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VIA ELECTRONIC FILING

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

Re: *Disability Rights California v. Gavin Newsom, et. al.*, No: S278330
Amicus Letter in Support of Petition for Writ of Mandate

Dear Chief Justice Guerrero and Associate Justices:

Pursuant to California Rule of Court 8.500(g), *amici curiae* submit this letter in support of the petition for writ of mandate in *Disability Rights California v. Gavin Newsom*. This case presents a pressing issue with wide-reaching impact: the Community Assistance, Recovery, and Empowerment (CARE) Act, signed by the Governor and chaptered on September 14, 2022. Statutes of 2022, Chapter 319. "CARE Act" (SB 1338) poses unacceptable threats to the civil rights of unhoused Californians living with mental disabilities and will further entrench racial disparities in healthcare and in the criminal legal and civil commitment systems. Coerced treatment is ineffective and only serves to divert resources away from actual solutions: funding voluntary services and affordable housing. With the nation's eye on California, *amici* urge this Court to grant the writ to prevent harm to those who face immediate threats from the CARE Act. If this writ is denied, there will be no meaningful constraint on the wrongful entry of people with disabilities into forced treatment as mandated by the CARE Act.

STATEMENTS OF INTEREST

Amicus curiae the American Civil Liberties Union ("ACLU") is a non-profit, non-partisan civil liberties organization with more than 1.6 million members dedicated to the principles of liberty and equality embodied in both the United States and California constitutions. *Amici curiae* the ACLU of Northern California and the ACLU of Southern California are regional affiliates of the national ACLU. The ACLU has a longstanding interest in protecting the civil rights of Californians who are living with disabilities, facing racial discrimination,

experiencing homelessness,[1] and involved in the criminal legal and/or civil commitment systems. The ACLU stands up for these rights even when the cause is unpopular, and sometimes when few others will. The ACLU consistently advocates in and out of court for Housing First[2] policies, against policies that will reinforce structural racism, and against policies that threaten the due process rights and personal liberty of individuals, including people living with disabilities. These a*mici curiae* have represented plaintiffs in numerous legal challenges to the criminalization of homelessness and the violation of the rights of people with mental disabilities, inside and outside of California. Given this interest and experience, *amici curiae* are uniquely positioned to offer perspective regarding the civil rights deprivations and related impacts that will occur should the CARE Act be implemented.

Amicus curiae the National Homelessness Law Center ("NHLC") is a non-profit national legal advocacy organization dedicated solely to ending and preventing homelessness. NHLC has over 30 years of experience in policy advocacy, public education, and impact litigation. Since 2006, NHLC has tracked laws criminalizing homelessness in 187 cities across the country, and has documented the failures and costs of those policies in numerous national reports, including *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (2019).[3] NHLC has also published best practices, model policies, and case studies from across the country on how to constructively address unsheltered homelessness and encampments.[4] NHLC's publications and reports demonstrate that laws and practices that undermine the autonomy and dignity of people experiencing homelessness do not address the underlying causes of homelessness and poverty, and the most sustainable solution to homelessness is permanent, affordable, accessible housing. Given this interest and experience, *amicus curiae* NHLC is well-positioned to offer perspective regarding the shortcomings of the CARE Act when it comes to addressing homelessness in California.

Amicus curiae Public Counsel is the nation's largest provider of pro bono legal services. For over fifty years, Public Counsel has worked with communities and clients to create a more

[1] "Homeless" is defined by Welf. & Inst. Code § 16523(d). In this letter, "unhoused" is used synonymously with "homeless."

[2] Under Welf. & Inst. Code § 8255, "Housing First" is defined as "the 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."

[3] National Law Center on Homelessness & Poverty, *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (Dec 2019), https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf.

[4] National Law Center on Homelessness & Poverty, *Tent City, USA: The Growth of America's Homeless Encampments, and How Communities are Responding* (2017), https://homelesslaw.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf.

just society through legal services, advocacy, and civil rights litigation. Public Counsel is committed to promoting justice, opportunity, and dignity for individuals experiencing homelessness, individuals with disabilities, and communities of color in the State of California.

Amicus curiae Community Legal Aid SoCal (CLA SoCal) is committed to helping neighbors fight injustice and advocates for social, economic, and racial equity by providing compassionate, holistic, and impactful legal services to low-income people throughout Orange and Los Angeles Counties. CLA SoCal opposed the CARE Act legislation in 2022, and now actively monitors the impending rollout of the CARE Act in its service areas, as the CARE Act will severely impact unhoused individuals in its client population.

Amicus curiae the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCRSF) is committed to dismantling systems of oppression and advancing racial justice. This includes the decriminalization of poverty and homelessness specifically. LCCRSF is one of the organizations representing the Plaintiffs in the case *Coalition on Homelessness et al. v. City and County of San Francisco et al.*, challenging San Francisco's unconstitutional criminalization of unhoused people and unconstitutional property destruction. LCCRSF has extensive experience advocating for the rights of unhoused individuals.

