

Case No. 24-6888

In the United States Court of Appeals
for the Ninth Circuit

JEFFREY POWERS, et. al.,

Plaintiffs-Appellees,

v.

BRENTWOOD SCHOOL,

Intervenor-Appellant.

On Appeal from the United States District Court
for the Central District of California
Case No. 2:22-cv-08357-DOC-KS
The Honorable David O. Carter

BRENTWOOD SCHOOL'S OPENING BRIEF

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RULE 26.1 DISCLOSURE

Brentwood School has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' claims arose under federal statutes and federal common law.

This Court has jurisdiction under 28 U.S.C. § 1291 because the district court's Permanent Injunction Re: Former Brentwood School Leased Grounds (Final Injunction); Final Judgment and Permanent Injunction (Final Judgment) and Post-Trial Opinion; Findings of Fact and Conclusions of Law (Final Order) are all final and appealable. The Final Injunction, Final Judgment, and Final Order were entered on October 11, 2024, 1-ER-2-143, and Brentwood School filed a timely notice of appeal on November 8, 2024, 2-ER-343. Fed. R. App. P. 4(a)(1)(A).

ISSUES PRESENTED

1. Whether the plain language of the West Los Angeles Leasing Act of 2016 (Leasing Act)—which allows the Department of Veteran Affairs (VA) to enter into third-party leases—requires the “predominant purpose” of the *entire lease* to principally benefit veterans and their families when no such requirement exists in the statute.

2. To the extent the Leasing Act is ambiguous, whether the legislative history—which expressly stated that the envisioned lease

with Brentwood School would comply with the statute—confirms that the statute only requires that lessees provide *services* that principally benefit veterans and their families.

3. Whether, under the correct interpretation of the Leasing Act, Brentwood School’s lease complied with the statute by requiring Brentwood School to provide significant services that principally benefit veterans and their families.

STATEMENT OF THE CASE

I. The creation of the WLA Campus

In 1865, Congress created the National Home for Disabled Volunteer Soldiers (“National Home”). Act of Mar. 3, 1965, ch. 91, 13 Stat. 509. In 1887, Congress “authorized, empowered, and directed” the “Board of Managers of the National Home for Disabled Volunteer Soldiers” to “locate, establish, construct, and permanently maintain a branch of [the National Home] in the states west of the Rocky Mountains.” Act of Mar. 2, 1887, ch. 316, § 1, 24 Stat. 444; *see also* Act of March 3, 1851, ch. 25, 9 Stat. 595. The following year, the government accepted a gift of 300 acres between Santa Monica and Los Angeles for that purpose (“WLA Campus”). 1-ER-24; 2-ER-235-37.

II. Brentwood School partners with VA and invests millions of dollars to construct athletic facilities on the WLA Campus for veterans and students alike.

Brentwood School is an independent school, and 501(c)(3) nonprofit, with over 1,100 students in kindergarten through twelfth grade.¹ 2-ER-168, 177. Brentwood School’s campus for sixth through twelfth grade is adjacent to the WLA Campus. 2-ER-169-70. Through various informal and formal agreements, VA has allowed Brentwood School to use portions of the WLA Campus since the early 1970s. 2-ER-178.

In 1999, VA and Brentwood School entered into an enhanced sharing agreement (ESA) for Brentwood School to build athletic facilities on 22 acres of the WLA Campus. 2-ER-179-84, 191. After this agreement was signed, Brentwood School spent approximately \$15 million developing athletic facilities on the property—including three baseball fields, a workout tent, a stadium field and track, a basketball/volleyball pavilion, pool, and tennis courts. *Id.*

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¹ <https://projects.propublica.org/nonprofits/organizations/951426236>. This Court may take judicial notice of Brentwood School’s nonprofit status. *Garcia v. Salvation Army*, 918 F.3d 997, 1002, n. 9 (9th Cir. 2019) (“We take judicial notice of the Salvation Army’s nonprofit status....”).

III. After Brentwood School's prior agreement is deemed invalid, VA creates a Master Plan to revitalize the WLA Campus that includes a revised lease with Brentwood School.

In 2011, veterans with disabilities sued VA related to the WLA Campus. *Valentini v. Shinseki (Valentini I)*, 860 F. Supp. 2d 1079, 1084 (C.D. Cal. 2012). In *Valentini I*, the district court concluded, among other things, that VA's ESA with Brentwood School violated the Administrative Procedures Act (APA). *Id.* at 1091–92. Specifically, VA had approved the ESA pursuant to 38 U.S.C. § 8151, which required such agreements to be connected to improving health care for veterans. *Id.* Because Brentwood School's ESA was not sufficiently connected to health care, the district court determined that the agreement was unlawful. *Id.* The parties reached a settlement during the subsequent appeal, committing to work together in good faith on a new master plan for the WLA Campus. 1-ER-27.

Pursuant to the settlement, the VA Secretary approved a draft master plan on January 28, 2016 (Master Plan). 2-ER-221-234. The Master Plan specifically highlighted Brentwood School's athletic facilities as a source of open space and recreation for veterans. 2-ER-228-34. It also noted that VA was in negotiations with Brentwood School

on a new lease that provided “a combination of fair market value rents, and Veteran focused consideration (such as in-kind consideration and use of existing and future facilities under those arrangements for purposes tied to recreation, rehabilitation, therapy, mental health support, legal and addiction services.).” 2-ER-231.

IV. Congress enacts the Leasing Act to allow VA to enter into the new Brentwood School lease highlighted in the Master Plan.

In response to *Valentini I*, Congress passed the Leasing Act to expand the scope of leases that VA was permitted to enter into on the WLA Campus, including the lease with Brentwood School. Pub. L. No. 114-226.

The Leasing Act authorizes VA to enter into leases with third parties “to provide services that principally benefit veterans and their families” for certain enumerated purposes, such as “health and wellness,” “[p]eer activities, socialization, [and] physical recreation,” “[e]ducation,” “training related to employment,” and “[t]ransportation,” among several others. *Id.* at § (b)(2)(A)-(I).

