E083382

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

PAUL NATHAN HENDERSON,
Defendant and Appellant.

APPEAL FROM THE SUPERIOR COURT FOR RIVERSIDE COUNTY
HON. TIMOTHY HOLLENHORST, JUDGE • NO. INF2101999

BRIEF OF AMICI CURIAE FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY; SIX ADDITIONAL RACIAL JUSTICE CENTERS; AND TWELVE INDIVIDUAL PROFESSORS AND SCHOLARS IN SUPPORT OF APPELLANT

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Introduction and Summary of Argument

The California Racial Justice Act (RJA or the Act) aims "to eliminate racial bias from California's criminal justice system." (Assem. Bill No. 2542 (2019-2020 Reg. Sess.) § 2(i) <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2542> [as of Sept. 19, 2025] (hereafter AB 2542).) The California Legislature enacted the RJA in response to judicial decisions that imposed a high burden on criminal defendants seeking to show that their cases were infected with racial bias.

The Act's findings explain that "[e]ven when racism clearly infects a criminal proceeding, under current legal precedent, proof of purposeful discrimination is often required, but nearly impossible to establish." (AB 2542, § 2(c).) The Act explicitly rejects the nearly impossible-to-meet standard of purposeful discrimination, so now defendants do not need to prove the individual decisionmakers in their case acted with racial animus. Instead, the Act allows defendants to show racial discrimination through "statistical evidence, aggregate data, expert testimony, and the sworn testimony of witnesses." (Pen. Code, § 745, subd. (c)(1).) This showing establishes a prima facie case of racial bias so the matter must proceed to a prima facie hearing where the trial court can weigh competing evidence and determine if racial bias actually infects a charging decision. The RJA's endorsement of these forms of evidence rightfully recognizes the power of social science methods to uncover critical information about racial bias in charging and sentencing practices.

In direct contravention of the RJA's text and purpose, the trial court discounted the appellant's statistical evidence demonstrating racial disparities in charging Black defendants with special circumstances 2.98 times as often than White defendants. The trial court refused to find a prima facie showing of racial disparity without proof of specific instances of disparate charges involving similarly situated White defendants who engaged in similar conduct but were subject to different treatment.[1] But the statutory text and legislative history of the RJA makes clear that the statistics appellant offered are alone sufficient to warrant a hearing under the Act.

That is particularly the case for regression analysis, which can demonstrate the racially disparate treatment of similarly situated groups by accounting for potential confounding variables. Contrary to the trial court's holding and the prosecution's assertions, regression analyses like the reports appellant submitted below provide strong evidence of racial bias because they control for factual similarities and expose racial disparities. Such analyses can alone establish what is required for a hearing under the Act—"more than a mere possibility" that

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[1] The trial court explained: "[T]he question is whether or not on the record that I have before me a prima facie case has been made – the – all of the reports are statistical analyses. There's not been, in this case, evidence of similar conduct as compared to specific cases. And for that reason, I am persuaded by the People's argument that the defendant has not shown any similarly situated individuals who committed similar conduct that were subject to different treatment, and that prong has not been met. And for that reason, I'm finding the prima facie case has not been satisfied." (26 RT 7512:13-22.)

racial bias infects decisions to charge Black defendants with special circumstances more than White defendants.

The statistical evidence put forth by appellant here comports with accepted social science methods for proving racially disparate treatment of similarly situated groups. Appellant presented a complex multivariate set of regression analyses that control for possible non-racial legal factors. In other words, the studies appellant submitted to the court establish not only a mere possibility of racial bias, but statistically strong evidence of recurring racial bias, amply meeting the "substantial likelihood" requirement to warrant a hearing. (Pen. Code, § 745, subd. (h)(2) [defining "prima facie showing"].)

The trial court's refusal to accept the regression analysis and instead require proof of specific cases involving similar facts imposed an unnecessary barrier to proving a prima facie case. Indeed, such a barrier would be insurmountable in many cases, as criminal defendants often lack access to the type of evidence the trial court demanded. Here, for example, the prosecution only provided 113 probation and presentencing reports—far fewer than the nearly 900 defendants that have been charged for murders committed in Riverside County from 2006 through 2019. Appellant's ability to find a case involving similar circumstances within this arbitrary sample should not be determinative of whether he has established a prima facie case of an RJA violation. Moreover, a single instance of charging is purely anecdotal evidence that would neither prove nor disprove a

pattern demonstrated by a careful regression analysis like the reports submitted below.

