786 F.3d 400
United States Court of Appeals,
Fifth Circuit.

The GIL RAMIREZ GROUP, L.L.C.; Gil Ramirez, Jr., Plaintiffs–Appellants
v.
HOUSTON INDEPENDENT SCHOOL DISTRICT; Lawrence Marshall; Eva Jackson; RHJ–JOC, Incorporated; Fort Bend Mechanical, Limited; Marshall & Associates; Joyce Moss Clay; JM Clay and Associates; FBM Management, L.L.C.; David L. Medford, Defendants–Appellees.

No. 13–20753. | May 18, 2015.

Opinion

EDITH H. JONES, Circuit Judge:

This case, involving multiple causes of action based on allegations of bribery to procure construction contracts, was filed against Houston Independent School District ("HISD" or "the District"), former trustee Lawrence Marshall and his consulting company, alleged coconspirator Joyce Moss Clay and her consulting company, and two of the plaintiff's competitors (RHJ–JOC and Fort Bend Mechanical), and their respective owners. The district court ably resolved most of these kaleidoscopic claims against Plaintiff–Appellants Gil Ramirez, Jr. and the Gil Ramirez Group, L.L.C. (collectively "GRG"), but we conclude GRG has met its summary judgment burden with respect to its RICO claims (against all defendants except HISD) and has sufficiently supported those elements of its claims for tortious interference with business relations that the district court ruled on. For those claims, we reverse and remand for further proceedings. This decision requires resolving two novel issues in this circuit—whether HISD is a proper RICO defendant (it is not), and whether Appellee Marshall, a former elected HISD trustee, may invoke state sovereign immunity principles against the state law claims (he cannot).

BACKGROUND[1]

Defendant Houston Independent School District is one of the largest school districts in the nation, serving over 200,000 students. A nine-member Board of Trustees governs the district; the administrative staff is led by the Superintendent. The District procures some construction and facilities services through a job-order contract ("JOC") program. Under this program, the District periodically solicits requests for proposals ("RFPs"), following which a committee of HISD administrators (the "selection committee") evaluates vendors' bids against predetermined criteria and selects as many qualifying vendors as current needs require. The single most important factor in the selection process is the vendor's pricing coefficient—a percentile that reflects the difference between the standard price set in a pricing manual and the price a contractor agrees to charge. Pricing coefficients are assigned for several categories of work and are combined to determine the vendor's weighted average. The selection committee forwards its recommendations to the Board of Trustees, which then votes on whether to offer JOC contracts to the suggested vendors.

HISD outsourced the assignment and management of JOC projects to several independent project managers, each of which covered specific facilities. The District would inform the relevant project manager of its need and the project manager would solicit cost estimates from the JOC vendors, evaluate the estimates, assign the jobs, and manage their progress.

Ramirez alleges that he and his company GRG were punished for refusing to participate in the corruption of municipal authorities. Defendant Lawrence Marshall, for many years an administrator at HISD until he was elected Trustee in 1997, masterminded questionable business arrangements in which he served as a paid ***405** consultant for several organizations that did business with the District. When the District explicitly prohibited that conduct, those companies hired Marshall's business associate Joyce Moss Clay (together with her company, "Clay"), whose company began paying Marshall a share of its consulting fees.

Ramirez and Marshall crossed paths during an RFP initiated in May 2008 (the "2008 RFP") to expand the HISD's contractor capacity and increase vendor diversity. GRG bid in this RFP along with ten other companies, including Defendants Fort Bend Mechanical ("FBM") and RHJ–JOC ("RHJ") (collectively, with their owners, the "vendor defendants"). The vendor defendants both hired Clay as a consultant, in RHJ's case "to provide moral support." RHJ paid Clay over $2,000 per month for several years, but neither RHJ nor Clay could explain what work Clay actually performed. FBM's owner Pete Medford avers that he wanted to make donations to

specific schools and hired Clay to help him negotiate the rules and regulations governing those donations. Clay's explanation for forwarding Marshall 65% of her consulting fees is that he was her "mentor."

Once the initial bids were in, an employee in HISD's procurement department (who also served on the selection committee) advised several companies to reallocate their pricing coefficients. No bidding vendor was permitted to change its overall coefficient; such a change would have given that vendor an unfair advantage.[2] On its first cut, the selection committee recommended approving the two companies with the lowest overall price: RHJ and Kellogg Brown & Root Services, Inc. ("KBR"). GRG ranked ninth and the selection committee summarily eliminated it along with several other companies. Senior HISD administrators reviewed the proposal and, based on an internal policy, disqualified RHJ because of a then-pending lawsuit between the vendor and another school district.