The statute defines “principally benefit veterans and their families” as “services (A) provided exclusively to veterans and their families; or (B)

that are designed for the particular needs of veterans and their families, as opposed to the general public, and any benefit of those services to the general public is distinct from the intended benefit to veterans and their families.” *Id.* at § (l)(1)(A)-(B).

The Leasing Act also states that “[t]he Secretary shall ensure that each lease carried out under this section is consistent with the draft master plan approved by the Secretary on January 28, 2016, or successor master plans,” which again, expressly envisioned a lease with Brentwood School that provided for a combination of fair market rents and in-kind consideration through veteran services, including the use of the existing athletic facilities on the 22 acres of the WLA Campus leased by Brentwood School. *Id.* at § (g); 2-ER-231.

The Congressional Committee Report on the Leasing Act expressed enthusiasm for the envisioned lease with Brentwood School and confirmed that the lease would comply with the requirements in the statute:

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The Committee further recognizes that the envisioned future lease arrangement between VA and the Brentwood School meets the criteria laid out in this legislation. The Brentwood School is uniquely positioned to offer veterans and their families on the West LA campus substantial opportunities for physical recreation, health and wellness, education, and vocational training as well as direct community service and increased revenue. As such, **the Committee is supportive of VA continuing the Department’s long-standing community partnership with the Brentwood School under the tenets of this bill.**

H. Rep. No. 114-570, at 7 (emphasis added).

V. Brentwood and VA enter into a new lease that complies with the Leasing Act.

Pursuant to the Leasing Act, Brentwood School and VA entered into a new lease on November 4, 2016. 2-ER-270. The lease required Brentwood School to “provide consideration as described herein, to principally benefit veterans and their families,” and stated that it was intended to provide services that “more appropriately benefit veterans and their families” than the parties’ prior ESA. 2-ER-271.

The lease required Brentwood School to provide numerous veteran-specific services amounting to nearly \$1 million of in-kind consideration annually to promote veterans’ health and wellness, vocational training,

skills building, training related to employment, peer activities, socialization, physical recreation, and transportation. 2-ER-275, 277-79, 327-30. Those services included, among others, special programs and events exclusively for veterans and their families, athletic and educational programs exclusively for veterans, and scholarships exclusively for the children of veterans. 2-ER-277-79, 327-30. The lease also provided for the payment of at least \$850,000 per year to VA, which was made available for, among other things, renovating and maintaining facilities on the WLA Campus and supporting veteran housing. 2-ER-275.

In addition to the terms of the lease itself, the evidence at trial confirmed that Brentwood School followed through with providing the required veteran services (and more). Trial testimony confirmed that Brentwood School provides exclusive times for veterans to use the athletic facilities, including the pool, track, gym (with an on-site trainer), and tennis courts. 2-ER-205, 211-12. Brentwood School delivers hundreds of free meals to veterans, and even provides pork-free options, kosher options, vegan options, gluten-free options, and vegetarian options. 2-ER-211. It provides food pantries that regularly distribute

between 150 and 250 bags of supplies to veterans. 2-ER-218. It offers adult education courses exclusively to veterans, including, among many others, courses on financial literacy, cooking, screenwriting, and yoga. 2-ER-209-14. It holds employment readiness seminars, where veterans receive help building resumes, receive headshots, and hold mock interviews. 2-ER-214. It maintains a computer lab for veterans. 2-ER-218. It provides free summer camp to children of veterans, which normally costs between \$400 to \$550 per week, and it provides roughly \$400,000 per year in financial assistance for children of veterans that are enrolled as full-time students. 2-ER-197, 213. And it provides transportation to veterans through a shuttle that regularly circles the WLA Campus to bring veterans to and from the athletic facilities. 2-ER-206.

VI. Plaintiffs assert that Brentwood School's lease violates the Leasing Act.

The Plaintiffs are a class of homeless veterans with serious mental illness or traumatic brain injuries residing in Los Angeles County. 2-ER-241, 253. Among other things, Plaintiffs' amended complaint asserted that Brentwood School's lease should be invalidated on two grounds.

First, Plaintiffs claimed that Brentwood School’s lease was invalid under the Administrative Procedure Act (APA) because it was entered into in violation of the Leasing Act. 2-ER-341-42. To support this claim, Plaintiffs argued that: (1) the Leasing Act required the overall purpose of the *entire lease* to principally benefit veterans and their families, and (2) the overall purpose of Brentwood School’s lease was the athletic facilities. 2-ER-335, 342. Under Plaintiffs’ interpretation of the statute, Brentwood School’s lease was invalid even though it required Brentwood School to provide significant services that principally benefit veterans and their families. *See id.* Plaintiffs brought this claim despite the fact that: (1) no such “overall purpose” requirement exists in the statute, and (2) the legislative history expressly confirmed that the lease with Brentwood School—which would necessarily provide for the school’s continued use of the athletic facilities²—complied with the Leasing Act because it required Brentwood School to provide veteran services. *See* Pub. L. No. 114-226; H.R. Rep. 114-570, at 7.

² Brentwood School would have no reason to enter into a lease with VA if the lease did not allow Brentwood School and its students to use the athletic facilities.

Second, Plaintiffs claimed that the 1888 deed created a charitable trust that imposes fiduciary duties on VA to create and maintain permanent housing for veterans on the WLA Campus. 2-ER-336-41. Plaintiffs asserted that the scope of that fiduciary duty is defined by the requirements in the Leasing Act, and that VA breached those duties because Brentwood School's lease violated the statute. *Id.* Thus, both of Plaintiffs' claims related to Brentwood School's lease relied on the same underlying argument that its lease violated the Leasing Act. 2-ER-335-42.