Accordingly, the statistical studies appellant presented warrant a hearing under the RJA. Amici urge this court to reverse appellant's conviction and direct the trial court to conduct an evidentiary hearing on appellant's RJA petition.

Argument

I. The California Racial Justice Act responds to federal cases that impose too high a burden on criminal defendants seeking to demonstrate racial bias.

As the Act's findings make clear, the California Legislature enacted the RJA in part as a response to case law from the U.S. Supreme Court restricting racial bias claims.

Prevailing U.S. Supreme Court jurisprudence makes it nearly impossible to prove actionable racial bias in criminal cases under federal law. In *McCleskey v. Kemp* (1987) 481 U.S. 279, the Supreme Court substantially limited Equal Protection challenges to the death penalty by holding that statistical analysis is insufficient to prove racial bias in capital cases. The majority acknowledged that the petitioner had demonstrated through statistical evidence the racially disparate impact of death penalty sentencing, but suggested this defect is "an *inevitable* part of our criminal justice system." (*Id.* at p. 312, italics added.) Justice Brennan famously dissented from that decision, describing the majority's concern about opening the floodgates to future

litigation as a "fear of too much justice."[2] (*Id.* at p. 339 (dis. opn. of Brennan, J.).)

Many state courts initially followed the lead of the U.S. Supreme Court in interpreting parallel provisions of state constitutions and law. But after decades of unredressed racial discrimination, courts and legislatures have begun to recognize the ineffectiveness of the prevailing federal standard and have used their power to create more expansive paths for relief. (Cf. Liu, *State Courts and Constitutional Structure* (2019) 128 Yale L.J. 1304.)

The Washington Supreme Court is a prime example of a court acting to address racial bias—and the California Legislature cited that court when passing the RJA. (AB 2542, § 2(c), citing *State v. Saintcalle* (2013) 178 Wash.2d 34.) In 2013, the Washington Supreme Court unanimously acknowledged racial bias regarding the exercise of peremptory challenges in

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[2] Similarly, the Supreme Court's decision in *Batson v. Kentucky* (1986) 476 U.S. 79 regarding the use of peremptory strikes against criminal jurors has come under withering criticism for imposing too high a burden on defendants to prove racial discrimination. (E.g., *People v. Bryant* (2019) 40 Cal.App.5th 525, 544-549 (conc. opn. of Humes, J.).) Under the *Batson* framework, a defendant seeking to show the government used peremptory challenges in a racially biased manner must first provide evidence establishing a prima facie case that the prosecutor engaged in purposeful discrimination. (*Batson*, *supra*, 476 U.S. at pp. 93-97.) If the defendant makes that showing, the burden shifts to the government to provide a race-neutral explanation for the strike. (*Id.* at p. 97.) If the government does, the trial court must then assess whether the defendant "has established purposeful discrimination" under all the evidence. (*Id.* at p. 98.)

Saintcalle, but felt itself bound to follow the federal *Batson* test. In 2018, however, the Washington Supreme Court reevaluated its stance, adopting a state court rule that largely eliminated the first step of the *Batson* test that had required a defendant to provide evidence showing a prima facie case, identified a number of presumptively invalid reasons for a strike, and moved away from a purposeful discrimination test by adopting an objective observer standard to assess the peremptory challenge. (Wash. Rules of General Application, rule 37, <https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_37_00_00.pdf> [as of Sept. 19, 2025].)

That same year, the Washington Supreme Court again diverged from U.S. Supreme Court precedent to intervene in racial bias within the criminal legal system. In *State v. Gregory*, the court split from the federal standard set out in *McCleskey*, and invalidated Washington's capital punishment statute as unconstitutional because it was being imposed "in an arbitrary and racially biased manner." (*State v. Gregory* (2018) 192 Wash.2d 1, 18-19.) In doing so, the court relied on a defense-commissioned study that sought to determine the effect of race on the imposition of the death penalty without requiring proof of purposeful discrimination. (*Id.* at p. 12.) The study included a regression analysis that controlled for various factors and concluded that Black defendants were between 3.5 and 4.6 times as likely to be sentenced to death than similarly situated White defendants. (*Id.* at p. 19.) The court declined to require "indisputably true social science to prove that our death penalty

is impermissibly imposed based on race," and also relied on historical evidence of racism in Washington's legal system. (*Id*. at pp. 21-23.) Significantly, the court did not require the defendant to prove that a decision maker acted with discriminatory purpose.