GROUNDS FOR REVIEW

Original jurisdiction in this Court is merited when "the matters to be decided are of sufficiently great importance and require immediate resolution."[5] More than 100 civil rights, disability rights, and community-based organizations that serve the communities targeted by the CARE Act publicly opposed SB 1338, demonstrating both the significance of and widespread interest in this issue throughout the state.[6] The vague, arbitrary, and expansive criteria that authorize a "CARE process" are ripe for abuse and discriminatory enforcement. The costly plan substitutes coercive, court-ordered treatment in place of adequately resourced voluntary outpatient treatment; undermines the rights of targeted individuals; perpetuates institutional racism; and conflicts with evidence-based solutions to homelessness. Absent urgent intervention from the Court, the CARE Act will cause great harm to thousands of people living in California. Further, if implemented, the CARE Act stands to affect those beyond the state's borders, especially given California's significance in shaping national policy.

For these reasons, elaborated further below, the undersigned respectfully ask this Court to grant the petition for writ of mandate.

[5] See, e.g., *California Redevelopment Ass'n. v. Matosantos*, 53 Cal. 4th 231, 253 (2011).

[6] Letter to The Honorable Gavin Newsom, Governor of the State of California (August 11, 2022), at https://www.disabilityrightsca.org/latest-news/open-letter-to-governor-newsom-we-do-not-need-care-court-sb-1338

I. THE CARE ACT'S VAGUENESS VIOLATES DUE PROCESS.

The vague directives of the CARE Act will result in targeting unhoused people with mental disabilities, and particularly Black and brown people, for discriminatory and disproportionate law enforcement; burdensome judicial hearings; and the deprivation of liberty—all without due process.

The CARE Act requires annual reporting to collect information concerning any "reductions in law enforcement encounters and incarceration" and "reductions in involuntary treatment and conservatorship." Sec. 5985, subd. (e)(17).[7] However, the CARE process is designed expressly to authorize increased policing of unhoused people and people with mental health disabilities; to coerce treatment; and to increase the likelihood of conservatorship for disproportionately Black and brown people.

A primary mechanism for entry into the "CARE process" is through law enforcement personnel. *See* Sec. 5974, subd. (f) (authorizing a "peace officer" to "file a petition to initiate the CARE process"). This creates new mechanisms, and increased power, for law enforcement personnel to commit targeted sweeps of unhoused communities, armed with the threat of a new form of judicial intervention. Under the CARE Act, police will be newly authorized to target people with mental disabilities and unhoused people regardless of any allegation of criminal wrongdoing or even an assertion that targeted individuals are dangerous or gravely disabled.

The CARE Act also mandates excessive judicial intervention absent any criminal offense, or even a finding of incompetence, for people with severe disabilities. The new law imposes a series of burdensome judicial obligations on people with mental disabilities based on minimal requirements and without any demonstrated benefit to the individuals, or to public safety.

The CARE Act creates a civil court system which imposes significant obligations triggered only by an initial finding that any of a broad array of petitioners has made a prima facie showing that (1) an individual is an adult experiencing a designated and untreated mental health disability, (2) the individual needs services and supports to avoid a relapse or deterioration likely to result in "grave disability or serious harm," and (3) the individual would likely benefit from a "CARE plan" as a "least restrictive alternative necessary to ensure the person's recovery and stability." Secs. 5972, 5977, subd. (a). This standard is vague and subjective, and far lower than any standard which currently exists to authorize such extensive and involuntary control over an individual with a mental disability.[8]

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

[8] In contrast, the law establishing Assisted Outpatient Treatment (AOT) requires additionally to the bare CARE Act requirements that before a court orders AOT, it must find by clear and convincing evidence that a person subject of a

Once that low standard is met, the targeted individual is obligated to attend a series of court hearings—at minimum, an initial court hearing within two weeks; and, absent the satisfaction of "voluntary" treatment or dismissal of the proceedings, a merits hearing within ten days, a case management conference within another two weeks, and hearings at least every two months thereafter for between one and two years. Secs. 5977, subds. (a)(3), (a)(4), (a)(5) ("voluntary" entry into services may support extension or dismissal of judicial process); 5977, subds. (b)(8), (c)(2); 5977.1, subds. (a)(2)(B), (c); 5977.2, subd. (a); 5977.3.

These judicial interventions are themselves intrusive and arduous, independent of the associated court-ordered treatment plan obligations. Moreover, individuals targeted by the CARE Act are more likely to have conditions that severely hamper their ability to comply with the onerous obligations of court attendance.[9] The obligations created by the CARE process may also limit the ability of those targeted to participate in voluntary programming, or maintain relationships that are protective of their mental health.[10] Court appearances are also likely to increase or trigger anxiety, trauma, or mental deterioration for individuals targeted for the CARE process.[11] While mental health courts have been recognized as an effective alternative to incarceration, they represent a *less* restrictive alternative than a criminal process. The CARE courts, in contrast, are involuntary and *more* restrictive than their alternative of non- or voluntary intervention.

petition 1) "has a history of lack of compliance with treatment for the person's mental illness" as defined by the mental illness being the cause of hospitalization or forensic or mental health treatment in a correctional facility "at least twice within the last 36 months," or an act or acts of violence within the past 48 months; and 2) has been offered a treatment plan that includes certain designated services and has not engaged in treatment. Compare Secs. 5346, subd. (a)(3) and 5972. Further, a petition for AOT may only be made by a county behavioral health director whereas the CARE Act authorizes a far broader range of individuals to petition a court for intervention. Compare Secs. 5346, subd. (b)(3) and 5974.

