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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 **FAIR EDUCATION SANTA**  
12 **BARBARA, INC., a 501(c)(3)**  
organization,

13 Plaintiff,

14 vs.

15 **SANTA BARBARA UNIFIED**  
16 **SCHOOL DISTRICT, a public school**  
district; and **JUST COMMUNITIES**  
17 **CENTRAL COAST, INC., a 501(c)(3)**  
organization,

18 Defendants.

CASE NO.: 2:18-cv-10253-SVW-  
(PLAx)

**SANTA BARBARA UNIFIED**  
**SCHOOL DISTRICT'S**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN OPPOSITION**  
**TO MOTION FOR A**  
**PRELIMINARY INJUNCTION**

Date: January 28, 2019  
Time: 1:30 p.m.  
Courtroom 10A

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1 **A. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Fair Education of Santa Barbara, Inc. invoked this court’s jurisdiction by  
3 claiming that the Santa Barbara Unified School District’s contract with Just  
4 Communities of the Central Coast, Inc. for diversity, equality, and inclusiveness  
5 training is anti-Caucasian, anti-male and anti-Christian, and that it violates Title  
6 VI of the Civil Rights Act and 42 U.S.C. § 1983. But in a plot twist worthy of a  
7 John Grisham novel, instead of seeking a preliminary injunction on those claims,  
8 FESB instead seeks an injunction on a state law claim that it could have brought  
9 in the state court: an alleged violation of California Public Contract Code §  
10 20111, because the SBUSD-JCCC contract wasn’t competitively bid. (The  
11 solution to the plot twist is simple and not worthy of Grisham. FESB hasn’t  
12 sought an injunction on its civil rights claims because they fail under controlling  
13 Ninth Circuit authority. See *Arce v. Douglas*, 793 F.3d 968, 973-975 (9th Cir.  
14 2015)(upholding Mexican American Studies Program despite claims it promoted  
15 “resentment toward a race or class of people.”); *Monteiro v. Temple Unif. Sch.*  
16 *Dist.*, 158 F.3d 1022, 1028 (9<sup>th</sup> Cir. 1998)(rejecting claim that African American  
17 student’s equal protection rights were violated by having to read Huckleberry  
18 Finn, which uses a racially derogatory term 215 times.) )

19 Plot twists aside, FESB has not met its heavy burden to obtain the  
20 extraordinary relief of a preliminary injunction on its competitive bidding claim  
21 for the following reasons.

22 1. FESB has no likelihood of success on the merits. California law  
23 permits a public entity to contract for services without competitive bidding if (1)  
24 the services are specialized services, and (2) the public entity itself or some other  
25 public entity cannot perform those services. *Service Employees Internat. Union v.*  
26 *Board of Trustees*, 47 Cal.App. 4th 1661, 1673 (1996). FESB has not cited a  
27 single California case — and SBUSD has found no cases — voiding a non-  
28 competitively-bid contract because those contracted-for services weren’t special.

1 The California Attorney General has also ruled that competitive bidding isn't  
2 required for a school district to contract for a program with similar goals to  
3 JCCC's: at-risk student dropout prevention and retention programs. JCCC  
4 provides a special service under California law because it is offered by specially  
5 trained facilitators to assist SBUSD in reducing the minority-student achievement  
6 gap, and it is not offered by SBUSD or any other public entity, and is based upon  
7 the work of numerous scholars in the diversity education field.

8         2. FESB has not made a "clear showing" of irreparable harm if a  
9 preliminary injunction is denied. Even if FESB somehow suffers a monetary  
10 injury from the SBUSD-JCCC contract, "[i]t is well established ... that . . .  
11 monetary injury is not normally considered irreparable." *Los Angeles Memorial*  
12 *Coliseum Commission v. National Football League*, 634 F.2d 1197, 1202 (9th  
13 Cir. 1980). The irreparable-injury-bidding cases cited by FESB at page 26 of its  
14 brief involve disappointed bidders. FESB does not allege it would have bid on  
15 this contract.

