

February 17, 2023

***Via TrueFiling***

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  
Amicus Curiae Letter in Support of Petition for Writ of Mandate**

Dear Chief Justice Guerrero and Associate Justices:

Pursuant to California Rules of Court, Rule 8.500(g), we submit this letter respectfully 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.

We represent Loyola Law School's Anti-Racism Center (LARC) and The Coelho Center for Disability Law, Policy & Innovation (The Coelho Center). LARC convenes multiple academic, research, and clinical programs to further the law school's commitment to anti-racism. The Coelho Center collaborates with the disability community to cultivate leadership and advocate innovative approaches to advance the lives of people with disabilities. Both LARC and The Coelho Center support the Mental Health Equity Project (MHEP). MHEP draws on disability and racial justice models to address gaps in mental healthcare treatment for individuals with serious mental illness (SMI)<sup>1</sup> whose treatment needs are unmet and are at high risk of becoming unhoused, arrested, and incarcerated.

California’s dual crises of chronic homelessness and lack of appropriate treatment options for individuals with SMI require significant attention. We support policies that improve access to quality mental healthcare and housing for people with SMI such as supportive housing programs, community-based treatment, and other social services that support individuals to thrive in the community. Evidence-based studies continue to demonstrate the effectiveness of these policies.<sup>2</sup> The CARE Act,

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<sup>1</sup> Any psychiatric or behavioral disabilities that results in “functional impairment which substantially interferes with or limits one or more major life activities.” California Health Care Foundation, *Mental Health in California: For Too Many, Care Not There*, (2018), <https://www.chcf.org/wp-content/uploads/2018/12/MentalHealthCA2018.pdf>.

<sup>2</sup> See, e.g., Bazelon Center for Mental Health Law, *Supportive Housing: The Most Effective and Integrated Housing for People with Mental Disabilities* (2017) (In supportive housing models, participants are involved in the process of choosing their housing units, which allows them to gain control over their lives and determine their own path of recovery), <http://www.bazelon.org/wp-content/uploads/2017/04/supportive-housing-fact-sheet.pdf>; Bazelon Center, *Diversion to What?*

at issue in DRC's petition, will impede progress towards assisting some of the most vulnerable, marginalized Californians.

California's jails, prisons, and streets are filled with more individuals with SMI than its hospitals. Four percent of Californians have SMI.<sup>3</sup> Yet, 33% of unhoused Californians have SMI<sup>4</sup>, and over 30% of incarcerated Californians need treatment for SMI.<sup>5</sup> The Black population disproportionately represent these unhoused and incarcerated individuals for reasons including a history of institutional racism.<sup>6</sup> For decades, there has been a lack of adequate funding for community services to support formerly hospitalized individuals' reintegration into the public sphere.<sup>7</sup> As a result, many have languished on the streets without mental health treatment, community care and/or are arrested for minor crimes.

Public pressure on government leaders to "fix" the visible unhoused crisis led to the passage of the CARE Act, which acknowledges "thousands of Californians" who suffer from SMI leading to "increased homelessness [and] incarceration."<sup>8</sup> In

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*Evidence-Based Mental Health Services That Prevent Needless Incarceration* (2019), <http://www.bazelon.org/wp-content/uploads/2019/09/Bazelon-Diversion-to-What-Essential-Services-Publication-September-2019.pdf>; Robert Bernstein, et.al, *Diversion, Not Discrimination: How Implementing the Americans with Disabilities Act Can Help Reduce the Number of People with Mental Illness in Jails* (2017) (Delaware and Georgia each entered an *Olmstead* settlement agreement that went into effect in the early 2010s. The states focused on developing community services such as supportive housing and assertive community treatments – which led to decrease in rates of rehospitalization and reincarceration), <http://www.bazelon.org/wp-content/uploads/2018/07/MacArthur-White-Paper-re-Diversion-and-ADA.pdf>.

<sup>3</sup> California Health Care Foundation at pg. 2 ("1 in 24 California adults have a serious mental illness that makes it difficult to carry out major life activities.") <https://www.chcf.org/wp-content/uploads/2018/12/MentalHealthCA2018.pdf>.

<sup>4</sup> Treatment Advocacy Center, *Serious Mental Illness and Homelessness*, (2016) (Since the early 1980s, studies across the U.S. consistently report approximately one-third of the homeless population have SMI. A 2015 federal census estimated 25% of the population have SMI. Given that it is difficult to count all unhoused individuals, experts presume it is still one-third of the population have SMI.) <https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/smi-and-homelessness.pdf>.

<sup>5</sup> Stanford Justice Advocacy Project, *Confronting California's Continuing Prison Crisis: The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise* (2017) <https://law.stanford.edu/wp-content/uploads/2017/05/Stanford-Report-FINAL.pdf>.