[9] See, e.g., Jennifer Eno Louden & Jennifer Skeem, *Parolees with Mental Disorder: Toward Evidence-Based Practice*, Apr. 2011, UNIV. OF CALIFORNIA IRVINE CENTER FOR EVIDENCE-BASED CORRECTIONS, at https://bpb-us-e2.wpmucdn.com/sites.uci.edu/dist/0/1149/files/2013/06/Parolees-with-Mental-Disorder.pdf (discussing how people with mental health disabilities are more likely to be cited for technical violations while on parole, increasing subsequent penalties and lengthening involvement with criminal legal system).

[10] See e.g., H. Douglas Otto, *A Review of Literature on Mental Health Court Goals, Effectiveness, and Future Implications*, Oct. 2020, ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, *at* https://icjia.illinois.gov/researchhub/articles/a-review-of-literature-on-mental-health-court-goals-effectiveness-and-future-implications (discussing how "over-prescribing" obligations for people with mental disabilities "increase[s] the risk of reoffending, as intensive services with excessive time requirements may impede on pre-existing protective factors, such as employment and social relationships").

[11] See generally Victoria Knoche et al., *Trauma-Informed: Dependency Court Personnel's Understanding of Trauma and Perceptions of Court Policies, Practices, and Environment*, 11 NATIONAL LIBRARY OF MEDICINE 495 (2018), at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7163849/.

The series of mandated judicial hearings over an extended period of time, without adequate support or stability, also sets up individuals targeted for CARE Act intervention to fail, and to be compelled into even greater loss of liberty. The refusal or failure of an individual to participate in any aspect of an involuntarily initiated CARE process—from burdensome hearings to court-ordered treatment—creates a potential fast track to conservatorship and the greater loss of civil liberties. Secs. 5979, subds. (a)(2), (3) (failure to complete a CARE plan is a "fact considered by the court in a subsequent [conservatorship] hearing" and "shall create a presumption . . . that the respondent needs additional intervention beyond the supports and services provided by the CARE plan"). Thus, despite an affirmation that a CARE court may not forcibly medicate a targeted individual, Sec. 5977.1, subd. (d)(3), the CARE Act provides a mechanism for court-ordered treatment under the threat of conservatorship for failure to comply. Sec. 5977.1, subd. (d)(3) ("court may order medication if it finds . . . by clear and convincing evidence, the respondent lacks the capacity to give informed consent to the administration of medically necessary stabilization medication").

Conservatorship further decreases autonomy and increases the state's control over an individual's decision-making. Noncompliance with the CARE process can ultimately result in conservatorships which can include locked placements and forcible psychotropic medication for an extended—and potentially unlimited—duration. This means that once an individual is targeted for CARE Act intervention–based on vague inconsistent criteria and a very low bar–potential missteps carry the inherent risk of a dramatic loss of liberty.

II. CONTRARY TO RESOUNDING EVIDENCE, THE CARE ACT SUBSTITUTES COERCIVE TREATMENT IN LIEU OF ADEQUATELY RESOURCED VOLUNTARY OUTPATIENT TREATMENT AND HOUSING.

Opponents and proponents of the CARE Act agree: we have a crisis on our streets. But the Act's opponents understand that, to actually address this crisis, the State should use evidence-based approaches that have been proven to work, but never fully funded. This includes, most importantly, housing and voluntary treatment. Yet the CARE Act is based on the false assumption that people *choose* homelessness and treatment aversion over appropriate services that are available on demand. That is not the case. People cannot reject non-existent services, and the CARE Act does nothing to fund much-needed services.[12]

[12] There is not nearly enough permanent, affordable housing to bring all unhoused individuals in California indoors. See e.g., Manuela Tobias, *California Homeless Population Grew By 22,000 Over Pandemic*, CAL MATTERS, Oct. 6, 2022, at https://calmatters.org/housing/2022/10/california-homeless-crisis-latinos/. There is also a statewide scarcity of mental and behavioral health care. See e.g., California Health Care Foundation, *California's Current and Future Behavioral Health Workforce* (Feb. 13, 2018), at https://www.chcf.org/publication/californias-current-future-behavioral-health-workforce/

What works to get unhoused people with mental health disabilities off the streets and into treatment is access to affordable and supportive housing, intensive case management, and a range of voluntary treatment and services. Access to housing and voluntary services is particularly effective in ending and preventing chronic homelessness among those with severe mental health conditions.[13] By adding intensive case management (such as Assertive Community Treatment or Full Service Partnerships), people who are unhoused with significant mental disabilities have better mental health outcomes, fewer interactions with the criminal legal system, and lower costs to the state.[14] Instead, the CARE Act requires coercive, court-ordered mental health services without first addressing the lack of housing for targeted individuals.

California law requires that any policy intended to address homelessness be grounded in "Housing First" principles.[15] "Housing First" is an evidence-based model that focuses on providing permanent housing to unhoused people as efficiently as possible.[16] This approach acknowledges that a lack of stable housing is a major barrier to treatment for people living with mental health disabilities.

Mental health treatment is ineffective absent stable housing.[17] However, the CARE Act does not compel counties to provide housing for people referred to the program.[18] Indeed, the CARE Act fails to guarantee any housing at all. While the State acknowledges the "need [for] a diverse range of housing," it does not specify whether and how these housing needs will be met.

