leaseback method.

There are many advantages to the leaseback method over the traditional hard-bid method, according to the petition, including a capped, guaranteed maximum price for projects.

Since the appellate court opinion, a group of California building organizations has pushed for [changes](#) to state law to amend statutes related to school construction and conflicts of interest.

“However, passage of new legislation is not guaranteed, nor would it necessarily be swift,” the petition said. “In the meantime, the opinion has created confusion and disparity of options in project delivery methods for school districts in different judicial districts, and dozens of lease-leaseback contracts involving hundreds of millions of dollars throughout the state are at risk for being invalidated.”

Some Fresno Unified trustees have spoken out against Superintendent Michael Hanson’s handling of the contract, and the District Attorney’s Office is monitoring the case. The FBI has also become involved, according to a school board member.

Kevin Carlin, who represents Davis in the case, said Thursday the contract in question is “a sham lease used as a subterfuge” to avoid competitive bidding requirements otherwise applicable to public school construction contracts.

“The Davis court opinion recognizes how unscrupulous contractors have been gaming school districts and fleecing the taxpayers to the detriment of the public,” Carlin said.

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