



*Via Electronic Filing*

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:

The Legal Aid Foundation of Los Angeles, along with the Human Rights Litigation Clinic and Veterans Legal Clinic at UCLA School of Law respectfully submit this letter in support of the above-referenced petition for original jurisdiction. *See* California Rules of Court, Rule 8.500(g). The CARE Act, Welfare and Institutions Code Section 5970 *et seq.*, creates new presumptions that will deprive individuals of their civil liberties. These presumptions fail to take into account the lived experiences of low-income and unhoused individuals in California, who face significant barriers to accessing services and are frequently deprived of meaningful access to the courts. Instead, the new law unjustifiably equates a person's inability to overcome those systemic barriers with mental disability. By ignoring the reality facing individuals who will be subjected to CARE Court jurisdiction, the new law threatens to deprive tens of thousands of low-income and homeless Californians of their liberty interests without affording them basic due process protections. The petition raises significant issues that impact Californians across the state, and this Court should grant review.

**I. Statement of Interest**

The Legal Aid Foundation of Los Angeles (LAFLA) is one of the oldest and largest legal aid organizations in Los Angeles. LAFLA seeks to achieve equal access to justice for people living in poverty across Greater Los Angeles. Each year, LAFLA provides free legal services to more than 100,000 people living in poverty, including people with disabilities and people who are unhoused. LAFLA is also a qualified legal services provider, as that term is defined in the Business and Professions Code and Section 5976 of the CARE Act. The CARE Court stands to impact a significant number of LAFLA's clients. LAFLA has an interest in ensuring that the CARE Act and the CARE Court is constitutionally permissible and protects the due process rights of its clients.

The Human Rights Litigation Clinic at UCLA School of Law represents unhoused clients in various civil proceedings, including by representing unhoused individuals in ticket infractions. As such, the HRLC staff have had the chance to firsthand observe the barriers to participation in court proceedings that unhoused individuals face.

The Veterans Legal Clinic (VLC) at UCLA School of Law seeks to address the unmet legal needs of former service members, particularly those staying at or accessing services at the West Los Angeles VA Medical Center. The VLC works with veterans who are unhoused to address their civil legal issues that are barriers to obtaining housing, such as increasing disability benefits, addressing past criminal convictions, and defending them against infraction citations. Many of these veterans have been diagnosed with serious mental illness and are likely to be impacted by the CARE Court.

## **II. Support for Review**

Meaningful access to court proceedings that may impact one's liberty is a hallmark of the constitutionally-protected guarantee of due process, particularly where, as here, the court proceedings could "result in the serious deprivation of personal liberty." *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 228. Yet as outlined below, the CARE Act creates an entirely new and resource-intensive court proceeding, the structure of which fails to account for the lived experiences of low-income people, especially unhoused individuals, and it ignores the real-life barriers they face attending court hearings and accessing benefits and services. This structure threatens the due process rights of thousands of individuals and warrants review by this Court.

### **A. The Structure of the CARE Court Ignores the Lived Experiences of Respondents**

The CARE Court places considerable obligations on respondents who are brought under its jurisdiction. First, the Act sets an unprecedentedly low bar for the Court to begin court proceedings against an individual. *See* § 5972, §5974; § 5975. In fact, a person can be brought under the Court's jurisdiction based on the affidavit of a behavioral health practitioner who has not even evaluated the respondent, simply because the practitioner attests only that they have made "multiple attempts to examine" the respondent. § 5975. Once this bar is met, the obligations on a respondent are significant: the CARE Act mandates a series of court hearings in short succession. *See e.g.*, §§ 5977(a)(3)(A)(i); 5977.1(c)(6) (outlining the initial hearing, merits hearing, subsequent case management conferences). The result of these initial proceedings is the creation of a CARE Plan, which among other things, can require the respondent to access housing and social services. § 5977 *et seq.* Over the course of the next year, a respondent must participate in status review hearings at regular intervals as well as "at any time during the CARE process." § 5977.2(a)(1), (b). All of mandated court appearances are in service of the CARE

Act proceedings, to say nothing of the obligation to obtain the services, housing, and treatment necessary to complete the court-mandated CARE Plan.