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[13] See Leyla Gulcur et al., *Housing, Hospitalization, and Cost Outcomes for Homeless Individuals with Psychiatric Disabilities Participating in Continuum of Care and Housing First Programmes*, 13 JOURNAL OF COMMUNITY AND APPLIED SOCIAL PSYCHOLOGY 171 (2003); see also Molly Brown et al., *Housing First as an Effective Model for Community Stabilization Among Vulnerable Individuals with Chronic and Nonchronic Homelessness Histories*, 44 JOURNAL OF COMMUNITY PSYCHOLOGY 384 (2016).

[14] See generally H. Richard Lamb et al., *Treatment Prospects for Persons with Severe Mental Illness in an Urban County Jail*, 58 PSYCHIATRIC SERVICES 782 (2007); United Way, *Homeless in Orange County: The Costs to Our Community* (2017), at https://www.unitedwayoc.org/wp-content/uploads/2017/08/united-way-cost-study-homelessness-2017-report.pdf.

[15] Sec. 8255, et seq.

[16] See generally National Alliance To End Homelessness, *The Case For Housing First* (Feb. 13, 2023) at https://nlihc.org/sites/default/files/Housing-First-Research.pdf.

[17] See e.g., Nadareh Pourat et. al., *First Interim Evaluation of California's Health Homes Program*, NATIONAL LIBRARY OF MEDICINE (Sept. 2020), https://collections.nlm.nih.gov/catalog/nlm:nlmuid-101773772-pdf?_gl=1*1wpu500*_ga*MjAyNzA4MjQ0My4xNjc1Mjc1MzM4*_ga_P1FPTH9PL4*MTY3NTI3NTMzNy4xLjEuMTY3NTI3NTYwMS4wLjAuMA..*_ga_7147EPK006*MTY3NTI3NTMzNy4xLjEuMTY3NTI3NTUzMC4wLjAuMA.

[18] Manuela Tobias & Jocelyn Wiender, *California Lawmakers Approved CARE Court. What Comes Next?* Cal Matters, Sept. 8, 2022 (rev. Sept. 14, 2022), at https://calmatters.org/housing/2022/09/california-lawmakers-approved-care-court-what-comes-next/ (noting that the Administration's response to questions about whether there would be available housing for those targeted by the CARE Act was to identify funding provided in prior budgets).

Further, the housing services available to people targeted by the CARE Act are only contemplated secondarily to coercive mental health treatment. The State only affirms that "[t]he court *may* issue orders necessary to support the respondent in accessing housing," and that there is some separate funding available for interim housing programs.[19] (Emphasis added.) Nowhere does the CARE Act contemplate access to permanent housing as recommended and required by a "Housing First" model.

The temporary shelter available with other State funding, particularly when in congregate settings, is not housing and does not effectively respond to the root causes of homelessness.[20] Moreover, temporary and congregate shelter is particularly inappropriate for people with severe mental health disabilities.

Overall, the CARE Act is based on the common and dangerous myth that unhoused people and people living with mental disabilities are "service resistant" and not interested in engaging with programs that are offered to them. This myth, and the rhetoric that accompanies it, are born from harmful stereotypes, false narratives, and incomplete or misconstrued information about the realities in which unhoused individuals live. To the extent that services exist at all, many people with mental disabilities who are living unsheltered have had traumatic encounters with law enforcement, have experienced invasions of their privacy in unsanitary congregate shelter settings,[21] or have been disappointed by unfulfilled promises of overworked case managers in an underfunded social services system. All of this provides legitimate justifications for wariness to engage with ineffective or inaccessible programs labeled as "services."[22] The perpetuation of the "service resistance" myth allows systems and institutions to evade critical

[19] California Health and Human Services Agency, *CARE FAQ*, p. 5, at www.chhs.ca.gov/wp-content/uploads/2022/09/CARE_FAQ.pdf. See also Legislative Analyst's Office, *Analysis of the Governor's Major Behavioral Health Proposals* (Mar. 3, 2022), at https://lao.ca.gov/Publications/Report/4569 (describing the Behavioral Health Bridge Housing Program).

[20] Temporary shelters are short-term responses, not long-term solutions to California's homelessness crisis. See e.g., Chris Martin & Sharon Rapport, *California Must Not Repeat Old Mistakes As It Seeks New Ways To End Homelessness*, Cal Matters (Aug. 14, 2019), at https://calmatters.org/commentary/2019/08/housing/.

[21] See e.g., Eve Garrow & Julia Devanthery, *This Place is Slowly Killing Me: Abuse and Neglect in Orange County Emergency Shelters*, ACLU OF SOUTHERN CALIFORNIA (Mar. 2019), at https://www.aclusocal.org/sites/default/files/aclu_socal_oc_shelters_report.pdf (documenting unsanitary conditions, civil rights concerns, and sexual harassment complaints in congregate shelters in Orange County).

[22] See e.g., Ananya Roy et. al., *(Dis)Placement: The Fight for Housing and Community After Echo Park Lake,* UCLA LUSKIN INSTITUTE ON INEQUALITY AND DEMOCRACY (Mar. 23, 2022), at https://escholarship.org/uc/item/70r0p7q4#page=9 (finding that police displacement of unhoused people from a Los Angeles encampment resulted in virtually no meaningful access to housing—only 17 of the 183 displaced were placed into what could be called "housing" at the time of the displacement; one year later, very few were housed and those were housed mainly through social networks and community support, and at least six passed away).

review, while shifting the blame for homelessness and mental health crises to those most affected.

