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NCLA Amicus Brief Tells Ninth Circuit to End Calif. Ban on Special Ed. Funding for Religious Schools

Chaya Loffman and Jonathan Loffman, et al. v. California Department of Education, et al.

Washington, DC (November 3, 2023) — California bars private religious schools and parents of their students from accessing federal and state-level special education funds and programs. The New Civil Liberties Alliance has filed an *amicus curiae* brief in *Loffman v. California Department of Education*, urging the U.S. Court of Appeals for the Ninth Circuit to block this policy, which violates faithful Californians' First Amendment rights.

Provisions in the California Education Code only allow "nonsectarian" schools to be certified for receiving special education services. By categorically denying these resources to religious schools, California defies the First Amendment's clause protecting the free exercise of religion. The Becket Fund for Religious Liberty represents Jewish parents and private schools, in *Loffman v. California Dept. of Education*, whose students are victimized by this rule. The U.S. Supreme Court has repeatedly recognized that disqualifying otherwise eligible recipients of public benefits solely due to their religion penalizes them for exercising that fundamental right.

Lawmakers who passed California's exclusionary policy might have been motivated by a mistaken belief that the state constitution, or even the Free Exercise Clause itself, forces the state to prevent religious schools from participating in any state-funded program or receiving any form of taxpayer assistance. In fact, the "separation of church and state" is a constitutional myth, as the Establishment Clause was carefully written to protect established churches in the states from dis-establishment by the federal government. Denying all public aid to religious groups would be absurd, prohibiting governments from providing them even police and fire protection.

The U.S. District Court for the Central District of California wrongly ruled that the religious schools serving as plaintiffs in this case lacked Article III standing to sue the Defendants. The court recognized that individual plaintiffs Fedora Nick and Morris Taxon and Sarah and Ariel Perets, parents of Jewish private school students with disabilities, had proper Article III standing. However, the judge erroneously decided they had failed to allege that *their own* Free Exercise rights have been violated by the school plaintiffs' exclusion from certification. NCLA asks the Ninth Circuit to correct this blunder and strike down the state's discriminatory restriction, which harms children and parents every day it remains in force.

NCLA released the following statement:

"The U.S. Supreme Court has ruled—repeatedly and unequivocally—that states may not deny public benefits to sectarian schools on account of their religious beliefs. Yet somehow California persists with its benighted, unconstitutional policy. Worse yet, the federal district court failed to stop it. Cases challenging such prejudice should be unnecessary by now, but NCLA is proud to stand alongside the Becket Fund for Religious Liberty to right this wrong. We have every confidence that the Ninth Circuit will enjoin this misguided law."
— Mark Chenoweth, President and General Counsel, NCLA

For more information visit the *amicus* page here.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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