

February 17, 2023

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

Re: Amicus Letter of Disability Rights Education and Defense Fund, Disability Rights Advocates, and Disability Rights Legal Center in Support of Petition for Writ of Mandate in *Disability Rights California v. Gavin Newsom*, No: S278330.

Dear Honorable Chief Justice Guerrero and Associate Justices:

Disability Rights Education and Defense Fund (“DREDF”), Disability Rights Advocates (“DRA”), and Disability Rights Legal Center (“DRLC”) submit this amicus letter in support of Disability Rights California’s petition for writ of mandate (“Writ”). This letter explains how the issues presented in the petition, which challenges the constitutionality of the recently passed Community Assistance, Recovery & Empowerment (“CARE”) Act, are “of sufficiently great importance and require immediate resolution,” wanting review. (*See California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231, 253.)

The CARE Act will have a major impact on people who are unhoused, people of color, low-income people, people who are severely mentally ill, as well as the court system, mental health resources, and the community. As outlined in the Writ, the CARE Act violates the Due Process and Equal Protection rights of the persons it purports to help. The language of the CARE Act is also ambiguous, which will lead to inconsistent and arbitrary implementation across the various courts of California, thus making review by California’s Supreme Court crucial. Finally, granting the Writ is urgent because implementation of the CARE Act will begin later this year, making this Writ the only viable option for a resolution of the legal conflicts inherent in the Act.

Authority for Permitting this Amici Letter

California Rules of Court, rule 8.487 expressly permits the filing of amicus briefs after an appellate court issues an alternative writ or order to show cause. (Cal. Rules of Court, rule 8.487(e)(1).) The Advisory Committee Comment to that rule, however, makes clear that amicus letters are also permitted before a court issues an alternative writ or order to show cause. (Adv. Comm. Comment to CRC 8.487, subd. (d) and (e) [“These provisions do not alter the court’s authority to . . . permit the filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause”].) Courts have relied on amicus letters filed in connection with a writ petition when deciding whether to issue an order to show cause. (*See, e.g., Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557- 558.)

Interest of Amici

Based in Berkeley, California, *Amicus* DREDF is a national nonprofit law and policy center dedicated to protecting and advancing the civil rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff- led by members of the communities for whom it advocates. It pursues its mission through education, advocacy and law reform efforts. It is nationally recognized for its expertise in the interpretation of federal and California disability civil rights laws, including the California Unruh Act. DREDF's work includes working with people with mental health disabilities and advocating for their human and civil rights including their right to self-determination and personal autonomy. DREDF opposed SB 1338. The experience, expertise, and unique perspective of DREDF make them particularly well suited to understand how the CARE Act will impact people with mental health disabilities, particularly those with multiple marginalized identities.

Amicus DRA is a non-profit public interest legal center that specializes in high-impact civil rights advocacy on behalf of persons with all types of disabilities throughout the United States. Based in Berkeley, California, with additional offices in New York City, DRA strives to protect the civil and human rights of all people with disabilities, including those people with mental health disabilities. DRA works to end discrimination in areas such as access to public accommodations, employment, transportation, education, and housing and houselessness. DRA publicly opposed SB 1338, and given DRA's experience advocating and litigating the rights of people with mental health disabilities, it is well positioned to understand the illegal impacts of the CARE Act on these constituents.

Amicus DRLC is a non-profit legal organization founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle with ignorance, prejudice, insensitivity, and lack of legal protections in their endeavors to achieve fundamental dignity and respect. DRLC assists people with disabilities in obtaining the benefits, protections, and equal opportunities guaranteed to them under the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Individuals with Disabilities Education Act, the Unruh Civil Rights Act, and other state and federal laws. DRLC's mission is to champion the rights of people with disabilities through education, advocacy and litigation. DRLC is generally acknowledged to be a leading disability public interest organization and has participated in various *amici curie* efforts affecting the rights of people with disabilities.