Studies have found that "service resistant" narratives about unhoused communities are unsubstantiated.[23] If offered the opportunity to engage with culturally-competent services and housing options that align with their needs, individuals will opt to engage with those services. Studies show that when people are offered private, dignified housing options, they accept these placements.[24] In contrast, congregate shelter placements with restrictive and paternalistic rules, no access to transit, or other features that make them inaccessible for people with loved ones and pets, and chaotic environments, may be less attractive to unhoused individuals than living on the street or in a tent or car.[25]

Rather than labeling individuals as "service resistant" for failing to accept unavailable, undignified, culturally inadequate and/or otherwise inappropriate "services," there must be adequate "services" for people living on the street to meet the actual needs. Further, studies show that when people have autonomy and choice, placements into housing and treatment programs are more effective.[26]

Because the CARE Act ignores the breadth of evidence showing that a person must be housed before supportive services can be effective, the program's treatment goals will fail. But the CARE Act will shift responsibility to the individual in need of housing and services rather than to the vast lack of available and appropriate housing and service options. Moreover, instead of providing unhoused California residents living with mental health-related disabilities the opportunity to engage with much needed voluntary housing and healthcare, the CARE Act

[23] See e.g., Christina Wusinich et al., '*If You're Gonna Help Me, Help Me': Barriers to Housing Among Unsheltered Homeless Adults*, Evaluate and Program Planning, vol. 76 (Oct. 2019) at https://www.sciencedirect.com/science/article/abs/pii/S0149718918303823?via%3Dihub (study identified "the most common barriers" to housing and services for unhoused individuals as related to access barriers, wait times, and exclusion of pets).

[24] Jason M. Ward et al., *Recent Trends Among the Unsheltered in Three Los Angeles Neighborhoods*, Rand Corporation (2022), at https://www.rand.org/pubs/research_reports/RRA1890-1.html (reporting that nearly all unhoused respondents surveyed indicated interest in housing, and around 80 percent said they would accept a private shelter or hotel room, a permanent stay in a motel- or hotel-like setting, or permanent supportive housing).

[25] Joel Cantor et al., *The Promise of Service-Enriched, Hotel-Based Housing as an Alternative to Congregate Shelters for High-Need Persons Experiencing Homelessness*, JAMA NETWORK 1 (Jul. 27, 2022), at https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2794709.

[26] See generally Sam Tsemberis et al., *Housing First, Consumer Choice, and Harm Reduction for Homeless Individuals with a Dual Diagnosis*, 94 Am J. Public Health 651 (Apr. 2004), at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448313/.

instead adopts a paternalistic approach that undermines autonomy and perpetuates harmful narratives about "service resistance."

III. THE CARE ACT'S COERCIVE TREATMENT APPROACH UNDERMINES THE DIGNITY, AUTONOMY AND FUNDAMENTAL RIGHTS OF PEOPLE WITH DISABILITIES.

The CARE Act undermines the autonomy of people living with mental health related disabilities and assumes they are incapable of making autonomous decisions about their own health care.[27] The Act sets up a system of court-ordered treatment targeted at populations whose autonomy is already jeopardized by existing structures and systems.[28] This fails to effectively respond to homelessness or sustainably address behavioral health crises, and violates the civil rights of those targeted.

Coerced treatment has no demonstrated record of success. To the contrary, coerced treatment produces negative outcomes, including the likelihood of mental health deterioration.[29] Coercion alienates the individual from the care provider, which "can weaken or damage therapeutic relationships and dissuade people from seeking further treatment thus increasing the risk of non-adherence and involuntary treatment."[30]

The CARE Act's reliance on coercive treatment also violates the fundamental rights of people with disabilities. This Court has held that the right to make voluntary decisions about one's medical treatment, including the right to refuse treatment, is guaranteed by California's constitution and the common law.[31] As this Court has long recognized, "it is the prerogative of the patient . . . to determine . . . the direction in which [they] believe [their] interests lie" and,

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[27] See Dainius Pūras, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, UN GENERAL ASSEMBLY, HUMAN RIGHTS COUNCIL 35TH SESSION (Mar. 28, 2017), at http://undocs.org/A/HRC/35/21 (expressing concern regarding mental health legislation that propagates coerced treatment and uses tribunals as a tool to treat mental health conditions as they "legitimize coercion and further isolate people within mental health systems from access to justice").

[28]National Law Center on Homelessness & Poverty, *Housing Not Handcuffs 2019 – Ending the Criminalization of Homelessness in U.S. Cities* (Dec. 2019), at https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf (discussing how "people without housing are ticketed, arrested, and jailed under laws that treat their life-sustaining conduct—such as sleeping or sitting down—as civil or criminal offenses" and are "routinely displace[d] . . . from public spaces without [] any permanent housing alternatives").

[29] See Sashi Sashidharan et al., *Reducing Coercion in Mental Healthcare*, 28 EPIDEMIOL PSYCHIATR SCI. 605 (Dec. 2019), at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7032511/; see also Steve R. Kisely & Leslie A. Campbell, "Compulsory community and involuntary outpatient treatment for people with severe mental disorders", COCHRANE DATABASE SYST. REV. (Mar. 2017), at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6464695/.

[30] Sashidharan, *supra* note 29.

