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July 29, 2015

Honorable Tani Gorre Cantil-Sakauye, Chief Justice,  
and Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

Re: *Davis v. Fresno Unified School District, et al.* Case No. S 227786  
Los Angeles Unified School District's  
Amicus Curiae Letter in Support of Petitions for Review of Court of Appeal Decision  
Court of Appeal No. F068477  
Fresno County Superior Court No. 12CECG03718

To the Chief Justice and Associate Justices of the Supreme Court of California:

Pursuant to California Rules of Court 8.500(g), the **Los Angeles Unified School District** ("LAUSD") requests the Supreme Court grant review of *Davis v. Fresno Unified School District*, Case No. S 227786 ("Opinion" or "Op.").<sup>1</sup>

LAUSD is California's largest public school district, encompassing the City of Los Angeles and 31 other cities within Los Angeles County. LAUSD is currently undertaking a \$19.5 billion voter approved bond funded school construction program. LAUSD has used Education Code section 17406 ("Section 17406") to procure construction services on 116 separate projects with a total expenditure of public funds exceeding \$3.6 billion. Approximately 33 separate general contractors and 1,732 separate subcontractors have worked on these projects.

The Opinion has left unsettled important questions of how procurement of construction services using Section 17406 may now be transacted and has also created a conflict with the opinion of the Fourth Appellate District in *Los Alamitos Unified School District v. Howard Contracting, Inc.* (2014) 229 Cal.App.4th 1222 ("*Los Alamitos*"). This uncertainty and conflict must be resolved to ensure that LAUSD (and other school districts) may continue to appropriately procure construction services utilizing Section 17406 without exposure to legal challenges based upon the format of the transactions.<sup>2</sup>

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<sup>1</sup> To avoid repetition, LAUSD joins in the Petitions for Review of Fresno Unified School District and Harris Construction Co., Inc.

<sup>2</sup> The Opinion likely creates the same issues for community college districts in California. (See Ed. Code, § 81335.)

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July 29, 2015

Honorable Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, California 94102-7303

**SUPREME COURT NO. S227786**  
**COURT OF APPEAL NO. F068477**

Re: Letter in Support of Respondent, Harris Construction Company, Inc.

Dear Honorable Justices:

Pursuant to Rule 8.504(g) of the California Rules of Court, the **Construction Employers Association** ("CEA") respectfully submits this Amicus Curiae letter in support of the Petition for Review by Respondent, Harris Construction Company, Inc. CEA is familiar with the questions involved in this case and supports the granting of the Petition for Review.

Amicus Curiae Construction Employers Association (CEA) is a California non-profit trade association representing over 100 of the largest commercial building contractors in Northern California whose members performed over \$12 billion worth of construction work last year. CEA members performed approximately \$1.5 billion worth of Lease Lease Back school construction projects. Respondent is a member of CEA.

CEA believes that pursuant to Rule 8.500(b)(1) it is necessary for the Court to order review of the Appellate Court Decision to settle important questions of law as they relate to Lease Lease Back school construction projects in California. One of those questions is whether independent contractors and consultants can be deemed employees of the school district and subject to Government Code Section 1090. CEA members who are engaged in Lease Lease Back projects may have an independent relationship with a school district for pre-construction services. The Appellate Court Decision has created uncertainty with regard to the long standing principle that these contractors are independent contractors and not government employees subject to Government Code Section 1090.

Based upon the Appellate Court Decision, CEA members who perform Lease Lease Back work are not sure how to proceed with current projects under construction and projects that are

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July 30, 2015

File No. 15844.00003

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Chief Justice Tani G. Cantil-Sakauye and Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: Davis v. Fresno Unified School District  
Fresno County Superior Court  
Case No. 12CECG03718  
Fifth District Court of Appeal  
Case No. F068477  
California Supreme Court Case No. S227786

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to rule 8.1125(a) of the California Rules of Court defendant **Fresno Unified School District** (FUSD) requests that this Court order depublication of the decision in *Davis v. Fresno Unified School District et al.* (2015) 237 Cal.App.4th 261 (*Davis*).

*Davis* concerns “lease leaseback” school construction contracts. Lease-leaseback is authorized by Education Code section 17406, subdivision (a), which allows a school district to lease land for a minimum of \$1 to a contractor if the instrument by which the property is let requires the contractor to construct a building or buildings on the site for the use of the district during the term of the instrument, and provides that title to the building(s) vests in the district at the end of the term. The contractor is responsible for delivering the project at a fixed, “guaranteed maximum price,” which allows the school district to know in advance and control the actual cost of the project. Section 17406(a) expressly exempts lease-leaseback arrangements from the competitive bidding requirements of Education Code Section 17417.

