No. S278330

In the Supreme Court of the State of California

DISABILITY RIGHTS CALIFORNIA ,

Petitioner,

v.

GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY AS THE GOVERNOR OF THE STATE OF CALIFORNIA; AND MARK GHALY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY

Respondents.

PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE

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INTRODUCTION

The Community Assistance, Recovery, and Empowerment (CARE) Act (Welf. & Inst. Code, § 5970 et seq.) creates a new civil court process open to persons experiencing severe, untreated schizophrenia and other psychotic disorders.[1] The Act provides a pathway to access much needed community-based treatment, avoiding such adverse consequences as homelessness, incarceration, civil commitment, hospitalization, and premature death. The CARE process provides a package of individualized services and supports through either an agreement negotiated between the individual and the county behavioral health agency—a "CARE agreement"—or through a "CARE plan" adopted by the court with the input of all interested parties.[2] It is expected to serve approximately 7,000 to 12,000 persons with severe, untreated mental illness each year, to the benefit of those individuals, their families, and their communities.

If the alarming assertions about the CARE Act made by petitioner Disability Rights California were correct (see, e.g., Petn. 20-23), intervention in mandamus might well be warranted. But petitioner's assertions are unsupported and misunderstand the Act. The CARE Act's co-author, Senator Thomas Umberg, spoke directly to the type of mischaracterizations about the CARE Act that were raised

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[1] All further references are to the Welfare and Institutions Code unless otherwise specified.

[2] The CARE Act provisions referred to in this introduction are described at pp. 21-31, *post*.

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during the legislative process and that are now repeated in this petition.[3] As the Senator noted, the CARE Act process is "not a conservatorship. There is . . . no substitute decision-maker for the person. CARE Court does not create a path to arrest. CARE Courts are not a function of criminal courts. They're a function of civil courts. CARE Court does not allow for forced involuntary medication. . . . Law enforcement will not arrest them if they do not come to court. And CARE Court does not involve secure facilities."[4] Moreover, "CARE Court participants cannot be forced to participate."[5] In contrast, the Act holds entities delivering mental health support and services accountable, so that individuals who participate in the CARE process have every chance to succeed and regain their mental health.

Respondents Governor Gavin Newsom, the CARE Act's sponsor, and Dr. Mark Ghaly, Secretary of the California Health and Human Services Agency, request that the Court deny the petition for the fundamental reason that it is unmoored from the actual text, purpose, and operation of the CARE Act. In addition, as discussed below, petitioner has not met the high bar for mandamus relief (particularly as petitioner asks for relief from this Court in the first instance) or the exacting standard for facial invalidity. And its due process and equal protection claims are

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[3] Petn. RJN (Request for Judicial Notice), RJN-0447 (transcript of Assem. Judiciary Com. Hearing, June 21, 2022). Respondents do not object to petitioner's RJN.

[4] Petn. RJN, RJN-0447-0048.

[5] *Ibid.*

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without merit. Petitioner's contention that the Act is unconstitutionally vague fails; the relevant terms are understandable in context, may be further clarified in the course of individual CARE proceedings, and can be further clarified as necessary by administrative guidance, as the CARE Act specifically contemplates. Further, its argument that the Act's eligibility limits should be subject to strict scrutiny is unsupported by precedent. Equal protection is satisfied, as the Legislature's decision to create a non-custodial, community-based, inclusive civil process to deliver mental health care to those who are in serious need, and are likely to benefit from the intervention, is indisputably rational.

For these reasons, the Court should deny the petition without issuing an order to show cause. Respondents ask in addition that the Court issue an accompanying order or docket entry explaining that the petition establishes no basis for the requested prohibitory relief. Such additional guidance from the Court could discourage abstract, speculative litigation over the CARE Act in its pre-implementation stage, allowing California to begin the process of providing essential support and assistance to persons currently experiencing untreated severe mental illness.

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LEGAL AND PROCEDURAL BACKGROUND

A. Circumstances giving rise to the Community Assistance, Recovery, and Empowerment (CARE) Act

Beginning in the late 1950s, the nation and California began the large-scale deinstitutionalization of persons with mental illness, including psychiatric conditions, in a move to ensure treatment in the least restrictive environment.[6] The development of alternative community-based mental health programs accessible to the members of these vulnerable populations was, however, uneven, leaving many individuals without support.[7]

Individuals living without necessary mental health support can be subjected to involuntary psychiatric treatment under the Lanterman-Petris-Short (LPS) Act—enacted in 1967 as a first-wave response to the effects of deinstitutionalization. (§ 5000 et seq.)[8] The LPS Act authorizes escalating temporary civil

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[6] Cal. Budget and Policy Center, *Mental Health in California: Understanding Prevalence, System Connections, Service Delivery, and Funding* (Mar. 2020) p. 32 <https://calbudgetcenter.org/app/uploads/2020/03/CA_Budget_Center_Mental_Health_CB2020.pdf> (as of Feb. 9, 2023).

[7] *Ibid.*

[8] This preliminary opposition provides only a high-level overview of the LPS Act. The legislative history for the CARE Act, Senate Bill No. 1338 (2021-2022 Reg. Sess.), contains additional summaries of this detailed law. (See, e.g., Assem. Com. on Judiciary, Rep. on Sen. Bill No. 1338 (2021-2022 Reg. Sess.) June 17, 2022, pp. 11-13; Sen. Judiciary Com., Rep. on Sen. Bill No. 1338 (2021-2022 Reg. Sess.) Apr. 22, 2022 (Sen. Judiciary Com. Rep.), pp. 3-5.) All bill history and analyses for Senate Bill

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commitments and involuntary psychiatric treatment of persons with serious mental illness who are in crisis: specifically, they must be either "gravely disabled" (§ 5008, subd. (h)(1)(A), (2)) or a danger to themselves or others (see, e.g., §§ 5150, 5250, 5270.15). When specified criteria are met, increasingly longer court-ordered commitments for involuntary psychiatric treatment are authorized: up to 72 hours for "assessment, evaluation, and crisis intervention" (§ 5150, subd. (a)); up to 14 additional days for persons who are without other assistance and still meet the criteria for involuntary psychiatric treatment at the end of the 72-hour period (§ 5250); and up to 30 days of additional intensive treatment for persons still meeting the criteria for grave disability who do not accept voluntary treatment (§ 5270.15). LPS Act mental health conservatorships, which last one year and can be renewed, are reserved for a smaller subset of individuals with grave mental disabilities who require long-term assistance in making health decisions. (§ 5350 et seq.)[9]

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No. 1338 are available at <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1338> (as of Feb. 9, 2023).

[9] In addition, Assembly Bill No. 1421 (2001-2002 Reg. Sess.) established the Assisted Outpatient Treatment Demonstration Project Act, also known as Laura's Law. (§§ 5345-5349.1.) County participation is optional; 31 counties currently participate in the project. (Cal. Dept. of Health Care Services, *Laura's Law: Assisted Outpatient Treatment Demonstration Project Act of 2002* (May 2022) p. 6 <https://www.dhcs.ca.gov/formsandpubs/Documents/Lauras-Law-AOT-Report-2021.pdf> [as
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And unsupported persons experiencing mental illness are routinely pulled into another involuntary system—the criminal justice system—after being arrested for relatively minor offenses, including offenses related to substance abuse. As the State's Mental Health Services Oversight and Accountability Commission has noted, "[t]oo many mental health consumers, particularly those from African American, Latino, Native American, and LGBTQ communities, end up in jail because of unmet needs and system inequities."[10] "Of those incarcerated in local jails, approximately 17 percent have a serious mental illness"—over three times the rate of the general population.[11]

Arrest of persons with untreated mental illness "too often lead[s] to a downward spiral toward time behind bars."[12] "[J]ails

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of Feb. 9, 2023].) Laura's Law provides for court-ordered community treatment for individuals with a history of hospitalization or contact with law enforcement. (*Id*. at p. 5.) While this non-custodial, outpatient project has benefited individual participants (see *id*. at pp. 21-24), the numbers served are relatively small; in fiscal year 2019-2020, for example, there were about 2,400 referrals statewide, with 918 persons found eligible for participation. (*Id*. at pp. 13-14.)