Importance of Issues

The passage of the CARE Act presents several important social issues and legal questions that can only be resolved through a Writ of Mandate, as implementation will begin later this year. The Court must rule on the Writ, as this new law establishes court procedures that are a violation to Due Process and Equal Protection rights. The CARE Act also forces treatment on people, in opposition to prevailing wisdom in the disability rights community that voluntary treatment has

greater long-term success. Further, the CARE Act is likely to have an adverse impact on black communities, who are often over diagnosed with mental health illnesses, like schizophrenia. Finally, this Writ is of great importance, because the CARE Act will also have far-reaching impacts on people across California, especially Black people, low-income people, unhoused people, and mentally ill people, as well as people nationwide, as other states will likely seek to replicate the model used in California.

The CARE Act Violates the Rights of CARE Petition Respondents

Amici agree with the arguments of Petitioner Disability Rights California that the CARE Act violates the Constitution. In particular, the CARE Act violates the Due Process rights of people with mental health disabilities. The eligibility criteria of the CARE Act require courts to speculate about whether a person is likely to cause harm or “deteriorate” in the future, without defining those terms or providing proper guidance for an individual, petitioner, or decision maker. (Welf. & Inst. Code, § 5972.) The vague criteria could lead to arbitrary and discriminatory decisions by courts, in addition to hampering the ability of individuals to understand the prohibited conduct under the CARE Act, all of which is a violation of a person’s Due Process rights. (*See Kolender v. Lawson* (1983) 461 U.S. 352, 357.) Given the highly stigmatized nature of a schizophrenia diagnosis, such vague criteria will also undoubtedly lead CARE Act petitioners and courts to make decisions based on preconceived, and likely incorrect, notions of schizophrenia and other psychotic disorders.

Further, the CARE Act discriminates against people with schizophrenia without any compelling state interest, in violation of Equal Protection rights. Although the purpose of the CARE Act is to protect people with severe mental illness from injury to their health and safety, as well as prevent homelessness, incarceration, hospitalization, and premature death, the subjects of CARE petitions are only those who have schizophrenia or other similar psychotic disorder. Other severe mental illnesses, as well as mental conditions based on, “physical health conditions such as traumatic brain injury, autism, dementia, or neurologic conditions,” are excluded from the CARE Act. (Welf. & Inst. Code, § 5972, subd. (a).) The state has no compelling state interest to discriminate against people with schizophrenia, as people with or without mental health disabilities-including those excluded under section 5972, subdivision (a) may also be at risk of injury to their health and safety, as well as at risk of homelessness, hospitalization, incarceration, and premature death.”

Given the violations of the constitution rights of respondents in CARE proceedings, this Court should grant the petition and rule in favor of Petitioners.

The CARE Act is Ambiguous

As mentioned above, the language of CARE Act has many ambiguities that, without a ruling from this Court, will impact implementation, leading to varying interpretations across courts in California. Indeed, the Judicial Council, in proposing new rules and forms for CARE courts

acknowledged several ambiguities exist in the law, stating, "...the CARE Act uses many technical terms without defining them. Committee members understand that courts may struggle to determine what is required by the act when it uses those terms. In the absence of clear indications of legislative intent, however, resolution of these ambiguities is the province of the courts or, should it so choose, the Legislature itself." (*Invitation to Comment*, W23-10 at 9 (Dec. 14, 2022).)

The CARE Act Forces Treatment on People Which Can be Detrimental to their Mental Health Needs

The passage of the CARE Act has been met with immense controversy, which further highlights the need for review by this Court. Many prominent disability and civil rights organizations oppose the CARE Act, including the undersigned, Human Rights Watch, the American Civil Liberties Union, and petitioners Disability Rights California, Western Center on Law and Poverty, and the Public Interest Law Project. A key objection voiced by opponents to the CARE Act is the State of California's choice to fund a coercive, court-ordered treatment system that strips people with mental health disabilities of their right to make their own decisions about their lives, rather than funding community-integrated, affordable, accessible housing with voluntary services and supports.

