S278330

Supreme Court Case No.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DISABILITY RIGHTS CALIFORNIA,

PETITIONER,

V.

GAVIN NEWSOM, in his official capacity as Governor of the State of California; and MARK GHALY, in his official capacity as Secretary of the California Health and Human Services Agency,

RESPONDENTS.

PETITION FOR WRIT OF MANDATE AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

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PETITION FOR WRIT OF MANDATE

Petitioner DISABILITY RIGHTS CALIFORNIA ("DRC") brings this Petition for a Writ of Mandate under Article VI, Section 10 of the California Constitution, and by this verified Petition alleges:

1. Beginning October 1, 2023, thousands of unhoused Californians with mental illness will be threatened with court orders, forced into involuntary treatment and swept off the streets, not because they are a danger to themselves or others, but because a judge has speculated they are "likely" to become so in the future. The legislation creating this radical change in California law is the Community Assistance, Recovery, and Empowerment (CARE) Act, signed by the Governor and chaptered on September 14, 2022. Statutes of 2022, Chapter 319. Although designed to address the State's homelessness crisis, it will not further that goal. And on its face, the CARE Act violates essential constitutional guarantees of due process and equal protection while needlessly burdening fundamental rights to privacy, autonomy and liberty.

2. Petitioner DRC is a California non-profit corporation with offices statewide. As California's Protection and Advocacy system, DRC is charged by federal and state laws to protect the rights of Californians with disabilities, including mental health disabilities. 42 U.S.C. §§15041 *et seq*., and Welf. & Inst. Code §§4900, *et seq*. Under this authority, DRC pursues legal remedies on behalf of people with disabilities in California to ensure that all Californians with disabilities retain autonomy and the right to make their own decisions about their lives, including where to live and what services and treatment to accept. DRC's constituents include people who will be subject to the CARE Act if the law is implemented. DRC brings this Petition on its own behalf and on behalf of its constituents.

3. Respondent GAVIN NEWSOM is the Governor of the State of California and is named as a Respondent in his official capacity.

4. Respondent MARK GHALY is the Secretary of the California Health and Human Services Agency and is named as a Respondent in his official capacity.

5. This petition is a facial challenge to the CARE Act, which violates Art. I, §1 and §7(a) of the California Constitution. The Act creates a new court-ordered regime of involuntary outpatient treatment that will affect thousands of Californians with serious mental illness. The Act authorizes a wide range of people—including family, police, and psychotherapists—to file petitions against Californians diagnosed with schizophrenia and other related psychotic disorders. These petitions will trigger a series of court hearings that may continue for years, requiring compliance with a coerced "CARE plan." The new procedures burden fundamental rights to privacy and liberty by constraining CARE respondents' autonomy in choosing their medical provider and where and with whom they live, and by relying on confidential medical information.

6. The CARE Act constitutes a facial violation of the Due Process Clause of the California Constitution. Its eligibility criteria are vague, subjective and undefined. Under the Act, individuals who are not presently a danger or gravely disabled can be forced into treatment if a court speculates that they are "likely" to meet these criteria in the future.

7. The Judicial Council, which is charged with adopting rules to interpret the Act, confirmed that the Act's "ambiguities" and undefined technical terms "will lead courts to struggle to determine what is required." This vague language creates uncertainty and speculation, which in turn leads to arbitrary and discriminatory decision-making, in violation of the Due Process Clause.

8. The CARE Act also violates the Equal Protection Clause of the California Constitution because it singles out people with schizophrenia for burdensome court proceedings and coerced treatment not imposed on

others similarly situated. No other California mental health statute distinguishes between individuals based on diagnosis, rather than severity of need. The CARE Act's focus also perpetuates racial inequity, since Black people are disproportionately over-diagnosed and misdiagnosed with schizophrenia. No legitimate or compelling state interest justifies this classification.

9. Because the CARE Act violates state law, Respondents have a clear and present ministerial duty not to enforce it. Yet, the state intends to enforce the CARE Act unless restrained by a Writ of Mandate.

10. DRC has standing because it is beneficially interested in ensuring that the CARE Act is not implemented. The Act will negatively impact DRC's constituents and increase the need for DRC's services to enforce their rights. DRC also has public interest standing to ensure that Respondents comply with California law. *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal.4th 155, 165-66 (2011).

11. DRC has no plain, speedy, and adequate remedy at law other than this Petition. The state and counties have already begun planning implementation of the new court procedures required by the Act. An initial cohort of seven county superior courts must implement the CARE Act by October 1, 2023. Because of litigation timelines and the likelihood of appeals, a civil action filed in the superior court of any of the seven counties, or in the four appellate districts in which they are located, would not result in a final ruling regarding the statewide legality of the CARE Act prior to October 1, 2023.

12. DRC submits this mandamus petition in this Court as an original matter because of the statewide importance and urgent nature of the issues presented. Filing a civil action in a lower court could not afford timely relief.

13. This Petition is based on the Memorandum of Points and Authorities

and Request for Judicial Notice that follow, which are incorporated herein by reference.

WHEREFORE, Petitioner DRC prays that:

1. This Court issue its alternative Writ of Mandate and/or order to show cause ordering Respondents to refrain from enforcing the CARE Act or to show cause why a Peremptory Writ as set forth below should not issue;

2. Upon return of the alternative Writ and/or the hearing on the order to show cause, or alternatively in the first instance, a Peremptory Writ issue ordering Respondents to refrain from enforcing the CARE Act;

3. Petitioner is awarded its cost of suit, including reasonable attorneys' fees; and

4. Petitioner is awarded such further relief as may be just and proper.

Dated: January 25, 2023

DISABILITY RIGHTS CALIFORNIA
WESTERN CENTER ON LAW & POVERTY
PUBLIC INTEREST LAW PROJECT

By: Melinda Bird

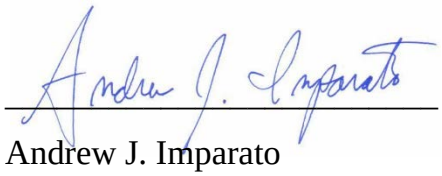
Melinda R. Bird
S. Lynn Martinez
Sarah J. Gregory
Attorneys for Petitioner DRC

VERIFICATION

I, Andrew J. Imparato, declare:

I am Executive Director of Disability Rights California, the petitioner herein. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition are within my personal knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on January 25, 2023 at Sacramento, California.



Andrew J. Imparato

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

INITIAL CERTIFICATE

Pursuant to Rules 8.208 and 8.488 of the California Rules of Court, petitioner Disability Rights California certifies that there are no interested entities or persons that must be listed in this certificate.

Dated: January 25, 2023

Respectfully submitted,

Melinda Bird

Melinda R. Bird

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

I. INTRODUCTION

Beginning October 1, 2023, a new statute will force thousands of unhoused Californians with schizophrenia into court-ordered involuntary treatment, not because they are a danger to themselves or others, but because a judge speculates they are "likely" to become so in the future. The legislation creating this radical change in California law, while billed as a solution to homelessness, does not appropriate one penny towards building or preserving affordable housing. Nor does it increase access to mental health care services. Instead, the proposed solution is court orders that rob unhoused Californians of their autonomy to choose their own mental health treatment and housing and threatens their liberty. This "solution" will not work and will deprive thousands of people of their constitutional rights. This Court must intervene to prevent that from happening.

The statute at issue is the Community Assistance, Recovery, and Empowerment ("CARE") Act, Stats 2022, Ch. 319 (Sept. 14, 2022),[1] codified as Welfare and Institutions Code §5970 *et seq*.[2] Implementation will begin on October 1, 2023, with an initial cohort of seven county superior courts. An estimated 7,000-12,000 unhoused Californians living with mental illness will be subject to the CARE Act, RJN, Ex.20 at 381:9-14, a new court-ordered, regime of involuntary outpatient treatment.

This Court accepts original jurisdiction only when the matters to be decided are of sufficiently great importance and require immediate resolution. *See, e.g.*, *Cal. Redevelopment Ass'n v. Matosantos,* 53 Cal.4th

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[1] *See* Petitioner's Request for Judicial Notice in Support of Petition (RJN), Ex.1.

[2] Unless otherwise designated, all statutory references are to the Welfare and Institutions Code.

231, 253 (2011). The facial constitutionality of the CARE Act is just such a matter. The CARE Act extends court jurisdiction over the autonomy and privacy of individuals who are not presently dangerous or gravely disabled. This raises important questions regarding the government's ability to curtail the constitutional rights of its citizens.

The CARE Act's eligibility criteria differ from the Lanterman-Petris-Short (LPS) Act, which imposes involuntary treatment only upon a finding that a person with serious mental illness is *currently* "gravely disabled" or a danger to self or others. §§5008(h), 5150, 5250. Instead, under the CARE Act, judges will order individuals into involuntary outpatient treatment if they are "likely" to meet the LPS criteria in the future. §5972(d). However, with no definition or clarifying standard for this speculative inquiry, it is impossible for CARE respondents to address, much less defend, a finding regarding a "likely" future proscribed situation. The Act also uses undefined and ambiguous technical terms, as the Judicial Council recently confirmed. The vague eligibility criterion will lead to arbitrary and *ad hoc* decision-making as well as biased and discriminatory enforcement.

This Court established long ago that "when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." *People v. Ramirez*, 25 Cal.3d. 260, 268 (1979). Here, the Act's procedures burden respondents' autonomy in choosing their own housing and mental health treatment and impairs their constitutionally protected privacy interests in confidential communication with psychotherapists. The CARE Act's eligibility provisions are so vague and subjective that the risk of erroneous deprivation of these rights is great. On its face, the CARE Act violates due process guarantees in the State Constitution.

