

No. S266344

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

STEPHEN K. DAVIS,
Plaintiff and Respondent,

v.

FRESNO UNIFIED SCHOOL DISTRICT AND HARRIS
CONSTRUCTION CO., INC.,
Defendant and Petitioners.

After a Published Decisions by the
California Court of Appeal, Fifth Appellate District
Docket no. F079811

From the Fresno County Superior Court
Case no. 12CECG03718
The Honorable Kimberly Gaab

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF AND *AMICUS CURIAE* BRIEF OF CALIFORNIA
ASSOCIATION OF BOND OVERSIGHT COMMITTEES IN
SUPPORT OF PLAINTIFF AND RESPONDENT STEPHEN
K. DAVIS**

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to California Rule of Court 8.520(f), leave is hereby requested to file the attached brief of *Amicus Curiae* California Association of Bond Oversight Committees (CABOC) supporting Plaintiff and Respondent Stephen K. Davis. This application is being made within 30 days after the filing of the last reply brief and is therefore timely.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

CABOC is a California non-profit public-benefit corporation organized in 2019 to assist in the implementation, training, and encouragement of Proposition 39 citizens' oversight committees.

Proposition 39 – the Smaller Classes, Safer Schools and Financial Accountability Act – was approved by California voters in 2000 and later codified at Education Code Sections 15264-15288 as the Strict Accountability in Local School Construction Bonds Act of 2000 (hereinafter “Strict Accountability Act”). Among other things, the Strict Accountability Act lowered the voter threshold for passing certain general-obligation bonds by a school district (like those referenced in this lawsuit), community college district, or county of education from a two-thirds super majority to 55 percent on the condition that the school district’s governing board establish and appoint members to a citizens’ oversight committee to oversee the expenditure of those bonds. 2000 Cal. Legis. Serv. Ch. 44 (A.B. 1908) (West); *see also* Educ. Code § 15278(a)¹; Cal. Const., art. XIII A, §

¹ Educ. Code § 15278(a) reads in full: “If a bond measure authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section

1(b)(3), (c). In 2017, the Little Hoover Commission (LHC), a bipartisan independent California oversight agency, issued a report making series of recommendations to the Governor regarding Proposition 39 bonds. *See* Little Hoover Comm’n, Report no. 236, *Borrowed Money: Opportunities for Stronger Bond Oversight* (Feb. 2017).² CABOC was formed soon thereafter to assist in implementing the recommendations of the LHC report.³ CABOC’s goal is to help citizens’ oversight committees fulfill their purpose of providing effective oversight of school district construction-bond spending.

Unfortunately, the Strict Accountability Act does not provide the citizens’ oversight committees any enforcement power; enforcement falls to citizen-taxpayers. Therefore, preserving access to all of the legal rights and remedies provided to citizen-taxpayers by law is imperative to CABOC’s mission of ensuring effective bond

18 of Article XVI of the California Constitution is approved, the governing board of the school district or community college shall establish and appoint members to an independent citizens’ oversight committee, pursuant to Section 15282, within 60 days of the date that the governing board enters the election results on its minutes pursuant to Section 15274.”

² A copy of the LHC’s full report is available online at <https://lhc.ca.gov/report/borrowed-money-opportunities-stronger-bond-oversight>.

³ The California League of Bond Oversight Committees (CaLBOC; Corp. no. C3180241) filed a Nonprofit Certificate of Dissolution on January 15, 2021. With the dissolution of CaLBOC the CABOC is the only statewide non-profit organization existing to address the recommendations of the LHC.

oversight as envisioned by Proposition 39 and the Strict Accountability Act.

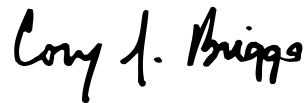
AUTHORSHIP & FUNDING

No party or attorney to this litigation authored the attached *amicus* brief or any part thereof. No person or entity, other than CABOC and their counsel, has contributed – financially or otherwise – to the preparation or submission of this brief.

