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February 17, 2023

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: Amicus Letter of Transgender Law Center in Support of Petition for Writ of Mandate
Disability Rights California v. Newsom, S278330

Dear Chief Justice Guerrero and Justices of the Supreme Court of California:

Pursuant to California Rule of Court 8.500(g), Transgender Law Center (TLC) writes in support of Disability Rights California’s Petition for Writ of Mandate in *Disability Rights California v. Newsom*, S278330 (“the Petition”). As the Petition explains, the Community Assistance, Recovery, and Empowerment (CARE) Act is a grave threat to the fundamental rights of all Californians. We submit this *amicus curiae* letter to alert the Court to the disastrous consequences CARE Court will have for transgender and LGB Californians, as well as CARE Court’s potential to be a frighteningly powerful tool for human traffickers to further their control over their victims.

Founded in San Francisco in 2002, TLC is the largest national trans-led organization advocating self-determination for all people. Grounded in legal expertise and committed to racial justice, we employ a variety of community-driven strategies to keep transgender and gender nonconforming (“TGNC”) people alive, thriving, and fighting for liberation. TLC believes that TGNC people hold the resilience, brilliance, and power to transform society at its root, and that the people most impacted by the systems TLC fights must lead this work. TLC builds power within TGNC communities, particularly communities of color and those most marginalized, and lays the groundwork for a society in which all people can live safely, freely, and authentically regardless of gender identity or expression.

These commitments include fighting for TGNC people who are disabled, experiencing homelessness, and survivors of human trafficking. TLC’s Disability Project magnifies the leadership, collective power, and visibility of LGBTQ disabled/Deaf/ill constituents. Led by a multi-racial, cross-class, cross-disability advisory board of TGNC people, the Disability Project embeds disability, Deafness, and anti-ableism politics and expertise into LGBTQ movement work. In 2020, TLC submitted a 33-page public comment in opposition to the Trump Administration’s attempted rollback of transgender-inclusive nondiscrimination regulations of homeless shelters receiving federal funds, telling the stories of several Black and Latina trans women, including three who survived homelessness to become fierce advocates, and three young trans women whose

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experiences with homelessness ultimately led to their deaths.¹ And this January, TLC launched a first-of-its-kind tool to assist attorneys and other service providers in understanding and identifying human trafficking in LGBTQ communities, because even experts in human trafficking often do not account for the particular experience of LGBTQ trafficking survivors.²

Transgender and LGB people will be disproportionately subjected to CARE Act petitions, recalling the eugenicist history of pathologizing and institutionalizing people on the basis of our gender identity or sexual orientation. At a time when states around the country are openly attacking trans lives, California's CARE Act similarly seeks to rob vulnerable people of their autonomy, in a way that will have a disproportionate impact on transgender and LGB communities.

The CARE Act is touted as a solution to homelessness and targets people experiencing homelessness or who are unstably housed. Transgender people therefore will be disproportionately subjected to CARE Act petitions because transgender people disproportionately experience homelessness. Because of systemic discrimination, one of every five transgender people have experienced homelessness at some point in their lives,³ and a full 41% of Black transgender people have experienced homelessness at some point in their lives.⁴ As many as 40% of the millions of homeless youth are LGBTQ.⁵

The CARE Act enables a wide array of family members to petition to initiate the CARE process.⁶ This provision is presumably based on a conception of the caring family that is sadly alien to too many transgender people. Transgender people who come out to our families face at least a one-in-four chance that our family will reject us for who we are,⁷ and transgender people who face family rejection are twice as likely to experience homelessness.⁸ While California has banned so-called gay conversion therapy,⁹ the CARE Act represents a new method by which hostile family members can assert control over their transgender and LGB relatives, forcing us back into the closet by holding a CARE Act petition over our heads.

¹ Transgender Law Center, *TLC Opposes HUD's Dangerous Proposed Changes to the Equal Access Rule* (Sept. 22, 2020), <https://transgenderlawcenter.org/archives/15962>.