In enacting the RJA, the California Legislature followed the lead of the Washington Supreme Court and sought to eliminate racial bias from California's criminal legal system.[3] The Legislature explicitly relied on *Saintcalle*, stating that "[m]ore and more judges in California and across the country are recognizing that current law, as interpreted by the high courts, is insufficient to address discrimination in our justice system." (AB 2542, § 2(c).) The Legislature also recognized that statistical evidence of racially disparate treatment in charging and sentencing, along with historical evidence of racism, is sufficient to demonstrate that a case may have been impacted by racial bias. (AB 2542, § 2(j); Pen. Code, § 745, subd. (c)(1).) The Act makes clear that an evidentiary hearing is warranted where an appellant establishes "more than a mere possibility" of racial bias, as appellant has here. (Pen. Code, § 745, subd. (h)(2); *Young v. Superior Court* (2022) 79 Cal.App.5th 138, 160.)

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[3] The California Legislature amended the RJA in 2022 through the California Racial Justice Act for All, making the provisions retroactive and adding some technical revisions to the original act. (Assem. Bill No. 256 (2021-2022 Reg. Sess.) <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB256> [as of Sept. 19, 2025].)

II. The plain language and legislative history of the California Racial Justice Act make clear that statistical evidence alone is sufficient to establish a prima facie showing of racial bias and requires a hearing.

When the U.S. Supreme Court held that statistical evidence of racial disparities was insufficient to establish a constitutional violation in death penalty cases, the Court recognized that Congress and state legislatures could establish statutory standards for the use of statistical evidence to prove racial disparities. (*McCleskey*, *supra*, 481 U.S. at p. 319.) In 2020, the California Legislature took up that call and enacted the California Racial Justice Act of 2020.[4] (AB 2542.) In passing the RJA, the Legislature cited *McCleskey* and explicitly stated its intent "to provide remedies that will eliminate racially discriminatory practices in the criminal justice system" and "to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination

[4] As the First District explained after comprehensively examining the RJA, "[t]here is little doubt which side of the *McCleskey* debate our Legislature has aligned California with by statute. More than three decades after *McCleskey* was decided, the Legislature took up the high court's invitation to fashion a response to the intractable problem that Justice Brennan identified. In the Racial Justice Act, it enacted a statutory scheme applicable in all criminal and juvenile delinquency cases that not only eliminates any requirement to show discriminatory purpose [citation] and permits violations of the Act to be established based on statistics [citation], but also appears to be a direct response to the result reached in *McCleskey* . . . ." (*Young*, *supra*, 79 Cal.App.5th at pp. 152-153.)

in seeking or obtaining convictions or imposing sentences." (AB 2542, § 2(f), (j).)

The California Legislature recognized the need for a new approach because of the overwhelming evidence of systemic racism throughout the criminal legal system (AB 2542, § 2(c)-(e)), and the inability—or perhaps unwillingness—of courts to provide a remedy under existing law. The Legislature cited with disapproval several examples of courts upholding instances of racial bias in criminal proceedings because the bar for proving legally actionable racial bias was so high. (AB 2542, § 2(d), citing *United States v. Shah* (9th Cir. 2019) 768 Fed. Appx. 637, 640 [finding no error in allowing racist testimony by expert regarding predisposition toward bribery of people of Indian descent], *Mayfield v. Woodford* (9th Cir. 2001) 270 F.3d 915, 924-925 (en banc) [denying ineffective assistance of counsel claim by Black defendant in death penalty case where defense counsel used racist language in reference to clients of color and generally demonstrated racial prejudice], and *id.* at pp. 939-940 (dis. opn. of Graber, J.) [describing in detail defense counsel's racist behavior].) The Legislature also disapproved of opinions failing to address the use of overtly racist language, racially coded language, and racist stereotypes in criminal trials. (AB 2542, § 2(e), citing *Duncan v. Ornoski* (9th Cir. 2008) 286 Fed. Appx. 361, 363 [finding no misconduct where prosecutor compared Black capital defendant to a Bengal tiger], and *People v. Powell* (2018) 6 Cal.5th 136, 182-183 [same].)