Dated: August 23, 2021.

Respectfully submitted,

BRIGGS LAW CORPORATION



Cory J. Briggs

Attorney for *Amicus Curiae*
California Association of Bond
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BRIEF OF *AMICUS CURIAE*

I. INTRODUCTION

This Court granted review in this case to address whether “a lease-leaseback arrangement in which construction is financed through bond proceeds, rather than by or through the builder, is a ‘contract’ within the meaning of Government Code section 53511.” Said another way, is a lease-leaseback construction contract that is not itself a financing vehicle or otherwise *contingent* on some other financing vehicle subject to the Validation Statutes?⁴

This question is of critical importance because to answer in the affirmative would move *all* public construction contracts of a school district, including but not limited to lease-leaseback agreements, that are *merely funded* by existing proceeds from previously issued bonds (and not just those contracts *contingent* on new bond financing or that are financing vehicles themselves) within the scope of the Validation Statutes and, more importantly, the Validation Statutes’ 60-day statute of limitations and their limited remedies. *See* Civ. Proc. Code § 860 *et seq.*; Gov’t Code § 53511.⁵ Such a holding would effectively insulate and immunize *all* public construction contracts, even those only tangentially connected to public financing, from legal challenge and judicial scrutiny beyond the 60-day period. *See Davis v. Fresno Unified Sch. Dist.*, 57 Cal. App. 5th 911, 928 (2020) (“*Davis II*”) (citing *City of*

⁴ The Validation Statutes are codified at Civ. Proc. Code § 860 *et seq.* (general validation-authorizing statute) and Gov’t Code § 53511 (specific validation-authorizing statute). CABOC refers to the collectively as the “Validation Statutes.”

⁵ Textual references to Section 53511 are to Gov’t Code § 53511.

Ontario v. Superior Ct., 2 Cal. 3d 335, 341-342 (1970) (“*Ontario*”). Furthermore, plaintiffs forced to bring their actions as validation proceedings merely because the challenged contract was paid for by **existing** bond proceeds would be limited to declaratory relief because injunctive and restitutionary relief are not authorized under the Validation Statutes. *See Ontario*, 2 Cal. 3d at 344-345.

For the reasons thoughtfully discussed in the answering brief of Stephen K. Davis (Taxpayer), this Court should affirm the Fifth District Court of Appeal’s sound reasoning in *Davis II*, reaffirm its holding and reasoning in *Ontario*, and find that contracts that are **merely funded** by bond proceeds (like those at issue in this case) are not of the type of “contracts” that Section 53511 was meant to reach. *Davis II*, 57 Cal. App. 5th at 940-941. More specifically, this Court should affirm that **merely funding** a school district construction project with **previously obtained** general-obligation bond proceeds is not enough to support a finding that a project’s construction contracts are “inextricably bound-up” with the bonds and thereby implicate the Validation Statutes. *Id.* (“The use of bond funds does not support the conclusion that the Construction Contracts are in the nature of, or are directly related to, a public agency’s bonds or other evidences of indebtedness.” (citation omitted)).

In addition to all of the sound policy reasons discussed in *Davis II* and in Taxpayer’s answering brief, this Court should also affirm because to hold otherwise would severely hamper or even negate the necessary and crucial work of citizens’ bond oversight committees required under the Strict Accountability Act.

II. DISCUSSION

A. **Effective Bond Accountability Requires Enforcement through Both Validation Proceedings and Taxpayer Actions**

The intent of the Strict Accountability Act is specifically described in the statute itself:

It is the intent of the Legislature that all of the following are realized:

(a) ***Vigorous efforts*** are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in ***strict conformity with the law***.

(b) ***Taxpayers directly participate in the oversight*** of bond expenditures.

(c) The members of the oversight committees appointed pursuant to this chapter ***promptly alert the public*** to any waste or improper expenditure of school construction bond money.