Left with only one proposed vendor, HISD Superintendent Dr. Abelardo Saavedra and Chief Business Operations Officer Richard Lindsay unilaterally added four vendors to the list that went before the Board of Trustees: FBM for its HVAC expertise, and the other three, including GRG, to increase JOC "diversity." The Board approved this slate of five vendors, only one of which (KBR) had the approval of the selection committee. It is noteworthy that the selection committee passed over GRG, and HISD administrators added the company solely for diversity reasons.[3] Shortly after learning that it was not among HISD's selected JOC group, RHJ fired Clay.

GRG and the other contractors executed one-year contracts, renewable at HISD's sole discretion, thus constituting the 2009 JOC program. When the District began assigning projects the following summer, GRG received more project funds than any other vendor. GRG maintains that it was a JOC vendor *par excellence,* completing jobs properly, ahead of schedule, and under budget. Appellees dispute this. The District reports that it "experienced a number of performance issues with GRG ***406** ... including false starts on construction projects, failure to obtain proper bonding and insurance, and failure to timely submit documents required under" the JOC program.

Marshall became president of the Board of Trustees in January 2009. The next month, Superintendent Saavedra announced his resignation, effective at the end of August of that year. In August, Saavedra recommended that the Board reconsider RHJ because its lawsuit with the other school district was over. The Board agreed and added RHJ to the approved JOC list. Saavedra testified that he was "very hesitant" to recommend RHJ for approval and that Marshall was putting "tremendous pressure" on other senior administrators.[4] He also testified that he had lost Marshall's support by disqualifying RHJ earlier in the process.

According to GRG, the trouble began after August 2009. Once RHJ was in the mix, GRG saw a sharp decline in the volume of JOC work it received, though it continued to receive assignments until its contract expired. Ramirez testified that Ricardo Aguirre, a janitorial services consultant and mutual associate of Marshall and Ramirez's father, visited Ramirez's office. Aguirre told Ramirez that GRG would need to hire Clay as Marshall's "bag lady" in order to protect its JOC business.[5] GRG suggests that Ramirez's expression of disapproval to Aguirre was the triggering event for the decrease in GRG's JOC assignments.

In the February before the election, FBM paid for Marshall to attend the Super Bowl in Tampa, Florida. Medford admitted on tape that he had given Marshall approximately $150,000 since 2008. When Marshall faced a reelection contest in autumn 2009, the owners of RHJ and FBM donated to Marshall's campaign, in amounts totaling over $50,000. GRG did not contribute to Marshall's reelection campaign or otherwise support him, but there is no indication that Marshall or anyone else asked GRG or Ramirez to do so.

Also in August 2009, a District internal auditor noticed the non-recommended vendors on the Board of Trustees meeting agenda. He investigated the 2008 procurement process, concluding that HISD administrators failed to follow proper procedure and that the final JOC configuration did not provide the best value for the District. His report recommended voiding the contracts for noncompliance with state law. GRG attacks this report as a "smokescreen to enable Marshall and allied board members to steer more of the JOC work to his favored contractors." GRG asserts that an independent agency gave HISD's auditors low marks in a general review, and that the audit did not result in changes to future RFPs.[6]

***407** In January 2010, based on the auditor's report, the District's Inspector General brought the 2008 noncompliance to the Board's attention and intimated that the conduct might be criminal. Presumably because the initial contract terms for the 2008 JOC vendors were at an end, the business administrator recommended rebidding

the entire JOC program. Just a few days before the meeting at which the Board was scheduled to vote on renewal of the JOC contracts, the new Superintendent Terry Grier removed the matter from the agenda. Superintendent Grier later called for Lindsay's resignation when Lindsay was unable to explain his conduct in the 2008 RFP. Because the Board did not renew any contracts, most of the 2008 JOC contracts expired by February 2010; RHJ's contract remained in force until October 1, 2010, since it started much later than the others. All vendors had to bid in the 2010 RFP if they wanted to continue to be part of the JOC program.

