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**IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION III**

STATE OF WASHINGTON,

Respondent,

v.

RYAN LEWIS FARR,

Appellant.

**BRIEF OF *AMICI CURIAE* DISABILITY RIGHTS
WASHINGTON AND THE ACLU OF WASHINGTON**

Elizabeth Jiménez,
WSBA #54688
DISABILITY RIGHTS
WASHINGTON
315 5th Ave. S., Ste. 850
Seattle, WA 98104

Breanne Schuster,
WSBA #49993
Molly Tack-Hooper,
WSBA # 56356
Bill Block WSBA #7578
ACLU of Washington
Foundation
P.O. Box 2728
Seattle, WA 98111

Attorneys for Amici Curiae
Disability Rights Washington and the American Civil Liberties
Union of Washington Foundation

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- The National Trauma Consortium for the Center for Substance Abuse Treatment, *Enhancing Substance Abuse Recovery through Integrated Trauma Treatment* (June 2004),
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- The U.S. Substance Abuse and Mental Health Services Administration, *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach* (July 2014),
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I. INTRODUCTION

The trial court’s order authorizing involuntary and suspicionless urinalysis, hair, and nail drug testing of Mr. Farr effectively approves physical restraint to carry out the testing—an extremely invasive and traumatizing intrusion, particularly for psychiatric patients in Mr. Farr’s circumstances. This order flies in the face of established standards of medical care, as well as Article I, Section 7 of the Washington Constitution, which prohibits interference in one’s private affairs without authority of law. There is no “authority of law” that allows a state hospital to physically hold a patient down and “rip out [their] hair forcefully [and] catheter [them] for urine” whenever and for however long it so desires. *See* RP 6-8. Allowing such an order to stand would create an unprecedented and unwarranted exception to Article I, Section 7’s protections.

II. INTERESTS OF AMICI CURIAE

The identity and interests of *amici curiae* are set forth in the Motion for Leave to File Brief of Amici Curiae filed with this brief.

III. STATEMENT OF THE CASE

Amici curiae adopt Mr. Farr’s Statement of the Case. App. Br. 2-6. It is critical, however, that this Court view those facts in light of well-established medical evidence that the use of physical restraints for

involuntary drug testing results in significant trauma for psychiatric patients, particularly those in Mr. Farr’s circumstances. As discussed below, medical best practices require trauma-informed care which seeks to avoid such invasions and requires use of less intrusive means whenever available.

IV. ARGUMENT

The Washington Constitution provides that “[n]o person shall be disturbed in his private affairs . . . without authority of law.” Const. art. I, § 7. “It is well established that Article I, Section 7 often provides broader protections than the Fourth Amendment” including “heightened protection for bodily functions” compared to federal law. *State v. Mayfield*, 192 Wn.2d 871, 878, 434 P.3d 58 (2019); *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 307, 178 P.3d 995 (2008).¹

It is undisputed that Article I, Section 7’s protections apply to psychiatric patients at state facilities and that the highly invasive and nonconsensual forms of drug testing authorized by the trial court invade Mr. Farr’s private affairs. The question at issue—whether there is authority of law allowing a care provider to physically restrain a patient to

¹ Last year, the Supreme Court, sitting en banc, reaffirmed that “no *Gunwall* analysis is needed to justify an independent state law analysis of Article I, Section 7 in new contexts.” *Mayfield*, 192 Wn.2d at 879. Accordingly, this brief proceeds directly to an analysis of the trial court’s order under Article I, Section 7.

conduct suspicionless drug testing—is plainly answered no. And well established medical evidence regarding the particularized trauma of such forced drug testing on psychiatric patients underscores the critical importance of not crafting a new exception to Article I, Section 7 now.

A. Forced Drug Testing Creates Serious Psychological Harms to Psychiatric Patients.

The trial court’s order allows Eastern State Hospital (“ESH”) to conduct forced drug testing by physical restraint, which involves staff physically preventing a patient from moving all or parts of their body freely before forcibly collecting a bodily sample. This includes allowing staff to hold down Mr. Farr and “rip out (...) hair forcefully [and] catheter [him] for urine.” RP 6-8.

