

Supreme Court Case No. 266344
Court of Appeal No. F079811
Superior Court Case No. 12CECG03718

SUPREME COURT OF THE STATE OF CALIFORNIA

STEPHEN K. DAVIS

Plaintiff and Respondent,

v.

**FRESNO UNIFIED SCHOOL DISTRICT, and HARRIS
CONSTRUCTION CO., INC.,**

Defendants and Petitioners

After a Published Decision by the Court of Appeal,
Fifth Appellate District

**APPLICATION FOR LEAVE TO FILE AMICUS
CURIAE BRIEF AND PROPOSED BRIEF OF
TORRANCE UNIFIED SCHOOL DISTRICT IN
SUPPORT OF DEFENDANT AND PETITIONER
FRESNO UNIFIED SCHOOL DISTRICT**

TAO ROSSINI, APC
Martin A. Hom (SBN 157058)
408 N. Harbor Boulevard, Suite 408
La Habra, California 90631
Telephone: (714) 761-3007
Facsimile: (714) 446-8742

Attorneys for Amicus Curiae
Torrance Unified School District

APPLICATION TO FILE *AMICUS CURIAE* BRIEF
TO THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT
OF THE STATE OF CALIFORNIA:

I.

INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(f), the Torrance Unified School District (“District”) respectfully requests permission to file the accompanying *Amicus Curiae* Brief in support of Defendant and Petitioner Fresno Unified School District. *Amicus* will address the importance and use of the lease-leaseback construction delivery method to the District, the litigation challenging the District’s lease-leaseback agreements, and whether lease-leaseback agreements, financed through local general obligation bonds, are subject to the validation statutes, Government Code section 860 et seq., as a “contract” under Government Code section 53511.

II.

INTERESTS OF THE AMICUS CURIAE

The District is a California public school district located in Torrance, California. The District was established in 1947, unified in 1948, and located in the south-western part of Los Angeles County bordered by the Palos Verdes Peninsula to the south, the beach cities (Redondo, Hermosa, and Manhattan) to the west, and the cities of Hawthorne and Lawndale to the north. The District serves approximately 23,000 students at 17 elementary schools, eight middle schools, four high schools, one continuation school and one alternative high school. The District was served with three separate reverse validation actions challenging ten different lease-leaseback agreements on virtually identical grounds that were alleged in the instant case. The District’s litigation resulted in three Court of Appeal opinions. (See *McGee v. Torrance Unified School*

District, et al., (2020) 49 Cal.App.5th 814, *McGee v. Torrance Unified School District, et al.*, (2016) 247 Cal.App.4th 235; *McGee v. Torrance Unified School District, et al.*, Case No. B252570, 2015 WL 301918 (Jan. 23, 2015).) The holding in the above Court of Appeal opinions are contrary to the instant case. For example, the requirement of a “genuine” lease and contractor financing in the lease-leaseback statute, Education Code section 17406, were soundly rejected in *McGee*, that the challenged lease-leaseback agreements were subject to the validation statutes. (*McGee, supra*, 247 Cal.App.4th at 244.)

This case involves legal issues of critical statewide importance to all California public entities on the availability of validation actions for contracts financed through local general obligation bonds. The question presented in this case is whether a California school district may seek validation of a lease-leaseback agreement, pursuant to Government Code section 53511, when the lease-leaseback agreement is financed through local general obligation bonds.

The trial court granted Defendant’s Motion for Judgment on the Pleadings finding that this action was a reverse, in rem, validation action pursuant to Code of Civil Procedure section 863, that invalidating the lease-leaseback agreement was no longer effective relief because the agreement had been fully performed and therefore, the action was moot, and that disgorgement was not a remedy in an in rem proceeding. The Court of Appeal reversed finding that the action was both an in rem, reverse validation action, under Code of Civil Procedure section 863, and as an in personum, taxpayer’s action, under Code of Civil Procedure section 526a, which disgorgement was a proper remedy. The Court of Appeal continued and found that since it had previously held that the lease-leaseback agreement did not include a financing component for the project, and

therefore, did not fall within the ambit of Government Code section 53511 as a contract or other evidences of indebtedness and subject to validation.

Amicus disagrees with the Court of Appeal opinion because the District's lease-leaseback litigation involved the exact same issues and the Second Appellate District held that the lease-leaseback agreement, financed through local general obligation bonds fell within the ambit of Government Code section 53511, and the validating statutes, Government Code section 860. (*McGee, supra*, 49 Cal.App.5th at 624.) The Second Appellate District also rejected the Fifth Appellate District's interpretation of the lease-leaseback statute, Education Code section 17406, that a lease-leaseback agreement requires a "genuine" lease and contractor financing. (*McGee, supra*, 247 Cal.App.4th at 244.)