16         3. The balance of hardships tips strongly in favor of SBUSD. If  
17 SBUSD is enjoined, it will be deprived of a program that has reduced the  
18 achievement gap between Latino and other students. FESB only suffers the  
19 "psychological consequence presumably produced by observation of conduct  
20 with which one disagrees . . . ." *Valley Forge Christian College v. Americans*  
21 *United for Separation of Church and State, Inc.* 454 U.S. 464, 485 (1982), which  
22 is insufficient as a matter of law.

23         4. While the public interest favors competitive bidding when it is  
24 required, it also favors academic success by all students regardless of race,  
25 ethnicity, gender or religion, and SBUSD's efforts to achieve that goal will be  
26 impaired if it is preliminarily enjoined.

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1 **B. FACTS**

2 **1. The JCCC Program**

3 JCCC's program is not part of SBUSD's regular curriculum. None of its  
4 materials have been adopted by SBUSD for use in regular classes. The program  
5 is completely voluntary. No one, not a teacher, a student or a parent, is  
6 compelled to attend.

7 JCCC's program focuses primarily on training educators, and focuses on  
8 issues of diversity, equity and inclusion. Its main purpose is to eradicate the  
9 persistent educational achievement gap among minority students. The JCCC  
10 program also has a separate student component (who can only attend with  
11 parental consent), and has sessions for parents and community members.

12 Participants in JCCC's program obtain skills and insights that help them to  
13 reduce the achievement gap among students of color and students from other  
14 marginalized groups without taking anything away from Caucasian students.  
15 JCCC draws upon research from a variety of fields to inform its approach and to  
16 better teach educators, students, and parents. As described in the declaration of  
17 Jarrod Schwartz, this research comes from many leading lights in diversity  
18 education, and include the Centers of Disease Control & Prevention's Division of  
19 Adolescent and School Health, Pedro Noguera and Maurianne Adams. JCCC  
20 also works with local researchers at UCSB and Westmont College.

21 JCCC's programs are taught by facilitators. At any one time, there are  
22 between twelve and fifteen facilitators in its primary educator training program.  
23 Most of the facilitators are former educators and have bachelor degrees, and  
24 some have advanced degrees. Before they are hired, they go through sixty hours  
25 of JCCC training or its equivalent, and go through another eight to twelve hours  
26 of specialized training for the educator program.

27 JCCC is based in Santa Barbara and primarily serves the tri-county area of  
28 Ventura, Santa Barbara and San Luis Obispo. It knows the local community, is



1 accountable to the local community, most its facilitators live and work locally,  
2 and most have attended or worked in the local school system. JCCC knows the  
3 culture of the Santa Barbara community and the issues which allow it to make its  
4 programs relevant to the districts and communities in which it works.

5 Far from being a radical, discriminatory outlier used solely by SBUSD as  
6 FESB alleges, JCCC has worked in many school districts in Santa Barbara  
7 County. JCCC has also presented its program in school districts in other states,  
8 and has presented other implicit bias training to the Santa Barbara Police  
9 Department and various Santa Barbara County agencies. Implicit bias programs  
10 using similar materials are conducted in educational and other institutions  
11 nationwide, including Oregon State University, USC, UCLA, and Scripps  
12 College.

13 As a result, the program enjoys a high level of support from SBUSD  
14 educators, parents, and others with whom it works:

- 15 • “I have personally attended several Just Community events . . . As a  
16 Caucasian male, that came from a Christian tradition, I felt very safe  
17 and did not feel targeted . . . [T]he group worked very hard to create  
18 an environment where difficult subjects could be discussed in a way  
19 that was comfortable for all participants.” Declaration of Jon Clark,  
20 President of the James S. Bower foundation.
- 21 • “I understand that a group of people have criticized Just  
22 Communities for being divisive and anti-establishment (specifically  
23 anti-[C]aucasian, anti-male, anti-Christian). . . [A]s a Caucasian male  
24 who was brought up Christian, I saw no basis [in the program I  
25 attended] for being ‘anti-‘ any of those things.” Declaration of  
26 Douglas Fischer.
- 27 • “These Just Communities workshops have gone a long way in  
28 helping our school work on closing the achievement gap, which is

1 vitally important not just to individual students, but to our  
2 community as a whole . . . .” Declaration of Kelly Savio, Dos  
3 Pueblos High School English Teacher.