It is well established that the use of physical restraint has harmful psychological and psychiatric consequences.² Studies have found that 25 to 47 percent of patients subjected to forced intervention methods, including physical restraint, experience Posttraumatic Stress Disorder (PTSD) after such interventions. *Effects of Seclusion and Restraint* at 13. Even in settings that are ostensibly therapeutic, such as psychiatric

² See generally, Marie Chieze et al., *Effects of Seclusion and Restraint in Adult Psychiatry: A Systematic Review*, 10 *Psychiatry* 491 (2019) [hereinafter *Effects of Seclusion and Restraint*]; Susan Stefan, *Successful Restraint and Seclusion Reduction Programs as Quality Indicators for Psychiatric Services*, MEDSCAPE PSYCHIATRY (Apr. 10, 2006), www.medscape.org/viewarticle/528949 [hereinafter *Successful Restraint Reduction*].

hospitals, patients associated restraint with negative emotions, particularly feelings of punishment and distress. *Id.* The psychological and psychiatric risks associated with physical restraint include both new trauma and revival of previous traumas, hallucinations, and negative emotions. *Id.* Such symptoms can result in longer psychiatric hospitalizations. *Id.*

Restraint can be particularly harmful to those with a history of childhood physical and sexual abuse.³ Patients held in inpatient psychiatric settings are more likely to present such history. One study found that 47 percent of inpatient psychiatric patients with serious mental illness⁴ had been physically abused, in comparison to twenty-one percent in the general population.⁵ Additionally, 37 percent of these patients had been

³ See generally, Joseph H. Hammer et al, *The Relationship Between Seclusion and Restraint Use and Childhood Abuse Among Psychiatric Patients*, 26 *J. of Interpersonal Violence* 567-579 (2011).

⁴ Serious mental illness can be defined by someone having—within the past year—a diagnosable mental, behavior, or emotional disorder that causes serious functional impairment that substantially interferes with or limits one or more major life activities. Substance Abuse and Mental Health Services Administration (SAMHSA), *Mental Health and Substance Use Disorders*, (Apr. 30, 2020), <https://www.samhsa.gov/find-help/disorders>.

⁵ Stephanie Hepburn, *Medical Directors' Recommendations on Trauma-Informed Care for Persons with Serious Mental Illness*, Alexandria, VA: National Association of State Mental Health Program Directors (NASMHPD) at 8 (citing Maria W. Mauritz, et al., *Prevalence of Interpersonal Trauma Exposure and Trauma-related Disorders in Severe Mental Illness*, *European J. of Psychotraumatology* (2013)) [hereinafter *Medical Directors' Recommendations*].

sexually abused, compared to 23 percent of the general population.

Medical Directors' Recommendations at 8.

The traumatic effects of restraint are also damaging in light of the high number of inpatient psychiatric patients who have PTSD or substance abuse disorders. 30 percent of these patients had a diagnosis of PTSD, in comparison to just seven percent of the general population. *Id.* Like serious mental illness, substance abuse strongly correlates with childhood physical, sexual, and emotional abuse as well as current PTSD symptoms.⁶

To the extent Mr. Farr is typical of patients receiving care at ESH, he is similarly likely to be significantly harmed by restraint and forced drug testing, and his experiences and struggles likely represent the experiences and struggles of many patients at ESH. The Court should consider his personal background and diagnoses and that of any similarly situated patients at ESH when deciding whether the terms of involuntary testing imposed on Mr. Farr are constitutional under the circumstances.

The trial court's order also allows for forced catheterization of Mr. Farr, which involves holding down the limbs of restrained patients and for male patients, taking hold of their penis and inserting a tube up their

⁶ Lamya Khoury et al., *Substance Use, Childhood Traumatic Experience, and Posttraumatic Stress Disorder in an Urban Civilian Population*, 27 *Depression and Anxiety* 1077-1086 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3051362/>.

urethra to draw the urine. For most patients, forced catheterization is extremely intrusive and painful. *See e.g., Riis v. Shaver*, No. 3:17-CV-03017-RAL, 2020 WL 2043328 (D.S.D. Apr. 28, 2020) at *26 (finding that “commonsense dictates that inserting a tube into the urethra and bladder of an unwilling and, in some of the Plaintiffs’ cases, highly emotional suspect would cause pain” and that such intrusions were unreasonable searches under the Fourth Amendment).

Like physical restraint, forced catheterization also presents a serious risk of physical and emotional harm, particularly for psychiatric patients. As mental health experts have testified, forcible catheterization is likely to be “emotionally traumatic”; “worsen pre-existing PTSD”; and “make other mental disorders worse.” *Id.* at *26. Further, “there is ‘significant comorbidity between street drug abuse’ and PTSD; [and] mental health experts ‘commonly hypothesize that many people use illegal drugs to find relief from symptoms of’ PTSD and other mental disorders[.]” *Id.* at *17. Thus, forcible catheterization “may make the person catheterized more likely to use illegal drugs in the future” by exacerbating the person’s pre-existing PTSD and other mental disorders. *Id.* In other words, not only would forcible catheterization most likely traumatize Mr. Farr and similarly situated patients and exacerbate any

mental health disorders they are being treated for, but it also increases the likelihood such patients may use illicit substances.

