

Contractor urges high court to affirm criticism of FUSD leaseback contracts

By Mackenzie Mays
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An attorney for a local contractor is urging the California Supreme Court to deny Fresno Unified's request that it OK the district's use of a controversial multimillion dollar no-bid contract.

Fresno Unified School District last month petitioned the Supreme Court to reverse an opinion from the 5th District Court of Appeal in Fresno. That opinion says that the district's leaseback contract with Harris Construction to build Rutherford B. Gaston Middle School was not used the way the law intended.

On Monday, Kevin Carlin, attorney for contractor Stephen Davis, asked the high court to stand by the appellate court's decision.

Davis wants the near \$37 million spent on the project to be returned to Fresno Unified — but the district is pushing the case to the Supreme Court, defending leaseback contracts and saying the appellate court's decision negatively affects school districts and contractors across the state.

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

But the [5th District Court of Appeal](#) said in this case Fresno Unified had the money to pay for the project upfront, therefore the Harris contract was a leaseback deal in name only. Davis is also alleging a violation of conflict of interest laws, since Harris Construction provided pre-construction consulting services for a project it was ultimately awarded.

The board of education has a fiduciary duty to make sure it's exercising some type of care and not just throwing their money away

Kevin Carlin, attorney for Stephen Davis

"The Fifth District has simply pointed out the obvious — that the purpose of [leaseback contracts] was to provide flexibility to school districts that desired higher quality facilities but did not have the present ability to pay for them. Unfortunately, the exception to competitive bidding carved out for that very purpose has been hijacked in recent years by what [many] have suspected to be sweetheart deals and cronyism," Monday's [response](#) from Carlin said. "The Fifth District has merely blown the whistle."

Carlin's response also said that Fresno Unified's argument that leaseback contracts provide many advantages to school construction over the traditional hard-bid process is "pure speculation." Carlin points to cases across the state where leaseback deals end up costing more than what the lowest bidder's cost would have been under the regular process.

While the state Supreme Court rarely agrees to review petitions like Fresno Unified's, Carlin asks that if a review is granted, two additional issues should be considered. The first questions the board of education's "duty of care" when awarding contracts paid for with school construction bond proceeds. Gaston Middle School was paid for with taxpayer money from Measure K.

Carlin also said the Supreme Court should tighten up the law when it comes to competitive bidding requirements, and clarify who has to follow them and when. The current law lacks uniformity and causes confusion among school districts that use leaseback deals, he said. .

Fresno Unified has about two weeks to respond to Davis' filing. The Supreme Court then has 60 days to decide if it wants to review the case.

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