



11-1-2023

California's CARE Act: A Step Forward for Mental Healthcare, or a Step Back for Individual Liberties?

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California’s CARE Act: A Step Forward for Mental Healthcare, or a Step Back for Individual Liberties?

Tooba Naveed*

TABLE OF CONTENTS

I. INTRODUCTION.....	78
II. DUE PROCESS AND THE FUNDAMENTAL RIGHT TO REFUSE MENTAL HEALTHCARE TREATMENT	81
<i>A. Fourteenth Amendment Substantive Due Process.....</i>	81
<i>B. California Standards on the Right to Refuse Medical Treatment.....</i>	83
<i>1. An Overview of Existing Involuntary Civil Commitment Systems in California.....</i>	83
<i>2. The Constitutionality of California’s Existing Mental Health Systems Under Substantive Due Process.....</i>	84
III. THE CARE ACT: A NOVEL SYSTEM OF BEHAVIORAL HEALTHCARE	87
IV. HOW THE CARE ACT SAFEGUARDS THE FUNDAMENTAL RIGHT TO REFUSE TREATMENT	89
<i>A. The CARE Act Does Not Implicate the Right to Refuse Treatment Without Abiding by Existing Due Process Standards.....</i>	89
<i>1. The State’s Compelling Interest.....</i>	90
<i>2. The CARE Act is Narrowly Tailored to its Purpose</i>	91
<i>3. A CARE Plan Must be the Least Restrictive Form of Treatment</i>	92
<i>B. Failure to Complete a CARE Plan Does Not Lead to Harsh Sanctions.....</i>	94
<i>1. A Presumption for LPS Conservatorship Does Not Violate Due Process....</i>	94
<i>2. The CARE Act Will Not Force Medication Upon Respondents—Safeguarding Their Right to Refuse Treatment.....</i>	96
<i>3. The Reality Behind Noncompliance With Court-Ordered Treatment</i>	96
V. HOW CARE ACTORS CAN ENSURE THE LIBERTY INTERESTS OF RESPONDENTS REMAIN PROTECTED	97
<i>A. Sufficient Resources for Housing, Counseling, and Other Supports.....</i>	98
<i>B. Judges Must Prioritize Voluntary Treatment at All Costs.....</i>	99
VI. CONCLUSION	101

* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2024; B.A. Political Science, University of California, Davis, 2020. I would like to extend my profound thanks to the UPLR staff and editors for their diligent work in editing this Comment. Specifically, I would like to thank Grace Bransen, Volume 54 Chief Comment Editor, for her guidance and encouragement throughout the writing and research process. Lastly, thank you to my husband Usman, for always being my number one supporter.

I. INTRODUCTION

“[A]s sick as this may sound—I like when [my son’s] in jail.¹ And why is that?² It’s because I know he’s being fed.³ I know he’s being bathed.”⁴ California’s inadequate mental healthcare system often leaves individuals with severe mental disabilities helpless, despite the tireless efforts of their concerned loved ones.⁵ Those struggling with severe mental illness who cannot access adequate care remain at risk of going to prison before the State can provide them with necessary treatment.⁶ As a result, families desperately turn to abysmal solutions, like arrest and incarceration, to sustain their loved one’s basic needs.⁷ Meanwhile, the current system consistently deprives mentally disabled individuals of the opportunity to advocate for their own treatment.⁸

Communities across the State are expressing a growing need for effective tools to manage mental health crises in individuals suffering from severe mental disorders.⁹ The lack of a robust framework ensuring care to those who need it is a grave systemic failure in California’s behavioral healthcare laws.¹⁰ Mental health advocates describe the status quo for managing mental illness in California as a system of “no treatment until tragedy.”¹¹ Consequently, affected individuals often

¹ Daniela Pardo & Jackson Ellison, *Moms Make a Case for CARE Court*, SPECTRUM NEWS 1 (Aug. 2, 2022), <https://spectrumnews1.com/ca/la-west/inside-the-issues/2022/08/02/moms-make-a-case-for-care-court-> (on file with the *University of the Pacific Law Review*).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Erin Baldassari, *Newsom’s ‘Care Court’ Passes Senate but Still Faces Shortage of Treatment Beds, Housing*, KQED (May 24, 2022), <https://www.kqed.org/news/11914873/newsoms-care-court-faces-foe-shortage-of-treatment-beds-housing> (on file with the *University of the Pacific Law Review*); Pardo & Ellison, *supra* note 1; CAL. WELF. & INST. CODE § 5600.3 (West 2019) (“Serious mental disorders include, but are not limited to, schizophrenia, bipolar disorder, post-traumatic stress disorder, as well as major affective disorders or other severely disabling mental disorders.”).

⁶ Anita Chabria, *Column: Some Mentally Ill People Need to be Forced into Care. Newsom’s Plan Could Finally Help*, L.A. TIMES (Mar. 3, 2022), <https://www.latimes.com/california/story/2022-03-03/column-california-newsom-involuntary-care-mental-illness-health> (on file with the *University of the Pacific Law Review*).

⁷ Anita Chabria, *Column: ‘No Treatment Until Tragedy’ Is Our Mental Health System. CARE Court Could Change That*, L.A. TIMES (July 11, 2021), <https://www.latimes.com/california/story/2022-07-11/california-mental-health-newsom-care-courts> (on file with the *University of the Pacific Law Review*) (describing the “absurd advice” doctors and law enforcement give to families of individuals with severe mental health disabilities: have law enforcement arrest them to obtain necessary help).

⁸ See Baldassari, *supra* note 5 (describing how Shahada Hull, an individual struggling with homelessness and mental disabilities, depends on her godfather and caseworkers to advocate to hospitals and care centers on her behalf).

⁹ See Sigrid Bathen, *A Deep Dive into Newsom Plan to Overhaul Mental Health Policy*, CAPITOL WKLY. (Mar. 24, 2022), <https://capitolweekly.net/a-deep-dive-into-newsom-plan-to-overhaul-mental-health-policy/> (on file with the *University of the Pacific Law Review*) (discussing how those who experience severe mental disabilities and homelessness undergo a pattern of hospital visits, incarceration, and jail time).

¹⁰ Darrell Steinberg, *CARE Court Plan Rightly Targets Government’s Responsibilities to Homeless People*, STEINBERG INST. (Aug. 19, 2022), <https://steinberginstitute.org/care-court-plan-rightly-targets-governments-responsibilities-to-homeless-people/> (on file with the *University of the Pacific Law Review*) (“There is no right to mental health care, housing or shelter in California, nor any clear legal obligation for any level of government to provide it.”).

¹¹ Chabria, *supra* note 7.

do not receive comprehensive care until after a cycle of arrest, institutionalization, conservatorships, and incarceration.¹²

In an attempt to break the cycle, California Governor Gavin Newsom proposed legislation in early 2022 to overhaul the State's current mental health system.¹³ Governor Newsom dubbed the legislation "CARE" Act, standing for Community Assistance, Recovery, and Empowerment.¹⁴ The CARE Act pledges to implement an alternative process within the civil court system for individuals experiencing schizophrenia or psychotic disorders.¹⁵ Procedures within the CARE Act intend to place the individual subject to treatment at the center of all decision-making regarding their behavioral healthcare.¹⁶

The CARE Act authorizes designated people—such as family members, roommates, and behavioral specialists—to petition a civil court to initiate treatment plans for the individual needing care.¹⁷ The criteria requires the individual needing care, or the respondent, to be experiencing a severe mental illness and unlikely to survive safely in the community without support.¹⁸ If the respondent qualifies, the court will order the parties to enter into a CARE agreement—a voluntary settlement the parties agree upon.¹⁹ A CARE agreement

¹² CAL. HEALTH & SAFETY CODE § 1374.723 (enacted by Chapter 319); CAL. INS. CODE § 10144.54 (enacted by Chapter 319); CAL. PENAL CODE § 1370.01 (enacted by Chapter 319); CAL. WELF. & INST. CODE §§ 5970, 5801, 5813.5 (enacted and amended by Chapter 319, respectively); *see also* *Institutionalization*, APA DICTIONARY OF PSYCH., <https://dictionary.apa.org/institutionalization> (last visited Jan. 1, 2023) (on file with the *University of the Pacific Law Review*) (defining institutionalization as "placement of an individual in an institution for therapeutic or correctional purposes or when he or she is incapable of living independently"); *Advocates Oppose California CARE Legislation*, HUM. RTS. WATCH (June 14, 2022), <https://www.hrw.org/news/2022/08/04/advocates-oppose-california-care-court-legislation> (on file with the *University of the Pacific Law Review*) (defining conservatorship as "a legal determination that deprives a person of the right to choose where to reside, to make medical decisions, . . . and other fundamental rights"); *Incarceration*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/incarceration> (last visited Jan. 1, 2023) (on file with the *University of the Pacific Law Review*) (defining incarceration as "confinement in a jail or prison").

¹³ Bathen, *supra* note 9; HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (stating that the legislature strives to continue expanding behavioral healthcare services to end homelessness).

¹⁴ Bathen, *supra* note 9.

¹⁵ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (explaining how the CARE Act will introduce a new process within the civil court system which will ensure earlier and more effective resolutions for individuals seeking behavioral healthcare); *What is Schizophrenia?*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/patients-families/schizophrenia/what-is-schizophrenia> (last visited Jan. 1, 2022) (on file with the *University of the Pacific Law Review*) ("[S]ymptoms [of schizophrenia] can include delusions, hallucinations, disorganized speech, trouble with thinking and lack of motivation. . . . Psychosis refers to a set of symptoms characterized by a loss of touch with reality due to a disruption in the way that the brain processes information."); *Psychotic Disorders*, MEDLINEPLUS, <https://medlineplus.gov/psychoticdisorders.html> (last visited Apr. 2, 2023) (on file with the *University of the Pacific Law Review*) ("Psychotic disorders are severe mental disorders that cause abnormal thinking and perceptions. . . . Two of the main symptoms are delusions and hallucinations.").