VII. The district court adopts Plaintiffs' interpretation of the Leasing Act and voids Brentwood School's lease.

Following trial, the district court adopted Plaintiffs' interpretation of the Leasing Act and voided Brentwood School's lease (Judgment). 1-ER-68-69, 72, 79. Specifically, the district court concluded that the Leasing Act requires the "predominant purpose" of the *entire lease* to principally benefit veterans and their families, and the "predominate purpose" of Brentwood School's lease was the athletic facilities. 1-ER-68-69, 88. The district court further concluded that renegotiating Brentwood School's lease would be "futile" because "it is virtually

impossible” for any lease that allows for the school’s use of the athletic facilities to “principally benefit veterans and their families.” 1-ER-90.

Given the district court’s ruling, Brentwood School moved to intervene in the district court on November 4, 2024, 2-ER-146, which was granted on November 13, 2024, 2-ER-145.³

SUMMARY OF THE ARGUMENT

The district court erred in voiding Brentwood School’s lease because it applied an erroneous interpretation of the Leasing Act. The district court concluded that the Leasing Act’s plain language requires the “predominant purpose” of the *entire lease* to principally benefit veterans and their families. But this “predominant purpose” requirement does not appear anywhere in the statute. Rather, the Leasing Act’s plain

³ Even if Brentwood School had not intervened, it would still have the right to bring this appeal because: (1) it participated heavily in the district court proceedings that resulted in the Judgment, and (2) the Judgment expressly impairs Brentwood School’s property and contract rights. *See Hilao v. Estate of Marcos*, 393 F.3d 987, 992 (9th Cir. 2004) (holding that nonparties may appeal “when (1) the appellant, though not a party, participated in the district court proceedings, and (2) the equities of the case weigh in favor of hearing the appeal) (internal quotations omitted); 1-ER-3 (“Brentwood School has participated in the hearing on injunctive relief and other conferences with Plaintiffs’/Class counsel, the Monitor, and the Court”); 1-ER-72 (declaring that the “lease between the VA and the Brentwood School ... is void.”)

language only requires that the lessee “provide **services** that principally benefit veterans and their families.” Pub. L. No. 114-226, at § (b)(2) (emphasis added). Indeed, the statute’s definition of “principally benefit veterans and their families” specifically notes that the phrase refers to and modifies the “services” that must be provided, rather than referring to the overall purpose of the entire lease. Pub. L. No. 114-226, at § (k)(1). As a result, the district court committed legal error by reading a “predominant purpose” requirement into the statute that does not exist. Because Brentwood School’s lease required it “to provide services that principally benefit veterans and their families,” the lease complied with the plain language of the Leasing Act.

At a minimum, the Leasing Act is ambiguous on whether the phrase “principally benefit veterans and their families” applies to the “services” provided or the “predominant purpose” of the entire lease. To the extent the statute is ambiguous, the legislative history confirms that the district court’s interpretation was erroneous.

First, the legislative history confirmed that Congress enthusiastically approved of the Master Plan, which included the proposed lease with Brentwood School providing for a combination of fair

market rents and in-kind consideration through veteran services. To that end, the Leasing Act requires that “[t]he Secretary shall ensure that each lease carried out under this section is consistent with the draft master plan....” Pub. L. No. 114-226 at § (g). Obviously, if Congress intended for the Leasing Act to prohibit a lease with Brentwood School—which would necessarily provide for the school’s continued use of the athletic facilities—it would not have mandated that the Secretary ensure that leases entered into under the statute be consistent with the Master Plan that expressly envisioned a lease with Brentwood School.

Second, the legislative history expressly stated that the envisioned lease with Brentwood School would comply with the Leasing Act:

The Committee further recognizes that the envisioned future lease arrangement between VA and the Brentwood School meets the criteria laid out in this legislation.

H. Rep. No. 114-570, at 7. Congress was fully aware that this envisioned lease would necessarily provide for Brentwood School’s continued use of the athletic facilities, and confirmed that the lease complied with the statute because it required Brentwood School to provide *services* to veterans and their families:

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The Brentwood School is uniquely positioned to offer veterans and their families on the West LA campus substantial opportunities for physical recreation, health and wellness, education, and vocational training as well as direct community service and increased revenue.

Id.

Third, the Leasing Act requires VA and the Office of Inspector General (OIG) to provide Congress with periodic reports regarding compliance with the Leasing Act on the WLA Campus. VA's annual reports to Congress in 2017, 2018, 2019, and 2020 all confirmed VA's position that Brentwood School's lease complied with the Leasing Act. In 2018, the OIG issued a report to Congress applying the same erroneous interpretation of the Leasing Act that was adopted by the district court, *i.e.*, that the Leasing Act requires the overall purpose of the **entire lease** to principally benefit veterans. The OIG's report to Congress also included VA's response, wherein VA rejected the OIG's interpretation of the Leasing Act because the statute's plain language and legislative history confirmed that it only requires that lessees provide **services** that principally benefit veterans. After receiving these reports, Congress amended the Leasing Act in 2021 to modify how certain revenues are used, but did not invalidate Brentwood School's lease through the

amendment or add the “overall purpose” language that the OIG was reading into the statute. It is therefore presumed that Congress adopted VA’s interpretation of the Leasing Act, especially with regards to Brentwood School’s lease. This legislative history confirms that the district court applied an erroneous interpretation of the Leasing Act when voiding Brentwood School’s lease.

Under the proper interpretation of the Leasing Act, third-party leases comply with the statute if they require the lessee “to provide services that principally benefit veterans and their families.” Because it is undisputed that Brentwood School’s lease meets this requirement, the district court erred in voiding Brentwood School’s lease.

Finally, in addition to applying an erroneous interpretation of the Leasing Act, the district court erred by ruling in Plaintiffs’ favor on their charitable trust claim because: (1) Plaintiffs lacked standing to bring their charitable trust claim, (2) the 1888 deed did not create a charitable trust, and (3) the government did not accept any fiduciary duties through the Leasing Act. For these reasons, the district court’s decision to void Brentwood School’s lease should be reversed.

STANDARD OF REVIEW

This appeal involves issues of statutory construction, which this Court reviews de novo. *Miranda v. Anchondo*, 684 F.3d 844, 849 (9th Cir. 2012).