The CARE Act also violates equal protection guarantees. It singles out people with schizophrenia and, without constitutionally adequate justification, subjects them to burdens not imposed on others. Moreover, the California Legislature is aware that a disproportionate number of Black people are *misdiagnosed* with schizophrenia leading to targeted racial disparities in the CARE Act. This broad discriminatory treatment is based on a single characteristic—an *alleged* diagnosis of schizophrenia—over which the respondent has no control and which anyone can weaponize to initiate judicial proceedings. It is a characteristic of disfavor and stigmatization, as well as racial bias, and no governmental interest justifies this differential treatment.

Petitioner DRC recognizes that the CARE Act was an attempt to respond to two crises—a shortage of affordable, accessible housing and mental health care—that force many into last-resort living situations. RJN, Ex.3 at 0109 (Assembly Health Committee analysis stating that Act is intended to "support the thousands of Californians living on our streets with severe mental health and substance use disorders"). However, the Assembly Judiciary Committee also warned that the resulting bill skirted very close to constitutional limits: "If challenged in court, it remains to be seen whether [the CARE Act] would be sufficient to pass constitutional muster." *Id*., Ex.4 at 0156. The State's homelessness crisis is no excuse for creating a constitutionally invalid CARE Court process. Singling out people with schizophrenia and forcing them into involuntary outpatient treatment, multiple court hearings, compelled assessments and other statutory penalties is not an appropriate response.

Accordingly, Petitioner seeks original relief in this Court pursuant to Article VI, Section 10 of the California Constitution, Code of Civil Procedure Section 1085, and California Rules of Court, Rules 8.485 *et seq.*, which govern writ relief. This petition involves issues of sufficient public

importance and urgency to warrant exercise of this Court's original jurisdiction.

II. STATEMENT OF FACTS

A. CARE Act eligibility is based on the prospect that an individual with schizophrenia who is *not* currently dangerous or gravely disabled may become so in the future.

CARE Act proceedings begin with a petition filed in a superior court, alleging that the respondent is age 18 or older, is "currently experiencing a severe mental illness," and has a diagnosis within the class of "schizophrenia spectrum and other psychotic disorders, as defined in the most current version of the Diagnostic and Statistical Manual of Mental Disorders." §5972(b). Known as the DSM, this manual provides a formal classification of mental health disorders, covering more than 70 diagnostic categories. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR)*, (2022), https://www.psychiatry.org/psychiatrists/practice/dsm (last visited January 21, 2023). Other serious mental illnesses such as bipolar disorder or clinical depression are not included in this category and do not support a CARE petition. *Id.*[3]

A CARE petition must establish that the respondent is either "*unlikely* to survive safely in the community without supervision and the person's condition is substantially deteriorating" or "in need of services and

[3] Hereafter, we use the term schizophrenia to refer to "schizophrenia spectrum and other psychotic disorders" as referenced in the CARE Act. Under the DSM, this category includes schizophrenia, schizoaffective disorder and schizotypal (personality) disorder. For a list of covered diagnoses encompassed within the schizophrenia spectrum, *see* https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Contents.pdf (last visited Jan. 6, 2023).

supports in order to prevent a relapse or deterioration that would be *likely* to result in grave disability or serious harm to the person or others, as defined in [the LPS Act]." §5972(d)(1), (2) (emphasis added). The Act does not require that an individual be *currently* dangerous to themselves or others, or gravely disabled and unable to meet their basic needs. *Compare* §§5008(h), 5150, 5250 (LPS).[4] The Act provides no standards or guidance to a court attempting to determine a respondent's likelihood of future deterioration or relapse.

The petition must also allege that additional criteria are met, including that the respondent:

- is "not clinically stabilized in on-going voluntary treatment;"
- is a candidate for participation in CARE Plan that is the least restrictive alternative necessary to ensure the person's recovery and stability," and
- is likely to "benefit from participation in a CARE plan or CARE agreement."

§5972 (c, e, and f). The CARE Act also does not define or explain these clinical criteria or how a court makes findings regarding them.

The CARE Act requires the Judicial Council to adopt "rules to implement the policies and provisions [of the Act] to promote statewide consistency." §5977.4(c). In proposing new rules, the Judicial Council commented on the substantive "ambiguities" in the Act. *Invitation to Comment*, W23-10 (Dec. 14, 2022),

[4] In the LPS Act, "gravely disabled" means either the person is unable to provide for their "basic personal needs for food, clothing or shelter" or is a danger to themselves or others. §5008(h).

https://www.courts.ca.gov/documents/w23-10.pdf.[5] The commentary states that "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." *Id.* at 9.

In addition to these initial eligibility criteria, the petition must include evidence that the respondent was involuntarily detained twice for 14 days of treatment under §5250, a provision of the LPS Act. §5975(d)(2). Alternative to making these allegations, the petition can include "an affidavit from a licensed behavioral health professional," stating that the person meets the criteria above. §5975(d)(1). This affidavit need not be based on personal knowledge. The professional only must have examined the respondent within the past 60 days or "made multiple unsuccessful attempts to examine the person." §5975(d)(1).

This provision prompted a complaint from the California Psychological Association, informing the Legislature that its national code of ethics "expressly prohibits any assessment without an examination of the individual." RJN, Ex.5 at 0216. Although the County Behavioral Health Directors Association recommended removing this language to "ensure due process and minimum clinical and ethnical [*sic*] standards for clinicians," the Legislature retained it. *Id*., Ex.6 at 0225-26.

B. The CARE Act creates a regime of involuntary outpatient treatment, using multiple hearings and statutory penalties to secure compliance.

The Act permits third parties—including roommates, relatives, police, and psychotherapists—to file a CARE petition and initiate judicial

[5] The Judicial Council's Probate and Mental Health Advisory Committee developed the forms and commentary. The new forms and rules will become effective after the close of the public comment period on January 27, 2023.

proceedings. §5974. After a petition is filed, the court must review the petition to confirm it makes a *prima facie* showing of eligibility, appoint counsel, set an initial hearing within 14 days, and order the county to provide notice of the hearing to the respondent and their counsel. §§5977(a)(3)(A)(iv), (3)(B). If the respondent agrees to a voluntary "CARE Agreement," the petition can be dismissed (§5977(a)(5)(1)), or the court may approve the agreement and set a status hearing in 60 days. §5977.1(a)(2). If not, the court will order the respondent and county behavioral health to develop a court-ordered "CARE Plan" on an involuntary basis. §§5977.1(b), (d)(2), (e). CARE respondents face as many as five hearings within the first two months, followed by at least six status review hearings within the following year. §§5977.1-5977.3.

Once ordered, a CARE Plan may require respondents to engage in outpatient treatment and social services and live in a shelter or emergency housing. §5982(a)(1), (3). These services may be ordered over a respondent's objection. §5977.1(d)(2). If the court finds that the respondent lacks capacity to give consent, it may also order "medically necessary stabilization medication" without forcible administration. §5977.1(d)(3). Under the Act, services will be ordered on an involuntary basis if the respondent "decline[s]" participation in a proposed CARE Plan. §5801(5).

When the Legislature was considering the CARE Act, it received testimony regarding the involuntary nature of the program from the California Behavioral Health Planning Council, an official advisory body to the Legislature. RJN, Ex.7. The Council described the CARE Act process as creating a "threat of repercussions on the individual for non-compliance" that, "coupled with the involvement of the civil judicial system directly signifies compulsion to submit." *Id*. at 0236. The Council continued: "There is no other way in which an individual will experience going to court, standing before a judge and receiving a court order to do something

for up to 12 months as anything but coercion." *Id*. at 0237. Others explained that coercion "can also take the form of perceived coercion[]—fear by the individual that noncompliance will result in compulsion or forced treatment[], often referred to as . . . 'the black robe effect'." *Id*., Ex.8 at 0242.

If, at any point, the court concludes that a respondent failed to attend hearings and comply with the Plan, it may "terminate the respondent's participation in the CARE process." §5979(a). The court is then authorized to impose further statutory penalties. First, the court may order that the respondent is detained for an involuntary inpatient evaluation under §5200 of the LPS Act. §5979(a)(2). This detention may last up to 72 hours. §5206. If the evaluation concludes that the respondent meets the LPS criteria due to danger to self, others or grave disability, the individual may be held an additional 72 hours. §5213.

Second, termination from CARE Act proceedings creates a negative factual presumption at subsequent LPS hearings. §5979(a)(3). "[T]he fact that the respondent failed to successfully complete their CARE Plan, including reasons for that failure, *shall* be a fact considered by the court in a subsequent hearing under the [LPS Act], provided that the hearing occurs within six months of termination from CARE Court." *Id.* (emphasis added). In addition, the termination "*shall* create a presumption at that hearing that the respondent needs additional intervention beyond the supports and services provided by the CARE Plan." *Id*. (emphasis added). These penalties for termination increase the likelihood of an involuntary commitment order under the LPS Act.

C. Although claimed to address homelessness, the CARE Act fails to offer actual housing or procedural accommodation for unhoused respondents.

The state presented "Governor Newsom's CARE Court program" as

its "solution" to deal with California's "massive problem" of homelessness "[b]eyond simply seeing the growing number of tent encampments and unhoused people living on the streets...." RJN, Ex.9 at 0261. In hearing, the Senate acknowledged that the Governor declared that "'CARE Court is about meeting people where they are and acting with compassion to support the thousands of Californians living on our streets with severe mental health and substance use disorders.'" *Id*.

However, the Act does not require the courts to order, or the counties to provide, actual housing for unhoused people. By "actual housing," Petitioner means housing that is permanent, safe and accessible. This is in contrast to temporary shelters, which are time limited and do not provide a permanent home: people in shelters are still experiencing homelessness and are often still on the streets. Shelters do not address the root causes of homelessness, and can be dangerous, restrictive, and inaccessible, particularly for people with mental health disabilities. The Legislature observed that although housing resources are a part of a court-ordered CARE Plan, nothing in the Act allows a "court to order housing or to require the county to provide housing [so] it seems that an individual could be participating in CARE Court, be required to meet certain treatment plan goal and requirements, and yet remain unhoused." RJN, Ex.10 at 0277.