Accordingly, the Court must find that lease-leaseback agreements, finance through local general obligation bonds, fall within the definition of contracts, warrants, and other evidences of indebtedness under Government Code section 53511.

III.


THIS AMICUS CURIAE BRIEF WILL ASSIST THE COURT

Amicus has reviewed the briefs and are familiar with the questions involved in this case and the scope of their presentation. *Amicus* believes that its brief will assist the Court by addressing relevant points of law and arguments not discussed in the briefs of the parties and demonstrating that this case is a matter of general statewide importance affecting school districts across California. Presentation of such legal argument is the very reason for affording amicus curiae status to interested and responsible parties such as the Torrance Unified School District. (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 405 fn. 14.)

IV.
CONCLUSION

For the foregoing reasons, *Amicus* respectfully request that the Court accept the accompanying *Amicus Curiae* Brief for filing in this case, and *Amicus* confirms that no party or counsel for any party in the proceeding authored the attached brief in whole or in part or made any monetary contribution intended to fund its preparation or submission. (Cal. Rules of Court, Rule 8.200(c)(3).)

Dated: August 23, 2021

By: 

Martin A. Hom, SBN 157058
Attorneys for Amicus Curiae
Torrance Unified School District

Supreme Court Case No. 266344
Court of Appeal No. F079811
Superior Court Case No. 12CECG03718

SUPREME COURT OF THE STATE OF CALIFORNIA

STEPHEN K. DAVIS,

Plaintiff and Respondent,

v.

**FRESNO UNIFIED SCHOOL DISTRICT, and HARRIS
CONSTRUCTION CO., INC.,**

Defendants and Petitioners

After a Published Opinion of the Court of Appeal
Fifth Appellate District

**PROPOSED BRIEF OF TORRANCE UNIFIED
SCHOOL DISTRICT IN SUPPORT OF DEFENDANT
AND PETITIONER FRESNO UNIFIED SCHOOL
DISTRICT**

TAO ROSSINI, APC
Martin A. Hom (SBN 157058)*
921 N. Harbor Boulevard, Suite 408
La Habra, California 90631
Telephone: (714) 761-3007
Facsimile: (714) 446-8742

Attorneys for Amicus Curiae
Torrance Unified School District

Table of Contents

CERTIFICATE OF INTERESTED PARTIES 5

PROPOSED *AMICUS CURIAE* BRIEF 6

I. INTRODUCTION..... 6

 A. Torrance 1 (Case No. YC068686) – Hickory Elementary School, Madrona Middle School, and North High School 10

 B. Torrance 2 (Case No. YC069859) – Towers Elementary School and Riviera Elementary School 10

 C. Torrance 3 (YC070614) – Torrance High School, Edison Elementary School, and Yukon Elementary School..... 11

II. ARGUMENT 12

 A. Education Code Section 17406 Includes Lease-Purchase Agreements 12

 B. The Lease-Leaseback Agreement Was Involved in the District’s Financial Obligation and Inextricably Bound Up in the District’s Bond Financing. 15

III. CONCLUSION 18

CERTIFICATE OF WORD COUNT 20

AFFIDAVIT OF SERVICE 21

Table of Authorities

CASES

California Commerce Casino, Inc. v. Schwarzenegger
(2007) 146 Cal.App.4th 1406..... 16

California Taxpayers Action Network v. Taber Construction, Inc.
(2017) 12 Cal.App.5th 115..... 10, 11, 17

Davis v. Fresno Unified School District
(2015) 237 Cal.App.4th 261 11

Davis v. Fresno Unified School District
(2020) 57 Cal.App.5th 911 17

Friedland v. City of Long Beach
(1998) 62 Cal.App.4th 835..... 15

Golden Gate Hill Development Co. v. County of Alameda
(2015) 242 Cal.App.4th 760..... 15

Kaatz v. City of Seaside
(2006) 143 Cal.App.4th 13..... 14, 15

McGee v. Torrance Unified School District
(2020) 49 Cal.App.5th 814, S263393 depub. denied (Aug. 24,
2020)..... 11, 17

McGee v. Torrance Unified School District
(Cal. Ct. App., Jan. 23, 2015, B252570) 2015 WL 301918;
2015 Cal.App. LEXIS 446 10