- 4 • “[T]he school district aims to serve all students with equity, but we  
5 fall short. . . In order to move toward greater equity, the district  
6 engaged [JCCC] to help staff narrow learning gaps  
7 disproportionately demonstrated by our students of color. . .Just  
8 Communities is helping to recognize the unintentional consequences  
9 of ‘colorblindness’ . . .that affect us and our students.”  
10 Declaration of Melanie Jacobson, SBUSD world history teacher for  
11 25 years.

- 12 • “I was particularly struck by the [JCCC] facilitators’ ability to create  
13 an effective learning environment for people with a range of social  
14 class statuses. . .We are incredibly fortunate to have such a valuable  
15 resource in our community . . . .” Declaration of Tania Israel,  
16 Professor and Chair, Department of Counseling, Clinical, and  
17 School Psychology, UCSB.

## 18 **2. SBUSD’s Relationship and Contracts With JCCC**

19 SBUSD began working with JCCC in 2005 in a series of pilot programs  
20 and conferences, during which JCCC taught courses to teachers, parents and  
21 students. A 2013 program evaluation conducted by Ruyabi Srivastava and  
22 Michelle Enriquez showed that JCCC’s program had made a measurable  
23 contribution to Latino Student Achievement. Exhibit 1. After that evaluation,  
24 SBUSD expanded its use of JCCC’s training and the parties entered into a series  
25 of contracts beginning in the 2014-2015 school year. Exhibit 2. The current  
26 contract is for 2018-2019 and was approved by SBUSD’s board on October 9,  
27 2018. Exhibit 3. Like JCCC’s contracts with all other Santa Barbara County  
28 school districts, JCCC was not asked to bid on any SBUSD contracts.

1           **3. The Providers of Implicit Bias Training Identified by FESB**

2           Relying upon hearsay copies of internet pages, FESB alleges that there are  
3 “scores” of implicit bias training companies that provide JCCC’s achievement-  
4 gap-reduction-implicit-bias program. FESB lists only four at its Exhibits N-Q,  
5 one of which — UCSB — is a public entity. None of them offers what JCCC’s  
6 program does: specialized training designed for school districts to reduce the  
7 minority student achievement gap by structurally changing the ways teachers  
8 approach their teaching. Here are the four programs FESB identifies and why  
9 they are different:

10           **a. Santa Barbara Pathways.** SBP provides college preparedness  
11 workshops, tutoring and mentoring to students. In contrast, JCCC works  
12 primarily with educators and is focused on changing the conditions in the school  
13 system so that all students can succeed. SBUSD already works with SBP in  
14 several of its schools and it wouldn’t also contract with JCCC if SBP and JCCC  
15 did the same thing.

16           **b. The California Teachers Association.** The CTA has a very basic  
17 introductory program designed to help educators value diversity. The CTA  
18 program doesn’t prepare teachers to tackle the root causes of the achievement  
19 gap, it doesn’t have components for students and parents, and it doesn’t include  
20 on-going coaching and support. The CTA itself has recognized that JCCC’s  
21 program is different. That’s why it partnered with JCCC in 2012 to provide  
22 services to improve student achievement in struggling schools, and in May 2017  
23 to facilitate a program for immigrant students and parents.

24           **c. Muse.** Muse appears to be a job search company and executive  
25 coaching firm without any connection to educational equity, diversity, inclusion,  
26 implicit bias, or work with schools and districts. Jarrod Schwartz of JCCC, who  
27 has twenty-six years of implicit bias training experience, had never before heard  
28 of them.

1           **d. The NewSchools.** The NewSchools is a venture fund that provides  
2 investment capital to teachers and other individuals who want to design and start  
3 innovative schools. It also supports the development of diverse school leaders.  
4 But it doesn't provide anything remotely like the comprehensive educator,  
5 student, and parent training or systems-change consulting and coaching work  
6 JCCC provides.