B. The Trial Court’s Order Violates Article I, Section 7 of the Washington State Constitution

In addition to unnecessarily subjecting inpatient psychiatric patients to psychological, psychiatric, and physical harm and jeopardizing their health, it is undisputed that forced drug testing is a “disturbance of private affairs” within the meaning of Article I, Section 7. *See* State Br. at 12. As the Washington State Supreme Court has “consistently held,” “the nonconsensual removal of bodily fluids implicates privacy interests,” both because the method of collection is “fundamentally intrusive” and because the sample “can reveal a host of private medical facts” about the person from whom it is taken.” *State v. Olsen*, 189 Wn.2d 118, 124, 399 P.3d 1141 (2017) (discussing urinalysis). Likewise, there can be no doubt that forcibly restraining Mr. Farr to cut some of his hair or fingernails to test them for traces of drugs constitutes a disturbance of his private affairs.

The State argues that psychiatric patients at ESH have a reduced expectation because they are “at a minimum like probationers or parolees.” State Br. at 13. But Mr. Farr has not been convicted of a crime, nor is he in state custody because he is being punished; he has been found not guilty by reason of insanity (“NGRI”) and is in state custody in order

to receive mental health treatment that would be dramatically undermined by these invasions of privacy. *Cf. State v. Surge*, 160 Wn.2d 65, 74, 156 P.3d 208 (2007) (observing that “the constitutional rights afforded to a person often depend on his or her status” in upholding DNA collection of people with felony convictions); *Blomstrom v. Tripp*, 189 Wn.2d 379, 409-10, 402 P.3d 831 (2017) (striking down suspicionless urinalysis of arrestees). But even if patients at ESH had a reduced expectation of privacy akin to that of a person on parole or probation, there is no authority of law justifying the trial court’s order allowing for the forced restraint and catheterization of Mr. Farr.

Even in situations wherein an individual has a reduced expectation of privacy, suspicionless drug testing “must be justified by compelling government interests and must be narrowly tailored to meet those interests.” *Robinson v. City of Seattle*, 102 Wn. App. 795, 818, 10 P.3d 452 (2000); *see also Olsen*, 189 Wn.2d at 127-134. The trial court’s order plainly fails to meet that stringent standard.

1. *Forced Drug Testing Is Antithetical to the Trauma-Informed Care That the State Is Obligated to Provide Mr. Farr and Does Not Further a “Compelling Interest.”*

The State’s mere assertion that such an intrusive invasion of Mr. Farr’s privacy is necessary to “monitor compliance with a validly imposed commitment and treatment” (State’s Br. 13-14) is insufficient to establish

that it furthers a compelling interest. Under the State’s reasoning, any psychiatric patient could be forced to undergo suspicionless and traumatic drug testing merely because they are lawfully committed to state institution. But a “compelling interest” is “based in the necessities of national or community life such as clear threats to public health, peace, and welfare.” *Robinson*, 102 Wn. App. at 823 (citations omitted). Here, forced drug testing is not only unnecessary to monitor Mr. Farr, but it is antithetical to his treatment.

Respondent accurately states that when a person is institutionalized and wholly dependent on the State, the State has a duty to provide certain services and care. State Br. at 9 (citing *Youngberg v. Romeo*, 457 U.S. 307, 324, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982)). The State gravely misinterprets *Youngberg*, however, when it argues that the case supports subjection of Mr. Farr to a high-risk, extremely intrusive, and ultimately unreasonable procedure as part of his medical treatment. Rather, *Youngberg* establishes that Mr. Farr has the constitutional right under the Fourteenth Amendment to be free from unreasonable restraints and to receive adequate treatment that would ensure his safety and ability to be free from unreasonable restraints. For inpatient psychiatric patients like Mr. Farr, fulfilling the obligations of *Youngberg* requires adhering to trauma-informed care—not taking actions that further harm them.

