

Contractor opposes Fresno Unified's motion to dismiss leaseback case

By Mackenzie Mays
mmays@fresnobee.com

The contractor suing Fresno Unified over a no-bid construction project has asked a judge to deny the district's recent motion to dismiss the case, calling district leaders "arrogant."

Last week, attorneys for Fresno Unified [filed a motion](#) in Fresno County Superior Court to dismiss the "lease-leaseback" suit, which alleges the district deliberately avoided the traditional competitive bid process in 2012.

Districts across the state have been [watching the case](#), which could change how schools are financed.

In the motion to dismiss, Fresno Unified attorneys say that Stephen Davis – the Fresno contractor who first alleged the district abused the system – does not have a right to sue the district as a taxpayer who is not directly involved with the contract in question, which was signed with Harris Construction.

In Davis' opposition to the district's motion to dismiss, his attorney, Kevin Carlin of San Diego, says taxpayers do have standing to sue "in a representative capacity" in cases involving failures on the part of their governmental bodies.

Certainly this court will not rule taxpayers have no judicial recourse when their local school district violates the law.

Attorney Kevin Carlin in opposition to FUSD's motion to dismiss case

"Is (FUSD) really so arrogant as to say they can violate California's laws on conflicts of interest and leaseback contracts and no citizen can do anything about it? That is what (FUSD's) motion says," the opposition, filed Friday, says.

ADVERTISING

3

"Certainly this court will not rule taxpayers have no judicial recourse when their local school district violates the law, for if it does, then taxpayers will have no option but to take up pitchforks and torches."

Davis' lawsuit [sparked a federal investigation](#) of the contract and several other of Fresno Unified's leaseback deals. The grand jury investigation, which began in August, is still underway.

Davis claims that not only did the district deliberately misuse the process to ensure the Gaston Middle School project went to Harris Construction, but it also broke conflict-of-interest laws by allowing the firm to perform pre-consulting work on the project.

In the district's motion to dismiss the case, attorneys contend that allowing public agencies to be challenged by "every disgruntled contractor under the guise of a 'taxpayer' suit" would embroil them in endless litigation and "divert precious resources and taxpayer money away from public projects and public needs."

Carlin also asks that if the judge dismisses the case, that Davis get a chance to amend his original suit to include further allegations of collusion between Harris Construction and Fresno Unified leaders – pointing to the federal investigation and emails released as part of [an investigation by The Bee](#).

“Such allegations would include an assertion that there was an express and or implied agreement between Harris and executive levels of (FUSD) to turn a blind eye toward the patent conflict of interest created by awarding Harris a contract to construct projects on which Harris previously acted as a consultant to the district,” the opposition says.

The hearing on whether the district’s motion to dismiss will be approved is set for May 5 in the Fresno County Superior Court.

Mackenzie Mays: [559-441-6412](tel:559-441-6412), [@MackenzieMays](https://www.instagram.com/MackenzieMays)