



CONSENT CALENDAR
June 28, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin (Author), Councilmember Wengraf (Co-Sponsor),
Councilmember Robinson (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Subject: Support for AB-256 (Racial Justice Act for All)

RECOMMENDATION

Send a letter to Assemblymember Ash Kalra (D-San Jose) and the state legislature in support of Assembly Bill 256, the Racial Justice Act for All, which would apply Kalra's previous bill, AB 2542 (2020) retroactively to enable appeals of past convictions and sentences made with racial bias.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

In 2020, Governor Newsom signed Assembly Bill 2542 (Kalra, 2020) which allowed for people with convictions and sentences based on racial biases to challenge their case. However, the bill only applied to judgments made after January 1, 2021.

Assembly Bill 256 would apply the law retroactively to enable appeals for cases prior to that date. In 2021, the bill was held in the Senate Appropriations Committee and became a two-year bill.

The bill is sponsored by the American Civil Liberties Union (ACLU), American Friends Service Committee, California Coalition for Women Prisoners, Californians United for a Responsible Budget, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), Initiate Justice, Ella Baker Center for Human Rights, the League of Women Voters of California, NextGen, and Silicon Valley De-Bug.

AB-2542 (2020) was introduced to address judicial precedent which greatly inhibited defendants' ability to appeal against racial discrimination in criminal cases. In 1987, the US Supreme Court ruled in *McCleskey v. Kemp* that statistical evidence of racial bias was insufficient to show a constitutional violation—in this case, a death penalty sentence for a Black defendant—requiring instead that a defendant show "exceptionally clear proof" of discrimination under the facts of his or her own case. This set up a virtually impossible evidentiary standard which is higher than the "disparate impact"

standard applicable in fair housing and employment laws. After his retirement, Justice Lewis Powell expressed regret for his vote for the majority in *McCleskey*.¹

Nevertheless, the majority opinion in *McCleskey* held that state legislatures could address racial bias in state law. Prior to the passage of AB-2542, convictions and sentences were routinely upheld in California in the face of blatant racial bias, ranging from unrepresentative jury trials, racist statements by judges and prosecutors, or statistical evidence of systematic bias in sentencing.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CONTACT PERSON

Councilmember Taplin Council District 2 510-981-7120

¹ Liptak, A. (2008). New Look at Death Sentences and Race. *New York Times*. Retrieved from <https://www.nytimes.com/2008/04/29/us/29bar.html>

The Honorable Ash Kalra
State Capitol
Sacramento, CA 95814

CC:
Assemblymember Buffy Wicks
Senator Nancy Skinner
Assembly Speaker Anthony Rendon

RE: Support: AB-256 (Racial Justice for All Act)

Dear Assemblymember Kalra:

The City Council of the City of Berkeley is proud to support of your bill, AB-256, which would enable appeals of convictions and sentences made with racial bias prior to January 1, 2021.

As you know, former US Supreme Court Justice Lewis Powell expressed regret after his retirement for his vote for the majority in *McCleskey v. Kemp* (1987). The *McCleskey* ruling placed an impossible evidentiary standard for defendants to appeal convictions or sentences with clear racial bias by requiring “exceptionally clear proof” of discrimination in their specific case. Other civil rights laws enable the evidentiary standard of “disparate impact” for finding racial bias, since racial biases are often unconsciously applied as a result of deeper systemic inequalities. Californians should be able to appeal their convictions and sentences without having to prove, somehow, that their case was decided with a specific bias in one instance rather than the result of systemic biases.

Your previous bill, AB-2543, was a step in the right direction. We urge the state legislature to pass AB-256 so that this important reform can be applied retroactively.

Thank you for your courageous leadership on restorative justice.

Sincerely,

The Berkeley City Council
2180 Milvia St
Berkeley, CA 94709