McGee v. Torrance Unified School District, et al.
(2016) 247 Cal.App.4th 235..... 11, 17

McLeod v. Vista Unified School District
(2008) 158 Cal.App.4th 1156..... 16

Planning & Conservation League v. Department of Water Resources
(1998) 17 Cal.4th 264..... 15

STATUTES

Code of Civil Procedure section 860..... 15, 16

Code of Civil Procedure section 870.....	16
Code of Civil Procedure sections 860-870.....	15
Education Code section 17070.10	7
Education Code section 17401	12, 14
Education Code section 17406	6, 12, 15, 17
Education Code sections 17250.10 – 17250.50	6
Government Code section 4525	6
Government Code section 53511	12, 16, 18
Government Code section 53511(a).....	16
Government Code section 860	12
Public Contract Code section 10503	6
Public Contract Code section 10708	6
Public Contract Code section 20111	6
Public Contract Code section 20146	6

CONSTITUTIONAL PROVISIONS


California Constitute Article XIII A, section 1; Article XVI, § 18.....	7
California Constitution Article XIII A, section 1(b)(3)	7
California Constitution Article XVI, section 18	13

CERTIFICATE OF INTERESTED PARTIES

(Cal. Rules of Court, Rule 8.208)

Amicus Curiae Torrance Unified School District knows of no entity or person that must be listed under subsections (1) or (2) of Rule 8.208(e). (Cal. Rules of Court, Rule 8.208(e)(3).)

Dated: August 23, 2021

By: 

Martin A. Hom, SBN 157058
Attorneys for Amicus Curiae
Torrance Unified School District

PROPOSED AMICUS CURIAE BRIEF

Torrance Unified School District respectfully submits the following Proposed *Amicus Curiae* Brief.

I.

INTRODUCTION

California school districts have the discretion to choose the delivery method for the construction and modernization of their school facilities. The project delivery methods available to school districts are: design-bid-build, construction manager (agency, multiple prime, or at-risk), lease-leaseback, and design-build. The statutory authorization for each of the project delivery methods are located within different code sections. The following table sets forth the code sections that authorize the available project delivery methods.

PROJECT DELIVERY METHOD	STATUTORY AUTHORITY	COMMENT
Design-bid-build	Pub. Cont. Code § 20111	\$15,000 or greater
Construction manager – multiple prime contractors	Pub. Cont. Code § 20111; Gov. Code § 4525	\$15,000 or greater
Lease-leaseback	Ed. Code § 17406	
Design-Build	Ed. Code §§ 17250.10 – 17250.50	\$1,000,000 or greater
Construction manager at risk	Gov. Code § 4525	No express authority ¹

¹ Only the Regents of the University of California (Pub. Cont. Code § 10503; California State University (Pub. Cont. Code § 10708); and Counties (Pub. Cont. Code § 20146) have express authority to utilize the construction manager at risk delivery method.

The District has some of the oldest schools in California. The oldest is Torrance High School, which was opened in 1917. The majority of the District's schools are more than 50 years old and built during a large population increases following World War II. To address its aging school facilities, in November 2008, the District placed two Proposition 39² bond measures on the ballot, Measure Y & Z³.

Measure Y asked the voters to approve the sale of \$265,000,000 in general obligation bonds for the following projects at the District school sites:

- Repair, replace, upgrade, improve, acquire and/or install interior ceilings and lighting
- Repair damaged interior walls and surfaces and paint and resurface interior walls
- Repair, upgrade, acquire and/or install telephone and heating, cooling, and ventilation systems, and acquire and install related equipment
- Repair, rehabilitate, replace and/or upgrade restrooms, including fixtures, walls, wall coverings, floor coverings, plumbing and electrical

² In 2000, the voters approved Proposition 39 which reduced the supermajority from 66% to 55% for the passage of school district general obligation bonds for the repair, renovation and/or construction of school facilities and classrooms. Proposition 39 required an annual performance and financial audit as well as the appointment of a citizen's oversight committee. Proposition 39 also prohibited the use of the bond proceeds for salaries and operating expenses. (See, Cal. Const. art. XIII A, § 1; art. XVI, § 18.)

³ The construction and modernization of California public school facilities are mainly funded through a combination of developer fees pursuant to Government Code section 65995 et seq., local general obligation bonds pursuant to California Constitution Article XIII A, section 1(b)(3), and if eligible, statewide school construction bonds pursuant to Education Code section 17070.10, et seq.