The Legislature also challenged the supposed inevitability of racial disparities in the criminal legal system. (AB 2542, § 2(f), citing *McCleskey*, *supra*, 481 U.S. at p. 312 [calling racial disparities in sentencing "an inevitable part of our criminal justice system"].) Rather than normalizing such evidence, the Act states that "we can no longer accept racial discrimination and racial disparities as inevitable in our criminal justice system and we must act to make clear that this discrimination and these disparities are illegal and will not be tolerated in California[.]" (AB 2542, § 2(g); see *Young*, *supra*, 79 Cal.App.5th at 152 & fn. 7.)[5]

The legislative history shows that the Legislature intended for statistical evidence alone to be capable of proving racial disparities. When it considered AB 2542, which became the RJA, the Senate Committee on Public Safety discussed how *McCleskey* had refused to draw an inference of racial bias from statistical evidence but explained that the RJA would change that:

> This bill allows racial bias to be shown by, among other things, statistical evidence that convictions for an offense were more frequently sought or obtained against people who share the defendant's race, ethnicity or national origin than for defendants of other races, ethnicities or national origin in the county where the convictions were sought or obtained.

(Sen. Com. on Pub. Safety, Analysis of Assem. Bill No. 2542 (2019-2020 Reg. Sess.), p. 9.) The Legislature reiterated this

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[5] See also Bright & Kwak, The Fear of Too Much Justice: Race, Poverty, and the Persistence of Inequality in the Criminal Courts (2023).

language when considering Assembly Bill No. 256, the Racial Justice for All Act, which sought to make the RJA retroactive. (Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 256 (2021-2022 Reg. Sess.), p. 7).)

Accordingly, the Act creates a system to eradicate racism from the criminal legal process and rejects any requirement of proof of racial animus. (AB 2542, § 2(i) ["[R]acism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under . . . the California Constitution, and violates the laws and Constitution of the State of California. . . . It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice [system] are inevitable, and to actively work to eradicate them."].)

The court below ignored this legislative directive and imposed a nearly insurmountable barrier to making a prima facie showing of an RJA violation. The court rejected appellant's statistical evidence—two regression analyses[6]—because the defendant did not offer evidence of the specific facts of the crimes

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[6] These actually were the second and third reports appellant submitted in support of his RJA claim. The first also contained regression analysis of death penalty notices and the imposition of death sentences. (5 CT 1444.) The prosecution subsequently announced it was not seeking the death penalty against appellant. (5 CT 1444.) Thereafter, appellant filed two reports focused racial disparities in charging special circumstances.

used for the comparative analysis. Not only did the trial court misunderstand how a regression analysis works, it effectively precluded any prima facie showing of bias unless the defendant could find a specific case factually identical to the crime alleged. The superior court's decision contravenes the purpose of the RJA and ignores what social science methodology, particularly regression analysis, can demonstrate about racial bias and disparate outcomes.

III. Accepted social science methodologies support a finding that statistical evidence alone can establish more than a mere possibility of racial bias.

Accepted social science methods support a finding that statistical evidence of racial disparity alone is sufficient to meet appellant's prima facie burden warranting a hearing under the RJA. Statistical methods can establish that members of one racial group have been subjected to disparate charging or sentencing practices compared to similarly situated members of other racial groups.

While statistics alone cannot show whether purposeful racial discrimination occurred in an individual case, no such showing is required under the RJA. Even bivariate statistics—that is, statistical analyses that do not control for other factors—can establish more than a "mere possibility" of racial bias, which is all that is required for an evidentiary hearing. (Pen. Code,

§ 745, subd. (h)(2).)[7] Indeed, at the prima facie stage, trial courts' review of statistical information "must be solely on principles and methodology, not on the conclusions that they generate." (*Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 23, quotation marks omitted.)

The prosecution maintains that "[a]bsent facts underlying the charges [in the cases included in the analysis], it was impossible for the trial court to find that Black and non-Black defendants engaged in 'similar conduct' and were 'similarly situated,' as required by the RJA." (RB 27.) This betrays a fundamental lack of understanding of regression analysis and the minimal showing required under the RJA at the prima facie stage.