[10] Mental Health Services Oversight and Accountability Commission, *Together We Can: Reducing Criminal Justice Involvement for People with Mental Illness* (Nov. 2017) (*Together We Can*) p. 4 <https://mhsoac.ca.gov/wp-content/uploads/OAC_CJMH_FINAL_Criminal_Justice_and_Mental_Health_Report_12112017.pdf> (as of Feb. 9, 2023).

[11] *Id*. at p. 14.

[12] *Together We Can*, *supra*, at p. 2.

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are often crowded, chaotic, and understaffed, resulting in dangerous environments" and are generally "ill-equipped to effectively manage inmates with mental health and substance use needs."[13] Symptoms are likely to intensify in this setting, because "interruptions in medication and other treatments are common."[14] And on release from jail, many fail to receive adequate support for such basic needs as "transitional assistance with housing, treatment, and other community services."[15] "As a result, many struggle, run afoul of the law again, and cycle back into custody."[16]

B. The CARE Act explained

Purpose. The Community Assistance, Recovery, and Empowerment (CARE) Act (§§ 5970-5987), sponsored by Governor Gavin Newsom and signed into law on September 14, 2022, is designed to function as a "paradigm shift" away from the "status quo" which, "[s]adly, . . . provides support only after a criminal justice intervention or conservatorship."[17] The CARE Act "create[s] and implement[s] throughout California a new" civil court process "for identifying those with [specified] mental

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[13] *Ibid.*

[14] *Ibid.*

[15] *Ibid.*

[16] *Ibid.*

[17] Assem. Floor Analysis, 3d reading analysis of Sen. Bill No. 1338 (2021-2022 Reg. Sess.) Aug. 26, 2022, p. 11.

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illness who need treatment."[18] As the Legislature found, "[t]housands of Californians are suffering from untreated schizophrenia spectrum and psychotic disorders, leading to risks to their health and safety and increased homelessness, incarceration, hospitalization, conservatorship, and premature death. These individuals, families, and communities deserve a path to care and wellness." (Sen. Bill No. 1338 (2021-2022 Reg. Sess.) § 1, subd. (a) [legislative findings].)

The CARE Act provides non-custodial, "community-based behavioral health services and supports to Californians living with untreated schizophrenia spectrum or other psychotic disorders through a new civil court process."[19] The process "is intended to serve as an upstream intervention for the most severely impaired Californians to prevent avoidable psychiatric hospitalizations, incarceration, and Lanterman-Petris-Short Mental Health Conservatorship."[20] And the Act's "provision of legal counsel for CARE proceedings, agreements, and plans, as well as the promotion of supported decisionmaking" advances and protects the "[s]elf-determination and civil liberties" of

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[18] *Id.* at p. 13, italics omitted.

[19] Cal. Dept. of Health Care Services, *Community Assistance, Recovery, and Empowerment Act* <https://www.dhcs.ca.gov/Pages/CARE-ACT.aspx> (as of Feb. 9, 2023).

[20] *Ibid.*; see also Sen. Bill No. 1338 (2021-2022 Reg. Sess.) § 1, subd. (c) ("California's civil courts will provide a new process for earlier action, support, and accountability").

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participants. (Sen. Bill No. 1338 (2021-2022 Reg. Sess.) § 1, subd. (e).)

Phased implementation. The CARE Act will be implemented in two phases. (§ 5970.5.) Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne Counties, and the City and County of San Francisco, are required to implement the CARE Act by October 1, 2023. (*Id.*, subd. (a).) Los Angeles County has also announced that it will launch by December 1, 2023.[21] All other counties are required to implement the CARE Act by December 1, 2024, unless that date is extended. (§ 5970.5, subd. (b).) Counties have access to multiple existing funding sources to provide the required care and treatment.[22] The CARE process is projected to serve approximately 7,000 to 12,000 individuals each year, benefiting participants, their loved ones, and the communities in which they live.[23]

A summary of the CARE Act follows.

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[21] Off. of Governor Gavin Newsom, *Los Angeles County Accelerates CARE Court Implementation to Support Californians with Untreated Severe Mental Illness* (Jan. 13, 2023) <https://www.gov.ca.gov/2023/01/13/los-angeles-county-accelerates-care-court-implementation-to-support-californians-with-untreated-severe-mental-illness/> (as of Feb. 9, 2023).

[22] Cal. Health and Human Services Agency, *Funding Backgrounder: California's Behavioral Health Approach and Funding* (Aug. 17, 2022) <https://www.chhs.ca.gov/wp-content/uploads/2022/08/Public-Community-Behavioral-Health-Funding-8.17.22.pdf> (as of Feb. 9, 2023).

[23] Sen. Judiciary Com. Rep., *supra*, at p. 27.

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Function of the CARE Act. The Act establishes a new, noncriminal, confidential mental health care proceeding initiated by petition and administered in the superior courts. (§§ 5973, 5976.5, 5977.4, subd. (a).) CARE proceedings are designed to provide eligible persons experiencing severe mental illnesses with a package of "community-based services and supports" to foster recovery and stability. (§ 5971, subds. (a), (b).)[24] As discussed below (at pp. 27-28, *post*), mental health care provisions are set out in either a negotiated settlement agreement called a "CARE agreement" or, alternatively, a court-ordered "CARE plan"—documents that are enforceable against the government entities responsible for delivering services and supports. (See, e.g., §§ 5971, subd. (l), 5979, subd. (b); see also at pp. 30-31, *post*.)[25]

Respondents' eligibility. The person who is the subject of a CARE Act petition is referred to as the "respondent." (§ 5971, subd. (o).) To be eligible to enter the CARE process, the respondent must be:

- At least 18 years of age;
- "experiencing a severe mental illness";
- diagnosed in the disorder class: schizophrenia spectrum and other psychotic disorders;

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[24] The specific services provided are discussed at pp. 28-29, *post*.

[25] While the petition now before this Court requests invalidation of the entire CARE Act, it does not address the provisions that relate to CARE agreements.

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- "not clinically stabilized in on-going voluntary treatment"; and
- Either:
  - "unlikely to survive safely in the community without supervision" and experiencing a substantially deteriorating condition; 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."

(§ 5972, subds. (a)-(d).) Further, participation in the CARE process must be "the least restrictive alternative necessary to ensure the person's recovery and stability" and it must be "likely that the person will benefit from participation." (*Id.*, subds. (e), (f).)

Respondents' rights. The rights of respondents in CARE Act proceedings are expressly enumerated. They include the right to be represented by counsel at all stages, regardless of ability to pay; to receive notice of the hearings; to receive a copy of any court-ordered evaluation; to have the assistance of a "supporter" (discussed below); to be present at hearings unless the right is waived; to present evidence; to call witnesses; to cross-examine witnesses; and to appeal decisions and be informed of the right to appeal. (§ 5976.)