The 2010 RFP selection process evaluated vendors' bids according to a pre-established set of criteria that, as in the 2008 RFP, was mostly a function of price. This time, the selection committee recommended KBR, RHJ, FBM, and Jamail & Smith, the last of which had been a JOC participant since before the 2008 expansion RFP. RHJ rehired Clay two days after its selection. The committee did not recommend GRG, which ranked tenth out of thirteen bidders because as in the previous RFP, its work was not competitively priced. The Board approved the selection committee's slate of vendors. GRG alleges, not without dispute by the Appellees, that the ranking system and selection process were pretextual.

Ramirez and GRG sued in December 2010, alleging that their refusal to bribe Marshall harmed their business, both in the reduction in assignments under the 2008 JOC and in GRG's nonselection under the 2010 RFP. GRG brought an array of federal and state law claims against the various defendants. Against HISD, plaintiffs alleged 1) violations of the Racketeer Influenced Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.;* 2) infringement of their First and Fourteenth Amendment rights (through 42 U.S.C. § 1983); and 3) state law claims for breach of contract, estoppel, and civil conspiracy. Against Marshall and Clay (and their respective consulting companies), GRG alleged the same RICO violations, in addition to tortious interference with prospective contract, tortious interference with existing contract, and civil conspiracy (but not the estoppel or breach of contract claims). The vendor defendants were also named in the RICO and tortious interference claims. Extensive discovery was conducted.

The District, Marshall, and Clay moved for summary judgment on all claims. The District also moved to dismiss the RICO and state law tort claims under Fed. Rules of Civ. Pro. 12(b)(6) and 12(c). The district court granted these motions in its Memorandum and Order of November 18, 2013. The district court first dismissed the state law claims against Marshall as barred by the election of remedies provision of the Texas Tort Claims Act, Tex. Civ. Prac. & Rem.Code § 101.106. It then held that GRG was not a proper RICO plaintiff; that GRG could not make out any constitutional violations, even if it could overcome various immunity obstacles; and that HISD and Clay were entitled to summary judgment or dismissal on the state law claims. The district court dismissed the civil conspiracy charges because it had resolved the underlying tort ***408** claims, leaving no illegal conduct for a conspiracy. After additional briefing, the district court granted summary judgment for the vendor defendants. Final judgment was entered on December 13, 2013. GRG timely appealed.

STANDARDS OF REVIEW

The district court dismissed the state law claims against Marshall under Fed. R. Civ. Pro. 12(b)(6) and 12(c). We review both types of motion de novo. *Jebaco, Inc. v. Harrah's Operating Co., Inc.,* 587 F.3d 314, 318 (5th Cir.2009). "To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead enough facts 'to state a claim to relief that is plausible on its face.' " *Bustos v. Martini Club Inc.,* 599 F.3d 458, 461 (5th Cir.2010) (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)).

The district court disposed of the other claims on summary judgment. "This court reviews the district court's grant of summary judgment de novo, applying the same standards as the district court." *DePree v. Saunders,* 588 F.3d 282, 286 (5th Cir.2009). "Summary judgment is proper when no issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Cronn v. Buffington,* 150 F.3d 538, 541 (5th Cir.1998). "The standard of review is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the non-moving party based upon the record evidence before the court." *James ex rel. James v. Sadler,* 909 F.2d 834, 837 (5th Cir.1990) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986)).

For Rule 12 and summary judgment alike, we view the facts and inferences in the light most favorable to the non-movant. *Cronn,* 150 F.3d at 541; *Jebaco,* 587 F.3d at 318.

DISCUSSION

In this appeal, Appellants challenge the district court's adverse judgment on all but one of their claims.[7] We address each cause of action in turn.

I. Racketeer Influenced and Corrupt Organizations Act

GRG sued all defendants under §§ 1962(c) and (d) of RICO, which prohibit, respectively, participation in a racketeering enterprise or conspiring to do the same. In the district court, HISD objected that it was not a proper RICO defendant because as a municipal corporation it cannot form the *mens rea* of any of RICO's predicate offenses and is not susceptible to RICO's treble damages, which the District characterizes as "punitive." Several other arguments were raised by HISD and other defendants, but the court found instead that GRG failed to assert or prove a cognizable RICO claim. We disagree in part. Our precedent requires a RICO plaintiff to show a "conclusive financial loss" and not harm to "mere expectancy" or "intangible" interests. *Price v. Pinnacle Brands, Inc.,* 138 F.3d 602, 607 (5th Cir.1998) (per curiam). GRG has created a genuine issue of material fact on this issue. Appellants may not, however, sue HISD for RICO violations, because the District is immune from treble damages.