A. Statistical evidence alone can demonstrate racial bias warranting a hearing under the California Racial Justice Act.

The trial court held that appellant's prima facie burden could not be carried by reliance on statistics alone. That is contrary to the Legislature's intent in enacting the RJA. As discussed below, statistical evidence alone can establish more

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[7] A descriptive analysis shows the relationship between an independent and dependent variable without controlling for additional covariates. (See Volis et al., *Combining Adjusted and Unadjusted Findings in Mixed Research Synthesis* (2011) 17 J. Eval. Clin. Pract. 429 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3063329/#:~:text=An%20unadjusted%20finding%20is%20the,between%20intervention%20type%20and%20adherence> [as of Sept. 19, 2025].)

than a mere possibility of racial bias requiring a hearing under the RJA.

The aim of the RJA is to "eliminate racial bias from California's criminal justice system." (AB 2542, § 2(i).) As another court has explained, "the primary motivation for the legislation was the failure of the judicial system to afford meaningful relief to victims of unintentional but *implicit* bias." (*Bonds v. Superior Court* (2024) 99 Cal.App.5th 821, 828, original italics.) "In an uncodified section of Assembly Bill No. 2542, the Legislature explained, 'Implicit bias, *although often unintentional and unconscious*, may inject racism and unfairness into proceedings similar to intentional bias. The intent of the Legislature is not to punish this type of bias, but rather to remedy the harm to the defendant's case and to the integrity of the judicial system.' " (*Ibid*., quoting Stats. 2020, ch. 317, § 2, subd. (i), italics added in *Bonds*.) Accordingly, the RJA provides for relief based on a showing that members of one racial group were systematically more likely to be subjected to racially disparate charging or sentencing practices compared to similarly situated members of other racial groups, regardless of whether the discrimination was intentional.[8]

[8] Chien et al., *Proving Actionable Racial Disparity Under the California Racial Justice Act* (2023) 75 U.C. L.J. 1, 3 <https://ssrn.com/abstract=4392014> [as of Sept. 19, 2025] (noting that the RJA "gives by state statute what the *McCleskey* decision foreclosed constitutionally—a pathway to relief based solely on evidence of unexplained racial disparity").

It is a fundamental principle of social science that an analysis of aggregated data can allow researchers to identify factors that contribute to observed outcomes, without knowing the individual circumstances of each case included in the study. Social scientists routinely take up administrative datasets of court records and other crime data to measure patterns in outcomes across that data with the intention of predicting the likelihood that those outcomes will occur. Standard social scientific methods for evaluating this type of data are selected based on the research question and the allowances of the specific data provided. Included in these analyses are robustness checks that provide information on the level of confidence that can be ascribed to particular findings, specific investigations of data quality and potential sources of error, and the application of substantive expertise in making decisions about data modeling.

A variety of statistical models can be used to provide important and coherent findings about racial disparity. Even descriptive statistical analyses of racial disparities can provide a strong indication of racial bias warranting further investigation at an evidentiary hearing. The Superior Court of Contra Costa County has held that a study calculating statistical disparity by comparing unadjusted odds ratios established racial bias warranting relief under the RJA, even without the stronger evidence that comes from a multivariate regression analysis. (*People v. Windom* (Super. Ct. Contra Costa County, May 23, 2023, No. 01001976380) Court's Order Re: PC 745(a)(3) Motion.) There, the court credited the testimony of an expert who found

that a Black defendant was significantly more likely than a White defendant to be charged with special circumstances and that, based on the odds ratio analysis, the racial disparity in charging was just 8 percent likely to be a random occurrence. (*Id.* at p. 9.) Since the prosecution did not prove that the racial disparity was due to "an alternate race-neutral cause" the court found that the defendants had met their burden under the RJA and granted the motion to dismiss the special circumstances allegations against them.

Similarly, in *Mosby v. Superior Court* (2024) 99 Cal.App.5th 106, Justice Menetrez in a concurring opinion found that statistical evidence alone could establish a prima facie case under the RJA. While the majority found it unnecessary to reach this question because the defendant identified similarly situated case comparators (*id.* at p. 133), Justice Menetrez noted that the RJA was enacted to repudiate *McCleskey*'s holding that statistical evidence could not establish purposeful discrimination. (*Id.* at pp. 135-136 (conc. opn. of Menetrez, J.).) He wrote:

> Directly contrary to *McCleskey*'s requirement that an equal protection claimant prove "purposeful discrimination" (*McCleskey*, *supra*, 481 U.S. at p. 292, 107 S.Ct. 1756), the [legislative] findings acknowledge the existence of "implicit bias," which is "often unintentional and unconscious," and the findings express the Legislature's intent "to remedy the harm to the defendant's case and to the integrity of the judicial system" caused by such bias (Assem. Bill 2542, § 2, subd. (i)). Accordingly, the RJA provides that "[t]he defendant does not need to prove intentional discrimination." (§ 745, subd. (c)(2).)