Initiation by petition. Specified laypersons connected to the respondent (for example, persons who live with the respondent, or respondent's close relatives), specified

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professionals or entities (for example, the director of a facility where the respondent lives, a first responder, or the director of a county behavioral health agency), or respondents themselves may file a petition to initiate the CARE process. (§ 5974.) A CARE "petitioner" (§ 5971, subd. (m)) must file in the superior court in a county where the respondent lives, is found, or is facing other criminal or civil proceedings. (§ 5973, subd. (a); see also *id*., subd. (b) [authorizing transfers].) The CARE petition is filed on a mandatory California Judicial Council form containing information required by statute and designed to allow a judge to determine whether the petitioner has made a prima facie showing that the respondent is or may be eligible for the CARE process. (§§ 5975, 5977, subd. (a)(1).)[26] The CARE petition must be accompanied by either an affidavit of a "licensed behavioral health professional" that addresses the CARE Act "diagnostic criteria" or, alternatively, "[e]vidence that the respondent was detained for a minimum of two intensive treatments" under the LPS Act, with "the most recent one within the previous 60 days." (§ 5975, subd. (d); see also at pp. 37-38, *post*.)[27]

Initial appearance. On the filing of a CARE Act petition, if the court finds that the petitioner has not made a prima facie

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[26] See at p. 32, fn. 30, *post*, concerning the Judicial Council's ongoing rulemaking.

[27] Persons in LPS conservatorship proceedings or misdemeanor proceedings may also be referred to CARE Act proceedings. (§ 5978.)

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case, it must dismiss the petition. (§ 5977, subd. (a)(2).)[28] If the petition is sufficient on its face and the petitioner is the director of the county behavioral health agency, the court must set the matter for an initial appearance within 14 court days. (§ 5977, subd. (a)(3)(A)(i).) If the petition appears sufficient but the petitioner is not the county agency, the court must take additional steps to engage the agency to make its own determination and to report back to the court. (*Id.*, subd. (a)(3)(B).) That additional process may result in dismissal in two ways. First, the engagement of the agency and its outreach to the respondent may cause the respondent "to enroll in voluntary behavioral health treatment[,]" in which case "the court shall dismiss the matter." (*Id.*, subd. (a)(5)(A).) Second, if the county's report does not support the petition, the court must dismiss it. (*Id.*, subd. (a)(5)(B).) Where the county's report supports the petition, the court must set the matter for an initial hearing. (*Id.*, subd. (a)(5)(C)(i).)

Initial hearing. Once the matter is set for initial hearing, among other things, the court must appoint counsel for the respondent and order the county behavioral health agency to provide notice of the initial appearance to the respondent and to respondent's counsel. (§ 5977, subd. (a)(3)(A)(ii), (iv), (a)(5)(C)(ii), (iii).) If the original petitioner is not the county behavioral health agency, the court shall relieve the original petitioner and appoint

[28] Repeated filing of meritless petitions constitutes grounds to deem the petitioner a vexatious litigant. (§ 5975.1.)

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the agency as the substitute petitioner. (*Id.*, subd. (b)(7)(A).)[29] At the initial appearance, respondents may substitute their own counsel and may choose to appear through counsel. (*Id.*, subd. (b)(1), (3).) "If the respondent does not waive personal appearance and does not appear at the hearing, and the court makes a finding on the record that reasonable attempts to elicit the attendance of the respondent have failed, the court may conduct the hearing in the respondent's absence[,]" provided "the court makes a finding on the record that conducting the hearing without the participation or presence of the respondent would be in the respondent's best interest." (*Id.*, subd. (b)(3).) The court may also appoint a qualified volunteer "supporter" to assist the respondent, whose duties "may include supporting the person to understand, make, communicate, implement, or act on their own life decisions during the CARE process." (*Id.*, subd. (b)(5), § 5971, subd. (q); see also § 5980 [training for supporters].)

Hearing on the merits. The court must set a hearing on the merits of the petition within ten days to "determine by clear and convincing evidence if the respondent meets the CARE criteria." (§ 5977, subd. (b)(8)(A).) If the court finds there is clear and convincing evidence that the criteria are satisfied, "the court shall order the county behavioral health agency to work with the respondent, the respondent's counsel, and the supporter to

[29] An original petitioner with a relationship to the respondent may continue to participate in CARE proceedings subject to the requirements and limits set out in statute. (*Id.*, subd. (b)(7)(B).)

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engage in behavioral health treatment and determine if the parties will be able to enter into a CARE agreement." (*Id.*, subd. (c)(2).) A CARE agreement is a "settlement agreement entered into by the parties . . . to support the respondent in accessing community-based services and supports." (§ 5971, subd. (a).) It is "individualized" and consists of "clinically appropriate behavioral health care and stabilization medications, housing, and other supportive services" described in the Act. (*Id.*, subds. (a), (b), § 5982.) The court must set a case management hearing within 14 days. (§ 5977, subd. (c)(2).)

Case management hearing: CARE agreement or CARE plan. At the case management hearing, the court must determine whether the process will proceed by way of a CARE agreement, or will instead require the creation of a CARE plan—which contains the same individualized types of services and supports for an eligible respondent as a CARE agreement, but is prepared at the direction of the court and terminates after one year (unless extended). (§§ 5977.1, subds. (a), (c), (e), 5971, subds. (a), (b).) Where the parties have reached or are likely to reach agreement, the court may approve the CARE agreement, approve the agreement as modified, or provide the parties additional time, and set a progress hearing toward ultimate CARE agreement approval. (§ 5977.1, subd. (a)(2).)

If the court finds that reaching a CARE agreement is unlikely, however, it must order the county behavioral health agency, through a licensed behavioral health professional, to conduct a clinical evaluation of the respondent, which includes

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"[a]n analysis of recommended services, programs, housing, medications, and interventions that support the recovery and stability of the respondent." (§ 5977.1, subd. (b).) At a subsequent clinical evaluation hearing, "the court shall review the evaluation and any other evidence from the county behavioral health agency and the respondent. The county behavioral health agency and the respondent may present evidence and call witnesses, including the person who conducted the evaluation." (*Id.*, subd. (c)(2).) At the conclusion of the hearing, if the court finds that the respondent meets CARE Act criteria, "the court shall order the county behavioral health agency, the respondent, and the respondent's counsel and supporter to jointly develop a CARE plan within 14 days." (*Id.*, subd. (c)(3)(A).) Otherwise, it must dismiss the petition. (*Id.*, subd. (c)(3)(B).)

CARE plan review hearing. At the CARE plan review hearing, "[t]he county behavioral health agency or the respondent, or both, may present a proposed CARE plan." (§ 5977.1, subd. (d)(1).) "After consideration of the plans proposed by the parties, the court shall adopt the elements of a CARE plan that support the recovery and stability of the respondent. The court may issue any orders necessary to support the respondent in accessing appropriate services and supports, including prioritization for those services and supports, subject to applicable laws and available funding . . . . These orders shall constitute the CARE plan." (*Id.*, subd. (d)(2).) A court may issue a "medication order" to the respondent, but only if the court finds by clear and convincing evidence that "the respondent lacks the

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capacity to give informed consent to the administration of medically necessary stabilization medication." (*Id.*, subd. (d)(3).) Under *no circumstances* may the court order forcible administration of medication. (*Ibid.*)

CARE plan enforcement. As set out in section 5979 of the Act, the only adverse consequences that can result to a respondent from the respondent's failure to take advantage of a CARE plan are (1) termination of respondent's participation in the CARE process; and (2) consideration of respondent's non-participation (and reasons for that non-participation) if the person becomes subject to the LPS commitment process within a six-month time period. (§ 5979, subd. (a)(3).) No other penalty can be imposed on a non-participating respondent, "including, but not limited to, contempt or a failure to appear." (*Id.*, subd. (a)(4).) Further, a respondent's failure to comply with a medication order "shall not result in *any* penalty," including the consequences described in section 5979. (*Id.*, subd. (a)(5), italics added.)

In contrast, government entities that are parties to the court's CARE Act orders may be penalized for noncompliance. If there is "clear and convincing evidence" that an entity has substantially failed to comply with the Act or with lawful orders issued by a court under the Act, "the presiding judge or their designee" may impose a fine. (§ 5979, subd. (b)(2)(B).) Fines "shall be in an amount of up to one thousand dollars ($1,000) per day, not to exceed $25,000 for each individual violation identified in the order imposing fines." (*Id.*, subd. (b)(2)(C).) And where an entity is "persistently noncompliant . . ., the presiding judge or

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their designee may appoint a special master to secure court-ordered care for the respondent at the local government entity's cost." (*Id.*, subd. (b)(3).)