- Repair, replace, acquire and/or install window and door systems
- Repair, replace, acquire and/or install rain gutters
- Repair, replace, upgrade and/or improve floors and floor coverings
- Repair, rehabilitate, replace and/or upgrade damaged exterior walls and surfaces and paint and resurface exteriors
- Acquire and install exterior security lighting on campus and grounds
- Improve and repair drainage and irrigation systems
- Resurface, repair, and/or replace concrete and asphalt on campus, grounds and parking and student drop off areas
- Replace aging portable classrooms and modular buildings
- At Hull Middle School – renovate, demolish, re-construct and/or construct school buildings, support facilities and school grounds to house and serve approximately 750 students
- At Fern Elementary School – construct a two-story classroom building to replace existing portables

Measure Z asked the voters to approve the sale of \$90,000,000 in general obligation bonds for the following projects at the District school sites:

Elementary Schools

- Construct, or renovate, reconfigure, reconstruct and/or convert existing facilities to add, an additional art/music classroom at each site, and furnish and equip such classrooms
- Improve, renovate and/or upgrade classrooms with water and sewer utility connections and fixtures
- Construct and/or repair, replace or renovate covered walkways

Middle Schools

- Construct, or renovate, reconfigure, reconstruct and/or convert existing facilities to add, an additional science laboratory at each site, and furnish and equip such laboratory
- Construct and/or repair, replace or renovate covered walkways

High Schools

- Construct and/or repair, replace or renovate covered walkways
- Repair, renovate and upgrade gymnasium buildings, including flooring, walls, windows and doors, interior and exterior painting, bleachers, locker rooms, operating and utility systems, scoreboards and backboards, and equip such buildings
- Upgrade stadiums and related fields at North High School, South High School and Torrance High School with new aluminum seating, an all-weather track and artificial turf
- Upgrade stadium at West High School and related field at West High School with artificial turf

In 2011 and 2012, several of the Measure Y & Z bond projects experienced issues with trade contractors defaulting on their contracts causing delays and cost overruns to the various projects. Additionally, bids came in higher than the budgeted amounts resulting in a “bid bust” and causing the District to reject all bids and rebid the project in hopes of bringing the prices within the project’s budget. One significant challenge of any school bond program, such as the Measure Y & Z bond construction program, when construction projects may span over a 10-year period, is to plan for inflation, escalations, and cost overruns to ensure that there are sufficient funds for all of the contemplated projects. Accordingly, maintaining the budgets for the various Measure Y & Z projects was important to ensure that bond funds remained for those projects planned to be completed at the end of the program.

After one particular project, the Magruder Middle School modernization project, was bid on two different occasions and both times came in over budget and all bids rejected, the District’s governing board authorized the use of the lease-leaseback project delivery method for specific Measure Y & Z projects in an effort to better control costs and subcontractor defaults. After the change to the lease-leaseback project delivery method, the District successfully completed three projects,

Magruder Middle School, Calle Mayor Middle School, and Wood Elementary School and delivered those projects on time and within budget.

Between 2013 and 2015, a local taxpayer, James McGee filed three reverse validation actions, pursuant to Government Code section 863, challenging a total of 10 different lease-leaseback agreements alleging that they were invalid for failing to seek competitive bids, for failing to comply with Education Code sections 17406, 17417, and an impermissible conflict of interest, among other allegations. The reverse validation actions filed by McGee against the Torrance Unified School District and all interested persons was essentially identical to the allegations in the instant case.

A. Torrance 1 (Case No. YC068686) – Hickory Elementary School, Madrona Middle School, and North High School

In Torrance 1, McGee challenged three separate lease-leaseback agreements for the Hickory Elementary School, Madrona Middle School, and North High School projects in a reverse validation action. The trial court sustained the demurrers without leave to amend as to McGee’s First Amended Complaint.

On appeal, the Court of Appeal affirmed the trial court rulings on six of the causes of action but held that the alleged conflict of interest was sufficiently pled and remanded that one cause of action to the trial court. (See *McGee v. Torrance Unified School District* (Cal. Ct. App., Jan. 23, 2015, B252570) 2015 WL 301918; 2015 Cal.App. LEXIS 446.)

B. Torrance 2 (Case No. YC069859) – Towers Elementary School and Riviera Elementary School

In Torrance 2, *McGee* and *California Taxpayers Action Network* challenged two separate lease-leaseback agreements for Tower Elementary School, and Riviera Elementary School projects in a reverse validation action. Again, the trial court sustained the demurrers without leave to amend.

