

February 17, 2023

Via TrueFiling

Chief Justice Patricia Guerrero and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102-4797

Re: Disability Rights California v. Gavin Newsom, No. S278330

Dear Chief Justice Guerrero and Associate Justices:

The undersigned organizations from across the United States work to advance and protect the civil and human rights of people with disabilities, those experiencing homelessness or housing instability, and individuals involved in the criminal legal system. Pursuant to California Rule of Court 8.500, we write in support of Disability Rights California's (DRC's) petition for writ of mandamus in the above-captioned action, and ask that you grant the petition and rule that the Community Assistance, Recovery, and Empowerment (CARE) Act violates the California Constitution.

DRC's petition aptly explains why this Court must grant either a peremptory or alternative writ. The CARE Act contains unconstitutionally vague terms, which among them invite judges to speculate about whether individuals with schizophrenia or other psychotic disorders will pose a danger to themselves or others, or otherwise become gravely disabled, at some point in the future. The Act also singles out people with schizophrenia or other psychotic disorders, who are disproportionately Black Californians,¹ for differential treatment based on their diagnoses, not on their conduct or severity of need. As explained in the petition, although strict scrutiny is warranted because the Act would significantly burden these individuals' right to be free from coerced treatment, the Act's distinction among people with schizophrenia and those with other mental disabilities does not satisfy even rational basis scrutiny.

Beyond these legal defects, the CARE Act will not meet the needs of Californians with mental disabilities. There is no evidence that the court-ordered involuntary treatment the Act permits, and will increase, is more effective than voluntary community-based treatment. There is

¹ Charles M. Olbert et al., Meta-analysis of Black vs. White racial disparity in schizophrenia diagnosis in the United States: Do structured assessments attenuate racial disparities?, *J. of Abnormal Psychology*, 127(1), 104-115 (2018), <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fabn0000309>; Robert C. Schwartz & David M. Blankenship, "Racial disparities in psychotic disorder diagnosis: A review of empirical literature," *World J. of Psych.* 4 (2014): 133-140, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4274585/>.

evidence that it is harmful.² Although involuntary treatment has produced improved outcomes in some places, these outcomes appear to result from the fact that there was literally nowhere else for the person to go to receive services – in other words, involuntary treatment was the only option.³

Further, in California and elsewhere, Black and brown people with serious mental health conditions are overrepresented in the population of individuals with schizophrenia experiencing homelessness,⁴ and so are more likely to be involuntarily committed under the Care Act’s legal scheme.⁵

In *amici*’s experience, communities across the country are employing proven methods to meet the needs of individuals with serious mental health conditions experiencing homelessness who cycle between the streets, the emergency room, and the jail—without resort to coerced treatment like that mandated by the CARE Act. Research indicates that effective engagement of people with mental health conditions in public spaces, including by people with lived experience with homelessness working as peer specialists, helps individuals see the value and

² Joshua T. Jordan & Dale E. McNiel, Perceived Coercion During Admission Into Psychiatric Hospitalization Increases Risk of Suicide Attempts After Discharge, *Suicide & Life-Threatening Behavior*, Vol. 50, Iss. 1, 180-188 (Jun 4, 2019) (people who are involuntarily committed more likely to attempt suicide than those who voluntarily accept treatment), <https://onlinelibrary.wiley.com/doi/full/10.1111/sltb.12560>; Nev Jones et al., Investigating the Impact of Involuntary Psychiatric Hospitalization on Youth and Young Adult Trust and Help-Seeking in Pathways to Care, *Soc. Psychiatry & Psy. Epidemiology*, 56, 2017-2027 (2021) (young people who are involuntarily committed are less likely to disclose suicidal feelings). <https://doi.org/10.1007/s00127-021-02048-2>. (young people who are involuntarily committed are less likely to disclose suicidal feelings).

³ See, e.g., Steve R. Kisely et al., *Compulsory community and involuntary outpatient treatment for people with severe mental disorders*, Cochrane Database of Systematic Reviews (2017)(systematic review of research shows no evidence that involuntary outpatient treatment is more effective than voluntary treatment), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4164937/>; M. Susan Ridgely et al., RAND Health, *The Effectiveness of Involuntary Outpatient Treatment* (2001) (same), https://www.rand.org/pubs/monograph_reports/MR1340.html.

⁴ See, e.g., First Amended Complaint at ¶ 2, *Disability Rights California v. County of Alameda*, 2021 WL 212900 (N.D. Cal. Feb. 22, 2021) (No. 5:20-cv-05256-CRB) (“During a recent two-year period, over 2,300 people were detained at the County’s psychiatric facilities more than three times, the majority of whom were Black.”), https://www.disabilityrightscalifornia.org/system/files/file-attachments/Amended_Complaint.pdf; cf. Stacy M. Brown, Blacks Hit Hardest as NYC’s Homeless Population Grows Amid Mental Health Crisis (Mar. 23, 2022), *The Washington Informer* (citing Coalition for the Homeless report that 57% of heads of households in NYC shelters are Black and 32% are Hispanic/Latinx), <https://www.washingtoninformer.com/blacks-hit-hardest-as-nycs-homeless-population-grows-amid-mental-health-crisis/>.