Status review hearings and reappointment. The court oversees progress on CARE plans through regular, mandatory status review hearings. (§ 5977.2.) One month before the one-year termination of a CARE plan, the court must hold a status hearing. (§§ 5977.1, subd. (e), 5977.3, subd. (a)(1).) In advance of the hearing, "the county behavioral health agency shall file a report with the court and shall serve the report on the respondent and the respondent's counsel and supporter." (§ 5977.3, subd. (a)(1).) Among other things, the report must include "[r]ecommendations for next steps, including what ongoing and additional services would benefit the respondent that the county behavioral health agency can facilitate or provide." (*Id.*, subd. (a)(1)(D).) The respondent may request to remain in the CARE process for up to one additional year, which the court may permit if the respondent has not yet successfully completed the plan and would benefit from continuation. (*Id.*, subd. (a)(3)(B).) The respondent may be involuntarily reappointed to a CARE plan only if the court finds, by clear and convincing evidence, that: the respondent has not successfully completed the CARE process; all services and supports required through the CARE process were provided to the respondent; the respondent would benefit from continuation in the CARE process; and the respondent currently meets the Act's eligibility requirements. (*Id.*, subd. (b).)

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Rules, forms, and guidance. The Judicial Council is in the process of promulgating rules and developing mandatory forms to implement the CARE Act, as requested by the Legislature. (§§ 5975, 5977.4, subd. (c), 5983, subd. (c), 5985, subd. (d).)[30] Further, the California Health and Human Services Agency and the Department of Health Care Services are expressly authorized to "implement, interpret, or make specific" the provisions of the CARE Act "by means of plan letters, information notices, provider bulletins, or other similar instructions, without taking any further regulatory action." (§ 5984, subd. (b).)

LEGAL STANDARD

A. Mandamus relief—especially on this Court's original jurisdiction—is an extraordinary remedy

Mandamus is "an extraordinary writ" (*People v. Mena* (2012) 54 Cal.4th 146, 153) that generally requires a petitioner to demonstrate (1) a "'clear, present, ministerial duty on the part of the respondent[s]'" to "perform a specific act in a manner prescribed by law"; (2) no "'adequate alternative remedy'"; and (3) a "'clear, present, and beneficial'" interest in the controversy. (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340, citations and alterations omitted; see Code Civ. Proc., §§ 1085, 1086.) "[O]riginal proceedings in appellate courts are truly

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[30] See Judicial Council of California, Invitation to Comment, Rules and Forms: Community Assistance, Recovery, and Empowerment Act (W23-10) <https://www.courts.ca.gov/documents/w23-10.pdf> (as of Feb. 9, 2023).

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extraordinary"—and it is all the more extraordinary for this Court to exercise its mandamus discretion in the first instance. (*Adams v. Department of Motor Vehicles* (1974) 11 Cal.3d 146, 150, fn. 7.) This Court "customarily" declines to exercise original jurisdiction, "preferring initial disposition by the lower courts." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 500.)

Original writ relief is appropriate only where a case presents issues of "great public importance" (*Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 808), and—most relevant here—only where those issues require "immediate resolution" by this Court (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 253). The Court has, for example, exercised original jurisdiction to resolve time-sensitive election-related disputes (e.g., *Legislature v. Padilla* (2020) 9 Cal.5th 867, 874-875); to consider a "threat of imminent dissolution" faced by "the state's nearly 400 redevelopment agencies" (*Matosantos*, *supra*, 53 Cal.4th at p. 253); and to review a proposed delay of pollution-control requirements that risked allowing "an additional 100 tons of NOx per day to pollute the air of California" (*Clean Air Constituency*, *supra*, 11 Cal.3d at p. 808).

When such pressing issues are not presented, or would properly be resolved in the lower courts in the first instance, the Court generally denies the petition without inviting full briefing and argument. (See, e.g., *California Attorneys for Criminal Justice v. Newsom* (May 13, 2020, S261829) [nonpub. order den. petn. for writ of mandate/prohibition].) More recently, the Court has sometimes issued a short statement explaining the basis for

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denial. (See *id.*; see also *Alliance for Constitutional Sex Offense Laws v. California Dept. of Justice* (May 21, 2020, S261522) [nonpub. order den. petn. for writ of mandate/prohibition].)[31]

B. The standard for facial invalidation is exacting

Petitioner's request for a writ of mandamus or prohibition from this Court faces an additional high hurdle, as petitioner seeks invalidation of a statute on its face. A petitioner in a facial challenge "'cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute.'" (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 267, italics and citations omitted.) In general, a petitioner must demonstrate that the challenged statute "'inevitably poses a present *total* and *fatal* conflict with applicable constitutional prohibitions.'" (*Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1138, citation and alterations omitted, italics added.) Even in its more lenient form, the test is still "'exacting,'" "asking whether the statute is unconstitutional in the generality or great majority of cases." (*Ibid.*, citation and italics omitted; see generally *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.)

These "formidable rules insulating a statute from facial attack are understandable in light of the severe remedy for a

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[31] Respondents in this paragraph cite unpublished orders not as precedent, but to provide examples of petition denials that are accompanied by explanation.

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successful facial challenge. . . ." (*In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 48.) Facial invalidation is "'strong medicine'" (*People v. Toledo* (2001) 26 Cal.4th 221, 234, citation omitted) that can "short circuit the democratic process" (*Washington State Grange v. Washington State Republican Party* (2008) 552 U.S. 442, 451). "Claims of facial invalidity," moreover, "often rest on speculation[,]" which "raise[s] the risk of 'premature interpretation of statutes on the basis of factually barebones records.'" (*Id.* at p. 450, citation omitted.) As-applied challenges, in contrast, grounded as they are in real-world disputes, "'are the basic building blocks of constitutional adjudication.'" (*In re Taylor* (2015) 60 Cal.4th 1019, 1039, quoting *Gonzales v. Carhart* (2007) 550 U.S. 124, 168.) For these reasons, "'consideration of as-applied challenges, as opposed to broad facial challenges, is the preferred course of adjudication . . . .'" (*Id.* at p. 1039, citation omitted.)

THE COURT SHOULD DENY THE PETITION

I. THE PETITION DOES NOT ACCURATELY DESCRIBE THE CARE ACT AND DOES NOT MEET THE STANDARDS FOR MANDAMUS RELIEF OR ORIGINAL JURISDICTION

The Court should reject petitioner's request to take the extraordinary action of exercising mandamus jurisdiction in the first instance to bar implementation of the CARE Act. As a threshold matter, the petition suffers from a fundamental and fatal defect: It fails accurately to describe the CARE Act, mischaracterizing this carefully crafted mental health services law.

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Moreover, petitioner has not met the legal standards that apply in mandamus. While respondents do not contest that petitioner has shown a "beneficial interest" (see generally *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363, 378-379), petitioner has not demonstrated either a clear ministerial duty on the part of respondents, or the absence of an adequate alternative remedy. And petitioner certainly has not shown that this is the rare case demanding "immediate resolution" in the first instance by this Court (*Matosantos*, *supra*, 53 Cal.4th at p. 253), where petitioner's preferred resolution is the invalidation of the entire CARE Act. To the contrary: petitioner acknowledges that thousands of persons with severe mental health issues lack adequate access to care. (Petn. 22; see at pp. 17-21, *ante*.) There is thus a compelling public interest in allowing the CARE Act to take effect, so that this new civil court process can begin providing a pathway to essential mental health support and services to those who need them most.

