



## *National Association of Consumer Advocates*

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February 13, 2026

The Honorable Chief Justice Patricia Guerrero  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

Re: ***Jacobson v. Metropolitan Life Insurance Company, No. S294756***  
**Letter from National Association of Consumer Advocates in Support  
of Petition for Review**

Dear Chief Justice Guerrero and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, the National Association of Consumer Advocates (NACA) respectfully submits this letter as amicus curiae to urge the Court to grant review in *Jacobson v. Metropolitan Life Insurance Company*, Case No. S294756. This case concerns the integrity of a consumer-protection statute that safeguards California teachers' ability to plan and save for retirement. The Court of Appeal's rule, however, undermines those statutory protections and creates confusion regarding the operation of the statutory regime. For the reasons set forth below, and as thoroughly explained in the petition for review and other amicus curiae letters, review is warranted.

### **INTEREST OF AMICUS CURIAE**

NACA is a nonprofit association of more than 1,600 attorneys and consumer advocates committed to representing consumers' interests. NACA's members are private and public sector attorneys, legal services attorneys, law professors, and law students whose primary focus is the protection and representation of consumers. They have represented hundreds of thousands of consumers in small-damages actions and consumer class actions. As a national organization fully committed to promoting justice for consumers, with an emphasis on those of modest means or those who are otherwise especially vulnerable, NACA has long worked to ensure that corporations comply with state consumer-protection laws.

## DISCUSSION

At bottom, this case presents a simple question: may a 403(b) vendor continue charging a fee after removing its disclosure from the state registry (403bCompare.com) solely because the fee applies only to existing customers? The Education Code answers that question no. The decision below answers it yes, creating a loophole the Legislature neither wrote nor intended.

**1. The statutory rule is straightforward: fees that are charged must be disclosed.**

California’s Education Code establishes a simple rule governing 403(b) retirement products sold to employees of public schools: vendors may not charge fees unless those fees are publicly disclosed on 403bCompare.com. Sections 25101 and 25107 work together to enforce that rule. Section 25101 requires disclosure of all fees associated with a registered 403(b) product, and Section 25107 prohibits vendors from charging any fee that has not been disclosed.

Nothing in the statutory regime suggests that this prohibition turns on whether a product or feature remains available to new customers. The operative question under Section 25107 is whether a fee is being charged in connection with a registered product—not whether the vendor is still marketing that product or feature to new customers. If the vendor registered the product on the website, and continues to charge an associated fee in 403(b) accounts, the statute requires the fee to be disclosed.

The Court of Appeal adopted a contrary rule, holding that a vendor may remove fee disclosures from the state-maintained registry while continuing to charge those same fees so long as the associated product or feature is no longer sold to new customers. That interpretation creates an exception that appears nowhere in the statutory text. The Legislature knew how to create exceptions when it wished to do so and did so expressly in Section 25114, which contains a narrow exemption for certain products purchased before November 30, 2004. No comparable exception exists for products or features not available to new investors.

Read as written, the Education Code does not permit vendors to charge undisclosed fees simply by closing a product or feature to new investors. So long as a fee is charged in connection with a registered 403(b) product, it must be disclosed.

**2. The statute is written to cover legacy products held by existing customers.**

The text and structure of the Education Code confirm that registration and disclosure obligations extend to 403(b) products that continue to be held by existing customers, even if those products are no longer marketed to new investors.

Section 25107 prohibits a vendor from charging “a fee associated with a registered 403(b) product that is not disclosed.” The provision does not condition that prohibition on whether the product or feature remains available to new

customers, and it does not distinguish between fees charged to new investors and fees charged to existing ones. Rather, once a product is registered, the statute's disclosure-and-prohibition framework applies. To be sure, Section 25107 requires that fees be disclosed "pursuant to Section 25101," but that simply ensures that the disclosure becomes publicly available on 403bCompare.com. The reference to Section 25101 does not create a roundabout exception to the disclosure requirement.

Although Section 25101 is framed as an entry-point provision directed at prospective vendors, the statutory scheme makes clear that its disclosure requirements are ongoing. Section 25102 requires registered vendors to renew and update their disclosures by reference to the same information required under Section 25101. Read together, these provisions establish a continuing disclosure obligation to disclose "all expenses paid directly or indirectly by retirement plan participants," not a one-time requirement that evaporates after initial registration.

