

# UPDATE: California Supreme Court to Review Whether Financing Is Required to Validate Lease-Leaseback Contracts

March 24, 2021

On March 17, 2021, the California Supreme Court granted review of the Fifth Appellate District's recent opinion in a long-running court battle over school district lease-leaseback construction contracts. (*Davis v. Fresno Unified School District* (2020) 57 Cal.App.5th 911 (*Davis II*), review granted Mar. 17, 2021, No. S266344.) The Supreme Court's review is limited to one question: whether a lease-leaseback construction contract that is financed solely through bond proceeds, rather than by the contractor, is a type of "contract" subject to the validation statutes, which could preclude legal challenges to lease-leaseback contracts.

*Davis II* held a taxpayer's challenge to the legality of a school district lease-leaseback contract was not mooted by project completion and the taxpayer could continue to seek disgorgement (i.e., the return) to the school district of payment made to the contractor for the completed project. In support of this holding, the Court of Appeal concluded that the contract was not immunized from legal attack by the validation statutes because the lease-leaseback contract at issue did not include contractor financing.

Other appellate courts had disagreed on this point, resulting in a split of authority warranting review by the California Supreme Court. The Supreme Court's review should clarify whether a financing component for lease-leaseback contracts is required to receive the protections of the validation statutes. For now and so long as this remains an open question, however, failing to include a financing component may extend the time period under which a lease-leaseback contract can be challenged by interested persons.

For further information regarding the impact of this decision on your district's lease-leaseback contracts or assistance with your district's construction program, please contact a member of our Construction Practice Group.