¹⁶ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (explaining how self-determination is important to CARE proceedings and the Act intends to promote supported decision-making).

¹⁷ *Id.* (defining a CARE plan as an "individualized, appropriate range of community-based services and supports").

¹⁸ *Id.* (describing severe mental illness as having a diagnosis such as schizophrenia and other psychotic disorders that are primarily psychiatric in nature).

¹⁹ *Infra* Part III (detailing the requirements to qualify under the CARE Act); HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (defining "parties" as including the individual who petitioned to the Court, the respondent, and the behavioral health agency from the county where the proceedings take place).

gives the respondent access to the care and services they need for recovery, such as housing, medication, and behavioral care.²⁰ If the court agrees that the respondent meets the criteria for a CARE plan, it will issue orders to require the respondent to abide by these plans.²¹ The respondent's lack of participation will give rise to a presumption in subsequent hearings that additional intervention may be necessary, such as through a conservatorship or other proceeding.²²

Civil and disability rights advocates have expressed disappointment towards the Act.²³ They fear it will subject those with mental disabilities to unfavorable and coercive treatment.²⁴ Most concerning, the CARE Act may risk depriving an individual of their constitutional right to refuse treatment.²⁵ Yet, upon taking a more nuanced look at the law and its procedures, the Act's stringent protections against coercive care may not actualize these concerns.²⁶

The CARE Act protects the fundamental right to make medical decisions by ensuring courts allow respondents the opportunity to volunteer for treatment.²⁷ However, to further safeguard an individual's fundamental rights, those responsible for the CARE Act's enforcement must prioritize voluntary treatment and ensure the respondent is fully informed.²⁸ Part II outlines standards for the fundamental right to refuse medical treatment according to federal and California law and discusses the existing behavioral healthcare mechanisms in the State.²⁹ Part III provides an in-depth discussion on how CARE courts function and the specific procedures the new legislation implements.³⁰ Part IV analyzes how the CARE Act preserves due process protections.³¹ Part V explores proposals for the courts to consider when enforcing the CARE Act to ensure the Act honors its commitment to the respondent's self-determination and recovery.³²

²⁰ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²¹ *Id.*

²² *CARE Court FAQ*, CAL. HEALTH & HUM. SERVS., (2022), https://www.chhs.ca.gov/wp-content/uploads/2022/03/CARECourt_FAQ.pdf (on file with the *University of the Pacific Law Review*) ("Failure to participate in . . . the CARE Plan may result in additional actions, consistent with existing law, including possible referral for conservatorship . . ."); *Understanding the Lanterman-Petris-Short (LPS) Act*, DISABILITY RTS. CAL. (Jan. 8, 2018), <https://www.disabilityrightsca.org/publications/understanding-the-lanterman-petris-short-lps-act> (on file with the *University of the Pacific Law Review*) (outlining several hearings that can occur under the LPS Act, including hearings for 14-day holds in a treatment facility and habeas corpus hearings challenging the hold).

²³ SENATE FLOOR, FLOOR ANALYSIS OF SB 1338, at 12, 15 (Aug. 30, 2022) (listing Human Rights Watch, American Civil Liberties Union, Disability Rights California, National Homelessness Law Center, and other civil and disability advocacy groups in opposition of the CARE Act).

²⁴ Bathen, *supra* note 9.

²⁵ ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 19–21 (Aug. 25, 2022) (explaining the legal basis behind the right to refuse treatment under the California Constitution and federal law, and opponents' concern that CARE Court permits coercive treatment).

²⁶ *Infra* Part IV; Bob Egelko, *California Supreme Court Rejects Challenge to Newsom's CARE Court Plan to Address Mental Illness*, S.F. CHRON. (Apr. 19, 2023), <https://www.sfchronicle.com/politics/article/supreme-court-care-court-17907396.php> (on file with the *University of the Pacific Law Review*).

²⁷ *Infra* Part IV; Egelko, *supra* note 26.

²⁸ *Infra* Part V.

²⁹ *Infra* Part II.

³⁰ *Infra* Part III.

³¹ *Infra* Part IV.

³² *Infra* Part V.

II. DUE PROCESS AND THE FUNDAMENTAL RIGHT TO REFUSE MENTAL HEALTHCARE TREATMENT

The Constitution and the United States Supreme Court establish foundational due process principles that implicate the states' ability to regulate the right to refuse treatment.³³ States supplement these foundational principles by creating more specific procedures and standards regarding the right to refuse treatment.³⁴ Section A details the due process framework under the Fourteenth Amendment of the United States Constitution.³⁵ Section B discusses California's standards for the right to refuse treatment.³⁶

A. Fourteenth Amendment Substantive Due Process

The United States Constitution protects against state governments depriving individuals of their right to fundamental liberties without due process of the law.³⁷ The Fourteenth Amendment prevents states from curtailing rights that fall into one of three categories.³⁸ These categories include procedural due process, substantive due process, and various rights enumerated in the Bill of Rights.³⁹ The right to refuse treatment, for example, falls within substantive due process.⁴⁰ Substantive due process protects various rights that the Constitution does not enumerate.⁴¹ The United States Supreme Court frequently refers to principles of history and tradition when determining what rights a state cannot deprive a person of without due process.⁴² If the Court finds that a right is fundamental, the Court analyzes whether the state has provided adequate justification for depriving a citizen of that right.⁴³

³³ ASSEMBLY FLOOR, FLOOR ANALYSIS of SB 1338, at 12–13 (Aug. 25, 2022).

³⁴ ASSEMBLY FLOOR, FLOOR ANALYSIS of SB 1338, at 13 (Aug. 25, 2022).

³⁵ *Infra* Section II.A.

³⁶ *Infra* Section II.B.

³⁷ U.S. CONST. amend. XIV, § 1 (“No state shall . . . deprive any person of life, liberty, or property, without due process of law . . .”).

³⁸ Nathan S. Chapman & Kenji Yoshino, *The Fourteenth Amendment Due Process Clause*, NAT’L CONST. CTR., <https://constitutioncenter.org/the-constitution/articles/amendment-xiv/clauses/701> (last visited Jan. 13, 2023) (on file with the *University of the Pacific Law Review*).

³⁹ *Id.* (“‘Procedural due process’ concerns the procedures that the government must follow before it deprives an individual of life, liberty, or property. . . . [T]he Court has held that the Due Process Clause ‘incorporates’ many—but not all—of the individual protections of the Bill of Rights against the states. . . . The Court has also deemed the due process guarantees of the . . . Fourteenth Amendment[] to protect certain substantive rights that are not listed (or ‘enumerated’) in the Constitution.”).

⁴⁰ See *Washington v. Harper*, 494 U.S. 210, 222–23 (1990) (“We have no doubt that . . . respondent possesses a significant liberty interest in avoiding the unwanted administration of antipsychotic drugs under the [Fourteenth Amendment] Due Process Clause . . .”); see also *Cruzan v. Dir., Mo. Dep’t. of Health*, 497 U.S. 261, 278 (1990) (finding that a competent person has the right to refuse life-saving treatment, given the “constitutionally protected liberty interest in refusing unwanted medical treatment”).

⁴¹ Chapman & Yoshida, *supra*, note 38.

⁴² *Id.* (explaining how critics have intensely debated the methodology the Court utilizes in determining which rights are fundamental and deserving of protection under substantive due process).

⁴³ Erwin Chemerinsky, *Substantive Due Process*, 15 TUORO L. REV. 1501, 1501 (1999) (discussing how the state must provide a compelling interest).

The state must have a “compelling” interest that is narrowly tailored to the means used to deprive citizens of the fundamental right.⁴⁴ States commonly invoke their police power to protect the “general welfare of society, even at the expense of individual liberty.”⁴⁵ States also point to their *parens patriae* interest of protecting vulnerable individuals who are unable to take care of themselves.⁴⁶ The state may also have to prove that its action was the least restrictive means for achieving the compelling interest.⁴⁷ If the Court determines the state has not met this burden, it will strike down the law as unconstitutional.⁴⁸ If the right is not considered fundamental, the state must merely show a rational relationship between its action and the purpose behind it.⁴⁹

Federal due process requires the government to honor citizens’ right to refuse treatment and to not confine law-abiding persons “unless they pose some risk of harm.”⁵⁰ The government can impose involuntary treatment on mentally ill individuals “to prevent harm to that person or others,” so long as these actions comply with due process standards.⁵¹ Beyond this foundation, the United States Supreme Court does not provide a clear test for when a court may subject individuals to involuntary mental health treatment.⁵² State statutes fill in this gap regarding involuntary mental health treatment and courts can subject such statutes to scrutiny.⁵³

⁴⁴ Elizabeth A. McGuan, *New Standard for the Involuntary Commitment of the Mentally Ill: “Danger” Redefined*, 11 MARQ. ELDER’S ADVISOR 181, 192 n.83 (2009); Ruth Ann Strickland, *Narrowly Tailored Laws*, FIRST AMEND. ENCYCLOPEDIA, <https://www.mtsu.edu/first-amendment/article/1001/narrowly-tailored-laws> (last visited Apr. 11, 2023) (on file with the *University of the Pacific Law Review*) (“[N]arrowly tailored’ . . . means that laws must be written precisely to place as few restrictions as possible on . . . liberties.”).

⁴⁵ Christyne E. Ferris, *The Search for Due Process in Civil Commitment Hearings: How Procedural Realities Have Altered Substantive Standards*, 61 VAND. L. REV. 959, 966 (2008).

⁴⁶ Ferris, *supra* note 45, at 966; *Parens Patriae*, BLACK’S LAW DICTIONARY, https://blacks_law.en-academic.com/37073/parens_patriae (last visited June 4, 2023) (on file with the *University of the Pacific Law Review*) (translating *parens patriae* as “parent of the country,” referring to the role of states as guardians over people with legal disabilities).

⁴⁷ McGuan, *supra* note 44, at 192 n.83.