Moreover, the statutory scheme contains no mechanism for deregistration based on discontinuation. The Education Code specifies how products are registered and how disclosures are updated, but it nowhere authorizes a vendor to remove a product—or its fee disclosures—simply because the vendor has stopped selling it to new customers. In fact, 403bcompare.com allows vendors to mark a product as "Discontinued," which informs website users that new customers cannot purchase it (but allows existing customers access to valuable disclosures).

Crucially, the Court of Appeal's interpretation also conflicts with other provisions of the statutory scheme. Sections 25113 and 25114 prohibit employers from forwarding consideration to vendors of unregistered 403(b) products and prohibit employees from selecting unregistered products, subject only to a narrow exception for products purchased before November 30, 2004. These provisions presuppose a stable universe of registered products. Under the Court of Appeal's reading, however, vendors are allowed to remove all disclosures about products that are held by existing customers but no longer available to new customers. These products would thus effectively become unregistered, placing participants and employers in violation of their statutory obligations while offering no lawful alternative—an outcome the Legislature plainly did not intend.

Finally, the Court of Appeal's interpretation depends on importing a "new customer" limitation that appears nowhere in the statutory text. Where the Legislature intended exceptions, it said so.

Taken together, the statute's text, structure, and design confirm a straightforward rule: a registered 403(b) product does not fall outside California's disclosure regime simply because it is offered only to existing customers, rather than new ones.

**3. Existing customers continue to make meaningful, recurring choices that require easy access to publicly-available information.**

The Court of Appeal reasoned that disclosure obligations may lapse because vendors are not making "new offers" to existing customers. As explained in other

submissions, that is factually inaccurate—Plaintiff has made new investments in the Financial Freedom Select variable annuity. In addition, the Court of Appeal’s framing misunderstands how 403(b) products function in practice.

Existing customers routinely make ongoing choices about their retirement products, including whether to maintain a product, make additional investments, or transfer their existing balance elsewhere. Each year they pay fees—often calculated as a percentage of their account balance—that directly affect their long-term retirement security. A disclosure regime that protects only first-time purchasers but leaves long-term investors in the dark about how their current investments compare to other investments in the marketplace fails to serve its core purpose. Undisclosed fees erode retirement savings over time regardless of when a product was first sold, and there is great value to all disclosures being available to teachers in the same location: on 403bCompare.com.

**4. The Court of Appeal’s rule creates a dangerous and easily exploitable loophole.**

If disclosure obligations apply only to products actively sold to new customers, vendors can evade the statutory scheme by closing products to new investors while continuing to charge—and even increase—fees for existing customers, without having to publicly disclose the fees. That result rewards opacity over transparency and undermines the Legislature’s goal of creating a centralized, one-stop platform for meaningful comparison among retirement options.

Nor is there any administrability concern that justifies this outcome. The statute authorizes the Teachers’ Retirement Board to organize and present information in a clear and usable manner, including by labeling products as discontinued for new customers. Eliminating or excusing disclosure altogether is neither necessary nor consistent with the statutory design.

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The Education Code establishes a simple, durable rule: fees associated with registered 403(b) products must be disclosed, and undisclosed fees may not be charged. The Court of Appeal departed from that rule by creating an unwritten exception for fees charged only to existing customers. That exception appears nowhere in the statute, contradicts its structure, and undermines its consumer-protective purpose. This Court should grant the petition for review.<sup>1</sup>

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<sup>1</sup> At a minimum, as explained in the request for depublication, this Court should order that the Court of Appeal’s opinion not be published in the Official Reports, pursuant to Rule 8.1125 of the California Rules of Court.

Letter from Amicus Curiae NACA  
February 13, 2026

Dated: February 13, 2026

Respectfully submitted,

/s/ Rachana Pathak

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## CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2026, I caused the foregoing to be filed with the Clerk of the Supreme Court using the TrueFiling System, which will serve notice of electronic filing on all registered users, including counsel for the parties and the Clerk of the Appellate Court.

Dated: February 13, 2026

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