LEGAL ARGUMENT

As discussed below, the district court erred when it voided Brentwood School's lease under Plaintiffs' APA and charitable trust claims.

I. Brentwood School's lease should not have been voided under Plaintiffs' APA claims.

Under the APA, a court shall "hold unlawful and set aside agency action" that is "not in accordance with law." 5 U.S.C. § 706(2)(A). "An agency action is not in accordance with the law ... when it is in conflict with the language of the statute" relied on by the agency in taking the relevant action. *Nw. Env'tl. Advocates v. U.S. E.P.A.*, 537 F.3d 1006, 1014 (9th Cir. 2008) (internal quotations omitted).

The district court concluded that VA violated the APA because its lease with Brentwood School violated the Leasing Act. 1-ER-87-90. But that conclusion was based on an erroneous interpretation of the statute.

Under the correct interpretation, it is undisputed that Brentwood School's lease complied with the Leasing Act.

A. The district court applied an erroneous interpretation of the Leasing Act.

The Leasing Act allows VA to enter into third-party leases that meet certain requirements. Pub. L. No. 114-226, at § (b)(2). The district court concluded that to comply with the plain language of the Leasing Act, the “predominant purpose” of the entire lease must principally benefit veterans and their families. 1-ER-68-69, 88.

As discussed below, the district court's interpretation of the Leasing Act conflicts with the statute's plain language. And to the extent the Leasing Act is ambiguous, the legislative history—which expressly stated that the envisioned lease with Brentwood School would comply with the statute—confirms that the district court's interpretation was erroneous.

1. The district court's interpretation of the Leasing Act conflicts with the statute's plain language.

When interpreting a statute, courts “must first determine whether the statutory text is plain and unambiguous.” *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009). “If it is, [courts] must apply the statute according to its terms.” *Id.*

In applying the terms of unambiguous statutes, courts cannot read additional requirements into the statute that do not appear in the text, even if the court believes those additional requirements would better accomplish Congress’s policy objectives. *See Harris v. Harris*, 935 F.3d 670, 674 (9th Cir. 2019) (“It is not a judge’s job to add to or otherwise re-mold statutory text to try to meet a statute’s perceived policy objectives. Instead, we must apply the statute as written”); *Salisbury v. City of Santa Monica*, 998 F.3d 852, 859 (9th Cir. 2021) (“Federal judges undertake to apply the law as it is written, not to devise alternative language that might accomplish Congress’s asserted purpose more effectively”); *Connell v. Lima Corp.*, 988 F.3d 1089, 1108 (9th Cir. 2021) (“It is our judicial function to apply statutes on the basis of what Congress has written, not what Congress might have written”) (quotation omitted).

The Leasing Act sets forth the requirements for third-party leases on the WLA Campus:

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The Secretary of [VA] may carry out ... [a]ny lease of real property for a term not to exceed 50 years to a third party to provide services that principally benefit veterans and their families and that are limited to one or more of the following purposes:

- (A) The promotion of health and wellness, including nutrition and spiritual wellness.
- (B) Education.
- (C) Vocational training, skills building, or other training related to employment.
- (D) Peer activities, socialization, or physical recreation.
- (E) Assistance with legal issues and Federal benefits.
- (F) Volunteerism.
- (G) Family support services, including child care.
- (H) Transportation.
- (I) Services in support of one or more of the purposes specified in subparagraphs (A) through (H).

Pub. L. No. 114-226, at §§ (a), (b)(2).

The Leasing Act defines “principally benefit veterans and their families” as “services (A) provided exclusively to veterans and their

families; or (B) that are designed for the particular needs of veterans and their families, as opposed to the general public, and any benefit of those services to the general public is distinct from the intended benefit to veterans and their families.”⁴ *Id.* at § (l)(1).

Based on the plain language of the statute, the Leasing Act only imposes three requirements for third-party leases: (1) the lease term cannot exceed 50 years; (2) the lessee must “provide services” that are “exclusively [provided] to veterans and their families” or “are designed for the particular needs of veterans and their families, as opposed to the general public,” and (3) the services provided must be for one or more of the enumerated purposes, such as “[t]he promotion of health and wellness,” “[e]ducation,” “[v]ocational training,” “[p]eer activities, socialization, or physical recreation,” and “[t]ransportation,” among others. Pub. L. No. 114-226, at § (b)(2).

In finding that Brentwood School’s lease violated the Leasing Act, the district court did *not* dispute that: (1) the lease term was less than

⁴ Although not relevant here, the Leasing Act also excludes from this definition “services in which the only benefit to veterans and their families is the generation of revenue for [VA].” Pub. L. No. 114-226, at §§ (l)(2).

50 years; (2) the lease required Brentwood School to provide services “exclusively to veterans and their families” or that were “designed for the particular needs of veterans and their families, as opposed to the general public;” or (3) the services provided by Brentwood School were for the purpose of “[t]he promotion of health and wellness,” “[e]ducation,” “[v]ocational training,” “[p]eer activities, socialization, [and] physical recreation,” and “[t]ransportation,” among others. *See generally* 1-ER-19-142.

Instead, the district court invalidated the lease by erroneously reading a *fourth* requirement into the Leasing Act that does not appear in the text. The district court concluded that the plain language of the Leasing Act requires the “predominant purpose” of the *entire lease* to “principally benefit veterans and their families.” 1-ER-68-69, 88. Under this interpretation, it was irrelevant that Brentwood School’s lease required it to provide significant services exclusively to veterans and their families for several of the enumerated purposes in the statute. *See id.* Rather, the only relevant inquiry to the district court was whether

the “predominant purpose” of the *entire lease* was to principally benefit veterans and their families.⁵ *Id.*

The district court’s interpretation was clearly at odds with the plain language of the Leasing Act. Indeed, the district court’s “predominant purpose” requirement does not appear anywhere in the statute:

The Secretary of [VA] may carry out ... [a]ny lease of real property for a term not to exceed 50 years to a third party to provide services that principally benefit veterans and their families and that are limited to one or more of the following purposes....