(d) That unauthorized expenditures of school construction bond revenues are ***vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures***.

Educ. Code § 15264 (emphasis added).

The citizens' oversight committees are the official watchdogs of the contracting and construction process that follows the passage of and the expenditure of Proposition 39 general-obligation bonds: "The purpose of the citizens' oversight committee shall be to inform

the public concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the proper expenditure of taxpayers' money for school construction." Educ. Code § 15278(b); 2000 Cal. Legis. Serv. Ch. 44 (A.B. 1908) (West).

Tasked with reviewing relevant documentation and informing the public on the expenditure of bond proceeds, citizens' oversight committees are often the first independent body to review the construction contracts behind those expenditures. However, citizens' oversight committees are granted no enforcement power. Instead, the statutory language of the Strict Accountability Act explicitly recognizes the importance of citizen and taxpayer suits for enforcement. *See* Educ. Code § 15284(a) (authorizing citizen-taxpayer suits), (c) (authorizing pre-trial injunctive relief).⁶

If the Validation Statutes applied to every contract submitted to the citizens' oversight committees for review, the committees would almost never be able to inform the public of improprieties in the contracting or construction process within the 60-day time frame. *See Ontario*, 2 Cal. 3d at 342 (if "contract" in Section 53511 means *any contract*, "virtually every taxpayer has become an

⁶ Taxpayer actions are one of the most effective mechanisms for protecting the public fisc and holding public agencies accountable to the law and the general public. Taxpayer actions are so integral to our system of checks and balances on public spending that they are legislatively encouraged. *See, e.g.*, Civ. Proc. Code §§ 526a (taxpayer standing) ("CCP 526a"), 1021.5 (private attorney general fee-shifting statute); *see also Blair v. Pitchess*, 5 Cal. 3d 258, 267-268 (1971) (the purpose of CCP 526a is to "enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement").

‘interested person’ with regard to virtually every action of a local public agency. It is unreasonable to assume that the members of such a large and amorphous group are likely to have prompt notice of each agency action affecting them” and not just those “interested persons” who “were likely to have notice of the agency’s action”). Only the most fortuitous of discoveries of improprieties or violations of the law by such citizens’ oversight committees could be legally challenged within the narrow validation time frame even though those challenges would have no effect or impact on the already completed bonds or public financing.⁷

B. The Legislative History Supports Taxpayer Enforcement beyond Validation Period

There is no independent statute of limitations on taxpayer actions under Education Code Section 15284; and for the type of relief requested by Taxpayer, there is only the general rule that claims must be adjudicated within four years from discovery. *See* Civ. Proc. Code § 343; *but see Ontario*, 2 Cal. 3d at 345 (referencing a one-year statute of limitations under CCP 526a). Whether a one-year period, a four-year period, or the doctrine of laches governs the time within which a taxpayer has to bring an action under the Education Code, the time within which to bring a taxpayer action for non-financing-related contracts and for relief other than a declaration of validity is not limited to the 60-days in the Validation Statutes.

⁷ A school district’s governing board is only required to provide its citizens’ oversight committees *annual* audit reports from which the committees complete their review. *See* Educ. Code § 15286.

“It is [to be] assumed that the Legislature has existing laws in mind at the time that it enacts a new statute.” *Schmidt v. Southern Cal. Rapid Transit Dist.*, 14 Cal. App. 4th 23, 27 (1993). In addition, “[t]he law shuns repeals by implication. In fact, [t]he presumption against implied repeal is so strong that, [t]o overcome the presumption the two acts must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together.” *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 569 (1998) (internal citations and quotation marks omitted).⁸

As such, the Court must assume that the Legislature was aware of CCP 526a when it enacted the Validation Statutes and aware of both of the aforementioned when it enacted the Strict Accountability Act. The legislative history supports this assumption. CCP 526a, enacted in 1909, made no mention of municipal bonds. *See* Act of Mar. 20, 1909, ch. 348, 1909 Cal. Stat. 578 (original

