



LUTHERAN OFFICE of PUBLIC POLICY – CALIFORNIA

April 2, 2020

Honorable Assemblymember Ash Kalra
State Capitol, Room 2196
Sacramento, CA 9581

Re: Support – AB 2200 (Kalra) Racial Justice Act

Dear Assemblymember Kalra,

The Lutheran Office of Public Policy – California writes in strong support of your bill AB 2200, the California Racial Justice Act. This bill will prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based on race, ethnicity or national origin. Our church names racism as sin. We expect our leaders to do the same.

We write to you on behalf of California's four hundred congregations in the Evangelical Lutheran Church in America. In our guiding church document on criminal justice, we recognize that while individuals must be held accountable, every person deserves to be seen and treated as a member of human communities. Every person is created in the image of God and worthy of appropriate and compassionate response.¹

But currently, we know that California's legal system is plagued by racial disparities. We look to our elected officials to acknowledge these disparities and address the implicit and explicit racism that persist within.

The California Racial Justice Act addresses the problem of what Justice William Brennan called a "fear of too much justice." The new law would make it possible for a person charged or convicted of a crime to challenge racial, ethnic, and national origin bias in their case, as shown through evidence of:

- 1) Explicit racial bias by an attorney, judge, law enforcement officer, expert witness, or juror involved in the case.
- 2) Use of racially discriminatory language in court and during the criminal proceedings, whether or not intentional.
- 3) Racial bias in jury selection, such as removing all or nearly all Black, Brown, Native, Indigenous, and people of color from the jury.
- 4) Statistical disparities in charging and convictions – that is, evidence that people of one race are disproportionately charged or convicted of a specific crime or enhancement.

¹ A Social Statement on Church and Criminal Justice: Hearing the Cries. Evangelical Lutheran Church in America. August 17, 2013. <https://www.elca.org/Faith/Faith-and-Society/Social-Statements/Criminal-Justice>



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- 5) Statistical disparities in sentencing – that is, evidence that people of one race receive longer or more severe sentences, including the death penalty or life without parole.

This bill is needed because of a widely condemned 1987 legal precedent established by the U.S. Supreme Court in the case of *McCleskey v. Kemp*. The *McCleskey* decision effectively requires that criminal defendants prove intentional discrimination when challenging racial bias in their legal process. This is an unreasonably high standard that is almost impossible to meet.

Current state and federal provisions are insufficient to address persistent racial discrimination in the criminal legal system. California courts have concluded that, due to the *McCleskey* case and others, proof of purposeful discrimination is required. As a result, convictions and sentences are routinely upheld despite:

- Blatantly racist statements by attorneys, judges, jurors and expert witnesses;
- The exclusion of all, or nearly all Black, Brown, Native, Indigenous, and people of color from serving on a jury; and
- Stark statistical evidence showing systemic bias in charging and sentencing.

The *McCleskey* majority observed that state legislatures concerned about racial bias in the criminal legal system could act to address the problem. We agree. Just as California's Unruh Civil Rights Act currently prohibits racial discrimination in employment, housing and public accommodation, we need a statewide policy that makes it unlawful to discriminate against Black and Brown people in the state's criminal legal system.

For these reasons we support AB 2200, the California Racial Justice Act, to establish a clear prohibition on the use of race, ethnicity or national origin in seeking or obtaining convictions or sentences.

Thank you for your leadership in standing with people of faith against racial discrimination in our criminal legal system. We must insist on justice. Please contact me at regina.banks@elca.org for any questions about our position.

Sincerely,

Regina Q. Banks, JD
Director, Lutheran Office of Public Policy – California