On appeal, on April 12, 2016, the Court of Appeal affirmed the dismissal of six of the causes of action but held that the one cause of action that the lease-leaseback agreements were invalid due to a conflict of interest was properly pled and remanded the one cause of action back to the trial court. (See *McGee v. Torrance Unified School District, et al.* (2016) 247 Cal.App.4th 235.) It should be noted that the Second Appellate District expressly rejected the arguments that a lease-leaseback agreement under Education Code section 17406 must be a “genuine” lease and contain contractor financing, (*Id.* at 244.), that the Fifth Appellate District found in *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261, 284-85.)

C. Torrance 3 (YC070614) – Torrance High School, Edison Elementary School, and Yukon Elementary School

In Torrance 3, *McGee* and *California Taxpayers Action Network* challenged lease-leaseback agreements Torrance High School, Edison Elementary and Yukon Elementary School projects in a reverse validation action.⁴ In this case, only one cause of action for conflict of interest was alleged.

Since all three reverse validation actions involved the same legal issue and only the cause of action seeking to invalidate the lease-leaseback agreements for conflict of interest survived, all cases were consolidated for trial in January 2019. The trial court granted the defendants motion to bifurcate the trial and allowed the affirmative defense of mootness to

⁴ The Edison and Yukon lease-leaseback projects were rescinded by the District on June 29, 2015, and delivered by the construction manager multiple prime project delivery method. Interestingly, after bidding the projects for the construction manager multiple prime delivery method, the price was significantly higher than the guaranteed maximum price of the lease-leaseback agreements that Plaintiffs challenged.

proceed in the first part of the trial. The trial court found that since all of the challenged lease-leaseback agreements were completed, the reverse validation action was now moot, and judgment was entered in the defendants favor. On appeal, the judgment was affirmed. (*McGee v. Torrance Unified School District* (2020) 49 Cal.App.5th 814, S263393 depub. denied (Aug. 24, 2020).)

This case is identical to the Torrance 1, 2, and 3 cases and Davis is represented by the same counsel, Kevin Carlin. The same arguments have been made in both cases and Amicus believes that the Second Appellate District made the correct interpretation of Education Code section 17406 that the plain language does not require a “genuine” lease or contractor financing, and that the lease-leaseback agreements fall within Government Code section 53511, bringing them within the validation statutes, Government Code section 860, *et seq.* For these reasons, and as set forth more fully herein, *Amicus* respectfully request that this Court find that a lease-leaseback agreement procured pursuant to Education Code section 17406, financed with local general obligation bonds, is subject to the validation statutes, Government Code section 860, *et. seq.*

II.

ARGUMENT

A. Education Code Section 17406 Includes Lease-Purchase Agreements

The Court of Appeals’ opinion found that under Education Code section 17406 the lease-leaseback agreement must be a “genuine” lease and that the school district must physically occupy the completed buildings. The Court of Appeal’s opinion is misplaced and not supported by Education Code section 17401, which provides that, “[a]s used in this article ‘lease or agreement’ shall include a lease-purchase agreement.”

The Court of Appeal ignores this statutory definition and concludes that only a “genuine” lease, which the Court believes is a traditional real property landlord–tenant lease. A lease–purchase agreement, also known as a finance lease, is a mechanism whereby a school district leases property, and in consideration for the use of the property, makes payments during the term of the lease. Lease-purchase agreements allow school districts to pay for capital assets over a multi-year period without voter approval or in violation of the Constitutional Debt Limitation found in California Constitution Article XVI, section 18. A lease–purchase agreement does not violate the Constitutional Debt Limitation because monthly lease payments are only considered to be current, and not future debt, because the payments are abated if the property is damaged or destroyed beyond repair, and because it is considered to be a current expense of the District. Finally, for security purposes a covenant of the school district to include the lease payments in its annual budget to appropriate the lease payments. These provisions are not found in a real property, landlord-tenant lease.

Here the lease-leaseback agreement contains the following provisions for required a lease-purchase agreement:

Abatement of Rent in the Event of Substantial Interference With Use and Occupancy of the Project and the Site, The amount of Lease Payments for the Project and the Site shall be abated during any period in which there is substantial interference with the use and occupancy of the Project and the Site by the District, including but not limited to by reason of delay in the completion of the Project beyond the final completion date specified in the Construction Provisions. The amount of such abatement shall be agreed upon by the District and the Sublessor such that the resulting Lease Payments represent fair consideration for the use and occupancy of the portion of the Project and the Site, if any, with respect to which there is no such substantial interference. Such abatement shall continue for the period commencing with such substantial interference and ending with the termination of such interference.

