

PUBLIC CITIZEN LITIGATION GROUP

1600 20th Street NW • Washington DC 20009
202/588-1000 • www.citizen.org

January 23, 2026

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

Re: Amicus Letter in Support of Petition for Review,
Jacobson v. Metropolitan Life Insurance Company, Case No. S294756

Dear Chief Justice Guerrero and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, Public Citizen submits this letter as amicus curiae to urge the Court to grant the pending petition for review in the above-entitled case.

As explained below, the Court of Appeal's decision in this case, if left in place, would undermine the ability of millions of Californians to make informed decisions about their retirement funds. Sections 25101 and 25107 of California's Education Code impose robust fee disclosure requirements on any vendor that "offers" 403(b) retirement plans to employees of public schools. Misreading the statutory term "offer," the Court of Appeal held that a vendor no longer "offers" a registered product, and therefore is no longer required to publicly disclose fees associated with the product, if the product remains an option for existing customers but is not available to new customers. As a result, the decision below reduces the information that vendors must disclose about their 403(b) products, undercutting the legislature's objective to create and maintain transparency in the 403(b) marketplace. For these reasons, Public Citizen urges this Court to grant the petition for review.

INTEREST OF AMICUS CURIAE

Public Citizen is a non-profit consumer advocacy organization with members in all 50 states, including California. The organization engages in research, education, lobbying, and litigation on a wide range of public health and consumer issues. Among other things, Public Citizen has long fought to ensure robust consumer protections in the marketplace for financial products, and Public Citizen often represents consumer interests in litigation, including as amicus curiae in this court and in the United States Supreme Court.

BACKGROUND

The Internal Revenue Code provides for tax-deferred retirement investment products, known as 403(b) plans, available for employees of public schools and certain non-profit organizations.¹ Millions of employees use these plans to save money for retirement.

¹ 26 U.S.C. § 403(b).

The plans charge fees, however, which are sometimes excessive.² To ensure that employees using these plans can make informed choices, California’s Education Code requires companies that offer these plans to disclose certain information, which is posted on a public website, 403bCompare.com.³ The legislature’s express intent was to help public education employees make “informed decisions” by providing “access to an impartial information bank to compare among registered vendors and investment options available.”⁴

For several years, Metropolitan Life Insurance Company (Met Life) offered what it called a Guaranteed Minimum Income Benefit (GMIB) rider with its Financial Freedom Select (FFS) variable annuity product.⁵ In accordance with the California disclosure requirement, Met Life disclosed on 403bCompare.com the fees associated with that rider. In 2018, Met Life stopped offering the GMIB rider to new customers. Shortly thereafter, Met Life stopped disclosing information about the GMIB fees on 403bCompare.com.⁶

Nonetheless, Met Life continues to offer the GMIB rider, and to charge associated fees, to customers who chose the rider when they originally purchased the FFS annuity product prior to 2018. Plaintiff Carolyn Jacobson, for instance, made additional investments and paid thousands of dollars in annual rider fees after Met Life removed the disclosures from 403bCompare.com.⁷

In this case, plaintiff Jacobson sued Met Life, alleging that Met Life was charging an undisclosed fee, in violation of the California Education Code. The superior court agreed that Met Life was required to disclose the fee for the rider that it continued to offer to existing customers, but granted the demurrer on the ground that Jacobson had not established economic harm. Affirming the dismissal, the Court of Appeal held that “the Education Code did not require Met Life to continue to disclose the GMIB rider fee on the state-maintained website after Met Life stopped offering that option to prospective purchasers.”⁸

² *403(b) Retirement Plans Are Widely Used by Teachers—Here’s What You Need to Know About Risks and Oversight*, U.S. Government Accountability Office (Aug. 1, 2023), <https://www.gao.gov/blog/403b-retirement-plans-are-widely-used-teachers-heres-what-you-need-know-about-risks-and-oversight> (“[E]ven seemingly small fees, such as a 1% annual charge, can significantly erode the amount of savings people have to fund their retirement.”).

³ Cal. Educ. Code §§ 25101, 25107.

⁴ Stats. 2002, ch. 1095, § 1, subds. (a), (c), (e).

⁵ *Jacobson v. Metro. Life Ins. Co.* (Cal. Ct. App. 2025) 339 Cal. Rptr. 3d 558, 561.

⁶ *Id.*

⁷ Compl. ¶¶ 77, 81.

⁸ *Jacobson*, 339 Cal. Rptr. 3d at 561.

DISCUSSION

The decision below is incorrect and warrants review. First, the decision is unsupported by the plain language of the statute, which does not restrict the disclosure requirement to products offered to *new* customers. Here, Jacobson has alleged that Met Life continues to offer the FFS annuity with the GMIB rider to *existing* customers who, like Jacobson, have already purchased the product and who may choose whether to maintain it or switch to a new product. The disclosure obligation therefore continues to apply. Second, the Court of Appeal’s decision undermines the effectiveness of 403bCompare.com for consumers, contravening the legislature’s intent.

I. Sections 25101 and 25107 require disclosure of fees associated with 403(b) products, even if a vendor offers those products only to existing customers.

California Education Code section 25101 applies to a “vendor of 403(b) products that offers those products, or the products of other 403(b) vendors, to employers and their eligible employees.”⁹ And section 25101(a)(3) requires prospective vendors to disclose to the Teachers’ Retirement Board “all expenses paid directly or indirectly by retirement plan participants, including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees, and annual fees.”¹⁰ Section 25102 requires periodic update of the information.¹¹ And section 25107 provides that “[a] vendor may not charge a fee associated with a registered 403(b) product that is not disclosed, pursuant to section 25101.”¹²

The language of the statute does not limit its application to products that a vendor “offers” to *new* customers; stated differently, the language does not exclude products that a vendor offers only to *existing* customers. Here, Met Life indisputably continues to “offer” the GMIB rider to customers like Jacobson, who each year may choose whether to continue using the product and each year are charged a fee if they choose to do so.¹³ Therefore, sections 25101 and 25107 required disclosure of the fee charged for the GMIB product.