² Transgender Law Center, *A Guide to Screening LGBTQ Clients for Trafficking*, <https://transgenderlawcenter.org/wp-content/uploads/2022/11/A-Guide-To-Screening-LGBT-Clients-for-Trafficking.pdf>.

³ National Center for Transgender Equality, *Issues | Housing & Homelessness*, <https://transequality.org/issues/housing-homelessness>.

⁴ Jack Harrison-Quintana et al., *Injustice at Every Turn: A look at Black respondents in the National Transgender Discrimination Survey 2*, https://transequality.org/sites/default/files/docs/resources/ntds_black_respondents_2.pdf.

⁵ Nico Sifra Quintana et al., *On the Streets: The Federal Response to Gay and Transgender Homeless Youth* 6 (June 2010), <http://cdn.americanprogress.org/wp-content/uploads/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>.

⁶ Cal. Welf. & Inst. Code § 5974(b) (“The following adult persons may file a petition to initiate the CARE process... A spouse, parent, sibling, child, or grandparent...”).

⁷ S.E. James et al., National Center for Transgender Equality *The Report of the 2015 U.S. Transgender Survey* 64-80 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁸ *Id.* at 65.

⁹ Cal. Bus. & Prof. Code §§ 865-865.2

Other persons empowered to file CARE Act petitions are representatives of institutions that are systemically biased against transgender people, including police officers and hospital directors.¹⁰ Like other marginalized communities, transgender people are simultaneously over- and under-policed. Transgender people, especially BIPOC¹¹ transgender women, “are often the subject of intense police scrutiny,” and research shows “a strong pattern of police unfairly profiling transgender women as sex workers.”¹² And, despite facing extremely high rates of violence and murder, transgender people who go to the police for help all too often find that police downplay or ignore their reports.¹³ Law enforcement’s problem with transgender people goes beyond simple overzealous or inattentive policing: transgender people are frequently the victims of outright police abuse, including physical and sexual assault and verbal harassment.¹⁴ The CARE Act therefore creates a new avenue by which police officers—too many of whom already profile, abuse, and/or dismiss transgender people as mentally ill—can single out transgender people and strip us of our rights. It is no better that the CARE Act gives hospital directors and their designees the power to initiate CARE Act proceedings against us, because transgender people also face wide-ranging discrimination in healthcare settings.¹⁵

The CARE Act has further potential for rife abuse by human traffickers because it allows for petitions from a “person with whom the respondent resides”¹⁶ in addition to family members. TLC staff have worked with hundreds of survivors of human trafficking. Transgender people, in particular BIPOC and immigrant transgender women, are disproportionately and uniquely vulnerable to human trafficking victimization because of social stigmatization including family rejection, discrimination in education, housing, employment, and social services, intimate partner violence, and police profiling.¹⁷ It is unfortunately common for traffickers to use law enforcement

¹⁰ Cal. Welf. & Inst. Code §§ 5974(f) & (c), respectively.

¹¹ “BIPOC” is an acronym for “Black, Indigenous, and/or People of Color.”

¹² Amnesty International, *Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the U.S.* 21 (Sept. 21, 2005), <https://www.amnesty.org/en/documents/AMR51/122/2005/en/>.

¹³ See, e.g., Jordan Blair Woods et al., *Latina Transgender Women’s Interactions with Law Enforcement in Los Angeles County*, 7 POLICING: A JOURNAL OF POLICY & PRACTICE 379 (Nov. 2013) (“The findings also lend support to the propositions that many transgender women perceive their personal interactions with law enforcement officers negatively, and view reports of crime against them as mishandled or ignored.”).

¹⁴ See, e.g., James et al., *supra* n. 7 at 185 (“Of respondents who interacted with police or law enforcement officers who thought or knew they were transgender in the past year... 58% reported some form of mistreatment, such as being repeatedly referred to as the wrong gender, verbally harassed, or physical or sexually assaulted.”).