[31] See *Conservatorship of Wendland*, 26 Cal. 4th 519, 531, 28 P.3d 151, 159 (2001) (citing California Constitution art. I, § 1).

therefore, absent a finding of incompetence, "the decision whether or not to undertake treatment is vested in the party most directly affected: the patient."[32]

This fundamental right is in no way diminished because a person has a mental health disability. Indeed, the Lanterman-Petris-Short (LPS) Act, which "has been called a 'Magna Carta for the Mentally Ill,'"[33] makes clear that "[p]ersons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California," and specifically recognizes the rights of persons with mental health disabilities "to dignity, privacy, and humane care" and "to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect."[34]

The CARE Act eschews this statutory commitment to the "dignity, privacy, and humane care" of people with disabilities by subjecting people diagnosed with schizophrenia spectrum and "other psychotic disorders" to a byzantine, potentially years-long court process under threat of further deprivation of liberty. The CARE Act permits the court to order a respondent to engage in involuntary outpatient treatment under threat of statutory penalties without a finding of incompetence. This runs counter to established law and logic. As this Court has explained, "the conditions that result from a mental illness or related disorder . . . do not necessarily imply incompetence or a reduced ability to understand, and make decisions."[35]

The CARE Act's creation of a separate, discriminatory regime of court-ordered treatment and services for individuals with a diagnosis of schizophrenia or "other psychotic disorders" also raises concerns under disability laws. For example, in enacting the Americans with Disabilities Act (ADA),[36] Congress "explicitly identified unjustified 'segregation' of persons with disabilities as a 'for[m] of discrimination.'"[37] The ADA prohibits discrimination against people

[32] *Cobbs v. Grant*, 8 Cal. 3d 229, 242, 244 (1972).

[33] *In re Qawi*, 32 Cal. 4th 1, 17 (2004).

[34] Sec. 5325.1 (b), (c).

[35] *People v. Blackburn*, 61 Cal. 4th 1113, 1128–29 (2015).

[36] California's analog to the ADA is the California Disabled Persons Act ("CDPA") which states that "a violation of the right of an individual under the Americans with Disabilities Act . . . constitutes a violation of" the CDPA. Civ. Code § 54.1(d). Additionally, Gov't Code § 11135(a) provides that "[no] person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status or sexual orientation...be unlawfully subjected to discrimination under, any program or activity that is conducted, … by the state… or receives any financial assistance from the state." The same conduct that constitutes a violation of Title II of the ADA, detailed above, also constitutes a violation of the antidiscrimination provisions of Gov't Code § 11135(b).

[37] *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999) (citing 42 §§ 12101(a)(2), (5)).

with disabilities in the form of provision of unnecessarily different or separate benefits[38], yet the CARE Act subjects respondents to a separate court-ordered treatment regime solely because of a schizophrenia diagnosis. The coerced "benefits" it provides also are not equal to or as effective as the voluntary treatment or services available to people who are not disabled or people with other mental health disabilities in the community, raising additional concerns of discrimination, particularly under the ADA.[39] Moreover, the CARE Act's statutory penalties for noncompliance with court-ordered services increase the likelihood that respondents will be involuntarily committed or subject to conservatorship under the LPS Act. See Section I, *supra*. This increased risk of institutionalization raises serious concerns under the ADA and the Supreme Court's *Olmstead* decision.[40]

In sum, involuntary treatment, as espoused by the CARE Act, undermines the stated goal of the CARE Act – to assist people with schizophrenia and other related mental health disabilities – and threatens the fundamental rights of those it intends to help.

IV. THE CARE ACT REINFORCES AND EXACERBATES EXISTING BIASES AND DISPARITIES.

The CARE Act also serves to further entrench racialized maltreatment of Black and brown California residents. To avoid perpetuating racialized harms, the response to the State's homelessness crisis must analyze and address the ways in which Black and brown Californians are currently harmed by the existing healthcare, criminal legal, and civil commitment systems. Yet, the CARE Act takes the opposite approach, increasing the likelihood of traumatic encounters with police and subjecting Black and brown people with mental disabilities to the inherent biases of the court systems.

In California, Black and brown people are overrepresented in the system failures implicated by the CARE Act. The onramps to houselessness disproportionately affect Black and brown California residents. As a result: Black Californians make up just 6.5 percent of the state's overall population but 40 percent of the unhoused population, and homelessness has dramatically

[38] 28 C.F.R. § 35.130(b)(1)(iv).

[39] 28 C.F.R. §§ 35.130(b)(1)(ii), (iii) (A covered entity also may not provide "a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others."); see also *Olmstead*, 527 U.S. at 598 n. 10 (1999) (clarifying that the ADA prohibits discrimination between groups).

[40] See Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead*, at https://www.ada.gov/olmstead/q&a_olmstead.htm ("Individuals need not wait until the harm of institutionalization or segregation occurs or is imminent. For example, a plaintiff could show sufficient risk of institutionalization to make out an *Olmstead* violation if a public entity's failure to provide community services … will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution.").

increased among the Latinx population.[41] The CARE Act makes Black and brown California residents at increased risk of further judicial intervention and loss of liberty.