7           **4. The Actual Providers of Services Similar to JCCC's**

8           There are three similar providers of educational equity training.

9           **a. Education Equity Consultants.** EEC is based in St. Louis, MO  
10 and provides a program similar to JCCC's teacher training program. EEC  
11 primarily works in the Midwest.

12           **b. National Equity Project.** NEP works primarily in Northern  
13 California, but also works in other parts of the country. NEP has a singular  
14 focus on racial achievement gaps and racism, whereas Just Communities also  
15 addresses issues of socio-economic class, gender identity, sexual orientation,  
16 ability, language, and other social identities.

17           **c. Pacific Education Group.** PEG is based in San Francisco. PEG  
18 works specifically with educators and does not have student, parent or language  
19 access components like JCCC and it has no local knowledge of the Santa Barbara  
20 community.

21 **C. ARGUMENT**

22           **1. FESB Has Not Met the Preliminary Injunction Requirements**

23           FESB "bears the heavy burden of making a 'clear showing' that it [i]s  
24 entitled to a preliminary injunction." *Ctr. for Competitive Politics v. Harris*, 784  
25 *F.3d 1307, 1312 (9th Cir. 2015)*. That requires FESB to prove that (1) it is likely  
26 to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence  
27 of preliminary relief; (3) the balance of equities tips in its favor; and (4) an

28 ///

1 injunction is in the public interest. *Jackson v. City and County of San Francisco*,  
 2 746 F.3d 953, 958 (9<sup>th</sup> Cir. 2014). FESB hasn't met that burden.

3 **a. Likelihood of Success on the Merits**

4 FESB cannot cite, and SBUSD has not found, a single case voiding a non-  
 5 competitively-bid contract because it was not a special service.<sup>1</sup> The reason is  
 6 simple: California courts construe the special-service rule broadly and practically  
 7 so that public entities can obtain important services they cannot themselves  
 8 provide.

9 **i. The California Statutes and Their Construction by California**  
 10 **Courts.**

11 California has two statutes providing exceptions to the general rule  
 12 requiring competitive bidding by public entities. Public Contract Code §  
 13 20111(d) says that bidding is not required for contracts for, among other things  
 14 “professional services or advice.” Government Code § 53060 exempts from  
 15 competitive bidding “special services and advice in financial, economic,  
 16 accounting, engineering, legal, or administrative matters if such persons are  
 17 specially trained and experienced and competent to perform the special services  
 18 required.” See *Cobb v. Pasadena City Bd. of Ed.*, 134 Cal.App.2d 93, 96  
 19 (1955)(section 53060 “removes all question of the necessity of advertising for  
 20 bids for ‘special services’ by a person specially trained and experienced and  
 21 competent to perform the special services required.”)

22 There are no cases construing the term “professional services or advice” in  
 23 Public Contract Code § 20111(d). But there is a well-developed body of case law  
 24 addressing exceptions to the competitive bidding rules. For the last 99 years,<sup>2</sup>

25 \_\_\_\_\_  
 26 <sup>1</sup> In the only case where a non-competitively bid contract has been voided, the services were  
 27 indeed special services — legal services — but, at that time, they were available from the  
 28 county counsel. See *Jaynes v. Stockton*, 193 Cal.App.2d 47, 53-54 (1961).

<sup>2</sup> The first reported decision is *Miller v. Boyle*, 43 Cal.App.39 (1919), which held that a school  
 district didn't have to competitively bid an architect's contract.

1 both before and after the enactment of § 53060 in 1951, California courts have  
 2 held that competitive bidding is not required “where the nature of the subject of  
 3 the contract is such that competitive proposals would be unavailing or would not  
 4 produce an advantage, and the advertisement for competitive bid would thus be  
 5 undesirable, impractical, or impossible.” See *Graydon v. Pasadena*  
 6 *Redevelopment Agency*, 104 Cal.App.3d 631, 635-636 (1980)(citing cases). To  
 7 implement this rule, California courts require that “[c]ompetitive bidding  
 8 provisions must be read in the light of the reason for their enactment, or they will  
 9 be applied where they were not intended to operate and thus deny municipalities  
 10 authority to deal with problems in a sensible, practical way.” *Domar Electric,*  
 11 *Inc. v. City of Los Angeles*, 9 Cal.4th 161, 173 (2010) (internal quotations  
 12 omitted).<sup>3</sup>