Further, the Act does not include any procedural accommodation for people who are unhoused. The Act makes no provision for the circumstances of individuals who, among other things, have no fixed address, cannot access transportation, are difficult to locate, and are unlikely or unable to appear at court hearings. If appointed counsel can locate them, the respondent may waive appearance and appear through counsel. §5977(b)(3). But if not, the court may proceed even without a waiver. *Id*. The county mental health agency must then attempt to engage respondents. §5977(a)(3)(B)(ii). But based on California's experience with

a similar program known as the Assisted Outpatient Treatment, locating respondents may be difficult. RJN, Ex.8 at 0243, n. 8 (citing California Department of Health Care Services (DHCS), *Laura's Law: Assisted Outpatient Treatment Demonstration Project Act of 2002* at 15 (May 2021) ("DHCS Report") (more than half of those found eligible for such outpatient treatment could not be located for further proceedings)).

D. The CARE Act differs from other California mental health treatment statutes.

The CARE Act differs from all other mental health treatment statutes in its eligibility criteria, by focusing only on people with a diagnosis of schizophrenia. And its eligibility criteria differ from the LPS Act in that respondents who do not currently meet the LPS criteria of danger to self or others, or gravely disability are subject to involuntary outpatient treatment if they are "likely" to meet these in the future. *Compare* §5972(d)(2) (CARE Act) *with* §§5008(h)(1)(A), 5150(a), 5250(a) (LPS).

The CARE Act is similar to California's Assisted Outpatient Treatment ("AOT") statute described above, since both employ similar eligibility language regarding likelihood of deterioration and relapse. *Compare* §5346(a) (AOT) *with* §5972(d) (CARE Act). However, the AOT statute imposes no penalties for non-compliance: "Failure to comply with an order of assisted outpatient treatment alone may *not* be grounds for involuntary civil commitment . . . ." §5346(f) (emphasis added). CARE Act reverses this, so that failure to participate "shall create a presumption" in favor of conservatorship. §5979(a)(3).

In addition, unlike AOT, the CARE Act deputizes a broad group of people with the authority to file petitions, including a family member, roommate, board and care home operator, or first responders such as a police officer or homeless outreach worker. §5974. In contrast, AOT

authorizes only the "county mental health director, or his or her designee" to file a petition. §5346(b)(1).

Granting such a broad group of people standing to file CARE petitions raised many concerns in the Legislature. The County Behavioral Health Directors Association warned that petitions from a wide range of people who are "[n]on-clinicians could easily overwhelm courts [and county mental health agencies] with inappropriate referrals" by third parties who "view [CARE Court] as a means to address homelessness and broader systemic challenges with access to behavioral health treatment." RJN, Ex.11 at 0287. In testimony, Human Rights Watch cautioned that "interpersonal conflicts between family members could result in abusive parents, children, spouses, and siblings using the referral process to expose their relatives to court hearings and potential coerced treatment, housing, and medication." *Id.*, Ex.12 at 0300.

Finally, the CARE Act also differs from AOT regarding the opportunity for voluntary treatment before a petition is filed. AOT requires attempts at voluntary engagement *prior* to filing a petition. §5346(a)(5). According to DHCS, over 70% of people referred to AOT voluntarily engaged in treatment *before* a court petition was ever filed, sparing them the trauma of court appearances and coerced treatment. RJN, Ex.8 at 0243, n. 8 (citing DHCS (AOT) Report at 14). In contrast, the CARE Act provides no opportunity for voluntary engagement prior to filing a petition.

Nonetheless, the Legislature adopted broad petitioner standing in the Act, and the CARE Act was signed into California law by the Governor. This Petition followed.

III. ARGUMENT

A. This Court can and should exercise its original jurisdiction to hear this case.

Original jurisdiction in this Court is merited when the matters to be decided are of sufficiently great importance and require immediate resolution. *See, e.g., Cal. Redevelopment Ass'n,* 53 Cal.4th at 253.

Here, the passage of the CARE Act has galvanized both statewide opposition and support with widespread media coverage. It is also the appropriate time to take up this writ because the Judicial Council has recently issued its proposed rules to implement the Act. If these are adopted, the rules will resolve but one constitutional defect in the Act: the failure to serve a copy of the petition on the respondent. *Invitation to Comment*, W23-10, *supra* pp. 24-25. The Council proposed requiring service of the Care Petition as with a summons. *Id.* (proposed rules 7.2235 and 7.2240). The Council's deadline for public comment ends January 27, 2023. *Id.* at 1.

However, the Judicial Council identified other problems that it could not resolve, concluding that "resolution of these ambiguities is the province of the courts." *Id.* at 9. *This* is the appropriate Court to address the unresolved constitutional and procedural issues with a statewide Act. To leave resolution to the lower courts will cause untold hardship and confusion, as conflicting interpretations of the Act slowly wind their way through the appellate courts over the ensuing months and years. This will both waste judicial resources and, in the interim, subject innocent respondents to *ad hoc* and arbitrary restrictions on their rights.

It is urgent to resolve the question of the Act's constitutionality without delay. The Judicial Council noted that the CARE Act "poses significant fiscal and operational challenges for the trial courts, which need to create a new proceeding from the ground up" and creates eight new types

of hearings for courts to implement. *Id.* at 9, 10. The State has already allocated $88 million towards CARE Act implementation in the 2022 State Budget, although these funds are not allocated for housing or services. RJN, Ex.2 (Budget Act of 2022 (AB 179), §§1-4, 18, 134-135. In the first seven cohort counties, planning and implementation have already begun.

The initial implementation date for the first seven counties is October 1, 2023. §5970.5(a).[6] Given the inevitability of appeals from any lower court ruling, there is insufficient time between now and October 1, 2023, to achieve final, statewide resolution of the constitutional questions raised in this petition. After final Judicial Council review, Petitioner DRC would need to file writ petitions in the seven superior courts or the four district appellate courts[7] that review these superior courts.

For these reasons, Petitioner DRC requests that this Court take original jurisdiction over this matter.

B. The CARE Act violates Due Process because it is unconstitutionally vague and will lead to erroneous deprivations of fundamental rights to privacy and liberty.

"[W]hen considering a facial challenge to a procedural scheme, a

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[6] Los Angeles County also wants to join the first cohort and implement by October 1, 2023. Office of Governor Newsom, *Los Angeles County Accelerates CARE Court Implementation to Support Californians with Untreated Severe Mental Illness* (Jan. 13, 2023), www.gov.ca.gov/2023/01/13/los-angeles-county-accelerates-care-court-implementation-to-support-californians-with-untreated-severe-mental-illness; L.A. Times, *L.A. County on track to join Newsom's sweeping mental health plan a year early* (Jan. 13, 2023), https://www.latimes.com/california/story/2023-01-13/la-county-care-court-2023-newsom-mental-health-los-angeles. If approved, this cohort will include a majority of the State's population.

[7] The seven counties and their appellate districts are District 1, San Francisco; District 3, Glenn; District 4, San Diego, Riverside and Orange; District 5, Tuolumne, Stanislaus.

court must determine whether the procedures 'provide sufficient protection against erroneous and unnecessary deprivations of [fundamental rights].'" *Cal. Teachers Ass'n v. State of Cal.*, 20 Cal.4th 327, 347 (1999) (citation omitted). These protections extend to vagueness, and the "constitutional interest implicated in questions of statutory vagueness is that no person be deprived of 'life, liberty, or property without due process of law.'" *Tobe v. City of Santa Ana*, 9 Cal.4th 1069, 1106-07 (1995) (citation omitted).

Here, due process applies because the involuntary outpatient treatment regime established by the CARE Act burdens fundamental rights to privacy, liberty, and autonomy. Court-ordered CARE Plans limit respondents' rights to make personal decisions about health care and their own living situation. CARE respondents face involuntary outpatient treatment, the coercion of multiple court proceedings that do little to protect their rights, and statutory penalties (including the possibility of involuntary detention to determine eligibility for civil commitment) for non-compliance. §5979. Non-compliance can be as simple as failing to appear at a status hearing. *Id.*

For individuals who are *not* presently a danger or gravely disabled, the CARE Act's eligibility criteria require the courts to speculate who *might* become so in the future, without offering any guidance about how to make such a subjective determination. §5972(d). The Act also employs ambiguous, undefined terms with no commonly understood meaning. These criteria fail "to meet two basic requirements . . . [t]he statute must be sufficiently definite to provide adequate notice of the conduct proscribed; and the statute must provide sufficiently definite guidelines . . . to prevent arbitrary and discriminatory enforcement." *Tobe*, 9 Cal.4th at 1106-07.

1. The CARE Act is unconstitutionally vague because it will result in arbitrary and discriminatory court enforcement.

a. The eligibility criteria require courts to speculate about future conduct based on imprecise and subjective standards.

The CARE Act's eligibility criteria are imprecise and subjective, and lack sufficiently specific guidelines to prevent arbitrary or discriminatory enforcement.

In considering a CARE petition, the superior court must make initial findings that all six eligibility criteria are satisfied. §§5972, 5977(a). The first two are objective—the respondent must be age 18 or older and diagnosed with schizophrenia spectrum or a psychotic disorder. §5972(a),(b). But three of the remaining criteria require speculation and rely on undefined and ambiguous terms, giving free rein to the decision-maker's subjective opinion. These concern the likelihood of grave disability or serious harm (§5972(d)), and considerations of clinical stability and recovery. §5972(c), (e).