⁴⁸ McGuan, *supra* note 44, at 192; Chapman & Yoshino, *supra* note 38 (referencing how the Court has struck down laws it has found to violate fundamental liberties, such as the right to privacy or the right to contract).

⁴⁹ McGuan, *supra* note 44, at 192 (discussing how a court’s standard of review under rational basis is more deferential than strict scrutiny).

⁵⁰ SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., CIVIL COMMITMENT AND THE MENTAL HEALTH CARE CONTINUUM: HISTORICAL TRENDS AND PRINCIPLES FOR LAW AND PRACTICE 1 (2019).

⁵¹ ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 14 (Aug. 25, 2022).

⁵² ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 13 (Aug. 25, 2022) (“[T]he Court has not drawn any bright lines or offered up any neat ‘factor’ test for identifying the precise conditions that would justify treating mentally ill persons against their will.”).

⁵³ See ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 13 (Aug. 25, 2022) (explaining that while states can subject involuntary treatment when necessary, the “power to do so is not unlimited and must respect the due process and liberty interests protected by the 14th Amendment”).

B. California Standards on the Right to Refuse Medical Treatment

Like the United States Constitution, California's Constitution also establishes that the State cannot deprive a person "of life, liberty, or property without due process of law."⁵⁴ A state's involuntary civil commitment mechanisms, or legal interventions where judges may order those with severe mental disabilities to obtain treatment, must comply with federal due process standards.⁵⁵ States expand upon the specific procedures for commitment proceedings through statutes and case law.⁵⁶ Subsection 1 surveys the involuntary civil commitment systems that exist in California.⁵⁷ Subsection 2 applies California Supreme Court case law to these mechanisms and discusses how they have surpassed due process review.⁵⁸

1. An Overview of Existing Involuntary Civil Commitment Systems in California

In 1967, the California Legislature passed the Lanterman-Petris-Short ("LPS") Act—drastic reform to years of institutionalization and forced confinement for patients suffering from severe mental disabilities.⁵⁹ LPS allows licensed behavioral specialists and police officers to take an individual into custody if they believe that individual is a danger to themselves or others.⁶⁰ A psychiatric hospital subjects the individual to a 72-hour psychiatric hold, during which medical professionals evaluate the individual to determine if they are safe for release.⁶¹ Medical professionals can subject patients to longer holds if they determine the patient is still a danger to themselves or cannot provide for their own basic needs.⁶²

LPS also established the processes for instituting conservatorships.⁶³ A court uses conservatorships to appoint decision-makers for individuals the court has deemed either incapable of caring for themselves or a danger to others.⁶⁴ An individual's conservator can make decisions on their behalf, including what medications to take, where to live, and how to spend one's money.⁶⁵ An

⁵⁴ CAL. CONST. art. I, § 7.

⁵⁵ SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 1 (defining involuntary civil commitment as a mechanism for confining an individual with a serious mental disorder to a psychiatric hospital, or briefly providing them with supervised outpatient treatment).

⁵⁶ *Id.*

⁵⁷ *Infra* Subsection II.A.1.

⁵⁸ *Infra* Subsection II.A.2.

⁵⁹ Bathen, *supra* note 9 (discussing how legislators introduced LPS in response to a history of placing those with mental disabilities into mental institutions with questionable conditions and no promise of treatment).

⁶⁰ DISABILITY RTS. CAL., *supra* note 22.

⁶¹ DISABILITY RTS. CAL., *supra* note 22; CAL. WELF. & INST. CODE § 5150 (listing those who can conduct evaluations as including the professional in charge of the psychiatric facility, a member of its attending staff, or professional whom the county designates).

⁶² DISABILITY RTS. CAL., *supra* note 22.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

investigator will designate a conservator to the individual, given the most suitable person available.⁶⁶

In 2002, the California Legislature introduced The Assisted Outpatient Treatment Demonstration Project Act, known as Laura's Law.⁶⁷ Laura's Law imposes strict legal requirements for assisted outpatient treatment ("AOT") in California.⁶⁸ AOT constitutes court-ordered treatment services, such as frequent individual counseling and therapy, educational training, and prescribed medication.⁶⁹ To participate in AOT, an individual must be suffering from severe mental illness and be unable to survive safely in the community without supervision.⁷⁰ A clinical evaluation of the individual will establish these factors, along with the individual's history of noncompliance, hospitalizations, and acts or attempts of violence against themselves or others.⁷¹ Though all large counties in the state have implemented Laura's Law, counties can opt out if their governing body chooses not to follow it.⁷²

2. The Constitutionality of California's Existing Mental Health Systems Under Substantive Due Process

Under the LPS Act, the State recognizes that individuals with mental disabilities hold the same legal rights guaranteed to others, "unless specifically limited by federal or state law."⁷³ In *In re Qawi (Qawi)*, the California Supreme Court held that the State's Constitution guarantees the freedom to reject intrusions to one's bodily integrity.⁷⁴ The court articulated that this right "clearly extends to the right to refuse antipsychotic drugs."⁷⁵ In criminal cases, the state's interest in "providing care to citizens who are unable . . . to care for themselves" must be narrowly imposed on adults who are found incompetent.⁷⁶

In *Conservatorship of George H.*, a California court of appeal held criminal law due process protections do not apply to civil commitment

⁶⁶ DISABILITY RTS. CAL., *supra* note 22 ("[Y]our conservator can be a friend or a family member. You may nominate who you would like to be your conservator, but it's up to the judge to decide the most suitable person or agency for your conservatorship."); CAL. WELF. & INST. CODE § 5355 (West 2012) (stating the officer conducting the conservatorship investigation designates the most suitable individual as conservator, whose interests or responsibilities should not compromise their ability to safeguard the conservatee's interests).

⁶⁷ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

⁶⁸ CAL. WELF. & INST. CODE § 5346 (West 2023); SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 14 (listing the services AOT plans offer as including intensive case management and supported housing).

⁶⁹ SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 14; CAL. DEP'T. HEALTH CARE SERV., LAURA'S LAW: ASSISTED OUTPATIENT TREATMENT DEMONSTRATION PROJECT ACT OF 2002 24 (2022).

⁷⁰ WELF. & INST. § 5346.

⁷¹ *Id.*

⁷² HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; CAL. DEP'T. HEALTH CARE SERV., *supra* note 69, at 9 (listing the thirty-one counties in California that have adopted Laura's Law and explaining how counties can opt out if their governing body passes a resolution).

⁷³ CAL. WELF. & INST. CODE § 5325.1 (West 2023).

⁷⁴ *In re Qawi*, 32 Cal. 4th 1, 14 (2004).

⁷⁵ *Id.*

⁷⁶ *Id.* (defining incompetent as "incapable of making rational decisions about [one's] own medical treatment").

proceedings, such as LPS conservatorship hearings.⁷⁷ Since statutes limit the commitments in duration and the sole state interest is the “care, diagnosis, treatment, and protection” of mentally disabled individuals, commitments are distinct from punishment.⁷⁸ The California Supreme Court in *Conservatorship of John L. (John L.)* similarly found that LPS proceedings are civil rather than criminal in nature.⁷⁹ The Court also held that despite the significant liberty interest at stake, the LPS Act provides multiple safeguards to avoid erroneous resolutions.⁸⁰ The Court referred to the substantial public interests behind the LPS Act, such as providing prompt “treatment of persons with serious mental disorders and protecting public safety.”⁸¹ In *Conservatorship of K.P. (K.P.)*, the California Supreme Court upheld the constitutionality of conservatorship proceedings because courts must find the individual is gravely disabled before approving conservatorships.⁸² A finding of grave disability requires that a person is “unable to provide for his or her basic needs for food, clothing, or shelter.”⁸³ Neither the U.S. nor California Constitution require proof of the individual’s “resistance to voluntary treatment” to qualify for a conservatorship.⁸⁴ However, an individual may not have a grave disability if they voluntarily accept treatment.⁸⁵

Although civil disability rights groups contested Laura’s Law for infringing on the right to refuse treatment, similar AOT statutes in other states have withstood constitutional challenges.⁸⁶ In *In re K.L.*, the New York Court of Appeals upheld Kendra’s Law—the AOT statute in New York after which California modeled Laura’s Law.⁸⁷ The Court held Kendra’s law complied with the constitutional right to refuse treatment, and that this right must yield to the state’s various compelling interests.⁸⁸ These interests included the state’s “police power to protect the community” from potentially dangerous individuals, to maintain order, and provide care to those “unable to care for themselves.”⁸⁹

According to the Court, “the restriction on a patient’s freedom effected by a court order authorizing assisted outpatient treatment is minimal” and a violation

⁷⁷ *Conservatorship of George H.*, 169 Cal. App. 4th 157, 164 (2008) (applying procedural rules from civil trials to conservatorship proceedings, excluding the right to jury trial on rehearings, the right to warning against self-incrimination, and the right to counsel).

⁷⁸ *Id.*

⁷⁹ *Conservatorship of John L.*, 48 Cal.4th 131, 147 (2010).

⁸⁰ *Id.* at 150–51.

⁸¹ *Id.* at 150.

⁸² *Conservatorship of K.P.*, 11 Cal.5th 695, 718 (2021) (“It has long been held that the gravely disabled standard is constitutionally sufficient to justify the imposition of a conservatorship.”).

⁸³ *Id.* at 705.

⁸⁴ *Id.* at 718.

⁸⁵ *Id.* at 718 (“[T]he fact finder may conclude there is no grave disability if a person is both willing and able to accept treatment that will ensure basic survival needs are met.”).

⁸⁶ Bathen, *supra* note 9; SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 17 n.20 (identifying New York’s AOT law as one which the State’s highest court has upheld as constitutional).

⁸⁷ *K.L.*, 1 N.Y.3d at 372; *Frequently Asked Questions on Laura’s Law*, TREATMENT ADVOC. CTR., <https://www.treatmentadvocacycenter.org/component/content/article/2651> (last visited Mar. 11, 2023) (on file with the *University of the Pacific Law Review*).