(*Id*. at p. 136 (conc. opn. of Menetrez, J.).) Because the Legislature expressly has rejected *McCleskey* in enacting the RJA, Justice Menetrez concluded that the RJA necessarily intended that "relief be more broadly available under the RJA than under *McCleskey*." (*Ibid*.) But if "statistical evidence cannot be sufficient even for a prima facie case under the RJA," Justice Menetrez reasoned that would make the RJA "*narrower* than *McCleskey*"—a result that cannot be reconciled with the Legislature's intent. (*Ibid*.) Consequently, Justice Menetrez held that the "trial court's conclusion that statistical evidence cannot be sufficient to make a prima facie case under the RJA must be mistaken." (*Ibid*.)

The *Mosby* concurrence also rejected the argument that the defendant must "produce evidence that there was another defendant who was similar to [the defendant] in all material respects[.]" (*Id*. at p. 137.) Justice Menetrez explained:

> The RJA's inclusion of the words "similarly situated" does not compel such an incongruous interpretation, because an alternative interpretation is readily available: Statistical techniques such as regression analysis can show that racial disparities exist even when one controls for various relevant characteristics, meaning that racial disparities exist among defendants who are similarly situated (i.e., defendants who share those relevant characteristics). The statute's reference to defendants who are "similarly situated" thus does not mean that a defendant must prove, at the prima facie stage, that there is at least one other defendant who is *identical* except for race and has an *identical* case except for race but who was treated less harshly.

(*Ibid*.) Requiring the defendant to make such a showing at the prima facie stage turns the statute on its head by placing "the burden on the defendant, at the prima facie stage, to negate every possible race-neutral reason for the racial disparities shown by the statistical evidence." (*Ibid*.) That conflicts with the statutory language that places the burden on the prosecution to provide race-neutral reasons for a disparity. (*Id*. at pp. 137-138.) It is sufficient that statistics control for relevant characteristics through regression analysis. (*Id*. at p. 138.)

Courts in other contexts also have found statistical evidence of racial disparities to be powerful enough to warrant relief. (See *Commonwealth v. Long* (2020) 485 Mass. 711, 719 [allowing an equal protection violation based on selective enforcement of traffic laws to be established through statistical evidence showing " 'that the racial composition of motorists stopped for motor vehicle violations varied significantly from the racial composition of the population of motorists making use of the relevant roadways, and who therefore could have encountered the officer or officers whose actions have been called into question' "]; *Griggs v. Duke Power Co.* (1971) 401 U.S. 424, 434-436 [holding that racially disparate impact of a job requirement that was not reasonably related to job performance was sufficient to establish a Title VII violation without proof of discriminatory intent]; *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 374 [finding an equal protection violation based on the disparate enforcement of a permitting ordinance where the city denied permits to all 200

Chinese laundromat operators who applied, yet granted permits to all but one of the White operators who applied].)

The *Mosby* concurrence specifically endorsed the use of regression analysis. It can isolate the impact of racial bias by controlling for other potential explanatory variables contributing to the racially disparate impact of a policy or practice.

That is because this form of analysis is particularly suited to the task of identifying disparities while accounting for non-racial variables. "The results of regression analysis reveal how much the outcome changes when any one of the independent variables is varied and the other independent variables are held constant." (Beckett & Evans, *Race, Death, and Justice: Capital Sentencing in Washington State, 1981-2014* (2016) 6 Colum. J. Race & L. 77, 91.) Regressions thus allow "researchers to identify the unique impact of each independent variable . . . over and above the impact of the other variables included in the model." (*Id.* at pp. 91-92.) Accordingly, such studies can support a conclusion about whether a particular policy was imposed in an arbitrary and racially biased manner. (*Ibid.*)

Indeed, the Ninth Circuit has held that statistical evidence using a regression analysis sufficiently established a prima facie case for disparate impact discrimination. (*Freyd v. University of Oregon* (9th Cir. 2021) 990 F.3d 1211, 1226.) Although the defendant contended that the study was flawed because the sample size was too small, that argument went to the "probative value" of the evidence, which was "a matter for the experts to debate and the jury to resolve." (*Ibid.*)