A. Ramirez and GRG as Plaintiffs

1. The Standard

RICO's civil provision creates a cause of action for "any person injured in his business ***409** or property by reason of a violation" of any of the statute's prohibited activities. 18 U.S.C. § 1964. At issue here is the injury requirement. The plaintiff's injury must be "conclusive" and cannot be "speculative." *In re Taxable Mun. Bond Sec. Litig.,* 51 F.3d 518, 523 (5th Cir.1995). "Injury to mere expectancy interests or to an 'intangible property interest' is not sufficient to confer RICO standing." *Pinnacle Brands,* 138 F.3d at 607 (quoting *In re Taxable Mun. Bond Sec. Litig.,* 51 F.3d at 523).[8] The district court held that GRG's alleged injuries were uncertain and intangible because JOC job assignments and contract renewal were at the sole discretion of HISD. "Thus," the district court concluded, "any injury can only be the loss of an expectation interest and therefore speculative[.]"

Appellants contend that they were not required to demonstrate legal entitlement to JOC assignments or job orders, but only the *fact* of loss. That is, although HISD *could* stop assigning GRG jobs and end the business relationships, it *would* not have done so but for the alleged corruption. The district court appears to have interpreted GRG as showing only that HISD *might* have continued favoring GRG.

GRG is correct that a RICO plaintiff need not demonstrate legal entitlement, a point the Supreme Court made clear in *Bridge v. Phoenix Bond & Indemnity Co.,* 553 U.S. 639, 128 S.Ct. 2131, 170 L.Ed.2d 1012 (2008). The plaintiffs in *Bridge* were "regular participants in Cook County's tax sales[,]" in which bids often ended in a tie. *Id.* at 643, 128 S.Ct. at 2135. The county would then allocate the auctioned property on a rotational basis. *Id.* at 642, 128 S.Ct. at 2135. In order to make this process fair, each bidder was permitted only one simultaneous bid. *Id.* at 643, 128 S.Ct. at 2135. The plaintiffs alleged that a competing corporate bidder had arranged for false-flag bidders to channel additional allocations. *Id.* The *Bridge* plaintiffs had no legal entitlement to the subject matter of the auction. Nevertheless, the Supreme Court held that "[a]s a result of petitioners' fraud, respondents lost valuable liens they otherwise would have been awarded." *Id.* at 649, 128 S.Ct. at 2139. Because the *fact* of loss was certain, the plaintiffs could state a RICO claim.

Although the vagueness of terms like "expectancy" may have created some confusion, the context of our cases makes clear that the test is a factual one. In *Pinnacle Brands,* for instance, plaintiffs complained that the random inclusion of valuable "chase" cards in packs of baseball cards constituted "illegal gambling." 138 F.3d at 605. This court held that the plaintiffs could not show injury under RICO because they suffered no harm to a property interest; the card packs they bought were exactly what they bargained for. *Id.* at 607. *Pinnacle Brands* thus stands for the unremarkable proposition that a RICO plaintiff must demonstrate harm. The court's rejection of "mere expectancy interests" appears to have been directed at the notion that the plaintiff was injured by not having any luck in drawing a chase card. *See id.* That is, damage to ***410** a plaintiff's subjective expectations cannot form the basis of a RICO claim.

Likewise, in *In re Taxable Municipal Bond Securities Litigation,* the plaintiff (for himself and others similarly situated) claimed that corruption in a state-authorized municipal bond program injured certain farmers and ranchers who might have applied for loans under that program. 51 F.3d at 521–22. The loans under the program were loans of last resort, unavailable to those who could obtain other credit. *Id.* at 522. At least some of the

farmers and ranchers had pursued and secured other loans with higher interest rates, which disqualified them for loans under the bond program. *Id.* The court held that the farmers and ranchers "have suffered no injury from not receiving what they were ineligible to receive." *Id.* at 522. The court further held that the plaintiff had not demonstrated detrimental reliance, and that a lost opportunity to obtain a loan was too speculative. *Id.* at 522–523. Importantly, the plaintiff "ha[d] not alleged lost profits" or "that [the farmers and ranchers] ha[d] ever lost money as a result of the RICO scheme." *Id.* at 523. GRG alleges both. *Accord Tel–Instrument Elecs. Corp. v. Teledyne Indus., Inc.,* No. 90–1549, 1991 WL 87194 (4th Cir. May 28, 1991).[9]

The rule that emerges from these cases is that loss of a legal entitlement is sufficient but not invariably necessary to sustain a RICO claim. A plaintiff need not show that the other party *would have been obliged* to confer a benefit, only that the other party *would have conferred* the benefit. That HISD retained discretion to award fewer contracts, or no contracts at all, does not prohibit GRG from demonstrating that but for corruption, it would have continued to receive awards.