13 **ii. The Special Services Test**

14 The test for whether a contract is for “special services” and need not be  
 15 competitively bid depends on “the nature of the services; the necessary  
 16 qualifications required of a person furnishing the services; and the availability of  
 17 the service from public sources.” *Service Employees Internat. Union v. Board of*  
 18 *Trustees*, 47 Cal.App.4th 1661, 1673 (1996)(internal quotations omitted). It  
 19 does not, as FESB argues at page 22 of its brief, depend on whether the  
 20 contractor has a special license, registration or certification.

21 Under that test, California courts have held that competitive bidding isn’t  
 22 required for all manner of contracts, including having a private company operate  
 23 and manage a college bookstore, *id.* at 1673-1674; having a pharmacy  
 24 administrator provide pharmacy services to HIV/AIDS patients, *Weinstein v.*  
 25 *County of Los Angeles*, 237 Cal.App.4th 944, 967-968 (2015); and having a  
 26

27  
 28 <sup>3</sup> To the extent the SBUSD-JCCC contract can be construed as a purchase by SBUSD of  
 JCCC’s materials, that purchase is also exempt from competitive bidding. See California  
 Public Contracts Code § 20118.3.

1 company do research and development work regarding new and improved  
2 techniques, methods and systems for the management and control of school  
3 property and equipment. *California Sch. Employees Assn. v. Sunnyvale*  
4 *Elementary Sch. Dist.*, 36 Cal.App.3d 46, 60-61 (1973).

5 Under these same principles, the California Attorney General recently  
6 opined that a school district did not have to bid a contract for services with a  
7 private, nonprofit organization, which shared some of the same goals as the  
8 JCCC program — to provide at-risk student dropout prevention and retention  
9 programs — under a school district’s “broad general authority to conduct their  
10 affairs” so long as the district did not act “in conflict with the laws and purposes  
11 for which school districts are established.” 93 Ops. *Cal. Atty. Gen.* 63 (2010).

12 **iii. JCCC’s Services Are Special and Can’t Be Obtained From**  
13 **Another Public Entity**

14 The JCCC contract satisfies the special services test: JCCC’s facilitators  
15 are “professional, highly trained and educated, experienced and extremely  
16 competent”<sup>4</sup> in the field of comprehensive diversity, equity, and inclusion  
17 training for teachers, students and parents designed to reduce the achievement  
18 gap and to change the conditions in the school system. The declarations of  
19 SBUSD Superintendent Cary Matsuoka, JCCC’s Jarrod Schwartz, the SBUSD  
20 teachers, and several community members establish that: (1) its facilitators are  
21 highly trained, and many of them are former teachers; (2) JCCC has presented its  
22 programs to every major Santa Barbara County school district and elsewhere; (3)  
23 it partnered with California Teachers Association to provide implicit bias  
24 training; and (4) its program incorporates the work of leading scholars in the field  
25 and is effective.

26  
27  
28 <sup>4</sup> *Service Employees Internat. Union v. Board of Trustees*, 47 Cal.App.4th at 1673.



1 JCCC’s services aren’t available from a public entity. The declarations of  
 2 Superintendent Cary Matsuoka and Jarrod Schwartz, and the SBUSD teachers —  
 3 who themselves went to JCCC training — establish that SBUSD doesn’t hire or  
 4 train personnel to provide these services. UCSB’s program — the only public  
 5 program identified by FESB — is not the same as JCCC’s program.

6 **iv. Competitive Bidding “Would Be Undesirable, Impractical, or**  
 7 **Impossible.”**

8 Competitive bidding is not required where it “would be unavailing or  
 9 would not produce an advantage, and the advertisement for competitive bid  
 10 would thus be undesirable, impractical, or impossible.” *Graydon v. Pasadena*  
 11 *Redevelopment Agency*, 104 Cal.App.3d at 636. SBUSD forthrightly identified  
 12 the three other companies that do the same work as JCCC.<sup>5</sup> But the closest  
 13 programs are in the Bay Area and the other is in the Midwest. None have  
 14 JCCC’s knowledge of the local community and record of accomplishment in  
 15 Santa Barbara. And since JCCC, on average, puts on several programs per month  
 16 for SBUSD, that would require these companies to commit to significant travel to  
 17 work for SBUSD. For these reasons, it would be undesirable and impractical to  
 18 require SBUSD to competitively bid for this program.