To start with, the Act requires a court to speculate about whether the respondent might deteriorate in the future. §5972(d). To be eligible for the CARE process, a court must find that the respondent is "*unlikely* to survive safely in the community without supervision" with a condition that is "substantially deteriorating" *or* "in need of services and supports in order to prevent a relapse or deterioration that would be *likely* to result in grave disability or serious harm to the person or others, as defined in [the LPS Act]." §5972(d)(1),(2) (emphasis added).

The uncertainty in the Act's eligibility criteria affects the decision-making of police and judges, who must also guess about what the individual might do in the future, and whether it is more likely or not that they will relapse or deteriorate. The Act provides no parameters to cabin the

court's forecasting of the individual's future conduct or condition. The Act further fails to provide any guidance about the basis for such a legal finding regarding likely (or unlikely) future behavior. Although some definitions are included in the Act, §5971, they do not address this issue.

To withstand a vagueness challenge, a law must have "sufficient precision that 'ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'" *Tobe*, 9 Cal.4th at 1106 (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). In *Kolender*, the high court struck down as vague a requirement in a California anti-loitering statute that required an individual to produce "credible and reliable identification" because it contained no standard to make this determination. *Id.* at 358; *accord*, *Smith v. Goguen*, 415 U.S. 566, 575 (1974) (statute prohibiting "contemptuous" treatment of the flag was vague because its "standardless sweep allows policemen, prosecutors, and juries to pursue their personal predilections."); *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971) (ordinance prohibiting conduct "annoying to persons passing by" was imprecise and depended on subjective impressions); *Connally v. Gen. Const. Co.*, 269 U.S. 385, 390, 395 (1926) (statutory requirement to set wages based on "locality" was "fatally vague and uncertain" because application depended on the "varying impressions of juries"). A vague statute "'impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.'" *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1116 (1997) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)).

Subjectivity also rendered a statue unconstitutionally vague in *Gatto v. Cnty. of Sonoma*, 98 Cal.App.4th 744, 774 (2002). There, a county fair's dress code prohibited wearing "gang colors" and "offensive slogans [and]

insignia." *Id.* The court found that "[t]hese operative criteria are so highly subjective as to provide enforcement authorities almost unfettered license to decide what the dress code permits and prohibits." *Id.* at 775.

Imprecision also doomed a zoning statute at issue in *Zubarau v. City of Palmdale*, 192 Cal.App.4th 289, 309 (2011). There, a zoning ordinance limited the height of radio towers and their active arrays but failed to define or reconcile these terms. *Id.* at 307. The court found that "[w]ithout some further definitions of the terms in context, the language does not meet the test of 'reasonable specificity.'" *Id.* at 310 (quoting *Gallo*, 14 Cal.4th at 1116-17). Relying also on *Grayned*, *supra*, the court concluded that the ordinance was unconstitutionally vague.

Here, rank speculation about what an individual may do in the future is baked into the central premise of the CARE Act. This inquiry is inherently subjective. The imprecise eligibility criteria were designed to allow court-ordered involuntary treatment *before* the respondent meets the more objective criteria of the LPS Act. §1(b), Stats 2022, Ch. 319 ("[T]oo often [ ] comprehensive care is only provided after arrest, conservatorship, or institutionalization").

In this respect, the Act is similar to old vagrancy statutes that were intended to prevent "[f]uture criminality." *Papachristou v. City of Jacksonville*, 405 U.S. 156, 169 (1972) (striking down Florida vagrancy statute as vague). The court observed that in the vagrancy measures, "[d]efiniteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of police and prosecution, although not chargeable with any particular offense." *Id.* at 166. Here, the criteria are intended to sweep up "undesirable" respondents who do not meet the objective LPS criteria.

The eligibility criteria in §5972(d) rest on a decisionmakers' subjective impression, unfettered by objective standards, that a respondent

might "relapse" and "deteriorate" in the future. In every case, this creates a risk of "arbitrary and discriminatory" decision-making by the "policemen [and] judges" (*Gallo*, 14 Cal.4th at 1116), charged with implementing the Act. This vague language will inevitably sweep in individuals who will *not* relapse or deteriorate, which violates due process.

People v. Superior Ct. (Ghilotti), 27 Cal.4th 888 (2002) does not change this conclusion. *Ghilotti* concerned a provision in the Sexually Violent Predators Act requiring extended commitments of convicted sex offenders who are "likely" to commit new acts of criminal sexual violence. *Id.* at 893 (construing §6601(d)). This determination is based on a "standardized assessment protocol" that considers specified risk factors described in the statute. *Id.* at 903. *Ghilotti* challenged the degree of probability required, arguing that it should be limited to those "highly likely" to reoffend. *Id.* at 923. This Court examined definitions of the term "likely," the purpose of the statute and the statutory standards in the assessment protocol, concluding that it required a "substantial danger of new acts of sexual violence." *Id.* at 922. The CARE Act fails to provide comparable standards or guidance. And unlike Mr. Ghilotti, the respondents here have not been convicted of a felony. This challenge is to the standardless application of the eligibility criteria in the Act, not because it fails to define the term "likely" in quantitative terms.

b. The eligibility criteria employ undefined technical terms with no common meaning that courts can apply.

The remaining CARE Act eligibility criteria are also vague. A court must find that the respondent "is not clinically stabilized in ongoing voluntary treatment" (§5972(c)), and that the CARE Plan "would be the least restrictive alternative necessary to ensure the person's recovery and stability." §5972(e).

The Act does not define what constitutes "clinically stabilized" for a person with schizophrenia, nor is there a dictionary definition of this phrase. The caveat that statutory terms "must be applied in a specific context" (*Gallo,*14 Cal.4th at 1116-17) is no help here. There is no commonly understood meaning of this phrase. Even if the term has a specialized technical meaning familiar to medical or mental health professionals, the statute fails to reference this point.

Similarly, the Act calls on judges to determine what will promote a respondent's "recovery and stability" without a statutory definition. Individually, these terms each have a dictionary definition, but these do not explain how to apply the criterion to an individual with schizophrenia. Even in context, they are ambiguous and offer the courts no definable standards on which to base their eligibility determinations.

The language at issue here differs markedly from other cases in which vagueness challenges were rejected. For example, in *Tobe*, the Court rejected claims that an anti-camping ordinance was unconstitutionally vague, pointing to common-sense as context because no law enforcement officer "would believe that a picnic in a public park constituted 'camping' within the meaning of the ordinance . . . ." 9 Cal.4th at 1107. But the ambiguous technical terms in the CARE Act cannot be clarified using a common-sense context as in *Tobe*. Nor do the technical terms provide the "reasonable specificity" required by *Gallo*. There are no definable standards anywhere in the Act, and common sense does not exist to cure this defect.

As noted above, the Judicial Council concurred that "the CARE Act uses many technical terms without defining them," leading courts to "struggle to determine what is required by the act." *Invitation to Comment, supra* pp. 24-25. Here, the CARE Act eligibility criteria in §5972(c) and (e) are vague because they suffer from an imprecise and insufficiently defined

standard. This defect makes the Act unsalvageable. CARE Act proceedings create an unacceptable risk of erroneous deprivation of constitutional rights in violation of the due process guarantees in the California Constitution.

c. Given the inherent dangers of "pessimism" and "paternalism" when judges speculate about the likelihood of future behavior, any statutory eligibility language inviting such speculation should be rejected.

California appellate courts are well aware that speculation about the likelihood of an individual's future behavior can lead trial courts to wrongly deprive individuals of their liberty, as reflected by a series of related cases under the LPS Act.

In *Conservatorship of Murphy*, 134 Cal.App.3d 15, 17-18 (1982), medical witnesses speculated that a conservatee who was no longer gravely disabled would likely relapse if released from a facility. The trial judge continued the conservatorship, explaining that "if he were to be left to his own devices, he would very shortly be back in the realm of those who are greatly disabled because of the intoxication problem and the ingestion of alcohol. It may sound like rampant paternalism, but in my view, that is a characteristic which is currently present in part of his make-up . . . ." *Id*. at 18. The appellate court reversed, highlighting the impropriety of the lower court's reasoning. *Id*.

Similarly, in *Conservatorship of Benvenuto*, 180 Cal.App.3d 1030 (1986), a medical witness testified that a conservatee was no longer gravely disabled, but if he lived with his mother as proposed, he would "cease taking his medication" and "he would be likely to regress and become gravely disabled." *Id*. at 1033-34. As a result, the trial judge continued his conservatorship and placement in a psychiatric facility. *Id*. The appellate court rejected such speculation and reversed the trial court's finding. "If [an] LPS conservatorship may be reestablished because of a perceived

likelihood of future relapse, many conservatees who would not relapse will be deprived of liberty based on probabilistic pessimism." *Id.* at 1034 n. 2; *accord, Conservatorship of Neal,* 190 Cal.App.3d 685, 689 (1987) (to impose a conservatorship based on likelihood of relapse "could deprive the liberty of persons who will not suffer such a relapse solely because of the pessimistic statistical odds").

Here, these risks of error—that someone who will not relapse or deteriorate will be deprived of rights through CARE Act proceedings—are even greater given the text of the Act. While the statutory language of the LPS Act requires the court to make a present finding that a person "is gravely disabled as a result of a mental health disorder," the CARE Act permits the court to make such findings based on a mere "likelihood" that an individual may "deteriorate." *Compare* §5350 (LPS Act) *with* §5972(d) (CARE Act). Indeed, even with the presentation of medical witnesses to opine about what may happen in the future, these cases demonstrate that future speculation by the courts may lead to pessimistic error and impermissible paternalism.

In these decisions, the defined terms and clear statutory language in the LPS Act provided guidance to the courts to determine whether conservatorship was appropriate—and even then, courts erred in making "paternalistic" decisions. Here, by including language regarding the likelihood" of "relapse or deterioration" in the CARE Act, the Legislature has led the courts too far into speculation about what people with mental disabilities *might* do in the future.

d. The CARE Act's vague eligibility criteria fail to provide adequate notice to respondents.