⁸⁸ *K.L.*, 1 N.Y.3d at 370.

⁸⁹ *Id.*

“ultimately carries no sanction.”⁹⁰ Kendra’s Law, like Laura’s Law, requires that the patient is unlikely to survive safely in the community or has a history of hospitalization or noncompliance with treatment.⁹¹ AOT in both states must also be the least restrictive form of care for the patient.⁹² Since these findings must be made with clear and convincing evidence before ordering treatment, the New York court found the standards under AOT did not violate due process.⁹³ The Court found that by requiring these findings before ordering treatment, the State “properly invoked” its police powers to care for citizens “unable to care for themselves.”⁹⁴

Laura’s Law has documented success at curtailing the harmful effects of severe mental illness amidst receiving fervent criticism.⁹⁵ Across participating counties, thirty-two percent of clients in AOT experienced a reduction in homelessness, and forty percent avoided hospitalization compared to their status before program participation.⁹⁶ Forty-two percent of clients also avoided law enforcement contacts.⁹⁷ Despite this success, legislators sought a more heavy-handed approach—one which the State would require counties to enforce.⁹⁸ Limited state oversight and weak enforcement of Laura’s Law prompted Governor Gavin Newsom to push for the CARE Act.⁹⁹ His goal was to hold counties accountable in providing support for those with serious mental health concerns.¹⁰⁰ The CARE Act aims to reach individuals who don’t qualify under existing mental healthcare systems or are unable to seek out treatment because of their condition.¹⁰¹ The Act imposes a mandatory program to combat severe mental illness before it culminates into crisis management.¹⁰²

⁹⁰ *Id.* (“[T]he coercive force of the order lies solely in the compulsion generally felt by law-abiding citizens to comply with court directives.”).

⁹¹ WELF. & INST. § 5346; *K.L.*, 1 N.Y.3d at 371–72.

⁹² *K.L.*, 1 N.Y.3d at 372 (finding that the “least restrictive alternative” requirement substantiates the New York AOT statute’s constitutionality); WELF. & INST. § 5346 (requiring “participation in the assisted outpatient treatment” to “be the least restrictive placement necessary to ensure the person’s recovery”).

⁹³ *K.L.*, 1 N.Y.3d at 372; *see also* *Clarke v. Cotton*, 263 Ga. 861, 863 (1994) (“Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence, but less than beyond a reasonable doubt.”).

⁹⁴ Jorgio Castro, *Laura’s Law: Concerns, Effectiveness, and Implementation*, 10 CAL. LEGAL HIS. 175, 189 (2015).

⁹⁵ *What is AOT?*, TREATMENT ADVOC. CTR., <https://www.treatmentadvocacycenter.org/storage/documents/aot-one-pager.pdf> (last visited Jan. 12, 2023) (on file with the *University of the Pacific Law Review*) (finding AOT programs “have been shown to reduce hospitalization, arrest and incarceration, homelessness and violent acts associated with mental illness”).

⁹⁶ CAL. DEP’T. HEALTH CARE SERV., *supra* note 69 (discussing how clients who participated in AOT experienced housing instability and incarceration for fewer days than before the program).

⁹⁷ *Id.*

⁹⁸ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

⁹⁹ Bathen, *supra* note 9.

¹⁰⁰ *Id.*

¹⁰¹ SENATE FLOOR, FLOOR ANALYSIS OF SB 1338, at 13 (Aug. 30, 2022).

¹⁰² HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; Chabria, *supra* note 7.

III. THE CARE ACT: A NOVEL SYSTEM OF BEHAVIORAL HEALTHCARE

The CARE Act tasks the Judicial Council with providing training and technical assistance to judges to support the implementation of the Act within civil courts across California counties.¹⁰³ Designated individuals can petition for someone experiencing severe mental illness—such as schizophrenia and other psychotic disorders—to be referred to CARE court.¹⁰⁴ The individual must either be unlikely to survive safely without supervision or gravely disabled—meaning they are in need of care to prevent the deterioration of their health.¹⁰⁵ Participation in a CARE plan must be the “least restrictive alternative necessary to ensure the person’s recovery and stability.”¹⁰⁶ It must also be likely that the respondent “will benefit from participation in a CARE plan.”¹⁰⁷

The petition to the court must include an affidavit from a licensed healthcare professional who either examined or attempted to examine the individual.¹⁰⁸ The licensed professional must find the respondent meets the diagnostic criteria for the CARE process.¹⁰⁹ Alternatively, the petition can include proof that the respondent has a detention record under intensive treatment, such as an LPS hold.¹¹⁰ The CARE court will review the petition and can grant the county additional time to engage the respondent in voluntary treatment before continuing court proceedings.¹¹¹

If the court finds that the individual does not meet the CARE Act’s criteria, or if voluntary care adequately satisfies their needs, the court dismisses the case.¹¹² If the respondent is eligible and can form a voluntary agreement with their counsel and the county behavioral health agency, the court will approve its terms and set a progress hearing.¹¹³ If the parties fail to enter into a voluntary agreement, the court

¹⁰³ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; *Judicial Council, THE STATE BAR OF CAL.*, <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Committee-Appointment-Opportunities/Judicial-Council> (last visited Jan. 13, 2023) (on file with the *University of the Pacific Law Review*) (“The Judicial Council is the constitutionally created policy making body of the California courts . . . responsible for ensuring the consistent, independent, impartial and accessible administration of justice.”).

¹⁰⁴ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (listing family members, friends, roommates, first responders, and licensed behavioral health professionals as people who can file a petition to CARE court).

¹⁰⁵ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (explaining how a person whose health is declining to the point of grave disability can qualify for CARE, given the definition of grave disability under § 5008); CAL. WELF. & INST. CODE § 5008 (describing gravely disabled as a condition, caused by mental disability, in which someone cannot provide for their own basic needs such as food, shelter and clothing or poses a danger to themselves or others because of their mental disability).

¹⁰⁶ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁰⁷ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁰⁸ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; *see Affidavit*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/affidavit> (last visited Jan. 9, 2022) (on file with the *University of the Pacific Law Review*) (defining affidavit as “a sworn statement in writing made especially under oath or on affirmation”).

¹⁰⁹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* (outlining how the court sets a case management hearing to discuss evidence on whether the parties can come to a voluntary CARE agreement).

will order the county behavioral health agency to conduct a clinical evaluation of the respondent.¹¹⁴ This evaluation must address the respondent's clinical diagnosis, their legal capacity to provide informed consent to psychotropic medication, and an analysis of the agency's recommended services.¹¹⁵ The court will review the evaluation along with other evidence from the agency and the respondent.¹¹⁶

If the court finds the respondent meets CARE criteria, it orders the parties to form a new CARE plan.¹¹⁷ If the court agrees with the plan, it will issue any necessary orders to ensure the respondent can access the agreed-upon services.¹¹⁸ The Act states the behavioral health agency only require medication after finding the respondent lacks capacity to give informed consent.¹¹⁹ At any stage in CARE court, the court will not hold a respondent in contempt for failure to comply with their treatment plan.¹²⁰ If, after a year, the respondent shows by clear and convincing evidence that they are not participating in the treatment plan, the court may terminate their participation.¹²¹ If the respondent is later involved in an LPS hearing, their failure to complete a CARE plan will weigh against them in determining whether they require additional intervention.¹²²

Proponents of the CARE Act pledge that “[s]upporting a self-determined path to recovery and self-sufficiency is core to CARE.”¹²³ The respondent will receive notice of any hearings and a copy of the court's evaluation.¹²⁴ Additionally, the Act ensures respondents can access counsel at all stages, call witnesses and present evidence, and have a supporter present.¹²⁵ The court must offer the respondent the opportunity to participate in treatment voluntarily before subjecting them to a court-ordered plan.¹²⁶

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* (referencing how the respondent can present evidence on their conditions and can call witnesses to testify for them).

¹¹⁷ *Id.*

¹¹⁸ *Id.* (providing that court orders may include prioritization for services in respondent's CARE plan, such as for medication or for local entities to provide housing); CAL. HEALTH & HUM. SERVS., *supra* at note 22 (noting that CARE provides respondents with clinically appropriate and community-based services such as wellness and recovery support, and medications such as antipsychotic medications to reduce “hallucinations, delusions, and disorganization”).

¹¹⁹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (requiring an evaluation of the respondent's lack of ability to give informed consent to medication necessary for stabilization before administering this treatment).

¹²⁰ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; *see Held in Contempt*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/held%20in%20contempt> (last visited Jan. 12, 2023) (on file with the *University of the Pacific Law Review*) (defining being held in contempt as “considered by the court to have broken the law by disobeying or disrespecting the judge”).

¹²¹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹²² *Id.* (explaining how an LPS court may consider a respondent's failure to complete their CARE plan in a subsequent LPS hearing if one occurs within six months of terminating the CARE plan).

¹²³ CAL. HEALTH & HUM. SERVS., *supra* note 22 (contending that any services provided should be responsive to the unique needs and characteristics of the respondent); HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (providing that any treatment plans the court orders should not warrant improper removal from a respondent's natural environment to more restrictive placements).

¹²⁴ *Id.*

¹²⁵ *Id.* (defining supporter as an adult volunteer whom the court designates to the respondent to assist them in ensuring they understand the process and are involved in all decisions).