19 **v. Competitive Bidding Isn’t Necessary to Prevent Favoritism or**  
 20 **Conflicts of Interest.**

21 One of the goals of competitive bidding is to guard against favoritism and  
 22 corruption. *Weinstein v. County of Los Angeles*, 237 Cal.App.4<sup>th</sup> at 949. FESB  
 23 tries to shoehorn its way into this goal with a laundry list of former school board  
 24 members (including Santa Barbara’s current Assemblyperson, Monique Limon)

25  
 26  
 27 <sup>5</sup> The fact that there are three other programs doesn’t mean that JCCC’s services aren’t special  
 28 because the California cases don’t require that the service provider be unique to be special  
 (lawyers and architects certainly aren’t unique and their contracts aren’t bid.)



1 and current SBUSD employees who have previously served on JCCC’s board or  
2 as JCCC employees, to claim these relationships create a conflict of interest. But  
3 FESB has produced no evidence — and there is none — that any of these people  
4 have a conflict of interest under the applicable California conflict of interest  
5 statutes. These statutes would only prohibit (1) SBUSD board members who  
6 were simultaneously working for JCCC from voting on the JCCC contract, or (2)  
7 SBUSD employees who were also working for JCCC from participating or  
8 influencing the contract decision. FESB presents no evidence that happened.

9       Specifically, Government Code § 1090 prohibits a public employee from  
10 being “financially interested in any contract made by them in their official  
11 capacity, or by any body or board of which they are members.” Government  
12 Code § 87100 (part of the Political Reform Act of 1974) says that “No public  
13 official at any level of state or local government shall make, participate in making  
14 or in any way attempt to use his official position to influence a governmental  
15 decision in which he knows or has reason to know he has a financial interest.”

16       None of the people FESB names fall under these rules.

- 17       • The former SBUSD board members didn’t participate in deciding  
18       the JCCC contract because they were “former” board members.
- 19       • FESB doesn’t and can’t show that board member Ismael Paredes  
20       Ulloa, who did vote for the JCCC contract, was working for JCCC  
21       when he voted.
- 22       • FESB doesn’t and can’t show that the SBUSD employees were also  
23       working for JCCC when the contract was approved or, if they were,  
24       that they participated in making or approving that contract.

25       What FESB’s so-called evidence shows is that SBUSD former and current board  
26       members and employees support the JCCC program for all the reasons stated in  
27       this brief and its declarations. Support isn’t favoritism or corruption.

28       Finally, the contract about which FESB complains has a specific provision

1 prohibiting JCCC from hiring current SBUSD employees as independent  
 2 contractors. See Exhibit 3, September 25, 2018, contract at para. 6. So the  
 3 illusory conflicts FESB raises about past contracts cannot occur with the current  
 4 contract.

5 **b. Irreparable Harm**

6 Whatever harm FESB might suffer if SBUSD is not enjoined from using  
 7 JCCC's program, it certainly isn't irreparable. The cases FESB cites all involve  
 8 parties who were actual or prospective bidders on a public contract.<sup>6</sup> FESB  
 9 doesn't claim that it or its members would have bid on the JCCC contract. Nor  
 10 does FESB allege it suffers a compensable monetary injury, but even if it did that  
 11 isn't irreparable harm. *Los Angeles Memorial Coliseum Commission v. National*  
 12 *Football League*, 634 F.2d at 1202.