Further, people with mental disabilities, and particularly those who are unhoused and Black or brown, are already at heightened risk of aggressive law enforcement responses, and severely overrepresented in arrest numbers, police use of force incidents, police killings, and jail and prison populations.[42] For instance, a recent analysis of stop data from the ten largest police departments in California found that Black adults are nearly ten times more likely to receive citations from police than white adults, most commonly for actions "related to a person's mere existence in public space–for sleeping, sitting, or standing (loitering)."[43] Data from police stops and searches around the state reflect this same pattern of racial bias, a trend which has grown in recent years.[44] These alarming disparities are the result of centuries of overtly racist policies.[45]

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[41] Kate Cimini, *Black People Disproportionately Homeless in California*, CAL MATTERS (Oct. 5, 2019, rev. Feb. 27, 2021), at https://calmatters.org/california-divide/2019/10/black-people-disproportionately-homeless-in-california/; Brittny Mejia & Ruben Vives, *More L.A. Latinos Falling Into Homelessness, Shaking Communities in 'a Moment of Crisis*, L.A. Times, Oct. 28, 2022, at https://www.latimes.com/california/story/2022-10-28/rising-homelessness-in-the-latino-community#:~:text=Latino%20homelessness%20increased%20across%20the,29%25%20from%202020%20to%202022.

[42] See generally Erin McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 Amer. J. of Public Health 1977 (Nov. 8, 2017), *at* https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304095 (the majority of disabled Black people have been arrested by age 28, double the rate of the white disabled population); Doris Fuller et al., *Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters*, THE OFFICE OF RESEARCH & PUBLIC AFFAIRS (Dec. 2015), at https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf (individuals with untreated mental health disabilities are sixteen times as likely to be killed by law enforcement during a police encounter); Sirry Alang et al., *Police Brutality and Unmet Need for Mental Health Care*, 56 HEALTH SERVICES RESEARCH 1104, (Aug. 5, 2021); Ashley Nellis, *The Color of Justice, Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJECT, at The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf (sentencingproject.org) (noting the "rate of imprisonment of Black California residents is more than nine times that of whites").

[43] Lawyers' Committee For Civil Rights of the San Francisco Bay Area, *Cited for Being in Plain Sight: How California Polices Being Black, Brown, and Unhoused in Public* (Sept. 2020), at 5-6, https://lccrsf.org/wp-content/uploads/LCCR_CA_Infraction_report_4WEB-1.pdf.

[44] Dustin Gardiner & Susie Neilson, *Are the Police Capable of Changing?: Data on Racial Profiling in California Shows the Problem is Only Getting Worse*, SAN FRANCISCO CHRONICLE (July 14, 2022), at https://www.sfchronicle.com/proje-cts/2022/california-racial-profiling-police-stops/.

[45] As the California Reparations Task Force noted in the key findings of its interim report: "American government at all levels, including in California, has historically criminalized African Americans for the purposes of social control... This criminalization is an enduring badge of slavery and has contributed to the over-policing of Black neighborhoods, the school to prison pipeline, the mass incarceration of African Americans, a refusal to accept African Americans as victims, and other inequities in nearly every corner of the American and California legal systems." California Task Force to Study and Develop Reparation Proposals for African Americans Interim Report

The CARE Act's inclusion of police as sources of referral into court-ordered treatment plans will exacerbate racially targeted policing, and will expose vulnerable community members to potentially traumatic encounters with law enforcement.[46] The CARE Act designates law enforcement as a means of entry into a process framed as increasing access to mental health care and stabilization. The CARE Act increases law enforcement contact and the associated risks, with little guarantee or base of evidence that it will improve access to mental health care. The CARE Act creates a justification for increased policing which neither protects public safety nor advances the health or safety of individuals targeted.

Disparities also exist throughout the mental health system. Studies have shown that Black and brown people are three to five times more likely to be diagnosed with schizophrenia than white people.[47] This may be due, in part, to overdiagnosis and misidentification, including when "culturally normative behavior is mistaken for psychopathology."[48] The CARE Act's focus on people diagnosed with schizophrenia means that Black and brown people will be disproportionately targeted by the law and hailed into CARE Courts.[49]

The CARE Act will also further the disparate targeting of Black and brown California residents for more restrictive forms of involuntary treatment. Data already shows that Black people are "less likely to be offered either evidence-based medication therapy or psychotherapy,"[50] and yet are more likely to be committed into involuntary "5150" holds and guardianship proceedings. For instance, though Black people make up six percent of the population of San Francisco, they have accounted for more than a quarter of all "5150" holds

(Jun. 2022), at https://oag.ca.gov/system/files/media/ab3121-interim-report-key-findings-2022.pdf; California Historic Assembly Bill 3121 (AB 3121).

[46] See Fuller, *supra* note 42 ("[g]iven the prevalence of mental health disabilities in police shootings, reducing encounters between on-duty law enforcement and individuals with the most severe psychiatric diseases may represent the single most immediate, practical strategy for reducing fatal police shootings in the United States").

[47] Robert Schwartz & David Blankenship, *Racial Disparities In Psychotic Disorder Diagnosis: A Review Of Empirical Literature*, 4 World J. Psychiatry 133 (Dec. 22, 2014), at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4274585/ (identifying a "clear and pervasive pattern" exists of Black and Latinx people diagnosed with psychotic disorders three to four times more often than white people).

[48] *Id.*; see also Sonya Shadravan, et al., *Dying at the Intersections: Police-Involved Killings of Black People with Mental Illness*, 72 PSYCHIATRY ONLINE 623, June 10, 2021, at https://ps.psychiatryonline.org/doi/10.1176/appi.ps.202000942.