Lease Payments to Constitute Current Expense of the District. The District and the Sublessor understand and intend that the obligation of the District to pay Lease Payments and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District. Lease Payments due hereunder shall be payable only from current funds which are budgeted and appropriated, or otherwise legally available, for the purpose of paying Lease Payments or other payments due hereunder as consideration for use of the Site during the fiscal year of the District for which such funds were budgeted and appropriated or otherwise made legally available for such purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments which may become due hereunder. The District has not pledged the full faith and credit of the District, the State of California or any agency or department thereof to the payment of the Lease Payments or any other payments due hereunder.

The lease-leaseback agreement in this case is a lease-purchase agreement as discussed above. The important clause that distinguishes a lease-purchase agreement from a landlord-tenant lease is the presence of an abatement clause so that lease-purchase agreements are not considered debt. The requirement for a “genuine” landlord-tenant lease is simply incorrect, contrary to Education Code section 17401.

Further, the Second Appellate District rejected the argument that the lease-leaseback statute, Education Code section 17406, only applies to a “genuine” lease. (*McGee v. Torrance Unified School District* (2016) 247 Cal.App.4th 235. In so holding, the court stated,

The plain language of the statute is consistent with the holding in *Los Alamitos [Unified School District v. Howard]* (2014) 229 Cal.App.4th 1222]. The statute requires the real property

belong to the school district, the lease is for the purposes of construction, and title shall vest in the school district at the end of the lease term. (§17406, subd. (a)(1).) Plaintiff's efforts to engraft additional requirements – such as the timing of the lease payments, the duration of the lease, and the financing – are not based on the plain language of the statute. Moreover, in contrast to *Offner*, this does not involve a contract that potentially violated the constitutional provision on indebtedness and no party argues otherwise. [footnote omitted] Even though there may be, as plaintiffs suggest, strong reasons to require competitive bidding in all circumstances, our role is to interpret the language of the statute, not rewrite the statute. [citation omitted]

(*Id.* at 244.)

The Court of Appeal in this case has misinterpreted Education Code section 17406, the lease-leaseback statute and rewritten the statute to include a “genuine” lease and contractor financing when the plain language of the statute does not support such an interpretation.

B. The Lease-Leaseback Agreement Was Involved in the District's Financial Obligation and Inextricably Bound Up in the District's Bond Financing.

The Code of Civil Procedure sections 860-870 provides public entity with a set of accelerated, in rem, procedures for determining the validity of certain bonds, assessments and other agreements. (*Planning & Conservation League v. Department of Water Resources* (1998) 17 Cal.4th 264, 266.) These are commonly called the validation statutes and allows a public entity an action in the Superior Court to promptly determine the validity of any of its actions that fall within the scope of the validation statutes. (See, Code Civ. Proc. § 860.) Any “interested person” may also bring their own lawsuit challenging the validity of such acts. (*Id.* at § 863.) Those lawsuits are referred to as a “reverse” validation action. (*Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 30 fn. 16.)

A validation complaint or reverse validation complaint must be filed within 60 days of the act to be challenged. (Code Civ. Proc. §§ 860, 863.) If a public entity does nothing and no interested person brings a reverse validation action within 60 days, the action is deemed valid and “become[s] immune from attack.” (*Kaatz, supra*, 143 Cal.App.4th at 30; *California Commerce Casino, Inc. v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1420.) As a result, all matters which have been, or which could have been adjudicated in a validation action must be raised within the statutory limitations period in Code of Civil Procedure section 860, *et seq.* or they are waived. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 84 public entity and all other persons, and is forever binding and conclusive. (*McLeod v. Vista Unified School District* (2008) 158 Cal.App.4th 1156, 1166; Code Civ. Proc. § 870.) The validation statutes apply when any other law authorizes their application. (*Golden Gate Hill Development Co. v. County of Alameda* (2015) 242 Cal.App.4th 760-765-66.)