Pub. L. No. 114-226, at §§ (a), (b)(2). To address this lack of “predominant purpose” language, while maintaining that it was applying the “plain and unambiguous language” of the statute, district court concluded that the phrase “principally benefit veterans their families” unambiguously “refers to and modifies” the word “lease” in the statute and “does not refer to ‘services.’”⁶ 1-ER-68. But that conclusion conflicts with both a

⁵ In addition to applying an erroneous interpretation of the Leasing Act, the district court also made an erroneous factual finding that the “predominate purpose” of Brentwood School’s lease was not veteran services. Indeed, the lease specifically stated that VA would have access to the athletic facilities a majority (51%) of the time. 2-ER-277.

⁶ The district court’s only support for this conclusion was a citation to its own prior ruling where it reached the same conclusion. 1-ER-68-69.

commonsense reading of the statute and the statute’s own definition of the phrase “principally benefit veterans and their families.”

The Leasing Act’s definition of “principally benefit veterans and their families” specifically notes that the phrase refers to and modifies the types of “services” that can be provided by the lessee:

In this section the term ‘principally benefit veterans and their families’, with respect to **services** provided by a person or entity under a lease of property or land-sharing agreement—

(1) means **services**—

(A) provided exclusively to veterans and their families;

or

(B) that are designed for the particular needs of veterans and their families, as opposed to the general public, and any benefit of those services to the general public is distinct from the intended benefit to veterans and their families; and

(2) excludes **services** in which the only benefit to veterans and their families is the generation of revenue for the [VA].

Pub. L. No. 114-226, at § (k)(1) (emphasis added). By its own definition, the phrase “principally benefit veterans and their families” unambiguously modifies the word “services” by explaining which

“services” are required. If Congress wanted to apply this “principally benefit” language to the overall purpose of the entire lease, it could have included that language in the statute. But because the definition of “principally benefit” is limited to the “services” that the lessee must provide, the district court’s interpretation—that the phrase “does not refer to ‘services’”—is not supported by the statute’s plain language. 1-ER-68; *see also Harris*, 935 F.3d at 674 (“It is not a judge’s job to add to or otherwise re-mold statutory text to try to meet a statute’s perceived policy objectives. Instead, we must apply the statute as written.”).

The district court’s interpretation would also lead to an absurd result and frustrate the purpose of the Leasing Act. *See Wilshire Westwood Assocs. v. Atl. Richfield Corp.*, 881 F.2d 801, 804 (9th Cir. 1989) (“[t]his court must look beyond the express language of a statute where a literal interpretation ‘would thwart the purpose of the over-all statutory scheme or lead to an absurd result’”) (citation omitted). The purpose of the Leasing Act is to allow VA to enter into leases with third-parties that provide services to veterans. Pub. L. No. 114-226, at §§ (a), (b)(2). But the district court’s interpretation of the statute—that the overall purpose of the lease itself must principally benefit veterans—would effectively

prevent VA from entering into leases with third-parties no matter how many services they provide to veterans if the lessee had a purpose to exist other than veterans. Indeed, under this interpretation, there would be no incentive for third-parties that are not exclusively veteran focused—including those parties that would provide extensive services to veterans—to enter into a lease on the WLA Campus. The Leasing Act contemplates that a lessee can pursue its own interests through the lease as long as the lease also requires the lessee to provide services that principally benefit veterans. To avoid rendering the Leasing Act effectively useless, this Court should reject the additional requirement that the district court read into the statute.

Because nothing in the Leasing Act states that the “predominant purpose” of the entire lease must “principally benefit veterans and their families,” the district court committed legal error by reading that requirement into the statute. Under the plain language of the Leasing Act, a lease complies with the statute if it requires the lessee “to provide *services* that principally benefit veterans and their families.” Pub. L. No. 114-226, at § (b)(2) (emphasis added).

2. To the extent the Leasing Act is ambiguous— which it is not—the legislative history confirms that the district court’s interpretation was erroneous.

“If the statute’s terms are ambiguous, [this Court] may use canons of construction, legislative history, and the statute’s overall purpose to illuminate Congress’s intent.” *Jonah R. v. Carmona*, 446 F.3d 1000, 1005 (9th Cir. 2006). “A statute is ambiguous if it is susceptible to more than one reasonable interpretation.” *Alaska Wilderness League v. U.S. E.P.A.*, 727 F.3d 934, 938 (9th Cir. 2013).

As discussed above, the phrase “principally benefit veterans and their families” unambiguously modifies the word “services” in the Leasing Act, not the word “lease.” But to the extent this Court concludes that the statute is ambiguous on which word is modified, the legislative history confirms that the district court’s interpretation was not Congress’s intent.

The Master Plan was approved by the VA Secretary on January 28, 2016, and repeatedly highlighted Brentwood School’s athletic facilities as a source of open space and recreation for veterans. 2-ER-228-34. It also noted that VA was in active negotiations with Brentwood School on a new lease that provided for a combination of fair market rents and in-kind

consideration through veteran services. 2-ER-231. Congress was fully aware of this Master Plan when passing the Leasing Act. Indeed, the Congressional Committee Report noted that “[t]he Committee believes that, if fully implemented, the draft master plan would revitalize and preserve the West LA campus, correct the years of neglect, misuse, and mismanagement that have plagued this historic site, and refocus VA’s efforts in West LA on veterans in need of services.” H.R. Rep. 114-570, at 6. To that end, the Leasing Act specifically requires that “[t]he Secretary shall ensure that each lease carried out under this section is consistent with the draft master plan approved by the Secretary on January 28, 2016, or successor master plans.” Pub. L. No. 114-226 at § (g).

Obviously, if Congress intended for the Leasing Act to prohibit a lease with Brentwood School—which would necessarily provide for the school’s continued use of the athletic facilities⁷—it would not have mandated that the Secretary ensure that leases entered into under the statute be consistent with the Master Plan, which again, expressly

⁷ Brentwood School would have no reason to enter into a lease with VA if the lease did not allow Brentwood School and its students to use the athletic facilities.

envisioned a lease with Brentwood School that includes the same combination of fair market rent and in-kind consideration as Brentwood School's actual lease. 2-ER-231.