2. The Evidence

The standard now clarified, it remains to determine whether GRG has marshaled competent summary judgment evidence that its business was injured. The proof covers two periods of time, differentiated by GRG's status as a JOC contractor in 2009 and its subsequent failure to be chosen in the 2010 RFP process.

The district court acknowledged that evidence of factual loss might be sufficient, but found that GRG had not met this burden with respect to the contract renewal. GRG points to evidence that several Board members and a high-level administrator led Ramirez to believe that GRG's contract was on the verge of renewal. As the district court noted, "[t]hese assurances [ ] were made before it was revealed to the HISD Board's audit committee that the same high-level administrator had bypassed the JOC contract procurement process unilaterally to award GRG with a contract in the first place." GRG challenges that audit of the 2008 RFP as improperly motivated, but does not undermine the fact that the initial RFP was tainted nor does it allege that re-bidding the program was the wrong course of action. GRG also faults the District's decision to select only four JOC vendors. Even viewed in the light most favorable to GRG, however, none of this evidence shows that GRG would have been chosen in the 2010 RFP but for corruption. Indeed, GRG's tenth-place ranking was so low that even if HISD had selected seven ***411** vendors and eliminated the vendor defendants, GRG still would not have been selected.[10] In short, GRG has not adduced sufficient evidence to overcome summary judgment as to its nonselection in the 2010 RFP.

The sudden decline in JOC assignments in 2009, however, is another matter. The District assigned GRG more work than any other contractor in the initial honeymoon period of the 2009 JOC program, and GRG won 42 of the 64 projects it "bid on" in 2009. The confluence of events in August 2009—Superintendent Saavedra's testimony that his resignation was driven by his dispute with Marshall, RHJ's latter-day and questionable addition to the JOC program, the drop-off in assignments to GRG—would allow a jury to infer that undue influence on and by Marshall harmed GRG's business.

Appellees offer plausible explanations why GRG's assignments dropped off, but none of these positively displaces the possible inference of corrupt influence. For example, vendors not alleged to have bribed Marshall continued to receive work after RHJ entered the picture. But GRG has produced evidence suggesting that Marshall's preferred vendor RHJ was displacing GRG after Ramirez spurned Marshall. Further, Appellees' expert noted that if GRG had continued to receive work at the same rate as it did the first two months, it would have been awarded over 100% of all JOC expenditures. But the drop off in total JOC volume may itself have been part of the alleged scheme. These are matters for the factfinder. We hold only that the evidence creates a fact issue as to the cause of the loss of GRG's JOC assignments.

Appellees urge many other grounds for affirming summary judgment on the RICO claims. "Although this court may decide a case on any ground that was presented to the trial court, we are not required to do so." *Breaux v. Dilsaver,* 254 F.3d 533, 538 (5th Cir.2001). Because the issues require consideration of a voluminous record, "we decline to decide these complex issues as they are better addressed by the district court in the first instance." *Lone Star Nat'l Bank, N.A. v. Heartland Payment Sys., Inc.,* 729 F.3d 421, 427 (5th Cir.2013).[11]

B. HISD as a Defendant

HISD contends that school districts are not proper RICO defendants for ***412** two reasons. First, RICO requires

demonstrating an underlying criminal act, which entails a *mens rea* requirement that a governmental entity cannot form. *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.,* 940 F.2d 397, 404 (9th Cir.1991); *see also Pedrina v. Chun,* 97 F.3d 1296, 1300 (9th Cir.1996) (reaffirming *Lancaster*).[12] Second, municipal entities enjoy common law immunity from punitive damages, and, whatever else it is, RICO's treble-damages provision is at least partially punitive. *Genty v. Resolution Trust Corp.,* 937 F.2d 899, 908 (3d Cir.1991). These reasons have proven persuasive to other courts.[13] We agree with these holdings.