A. Petitioner's assertions of harm to CARE Act participants are based on misunderstandings and mischaracterizations

Petitioner asserts that the "Court must intervene" to prevent implementation of a "regime of involuntary . . . treatment" that will "rob unhoused Californians of their autonomy to choose their own mental health treatment and housing." (Petn. 20; see also Petn. 3.) It contends that the CARE Act operates through "coercion" and extracts from non-cooperating individuals "penalties . . . for non-compliance." (Petn. 33.) But petitioner's assertions are not reflected in the carefully

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drafted terms of the CARE Act, and petitioner is simply wrong in characterizing the Act as an "involuntary . . . treatment regime." (E.g., Petn. 33.) The petition's defective foundation, standing alone, warrants denial of the extraordinary relief requested. (See *People v. Gurule* (2002) 28 Cal.4th 557, 651 [rejecting claim because it "mischaracterize[d]" the record].)

As noted above, the core of the Act is a set of civil court procedures designed to facilitate party-driven "settlement agreements," called "CARE agreements," entered into by the parties to provide "an individualized, appropriate range of community-based services and supports." (§ 5971, subds. (a)-(b); see at pp. 20-23, *ante*.) And "CARE plans"—that is, plans imposed by a court when the parties fail to enter into a CARE agreement (§ 5977.1, subd. (b))—are not "involuntary" in the ways that petitioner suggests. (E.g., Petn. 36, 42). Rather, the Act allows the respondent, with assistance of both counsel (§ 5976, subd. (c)) and a "supporter" (§ 5981, subd. (a)), to contribute to the CARE plan's composition, and even to propose an alternative plan, which the court may then incorporate into the CARE plan in whole or in part. (§ 5977.1, subd. (d).)

The petition also makes the following mischaracterizations and critical omissions:

Petitioner asserts that "the CARE Act permits court-ordered involuntary medical care *without* a determination that the respondent is incompetent." (Petn. 42, original italics.) But the Act requires a licensed behavioral health specialist to conduct—and the court to consider—a "clinical evaluation" addressing

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(among other things) the respondent's "legal capacity to give informed consent." (§ 5977.1, subd. (b).) The Act also bars the court from ordering "administration of medically necessary stabilization medication" unless it finds, by "clear and convincing evidence, [that] the respondent lacks the capacity to give informed consent." (*Id.*, subd. (d)(3).) And in no circumstances may a court order that medication be "forcibly administered." (*Ibid.*) A respondent thus always retains the right to refuse medication.

Petitioner compares the CARE process to involuntary commitment and conservatorships, referencing case law addressing the kind of "segregation of people with disabilities in institutional settings" that mentally disabled individuals faced decades ago. (Petn. 61; see also, e.g., Petn. 21, 39, 42, 53.) But that comparison is unsupported. CARE plans are limited to outpatient care; they *cannot* include involuntary commitment orders or other forms of compulsory custodial institutionalization, and the scheme is designed to *avoid* institutionalization either through LPS proceedings or criminal detention. (See, e.g., § 5982, subd. (a); Petn. 20 [describing the Act's system of "outpatient treatment"].)

Petitioner states that the CARE Act imposes on participating respondents "severe penalties for noncompliance." (Petn. 49.) That is also error. The only adverse consequences to respondents are those set out in section 5979. Such consequences are quite circumscribed, and are very different from the types of "penalties" that can be imposed for violating court orders in other

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contexts. Specifically, failure to comply with a medication order "shall not result in any penalty, including under [section 5979]." (§ 5979, subd. (a)(5).) And respondent's failure to comply with any other type of CARE plan order is subject to only to (1) termination of "the respondent's participation in the CARE process" or (2) limited consideration of the factual circumstances related to termination in any subsequent LPS commitment process. (*Id.*, subd. (a)(1), (3), (4).) As to the second consequence, if the respondent becomes subject to the LPS commitment process within six months, "the fact that the respondent failed to successfully complete their CARE plan" "shall create a presumption" that "the respondent needs additional intervention." (*Id.*, subd. (a)(3).)[32] As the Act makes clear, respondent's failure to participate in the CARE plan cannot result in contempt, failure to appear, fines, or confinement. (§ 5979, subd. (a)(4), (5).) In contrast, as discussed (at pp. 30-31, *ante*), penalties such as fines may imposed on entities responsible for delivering support and services that fail to comply with a CARE plan.

Petitioner asserts that an additional penalty for CARE Act noncompliance is "involuntary detention to determine eligibility

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[32] Contrary to petitioner's suggestion, this limited presumption cannot arise for conduct "as simple as failing to appear at a status hearing." (Petn. 33.) It arises *only if* "respondent was timely provided with all of the services and supports required by the CARE plan, [and] . . . the respondent failed to successfully complete their CARE plan . . . ." (§ 5979, subd. (a)(3).)

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for civil commitment" (Petn. 33) "last[ing] up to 72 hours." (Petn. 27, citing § 5979, subd. (a)(2).) But the subdivision cited by petitioner merely authorizes the court to "utilize *existing legal authority*" under the LPS Act to order appropriate treatment. (§ 5979, subd. (a)(2), italics added.) The civil detention provision to which petitioner objects is not a feature of the CARE Act.

Petitioner further states that "[t]he Act makes no provision for the circumstances of individuals who . . . are difficult to locate . . . ." (Petn. 28.) But, in fact, the Act bars a court from proceeding in the respondent's absence unless it "find[s] on the record" that (i) "reasonable attempts [were made] to elicit the attendance of the respondent" and (ii) that "conducting the hearing without the participation or presence of the respondent would be in the respondent's best interests." (§ 5977, subd. (b)(3).) And a respondent in that circumstance is represented by the respondent's attorney. (*Id.*, subds. (a)(3)(A)(ii), (b)(3).)

Petitioner also asserts that the Act "necessarily" authorizes psychiatrists and other professionals to divulge confidential information "disclosed by patients during treatment." (Petn. 45.) But nothing in the Act allows or requires professionals to violate duties of confidentiality, when filing or supporting petitions or otherwise. (See, e.g., § 5974.)[33] And the Act includes numerous

[33] It is well established that there can be exceptions to duties of confidentiality if a professional determines that certain disclosures are necessary to address risks of harm to the patient or others. (See generally *People v. Gonzales* (2013) 56 Cal.4th 353, 380-381.)

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provisions expressly designed to safeguard respondent's privacy and preserve confidentiality. (See, e.g., §§ 5976.5, 5977.1, subd. (c)(5), 5977.4, subd. (a).)

Petitioner further speculates that family members and other laypersons may file inappropriate petitions that could overwhelm the courts or harass their mentally ill relatives. (Petn. 30.) But the Legislature addressed this very concern by authorizing courts to sanction litigants for filing petitions "without merit or . . . intended to harass or annoy" (§ 5975.1), and by barring petitioning parties other than county health agencies—such as parents, spouses, or siblings—from participating in CARE proceedings without the respondent's consent (see § 5977, subd. (b)(7)(B)(iii)). In light of the CARE process's non-custodial nature, and its emphasis on respondent inclusion and participation, petitioner cannot show that CARE Act respondents will face "the coercion of multiple court proceedings that do little to protect their rights." (Petn. 33.)

The petition's reliance on misunderstanding and mischaracterization of the CARE Act, standing alone, warrants its denial.