¹²⁶ *Id.*

IV. HOW THE CARE ACT SAFEGUARDS THE FUNDAMENTAL RIGHT TO REFUSE TREATMENT

The CARE Act implicates the right to refuse treatment by subjecting individuals to court-ordered treatment plans.¹²⁷ Although the court gives the respondent multiple opportunities to participate in forming their treatment plan, the court may ultimately subject them to a plan they may disagree with.¹²⁸ Civil and disability rights advocates argue the CARE Act establishes a system of coercive and involuntary treatment.¹²⁹ Upon a closer look at the Act, the Legislature's intent to ensure voluntary treatment, and the respondent's ample opportunity to participate, become clear.¹³⁰ As such, the Act successfully protects the respondent's right to refuse treatment without violating due process.¹³¹ Section A argues the CARE Act would prevail under a due process challenge, given its thorough assurances in protecting the respondent's rights.¹³² Section B discusses how the lack of harsh sanctions would also protect the CARE Act under a due process challenge.¹³³

A. The CARE Act Does Not Implicate the Right to Refuse Treatment Without Abiding by Existing Due Process Standards

Since the right to refuse treatment falls under substantive due process, a state must provide a compelling interest—narrowly tailored to the means used to implicate the right.¹³⁴ Subsection 1 explains how the CARE Act sufficiently provides a compelling interest supporting its decision to implicate the right to refuse treatment.¹³⁵ Subsection 2 analyzes how the CARE Act is narrowly tailored to its purpose.¹³⁶ Subsection 3 explores how the Act orders treatment for the respondent only when it is the least restrictive alternative.¹³⁷

¹²⁷ *Id.* (explaining that court-ordered plans are those which the presiding judge issues orders to comply with based on plans the behavioral health agency, respondent, and other supporters have formed).

¹²⁸ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (discussing how the court allows respondent to first come to a voluntary CARE plan, and later allows respondent to participate in the health agency's analysis of recommended services); Shonique Williams et al., *Advocates Oppose California CARE Court Legislation*, HUM. RTS. WATCH (June 14, 2022), <https://www.hrw.org/news/2022/08/04/advocates-oppose-california-care-court-legislation> (on file with the *University of the Pacific Law Review*).

¹²⁹ ASSEMBLY FLOOR, FLOOR ANALYSIS of SB 1338, at 15 (Aug. 25, 2022).

¹³⁰ *Id.* at 15.

¹³¹ ASSEMBLY FLOOR, FLOOR ANALYSIS of SB 1338, at 15 (Aug. 25, 2022); *Infra* Section IV.A.

¹³² *Infra* Section IV.A.

¹³³ *Infra* Section IV.B.

¹³⁴ McGuan, *supra* note 44, at 192

¹³⁵ *Infra* Subsection IV.A.1.

¹³⁶ *Infra* Subsection IV.A.2.

¹³⁷ *Infra* Subsection IV.A.3.

1. The State's Compelling Interest

The compelling interest commonly includes the state's interest in society's general welfare, or its *parens patriae* interest in protecting "individuals who are incapable of protecting themselves."¹³⁸ Governor Newsom has stated that the purpose behind the CARE Act is to provide a "new approach to stabilize people with the hardest-to-treat behavioral health conditions."¹³⁹ The Governor's office claims CARE court is a process which will provide behavioral healthcare "to those who are in serious need, and likely to benefit from the intervention."¹⁴⁰ The Act relies on its goal of protecting those with severe mental disabilities from further deterioration and harm.¹⁴¹ Under *John L.*, the court found the LPS Act validly serves to protect individuals from the "myriad forms of suffering endured by those unable to care for themselves."¹⁴² In support of the Act, lawmakers pointed to the existing administrative and legal barriers to care and the inability of vulnerable individuals to access care on their own.¹⁴³ The State invokes its *parens patriae* interest by unlocking avenues of treatment for individuals at risk of being gravely disabled or incapable of taking care of themselves.¹⁴⁴

Proponents of CARE court argue that previous systems failed to meet the demand for services because of the lack of pressure on the government to provide necessary services.¹⁴⁵ Legislators enacted CARE court to address gaps in a disorganized mental health system.¹⁴⁶ Counties can still opt out of implementing Laura's Law, and services under the LPS Act are inaccessible to families.¹⁴⁷ These shortcomings inhibit a family's ability to seek necessary intervention or support for their loved one experiencing a severe psychotic disorder.¹⁴⁸ In *In re K.L.*, the court articulated that the state may exercise "its police power interest in preventing violence and maintaining order" when mandating treatment to a patient.¹⁴⁹ CARE

¹³⁸ Ferris, *supra* note 45, at 966.

¹³⁹ Bathen, *supra* note 9.

¹⁴⁰ Egelko, *supra* note 26.

¹⁴¹ Chabria, *supra* note 7.

¹⁴² *John L.*, 48 Cal.4th at 150.

¹⁴³ ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 14 (Aug. 25, 2022).

¹⁴⁴ Ferris, *supra* note 45, at 967; HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (explaining how the CARE Act seeks to increase access to comprehensive services for those with "complex behavioral health care needs so they can stabilize and find a path to wellness and recovery").

¹⁴⁵ Bathen, *supra* note 9.

¹⁴⁶ *Id.* ("[M]ental health experts contend [the CARE court sanctions] are necessary to provide accountability in a patchwork system long known for inconsistent policy, lax follow-up, poor data collection—and extremely limited state oversight . . .").

¹⁴⁷ Sigrid Bathen, 'Laura's Law' Okayed in 30 Counties—A Major Statewide Turnaround, *CAPITOL WKLY.* (June 17, 2021), <https://capitolweekly.net/lauras-law-okayed-in-30-counties-a-major-statewide-turnaround/> (on file with the *University of the Pacific Law Review*) (explaining how each California county could opt out of implementing Laura's Law until legislation in 2020 required all counties to provide specific justifications before being automatically opted in); Bathen, *supra* note 9 ("[T]he promised 'community care' [under the LPS Act] for thousands of former state hospital residents never materialized. . . . Many family members were unwilling or unable to help, while other families became (and remain) default caregivers, with little or no support. Families who do try to help say they are blocked by overly stringent confidentiality laws, and frequently told by authorities that their relatives must be homeless or arrested—or worse—in order to get help.").

¹⁴⁸ Chabria, *supra* note 7.

¹⁴⁹ *K.L.*, 1 N.Y.3d at 370.

courts exercise these powers by requiring counties to provide greater access to comprehensive services for qualified individuals.¹⁵⁰ By delegating this authority to CARE courts, lawmakers hope to combat housing instability, reduce hospitalizations, and advance the wellness of mentally disabled citizens.¹⁵¹ Lawmakers' interest in "trying to address a broken mental health system" through the CARE Act directly invokes their authority under due process to advance society's general welfare.¹⁵²

2. *The CARE Act is Narrowly Tailored to its Purpose*

Since California lawmakers based Laura's Law almost entirely on Kendra's Law, it would likely withstand a constitutional challenge under due process.¹⁵³ As Laura's Law also created new pathways for court-ordered treatment, civil and disability rights groups protested its implementation across California counties.¹⁵⁴ Upon seeing the positive effects of the Law and its ability to successfully balance individuals' personal liberties with the need to provide care, legislators approved its expansion.¹⁵⁵ The CARE Act adopts many of the provisions in Laura's Law, particularly its stringent eligibility criteria and support for the respondent.¹⁵⁶

Laura's Law and the LPS Act have survived due process challenges partly because they require individuals to meet certain behavioral health standards before instituting mandatory treatment.¹⁵⁷ Laura's Law retains the same elements of Kendra's Law, which New York's highest court unanimously upheld as constitutional.¹⁵⁸ These elements include a diagnosis for a serious mental illness, being unlikely to survive safely in the community, and a history of noncompliance towards voluntary treatment without supervision.¹⁵⁹ Similarly, to qualify for a CARE court petition, the respondent must meet the diagnosis for schizophrenia or other psychotic disorders.¹⁶⁰ In addition, the respondent must be unlikely to survive

¹⁵⁰ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁵¹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; *see* Chabria, *supra* note 7 (explaining how the CARE Act aims to allow families to obtain help for their loved one "before a person deteriorates to the point of homelessness or violence").

¹⁵² Bathen, *supra* note 9.

¹⁵³ Castro, *supra* note 95, at 191.

¹⁵⁴ Bathen, *supra* note 148 (explaining that Disability Rights California protested Laura's Law's enactment because they believed it "violated the right to refuse treatment").

¹⁵⁵ *Id.* (quoting former legislator, Joe Simitian, stating, "I've had concerns in the past about civil liberties and due process issues with AOT. . . . But I'm now convinced that the law is crafted narrowly enough, and has enough protections built into it, that these concerns have been alleviated").

¹⁵⁶ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; Castro, *supra* note 95, at 182–83.

¹⁵⁷ Castro, *supra* note 95, at 182 (referring to Laura's Law as having a "robust and narrowly tailored statutory scheme"); *K.L.*, 1 N.Y.3d at 370 (holding the AOT statute in New York did not violate due process); CAL. WELF. & INST. CODE § 5150 (West 2023).

¹⁵⁸ Castro, *supra* note 95, at 191.

¹⁵⁹ Castro, *supra* note 95, at 183; WELF. & INST. § 5346 (requiring the individual to need AOT to prevent grave disability or serious harm to themselves or others).

¹⁶⁰ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

safely in the community, be gravely disabled, or pose a risk of harm to themselves or others.¹⁶¹

Courts have upheld AOT statutes as constitutional because the statutes require similar findings to be made before the court orders treatment.¹⁶² By requiring these criteria to qualify for CARE court, the Act narrowly construes its applicability towards a limited group of individuals—those with a serious need for support.¹⁶³ These requirements ensure the court's deprivation of the respondent's right to choose treatment is closely tied to the state's interest in providing care to its most vulnerable citizens.¹⁶⁴ The CARE Act's eligibility criteria parallel those in Laura's Law, an AOT statute also enforced through civil courts, and will only reach those who are severely, clinically ill.¹⁶⁵

3. A CARE Plan Must be the Least Restrictive Form of Treatment

As part of the federal due process analysis, the State may also have to prove that its action was the least restrictive means for achieving the compelling interest.¹⁶⁶ Each of these statutory schemes—Laura's Law, the LPS Act, and CARE court—require court-ordered treatment to be the least restrictive form of care for the patient.¹⁶⁷ While the CARE Act implicates the right to refuse treatment, it requires “participation in a CARE plan” to be the “least restrictive alternative necessary to ensure” recovery.¹⁶⁸ Because a CARE court must make this finding before ordering treatment, the Act meets the due process standard of using the least restrictive means of achieving its purpose.¹⁶⁹

To avoid a due process violation, civil commitment statutes can provide opportunities for voluntary treatment before ordering care.¹⁷⁰ Both Laura's Law

¹⁶¹ *Id.*

¹⁶² *K.L.*, 1 N.Y.3d at 371 (requiring a patient to be unlikely to survive in the community, have a history of hospitalization, or inability to care for oneself to order treatment).

