



February 17, 2023

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

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

Dear Chief Justice Guerrero and Associate Justices:

On behalf of Corporation for Supportive Housing, pursuant to Rule 8.500(g), we are writing to urge the Court to accept the Petitioner's writ in Disability Rights California v. Gavin Newsom and issue an Order to Show Cause or alternative writ. The case raises crucial issues of widespread interest. In fact, implementation will cause trauma and harm to potentially tens of thousands of people experiencing homelessness in California, and will have racially disproportionate impact.

Amicus Interest

Corporation for Supportive Housing is dedicated to evidence-based solutions to ending homelessness and promoting the dignity and rights of those with disabilities experiencing homelessness. We are a national non-profit established over 30 years ago to promote housing as a platform for services to improve the lives of marginalized populations and build strong healthy communities. We partner with community-based organizations, cities, counties, homeless continuums of care, states, and the federal government in improving responses to homelessness.

CARE Courts Pose a Danger to People Experiencing Homelessness.

The Newsom Administration and bill authors promoted the Community Assistance, Recovery, and Empowerment (CARE) Act as a solution to homelessness among people with serious mental illness and substance use disorders. While we agree that homelessness is a crisis that calls for immediate statewide action, CARE Courts will pose significant obstacles to solving homelessness for the following reasons:

CARE Courts place the burden for treatment primarily on marginalized individuals to comply with a court-directed treatment plan, with potentially devastating consequences.

Document received by the CA Supreme Court.

Though we understand the intent of CARE Courts is not to force anyone to take medication or participate in treatment, the court imposes informal coercion through a court process that implies risk that participants may be subject to conservatorship participants fail to show up or struggle to comply with a court-ordered care plan, which we believe will happen frequently.¹ In fact, nothing in the Act identifies how people experiencing homelessness will know they have been ordered to participate in a court process or how they will even get to the court.

Moreover, forcing someone to participate in court-ordered treatment via threat of removing that individual's basic rights has the effect of making that person *more* resistant to behavioral health treatment, or to any assistance. People who have long experienced serious mental illness are often very distrustful of offers of help because they have likely been subject to negative treatment or medication experiences, sometimes having tried medication with severe side effects that can even be life-threatening. As one individual with lived experience of schizophrenia and chronic homelessness has said, despite a persistent case manager who visited her weekly, she evaded any offers of help for two years because she had been previously forced to take medication that almost killed her. Only when she got sick with pneumonia was she willing to consider offers of help to move into housing and receive services.

Homelessness is, in and of itself, traumatic. Trauma can lead to or exacerbate disabilities and causes fear, isolation, and disempowerment. Additionally, many experiencing homelessness have previous experiences of trauma in the form of neglect and abuse as children, victimization as adults, foster care, incarceration, and serious medical conditions.² In particular, trauma impacts an individual's ability to trust others, especially if the individual has undergone past negative experiences with health care, social services, or law enforcement systems.³ Compelled treatment violates almost all principles of trauma-informed care, the evidence-based approach to providing treatment and services to people with behavioral health conditions.

Compliance with treatment, under the threat that a court could strip all or many of an individual's rights, is therefore more difficult for someone who has experienced homelessness and could result in people becoming more distrustful of treatment. Given the breadth of potential referral sources to CARE Courts, including people who have no training in treating people with serious mental illness, and the breadth of the population who could be referred as "likelihood that their condition(s) will deteriorate," this program will likely impact tens of thousands of people experiencing homelessness, and will lead to greater barriers to effective treatment.

¹ Florian Hotzy and Matthias Jaeger, "Clinical Relevance of Informal Coercion in Psychiatric Treatment-A Systematic Review," *Front Psychiatry* 7:197 (2016).

² Substance Abuse & Mental Health Services Administration, *Current Statistics on the Prevalence & Characteristics of People Experiencing Homelessness in the United States* (Jul. 2011).

³ Urban Institute, Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It (Sep. 16, 2020), [Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It | Urban Institute](#).

Resistance to treatment is a system failure, rather than an individual failure. Compelling *an individual* who has experienced trauma and systems failures for sometimes years or even decades, through a legal process with implied threats, instead of compelling *the system* to truly reform, is an ineffectual response to homelessness among people with serious mental illness.

Studies show treatment ordered under threat is less effective than voluntary treatment.

For much of its history, homeless responses relied heavily on a services model that denied housing or treatment to people labeled “non-compliant;” these models resulted in poor outcomes.⁴ Law enforcement has long used “service resistance” or “non-compliance” to justify enforcement against unhoused Californians. This coercive model has established asymmetrical relationships between people working in these systems and the individual, and has further traumatized people who are already distrustful of justice systems.

Voluntary services and treatment are key to allowing stabilization, as evidence-based interventions begin with client collaboration. ***Consumers receiving voluntary services paired with assertive engagement are more likely to participate in services,⁵ to receive treatment,⁶ and to be satisfied with their services,⁷ than people in programs that require participation or “compliance” with a program.⁸*** CARE Courts would further an asymmetrical relationship, particularly with the judiciary overseeing treatment, reversing years of gains in our understanding and treatment of people experiencing homelessness and behavioral health conditions.