A particularly good reason for rejecting governmental RICO liability stems from judicial reluctance to impose punitive damages on the public fisc. The Supreme Court has held that a municipality's liability for § 1983 damages does not thereby subject it to punitive damages, from which government entities were historically immune. *City of Newport v. Fact Concerts, Inc.,* 453 U.S. 247, 263, 101 S.Ct. 2748, 2758, 69 L.Ed.2d 616 (1981). *City of Newport* emphasized that because a public entity itself "can have no malice independent of the malice of its officials," 453 U.S. at 267, 101 S.Ct. at 2760, punishment by punitive damages would be inequitably assessed against the public. Moreover, "the deterrence rationale of § 1983 does not justify making punitive damages available against municipalities." *Id.* at 268, 101 S.Ct. at 2760.[14]

City of Newport held that, to overcome municipal immunity from punitive damages, Congress must clearly express its intention. *Id.* at 263, 101 S.Ct. at 2749. No such clear intent to overcome governmental immunity appears in the RICO provision for treble damages.

GRG, however, fastens hope on the Supreme Court's ambiguity about treble damages, "which have a compensatory ***413** side, serving remedial purposes in addition to punitive objectives." *Cook Cnty., Ill. v. U.S. ex rel. Chandler,* 538 U.S. 119, 130, 123 S.Ct. 1239, 1246, 155 L.Ed.2d 247 (2003). The Supreme Court locates "different statutory treble-damages provisions on different points along the spectrum between purely compensatory and strictly punitive awards." *PacifiCare Health Sys., Inc. v. Book,* 538 U.S. 401, 405, 123 S.Ct. 1531, 1535, 155 L.Ed.2d 578 (2003). Treble damages provisions designedly go well beyond the amount of actual harm, but the Supreme Court has "repeatedly acknowledged that the treble-damages provision contained in RICO itself is remedial in nature." *PacifiCare,* 538 U.S. at 406, 123 S.Ct. at 1535.

The Court's ambivalence about punitive damages complicates analysis here, but we believe *PacifiCare* cannot salvage a claim against HISD. First, the Supreme Court's characterization of RICO treble damages as "remedial" in *PacifiCare* cannot substitute for an express Congressional abrogation of municipal immunity from treble damages, which, whatever the characterization, exceed actual provable damages. To hold otherwise would mock *City of Newport.* Second, nothing in *PacifiCare* contravenes the Court's earlier holdings that treble-damages provisions serve both compensatory and punitive functions. *See Shearson/Am. Exp., Inc. v. McMahon,* 482 U.S. 220, 240, 107 S.Ct. 2332, 2345, 96 L.Ed.2d 185 (1987); *accord Genty,* 937 F.2d at 910 ("there is convincing authority that Congress authorized civil RICO's powerful treble damages provision to serve a punitive purpose").[15] Third, the narrow question posed in *PacifiCare* was whether an arbitration agreement's ban on punitive damages included RICO treble damages. The Court refused to interpret the private parties' agreement, holding that threshold duty for an arbitrator. *PacifiCare* has no bearing on the liability of governmental entity defendants for treble damages under RICO.

For these reasons, we conclude that GRG cannot proceed against HISD under RICO's mandatory treble damage provision. Because Congress wrote no single-damage alternative, and we lack power to revise federal statutes, Appellants fail to state a cognizable RICO claim against HISD. *See Cullen v. Margiotta,* 811 F.2d 698, 713 (2d Cir.1987) ("civil RICO requires that a successful plaintiff be awarded treble damages").

* * * *

CONCLUSION

The district court commendably dealt with novel claims in this troubling case with a long and complex record. Based on the foregoing discussion, we AFFIRM the judgment dismissing HISD from liability for RICO and federal constitutional violations and state law claims. We AFFIRM the judgment dismissing Marshall from liability for constitutional violations. We REVERSE and REMAND, for further proceedings consistent herewith, the summary judgment dismissing the RICO claims against the (non-HISD) Appellees insofar as they allege injury covering the remainder of the 2009 JOC contract period. We REVERSE and REMAND for further proceedings consistent herewith the summary judgment dismissing the claim against the (non-HISD) Appellees for tortious interference with prospective business relations and the civil conspiracy claims.

AFFIRMED IN PART, REVERSED and

REMANDED IN PART.

Footnotes

1 For purposes of reviewing the pretrial orders on appeal, the evidence is recited in the light most favorable to Appellants.

6 GRG identifies no specific defects within the report, the purpose of which was to urge conformity to established procedures, not to change them.