More directly, the Congressional Committee Report expressly acknowledged that the envisioned lease with Brentwood School would comply with the Leasing Act:

The Committee further recognizes that the envisioned future lease arrangement between VA and the Brentwood School meets the criteria laid out in this legislation. The Brentwood School is uniquely positioned to offer veterans and their families on the West LA campus substantial opportunities for physical recreation, health and wellness, education, and vocational training as well as direct community service and increased revenue. **As such, the Committee is supportive of VA continuing the Department's long-standing community partnership with the Brentwood School under the tenets of this bill.**

H.R. Rep. 114-570, at 7 (emphasis added).⁸ The Committee was fully aware that this envisioned lease would necessarily provide for Brentwood

⁸ While Brentwood School's actual lease was executed after this Committee Report was published, this legislative history still confirms that the district court's interpretation was erroneous. Indeed, the fact that Congress enthusiastically approved of *any* lease with Brentwood School—which would necessarily provide for the school's continued use of the athletic facilities—negates the district court's interpretation that

School's continued use of the athletic facilities, but expressly confirmed that the lease would comply with the statute because it required Brentwood School to provide services that principally benefit veterans and their families.⁹

Finally, the Leasing Act requires both VA and the OIG to periodically report to Congress on VA's progress at the WLA Campus and its compliance with the statute. Pub. L. No. 114-226 at §§ (h)(1), (j)(1)-(3).

it would be “virtually impossible” for any lease with Brentwood School to comply with the statute. 1-ER-90. Moreover, the lease envisioned in the Master Plan had the same structure as Brentwood School's actual lease, i.e., a combination of fair market rent and in-kind consideration through veteran services. *Compare 2-ER-275 with 2-ER-231.* Thus, this legislative history fully supports the proper interpretation of the Leasing Act, which only requires that the lessee provide **services** that principally benefit veterans and their families.

⁹ The district court discounted this clear legislative history by claiming that this same Committee Report also stated that Brentwood School's lease was a “misuse” of the property. 1-ER-77. That is simply not the case. The Committee Report concluded that the Master Plan—which expressly envisioned the lease with Brentwood School—would **correct** the **prior** “misuse” of the property. H.R. Rep. 114-570 at 6. The Committee report went on to explicitly confirm that the **new** lease with Brentwood School would fully comply with the Leasing Act. H.R. Rep. 114-570 at 7.

In August 2017, VA provided Congress with its annual report that discussed, in detail, the lease with Brentwood School and the veteran services that were being provided thereunder in compliance with the Leasing Act.¹⁰

In 2018, the OIG issued a report to Congress concluding that Brentwood School's lease was unlawful based on the same erroneous interpretation of the Leasing Act that was adopted by the district court.¹¹ 2-ER-255-56. The OIG's report to Congress also included VA's response, wherein it rejected the OIG's interpretation of the Leasing Act because the statute's plain language and legislative history confirmed that Brentwood School's lease fully complied with the statute. 2-ER-257-69.

VA's annual reports to Congress in 2018, 2019, and 2020 reiterated that it disagreed with the OIG's interpretation of the Leasing Act, and

¹⁰ VA Report on Leasing Act, Aug. 2017, at 7-10, available at https://draft-master-plan-assets.s3.amazonaws.com/media/uploads/2022/03/11/WLA_CMCR_2017.pdf. This Court may take judicial notice of these reports to Congress. See *Anderson v. Holder*, 673 F.3d 1089, 1094, n. 1 (9th Cir. 2012) (“We may take judicial notice of records and reports of administrative bodies”) (internal quotations omitted).

¹¹ While the OIG used the phrase “principal purpose” instead of the district court's phrase “predominant purpose,” the interpretations were functionally the same. Compare 1-ER-69 with 2-ER-256.

discussed, in detail, the ongoing lease with Brentwood School and the significant services it was providing to veterans in compliance with the statute.¹²

After receiving these reports over several years—wherein VA concluded that Brentwood School’s lease complied with the Leasing Act—Congress amended the Leasing Act in 2021 to modify how land use revenues are used. Public Law 117–18. Despite being fully aware of VA’s interpretation of the statute and its refusal to invalidate Brentwood School’s lease based on the OIG’s report, Congress chose not to invalidate the lease through the amendment or add the “principal purpose” language that the OIG was reading into the statute. It is therefore presumed that Congress, consistent with its prior legislative history, was adopting VA’s interpretation that Brentwood School’s lease fully

¹² VA Report on Leasing Act, Nov. 2018, at 4, 7-12, *available at* https://draft-master-plan-assets.s3.amazonaws.com/media/uploads/2022/03/11/WLAC_CMV_2018.pdf.

VA Report on Leasing Act, Sep. 2019, at 4, 9-15, *available at* https://draft-master-plan-assets.s3.amazonaws.com/media/uploads/2022/03/11/WLAC_CMV_2019.pdf.

VA Report on Leasing Act, Sep. 2020, at 5, 10-15, *available at* https://draft-master-plan-assets.s3.amazonaws.com/media/uploads/2022/03/11/WLAC_CMV_2020.pdf.

complied with the statute.¹³ See *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change”); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239 (2009) (same). The rule from *Lorillard* and *Forest* is particularly applicable here, where the VA’s interpretation of the Leasing Act, as applied to Brentwood School’s lease, was reported directly to Congress for several years prior to the amendment.

This legislative history confirms that Congress intended for the Leasing Act to simply require that the lessee “provide services that principally benefit veterans and their families,” even if the predominant purpose of the lease is something else, such as Brentwood School’s athletic facilities. As such, the district court applied an erroneous interpretation of the Leasing Act to Brentwood School’s lease.

