



CITY COUNCILMEMBER
RIGEL ROBINSON
 DISTRICT 7

CONSENT CALENDAR
 July 28, 2020

To: Honorable Mayor and Members of the City Council
 From: Councilmember Rigel Robinson, Councilmember Ben Bartlett, and
 Councilmember Sophie Hahn
 Subject: Support for AB 2542: The California Racial Justice Act

RECOMMENDATION

Send a letter to Assemblymember Ash Kalra, Senator Nancy Skinner, and Assemblymember Buffy Wicks in support of Assembly Bill 2542, which would prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based on race, ethnicity, or national origin.

BACKGROUND

AB 2542, introduced by Assemblymember Ash Kalra, would enable a person charged or convicted of a crime to challenge racial bias in their case, as shown through evidence of 1) explicit racial bias by an attorney, judge, law enforcement officer, expert witness, or juror, 2) use of racially discriminatory language in court and during criminal proceedings, 3) racial bias in jury selection, 4) statistical disparities in charging and convictions of specific crimes, or 5) statistical disparities in sentencing.¹

In 1987, the U.S. Supreme Court ruled in *McCleskey v. Kemp* that statistical evidence was insufficient to prove racial discrimination in court, instead requiring “exceptionally clear proof” -- a higher, and often impossible threshold to meet.²

This ruling has made it extremely difficult to confront racism in the American criminal justice system. Purposeful and blatant discrimination that can be clearly proved constitutes only a small portion of the racial bias that harms BIPOC defendants in court. All-white juries and clear patterns of Black and brown people being subjected to harsher sentences for the same crime are also pervasive forms of racism.

A 2012 Duke study found that all-white juries convict Black defendants 16 percent more often than they do white defendants.³ Despite the court ruling in *Batson v. Kentucky* (1986) that lawyers cannot use peremptory challenges to exclude potential jurors on the basis of race, they continue to do so. Studies showed that in North Carolina,

¹ https://twitter.com/Ash_Kalra/status/1280235432416997376/photo/4

² <https://supreme.justia.com/cases/federal/us/481/279/>

³ <https://today.duke.edu/2012/04/jurystudy>

prosecutors were 2.5 times more likely to dismiss Black jurors in death-row cases. In Caddo Parish, Louisiana, prosecutors were three times as likely to do so.⁴

In the *McCleskey* majority opinion, the Supreme Court observed that state legislatures retain the power to address this issue through state law. Kentucky has passed a version of the Racial Justice Act specifically regarding the death penalty,⁵ and North Carolina did as well until it was overturned by a Republican majority. On June 5, 2020, North Carolina's Supreme Court issued an order restoring the full protections of the act for people who filed claims before its repeal in 2013.⁶

The State of California has laws prohibiting racial discrimination in employment, housing, and public accommodation, but no counterpart for discrimination in the criminal justice system.⁷ By explicitly outlawing discrimination in criminal convictions and sentencing, this bill would provide recourse for victims of racial bias. The Berkeley City Council should support AB 2542 and send the attached letter of support to Assemblymember Ash Kalra, Senator Nancy Skinner, and Assemblymember Buffy Wicks.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

No impact.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

- 1: Letter of support
- 2: Bill text

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2542

⁴ <https://psmag.com/news/the-data-that-shows-american-juries-are-racially-biased>

⁵ <https://nkaa.uky.edu/nkaa/items/show/728#:~:text=African%20Americans%20Database-,Kentucky%20Racial%20Justice%20Act%20of%201998,death%20penalty%20will%20be%20barred.>

⁶ <https://www.aclu.org/press-releases/north-carolina-supreme-court-finds-repeal-racial-justice-act-unconstitutional>

⁷ <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-ga/pages/californiafairemploymenthousingact.aspx>

July 28, 2020

The Honorable Ash Kalra
California State Assembly
State Capitol, Room 2196
Sacramento, CA 95814

RE: City of Berkeley's Support for Assembly Bill 2542

Dear Assemblymember Kalra,

The Berkeley City Council would like to convey our full support for AB 2542, which would enable a person charged or convicted of a crime to challenge racial bias in their case.

The *McCleskey* decision is a stain on our court system that has allowed racism to go unchecked for far too long. Purposeful and blatant discrimination that can be clearly proved constitutes only a small portion of the racial bias that harms BIPOC defendants in court. All-white juries and clear patterns of Black and brown people being subjected to harsher sentences for the same crime are also pervasive forms of racism. Without an explicit law that prohibits discrimination, the courts will continue to perpetuate the mass incarceration of people of color, especially Black people.

The California Racial Justice Act builds on the precedent set by Kentucky's and North Carolina's efforts, and goes further to prohibit racial discrimination in all convictions and sentences. This is a crucial piece of legislation that takes another step towards eliminating racial bias in the American criminal justice system and providing victims of discrimination with legal recourse.

The Berkeley City Council supports AB 2542 and thanks you, the bill's sponsors, and principal co-authors Senator Steve Bradford, Senator Lena Gonzalez, and Senator Holly Mitchell for taking the lead on this important issue.

Sincerely,

The Berkeley City Council

CC: Senator Nancy Skinner
Assemblymember Buffy Wicks