⁸ In *Stop Youth Addiction*, this Court held that standing to bring a private action under California’s unfair competition law (UCL) had not been impliedly repealed by Penal Code sections criminalizing the same. *See Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 561-562 (1998). In rejecting the defendant’s Penal Code exclusive-remedy argument, this Court concluded that, absent express language to the contrary, the remedies and penalties under the UCL and the Penal Code were cumulative. *Id.* at 573. This case is analogous in that, here, the District and the Contractor are essentially arguing that the Validation Statutes impliedly repealed Education Code Section 15284 (and CCP 526a) with respect to all lease-leaseback agreements and other bond-funded school construction contracts (and not just those contingent on bond financing or that are financing vehicles themselves).

enactment of CCP 526a). In 1967, six years after the enactment of the Validation Statutes and three years after the enactment of Section 53511, the Legislature amended CCP 526a to exempt the “offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities” from challenge thereunder. Act of July 12, 1967, ch. 706, 1967 Stat. 2080 (CCP 526a, as amended).⁹ Finally, when enacting the Strict Accountability Statute, the Legislature included a provision expressly stating that the rights, remedies, or penalties provided therein are *cumulative* to the rights, remedies, or penalties under other laws. *See* Educ. Code § 15284(c). This is strong if not conclusive evidence that the Legislature understood that these statutes would interact and did not intend to supplant or abrogate the rights of taxpayers to bring an action under Education Code Section 15284 (or CCP 526a) to challenge the wasteful spending of bond proceeds with the more restrictive Validation Statutes. *Accord* 92 Cal. Op. Att’y Gen. *1, *12 (2009) (“Apart from invalidation of the bond issue, other remedies may be available pursuant to a taxpayer’s suit under [CCP 526a] or actions by the Attorney General.”).¹⁰

⁹ CCP 526a was again amended in 2018 to list the types of taxes that would support standing thereunder but did not change the language related to municipal bonds except to separate it into its own subdivision. *See* Civ. Proc. Code § 526a.

¹⁰ *See also Austin v. Medicis*, 21 Cal. App. 5th 577, 585 (2018) (“The nature of the cause of action and the primary right involved, not the form or label of the cause of action or the relief demanded, determine which statute of limitations applies.”). “Where defendant’s wrongdoing injures both personal and property rights that become manifest at different times, a separate cause of action accrues when each primary right is injured. I.e., injury to one type

III. CONCLUSION

It is clear why the District and the Contractor want to immunize lease-leaseback construction contracts from challenge: they are exempt from the competitive-bidding process. *See* Educ. Code § 17406. As recognized by the Court of Appeal, the contracts at issue here – despite how the District and the Contractor chose to characterize them – are just standard construction contracts. *Davis II*, 57 Cal. App. 5th at 918 n.2. School districts and construction companies should not be permitted to avoid competitive-bidding requirements or invoke the Validation Statutes’ limited but highly accelerated judicial review merely by calling the contracts “lease-leaseback agreements.”

For these reasons and all of the reasons stated in Taxpayer’s answering brief, this Court should affirm the Court of Appeal’s opinion in *Davis II*.

of primary right does not start the statutory period running on a later manifesting injury of a different type.” Cal. Prac. Guide Civ. Pro. Before Tr. Stat. of Limitations Ch. 2-A, § 2:3 (citing *Grisham v. Philip Morris U.S.A., Inc.*, 40 Cal. 4th 623, 641-646 (2007)).

Certificate of Word Count

I, Cory J. Briggs, certify that this document is set in 13-point Century Schoolbook font and contains under 2,900 words, as counted by the WordPerfect word processing program used to generate the document.

Dated: August 23, 2021.

Cory J. Briggs

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Date: August 23, 2021

Signature: 

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Supreme Court of California

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