Due process also requires that a statute must be sufficiently definite that "ordinary people can understand what conduct is prohibited . . . ." *Tobe,* 9 Cal.4th at 1106-07. The CARE Act's use of technical terms and

subjective criteria will not be comprehensible to respondents facing a petition and court hearing.

Further, there is an "important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society." *Ramirez*, 25 Cal.3d. at 267, citations omitted. This dignitary interest is impaired when CARE Act eligibility criteria are so unclear that the respondent cannot understand them or determine what findings and decisions the court can impose or even whether the court is authorized to make them. This results in unbalanced power that destroys fundamental protections and creates inequality and the inability to participate in one's own life.

2. Due Process protections apply here because the CARE Act burdens fundamental rights to liberty and privacy.

In *Tobe*, this Court explained that "if a law threatens the exercise of a constitutionally protected right[,] a more stringent vagueness test applies." 9 Cal.4th at 1109 (citation omitted). The statute in *Tobe* did not burden fundamental rights and was thus upheld. But here, the CARE Act threatens the fundamental autonomy and privacy interests that every individual has in choosing their own health care and housing. Its vague standards must be given the most stringent review.

a. The CARE Act impermissibly burdens privacy interests in personal decisions about outpatient behavioral health care.

The right to privacy protects personal autonomy. *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal.4th 1, 35 (1994). The constitutional right to privacy thus protects an individual's freedom to choose to reject medical treatment. *In re Qawi*, 32 Cal.4th 1, 14 (2004). Individuals have an "'autonomy privacy' interest in making intimate personal decisions about

an appropriate course of medical treatment . . . without undue intrusion or interference . . . .” *Pettus v. Cole*, 49 Cal.App.4th 402, 458 (1996) (citing *Hill*, 7 Cal.4th at 35-36).

A court-ordered CARE Plan binds a respondent to comply with specific behavioral health services that are not the respondent’s choice and to which they may actively object. §§5977.1(d)(2), 5982(a)(1, 2). This system permits courts to order *legally competent* respondents into behavioral health treatment, directly impinging on their autonomy privacy right to make medical decisions about their own bodies and minds.

In *Qawi*, this Court recognized an exception to the right to choose one’s medical care when the individual has been accused of a crime and found incompetent to stand trial, provided that the determination is adjudicated during the commitment or recommitment period. 32 Cal.4th at 27-28. This exception is inapplicable here since the CARE Act does not require a finding of incompetence or otherwise authorize the court to make this determination. Instead, the CARE Act permits court-ordered involuntary medical care *without* a determination that the respondent is incompetent.

b. The CARE Act impermissibly burdens privacy and liberty interests in where and with whom one chooses to live.

The Act authorizes courts to order CARE Plans that will sharply limit a respondent’s choices about where and with whom they live. §§5982(a)(3), 5982(b) (listing authorized shelter and housing programs). This burdens autonomy privacy and the right to personal liberty.

Autonomy privacy includes choosing the people with whom one will live. *City of Santa Barbara v. Adamson*, 27 Cal.3d. 123, 126-34 (1980). In *Adamson*, residents of a shared home who were “not related by blood, marriage, or adoption” challenged a government ordinance that prohibited

more than five unrelated people from living together in one dwelling. *Id.* at 127. This Court found that the right to privacy under the California Constitution "comprehends the right to live with whomever one wishes or, at least, to live in an alternate family" with unrelated persons. *Id*. at 130. This "right to choose with whom to live is fundamental." *Tom v. City and Cnty. of S.F.*, 120 Cal.App.4th 674, 683 (2004).

Here, courts may order respondents into "housing" that is not housing at all. The "housing resources" that may be ordered in a CARE plan include congregate living arrangements where people share living and sleeping quarters with people they do not know, such as board and care homes, assisted living, or temporary emergency shelters. §5982(b).

Autonomy in housing choice is also protected by the right to personal liberty, including a person's right to "be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; *to live and work where he will . . . .*" *Conservatorship of Valerie N.*, 40 Cal.3d 143, 162 (1985) (emphasis added). Thus, a respondent's freedom to choose "to live . . . where he will" is impermissibly burdened when a court orders compliance with a CARE plan that requires the respondent to live in unwanted conditions. *Cf. In re Marriage of Fingert*, 221 Cal.App.3d 1575, 1581-82 (1990) (courts cannot order individuals to move and live in a community not of their choosing because this burdens the right to intrastate travel).

c. The CARE Act impermissibly burdens privacy interests in confidential psychotherapist communication and medical records.

The CARE Act impinges on informational privacy because the petition process relies on confidential disclosures from psychotherapists and hospital medical records. "It is well settled that the zone of privacy

created by [the California Constitution] extends to the details of a patient's medical and psychiatric history." *Pettus*, 49 Cal.App.4th at 440, citations omitted; *accord*, *Susan S. v. Israels*, 55 Cal.App.4th 1290, 1295 (1997) (patient's privacy interest in mental health records is "undisputed"). Further, "statements made by a patient to a psychotherapist during therapy are generally treated as confidential and enjoy the protection of a psychotherapist-patient privilege . . . [which] has been recognized as an aspect of the patient's constitutional right to privacy." *Mathews v. Becerra*, 8 Cal.5th 756, 770 (2019) (privacy rights violated by statute that required therapists to report when patients disclosed they had viewed child pornography). Confidentiality is essential to psychotherapy, since a psychotherapist "can be of assistance *only* if the patient may freely relate his thoughts and actions, his fears and fantasies, his strengths and weaknesses, in a completely uninhibited manner." *Id*. at 771 (emphasis added, citation omitted). Even "the fact that treatment has been sought may itself be considered confidential information." *Id*.

California law permits limited disclosure of confidential medical records in certain contexts involving criminal offenders. *See, e.g.*, *People v. Gonzales*, 56 Cal.4th 353, 387-88 (2013) (parolees); *Landau v. Superior Ct.*, 32 Cal.App.5th 1072, 1081, 1084 (2004) (mentally disordered and sexually violent felons). This context is inapplicable here. The CARE Act permits full disclosure of confidential information in an *initial civil filing* prior to any adjudication of CARE Court jurisdiction, much less conviction of a felony.

Although CARE Act proceedings are "presumptively closed,"[8] the

[8] If desired, the respondent may make the hearing public. §5976.5. In addition, the "request by any other party to the proceeding to make the (cont'd)

process relies on confidential information disclosed to the court and other parties without the respondent's consent. Among those authorized to file a CARE Act petition are behavioral health professionals who treated the respondent within 30 days prior to filing and hospital directors of treatment facilities. §5974(c)-(e). Because petitions must include facts to show why the respondent meets the CARE Court eligibility criteria, petitions filed by these parties are necessarily based on information disclosed by patients during treatment and in their medical records. The disclosures required by the CARE Act directly burden protected privacy rights.

In sum, given the fundamental autonomy and privacy interests at stake, the Court must take a particularly stringent view of vagueness when assessing the constitutionality of the CARE Act. *Tobe,* 9 Cal.4th at 1109. For all the reasons set forth in this Section—including the fact that the CARE Act's eligibility criteria fail to afford adequate notice to persons who will ultimately be judged under them, while their subjectivity invites arbitrary and discriminatory decisions—this Court should hold that the CARE Act is unconstitutionally vague.

C. Under strict scrutiny review, the CARE Act violates Equal Protection because it is not narrowly tailored to achieve a compelling interest, and instead targets the fundamental interests of a disfavored group of disabled people based on fear and prejudice.

The California Constitution provides that a person may not be "denied equal protection of the laws." Cal. Const. Art. I, §7(a). In determining whether legislation violates this mandate, this Court first asks

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hearing public may be granted if the judge . . . finds that the public interest in an open hearing clearly outweighs the respondent's interest in privacy." *Id*. Again, the Act does not define or otherwise provide guidance about what constitutes a finding of "public interest" to warrant a public hearing involving confidential information.

whether the State adopted a classification that treats similarly situated individuals in an unequal manner. *Pub. Guardian of Contra Costa Cnty. v. Eric B.*, 12 Cal.5th 1085, 1102 (2022). The next question is whether the disparate treatment is "justified by a constitutionally sufficient state interest." *Id.* at 1107. Statutes that "touch upon fundamental interests" or that involve "suspect classifications" are subject to "strict scrutiny and can be sustained only if they are necessary to achieve a compelling state interest." *Id.*; *Serrano v. Priest*, 18 Cal.3d 728, 761 (1976) ("*Serrano II*") (strict scrutiny warranted where classification burdened fundamental right to education).

The CARE Act divides people with severe mental illness into two groups: those with schizophrenia versus those with other diagnoses, such as bipolar disorder and clinical depression. These two groups of people with mental disabilities are similarly situated but treated unequally. Those with a schizophrenia diagnosis are subjected to an arduous court process and statutory penalties; those with other diagnoses are not. Because this unequal treatment burdens fundamental privacy and liberty interests, strict scrutiny review is warranted under the same rationale this Court employed in *Serrano II*, *Eric B.*, and *Darces v. Woods*, 35 Cal.3d 871 (1984).

The statutory scheme also classifies people based on inherent characteristics and stereotypes about people with schizophrenia. The CARE Act's differential treatment of people with mental illness is not justified by any compelling state interest, and its focus on involuntary outpatient treatment, coupled with its failure to require actual housing, undermine any possible benefit. The Act violates California's Equal Protection Clause.

Regarding remedy, the result sought in *Eric B.*—the extension of favorable statutory rights—would not resolve the discriminatory treatment here. *Eric B.*, 12 Cal.5th at 1106-07 (potential LPS conservatee sought right against compelled testimony, which was statutorily provided in criminal but

not LPS proceedings). In that case, the similarly situated groups were subject to different statutory schemes, one of which offered diminished rights. *Id.* at 1098-99. Here, the issue is whether the rights of one disfavored group may be restricted when the rights of those similarly situated are not. The restrictions are not supportable for either group, so the CARE Act fails in its entirety. *See, e.g., Sail'er Inn, Inc. v. Kirby*, 5 Cal.3d 1, 20 (1971) (state law imposing "invidious" and "wholly arbitrary" classification based on sex was invalid under California's Equal Protection Clause).