Trauma-informed care is not only protective of patient rights and safety, it also is vital to patients' recovery from both serious mental illness and substance use disorder. Trauma-informed care is essential to better outcomes for trauma survivors and "recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization."⁷

For people with substance use disorder, trauma-informed care must: 1) integrate an understanding of both trauma and substance abuse; 2) simultaneously address trauma and substance abuse; 3) ensure a patient's physical and emotional safety, meaning that treatment must be "hospitable, engaging, and supportive from the outset, *avoiding practices that may be physically intrusive and potentially retraumatizing (e.g. urine sample monitoring and strip searches)*, and avoiding shame-inducing confrontations that may trigger trauma-related responses of avoidance,

⁷ The U.S. Substance Abuse and Mental Health Services Administration, *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach* (July 2014), https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf. Within the trauma-informed care framework, trauma is perceived as "a defining and organizing experience that can share a survivor's sense of self and others" and seeks to create "an open and collaborative relationship between providers and consumers, placing priority on consumer safety, choice, and control." See also The National Trauma Consortium for the Center for Substance Abuse Treatment, *Enhancing Substance Abuse Recovery through Integrated Trauma Treatment* (June 2004), <https://www.samhsa.gov/sites/default/files/wcdvs-article.pdf> [hereinafter *Enhancing Substance Abuse Recovery*]

withdrawal, depression, or rage;” and 4) focus on empowerment by empowering clients to engage in collaborative decision making for themselves during all phases of treatment. *Enhancing Substance Abuse Recovery* at 2 (emphasis added). Further, mental health experts strongly recommend that all treatment providers for individuals with serious mental illness should make serious efforts to decrease restraint and other coercive interventions contributing to retraumatization, with the ultimate goal of completely eliminating these types of interventions. *Medical Director’s Recommendations* at 15.

The forced drug testing of Mr. Farr violates key trauma-informed care principles by allowing highly intrusive and coercive interventions, which ultimately jeopardize patient recovery. *See id.* at 11 (noting a patient’s victimization and retraumatization can derail treatment and thus hinder outcomes). In fact, mental health experts across the country view the use of restraint as a sign of treatment failure—not as any legitimate part of treatment itself. *Successful Restraint Reduction* at 1. Subjecting psychiatric patients to procedures that conjure up past traumas and possibly cause further psychological harm, and even physical injuries, is not “necessary” or “adequate” treatment. The kind of medical treatment needed to ensure that Mr. Farr and others similarly situated ultimately

recover entails providing appropriate and adequate trauma-informed supports.

That the legislature has not even attempted to authorize such an intrusion by statute further demonstrates the lack of a compelling interest in such forced testing of psychiatric patients. The only statutes cited by the State in seeking the drug testing order are RCW 10.77.094 and RCW 71.05.217, which address involuntary medication and in no way address or authorize the forcible collection and analysis of Mr. Farr's body parts and fluids. The legislature knows how to authorize invasions of personal autonomy, and when it did so in the involuntary medication statutes cited by the State, it included substantial procedural and substantive protections. It has not, however, sought to authorize suspicionless forced drug testing of patients at state hospitals like Mr. Farr, nor could it constitutionally do so, given how devastating such a testing regime would be to inpatient psychiatric patients' treatment.

2. *The Trial Court's Order is Not Narrowly Tailored to Any Articulated Government Interest.*

Even assuming the State had articulated a compelling government interest in determining whether Mr. Farr is using illicit substances, the trial court's order would still violate Article I, Section 7 because it authorizes ongoing testing without any reason to suspect Mr. Farr of using illegal

substances, is indefinite in duration, and does not require the government to exhaust less intrusive alternative means of advancing its interests.

ESH’s own manual requires “reasonable suspicion” before a search for drugs or other contraband can take place of a resident’s possessions, locker, room, or *body*. Eastern State Hospital Manual 1.39 Contraband Search (last reviewed 05.17), § II(B)(3) (emphasis added). Although the manual does not speak to the even more invasive collection and testing of urine, hair, or nails, it demonstrates that there would be no operational difficulty in requiring reasonable suspicion for such a search. Mr. Farr is under continuous observation. This context distinguishes this case from the context in *Olsen*, where probation officers saw their probationers infrequently, which made it difficult to detect signs of drug or alcohol use. *See Olsen*, 189 Wn.2d at 124.⁸

Another strike against the order at issue in this case is that it authorizes testing indefinitely. Most suspicionless searches that have been approved by this Court are one-time events. *See In re Juveniles*, 121 Wn.2d 80, 847 P.2d 455 (1993) (mandatory HIV testing of people with sex offense convictions); *Surge*, 160 Wn.2d at 156 (DNA collection of

⁸ The Supreme Court has cautioned that a suspicionless or “general search” is anathema to the protections of the Fourth Amendment and Article I, Section 7, “and except for the most compelling situations, should not be countenanced.” *Kuehn v. Renton Sch. Dist. No. 403*, 103 Wn.2d 594, 601–02, 694 P.2d 1078 (1985).

people with felony convictions). Even in *Olsen*, the condition of probation requiring participation in drug testing was coterminous with the duration of the probation. 189 Wn.2d at 121. Here, the order has no end date and continues regardless of any change in Mr. Farr’s circumstances or in the government’s need to drug test him. That is neither narrow nor the least intrusive means.