¹⁵ *Id.* at 93 (“One-third (33%) of respondents reported having at least one negative experience with a health care provider in the past year related to being transgender, such as verbal harassment, refusal of treatment, or having to teach the health care provider about transgender people to receive appropriate care.”).

¹⁶ Cal. Welf. & Inst. Code § 5974(a).

¹⁷ See generally Lynly S. Egyes, *Borders and Intersections: The Unique Vulnerabilities of LGBTQ Immigrants to Trafficking*, in BROADENING THE SCOPE OF HUMAN TRAFFICKING RESEARCH: A READER (Erin C. Heil & Andrea J. Nichols, eds., 2d ed. 2019).

and the legal system as a means of furthering control over their victims.¹⁸ For example, trafficking in domestic labor or day labor often includes threats to call immigration authorities on undocumented workers. Similarly, traffickers who force their victims into commercial sex may inform on their victims to the police because prostitution arrests and convictions limit the victim's pathways to legal means of supporting themselves and increase the victim's reliance on their trafficker.

For Melody,¹⁹ a transgender survivor of trafficking, her trafficker would become physically and sexually violent with her in order force her into sex work. He would then call the police and report that Melody was violent, and he had to defend himself. Although Melody tried to explain the abuse she was suffering, she was ignored by the officers and her public defender. After her third arrest, an order of protection was issued against Melody. Her trafficker then used the order of protection to threaten that if Melody didn't do what he wanted, he would claim she violated the order of protection, and she would be incarcerated with men. Melody was terrified of being sent to a men's prison, and these threats kept her under her trafficker's control for months. Living in fear and forced into sex work every day, Melody felt she had nowhere to turn, until she finally began working with a lawyer who identified her as a survivor. Melody's story of violence and coercion is similar to so many other survivors of trafficking.

If allowed to go into effect, the CARE Act will be yet another tool in a traffickers' toolbox to keep victims subservient, terrified, and forced into work. Absent action from this Court, traffickers like Melody's will be able to pull the wool over the legal system's eyes, potentially even leading to "CARE plans" that require victims to maintain residence with their trafficker or that require victims to take medications that make them even more susceptible to abuse. The CARE Act also ignores the lived reality that victims are often trafficked by a family member.²⁰

As Petitioners explain, it is of no comfort that the CARE Act applies only to respondents who have "schizophrenia spectrum and other psychotic disorders."²¹ Rather, people with mental illnesses are all the more vulnerable to the kinds of abuse described above.²² Further, it is pure artifice to suggest that the CARE Act will not further the criminalization and incarceration of people experiencing homelessness and people with mental illnesses. To the contrary, *any* nonconsensual contact with the legal system or the mental health system increases the risk of arrest and incarceration, particularly for transgender people who are disproportionately pushed into criminalized economies due to systemic discrimination and survivors of trafficking who are often trafficked into criminalized economies.

¹⁸ *C.f.*, 22 U.S. Code § 7102(3)(c) (For purposes of the federal Trafficking Victims Protection Act, defining "coercion," a legal element of trafficking, as including "the abuse or threatened abuse of the legal process.").

¹⁹ "Melody" is a pseudonym used to protect a former client's privacy.

²⁰ United States Department of State, *Fact Sheet: Navigating the Unique Complexities in Familial Trafficking*, Office to Monitor and Combat Trafficking in Persons (July 1, 2021).

²¹ Cal. Welf. & Inst. Code § 5972(b).

²² *See generally*, Verena Rossa-Roccor et al., *Victimization of People With Severe Mental Illness Outside and Within the Mental Health Care System: Results on Prevalence and Risk Factors From a Multicenter Study* (2020), 11 FRONT. PSYCHIATRY 563860, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7509533/pdf/fpsy-11-563860.pdf>.

For the reasons above and the reasons in the Petition, we respectfully urge the Court to issue its alternative Writ of Mandate and/or order to show cause ordering Respondents to show cause why a Peremptory Writ should not issue to compel Respondents to refrain from enforcing the CARE Act, and to set this matter for full briefing.

Dated: February 17, 2023

Respectfully Submitted,



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