1. The CARE Act subjects people with schizophrenia to burdens not imposed on other similarly situated people with serious mental illness.

As fully discussed in Section II.A. *supra*, the plain language of the CARE Act singles out people living with schizophrenia *who are not currently dangerous or gravely disabled*. §5972(b). It further burdens these singled-out individuals with restrictions, court proceedings and statutory penalties not imposed on other similarly situated people with serious mental illness. The CARE Act's segregated, mandatory treatment regime and its statutory penalties for noncompliance do not apply to any other California resident, including other people with the many other serious mental illnesses identified in the Diagnostic and Statistical Manual of Mental Disorders (DSM).

The result is a classification scheme that divides people with severe mental illness into two groups: those with schizophrenia versus those with bipolar disorder, clinical depression, and other DSM diagnoses. Within each group, symptoms vary in severity. Some people with schizophrenia

are highly functional,[9] while others may become completely incapacitated. But the same is true for people with other mental health disabilities. For instance, people with clinical depression—one of the most common psychiatric conditions—can likewise be highly functional, completely incapacitated, or somewhere in between. Both groups benefit from medication and engagement in voluntary treatment. *See* RJN, Exs.4 at 0147; 3 at 0115 (Committee analyses discussing Mental Health Services Act (MHSA) funding of voluntary services for people with mental illness); *see also* Ex.13 at 0320 [(describing "proven" MHSA services without a court order or involuntary component, and available "irrespective of their mental illness, level of care, or risk of noncompliance with a treatment program"). People in both groups are subject to involuntary detention and civil commitment proceedings under the LPS Act when they are dangerous or unable to care for themselves. Without question, both groups are similarly situated.

Yet the CARE Act singles out only one group—those with schizophrenia—for an arduous court process and compelled outpatient

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[9] Within the schizophrenia spectrum, severity varies significantly, with "schizoid (personality) disorder and schizophrenia defining its mild and severe ends." David B. Arciniegas, *Psychosis*, 21 Behavioral Neurology and Neuropsychiatry 715, 733 (June 2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4455840/pdf/20150600.0-0015.pdf. Severity varies widely even within the specific category of schizophrenia. Professor Elyn Sacks, whose schizophrenia still causes hallucinations, was a MacArthur Foundation Fellow after graduating from Oxford and Yale Law School. She now serves as a Distinguished Professor of Law, Professor of Psychology, and Psychiatry and Behavioral Sciences at the University of Southern California Gould School of Law, and Director of the Saks Institute for Mental Health Law, Policy, and Ethics. *See* Macarthur Foundation Fellows Program, https://www.macfound.org/fellows/class-of-2009/elyn-saks#searchresults; *see also* Faculty Directory, USC Gould School of Law, https://gould.usc.edu/faculty/?id=300 (last visited January 24, 2023).

treatment and imposes severe penalties for noncompliance. The other group—people with any other mental health condition—is free from subjective allegations and assumptions, judicial review, stigmatizing labels, and infringement on privacy and liberty.

Thus, the question becomes "whether they are similarly situated *for purposes of the law challenged*." *Eric B.*, 12 Cal.5th at 1102 (citation omitted). The answer is yes. The expressed legislative intent enunciates the ostensible purpose of the CARE Act: to "provide support" to "individuals with untreated severe mental illnesses" in order to prevent "risks to their health and safety," "homelessness, incarceration, hospitalization, conservatorship, and premature death." RJN, Ex.1, §1. However, this needed "support" is equally applicable to people with all kinds of severe mental illness, not just those with schizophrenia. It is indisputable that the same consequences—homelessness, incarceration, hospitalization, conservatorship, and premature death—also attend to other mental illnesses.

The Legislature also declared that treatment is available, but that "comprehensive care is only provided after arrest, conservatorship, or institutionalization." *Id.*, §1(b). Again, this is true of all mental illnesses, not just schizophrenia.

Another stated purpose of the CARE Act is to "provide support and accountability" to individuals and to "local governments with the responsibility to provide behavioral health services [for] Californians with complex behavioral health care needs so they can stabilize and find a path to wellness and recovery." *Id.*, §1(c)-(d). These purported goals of accountability, support, stabilization, wellness, and recovery apply equally to all people with severe mental illness, not just people diagnosed with schizophrenia. Finally, the Legislature promises that the CARE Act will help "some of the most ill and most vulnerable Californians." *Id.*, §1(f).

However, the Act offers no justification for concluding that people with schizophrenia are more "ill" and "vulnerable," especially given the range of severity within each diagnostic category of mental illness. *See* discussion *supra* at 40, note 9.

The CARE Act's focus on one diagnosis is a radical break from California's historical statutory approach, which appropriately turns on the severity of the individual's mental illness, rather than a particular diagnosis. Pointedly, California's other mental health treatment statutes apply to *all* residents with mental disabilities irrespective of the particular diagnosis, with eligibility criteria based on whether individuals pose a danger or cannot care for themselves. *See, e.g.*, §§5346(a)(2), 5600.3(b)(2)-(3) (Assisted Outpatient Treatment statute applies to all people "suffering from a mental illness" who meet the statutory criteria for severity and impairment); §§5150-5152 (involuntary commitment under the LPS Act applies to all people with a "mental disorder" who meet legal criteria for dangerousness or grave disability); *cf.* DHCS, *Behavioral Health Information Notice No: 21-073* at 3 (Dec. 10, 2021), https://www.dhcs.ca.gov/Documents/BHIN-21-073-Criteria-for-Beneficiary-to-Specialty-MHS-Medical-Necessity-and-Other-Coverage-Req.pdf (Specialty Mental Health Services available to all people with mental illness who meet severity criteria).

Classification based on severity of the mental illness is logical, while focusing only on diagnosis is not. An individual's symptomology and even diagnosis may change. *See, e.g.*, sources cited *supra* n. 9. Moreover, schizophrenia is a highly stigmatized diagnosis and relying on it alone, as an essential eligibility criteria, invites inaccuracy, bias and racial inequity. *See infra* Section III.C.3.

Viewed against the CARE Act's stated purpose, people with schizophrenia and people with other forms of severe mental illness are

similarly situated. The CARE Act treats these similarly situated individuals in an unequal manner, thus requiring further equal protection analysis.

2. Strict scrutiny is warranted because the CARE Act burdens constitutionally protected liberty and privacy interests.

The strict scrutiny standard of review is appropriate when a law treats similarly situated people differently in ways that "touch upon fundamental interests." *Eric B.*, 12 Cal.5th at 1107 (citation omitted). In such cases, this Court has "adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny." *Serrano II*, 18 Cal.3d at 761 (citation omitted). The state must "show a compelling interest if fundamental rights are affected," including fundamental liberty and privacy interests. *People v. Olivas*, 17 Cal.3d 236, 252 (1976) (liberty interests); *accord*, *In re Marriage Cases*, 43 Cal.4th 757, 847 (2008) (privacy interests), *superseded by* Cal. Const. Art. I, §7.5.

Here, the CARE Act impinges on CARE Respondents' constitutionally protected rights to privacy and liberty, triggering strict scrutiny review. As discussed above in Section III.B.2, the Act burdens respondents' fundamental privacy and liberty interests by (1) restricting their right to choose their own health care, *In re Qawi*, 32 Cal.4th at 14, and where and with whom they live, *Tom*, 120 Cal.App.4th at 683; and (2) permitting psychotherapists to use and disclose confidential information as the basis of CARE petitions, *Mathews*, 8 Cal.5th at 770.

Because the Act restricts respondents' constitutionally protected privacy and liberty interests, strict scrutiny is required. *Conservatorship of Valerie N.*, 40 Cal.3d 143, 163-64 (1985); *In re Marriage Cases*, 43 Cal.4th at 847.

3. Strict scrutiny is warranted because the CARE Act eligibility criteria are based on deep-rooted prejudice and stereotypes about people with schizophrenia.

Strict scrutiny is also warranted because the CARE Act treats disabled people differently on the basis of inherent characteristics—their mental health condition. The Act is based on deep-rooted (but unfounded) fear, prejudice, and stereotypes about schizophrenia and about people who are homeless in particular, including unsubstantiated associations with "insanity" and violence. As a result, it targets people who have—or who are presumed to have—schizophrenia for an onerous court process, serving as a vehicle for State-sanctioned prejudice against a disfavored group that already endures extreme stigmatization and marginalization. Moreover, these prejudices reveal overt racial discrimination because, as we discuss below, Black and Latinx individuals are more likely to be inappropriately misdiagnosed with schizophrenia.

This Court's precedent condemns differential treatment of people based on fear and generalizations about a person's inherent characteristics. These cases include:

- *Sail'er Inn*, 5 Cal.3d at 20, applying strict scrutiny to classification based on sex, in part because of historic stereotypes and generalizations about women's abilities;
- *In re Marriage Cases*, 43 Cal.4th at 840-41, finding that courts "must look closely" at classifications based on a person's characteristics "lest outdated social stereotypes result in invidious laws or practices," citation omitted;
- *Darces*, 35 Cal.3d at 888, 892-93, departing from U.S. Supreme Court precedent and applying strict scrutiny review to a welfare benefit classification because the children affected constituted "a

> discrete minority" who were classified on the basis of a trait "over which they have no control"—*i.e.*, their "birth into an undocumented family"—and were "saddled with [the same] disabilities [and] subjected to [the same] history of purposeful unequal treatment" as their undocumented family members (citation omitted).