As the Court of Appeal itself noted, “investors (such as Plaintiff) who were sold the rider while it was available are still permitted to make new investments that are subject to the rider fee, and continue to pay the rider’s annual fee on the entirety of their account balance, including monies invested after Defendant stopped offering the rider on new product purchases.”¹⁴ Jacobson, for

⁹ Cal. Educ. Code § 25101.

¹⁰ *Id.*

¹¹ *Id.* § 25102.

¹² *Id.* § 25107.

¹³ *See Offer*, Black’s Law Dictionary (12th ed. 2024) (defining “offer” as “[t]he act or an instance of presenting something for acceptance”).

¹⁴ *Jacobson*, 339 Cal. Rptr. 3d at 563.

instance, made additional investments in the product in the four years prior to her complaint.¹⁵ And Met Life charged her more than \$1,000 in annual GMIB rider fees in each of the last several years, calculated based on her entire account balance.¹⁶ Thus, Met Life continues to offer existing customers the GMIB rider, and customers accept that offer each year, when they choose to pay the annual fee to maintain the product.¹⁷

The Court of Appeal disagreed, stating that, “[t]here is no allegation that Met Life sought to inject new terms into its agreement with Jacobson on the GMIB rider such that it made new offers to her.”¹⁸ The statute’s disclosure requirement, though, is not limited to “new terms” or “new offers.” And Met Life’s “offer” of the GMIB rider remains open each year to Jacobson and other existing customers, who may continue to make additional investments.

As this Court has emphasized, “[i]n interpreting statutory language, a court must not insert what has been omitted, or omit what has been inserted.”¹⁹ The Court of Appeal violated this canon of statutory construction by inserting into the language of section 25101 the limitation that the disclosure requirement applies only with respect to offers available to *new* customers, and excluding offers available only to existing customers.

In addition, the court’s reading undercuts the statute’s purpose. The statute specifies that the legislature created the website “to provide employees notice of *available* retirement investment products from registered vendors” through “an impartial information bank to compare among registered vendors and investment options *available*.”²⁰ Here, Met Life’s FFS annuity product with the GMIB rider is continuously “available” to Jacobson, as evidenced by her additional investments and payment of the annual fee.

II. The Court of Appeal’s decision undermines the value of 403bCompare.com for existing consumers.

As California understood when establishing 403bCompare.com, “[m]any teachers struggle to budget for their retirement, only to discover that undisclosed fees, penalties, and restrictions erode their savings.”²¹ Therefore, the state established 403bCompare.com so that all customers—both new and existing—could make “informed decisions” about their retirement savings.²²

¹⁵ Compl. ¶ 81.

¹⁶ *Id.* ¶ 77.

¹⁷ *Id.* ¶¶ 78–79

¹⁸ *Jacobson*, 339 Cal. Rptr. 3d at 566 n.6.

¹⁹ *California Cap. Ins. Co. v. Hoehn* (2024) 17 Cal. 5th 207, 221 (cleaned up).

²⁰ Stats. 2002, ch. 1095, § 1, subs. (c), (e) (emphasis added).

²¹ California Bill Analysis, A.B. 2506 Assembly Committee, April 16, 2002.

²² *Id.*

Existing customers like Jacobson have a choice: They can make additional investments in their existing product or purchase a new product. The statutory scheme establishes a one-stop platform to assist that choice. But by allowing vendors to entirely remove information about products offered to existing customers from 403bCompare.com, the Court of Appeal greatly diminishes the usefulness of 403bCompare.com for customers seeking an apples-to-apples comparison between their existing plan and alternative options.

This concern is particularly acute with respect to vendors who frequently change the products offered to new customers (while maintaining availability of older products for existing customers), and with respect to vendors who frequently change the fees they charge for products offered only to existing customers. In these scenarios, existing plan-holders would lose access to informative fee disclosures about products they continue to use—and continue to have a choice whether or not to use—because the products are no longer offered to new customers, eliminating California’s goal of increasing transparency. This Court has rightfully overturned past Court of Appeal interpretations that “would vitiate [a] statute’s effectiveness” by “‘end-running’ the statute’s clear purpose.”²³ That same outcome is necessary here.

Finally, the Court of Appeal is incorrect that these disclosures will “make prospective purchasers wade through years of flotsam and jetsam about obsolete riders unavailable to them.”²⁴ The statute makes clear that the Teachers’ Retirement Board “shall have the authority to organize data” to make the information accessible.²⁵ One way in which 403bCompare.com does so is by allowing vendors to prominently designate products as “Discontinued” for new customers.²⁶ The Court of Appeal was wrong to permit these disclosures to be removed altogether, rather than allowing the Board to transparently organize the information for customers.

CONCLUSION

The Court of Appeal’s decision contravenes the plain text and purpose of Cal. Educ. Code § 25100 et seq. The Court should grant the petition for review and reverse the Court of Appeal.

Respectfully Submitted,

/s/ Karla Gilbride (CA Bar No. 264118)
William Gomberg
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-7783

²³ *Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal. 4th 524, 532–33.

²⁴ *Jacobson*, 339 Cal. Rptr. 3d at 567.

²⁵ Cal. Educ. Code § 25104(d).

²⁶ Compl. ¶¶ 11–12.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 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: January 23, 2026

/s/ Karla Gilbride
Karla Gilbride (CA Bar No. 264118)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-7783
kgilbride@citizen.org

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