The creation of such a rigorous and time-intensive court proceeding, with its mandatory treatment and services plan, fails to account for the fact that low-income people, especially individuals who are unhoused, often face significant and insurmountable systemic barriers to meaningfully participating in court proceedings or accessing services. These barriers can include a lack of access to phones, a stable mailing address, and reliable transportation.<sup>1</sup> There can also be significant language barriers. Unhoused individuals also frequently have sleep deficits that make it difficult to keep appointments and attend hearings.<sup>2</sup> In many communities, including Los Angeles, they face frequent encampment sweeps and displacement, which can result in the loss of court paperwork, identity documents, and medications.<sup>3</sup> Services may not adequately accommodate unhoused individuals, who can be terminated from services for missing appointments, exited from programs for inadequate hygiene, or foreclose housing opportunities because of a lack of identity documents. Many of these barriers are not eliminated if an individual moves into a shelter, as contemplated by the Act; in fact, residing in a congregate shelter can create its own set of barriers to accessing other services and treatment.<sup>4</sup>

Individuals attempting to access court-mandated services can also be denied, terminated, or discharged from services as a result of agency mistakes, clerical oversights, or the misapplication of regulations and enabling statutes. These errors frequently go unnoticed or at the very least, can take months or years to unravel,<sup>5</sup> and doing so frequently requires significant legal resources from civil legal aid organizations and attorneys like amici.

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<sup>1</sup> Ramsay, N; DeGroot, M.; Hossain, R.; Moore, M.; Milo, M.; Brown, A.; Health Care while Homeless: Barriers, Facilitators, and the Lived Experiences of Homeless Individuals Accessing Health Care in a Canadian Regional Municipality; *Qualitative Health Research*. 2019;29(13):1839-1849. Ijadi-Maghsoodi R, Feller S, Ryan GW, Altman L, Washington DL, Kataoka S, Gelberg L. A Sector Wheel Approach to Understanding the Needs and Barriers to Services among Homeless- Experienced Veteran Families. *J Am Board Fam Med*. 2021 Mar-Apr;34(2):309-319.

<sup>2</sup> See e.g., Gonzales, A., & Tyminski, Q.. (2020), Sleep Deprivation in an American Homeless Population, *Sleep Health*, 489-494; Buccieri, K., Oudshoorn, A., Waegemakers Schiff, J., Pauly, B., Schiff, R., & Gaetz, S. (2020). Quality of life and mental well-being: A gendered analysis of persons experiencing homelessness in Canada. *Community Mental Health Journal*, 56(8), 1496-1503.

<sup>3</sup> Herring, Chris, (2020), Complaint-Oriented Policing: Regulating Homelessness in Public Space, *American Sociological Review*, 1-32; Ananya Roy et. al., (2022), (Dis)Placement: The Fight for Housing and Community After Echo Park Lake, *UCLA Luskin Institute on Inequality and Democracy*.

<sup>4</sup> Hagen, J.L. (1987), Gender and Homelessness, *Soc. Work* (July-August), 312-16; Coalition on Homelessness (2020), Stop the Revolving Door: A Street Level Framework for a new System, <https://www.cohsf.org/wp-content/uploads/2020/11/Stop-the-Revolving-Door-1.pdf>; Garrow, E. and Devanthery, J., This Place is Slowly Killing Me: Abuse and Neglect in Orange County Emergency Shelters, *ACLU of Southern California* (March 2019), at [https://www.aclusocal.org/sites/default/files/aclu\\_socal\\_oc\\_shelters\\_report.pdf](https://www.aclusocal.org/sites/default/files/aclu_socal_oc_shelters_report.pdf).

<sup>5</sup> See e.g., Social Security Administration Annual Data for Disability Reconsideration Average Processing Time, (average processing time for a disability determination in 2021, the last year for which data is available, was 147 days).

Taken together, unhoused individuals often face significant systemic barriers to participating in court proceedings and accessing services, yet the structure of the CARE Court fails to account for these challenges. By creating such intensive court program and mandatory treatment and service obligations that do not take systemic barriers into account, the drafters of the new CARE Court have doomed respondents to fail.

### **B. The CARE Act Allows Courts to Equate Systemic Failures and Barriers to Access with Mental Disability**

Despite these structural barriers built into the new court, respondent's failure or success in participating in the court proceedings and completing the CARE plan is central to the Court's determination of whether an individual should be subjected to ongoing or increased medical intervention and deprivation of their civil rights. *See* § 5977.3(b); 5979. Under Section 5979(a), the Court may terminate CARE Court proceedings if "the court determines by clear and convincing evidence that the respondent is not participating in the CARE process." When that occurs, the fact that the respondent failed to successfully complete their CARE plan "shall be a fact considered by the court in a subsequent hearing under the Lanterman-Petris-Short Act . . . and shall create a presumption at that hearing that the respondent needs additional intervention beyond the support and services provided by the CARE Plan." § 5979. While this provision allows the court to consider "why an individual failed to complete" their CARE Plan, the Act does not outline which factors must be considered by the court and still presumes an individual requires more intensive interventions, regardless of the reasons for noncompliance. *Id.*

Other provisions in the program also allow the court to draw presumptions about a person's mental capacity based on their perceived willingness or ability to participate in services, without consideration of obstacles that may prevent that participation. For example, a respondent can be enrolled in CARE Court without being examined by a behavioral health practitioner if the profession has been unsuccessful in getting respondent to submit to an examination, regardless of the reason for respondent's failure to do so. § 5975. *See also* § 5977(a)(3)(B)(iii) (requiring a court assessment about an individual's "ability to voluntarily engage in services").