¹⁶³ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (listing extensive criteria for an individual to qualify for CARE court proceedings); Castro, *supra* note 95, at 182–83 (providing how Laura's Law is narrowly tailored because of its detailed statutory requirements).

¹⁶⁴ Ferris, *supra* note 45, at 967.

¹⁶⁵ Compare HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (requiring the respondent to be eighteen years or older, suffering from severe mental illness, be unlikely to survive safely in the community or in need of treatment to prevent grave disability, and participation is the least restrictive alternative), with WELF. & INST. § 5346 (requiring the respondent to be eighteen or older, suffering from severe mental illness, unlikely to survive safely without supervision or at risk of grave disability, and participation in AOT is the least restrictive alternative).

¹⁶⁶ McGuan, *supra* note 44, at 192.

¹⁶⁷ WELF. & INST. § 5346 (“Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability.”); HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 ; WELF. & INST. § 5150 (“If . . . the person can be properly served without being detained, the person shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis.”).

¹⁶⁸ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁶⁹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; *K.L.*, 1 N.Y.3d at 372.

¹⁷⁰ Ferris, *supra* note 45, at 967 (detailing how many states' civil commitment and AOT statutes require courts to consider whether the “least restrictive alternative” for the respondent's care sufficiently satisfies the government's interest).

and the LPS Act require a court to provide the individual with an opportunity to participate in treatment voluntarily before ordering treatment or imposing conservatorships.¹⁷¹ The CARE Act also gives respondents ample opportunity to voluntarily participate in treatment before ordering unfavorable care plans.¹⁷² In *Conservatorship of K.P.*, the California Supreme Court found that the conservatorship court may consider an individual's "amenability to voluntary treatment" in determining whether a conservatorship is appropriate.¹⁷³ The Court rejected the requirement of finding of the individual's "resistance to voluntary treatment" before imposing a conservatorship.¹⁷⁴ Because the CARE Act provides the "suitable alternative" of voluntary care before compromising the right to refuse treatment, it exceeds due process requirements for a civil commitment statute.¹⁷⁵

For instance, a court only subjects a respondent to treatment plans they may disagree with once the court has given the respondent multiple opportunities to accept voluntary treatment.¹⁷⁶ Additionally, various provisions ensure the court only orders unfavorable care once the respondent is aware of potential treatment plans and their benefits.¹⁷⁷ A CARE court can grant the county additional time to engage the respondent in voluntary treatment and dismiss the petition if it finds voluntary treatment will be effective.¹⁷⁸ This step occurs before the parties must form a CARE agreement with the respondent, providing the respondent with an opportunity to decide their own treatment without court supervision.¹⁷⁹ Once the court provides the respondent with counsel and a supporter—and informs the respondent of their rights—the parties again attempt to enter a voluntary CARE agreement.¹⁸⁰ Because the Act allows and encourages voluntary engagement at multiple stages throughout the process, it allows for the court to avoid implicating the right to refuse treatment.¹⁸¹ This reinforces the court's ability to only order unfavorable treatment as a last resort—when it is the least restrictive means of providing care.¹⁸²

Ultimately, Governor Newsom and the California Legislature successfully exerted a compelling purpose for the CARE Act and have narrowly tailored its provisions to ensure it protects individuals' liberties.¹⁸³ Because the CARE Act has such specific and strict criteria, it remains narrowly tailored to its purpose of

¹⁷¹ DISABILITY RTS. CA., *supra* note 22 ("To be placed on a conservatorship, a professional person must first evaluate you and determine that you are . . . unwilling or incapable of accepting treatment voluntarily."); WELF. & INST. § 5346.

¹⁷² HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (including various points at which a respondent can choose to participate in treatment and create their own treatment plan).

¹⁷³ *K.P.*, 11 Cal.5th at 718 ("Amenability to voluntary treatment is thus relevant to the ultimate question of grave disability.").

¹⁷⁴ *Id.*

¹⁷⁵ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁷⁶ *Id.*

¹⁷⁷ ASSEMBLY FLOOR, FLOOR ANALYSIS of SB 1338, at 8 (Aug. 25, 2022).

¹⁷⁸ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *See id.* (allowing the respondent to voluntarily accept treatment at multiple stages in the CARE court process, reducing the court's risk of implicating the respondent's right to refuse treatment).

¹⁸² *Id.*

¹⁸³ ASSEMBLY FLOOR, FLOOR ANALYSIS of SB 1338, at 13 (Aug. 25, 2022).

protecting the respondent and their community.¹⁸⁴ And as the Act provides sufficient avenues for voluntary care before imposing unfavorable treatment, it ensures court-ordered treatment will be the least restrictive alternative.¹⁸⁵ Thus, if opponents challenge the CARE Act on the basis that it unconstitutionally deprives respondents of their right to refuse treatment, they are unlikely to succeed.¹⁸⁶

B. Failure to Complete a CARE Plan Does Not Lead to Harsh Sanctions

While analogous to existing civil commitment statutes, the CARE Act is distinct from Laura's Law and LPS because of its more robust enforcement mechanism: increased court oversight.¹⁸⁷ The CARE Act empowers the court to hold both the respondent and the county accountable.¹⁸⁸ The court can fine counties or government agencies for noncompliance with the judge's orders and dismiss the respondent for failure to complete a plan.¹⁸⁹ Failure to complete the plan may create a presumption for greater intervention at future LPS proceedings.¹⁹⁰ Governor Newsom argued this court system was necessary to ensure respondents comply with care that may be necessary for their recovery.¹⁹¹ Subsection 1 articulates why the presumption for conservatorships does not violate due process.¹⁹² Subsection 2 argues the CARE Act's prohibition against courts forcing medication upon the respondent further safeguards the respondent's right to refuse treatment.¹⁹³ Subsection 3 refutes the claim that court-ordered treatment forces the respondent into unfavorable avenues of treatment.¹⁹⁴

1. A Presumption for LPS Conservatorship Does Not Violate Due Process

Opponents of the CARE Act argue it is unjust to allow courts to weigh a respondent's failure to abide by their plan against them in a conservatorship hearing.¹⁹⁵ They argue the provision streamlines the respondent into a conservatorship, depriving the individual of the liberty to make their own choices.¹⁹⁶ However, the CARE Act does not state that a court is guaranteed to consider individuals for a conservatorship when they fail to complete their

¹⁸⁴ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; *see also* Castro, *supra* note 95, at 182 (finding Laura's Law to be narrowly tailored because of its statutory requirements).

¹⁸⁵ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁸⁶ *Infra* Section IV.A.; *see* ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 13 (Aug. 25, 2022) (describing the narrow scope of the bill and the constraints of the 14th Amendment).

¹⁸⁷ ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 11 (Aug. 25, 2022); Bathen, *supra* note 9 (characterizing the current mental health system as having "extremely limited state oversight, enforcement, or sanctions").

¹⁸⁸ Bathen, *supra* note 9.

¹⁸⁹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

¹⁹⁰ *Id.*

¹⁹¹ ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 14 (Aug. 25, 2022); *see* Bathen, *supra* note 9 (describing the Governor's desire to make changes to the state's mental health policies).

¹⁹² *Infra* Subsection IV.B.1.

¹⁹³ *Infra* Subsection IV.B.2.

¹⁹⁴ *Infra* Subsection IV.B.3.

¹⁹⁵ Williams et al., *supra* note 129.

¹⁹⁶ *Id.*

treatment plan.¹⁹⁷ For a court to impose a conservatorship on the respondent, an LPS hearing must occur within six months of a respondent failing to complete their CARE plan.¹⁹⁸ If the presumption arises that the individual needs more intervention because they did not complete their CARE plan, the conservatorship court must still meet LPS requirements.¹⁹⁹ The presumption is not “an expansion of conservatorships or a change in what qualifies a person for one.”²⁰⁰ The court cannot subject the respondent to a conservatorship without undergoing its requisite legal procedures, including a finding of danger to self or others or grave disability.²⁰¹ Thus, in order to place an individual in a conservatorship, a judge presiding over an LPS hearing must still conclude a conservatorship is the form of care least restrictive on the individual’s personal liberties.²⁰²

Each of these steps ensures the Act remains narrowly tailored to its purpose of protecting individuals who cannot survive safely in the community alone.²⁰³ These criteria limit the State’s authority to impede on an individual’s ability to choose their own treatment, especially as the Act hopes to prevent restrictive forms of care.²⁰⁴ As a California appellate court held in *John L.*, the “combination of due process protections” within the LPS Act sufficiently prevents “erroneous conservatorship decisions.”²⁰⁵ Since the Act’s “presumption” for conservatorships does not change existing LPS standards, and courts seek to apply conservatorships as a last resort, these standards comply with due process.²⁰⁶ The presumption alone does not deprive the right to refuse treatment any more than existing law already permits.²⁰⁷

¹⁹⁷ See HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (providing that the respondent’s failure to complete their CARE plan only creates a presumption for greater intervention in an LPS hearing if the government timely and adequately provided the respondent with the requisite services).

¹⁹⁸ *Id.*

¹⁹⁹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; Chabria, *supra* note 6.

²⁰⁰ Chabria, *supra* note 6.

²⁰¹ CAL. HEALTH & HUM. SERVS., *supra* note 22 (stating that a court may refer a respondent for a conservatorship in a way that is “consistent with current law”); WELF. & INST. § 5150; DISABILITY RTS. CAL., *supra* note 22.