Court-ordered treatment for people experiencing homelessness violates existing California law, setting up a conflict between laws.⁹

Housing First is an evidence-based recovery-oriented model that acknowledges that people experiencing homelessness must have a safe, permanent home before they can engage in and access quality care. As Housing First is the only evidence-based model for solving homelessness,

⁴ Randomized controlled studies show that coerced outpatient care is not more effective than voluntary outpatient care. See, e.g., S.R. Kisely, L.A. Campbell, N.J. Preston, “Compulsory community and involuntary outpatient treatment for people with severe mental disorders,” *The Cochrane Library* (2005). See also a recent review of the research: J. Rugkåsa, J. Dawson, T. Burns, “What is the state of the evidence?,” *Soc Psychiatry Psychiatr Epidemiol* 49 (2014) 1861-71. <https://doi.org/10.1007/s00127-014-0839-7>.

⁵Martha Burt and Jacquelyn Anderson, “AB2034 Program Experiences in Housing Homeless People with Serious Mental Illness,” *Corporation for Supportive Housing* (2005); Steven Barrow, G. Soto, and P. Cordova, “Final Report on the Evaluation of the Closer to Home Initiative,” *Corporation for Supportive Housing* (2004).

⁶Angela Aidala, William McAllister, Maiko Yomogida, and Virginia Shubert, “Frequent Users of System Enhancement ‘FUSE’ Initiative,” *Columbia Univ. Mailman School of Pub. Health* (2014); Daniel Gubits, Marybeth Shinn, Michelle Wood, Stephen Bell, et. al., “Family Options Study: 3-Year Impacts of Housing & Services Interventions for Homeless Families,” *prepared for U.S. Dept. of Housing & Urban Dev. Office of Policy Dev. & Research* (Oct. 2016).

⁷Stephen W. Mayberg, “California’s Supportive Housing Initiative Act (SHIA) Program Evaluation Report: Fiscal Year 2002-2003, Report to the State Legislature,” *California Dept, Mental Health* (Nov. 2003).

⁸ Substance Abuse & Mental Health Services Administration, *Evaluating Your Program: Permanent Supportive Housing* (2010).

⁹ California Welfare & Institutions Code Section 8255, *et. seq.*

California law requires all programs addressing homelessness to follow core components of Housing First.¹⁰ Housing First, which originated as a response to people experiencing homelessness with severe behavioral health disorders, adheres to the following core components that are inconsistent with the CARE Court proposal:

- Service providers outreach to and engage consumers frequently and persistently in the community and a consumer’s refusal of assistance today means providers will attempt again tomorrow;
- People move directly into permanent housing (housing without limits on length of stay), without having to access shelter or treatment first, or treatment first;
- Staff actively and assertively engage tenants in supportive services, but tenants are not required to participate in services as a condition of receiving housing or treatment; and
- Staff engage in harm reduction principles that reduce risky behaviors, including behaviors related to substance use, rather than requiring people to participate in a set program that may not address their individual needs.¹¹

The Housing First law requires all state-funded programs to follow Housing First core components. The CARE Act is in conflict with this law, making enforcement challenging.

The proposal would disproportionately impact Black Californians, who are overrepresented among Californians who are unhoused, as well as people who have been diagnosed with psychotic disorders like schizophrenia.

Though 6.5% of Californians identify as Black/African-American, 32% of Californians experiencing homelessness are Black/African-American.¹² Similarly, Blacks are four to five times more likely to be diagnosed with psychotic disorders, including schizophrenia.¹³ These populations are also overrepresented in our justice system, many having negative encounters with law enforcement. As a recent report by the Los Angeles Homeless Services Authority (LAHSA) notes, “Institutional and structural racism impacts Black people experiencing homelessness on a daily, life-long basis, from renting an apartment, to seeking employment, to the trauma of living in an anti-Black society.”¹⁴ CARE Courts are certain to exacerbate existing racial inequities in targeting primarily people who are unhoused and people diagnosed with psychotic disorders, like schizophrenia.

¹⁰ California Welfare & Institutions Code Section 8255, *et. seq.*

¹¹ Carol Pearson, Gretchen Locke, Larry Buron, Ann Elizabeth Montgomery, and Walter McDonald, “The Applicability of Housing First Models to Homeless Persons with Serious Mental Illness.” *U.S. Dept. of Housing & Urban Dev., Office of Pol’y Dev. & Research* (Sep. 2007); Sam Tsemberis and Ana Stefancic, *Pathways Housing First Fidelity Scale* (2012).

¹² Homeless Data Integration System, California Interagency Council on Homelessness, [Homeless Data Integration System - California Interagency Council on Homelessness](#).

¹³ Robert Schwartz & David Blakenship, “Racial Disparities in Psychotic Disorder Diagnosis: A Review of Empirical Literature,” *World J. Psychiatry* (Dec. 22, 2014), [Racial disparities in psychotic disorder diagnosis: A review of empirical literature - PMC \(nih.gov\)](#).