This Court has thus engaged in an exacting review of legislative distinctions based on a person's characteristics or generalizations about the way people are. As former Justice Grodin observed, "greater scrutiny is required when a statute withholds some benefit or imposes some detriment upon a group defined by inherent characteristics since in such cases there is greater risk that the classification is the product of stereotyping or prejudicial views." Joseph R. Grodin, *Same-Sex Relationships and State Constitutional Analysis*, 43 Willamette L. Rev. 235, 248 (2007). That risk of stereotyping and prejudice that Justice Grodin feared was realized in the passage of the CARE Act.

Historically, all people with serious mental illness have been disfavored and subjected to segregation, isolation, and stigmatization. *See, e.g.*, *Conservatorship of Roulet*, 23 Cal.3d 219, 228-30 (1979) (discussing stigmatization of people with serious mental illness and the resulting harm thereof and stating that "[m]any people have an 'irrational fear of the mentally ill'"). However, people are more likely to fear and stigmatize others who are diagnosed with schizophrenia. In such cases,

> [s]tigmatization refers to a stereotyped set of negative attitudes, incorrect beliefs, and fears about the diagnosis schizophrenia that impact on how this syndrome is actually understood by others. It involves problems of knowledge (ignorance), attitudes (prejudice), and behavior (discrimination).

Van Zelst, C., *Stigmatization as an Environmental Risk in Schizophrenia*, Schizophrenia Bull., 35(2): 293-296 (2009),

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2659317/. Recent studies continue to confirm that "schizophrenia is the most stigmatized of mental illnesses," even among mental health professionals. *See, e,g.*, Valery, K. M., et al., *Schizophrenia stigma in mental health professionals and associated factors: A systematic review*, Psychiatry Research, 290:113068 (2020), https://doi.org/10.1016/j.psychres.2020.113068.[10] As discussed below, this fear and stigmatization is compounded for Black and Latinx people, who are more likely to be diagnosed with schizophrenia in the first place.

Significantly, the presumed failure to be "accountable" is blatantly stereotypical of people diagnosed with schizophrenia. As Doctor and Senior Professor Wulf Rössler points out,

> The most prominent stereotypes surrounding the mentally ill presume dangerousness, unpredictability and unreliability; patients with schizophrenia are most affected by such views . . . Investigations have revealed that a negative characterization is much more frequent when the diagnostic term 'schizophrenia' is applied rather than another diagnosis, such as depression.

Rössler, W., *The stigma of mental disorders: A millennia-long history of social exclusion and prejudices*, EMBO Reports, 17(9):1250-51 (2016).[11]

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[10] *See also* Dickerson F., et al., *Experiences of stigma among outpatients with schizophrenia*, Schizophrenia Bull., 28(1):143-55 (2002), https://pubmed.ncbi.nlm.nih.gov/12047014/; Guloksuz, S., & Van Os, J., *The slow death of the concept of schizophrenia and the painful birth of the psychosis spectrum*, Psychological Medicine, 48(2): 229-44 (2018), https://pubmed.ncbi.nlm.nih.gov/28689498/.

[11] These stereotyped responses are unwarranted, because people with schizophrenia are more likely to be victims than perpetrators of violence. *See, e.g.*, Heather Stuart, *Violence and Mental Illness: An Overview*, 2 World Psychiatry 123 (2003) (finding that "mental disorders are neither necessary, nor sufficient causes of violence" and that it is far more likely that people with serious mental illness will be victims of violence instead), (cont'd)

Unfortunately, fear and prejudice about homeless people with schizophrenia are at the heart of the CARE Act. RJN, Ex.1, §1(a). In statements made during the legislative process, Legislators asserted that potential CARE respondents are "taking a dump in a bucket," "walking around naked," "commit[ing] battery [and] domestic violence," "talking to an alien [and] God," and "living under a bridge." *Id*., Exs.23 at 0740:2-11; 21 at 0543:9-0544:3, 0525:18-20. Legislators also assumed that unhoused people living with schizophrenia "don't think they need help," and made clear that a purpose of the CARE Act is to "tak[e] our streets back and help[] these people," and that "the individual should have an obligation to say yes. . . if you don't, we're going to step in" and be "the adult in the room." *Id*., Exs.23 at 0738:16-19; 22 at 669:1-8. Likewise, the most prominent stereotype established by Dr. Rössler for people with schizophrenia, *i.e*., "dangerousness, unpredictability and unreliability," is front and center as its own chapter in the CARE Act: "Chapter 3. Accountability." *See* § 5979 (discussing accountability of respondent and counties in the provision of services).

The Act's exclusive focus on schizophrenia will also disproportionately affect Black people. The racial disparities caused by the Act were raised at hearings and in legislative analyses and never disputed. For example, the Assembly Appropriations Committee analyzed that "African Americans are disproportionately diagnosed with Schizophrenia with estimates ranging from three to five times more likely in receiving such a diagnosis . . . ." RJN, Ex.14 at 0332 (quoting *Racial disparities in psychotic disorder diagnosis: A review of empirical literature*, World Journal of Psychiatry 2014: 4:4, 133-140).

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https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525086/pdf/wpa020121.pdf.

Similarly, both the Assembly Judiciary and Appropriations Committees recognized opposition testimony that confirmed that the Senate Bill would "result in racially disparate impacts," noting the "historical and continued discrimination against Black Californians in [ ] housing and medical services" and that, "[a]s a result, Black Californians suffer a disproportionate rate of homelessness and are more likely to receive an inaccurate mental health diagnosis." *Id.*; *see also* Ex.4 at 0155 (discussing history of discrimination). The Committees went on to state that "[r]esearch demonstrates that Black, Indigenous, and People of Color (BIPOC) and immigrant racial minorities are more likely to be diagnosed, and misdiagnosed, with psychotic disorders than white Americans because of clinicians' prejudice and misinterpretation of patient behaviors." *Id*. (citing California Task Force to Study and Develop Reparation Proposals for African Americans, *Interim Report* at 422-23 (2022), https://oag.ca.gov/system/files/media/ab3121-reparations-interim-report-2022.pdf).

The County Behavioral Health Directors Association agreed, submitting written testimony that "it is well documented that the largely white profession of psychiatry tends to inappropriately misdiagnose Black and Latinx individuals with schizophrenia and other psychotic disorder diagnoses." RJN, Ex.11 at 0286. The Directors Association cited a 2019 study showing that "Black individuals are more likely to be diagnosed with a psychotic disorder than white individuals, despite no scientific evidence that they are more likely than other populations to have schizophrenia." *Id.* As a result, the County Directors concluded that the CARE Act would "increase stigma and discrimination" and "expand court and justice involvement for Black Californians, who are [already] more likely to be misdiagnosed and overpoliced." *Id.* at 0287.

The legislative record makes clear that the CARE act was founded

on generalizations and prejudices about a disfavored group: unhoused people with schizophrenia, who are disproportionally Black. As a result, the Act's distinction between those subject to the CARE Act, and those who are not, must be reviewed with strict scrutiny.

4. The CARE Act is not necessary to further a compelling state interest.

a. The Act is not narrowly tailored to accomplish its objectives, which could be met through increased voluntary services.

Under strict scrutiny, "[t]he state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose." *Serrano II*, 18 Cal.3d at 761, citations omitted; *Eric B.*, 2 Cal.5th at 1107.

The classification created by the CARE Act fails under the strict scrutiny standard because it is not necessary to further a compelling state interest. The state's professed interest in assisting unhoused mentally ill people is belied by the legislative history examined above, making it clear that the classification is based on unsubstantiated fear and generalizations. Such generalizations about people "fail[] as a compelling state interest." *Sail'er Inn*, 5 Cal.3d at 20-22 (rejecting state's asserted interests in limiting women's ability to serve as bartenders and holding that law was based on "unacceptable generalizations"); *cf. U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 537-38 (1973) (statute's stated purpose was constitutionally insufficient given legislative history suggesting political desire to target a disfavored group); *In re Marriage Cases*, 43 Cal.4th at 784 (state interest in retaining the traditional definition of marriage not "compelling" because it "impose[d] appreciable harm" and perpetuated stigma about a disfavored group).

Even assuming *arguendo* that the state's asserted interest is

"compelling," the challenged system is not "necessary" to further that interest. *See Serrano II*, 18 Cal.3d at 769. Nothing in the legislative record explains why it is "necessary" to order people into involuntary treatment when most potential CARE respondents are already eligible for existing voluntary services. County officials advised that the state could achieve the same policy goal by investing in less discriminatory and more effective voluntary services already "proven" to engage hard-to-reach individuals through trust-building, outreach and engagement, and intensive support services. *See, e.g.*, RJN, Ex.15 at 0340. They also expressed concern that the CARE Act would divert resources away from existing voluntary services that are already underfunded. *Id.*

Evidence was also presented showing that court-ordered outpatient treatment is not effective. For example, testimony submitted by opponents cited a previous RAND Institute study commissioned by the California Senate Committee on Rules. RJN, Ex.16 at 0349. The study concluded that there is no evidence "to prove that a court order for outpatient treatment in and of itself has any independent effect on client outcomes." *Id.* at n. 28; *see also* Ex.17 at 0361 (same).

Not only is the CARE Act unnecessary to accomplish the state's ostensible purpose of assisting people with schizophrenia, it actively *undermines* this goal. Evidence before the Legislature showed that involuntary treatment reduces patient engagement, recovery and treatment goals. *See e.g.*, RJN, Ex.22 at 0657:14-0658:23. County representatives explained that someone who is a person "brought into services on a voluntary basis is much more likely to maintain their recovery in the long run," versus someone who is coerced into treatment. *Id.*, Ex.21 at 0469:5-18. This testimony is supported by the many studies confirming the importance of offering voluntary, non-coercive treatment because self-determination is an essential element of effective mental health care. *Id.*,

Exs.17 at 0359-61; 8 at 0242-44.

b. The Act does not provide housing, and is therefore not tailored to advance the State's purported interest in reducing homelessness.