B. Petitioner's generalized assertions of ministerial duty and of inadequate remedy are insufficient

Turning to the standard for mandamus relief, as to the first requirement, petitioner has not established a "'clear, present, ministerial duty on the part of the respondent[s]'" subject to judicially compelled enforcement. (*Picklesimer*, *supra*, 48 Cal.4th at p. 340, citation omitted.) Even if public officials possess, in

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some broad sense, a mandatory duty "not to enforce" a statute that "violates state law" (Petn. 5), such a generalized duty does not, on its own, typically suffice to justify judicial intervention and the extraordinary remedy of mandamus or prohibition. (See, e.g., *California Attorneys for Criminal Justice* (May 13, 2020, S261829), *supra*.) And the relevant duty must be "clear" in the context of the dispute presented. (*Picklesimer*, *supra*, 48 Cal.4th at p. 340.) For example, in *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 575, the Court held that mandamus relief was appropriate because "[i]t [was] clear that respondents [had] abridged" young voters' rights under the Twenty-Sixth Amendment by requiring them to register to vote at their parents' address. (See *id.* at p. 570, fn. 2.) Here, by contrast, petitioner has not identified any specific act to be taken by the Governor or Secretary that should be compelled or prohibited. Rather, it seeks facial invalidation of every aspect of the CARE Act before this new civil court process has even begun to operate, on novel legal theories that are inconsistent with well-established principles of due process and equal protection. (See at pp. 44-57, *post*.)

Petitioner likewise has failed to show that no "adequate" alternative remedy exists. (Code Civ. Proc., § 1086; see *Phelan v. Superior Court in and for City and County of San Francisco* (1950) 35 Cal.2d 363, 366.) Petitioner's legal arguments, as well as any other relevant constitutional challenges to the Act, can be raised in individual CARE Act proceedings as they arise—if they in fact arise. (See § 5976 [enumerating respondent's rights to present a case, have counsel appointed, and bring an appeal].) Indeed,

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individual CARE Act proceedings will provide a far more appropriate forum for raising any relevant legal challenges, ensuring that courts will have concrete facts and a developed record to inform their decision making. (See *In re Taylor*, *supra*, 60 Cal.4th at p. 1039; cf. *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) Awaiting specific CARE Act cases will also allow the Act to be implemented at the state and local levels, so that any interpretive gaps in the statute can be filled by administrative action (see § 5984), and the resolution of any remaining disputes can be informed by real-world circumstances.[34]

Petitioner argues that requiring it to wait to bring challenges until after the CARE Act is underway would be "inadequate" because it would not allow for a "final ruling" prior to the CARE Act's implementation. (Petn. 5.) But petitioner does not explain how it—or any other interested party—would be harmed by reserving judgment on the Act's constitutionality until after its implementation. A "remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law . . . ." (*Rescue Army v. Municipal Court of City of Los Angeles* (1946) 28 Cal.2d 460, 465.) While petitioner may need to expend resources in preparation for the Act's implementation (cf. Petn. 5), the need to "expend[] . . . time and money" does not generally render an alternative remedy

[34] See also at pp. 49-50, *post* (discussing the relevance of such administrative guidance materials to petitioner's vagueness argument).

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inadequate. (*Jollie v. Superior Ct. of State, in and for Los Angeles County* (1951) 38 Cal.2d 52, 56.)

The Court should decline to exercise original jurisdiction, allowing the Legislature's considered response to an undisputed mental health crisis to take effect.

II. PETITIONER'S CLAIMS OF FACIAL UNCONSTITUTIONALITY ARE WITHOUT MERIT

Petitioner seeks facial invalidation on two grounds: that the Act is void for vagueness under the due process clause (Petn. 33-45) and that it violates the equal protection clause (Petn. 45-64). Neither argument satisfies the "exacting" standard for facial invalidation. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 218; at pp. 34-35, *ante*.) And both arguments fail under longstanding due process and equal protection precedents.

A. Petitioner cannot show that the CARE Act violates the state constitutional right to due process on its face

Petitioner first contends that the Court should "compel Respondents to refrain from enforcing the CARE Act" in its entirety (Petn. 64) because certain provisions of the Act are, in petitioner's view, "unconstitutionally vague" (Petn. 34). Petitioner urges the Court to apply "stringent" vagueness review (Petn. 41) on the ground that the Act "burdens fundamental rights to privacy, liberty, and autonomy." (Petn. 33, 41.)[35]

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[35] While the petition briefly references several cases discussing substantive due process (Petn. 41-44, citing, e.g., *In re Qawi* (2004) 32 Cal.4th 1, 14), it does so in support of its

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Petitioner's contentions fail. Even under the strictest form of vagueness scrutiny (applicable, for example, to criminal laws and statutes regulating First Amendment-protected expressive activity), the due process clause requires statutes to provide only a "'reasonable degree of certainty'" (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1117, citation omitted), not "'perfect clarity and precise guidance'" (*United States v. Williams* (2008) 553 U.S. 285, 304, citation omitted). Statutes are not unconstitutionally vague merely because they "contain ambiguities." (*Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.* (1982) 455 U.S. 498, 502.)[36] The clarity of the CARE Act is constitutionally sufficient, employing eligibility criteria that are readily susceptible to "'reasonable and practical construction'" and principled application by the implementing superior courts. (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, citation omitted.)

The focus of petitioner's vagueness challenge is subdivision (d) of section 5972, part of the CARE Act's eligibility criteria,

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vagueness argument and does not argue that the CARE Act violates substantive due process. Petitioner's only due process argument is that the Court "should hold that the CARE Act is unconstitutionally vague." (Petn. 45.) Respondents accordingly address that argument.

[36] This Court often looks to federal precedent when applying void-for-vagueness principles under the state constitution. (See, e.g., *People ex rel. Gallo*, *supra*, 14 Cal.4th at pp. 1115-1116.)

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which requires the court to find either that "(1) [t]he person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating" or "(2) [t]he person is 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." (Petn. 34-37.) While certain terms used in those criteria are "undefined" in the text (Petn. 34), that is true of many terms in many statutes. Legislatures can properly assume that affected parties will understand these terms in context, and, where necessary, courts will employ dictionary definitions and "any 'established technical or common law'" understandings to define statutory terms. (*People v. Mirmirani* (1981) 30 Cal.3d 375, 384, citation omitted.) And here, there are readily accessible definitions of the terms at issue—such as "deterioration" and "relapse"—in both dictionaries and the literature relevant to the work of the medical and professional care-providing communities.[37]

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[37] See, e.g., Webster's 3d New Internat. Dict. (1976) p. 1916 (defining "relapse" as "a recurrence of illness; *esp*: recurrence of symptoms of a disease after a prolonged abatement"); Lehman et al., *Practice Guideline for the Treatment of Patients with Schizophrenia* (2d ed. 2010), pp. 63-64 (describing "deterioration" and "relapse" in the "natural history and course" of schizophrenia); Lin et al., *Associations Between Relapses and Psychosocial Outcomes in Patients with Schizophrenia in Real-World Settings in the United States* (2021) 12 Frontiers in Psychiatry 1, 2 (explaining that for most patients with schizophrenia, "the clinical course is characterized by recurring
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Petitioner further contends that the eligibility criteria in subdivision (d) "require[] a court to speculate about whether the respondent might deteriorate [or relapse] in the future" (Petn. 34), leading to "inherently subjective" judgments (Petn. 36). But clinicians and other health professionals regularly make such judgments on the basis of objective considerations, not "subjective opinion[s]" or "rank speculation." (Petn. 34, 36.)[38] In making the determinations required by the Act, CARE court judges must base their decisions not on their own lay judgment, but on expert reports provided by mental health professionals. (See, e.g., §§ 5977.1, subd. (b) [licensed behavioral health professionals], 5977, subd. (a)(3) [county agencies].) The CARE Act also ensures that judges will receive "training and technical assistance" on "the CARE process, CARE agreement and plan services and supports, working with the supporter, supported decisionmaking, the supporter role, the family role, trauma-informed care, elimination of bias, best practices, and evidence-based models of care for people with severe behavioral health conditions." (§ 5983, subd. (c).) The Act's eligibility criteria are

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relapses," and "multiple relapses may result in greater functional deterioration").

[38] See, e.g., Olivares et al., *Definitions and Drivers of Relapse in Patients with Schizophrenia: A Systematic Literature Review* (2013) 12 Annals of Gen. Psychiatry 1, 7 (factors associated with relapse "include[] adherence to medication, stress, psychosocial therapies, previous hospitalization/relapse and patient insight").