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*Attorney at Law*

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July 30, 2015

The Honorable Chief Justice Tani G. Cantil-Sakauye  
The Honorable Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

RE: *Davis v. Fresno Unified School District* (2015) 237 Cal. App.4th 261  
**Supreme Court Case No. S227786**; Court of Appeal Case No. F068477 (5th District)  
California Association of School Business Officials Letter in Support of Fresno Unified School District's Petition for Review (Cal. R. Ct. 8.500(g))

To the Honorable Chief Justice Tani G. Cantil-Sakauye and the Honorable Associate Justices:

The California Supreme Court's review of the Fifth District of the California Court of Appeal's holding in *Davis v. Fresno Unified School District* (2015) 237 Cal. App.4th 261 ("Davis") is warranted to settle critically important questions of law that are of statewide interest. The Court of Appeal's holding has left California public school districts in a state of paralyzing confusion regarding the legal requirements for a widely used public school construction delivery method, commonly referred to as "Lease-Leaseback," and codified in Education Code section 17406. *Davis* has additionally muddied the waters regarding conflict of interest laws under Government Code section 1090 ("Section 1090") by extending the reach of Section 1090 to non-employee consultants. This misapplication of Section 1090 will substantially interfere with a public entity's ability to hire necessary consultants.

We write on behalf of the **California Association of School Business Officials** ("CASBO") to support the petitions for review in *Davis* filed by Defendants/Respondents Fresno Unified School District and Harris Construction Company Inc. Since 1928, CASBO has been a premier statewide resource for California's public school districts, serving more than 4,000 individual school district and county office of education members. CASBO members represent every facet of school business management and operations. CASBO promotes business best practices, and advocates for sound policy regarding school business and finance issues. CASBO's members work directly on Lease-Leaseback construction projects, school district financing arrangements and a variety of related matters in support of educational agencies. As a result, CASBO holds a strong interest in supporting this Court's review of the *Davis* opinion. We note that the undersigned also filed an alternative letter requesting the Supreme Court's depublication of the *Davis* opinion.

*Limited Liability Partnership*

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July 30, 2015

VIA OVERNIGHT DELIVERY

The Honorable Tani Gorre Cantil-Sakauye  
Chief Justice  
The Honorable Kathryn M. Werdegar  
Associate Justice  
The Honorable Ming W. Chin  
Associate Justice  
The Honorable Carol A. Corrigan  
Associate Justice  
The Honorable Goodwin H. Liu  
Associate Justice  
The Honorable Mariano-Florentiono Cuéllar  
Associate Justice  
The Honorable Leondra R. Kruger  
Associate Justice  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, California 94102-4797

Re: *Stephen K. Davis*  
*v. Fresno Unified School District, et al.*  
*Court of Appeal Case No. F068477*  
Request for Depublication

Dear Honorable Chief Justice and Associate Justices:

Pursuant to Rule of Court 8.1125, the **Associated Builders and Contractors of San Diego, Inc.** (ABC San Diego), requests depublication of the opinion filed on June 1, 2015, by the Fifth Appellate District Court in *Stephen K. Davis v. Fresno Unified School District et al.*, (*Davis*), as modified (June 19, 2015), review filed (July 14, 2015).<sup>1</sup> In *Davis*, the Appellate Court created requirements for “lease-leaseback” school construction contracts which are not part of the authorizing statute, Education Code section 17406. Not only did the Court create requirements without statutory authority, the requirements it set are hopelessly vague. The Appellate Court provided no guidance on such things as what financing or lease term will satisfy the undefined requirements. Thousands of school construction projects awarded by districts across the State and amounting to billions of dollars of school spending have been awarded via

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<sup>1</sup> Should the Court deny this request for depublication, ABC San Diego requests the Court accept the Petitions for Review filed by Fresno Unified School District and Harris Construction Co. Inc. This request will be further discussed in ABC San Diego’s *amicus curiae* letter in support of Supreme Court review.