²⁰² DISABILITY RTS. CAL., *supra* note 22; CAL. HEALTH & HUM. SERVS., *supra* note 22 (explaining that CARE court “seeks to prevent the need for conservatorship by intervening prior to the need for such restrictive services”).

²⁰³ *John L.*, 48 Cal.4th at 151 (finding that the LPS Act complies with due process because “several layers of important protections’ have been built into the system”); HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (listing strict criteria to qualify for CARE court).

²⁰⁴ CAL. HEALTH & HUM. SERVS., *supra* note 22.

²⁰⁵ *John L.*, 48 Cal.4th at 154.

²⁰⁶ CAL. HEALTH & HUM. SERVS., *supra* note 22; *John L.*, 48 Cal.4th at 154.

²⁰⁷ See CAL. HEALTH & HUM. SERVS., *supra* note 22 (“Failure to participate in any component of the CARE Plan may result in additional actions, consistent with existing law, including possible rerral for conservatorship with a new presumption that no suitsble alternative exists.”); *John L.*, 48 Cal.4th at 149 (finding that existing conservatorship law provides sufficient due process, due to “prehearing notice and counsel requirements,” “the availability of remedies after a conservatorship,” and “numerous checks [that] sufficiently guard against the risk of erroneous conservatorship decisions”).

2. The CARE Act Will Not Force Medication Upon Respondents—Safeguarding Their Right to Refuse Treatment

Some scholars argue that if AOT statutes allowed behavioral healthcare workers to administer medication involuntarily, they would not withstand due process review.²⁰⁸ These scholars reason it is not likely that the State's interest in protecting the respondent and the general welfare of society would override the deprivation of individual liberties.²⁰⁹ A CARE treatment plan may require a respondent to take short-term stabilization medication.²¹⁰ However, a court will only require medication upon an evaluation and hearing establishing the respondent lacks capacity to give informed consent to medication necessary for stabilization.²¹¹ A court's ability to administer psychotropic medication within the CARE Act would likely not impact its ability to withstand due process review.²¹²

In *Qawi*, the California Supreme Court held that individuals have a right to refuse medication, unless mental health professionals make a finding of incompetency.²¹³ Incompetency requires the individual to be "incapable of making rational decisions" about their own healthcare.²¹⁴ The CARE Act emphasizes that if the respondent refuses to take stabilization medication, no provider may forcibly administer it to them.²¹⁵ Additionally, the court will not penalize the respondent or terminate their CARE plan.²¹⁶ Thus, even with a court order to take stabilization medication, the respondent can still refuse to take medication.²¹⁷ These safeguards ensure the court protects the respondent's right to refuse medication, as recognized in *Qawi*.²¹⁸

3. The Reality Behind Noncompliance With Court-Ordered Treatment

Given that CARE proceedings take place in civil courts, the respondent will not face criminal liability for noncompliance, and thus can refuse treatment, to some extent.²¹⁹ If a respondent refuses to engage in the court-ordered plan, they may be subject to additional hearings or their participation in CARE court may be

²⁰⁸ SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50 at 17 n.20.

²⁰⁹ SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50 at 17 n.20 (explaining how the court in *In re K.L.* finds AOT is a minimal intrusion on the individual's liberties, but administering medication involuntarily may be more intrusive).

²¹⁰ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²¹¹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²¹² See HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (prohibiting forcibly administering medication); SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 17 n.20 (finding that courts would not find AOT statutes, if they allowed courts to involuntarily administer medication, to be constitutional).

²¹³ *Qawi*, 32 Cal. 4th at 19.

²¹⁴ *Id.* at 24.

²¹⁵ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; *Qawi*, 32 Cal.4th at 20.

²¹⁹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

terminated.²²⁰ Rather than subjecting the respondent to criminal penalties for failure to comply, a CARE court's accountability mechanisms focus on keeping the respondent under court supervision.²²¹ Options available to the court, when a respondent fails to participate in their court-ordered plan, include additional court hearings or referral for conservatorship.²²² Like AOT, "the coercive force" of a CARE order "lies solely in the compulsion generally felt by law-abiding citizens to comply with court-ordered directives."²²³ Because noncompliance with court-ordered treatment only triggers greater scrutiny from those administering care, respondents may feel they have no other choice but to follow through with the treatment.²²⁴ The Act also prohibits holding the respondent in contempt for not completing their CARE plan, ensuring the court does not impose any harsh penalties on the respondent.²²⁵

Thus, because a CARE plan cannot force medication—and failure to follow the plan will not automatically result in sanctions or conservatorship—the Act protects respondents' liberty interests.²²⁶ The CARE Act carefully ensures the court protects a respondent's fundamental interests in making their own healthcare decisions throughout the CARE process.²²⁷ The Act contains a broad array of protections to ensure the respondent has the opportunity to assert their interests and avoid restrictive forms of treatment.²²⁸ As written, the CARE Act clearly reflects legislators' goal of providing behavioral healthcare "while preserving self-determination."²²⁹

V. HOW CARE ACTORS CAN ENSURE THE LIBERTY INTERESTS OF RESPONDENTS REMAIN PROTECTED

Despite the CARE Act's careful compliance with due process standards and existing law, civil disability advocates still worry the new system will perpetuate more harm than good.²³⁰ CARE actors—judges, behavioral health workers, clinicians, and legislators—must ensure they enforce the CARE Act with

²²⁰ CAL. HEALTH & HUM. SERVS., *supra* note 22, at 3.

²²¹ *Id.*

²²² *Id.*

²²³ *K.L.*, 1 N.Y.3d at 370 (holding that Kendra's Law is not coercive); Castro, *supra* note 95, at 91 (analyzing that because Laura's Law is based almost entirely on Kendra's Law, it would similarly withstand a constitutional challenge).

²²⁴ *K.L.*, 1 N.Y.3d at 370 (discussing how a violation under AOT statutes "simply triggers heightened scrutiny on the part of the physician" who must determine whether more restrictive treatment is necessary); see CAL. HEALTH & HUM. SERVS., *supra* note 22, at 3 (describing the consequences of failing to follow a court-ordered CARE Plan).

²²⁵ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²²⁶ *Id.*

²²⁷ *Id.* (centering self-determination as a key value behind the CARE Act).

²²⁸ CAL. HEALTH & HUM. SERVS., *supra* note 22.

²²⁹ *Id.* (acknowledging that CARE courts hope to divert from restrictive conservatorships given the evidence that individuals can recover "in less restrictive, community-based care settings").

²³⁰ Manuela Tobias & Jocelyn Wiener, *California Lawmakers Approved CARE Court. What Comes Next?*, CALMATTERS (Sept. 8, 2022), <https://calmatters.org/housing/2022/09/california-lawmakers-approved-care-court-what-comes-next/> (on file with the *University of the Pacific Law Review*) (documenting the concerns of homelessness and disability rights advocates such as the ACLU of Southern California and Disability Rights California).

principles of self-determination and holistic care.²³¹ In enforcing CARE plans, counties must prioritize solutions that research has proven effective: providing accessible housing in conjunction with voluntary care.²³² Section A addresses shortages in services promised by the CARE Act, and the need to invest in these resources to ensure CARE actors enforce the Act as promised.²³³ Section B discusses judges' key role in adjudicating CARE treatment plans, and how judges should act diligently and conscientiously in this role.²³⁴

A. Sufficient Resources for Housing, Counseling, and Other Supports

A well-resourced treatment system is essential for court-ordered treatment to see successful outcomes in care and recovery.²³⁵ Opponents of the CARE Act point to the severity of preexisting shortages across mental health systems.²³⁶ For one, California is facing a large shortage of workers within the behavioral healthcare industry.²³⁷ Research predicts the State will lose fifty percent of its psychiatrists, and twenty-eight percent of its psychologists, within the next ten years to attrition and retirement.²³⁸ Even more harrowing is the lack of housing in the State.²³⁹ The CARE Act promises to streamline respondents' access to necessary housing resources, but given the statewide shortages, these resources either do not exist or are already scarce.²⁴⁰ California also faces a shortage of nearly five thousand psychiatric beds for short-term care, as well as nearly three thousand for long-term care.²⁴¹ For respondents subject to CARE proceedings that may require care in a psychiatric facility, this shortage may hinder their recovery.²⁴²

These services and resources are essential to the recovery of individuals suffering from severe mental disabilities—a fact CARE proponents were aware of when drafting the law.²⁴³ Legislators behind the CARE Act acknowledged that individuals struggling with mental illness and homelessness require multi-faceted solutions to address their problems, including housing and other social services.²⁴⁴ To promise these services to respondents subject to CARE proceedings—while knowing the resources are scarce—is contrary to the comprehensive care

²³¹ Williams et al., *supra* note 129; *Infra* Section V.B.

²³² Williams et al., *supra* note 129.

²³³ *Infra* Section V.A.

²³⁴ *Infra* Section V.B.

²³⁵ Erin Baldassari, *Newsom Signs 'CARE Court' Plan, Overhauling Mental Health Care in California*, KQED (Sept. 14, 2022), <https://www.kqed.org/news/11924117/governors-care-court-plan-passes-assembly-clearing-way-to-become-law> (on file with the *University of the Pacific Law Review*).

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Baldassari, *supra* note 5.

²³⁹ *Id.*

²⁴⁰ Baldassari, *supra* note 238.

²⁴¹ Baldassari, *supra* note 5.

²⁴² *Id.* (discussing how the lack of access to services in California's current mental health system makes recovery difficult).