⁵ See, e.g., Victoria Rodríguez-Roldán, *The Racially Disparate Impacts of Coercive Outpatient Mental Health Treatment: The Case of Assisted Outpatient Treatment in New York State* (Apr. 6, 2022)(in August 2021, although Black and Latinx people made up 17.6% and 19.3% of New York’s population, 38% of outpatient commitment participants were Black and 27% were Latinx), <https://deliverypdf.ssrn.com/delivery.php?ID=394013103113027025122025110115065109050063050068079069007115007009071025107021120009034102098026110059062000094123091001007071045007060077040002024097094122117117070000035046003085003000029005083005085093098125081084003013015093004127017088006016071103&EXT=pdf&INDEX=TRUE>.

agree to participate in supportive services.⁶ Safe, stable, and affordable permanent housing, provided with voluntary supports, has been shown to help these individuals stabilize and avoid hospitalization and incarceration.⁷ And voluntary, culturally-competent, and trauma-informed community-based services, such as assertive community treatment (ACT), supported employment, crisis services, and peer support services—delivered not in a hospital, but in the person’s own home and community—have been shown to break the cycle of homelessness, hospitalization, and incarceration.⁸ The CARE Act provides neither affordable housing nor the voluntary services that would improve the lives of unhoused people with mental disabilities.

Since Governor Newsom announced the “CARE Court” program, other jurisdictions have taken steps that will likely increase the coerced treatment of people with mental disabilities.⁹ Through its grant of the DRC petition, this Court can send the rest of the United States a message: laws that impose forced treatment are inconsistent with the dignity, privacy, and liberty interests of people with mental disabilities and will be scrutinized—and overturned when constitutionally infirm. The CARE Act will not meet the needs of these individuals, but will work a grievous harm against this already-stigmatized population. The Court should grant the petition and rule that the CARE Act violates the California Constitution.

Sincerely,



Lewis Bossing
Senior Staff Attorney
Bazelon Center for Mental Health Law
On behalf of amici:

Alabama Disabilities Advocacy Program

The Arc US

⁶ See, e.g., Center for Court Innovation, *The Myth of Legal Leverage?* (“Studies of therapeutic intervention strongly suggest that the quality of the human interaction outweighs the importance of any particular protocol or approach....,” “factors like goal consensus, empathy, alliance, and positive regard are significantly greater than, say, model fidelity,” and “a robust therapeutic relationship is less a matter of dosage and more a matter of engagement.”), https://www.courtinnovation.org/sites/default/files/media/documents/2020-04/report_the_myth_of_legal_leverage_04232020.pdf.

⁷ See, e.g., Sam Tsemberis & Ronda F. Eisenberg, *Pathways to Housing: Supported Housing for Street-dwelling Homeless Individuals With Psychiatric Disabilities*, *Psychiatr. Serv.* 2000 Apr; 51(4):487-93, doi: 10.1176/appi.ps.51.4.487. PMID: 10737824.

⁸ Bazelon Center for Mental Health Law, *Diversion to What? Evidence-Based Mental Health Services That Prevent Needless Incarceration* (2020), <http://www.bazelon.org/wp-content/uploads/2019/09/Bazelon-Diversion-to-What-Essential-Services-Publication-September-2019.pdf>.

⁹ See, e.g., Lara Korte, *Groups Sue to Block Newsom’s CARE Courts Program for Severe Mental Illness*, *Politico* (Jan. 26, 2023) (“The concept of compelled mental health treatment has taken hold elsewhere — including in New York City, where Adams last year issued a directive allowing seriously mentally ill New Yorkers to be transported to hospitals for psychiatric evaluations without their consent.”), <https://www.politico.com/news/2023/01/26/newsom-care-courts-mental-illness-california-00079824>.

Autistic People of Color Fund

Autistic Self Advocacy Network

Autistic Women & Nonbinary Network

Bazon Center for Mental Health Law

Center for Public Representation

Chicago Center for Psychoanalysis

Coelho Center for Disability Law, Policy and Innovation

Collaborative Support Programs of New Jersey

CommunicationFIRST

Connecticut Legal Rights Project, Inc.

Depression and Bipolar Support Alliance

Disability Law Center of Utah

Disability Rights North Carolina

DynamicChanges LLC

Kiva Centers

LatinoJustice PRLDEF

Little People of America

National Association for Rights Protection and Advocacy

National Health Care for the Homeless Council

National Health Law Program

National Mental Health Consumers' Self-Help Clearinghouse

New York Association of Psychiatric Rehabilitation Services, Inc.

Prison Policy Initiative

Rethinking Psychiatry

Tennessee Mental Health Consumers' Association

University of Iowa Law and Policy in Action Clinic

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