¹⁴ Los Angeles Homeless Services Authority, *Report and Recommendations of the Ad Hoc Committee on Black People Experiencing Homelessness* (Dec. 2018), <https://www.lahsa.org/documents?id=2823-report-and-recommendations-of-the-ad-hoc-committee-on-black-people-experiencing-homelessness>.

Treatment cannot succeed without people first accessing housing stability, frustrating any treatment expectations a CARE Court expects of individuals who are unhoused.

From research over the last 40 years, we know both what causes people to fall into homelessness, and what works to solve homelessness. The root cause of homelessness is the lack of safe, stable housing affordable to people in deep poverty, including those living on fixed incomes, like SSI.¹⁵ Though Governor Newsom and the Legislature have passed significant new resources for housing and services, California continues to experience significant gaps in funding for housing.

Data demonstrate treatment is ineffective while someone is still homeless, even if that person is accessing a shelter, “bridge housing,” or another interim intervention that is not housing or limits that individual’s length of time in housing. While someone is still homeless—including people living in shelter settings—that person is focused on day-to-day survival. They cannot get better until they can get housed in a permanent setting.¹⁶ In this way, housing *is* health care, an absolute necessity to stabilizing. Studies of “treatment first” programs show they are less effective compared to Housing First.¹⁷ CARE Courts compels participation in treatment regardless of whether the individual is able to move into permanent, stable housing. In fact, in California, someone experiencing homelessness often must wait six to 12 months for housing, but CARE Court architects expect the court’s treatment plan to stabilize someone’s health conditions within a year. Nothing in the proposal points to how people experiencing homelessness will access housing they need to stabilize. And if a participant’s conditions do not improve, they risk referral to conservatorship, and removal of basic rights because they are homeless.

Evidence-based approaches work to help people experiencing homelessness access treatment and health stability.

Multidisciplinary teams consistent with, for example, the Assertive Community Treatment model,¹⁸ that includes intensive engagement services for people experiencing homelessness and behavioral health disorders, are evidence-based models of care for people with the most serious disorders. Service providers who specialize in working with people experiencing homelessness

¹⁵The rise in homelessness since the 1980’s is attributable to increasing costs of housing and stagnant incomes. Today, a person living with a disability would have to pay for housing a low of 76% of SSI income for housing in Visalia to a high of 306% SSI income in San Francisco. <https://www.tacinc.org/resources/priced-out>.

¹⁶ People continue to suffer deteriorating health and increase their days inpatient when still homeless, even if offered quality care coordination or treatment. *See, i.e.,* Karen Linkins, *Frequent Users of Health Services Initiative*; Jack Tsai, “A Multi-Site Comparison of Supported Housing for Chronically Homeless Adults: ‘Housing First’ Versus ‘Residential Treatment First,’” *Psychol. Serv.*

¹⁷ Jack Tsai, Alvin Mares, and Robert Rosenheck, “A Multi-Site Comparison of Supported Housing for Chronically Homeless Adults: ‘Housing First’ Versus ‘Residential Treatment First,’” *Psychol. Serv.* 7(4) (2010) 219-232 (*observing no clinical advantage for study participants who received residential treatment for substance use and much higher costs than participants who received housing first, followed by outpatient services*).

¹⁸ Substance Abuse & Mental Health Services Administration, *Assertive Community Treatment Evidence-Based Practices Kit* (2008), [Assertive Community Treatment \(ACT\) Evidence-Based Practices \(EBP\) KIT | SAMHSA Publications and Digital Products](#).

promote a sense of safety by forming trusting, long-term relationships with their clients through repeated contact, even when their clients refuse services. Once a client engages, a service provider or team promotes trust and forming an equal, collaborative relationship with clients, while meeting them where they are (a street, a vehicle, a shelter, a hospital, at jail discharge, etc.). Providers assertively engage clients to want to participate in treatment through meaningful connection through a provider-to-client ratio of 1:10 for people with significant disabilities who need support to remain in the community.¹⁹ Unfortunately, while the State has proposed a “team” approach, the makeup of the team does not reflect any specific evidence-based model of care for people who experience homelessness and serious mental illness. Our local, state, and federal resources have long underfunded these services, and mainstream programs like the Mental Health Services Act and Medi-Cal do not fund this engagement. Imposing yet a new untested services model can cause real harm to people who are already marginalized.

In California, not everyone who currently needs and wants treatment can receive treatment on demand. CARE Courts do not change this reality. Compelling treatment does not necessarily lead to the right level of services or for treatment providers to materialize. In fact, CARE Courts would divert local resources intended for behavioral health treatment to pay for an expensive new court system, attorneys, and supporters. Judges (reviewing and ordering care), attorneys (apparently intended to defend participants’ civil rights), and supporters do not have expertise in behavioral health care, but would be able to reprioritize local dollars to CARE Court participants from others who may also need the services, removing resources from people who need treatment to impose a fundamentally flawed approach.

Urgent Need

CARE Courts impose significant threat to those experiencing homelessness, a threat of great importance to thousands of Californians and the public at large. For these reasons, we urge the Court to accept Petitioner’s writ and issue an alternative writ.

Sincerely,



Sharon Rapport

Corporation for Supportive Housing

¹⁹ Sam Tsemberis. *Pathways Housing First Fidelity Scale*.