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similar to other accepted statutory standards requiring courts to make evidence-based predictive judgments. (See, e.g., *Anderson v. Davidson* (2019) 32 Cal.App.5th 136, 146 [independently reviewing administrative decision to suspend license due to "'physical or mental disability, disease, or disorder which could affect the safe operation of a motor vehicle,'" citing Veh. Code, § 12806, subd. (c)].) Predictive standards of this type have repeatedly been upheld against vagueness challenges. (See, e.g., *Schall v. Martin* (1984) 467 U.S. 253, 278-279 [statute requiring "a finding that there is a 'serious risk' that the juvenile, if released, would commit a crime prior to his next court appearance"]; *People v. Mary H.* (2016) 5 Cal.App.5th 246, 261 [standard requiring courts to gauge likelihood that person would "use firearms in a safe and lawful manner"]; *Rupf v. Yan* (2000) 85 Cal.App.4th 411, 424 [standard requiring courts to evaluate future dangerousness].)

Petitioner also contends that the terms relevant to eligibility in subdivisions (c) and (e) of section 5972—in particular, "clinically stabilized" and "recovery and stability"—are also "vague." (Petn. 37-38.) Each of those terms, however, has "a dictionary definition" and can be further clarified and interpreted by referencing literature "familiar to medical or mental health professionals." (Petn. 38.)[39] As with the criteria in subdivision

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[39] See, Webster's 3d New Internat. Dict. (1976) p. 1898 ("recovery" is "the act of regaining or returning toward a normal or usual state <~ from a heart attack> <~from childbirth>"); Harvey et al., *Prediction of Disability in Schizophrenia:*

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(d), courts will be able to construe any necessary terms and apply them in a principled, objective fashion with support from the required evidence-based reports by county agencies and behavioral health professionals.

Petitioner's request for the extreme remedy of pre-enforcement facial invalidation based on asserted vagueness fails for another reason. There are numerous tools available to regulators and courts to fill any needed gaps as the statute is implemented and applied. The Health and Human Services Agency and the Department of Health Care Services, for example, may "implement, interpret, or make specific" the provisions of the CARE Act "by means of plan letters, information notices, provider bulletins, or other similar instructions, without taking any further regulatory action." (§ 5984, subd. (b); at p. 32, *ante*.) The Judicial Council is already in the process of promulgating implementing court rules and forms. (At p. 32, *ante*.) If a superior court engages in "pessimistic error and impermissible paternalism" in finding a respondent eligible for the CARE process (see Petn. 40), the Court of Appeal stands ready to correct that error and create precedent for the trial courts, as did the court in *Conservatorship of Murphy* (1982) 134

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Symptoms, Cognition, and Self-Assessment (2019) Journal of Experimental Psychopathology 1, 9 ("outcomes can be defined in terms of clinical response, stability, remission, and recovery"); *ibid.* ("[c]linical stability refers to maintenance at a decreased level of symptomatology, not necessarily full symptomatic remission").

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Cal.App.3d 15, 18-19 (cited at Petn. 39-40). And if necessary, courts can adopt "saving constructions" through their broad reformation powers to avoid invalidating any provisions as "unconstitutionally vague." (*Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 643.) In light of these myriad alternatives, petitioner's facial vagueness challenge must be rejected.

B. Petitioner cannot show that the CARE Act violates the state right to equal protection on its face

Petitioner next argues that the CARE Act violates the equal protection clause on its face. (Petn. 45.) That claim is unsupported. As explained below, the Legislature made the rational judgment that individuals diagnosed with schizophrenia and other psychotic disorders who are without services and support should have the pathway to wellness provided by the CARE Act.

1. The Legislature's decision to offer additional support and services to persons diagnosed with psychotic disorders is not subject to strict scrutiny

As this Court has often recognized, "the basic and conventional standard" for reviewing legislation is rational basis review. (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 480, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 16-17.) That standard appropriately "manifests restraint by the judiciary in relation to the . . . act[s] of a co-equal branch of government" by limiting judicial review to the question whether the "distinctions drawn by a challenged statute bear some

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rational relationship to a conceivable legitimate state purpose." (*Ibid.*)

Petitioner asks the Court to depart from that norm, recognizing a new "suspect classification[]" (Petn. 46) that would subject laws to strict scrutiny if they "target[] people who have—or who are presumed to have—schizophrenia" (Petn. 52). State and federal courts, however, have consistently rejected arguments that individuals experiencing mental illness, either generally or those with specific mental illnesses, "constitute a suspect class." (E.g., *Adoption of Kay C.* (1991) 228 Cal.App.3d 741, 753.)[40] And petitioner does not cite a single example of a state or federal court treating schizophrenia and other psychotic disorders as a suspect classification.

Nor does petitioner address the standard for recognizing a new suspect classification, which generally requires a showing that (among other things) the trait in question "bears no relation to a person's ability to perform or contribute to society." (*In re Marriage Cases* (2008) 43 Cal.4th 757, 841, superseded by constitutional amendment on other grounds.) While petitioner is surely correct that there is an unfortunate history in this country

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[40] See also, e.g., *Heller v. Doe by Doe* (1993) 509 U.S. 312, 321 (mental illness generally); *Colin K. v. Schmidt* (D.R.I. 1982) 536 F.Supp. 1375, 1389, affd. (1st Cir. 1983) 715 F.2d 1 (applying rational basis review to "policy of providing residential placement for visually and emotionally handicapped children, . . . but not for learning disabled students"); *Doe v. Laconia Supervisory Union No. 30* (D.N.H. 1975) 396 F.Supp. 1291, 1295-1297 (program giving priority to those with certain disabilities but not others).

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of subjecting individuals with symptomatic schizophrenia and other psychotic disorders to "stigmatization" (Petn. 53), those individuals, like those diagnosed with other severe mental illnesses, "have a reduced ability to cope with and function in the everyday world" if they go without treatment. (See *City of Cleburne, Tex. v. Cleburne Living Center* (1985) 473 U.S. 432, 442; see at pp. 54-56 & fns. 43-44, *post*.) The question of how such individuals should be treated under the law is thus "a difficult and often a technical matter, very much a task for legislators guided by qualified professionals." (*City of Cleburne,* at pp. 442-443.) Indeed, a number of state and federal laws draw distinctions on the basis of particular mental illnesses, including schizophrenia and psychotic disorders. (See, e.g., Cal. Code Regs., tit. 9, § 3710.) Petitioner provides no sound basis for treating all such laws as inherently "suspect."[41]

Petitioner also asserts that application of strict scrutiny is required because the Act purportedly "burdens constitutionally protected liberty and privacy interests." (Petn. 51.) That

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[41] Petitioner's suggestion that strict scrutiny is warranted because "[t]he Act's exclusive focus on schizophrenia will . . . disproportionately affect Black people" (Petn. 55) is unsupported and fails to account for the many provisions in the CARE Act that are designed to address the risk of racial bias through bias training; the collection, reporting, and analysis of both demographic and outcome data; and stakeholder engagement. (See §§ 5983, subds. (b), (c), 5985, 5986.) In any event, it is well-established that a "disproportionate impact," standing alone, "does not trigger . . . strict scrutiny." (*Hardy v. Stumpf* (1978) 21 Cal.3d 1, 7, citing *Washington v. Davis* (1976) 426 U.S. 229, 242.)