[49] The CARE Act divides people with severe mental health disabilities into two groups: those with schizophrenia versus those with other diagnoses—and establishes particular processes and penalties only for the former. Sec. 5972(b).

[50] See Phillip Murray, *Mental Health Disparities: African Americans*, AMERICAN PSYCHIATRIC ASSOCIATION (2017), at https://www.psychiatry.org/File%20Library/Psychiatrists/Cultural-Competency/Mental-Health-Disparities/Mental-Health-Facts-for-African-Americans.pdf.

between 2018 and 2021.[51] Those with multiple "5150" holds were overwhelmingly unhoused and had jail contact.[52] The targeting of Black and brown individuals for more restrictive and involuntary treatment, as well as the many overlaps between the mental health and criminal legal systems, demonstrate the racialized systemic failures that the implementation of CARE Act would further magnify.

In light of the extreme racial inequalities of the State's unhoused population, as well as the overdiagnosis of Black and brown people with psychotic disorders, and the excessive targeting of Black and brown people for law enforcement and civil commitment, the CARE Act will further entrench existing racial disparities.

V. THE CARE ACT SETS A DANGEROUS NATIONAL PRECEDENT.

Implementation of the CARE Act would set a dangerous precedent for the country. Though ineffective, inhumane, and unlawful, the use of involuntary, coercive treatment as a response to structural and health and housing-related issues, has emerged as an appealing approach to policymakers. This approach adopts the same "out of sight, out of mind" framework used to justify the pervasive and often unlawful encampment "sweeps" by police as a response to unsheltered homelessness. By temporarily removing unhoused community members with disabilities from public view, policymakers can create the illusion of successful policy and appease those more concerned about aesthetics and property values than about the needs, the rights, or the dignity of these marginalized individuals. And it is a step back to the horrific days of mass institutionalization.

Both the spread of this policy approach and its connection to broader criminalization are illuminated by the proliferation of related harmful policies in other regions. A similar policy called the "Reducing Street Homelessness Act Model Bill"[53] has already been introduced or adopted in a handful of states across the country. This "model" bill increases criminal punishments related to homelessness and reduces due process protections for involuntary psychiatric holds.[54]

The CARE Act and legislative approaches like it make invisible the structural and systemic causes of homelessness and behavioral health crises. They shift blame and

[51] San Francisco Housing Conservatorship Working Group (Oct. 18, 2021), 12-14, at https://www.sfdph.org/dph/files/housingconserv/Housing_Conservatorhip_Meeting_12_revised.pdf.

[52] San Francisco Housing Conservatorship Working Group (Nov. 2021), 4, at https://sf.gov/sites/default/files/2021-11/HC_Health%20Commission%20Update.pdf.

[53] Cicero Institute, *Reducing Street Homelessness Act Model Bill* (Nov. 2021), at https://ciceroinstitute.org/wp-content/uploads/2021/11/Reducing-Street-Homelessness-Act-Model-Bill.090821.pdf.

[54] *Id.*, at Section (G).

responsibility away from systems and governmental entities and onto individuals, allowing systemic injustice to fester and perpetuating the harmful narrative that individuals experiencing homelessness or living with mental health-related disabilities are at fault for the structural circumstances under which they live.

Already, following California's passage of the CARE Act, similar legislation was introduced in New York City in November of 2022, where the local government has pushed for first responders and other third parties to be permitted to involuntarily commit unhoused individuals experiencing mental health crises or disabilities.[55] Soon after New York City's directive was announced, the Portland mayor made a similar proposal, suggesting lowering the threshold for civil commitments and forcing unhoused residents into psychiatric treatment against their will.[56] During the 2023 legislative session, Tennessee lawmakers also introduced an amendment to their state code that would allow a person to be judicially committed to involuntary care and treatment as part of a legislative package seeking to divert state funding away from permanent housing and toward sanctioned encampments.[57]

Other jurisdictions around the country look to California for legislative guidance, and California's deployment of this harmful non-solution to homelessness and mental health-related conditions is already having repercussions beyond state lines. The CARE Act will not achieve its stated purpose and it will cause significant harm in California; the same is true of its implementation in other jurisdictions. This approach does nothing to solve homelessness or address its root causes, perpetuates harmful narratives about unhoused people with disabilities, further entrenches systemic racism, and creates dangerous precedent for the country.

CONCLUSION

For the foregoing reasons, *amici* request that this Court grant the petition for writ of mandate in *Disability Rights California v. Gavin Newsom*.

DATED: February 17, 2023

[55] Press Release, *Mental Health Involuntary Removals*, New York State (Nov. 28, 2022), at https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Mental-Health-Involuntary-Removals.pdf.

[56] Lauren Dake, *Portland Mayor Suggests Easing Process To Involuntarily Commit People With Mental Health Struggles*, OREGON PUBLIC BROADCASTING (Dec. 13, 2022), at https://opb.org/article/2022/12/12/portland-mayor-ted-wheeler-suggests-easing-process-involuntarily-commit-mentally-ill/.

[57] See generally House Bill 1192 (TN 2023); Senate Bill 1334, 2023 Leg., 113th Sess. (TN 2023), at www.capitol.tn.gov/Bills/113/Bill/HB1192.pdf

Respectfully submitted,

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PROOF OF SERVICE

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 17, 2023, at San Francisco, California.

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