¹³ The district court discounted this reporting to Congress by focusing on the OIG’s interpretation of the Leasing Act while ignoring the VA’s response on the issue. 1-ER-75-76, 112-13. Specifically, the district court only cited the portion of VA’s response where it noted that voiding Brentwood School’s lease could result in litigation with the school. *Id.* But VA’s response was much more substantive than that, and specifically addressed the reasons why the lease did not violate the Leasing Act based on a proper interpretation of the statute. 2-ER-258-69. Congress was fully aware of VA’s interpretation of the statute in these reports when it amended the Leasing Act in 2021.

B. Under the proper interpretation of the Leasing Act, it is undisputed that Brentwood School's lease complied with the statute.

The Leasing Act's plain language and legislative history confirm that only three requirements exist for third-party leases: (1) the lease term cannot exceed 50 years, (2) the lessee must "provide services" that are "exclusively [provided] to veterans and their families" or "are designed for the particular needs of veterans and their families, as opposed to the general public," and (3) the services provided must be for one or more of the enumerated purposes, such as "[t]he promotion of health and wellness," "[e]ducation," "[v]ocational training," "[p]eer activities, socialization, or physical recreation," and "[t]ransportation," among others. Pub. L. No. 114-226, at § (b)(2).

It is undisputed that Brentwood School's lease satisfied all three of these requirements. First, the lease term was only ten years, with a ten year extension option, for a total potential lease term of twenty years. 2-ER-281. Second, in addition to significant fair market rent payments, the lease required Brentwood School to provide services that were either offered "exclusively to veterans and their families" or were "designed for the particular needs of veterans and their families as opposed to the

general public.” Specifically, the lease required Brentwood School to, among other things:

- Provide “regular and ongoing free educational services to Veterans and their families, consisting of courses, seminars, workshops, and clinics in mutually agreed upon areas of general adult education, such as nutrition, health, fitness, wellbeing and computer literacy training.”
- Provide “access to music rooms for Veterans and their families interested in rehearsal space, subject to a mutually agreed-upon schedule.”
- Provide “year-round access for Veterans and their families to the athletic fields, complex, and facilities (including the track, tennis courts, pavilion, swimming pool, future weight room, and football, softball, baseball and soccer fields)....”
- Provide “access to eligible Veterans and their families as determined by VA and [Brentwood School] to check out and use athletic equipment and gear provided by [Brentwood School] when at the athletic fields and complex....”
- Provide “daily transportation services between identified stops at the WLA Campus and the 22.06 Acre Site, for the activities, events, and services described in this Lease.”
- “[D]uring each summer, provide not less than twenty (20) summer camp scholarship slots per week of the summer camp at [Brentwood School], for children and grandchildren of Veterans. [Brentwood School] may also provide up to the equivalent of three (3) full scholarships for

[Brentwood School] tuition and fees, in any given year during the Lease term to admitted children of Veterans.”

- Provide “web-based support to conduct master scheduling for all Veteran-related activities, events, and services on the 22.06 Acre Site.”
- “[C]onduct ‘Veteran Donation Drives’ centered around Veterans Day and Memorial Day, special occasions, holidays, or based on the timing of relevant BWS curriculum, to solicit, receive, and provide to Veterans in-kind donations, for the benefit of Veterans, primarily those that are severely disabled, chronically homeless, aging, and female, where the items may, for example, include donations of clothes, coats, food, furniture, bicycles, and wheelchairs.”
- Allow the VA, free of charge, to “use the athletic fields, complex, and facilities, for events such as Veteran-focused concerts, movie nights, and softball/ baseball leagues....”
- Host its own “activities, opportunities and other special events on the 22.06 Acre Site, and on the athletic fields and complex at the 22.06 Acre Site, for Veterans and their families, not less than three (3) times per year, to allow for social interaction, to help connect Veterans and their families with the local community, and to further educate and inform the Veterans in attendance about the Veteran access program....”

2-ER-277-79. Third, it is undisputed that these services were for the enumerated purposes in the Leasing Act, including:

- The promotion of health and wellness, including nutrition and spiritual wellness.
- Education.
- Vocational training, skills building, or other training related to employment.
- Peer activities, socialization, or physical recreation.
- Volunteerism.
- Family support services, including child care.
- Transportation.

Pub. L. No. 114-226, at § (b)(2).

In addition to the terms of the lease itself, which confirm that it complied with the Leasing Act, the evidence at trial confirmed that Brentwood School has followed through with providing the enumerated services that principally benefit veterans and their families (and more). Among many other services, trial testimony confirmed that Brentwood School provides: (1) exclusive times for veterans to use the athletic facilities, including the pool, track, gym (with an on-site trainer), and tennis courts, 2-ER-205, 211-12, (2) hundreds of free meals to veterans, 2-ER-211, (4) food pantries that regularly distributes between 150 and 250 bags of supplies to veterans, 2-ER-218, (5) adult education courses

exclusively to veterans, including, among many others, courses on financial literacy, cooking, screenwriting, and yoga, 2-ER-209-14, (6) employment readiness seminars, where veterans receive help building resumes, receive headshots, and hold mock interviews, 2-ER-214, (7) a computer lab for veterans, 2-ER-218, (8) free summer camp to children of veterans, which normally costs between \$400 to \$550 per week, and roughly \$400,000 per year in financial assistance for children of veterans that are enrolled as full-time students, 2-ER-197, 213, and (9) transportation to veterans through a shuttle that regularly circles the WLA Campus to bring veterans to and from the athletic facilities, 2-ER-206.

Because Brentwood School's lease fully complied with the requirements enumerated in the Leasing Act, the district court erred in voiding Brentwood School's lease under Plaintiffs' APA claim.

II. Brentwood School's lease should not have been voided under Plaintiffs' charitable trust claim.

The district court also voided Brentwood School's lease based on a finding that: (1) the 1888 deed created a charitable trust imposing enforceable duties on the government; (2) the government accepted fiduciary duties by adopting the Leasing Act; and (3) Brentwood School's

lease is a breach of those fiduciary duties because it violated the Leasing Act. 1-ER-66-67. This constitutes reversible error for several reasons.