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argument likewise fails. While the Court has sometimes noted that "classifications affecting fundamental rights are given the most exacting scrutiny" (e.g., *People v. Wilkinson* (2004) 33 Cal.4th 821, 836, alteration omitted), it has warned against an excessively "broad reading" of that principle (*id.* at p. 838). If all laws "implicat[ing] the right to 'personal liberty' of the affected individuals" triggered strict scrutiny, then "all criminal laws, because they may result in a defendant's incarceration" (*id.* at pp. 837, 838), as well as all laws regulating civil custodial commitment, would automatically trigger strict scrutiny. Courts, however, have applied rational basis scrutiny to both types of laws. (See, e.g., *id.* at p. 838; *People v. Barrett* (2012) 54 Cal.4th 1081, 1111, fn. 21; cf. *Public Guardian of Contra Costa County v. Eric B.* (2022) 12 Cal.5th 1085, 1107.) Because any burden imposed by the outpatient-based, inclusive CARE process on constitutionally protected liberty interests will be limited and de minimis, especially when compared with the burdens imposed by incarceration or custodial commitment (see at pp. 17-20, *ante*), it follows that rational basis applies to judicial review of the lines drawn by the CARE Act as well.[42]

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[42] In several older cases involving civil commitment or conservatorship, the Court appeared to apply strict scrutiny because the parties "concede[d] that [it was] the applicable standard for measuring the validity of" such statutes. (*In re Moye* (1978) 22 Cal.3d 457, 465, superseded by statute on other grounds; see, e.g., *ibid.*; *Conservatorship of Hofferber* (1980) 28 Cal.3d 161, 171, fn. 8; see also *People v. McKee* (2010) 47 Cal.4th 1172, 1222-1223 (conc. & dis. opn. of Chin, J.).) The more recent
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2. The Legislature's decision to institute a new civil mental-health court process to avoid the criminal justice system and civil commitment is rational

The CARE Act serves the "'rational . . . governmental purpose[s]'" (*Johnson v. Dept. of Justice* (2015) 60 Cal.4th 871, 881, citation omitted)—indeed, the compelling government interests—of providing access to needed treatment and services to individuals with severe mental illness and ensuring accountability for the government agencies tasked with providing such care. (See at pp. 20-22, *ante*.) The Legislature explained that the "[t]housands of Californians" who are experiencing untreated schizophrenia spectrum and psychotic disorders, as well as their "families[] and communities," "deserve a path to care and wellness"—*before* the point of "arrest, conservatorship, or institutionalization." (Sen. Bill No. 1338 (2021-2022 Reg. Sess.) § 1, subds. (a), (b).) "With advancements in behavioral health treatments, many people with untreated schizophrenia spectrum and psychotic disorders can stabilize, begin healing, and thrive in community-based settings, with the support of behavioral health services, stabilizing medications, and housing." (*Id.*, subd. (b).) The CARE Act "provide[s] a new process for earlier action, support, and accountability." (*Id.*, subd. (c).)

Petitioner argues that the CARE Act fails rational basis review because individuals with disorders other than

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cases cited in this preliminary opposition—in which there was no such concession—apply rational basis review.

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schizophrenia and related psychotic disorders (such as "bipolar disorder and clinical depression") would "benefit from medication and engagement in voluntary treatment." (Petn. 46, 48; see also Petn. 46.) It is well-established, however, that the Legislature can "tak[e] reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.'" (*Kasler*, *supra*, 23 Cal.4th at p. 488, citation omitted.) As Dr. Mark Ghaly, Secretary of Health and Human Services, explained during the CARE Act's consideration, it was sensible for the Legislature to "focus[] on a narrower set of conditions"—schizophrenia and psychotic disorders—because they "are defined by impairment in insight and judgment," making it difficult for individuals with those disorders to recognize the need for treatment.[43] Such individuals also have much to gain from CARE Act intervention because, in general, they are "highly responsive to treatment, including stabilizing medications."[44]

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[43] Hearing before Sen. Com. on Judiciary on Sen. Bill No. 1338 (2001-2002 Reg. Sess.) (Apr. 26, 2022), testimony of Secretary Mark Ghaly <https://www.senate.ca.gov/media-archive?page=2> (as of Feb. 9, 2023) (see time stamp 0:14:16 of hearing audio file); see, e.g., Lehrer & Lorenz, *Anosognosia in Schizophrenia: Hidden in Plain Sight* (2014) 11 Innovations in Clinical Neuroscience 10, 11 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4140620> (as of Feb. 9, 2023) (individuals with schizophrenia commonly have an impaired ability to "recogniz[e] the signs and symptoms of the illness, attribut[e] consequences and deficits to the illness, and understand[] the need for treatment of the illness").

[44] Cal. Health and Human Services Agency, *CARE (Community Assistance, Recovery and Empowerment) Act* (2022)
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And by limiting the Act's coverage to a specific set of conditions, the Legislature ensured that the new CARE process would be *administrable*, providing care to a limited group of approximately "7,000 to 12,000 individuals across the state" without overwhelming state and local resources before the new civil court process has a chance to get off the ground.[45]

Finally, petitioner asserts that the Act fails rational basis scrutiny because it "rests on irrational fears, prejudice, and stereotypes." (Petn. 61.) Not so. As Secretary Ghaly testified, "we know, see, feel, interact with so many Californians who are very sick, very vulnerable, often living unhoused on the streets. And our answer [to date] is to walk by them until either . . . a

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p. 21, emphasis omitted <https://www.chhs.ca.gov/wp-content/uploads/2022/ 12/CARE-Act-Overview_ADA-Compliant.pdf> (as of Feb. 9, 2023); see also, e.g., Hearing before Sen. Com. on Judiciary on Sen. Bill No. 1338 (2001-2002 Reg. Sess.) (Apr. 26, 2022), testimony of Secretary Mark Ghaly describing "advances in treatment models and new longer-acting antipsychotic treatments" <https://www.senate.ca.gov/media-archive?page=2> (as of Feb. 9, 2023) (see time stamp 0:13:49 of hearing audio file); Zolezzi et al., *Long-Acting Injectable Antipsychotics: A Systematic Review of Their Non-Systemic Adverse Effect Profile* (2021) 177 Neuropsychiatric Disease and Treatment 1917, 1917 <https://www.ncbi.nlm. nih.gov/pmc/articles/PMC8214363/> (as of Feb. 9, 2023) ("growing evidence" that certain antipsychotic drugs are effective "in preventing relapse and rehospitalization, and in decreasing the negative consequences of poor adherence during the early phases of schizophrenia").

[45] Petn. RJN, RJN-0453 (transcript of Assem. Judiciary Com. Hearing, June 21, 2022).

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crime is committed . . . or a hospitalization [is effected] through . . . [the] LPS process."[46] No longer, the Secretary urged: "Let's come in early"; "let's . . . wrap around the individual with a set of resources that we know are available . . . ."[47] "[W]e believe we can change the arc of their life, bend it towards success . . . ."[48] As the Act's text and legislative history make clear (at pp. 20-31, 55-56, *ante*), the CARE Act is not a product of stereotype and prejudice, but a compassionate, informed, and considered response to our pressing mental health crisis.

CONCLUSION

For the foregoing reasons, the petition for writ of mandamus should be denied without any order to show cause. Respondents acknowledge that summary denial is the usual disposition for a petition that, like this one, does not establish any plausible entitlement for relief. In this case, however, additional guidance from the Court could discourage abstract, speculative litigation over the CARE Act in its pre-implementation stage, allowing California to begin the process of providing much needed support and assistance to persons experiencing severe, untreated mental illness. For that reason, respondents request that the Court consider expressly stating in the denial order or in a docket entry that the petition establishes no basis for a writ of mandamus or prohibition preventing the implementation of the CARE Act.

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[46] Petn. RJN, RJN-0450.

[47] Petn. RJN, RJN-0452.

[48] Petn. RJN, RJN-0453.

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Such an order would not, of course, preclude as-applied challenges to the CARE Act, as appropriate, once CARE courts are in operation.

Respectfully submitted,

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February 10, 2023

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CERTIFICATE OF COMPLIANCE

I certify that the attached PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE uses a 13-point Century Schoolbook font and contains 10,484 words.

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February 10, 2023

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