In this case, the applicable law is Government Code section 53511, which provides that the validation statutes apply to “an action to determine the validity of [a local agency’s] bond, warrants, contractor, obligations or evidences of indebtedness.” (Gov. Code § 53511(a).) The Second Appellate District examined this very same issue when McGee brought his reverse validation actions and argued that the lease-leaseback agreements were not subject to validation. The Second Appellate District noted that the courts have read Government Code section 53511 to include contracts involving financing and financial obligations (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 843), and contracts that are inextricably bound up with bond funding and financing. (*McLeod v. Vista Unified School District* (2008) 158 Cal.App.4th 1156, 1169.) In finding that lease-leaseback agreements funded through a general obligation bond were

agreements involved in the District's financial obligations and were inextricably bound up in the District's bond financing and within the scope of contracts in Government Code section 53511, the court in *McGee* stated that Education Code section 17406 authorized lease-leaseback agreements without competitive bidding (*McGee, supra*, 247 Cal.App.4th at 242), and was characterized as providing a method of financing school construction (*California Taxpayers Action Network v. Taber Construction, Inc.* (2017) 12 Cal.App.5th 115, 136), and therefore were the proper subject of a validation action (*McGee, supra*, 49 Cal.App. 5th at 824.) The court also noted that McGee had always treated these cases as a reverse validation action, complied with the services requirements (i.e., publication) for a reverse validation action, and had previously argued that the lease-leaseback agreements were subject to the validation statutes. (*Id.* at 824-25.)

The *Davis*, the Fifth Appellate District distinguished this case from *McGee* stating that it had earlier held that the lease-leaseback agreement failed to include a "genuine" lease and contractor financing and therefore, did was not a "contract" within the meaning of Government Code section 53511. (*Davis v. Fresno Unified School District* (2020) 57 Cal.App.5th 911, 939-40.) As discussed above, we believe the court in *Davis* improperly interpreted Education Code section 17406 by including terms (i.e., genuine lease and contractor financing) that is not supported by the plain language of Education Code section 17406.

Finally, when running school construction bond program, the general obligations bonds are not sold all at once. They are sold over time and the financing and planning of the projects must be coordinated, especially if matching State school construction bond funds are also being

sought from the State Allocation Board.⁵ If the 60-day validation period for the District’s lease-leaseback agreements, financed through local general obligation bonds does not apply and the threat of litigation will hang over the projects for three years or more, the District’s ability to sell bonds, and complete its projects will be severely hampered and likely to increase the District’s costs making it even more difficult to complete the projects within its bond program.

Accordingly, the Court must find that lease-leaseback agreements, financed through local general obligation bonds are contracts within Government Code section 53511.

III.

CONCLUSION

Based on the foregoing, *Amicus* Torrance Unified School District respectfully requests that this Court find that lease-leaseback agreements, financed through local general obligation bonds, fall within the definition of contracts under Government Code section 53511, and therefore, are subject to the validation statutes.

Dated: August 23, 2021

By: _____



Martin A. Hom, SBN 157058
Attorneys for Amicus Curiae
Torrance Unified School District

⁵ The State Allocation (“SAB”) is a California State agency created pursuant to Government Code section 15490. The SAB consists of 10 members: the Director of Finance, the Director of General Services, a person appointed by the Governor, the Superintendent of Public Instruction, three members from the Senate, and three members from the Assembly. The Office of Public School Construction acts as staff for the SAB and implements the School Facility Program that is funded by various state general obligation bonds.

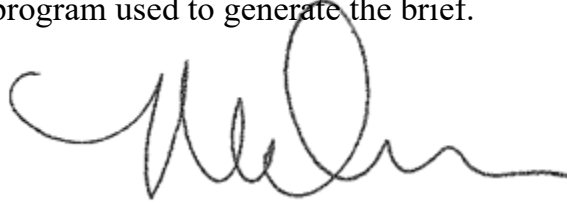
CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, § 8.204)

The text of this brief and excluding the tables, certificate, verification, and supporting documents, consists of 3604 words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: August 23, 2021

By: _____



Martin A. Hom, SBN 157058
Attorneys for Amicus Curiae
Torrance Unified School District

AFFIDAVIT OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is: 921 N. Harbor Boulevard, Suite 408, La Habra, CA 90631.

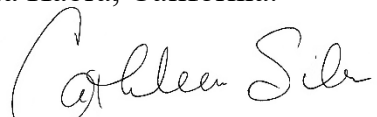
On August 23, 2021, I served the foregoing document described as: **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED BRIEF OF COALITION FOR ADEQUATE SCHOOL HOUSING AND ASSOCIATION OF CALIFORNIA CONSTRUCTION MANAGERS IN SUPPORT OF DEFENDANT AND PETITIONER FRESNO UNIFIED SCHOOL DISTRICT** on the interested parties in this action as follows:

<u>Via U.S. Mail</u> Honorable Kimberly Gaab FRESNO COUNTY SUPERIOR COURT 1130 O Street Fresno, CA 93721	<u>Via U.S. Mail</u> FIFTH DISTRICT COURT OF APPEAL 2424 Ventura Street Fresno, CA 93721
--	--

BY US MAIL: I placed the sealed envelope with the postage thereon fully prepaid for collection and mailing at our address shown above, on the parties immediately listed above. I am readily familiar with Tao Rossini, APC's business practice for collecting and processing correspondence for mailing with the United States Postal Service the same day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 23, 2021, at La Habra, California.