A. Plaintiffs lack standing to pursue their charitable trust claim.

The “general rule” is that “no private citizen can sue to enforce a charitable trust merely on the ground that he believes he is within the class to be benefited by the trust and will receive charitable or other benefits” from it. George G. Bogert et al., *Bogert’s The Law of Trusts and Trustees* §§ 363, 414; Restatement (Third) of Trusts § 94 cmt. g; *He Depu v. Yahoo! Inc.*, 950 F.3d 897, 905 (D.C. Cir. 2020) (“Traditionally, only a public officer, usually the state Attorney General [can] bring an action to enforce a charitable trust”) (internal quotation omitted). “The misuse of property donated to charity is in essence an injury to the community as a whole,” so a member of a broad beneficiary class lacks an Article III injury. *Pinkert v. Schwab Charitable Fund*, 48 F.4th 1051, 1059 (9th Cir. 2022) (Bress, J., concurring in part and concurring in the judgment). And while some courts have recognized a narrow exception to this general rule, that exception only applies when the class of beneficiaries of the purported trust is “sharply defined and limited in number.” *Yahoo! Inc.*, 950 F.3d at 906 (internal quotations omitted). In *Yahoo! Inc.*, for

example, a beneficiary class of between “800 and 1,200 individuals” was sufficiently limited for the exception to apply. *Id.* at 907.

Plaintiffs’ charitable trust claim fails as a matter of law because Plaintiffs lacked standing to bring it.¹⁴ Moreover, the narrow exception from *Yahoo! Inc.* does not apply because the class of beneficiaries of the purported trust is not “limited in number.” *Id.* Indeed, the class of beneficiaries of the trust supposedly created by the 1888 deed broadly includes all veterans with disabilities in the Western United States. 2-ER-66 (adopting Plaintiffs’ claim that the 1888 deed created a charitable trust with “veterans with disabilities as the intended beneficiaries.”). Unlike in *Yahoo! Inc.*, where the class of beneficiaries was between 800 and 1,200, California alone had over 454,282 veterans receiving disability benefits in 2023.¹⁵ Because the class of beneficiaries is not limited in

¹⁴ Because this defect is jurisdictional, this Court can (and must) consider it even though it was not raised below. *See, e.g., D’Lil v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1035 (9th Cir. 2008).

¹⁵ VA Report on Distribution of Veterans by County (FY 2023), *available at* <https://www.data.va.gov/stories/s/NCVAS-State-Summary-California-FY2023/js9q-3wam/>. This Court can take judicial notice of this data that was reported by VA. *See Anderson*, 673 F.3d at 1094, n. 1 (9th Cir. 2012) (“We may take judicial notice of records and reports of administrative bodies”) (internal quotations omitted).

number, the exception does not apply and Plaintiffs lack standing to pursue their charitable trust claim.

B. No charitable trust was created.

Even if Plaintiffs had standing to bring their charitable trust claim (they did not), the claim still fails because the 1888 deed did not create a charitable trust.

“A charitable trust is a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose.” Restatement (Second) of Trusts § 348 (1959). Statements of purpose that “merely ... explain the motivation for a bequest” do not create a charitable trust. Restatement (Third) of Trusts § 13 cmt. d (2003). Rather, unless a transferor “manifests an intention to impose enforceable duties on the transferee, the intention to create a trust is lacking and no trust is created.” *Id.*

Nothing in the 1888 deed manifests an intention to create a charitable trust. 2-ER-235-37. The deed simply states that the donors acted “for the purpose of” establishing a “branch Home for Disabled

Volunteer Soldiers.” That is merely a “statement of purpose,” not “a condition” on the gift. *Farquhar v. United States*, 1990 WL 121076, at *3 (9th Cir. Aug. 21, 1990). Thus, as a matter of law, no charitable trust was created.

C. The government has not assumed any fiduciary duties.

Even if Plaintiffs had standing to bring their charitable trust claim (they did not), and the 1888 deed created a charitable trust (it did not), the claim still fails because the government did not accept any fiduciary duties through the Leasing Act.

The government only owes duties under a trust if it “expressly accepts those responsibilities” through “the text of a treaty, statute, or regulation.” *Arizona v. Navajo Nation*, 599 U.S. 555, 563-65 (2023).

The government did not “expressly accept[]” fiduciary duties through the Leasing Act. Indeed, nothing in the Leasing Act states that the government was accepting fiduciary duties to disabled veterans, especially under a deed that predated the statute by over 120 years. Because nothing in the Leasing Act states that the government was “expressly accept[ing]” fiduciary duties to disabled veterans under the

1888 deed, Plaintiffs' charitable trust claim fails as a matter of law. *Navajo Nation*, 599 U.S. at 564.

D. Brentwood School's lease did not violate the Leasing Act.

Even if Plaintiffs had standing to bring their charitable trust claim (they did not), and the 1888 deed created a charitable trust (it did not), and the government expressly accepted fiduciary duties through the Leasing Act (it did not), the claim still fails because Brentwood School's lease did not violate the Leasing Act.

As explained above, *Supra* Sec. I(A), the district court applied an erroneous interpretation of the Leasing Act to conclude that Brentwood School's lease violated the statute. Under the correct interpretation, it is undisputed that Brentwood School's lease fully complied with the Leasing Act because it required Brentwood School "to provide services that principally benefit veterans and their families." Pub. L. No. 114-226, at § (b)(2). Because Brentwood School's lease did not violate the Leasing Act, the lease could not have been a breach of VA's fiduciary duties. As a result, the district court erred in voiding Brentwood School's lease based on Plaintiffs' charitable trust claim.

CONCLUSION

Based on the foregoing, Brentwood School respectfully requests that this Court reverse the district court's decision to void Brentwood School's lease with VA.

DATED this 17th day of January, 2025.

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CERTIFICATE OF COMPLIANCE

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,368 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the type face requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using a Microsoft Word 2010 processing program in 14-point Century Schoolbook type style.

DATED this 17th day of January, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 17, 2025, I served a true and correct copy of the foregoing **BRENTWOOD SCHOOL'S OPENING BRIEF** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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