The State argues that the fact that the hospital is required to review and send the Secretary of the Department of Social and Health Services (DSHS) a report on Mr. Farr’s condition every six months is somehow a limitation on the court’s open-ended search authorization. State Br. at 14. The report to DSHS, however, is not required to be sent to the court,⁹ and even if it were sent to the court, the court is not required to read it, and nothing in the order conditions the continued authorization for testing on the contents of the report. It is significant, however, that the legislature, in the very creation of a periodic medical review requirement, clearly recognized that medical conditions, and the course of treatment necessary to address them, are subject to change and require frequent reappraisal. *See* RCW 10.77.140. The court’s open-ended authorization of involuntary testing flies in the face of that reality.

⁹ The Secretary is required merely to provide the court with “written notice of compliance” with the review requirement, RCW 10.77.140.

Lastly, ESH clearly has safer and less intrusive methods to provide treatment to Mr. Farr and monitor his compliance with commitment. Courts have hesitated to uphold intrusive suspicionless searches when there are reasonable alternatives available to the government. *See, e.g., State v. Villela*, 194 Wn.2d 451, 460-62, 450 P.3d 170 (2019) (holding that suspicionless vehicle impound was constitutional only when “there are no reasonable alternatives” available to protect public safety); *Seattle v. Mesiani*, 110 Wn.2d 454, 459, 755 P.2d 775 (1988) (holding that suspicionless DUI checkpoint violated the Fourth Amendment because “the City has failed to demonstrate the need for sobriety checkpoints or that less intrusive alternatives could not achieve most of the constitutionally permissible benefits sought, such as the addition of more officers to its special enforcement unit”); *Jacobson v. Seattle*, 98 Wn.2d 668, 675, 658 P.2d 653 (1983) (holding that concert pat-down search of concert patrons was unconstitutional where government could ban large bags or require them to be checked).

The trial court’s order, far from requiring least restrictive methods to accomplish the State’s interest, authorizes involuntary drug testing for any reason, no matter what alternatives exist. CP 156-57. Although the order recites that Mr. Farr had refused drug screens, the court made no finding that the hospital had exhausted less intrusive alternatives.

There are many techniques, such as motivational interviewing and jointly-created treatment plans that have been developed to engage people with severe mental illness in desired activities.¹⁰ The hospital also has incentives it can use to induce compliance. For example, NGRI patients are assigned levels that have corresponding privileges.¹¹ ESH could thus potentially lower Mr. Farr's levels and revoke corresponding privileges if he refused to comply with voluntary urinalyses.

Moreover, the order also does not contain any provision that would revoke the authorization to hold Mr. Farr down and involuntarily catheterize him or remove hair or nail samples if he resumes voluntary compliance with drug testing. Because the government cannot show—and is not required to show under the trial court's order—that it has no less restrictive means than forcible and highly invasive testing, the order fails to satisfy Article I, Section 7.

¹⁰ See generally Hal Arkowitz et al., *Motivational Interviewing in the Treatment of Psychological Problems* (Hal Arkowitz et al. eds. 2d ed. 2015); Neil Adams & Dianne Grieder, *Treatment Planning for Person-Centered Care* (2d ed. 2013); Cf. *Medical Directors' Recommendations* at 15.

¹¹ NGRI patients are evaluated according to the Community Outpatient Treatment Readiness Evaluation Instrument (COTREI) to determine discharge readiness and their individual levels before discharge. Increased privileges are granted to NGRI patients as they progress towards conditional release and ultimately, full discharge.

V. CONCLUSION

For the foregoing reasons, the trial court's order endangers Mr. Farr's recovery and treatment and violates Article I, Section 7. This Court should reverse the decision below and vacate the order.

Dated: July 27, 2020

Respectfully submitted,

s/Elizabeth Jiménez

Elizabeth Jiménez, WSBA #54688
DISABILITY RIGHTS WASHINGTON

Breanne Schuster, WSBA # 49993
Molly Tack-Hooper, WSBA # 56356
AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON FOUNDATION

Bill Block, WSBA #7578
ACLU-WA Cooperating Attorney

DISABILITY RIGHTS WASHINGTON

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