A 2019 review of articles and research of coercive treatment for mental illness found little evidence exist that coercive interventions provide clinical benefits.¹ Rather, coercive practices are associated with negative outcomes.² The article further found that coercion can negatively impact therapeutic relationships and discourage people from continued treatment, thus leading to long-term negative outcomes.³ Rather, voluntary treatment, like Assertive Community Treatment, has been associated with positive outcomes for people with mental illness.⁴

The CARE Act's disregard for evidence-based treatment for people with mental illness and strong opposition from the community warrants review by this Court to ensure the health and wellness of people are protected.

¹ S.P. Sashidharan, et al., Reducing Coercion in Mental Healthcare, *Epidemiology and Psychiatric Sciences* (2019) pp. 605-612; *see also* Steve R. Kisely and Leslie A. Campbell, *Compulsory Community and Involuntary Outpatient Treatment for People with Severe Mental Disorder* (2014); Hans Joachim Salize and Harald Dressing, *Coercion, Involuntary Treatment and Quality of Mental Health Care: Is There Any Link?* (2005); Brown JD., *Is Involuntary Outpatient Commitment a Remedy for Community Mental Health Service Failure?* (2003).

² S.P. Sashidharan, et al., Reducing Coercion in Mental Healthcare, *Epidemiology and Psychiatric Sciences* (2019) pp. 605-612

³ *Id.*

⁴ M. Susan Ridgely, et al., *The Effectiveness of Involuntary Outpatient Treatment: Empirical Evidence and the Experience of Eight States* (2001).

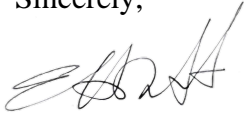
Race Based Discrimination under the CARE Act

The CARE Act will discriminate against Black people and compound the effects of ongoing discrimination and systemic racism in the housing, economic, medical, and law enforcement systems. Black people are disproportionately unhoused and make up almost 40% of the population of unhoused people in California.⁵ Black people are also disproportionately diagnosed with mental illnesses, including schizophrenia.⁶ Given the many ambiguities of the law, as well as the involuntary nature of CARE court, Black people will undoubtedly be forced into the CARE court process, even when unnecessary. This will also impact the Black communities of California as it will likely increase the difficulty of people subject to CARE court to contribute to the community and fulfill familial relationships, like parenthood.

Conclusion

For all of these reasons, *Amici* urge the Court to grant the petition for writ of mandate.

Sincerely,



Erin Nguyen Neff
Staff Attorney
Disability Rights Education & Defense Fund

cc: Additional organizations joining this amicus letter:

Disability Rights Advocates
Disability Rights Legal Center

⁵ U.S. Census shows California is 6.5% Black, but account for 40% of the unhoused population. See, Kate Cimini, *Black People Disproportionately Homeless in California*, Cal Matters (October 5, 2019).

⁶ State of California's Department of Justice – Office of the Attorney General, California Task Force to Study and Develop Reparation Proposals for African Americans: Interim Report (AB 3121), (2022) pp. 422-423 (“White mental health staff at federally-funded clinics and hospitals often diagnosed Black patients with schizophrenic, when they should have been diagnosed with depression.”)

PROOF OF SERVICE

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

I, the undersigned, declare that I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3075 Adeline Street, Suite 210, Berkeley, CA 94703.

On February 17, 2023, I served the following document:

AMICUS LETTER OF CALIFORNIA LEGAL SERVICES & NONPROFIT ORGANIZATIONS IN SUPPORT OF PETITION FOR WRIT OF MANDATE

on the interested parties in this action addressed as follows:


SEE ATTACHED LIST FOR METHOD OF SERVICE

[X] BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice the correspondence is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Berkeley, California, in the ordinary course of business. I am aware on the motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

[X] BY E-MAIL OR ELECTRONIC TRANSMISSION: A copy of the documents was sent through the Court’s authorized e-filing service TrueFiling. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 17, 2023, in Berkeley, California.



Erin Neff

Document received by the CA Supreme Court.

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