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File Number  
4498.001

July 31, 2015

Honorable Tani Gorre Cantil-Sakauye, Chief Justice,  
and Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

Re: ***Davis v. Fresno Unified School District***, Case No. S 227786  
Coalition for Adequate School Housing's  
Amicus Curiae Letter in Support of Petitions for Review of Court of Appeal Decision  
Court of Appeal No. F068477  
Fresno County Superior Court No. 12CECG03718

To the Chief Justice and Associate Justices of the Supreme Court of California:

Pursuant to California Rules of Court 8.500(g), the **Coalition for Adequate School Housing** ("C.A.S.H.") requests review to be granted of *Davis v. Fresno Unified School District*, Case No. S 227786 (the "Opinion" or "Op.").<sup>1</sup>

C.A.S.H. is a statewide trade association of California school districts and private consultants that serve those school districts. C.A.S.H. was formed in 1978 to promote, develop and support state and local funding for California school district construction. C.A.S.H. membership contains over 1,500 school districts, county offices of education and private sector businesses including architects, attorneys, consultants, construction managers, financial institutions, modular building manufacturers, contractors, developers, and others that are in the school facilities industry. C.A.S.H.'s school district members represent 93 percent of

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<sup>1</sup> To avoid repetition, C.A.S.H. joins in the petitions for review of Fresno Unified School District and Harris Construction Company, Inc, as well as the letter requesting review submitted by the Los Angeles Unified School District.





August 3, 2015

The Honorable Tani Cantil-Sakauye, Chief Justice, and Honorable Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: Letter in Support of Fresno Unified School District's Petition for Review  
*Stephen K. Davis v. Fresno Unified School District, et al.*, Case No. S227786  
After the Published Opinion in Court of Appeal, Fifth Appellate District,  
Case No. F068477, published June 1, 2015, as modified June 19, 2015  
Fresno County Superior Court No. 12CECG03718

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AUG -4 2015

Dear Chief Justice Cantil-Sakauye and Associate Justices:

OF THE CALIFORNIA SUPREME COURT

Pursuant to the California Rules of Court, Rule 8.500, subdivision (g), the **California School Boards Association** ("CSBA") through its Education Legal Alliance ("ELA") submits this amicus letter in support of the Petition for Review filed by the Fresno Unified School District ("Fresno") with regard to the June 1, 2015 decision (as modified on June 19, 2015) in the above-referenced case, *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261 ("Court of Appeal decision").

CSBA is a non-profit corporation duly formed and validly existing under the laws of the State of California. CSBA is a member-driven association composed of the governing boards of almost all 1,000 K-12 school districts and county offices of education ("COEs") throughout California. The ELA is composed of nearly 730 CSBA members dedicated to addressing public education legal issues of statewide concern to districts and COEs and to their students. The purpose of the ELA, among other things, is to ensure that local governing boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy decisions for their local educational agencies.

The ELA strongly supports the Petition for Review. A ruling by the Supreme Court in this matter is "necessary to secure uniformity of decision" and "to settle an important question of law." (Cal. Rules of Court, rule 8.500, subd. (b)(1).) As described in more detail below, the Court of Appeal decision striking down a lease-leaseback school construction ("LLB") contract stands in contrast to other decisions that have approved them. Moreover, such contracts serve as a critical tool that districts and COEs use to build school facility projects. The Court of Appeal decision has created significant confusion and uncertainty regarding the viability of LLB contracts. The result is that many facility projects have been put on hold, cancelled, or scaled back – harming students, districts and COEs, and taxpayers. A ruling by this Court would help clarify the law, thereby helping students, districts and COEs, and taxpayers.



August 4, 2015

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice  
The Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

Re: *Stephen K. Davis v. Fresno Unified School District*;  
Fifth District Court of Appeal, Case No. F068477  
Amicus Curiae Letter of Associated General Contractors

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I write on behalf of the **Associated General Contractors of California and the Associated General Contractors of America, San Diego Chapter** (collectively "AGC").<sup>1</sup> AGC respectfully submits this amicus curiae letter pursuant to Rule 8.500(g), California Rules of Court, to request that the Court grant review in this case, in order to secure uniformity of decision and to settle important questions of law.

I.  
THE INTERESTS OF AGC

AGC represents more than 1,500 individuals and companies throughout California. AGC members are general contractors, specialty contractors, and material suppliers who perform billions of dollars of construction work for public entities and private owners throughout California. AGC members also include associate or affiliate members that provide legal, accounting, insurance, bonding, and safety services to construction industry clients. AGC monitors and advocates on behalf of its members with respect to significant legislation and other legal issues relevant to the construction business. In California, AGC is known as "*the voice of the construction industry*."