Cathleen Siler

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **DAVIS v. FRESNO UNIFIED SCHOOL DISTRICT**

Case Number: **S266344**

Lower Court Case Number: **F079811**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **mhom@taorossini.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	AmicusBrief_TorranceUSD

Service Recipients:

Person Served	Email Address	Type	Date / Time
Colleen Bjerknæs SEWUP	cbjerknes@keenan.com	e-Serve	8/23/2021 9:29:01 PM
Yasmina Flores Twin Rivers Unified School District	yasmina.flores@twinriversusd.org	e-Serve	8/23/2021 9:29:01 PM
Timothy Thompson Whitney, Thompson & Jeffcoach LLP 133537	tthompson@wtjlaw.com	e-Serve	8/23/2021 9:29:01 PM
Jonathan Klotsche O'Connor Thompson McDonough Klotsche LLP 257992	john@otmklaw.com	e-Serve	8/23/2021 9:29:01 PM
Harold Freiman Lozano Smith, LLP 148099	hfreiman@lozanosmith.com	e-Serve	8/23/2021 9:29:01 PM
Glenn Gould Orbach Huff Suarez & Henderson LLP 141442	ggould@ohshlaw.com	e-Serve	8/23/2021 9:29:01 PM
Mandy Jeffcoach Whitney, Thompson & Jeffcoach LLP 232313	mjeffcoach@wtjlaw.com	e-Serve	8/23/2021 9:29:01 PM
Mark Creede Lang Richert & Patch, PC 128418	mlc@lrplaw.net	e-Serve	8/23/2021 9:29:01 PM
Regina Garza Lozano Smith 250780	rgarza@lozanosmith.com	e-Serve	8/23/2021 9:29:01 PM
Sandon Schwartz Madera Unified School District	SandonSchwartz@maderausd.org	e-Serve	8/23/2021 9:29:01 PM
Kevin Carlin	kcarlin@carlinlawgroup.com	e-	8/23/2021

Carlin Law Group, APC 185701		Serve	9:29:01 PM
James Traber Fagen Friedman & Fulfrost LLC 248439	jtraber@f3law.com	e- Serve	8/23/2021 9:29:01 PM
Matthew Slentz Colantuono, Highsmith & Whatley 285143	mslentz@chwlaw.us	e- Serve	8/23/2021 9:29:01 PM
Myron Moskovitz Moskovitz Appellate Team 36476	myronmoskovitz@gmail.com	e- Serve	8/23/2021 9:29:01 PM
Julie Arthur PSUSD	jarthur@psusd.us	e- Serve	8/23/2021 9:29:01 PM
Monica Silva Paso Robles Joint Unified School District	msilva@pasoschools.org	e- Serve	8/23/2021 9:29:01 PM
Cindy Kaljumagi Dinuba Unified School District	ckaljuma@dinuba.k12.ca.us	e- Serve	8/23/2021 9:29:01 PM
Debra Haney Caruthers Unified School District	dhaney@caruthers.k12.ca.us	e- Serve	8/23/2021 9:29:01 PM
Eduardo Martinez Sanger Unified School District	eduardo_martinez@sangerusd.net	e- Serve	8/23/2021 9:29:01 PM
Terry Bradley Kings Canyon Unified School District	garza-a@kcusd.com	e- Serve	8/23/2021 9:29:01 PM
Yvette Coronado Lang, Richert & Patch	yvette@lrplaw.net	e- Serve	8/23/2021 9:29:01 PM
Sean Selegue Arnold & Porter LLP 155249	sean.selegue@aporter.com	e- Serve	8/23/2021 9:29:01 PM
Heidi Hughes Coalition for Adequate School Housing	hhughes@m-w-h.com	e- Serve	8/23/2021 9:29:01 PM
Maiya Yang Clovis Unified School District 195970	Maiyayang@clovisusd.k12.ca.us	e- Serve	8/23/2021 9:29:01 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/23/2021

Date

/s/Martin Hom

Signature

Hom, Martin (157058)

Last Name, First Name (PNum)

Tao Rossini, APC

Law Firm