13 **c. Balance of the Hardships**

14 The balance of the hardships tips strongly against FESB. Although it  
 15 alleges general societal harm, at most any injury to its members is that they are  
 16 paying an unquantified, but surely small, amount of tax money that gets allocated  
 17 to a program with which they disagree. In contrast, if SBUSD is enjoined, it will  
 18 lose the ability to employ a successful program that has helped narrow the  
 19 achievement gap among minority students.  
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 22 <sup>6</sup> See, e.g., *BINL v. U.S.*, 106 Fed.Cl. 26, 35 (2012) (noting that a plaintiff has standing as an  
 23 interested party under 28 U.S.C. § 1491 "if it 'is an actual or prospective bidder and (2)  
 24 possess[es] the requisite direct economic interest.'"); *Palantar U.S.G., Inc. v. United States*,  
 25 129 Fed.Cl. 218, 284-285 (stating that the parties agreed "that '[w]ithout a showing of harm  
 26 specific to the asserted error [in the bidding process], there is no injury to redress, and no  
 27 standing to sue,'" and noting that for a protestor who is an actual or prospective bidder, "a  
 28 protestor suffers irreparable harm if it is deprived of the opportunity to compete fairly for a  
 contract.") Significantly, a showing of irreparable harm or direct economic impact in the  
 context of an allegation of noncompliance with public bidding laws can only be established if  
 the plaintiff is an actual or prospective bidder. See, *HP Enterprises Services, LLC v. U.S.*, 104  
 Fed. Cl. 230, 238 (2012) (stating that "[o]nly a protestor possessing a substantial chance of  
 winning the contract has a direct economic interest in the procurement and thereby standing  
 before this court.").

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**d. Public Policy**

The lengthy discussion of California public bidding law shows that California has a policy favoring competitive bidding, but only where doing so makes practical sense. That isn't the case here. California law also has a strong public policy favoring achievement by all students. That policy will be undermined if this preliminary injunction is issued.

**D. CONCLUSION**

FESB used its federal civil rights claims as a Trojan horse to try to get this court to grant it an injunction on a pure, state law public contracts claim over which it has but supplemental jurisdiction under 28 U.S.C. § 1367(a). Worse, FESB can't meet its heavy burden of establishing that it is entitled to an injunction. For these reasons, FESB's motion should be denied.

Dated: January 4, 2019

GRIFFITH & THORNBURGH, LLP

By: /s/ Joseph M. Sholder

Craig Price  
Joseph M. Sholder  
Attorneys for Santa Barbara Unified  
School District

**PROOF OF SERVICE**

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STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed by the law firm of GRIFFITH & THORNBURGH, LLP in the county of Santa Barbara, state of California. I am over the age of 18 and not a party to the within action. My business address is 8 East Figueroa St., #300, Santa Barbara, California 93101. My email address is downs@g-tlaw.com.

On Jan. 4, 2019, I served the foregoing document described as **SANTA BARBARA UNIFIED SCHOOL DISTRICT’S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** on the parties and/or interested persons in this action as follows:

**[ X ] BY ELECTRONIC MAIL SERVICE**

I caused the above document(s) to be electronically mailed through the ECF System of the United States District Court to the recipients as follows:

Attorneys for Plaintiff: eearly@earlysullivan.com; pscott@earlysullivan.com; ecfnoticing@earlysullivan.com; evillarreal@earlysullivan.com; esilverman@earlysullivan.com

Attorney for SBUSD: Joseph Sholder sholder@g-tlaw.com, downs@g-tlaw.com

**[ X ] BY OVERNIGHT DELIVERY:** I deposited such envelope in a facility regularly maintained by FedEx with delivery fees fully provided for or delivered the envelope to a courier or driver of FedEx authorized to receive documents at 8 East Figueroa Street, Suite 300, Santa Barbara, California 93101-2762 with delivery fees fully provided for, to the following:

Judge Stephen V. Wilson-Mandatory Chamber’s Copy  
United States District Court, Central District of California  
First Street Courthouse, 350 W. 1st Street, 10<sup>th</sup> Floor, Courtroom  
10A Los Angeles, California 90012

**[ X ] BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

Defendant Just Communities Central Coast, Inc.

Sarah E. Piepmeier, PC  
Kirkland & Ellis, LLP  
555 California Street  
San Francisco, CA 94104

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on Jan. 4, 2019, at Santa Barbara, California.

\_\_\_\_\_  
/s/ Evelyn R. Downs  
Evelyn R. Downs