The CARE Act also undermines its purported purpose because it does not actually provide "housing" for respondents. The Act does not authorize a court to order payment for a home (or apartment), or require a jurisdiction to provide actual housing, or otherwise cure the State's already dire affordable housing shortage. Rather, a respondent's Care plan *may* include a referral to "housing resources funded through" other statutes. §5982(a)(3). Among the laundry list of referral resources, those with supposed availability are not housing, but primarily emergency shelters, or congregate living arrangements where people share living and sleeping quarters with people they do not know, such as board and care homes.[12] CARE respondents may also be "prioritized" for a newly-funded "Bridge housing" program, which is again limited to emergency shelter and temporary shelter. §5982(b). And, acknowledging that there are not enough places for people to sleep in this state, all of these shelter resources are still "subject to available funding." §5982(d).

Accordingly, commenters advised the Legislature that "an individual could be participating in CARE Court, be required to meet certain treatment plan goals and requirements, and yet remain unhoused." RJN, Ex.3 at 0110-

[12] For example, the "housing resources" listed in the Act are not actual housing. Rather these resources include Community Care Expansion Program for residential adult and senior care facilities, §18999.97(a); congregate treatment facilities funded by the Behavioral Health Continuum Infrastructure Program, §5960.05; and Emergency Solutions Grant funding for emergency and transitional shelters. 42 USC §11374(a)(2), (3), all of which provide limited availability and funding.

0111 (noting that it is "unclear how an individual meeting the requirements for participation in CARE Court can truly make progress" if they remain homeless.) Indeed, both the counties *and* opponents of the CARE Act shared this concern about a respondent's inability to progress or even participate if remaining unhoused. *See, e.g., id.*, Exs.6 at 0227; 18 at 0368; 19 at 0372.

The Act also undermines California's official "Housing First" law. §8255 *et seq.*; *see* RJN, Ex.8 at 0245 (noting that all state agencies and departments "must incorporate the core components of housing first"). "Housing First" is an "evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible." §8255(d)(1). "Housing first providers offer services as needed and requested on a *voluntary* basis and . . . *do not make housing contingent on participation in services.*" *Id.* (emphasis added).

The CARE Act fails to ensure that respondents receive permanent housing and instead mandates involuntary treatment, both of which are inconsistent with the California's "Housing First" policy. The analysis by the Senate Health Committee raised the "question of whether [the Legislature] is creating a 'Housing Second' model" through the CARE Act. RJN, Ex.10 at 0277.

In light of the burdens that the CARE Act imposes on liberty and privacy interests and the fear and prejudices motivating the law, the state's failure to adopt a less discriminatory alternative violates Equal Protection. Accordingly, the CARE Act does not survive strict scrutiny and is unconstitutional.

D. The CARE Act violates Equal Protection under rational basis review because its invidious disability-based distinctions bear no relationship to any valid state interest.

Even assuming *arguendo* that strict scrutiny is inapplicable, the CARE Act still violates equal protection because its classification scheme rests on irrational fears, prejudice, and stereotypes. Where a statute creates two different classes of people, the rational basis standard still requires that the classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Young v. Haines*, 41 Cal.3d 883, 899 (1986) (quoting *Reed v. Reed*, 404 U.S. 71, 76 (1971)).

Modern legislation regulating disability discrimination recognizes that classifications based upon disability are inherently invidious. The Americans with Disabilities Act (ADA) recognizes that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem[.]" 42 U.S.C. §12101(a)(2); *accord*, Gov't Code §§11135(a)-(b) (incorporating the ADA by reference); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999) (segregation of people with disabilities in institutional settings violates the ADA); *Fry v. Saenz*, 98 Cal.App.4th 256, 263-64 (2002) (California regulation discriminated on the basis of disability in violation of Gov't Code §11135 and ADA). The ADA forbids not only discrimination between disabled and non-disabled people, but also among different groups of disabled people. *See Lovell v. Chandler*, 303 F.3d 1039, 1045, 1052-53 (9th Cir. 2002) (state law excluding one group of disabled people from state health insurance program constituted facial

discrimination in violation of the ADA).

These state and federal anti-discrimination statutes serve as a "source of guidance on evolving principles of equality" for purposes of constitutional analysis and the appropriate level of scrutiny. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 465 (1985) (Marshall, J. concurring in part and dissenting in part). "[M]ere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable" are "not permissible bases" for treating people with disabilities differently. *Id*. at 448.

More recently, the high court struck down the federal "Defense of Marriage Act" because its purpose was to disadvantage a disfavored group. *U.S. v. Windsor,* 570 U.S. 744, 770 (2013). The Court said:

> The Constitution's guarantee of equality 'must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group . . . In determining whether a law is motivated by an improper animus or purpose, '[d]iscriminations of an unusual character' especially require careful consideration.

Id. (citing *Moreno*, 413 U.S. at 534-35). The *Windsor* court found that the "principal purpose and the necessary effect" of the federal law was "to restrict the freedom and choice of couples" in lawful same-sex marriages, based on Congress' "moral disapproval of homosexuality." *Id.* at 771, 774. Because this purpose was improper, the Court found a violation of equal protection. *Id.* at 775. Although the court did not label its approach, it was more than mere rational basis review since the Court declined to consider other possibly legitimate justifications. *Id.*

As in *Windsor,* the CARE Act represents an "unusual deviation from the usual tradition" in California mental health law, which restricts liberty and privacy based on present day conduct, rather than speculation about later harm. *See id.* at 770. This deviation is directed only at those with

schizophrenia because of the stigma with which they are regarded. This improper purpose alone—targeting disabled people with a particular disfavored diagnosis—is enough to invalidate the eligibility criteria on rational basis review, without delving into other conceivable but unexpressed goals. *Id.* at 775.

The *Windsor* court cited *Moreno*, 413 U.S. at 538, which also subjected classifications based on prejudice to heightened rational basis scrutiny. *Moreno* overturned a restriction on food stamp assistance to certain low-income households that was "irrelevant to the stated purposes of the Act" which was to "alleviate . . . hunger and malnutrition." *Id.* at 533-34. Instead, the legislative history indicated a desire to "prevent so-called 'hippies' and 'hippie communes' from participating in the food stamp program." *Id.* Finding this purpose to be improper and rejecting the government's subsequent rationale of fraud prevention, the high court invalidated the classification as violative of Equal Protection. *Id.* at 538.

This Court also struck down a classification aimed at a disfavored group using rational basis scrutiny in *In re Taylor*, 60 Cal.4th 1019, 1042 (2015). At issue was a residency restriction making it illegal for sex offenders to reside within 2000 feet of a school. *Id.* at 1023. This Court found that the classifications created by the statute "cannot survive even the more deferential rational basis standard" given the burdens on petitioners' "liberty and privacy rights." *Id.* at 1038. This Court engaged in an exacting review of the state's justifications, concluding the justifications bore no rational relationship to "public safety" or the "state's legitimate goal of protecting children from sexual predators" because the rule would "hamper, rather than foster, efforts to monitor, supervise, and rehabilitate these persons." *Id*. Similarly, targeting people with schizophrenia alone for CARE Act petitions will also "hamper, rather than foster" efforts to engage them in voluntary treatment.

When the legislative history is viewed alongside evidence of the ineffectiveness of providing services by court order, it becomes clear that the CARE Act's primary purpose is to create a politically expedient legal mechanism for removing a disfavored group of Californians from public view. Legislative classifications that spring from improper motive and irrational prejudice are not constitutionally permissible, even under rational basis review. *Windsor,* 570 U.S. at 775; *Moreno,* 413 U.S. at 534; *Cleburne*, 473 U.S. at 450.

Because the CARE Act's eligibility criteria also spring from irrational prejudice against people with schizophrenia, the law fails under the rational basis standard of review.

IV. CONCLUSION

This Court should issue its alternative Writ of Mandate and/or order to show cause ordering Respondents to show cause why a Peremptory Writ should not issue to compel Respondents to refrain from enforcing the CARE Act, and to set this matter for full briefing.

Dated: January 25, 2023 Respectfully submitted,

DISABILITY RIGHTS CALIFORNIA
WESTERN CENTER ON LAW & POVERTY
PUBLIC INTEREST LAW PROJECT

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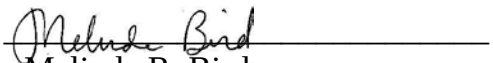
WORD COUNT CERTIFICATE

I certify that foregoing Petition and Memorandum of Points and Authorities consists of 13,757 words, including footnotes, according to the computer program used to prepare the documents.

Dated: January 25, 2023

Respectfully submitted,

By: 

Melinda R. Bird
Attorneys for Petitioner DRC

PROOF OF SERVICE

I am over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 1000 Broadway, Suite 395, Oakland, California 90017.

On January 26, 2023, I served:

1. **Petition for Writ of Mandate and Supporting Memorandum of Points and Authorities**
2. **Request for Judicial Notice and supporting exhibits**

on the interested parties as follows:

By Messenger Service: I personally delivered a copy of the documents listed to First Legal Support Service to be hand-delivered to the offices of the addressee(s) as stated below.

GAVIN NEWSOM OFFICE OF GOVERNOR 1021 O Street, Suite 9000 Sacramento, CA 95814 in his official capacity as Governor of the State of California	MARK GHALY JARED GOLDMAN California Health & Human Services Agency 1215 O Street Sacramento, CA 95814 in his official capacity as Secretary of the California Health and Human Services Agency
OFFICE OF THE ATTORNEY GENERAL 1300 "I" Street Sacramento, CA 95814-2919CR	

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

Executed on January 26, 2023 at Oakland, California.

Declarant, Alyssa Hopper