These presumptions raise significant due process concerns. By tying one's participation in the CARE Court and completion of the CARE plan to whether or not they are subjected an LPS conservatorship, presumptions in the CARE Act go directly to the question of whether a person is "gravely disabled." *Roulet*, 23 Cal.3d at 223. The consequence of these presumptions is the imposition of restrictions on a person's liberties that are justified only by a finding that, "*as a result of a mental disorder*" "the person is unable to provide for his or her basic personal needs." § 5008(h)(1)(A) (emphasis added). Under the CARE Act, however, there is no requirement the court find that a person's failure "is the result of a mental disorder," *id.*, nor is the state required to prove that causation. Instead, the court may ignore the significant systemic challenges keeping

low income individuals, and in particular, unhoused individuals, from accessing services and treatment in favor of a presumption that the deprivation of a person's liberty is needed if a person does not participate. It shifts the evidentiary burden on respondents to prove this failure was through no fault of their own. The burden-shifting and lack of evidence of causation raise serious due process concerns.

### **C. Providing Legal Representation Will Not Adequately Address Due Process Concerns**

The CARE Act does require that legal counsel be provided throughout the process. *See* § 5976, 5977(a)(5)(ii). While constitutionally required, it is not legally sufficient to address the due process concerns raised by the structure of the Act. *See Conservatorship of Benevenuto* (1986) 180 Cal.App.3d 1030, 1037 and fn. 6 (due process requirements outlined in the act cannot be met only with the appointment of counsel). Even if a respondent may be represented by counsel instead of appearing at the court hearing themselves, respondents will need to participate in their defense and fulfill the court-mandated CARE Plan. A respondent may also face the same barriers working with an attorney that they face accessing other services and treatment and the court, which undermines the due process protections afforded by counsel. *Id.*

Relying on civil legal services and public defenders to provide representation also raises significant concerns about the sufficiency of representation for the tens of thousands of people who may be referred to the CARE Court program. There is already a significant gap in access to justice for low-income people throughout California.<sup>12</sup> Legal services attorneys are already tasked with combatting improper denials and terminations of benefits for low-income Californians.<sup>13</sup> Under the CARE Act, improper terminations and denials take on even greater significance, since an individual is not only deprived of benefits or services to which they are entitled, but also face the deprivation of their civil liberties. When that occurs, individuals and their lawyers will have to fight on two separate fronts—on the one hand, contesting the denial, discharge, termination or eviction in order for the person to obtain these services, and on the other hand, collaterally defending against the presumption that the failure to obtain services was the result of mental incapacity instead of a systemic failure or institutional mistake. The creation of a new civil legal court system with its arduous court proceedings threatens to overburden the already overtaxed civil legal assistance and public defense systems.<sup>14</sup>

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<sup>12</sup> State Bar of California, 2019 California Justice Gap Study, Executive Report, 2019 at p. 15; Legal Services Corporation, The 2022 Justice Gap Study, 2022, available at <https://justicegap.lsc.gov/resource/executive-summary/>.

<sup>13</sup> According to the Legal Services Corporation 2022 Justice Gap Study, 34% of low income individuals experienced legal problems with income maintenance and 33% experienced legal problems related to housing. *Id.*

<sup>14</sup> 2019 California Justice Gap Study at 17-18 (outlining the challenges facing civil legal aid programs in California to recruit and retain attorneys).

**D. Conclusion**

The CARE Act and the structure of the CARE Court it creates raise serious due process questions about a process that threatens the civil liberties of tens of thousands of residents. The framework of the statute is built around presumptions that a person's participation in that process is a meaningful benchmark of one's mental capacity and ability to care for one's self. In order to rebut these presumptions, one must participate in the very same court proceeding. This circular process ensures that once the CARE Court exercises jurisdiction over a person, it will be difficult for them to exit out of the program and very easy for the court to find that a deprivation of liberty is justified. Individuals are entitled to assurances that the process is fair and will be accountable to their needs before they are subjected to its many requirements and potential consequences. The undersigned strongly encourage this Court to grant the petition and hear Disability Rights California's challenge of the statute.

Sincerely,



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