<sup>6</sup> See, e.g., V. Diane Woods, et.al, "We Ain't Crazy! Just Coping With a Crazy System" *Pathways into the Black Population for Eliminating Mental Health Disparities*, pg. 20 (2012) (In 2005, Black Californians were more likely to report symptoms associated with "serious psychological distress.") <https://cultureishealth.org/wp-content/uploads/2021/02/African-American-Population-Report-1.pdf>; Steve Lopez, Black people make up 8% of L.A. population and 34% of its homeless. That's unacceptable, Los Angeles Times (June 13, 2020) <https://www.latimes.com/california/story/2020-06-13/column-african-americans-make-up-8-of-l-a-population-and-34-of-homeless-count-heres-why>; Alisa Roth, *Insane: American's Criminal Treatment of Mental Illness*, New York, NY (2018) (One out of three African American men and one in six Hispanic men born in 2001 will be arrested in their lifetime, but for people with serious mental illness it is one in two.).

<sup>7</sup> Robert Bernstein et.al, *supra* 2, fn. 4.

<sup>8</sup> SB 1338, §1(A).

addition to the CARE Act violating the California Constitution as outlined in DRC's position, the CARE Act will take away the autonomy and dignity of unhoused individuals with SMI.

The liberties of individuals with SMI are at risk, namely the right to decide for themselves how and where to receive medical treatment and the right to decide where to live. The CARE Act claims that it empowers individuals with SMI because the *new* civil court process "invites" their collaboration. Yet, the process set forth by the CARE Act suggests a high likelihood of coercion, as DRC argues in its petition. Studies show that coercive treatment increases trauma, and fear of coercive constraints in the mental health context keeps individuals from seeking help.<sup>9</sup> Individuals with SMI fear that they will lose their autonomy and dignity in court proceedings. The CARE Act stands in opposition to psychiatric best practices which encourage widening access to mental health treatment options so individuals with SMI can exercise agency in pursuing the treatment plan that they choose.

The CARE Act also gives law enforcement officers wider discretion to interact with any individual who is "unlikely to survive safely in the community without supervision."<sup>10</sup> Police encounters often further traumatize individuals experiencing mental health distress. About 1 in 20 police encounters involve individuals with SMI.<sup>11</sup> Sadly, these encounters may be fatal for individuals in mental distress. Nationwide, at least 21% of fatal police shootings involved individuals suffering mental health crises.<sup>12</sup> In addition, Black people with mental illness are more likely to have a police encounter when experiencing a mental health crisis.<sup>13</sup> Black people are disproportionately victims of deadly police shootings.<sup>14</sup> Because Black people are disproportionately diagnosed with schizophrenia, a fact that reveals racial bias and lack of access to treatment<sup>15</sup>, they will be the most impacted by the CARE Act: coerced into the courts and into so-called voluntary treatment plans.

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<sup>9</sup> Kanna Sugiura et.al, *An end to coercion: rights and decision-making in mental health care*, Bull World Health Organ; 2020 Jan, 98(1): 52-58, <https://doi.org/10.2471%2FBLT.19.234906>.

<sup>10</sup> CA Welf. & Inst. §§ 5927(d)(1), 5974(f).

<sup>11</sup> Bazelon Center for Mental Health Law, "*Defunding the Police*" and *People with Mental Illness* (2020), <http://www.bazelon.org/wp-content/uploads/2020/08/Defunding-the-Police-and-People-with-MI-81020.pdf>.

<sup>12</sup> The *Washington Post* began tracking fatal shootings by a police officer in the line of duty since 2015. When the database is filtered to include deaths that involved a "mental health crisis", about 21% of the victims matched the criterium. See Washington Post, *Police Shooting Database* (updated Feb 15, 2023) <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

<sup>13</sup> *Supra* at 11.

<sup>14</sup> *Supra* at 12 (Black Americans account for 14% of the U.S. population, but are killed at more than twice the rate of White Americans).

<sup>15</sup> PsyCom, *Why Aren't We Talking About Schizophrenia in Black People?*, <https://www.psycom.net/schizophrenia-black-people-history-name-change> (Retrieved Feb 17, 2023); Jonathan M. Metzler, *The Protest Psychosis: How Schizophrenia Became a Black Disease*, Beacon Press (2009).

Californians with SMI deserve access to a full spectrum of mental health treatment options including specialized acute psychiatric care as well as community outpatient care. Their right to choose the treatment option most appropriate for them is a human right that honors their self-determination. Yet another court system now threatens their autonomy and will punish them if they fail to adhere to government-mandated treatment plans. For these reasons, we support an original writ of mandate for DRC's petition.

Sincerely,

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