²⁴³ *Id.*

²⁴⁴ ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 9, 14 (Aug. 25, 2022).

principles that support the Act.²⁴⁵ Legislators and other governmental institutions must invest in affordable housing supports and allocate funds towards strengthening the behavioral healthcare industry.²⁴⁶ CARE proponents should also consider investing part of the allocated budget towards hiring the requisite workforce.²⁴⁷ This allocation will ensure the State can provide the support it has promised to its participants.²⁴⁸ If lawmakers focus future legislative efforts towards investing in these resources, CARE courts can administer services effectively as the Act intended.²⁴⁹

B. Judges Must Prioritize Voluntary Treatment at All Costs

A CARE court works with the county behavioral health agency in forming a treatment plan with the respondent and their supporters.²⁵⁰ If the respondent refuses to form one voluntarily, the agency has greater discretion on which services to include in the recommended treatment plan.²⁵¹ Given the lack of research showing the effectiveness of involuntary care, the agency should weigh the respondent's refusal to voluntarily participate when forming their court-ordered plan.²⁵² The agency should avoid including any services or supports that the respondent vehemently opposes.²⁵³ Recovery is more successful when the individual is able to access housing and remain in their community while surrounded by peers.²⁵⁴ Most importantly, voluntary treatment is shown to "increase patient involvement and personal responsibility" and provide a greater opportunity for the patient to succeed in their rehabilitation.²⁵⁵

²⁴⁵ See Williams et al., *supra* note 129 ("A fully funded system would permit a person to choose their services...without fear of adverse legal consequences if they are found to be 'non-compliant' with treatment.").

²⁴⁶ See Williams et al., *supra* note 129 ("Evidence shows that housing provided with fidelity to Housing First principles leads to the types of positive outcomes for unhoused people that the state is misguidedly proposing to attain via CARE Court."); Baldassari, *supra* note 5 (opposing the CARE Act due in part to its failure to prioritize affordable housing).

²⁴⁷ Baldassari, *supra* note 5 (discussing the shortages within the mental healthcare industry); ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 16 (Aug. 25, 2022) (detailing the terms of the budget for CARE court hearings and resources).

²⁴⁸ Baldassari, *supra* note 5.

²⁴⁹ ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 14 (Aug. 25, 2022).

²⁵⁰ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²⁵¹ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (outlining how if the parties do not enter a CARE agreement on their own, the court orders the behavioral health agency to suggest services for the respondent).

²⁵² Williams et al., *supra* note 129; HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²⁵³ See ASSEMBLY FLOOR, FLOOR ANALYSIS OF SB 1338, at 15 (Aug. 25, 2022) ("The right framework allows people with disabilities to retain autonomy over their own lives by providing" affordable housing and voluntary services).

²⁵⁴ Andrew J. Imparato & Glenn Backes et al., *Disability Rights California and Over 50 Disability, Civil Rights, Racial Justice and Housing Advocacy Organizations Urge Governor Newsom to Veto SB 1338*, DISABILITY RTS. CAL. (Sept. 1, 2022), <https://www.disabilityrightsca.org/latest-news/disability-rights-california-over-50-disability-civil-rights-racial-justice-and-housing> (on file with the *University of the Pacific Law Review*).

²⁵⁵ Donald H. Stone, *The Benefits of Voluntary Inpatient Psychiatric Hospitalization: Myth or Reality?*, 9 B.U. PUB. INT. L.J. 27-28 (1999).

Judges cannot allow psychiatrists or other clinical professionals to be the decisionmakers.²⁵⁶ By doing so, CARE court judges risk administering the law carelessly, as not abiding by the Act's stringent requirements can lead to irresponsible divergence from due process protections.²⁵⁷ Especially regarding civil commitment proceedings, judges have a history of giving deference to clinicians because these proceedings are often lower priority.²⁵⁸ Although judges are limited in their knowledge on how severe mental disabilities function and how best to treat them, judges play an important role in CARE court.²⁵⁹ The judge must administer just application of the law, ensuring the agency diligently evaluates and provides an earnest and relevant treatment plan.²⁶⁰

To guarantee CARE actors have oriented the treatment plan to the needs and wishes of the respondent, the presiding judge must play an active role in forming it.²⁶¹ The judge must carefully scrutinize the agency's diagnosis, and the potential incapacity of the respondent, to ensure the diagnosis is reliable.²⁶² Without a more careful review, the judge may inadvertently deprive the respondent of their rights under the CARE Act or subject an ineligible individual to court proceedings.²⁶³ Judges in civil commitment proceedings often defer to the judgments of behavioral health experts, despite the fact that these judgments may be imprecise.²⁶⁴ To effectively serve in their role as CARE court administrators, judges must focus on interpersonal skills when engaging with the respondent and motivate the respondent to accept treatment.²⁶⁵ This role requires the judge to "convey empathy and respect" to the respondent and earn the respondent's trust and confidence.²⁶⁶ Providing the respondent with a dignified experience in CARE court can allow the respondent to see the value in obtaining care.²⁶⁷

²⁵⁶ Michael L. Perlin, *Who Will Judge the Many When the Game Is Through?*, 41 SEATTLE U. L. REV. 937, 943–44 (2018).

²⁵⁷ Perlin, *supra* note 259, at 943–44; *Infra* Section IV.A (arguing the strict criteria respondents must meet to qualify for CARE court protect respondents by limiting treatment to those most in need).

²⁵⁸ Perlin, *supra* note 259, at 944 (discussing the heavy case load of judges who frequently preside over civil commitment hearings, leading to a lack of "incentive to carefully scrutinize psychiatrists' judgment").

²⁵⁹ Perlin, *supra* note 259, at 942, 951 (2018); HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (listing various responsibilities of a CARE court judge, including informing "the respondent of their rights," controlling proceedings, and issuing orders for proceedings).

²⁶⁰ Perlin, *supra* note 259, at 951; HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5.

²⁶¹ Perlin, *supra* note 259, at 949 (discussing the skills a judge can utilize to earn the individual's trust, including listening to the individual and thereby fulfilling their need for validation); HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (giving the judge complete control in CARE proceedings, including the ability to ascertain all information relevant to respondent's welfare and make decisions "obtain[ing] the maximum cooperation of the respondent").

²⁶² Perlin, *supra* note 259, at 956 (explaining how complying with procedural requirements is vital to treating patients with "concern, fairness and respect"); SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50 at 6–7 (including reliable diagnosis as a criteria for treatment-oriented care).

²⁶³ Perlin, *supra* note 259, at 942–43; HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5 (describing the judge's ability to control all CARE court proceedings).

²⁶⁴ Perlin, *supra* note 259, at 943–44.

²⁶⁵ *Id.* at 948.

²⁶⁶ *Id.* at 949.

²⁶⁷ *Id.* at 951 ("Treatment courts that provide the most time and attention from the presiding judge have been shown to be more successful.").

Although court-ordered treatment is not as coercive as opponents have argued, the presence of a judge and the courtroom environment may lead respondents to believe otherwise.²⁶⁸ Individuals subject to court-ordered treatment often believe they are legally required to comply with the court's plans.²⁶⁹ This phenomenon, known as the "black robe effect," places judges in an influential role that compels respondents to comply with court orders out of fear of legal repercussions.²⁷⁰ To avoid making such misrepresentations to the respondent, CARE court judges should also strive to keep the respondent informed about the limits of court-ordered treatment.²⁷¹ CARE courts must be transparent with the respondent, given that studies show how alienating a patient—and preventing trust formation—are contrary to their recovery and long-term autonomy.²⁷² Although the courtroom setting and judicial presence are key to enforcing CARE plans, empowering the respondent to understand their treatment can foster more sustainable progress in their recovery.²⁷³

VI. CONCLUSION

According to CARE court proponents, "[t]he most important compelled action in CARE court is the government's obligation to provide the care, not the individual's obligation to accept it."²⁷⁴ By obligating counties to provide individuals with a stronger avenue of accessing treatment, the CARE Act can prevent mental illness from culminating into tragic events.²⁷⁵ Neither the LPS Act, Laura's Law, nor other existing systems in the State have been able to impose a sufficient mechanism of accountability.²⁷⁶ While depriving the right to refuse treatment may risk impeding due process, the right to access treatment may be essential to solving the State's mental health crisis.²⁷⁷

California's mental health system has long failed to provide the care and support that individuals who suffer from severe mental disabilities require.²⁷⁸ CARE courts can become a model for real change—both for individuals and their

²⁶⁸ *Infra* Subsection IV.B.3; SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 14 n.15 (2019).

²⁶⁹ SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 14 n.15 (2019).

²⁷⁰ *Id.*

²⁷¹ *See id.* (suggesting that professionals responsible for the client's care should keep the client informed, in order to avoid devaluing the client).

²⁷² *Id.* at 25.

²⁷³ *See id.* at 27 (citing studies which indicate the client's perception of coercion has a "negative impact on quality of life," although not outweighing the higher quality of life from the client's commitment to AOT).

²⁷⁴ Darrell Steinberg, *CARE Court Plan Rightly Targets Government's Responsibilities to Homeless People*, STEINBERG INST. (Aug. 19, 2022), <https://steinberginstitute.org/care-court-plan-rightly-targets-governments-responsibilities-to-homeless-people/> (on file with the *University of the Pacific Law Review*) (quoting Sacramento mayor Darrell Steinberg).

²⁷⁵ Chabria, *supra* note 7 (describing the unfortunate events that led to an individual with severe schizophrenia killing a civilian after his family repeatedly attempted to obtain treatment).

²⁷⁶ ASSEMBLY FLOOR, FLOOR ANALYSIS of SB 1338, at 11 (Aug. 25, 2022).

²⁷⁷ Steinberg, *supra* note 277.

²⁷⁸ HEALTH & SAFETY § 1374.723; INS. § 10144.54; WELF. & INST. §§ 5970, 5801, 5813.5; Chabria, *supra* note 7.

loved ones—who must grapple with the effects of mental illness each day.²⁷⁹ Leading with compassion can encourage individuals to take agency over their care and pursue treatment that may genuinely benefit them.²⁸⁰ Given the earnest concern for subjecting those with severe mental illness to treatment, CARE courts' framework can create meaningful progress if its administrators enforce it justly.²⁸¹

²⁷⁹ Chabria, *supra* note 7.

²⁸⁰ See Perlin, *supra* note 259, at 956 (noting importance of proceedings that humanize those appearing before the court).

²⁸¹ Bathen, *supra* note 9.