AGC has long supported fair and honest competition in the letting of public works contracts, without fraud, favoritism, or corruption. At the same time, AGC has been at

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<sup>1</sup> This letter has been approved by the necessary officers of both AGC of California and AGC of San Diego. It was prepared by a team of AGC member lawyers, including me; Eileen M. Diepenbrock of Diepenbrock Elkin LLP, Sacramento; P. Randolph Finch Jr. of Finch, Thornton & Baird LLP, San Diego; William K. Hurley of Miller, Morton, Caillat & Nevis LLP, San Jose; and Arthur G. Woodward of Reynolds Maddux Woodward LLP, Auburn.



August 5, 2015

VIA OVERNIGHT DELIVERY

The Honorable Tani Gorre Cantil-Sakauye  
Chief Justice  
The Honorable Kathryn M. Werdegar  
Associate Justice  
The Honorable Ming W. Chin  
Associate Justice  
The Honorable Carol A. Corrigan  
Associate Justice  
The Honorable Goodwin H. Liu  
Associate Justice  
The Honorable Mariano-Florentiono Cuéllar  
Associate Justice  
The Honorable Leondra R. Kruger  
Associate Justice  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, California 94102-4797

Re: *Stephen K. Davis*  
*v. Fresno Unified School District, et al.*  
Court of Appeal Case No. F068477  
*Amicus Curiae* Letter In Support Of Petitions For Review Of Court Of Appeal Decision

Dear Honorable Chief Justice and Associate Justices:

Pursuant to Rule of Court 8.500, subdivision (g), the **Associated Builders and Contractors of San Diego, Inc.** (ABC San Diego) submits this *amicus curiae* letter in support of the Petitions for Review filed by Fresno Unified School District and Harris Construction Co. Inc., (collectively, "Petitions") regarding the opinion filed on June 1, 2015, by the Fifth Appellate District Court in *Stephen K. Davis v. Fresno Unified School District et al.*, (*Davis*), as modified (June 19, 2015), review filed (July 14, 2015). In *Davis*, the Appellate Court created requirements for "lease-leaseback" school construction contracts which are not part of the authorizing statute, Education Code section 17406. Not only did the Appellate Court create requirements without statutory authority, the requirements it set are hopelessly vague. The Appellate Court provided no guidance on such things as what financing or lease term will satisfy the undefined requirements.

ABC San Diego supports the Petitions and urges this Court to grant the Petitions because the *Davis* decision has far-reaching consequences on construction throughout California. The decision threatens a

August 20, 2015

VIA OVERNIGHT DELIVERY

The Honorable Tani Gorre Cantil-Sakauye  
Chief Justice  
The Honorable Kathryn M. Werdegar  
Associate Justice  
The Honorable Ming W. Chin  
Associate Justice  
The Honorable Carol A. Corrigan  
Associate Justice  
The Honorable Goodwin H. Liu  
Associate Justice  
The Honorable Mariano-Florentiono Cuéllar  
Associate Justice  
The Honorable Leondra R. Kruger  
Associate Justice  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, California 94102-4797

Re: *Stephen K. Davis v. Fresno Unified School District, et al.*  
*Court of Appeal Case No. F068477*  
*Supreme Court Case No. S227786*  
*Amicus Curiae Letter In Support Of Petitions For Review Of Court Of Appeal Decision*

Dear Honorable Chief Justice and Associate Justices:

Pursuant to Rule of Court 8.500, subdivision (g), the **Association of California Construction Managers (ACCM)** submits this *amicus curiae* letter in support of the Petitions for Review filed by Fresno Unified School District and Harris Construction Co. Inc., (collectively, "Petitions") regarding the opinion filed on June 1, 2015, by the Fifth Appellate District Court in *Stephen K. Davis v. Fresno Unified School District et al.*, (*Davis*), as modified (June 19, 2015), review filed (July 14, 2015). In *Davis*, the Appellate Court created requirements for "lease-leaseback" school construction contracts which are not part of the authorizing statute, Education Code section 17406 ("Section 17406"). Not only did the Appellate Court create requirements without statutory authority, the requirements it set are hopelessly vague. The Appellate Court provided no guidance on such things as what financing or lease term will satisfy the undefined requirements. Further, the *Davis* court improperly expanded the scope of Government Code