The same should be true here. In assessing whether a petitioner has established a prima facie case of an RJA violation with respect to prosecutorial charging practices, "[t]he court should accept the truth of the defendant's allegations, including expert evidence and statistics, unless the allegations are conclusory, unsupported by the evidence presented in support of the claim, or demonstrably contradicted by the court's own records." (*Finley*, *supra*, 95 Cal.App.5th at p. 23.) That is consistent with the Legislature's "low standard for a prima facie case under the RJA[.]" (*Mosby*, *supra*, 99 Cal.App.5th at p. 136 (conc. opn. of Menetrez, J.).)

As both a legal and practical matter, an evidentiary hearing, not on the pleadings, is the appropriate place to dispute whether the underlying evidence for purposes of comparison supports the defense expert's conclusions. To reject statistical findings due to disputes about the underlying data places too heavy a burden on the pleadings and is "contrary to the Act's structure and purpose," which was " 'to depart from the discriminatory purpose paradigm in federal equal protection law,' a standard that was 'nearly impossible to establish.' " (*Finley*, *supra*, 95 Cal.App.5th at p. 22.)

The prosecution's assertion that statistical evidence of disparity should *not* warrant a hearing is inconsistent with accepting the truth of the statistical analysis at the prima facie stage. (*Finley*, *supra*, 95 Cal.App.5th at p. 23.) It also belies the language and animating purpose of the RJA, which recognizes that racial disparities are an indication of historical and ongoing

inequity requiring interrogation and redress. The prosecution's arguments imply that stark racial disparities are unconcerning, or perhaps to be expected since there are reasonable and legitimate explanations for the fact that Black defendants are systematically charged and sentenced more harshly than White defendants.[9] The normalization of these racial disparities is derived from a long history of racialized oppression in the criminal legal system—and in American society as a whole—and the resulting racist stereotypes unwarrantedly associate Blackness and criminality.[10] But in enacting the RJA, the

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[9] Chien et al., *Proving Actionable Racial Disparity Under the California Racial Justice Act*, *supra*, 75 U.C. L.J. 1.

[10] See, e.g., Muhammad, The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America (2011) p. 4 (noting that in the early twentieth century, "African American criminality became one of the most widely accepted bases for justifying prejudicial thinking, discriminatory treatment, and/or acceptance of racial violence as an instrument of public safety"); Hinton & Cook, *The Mass Criminalization of Black Americans: A Historical Overview* (2021) 4 Ann. Rev. Criminology 261, 270 <https://www.annualreviews.org/doi/10.1146/annurev-criminol-060520-033306> [as of Sept. 19, 2025] (noting that "statistical discourses about black criminality shaped the strategies urban law enforcement authorities deployed in black neighborhoods" even as "[t]he alarming racial disparities in arrest and incarceration rates led W.E.B. Du Bois and other prominent civil rights activists to vociferously critique racism in the justice system"); Hinton et al., Vera Institute of Justice, An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System (May 2018) <https://vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf> [as of Sept. 19, 2025] (discussing the ways in which "America's history of racism and oppression continues to

(footnote continues on following page)

Legislature rightfully "reject[ed] the conclusion that racial disparities within our criminal justice [system] are inevitable." (AB 2542, § 2(i).) The Act explicitly created a path for defendants to challenge their conviction or sentence with statistical evidence.

Comprehensive data under a range of sampling and analytic conditions on racial inequities spanning policy areas exposes how and where racism manifests, including in the allocation of resources and creation of harms.[11] Accordingly, statistical evidence alone can demonstrate the racially disparate treatment of similarly situated groups and thereby establish more than a "mere possibility" of racial bias warranting a hearing under the RJA. Statistical evidence of this kind need not

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manifest in the criminal justice system, and . . . how the system perpetuates the disparate treatment of black people"); Hetey & Eberhardt, *The Numbers Don't Speak for Themselves: Racial Disparities and the Persistence of Inequality in the Criminal Justice System* (May 2018) 27 Current Directions in Psychological Science 183, 184 <https://journals.sagepub.com/doi/epdf/10.1177/0963721418763931> [as of Sept. 19, 2025] ("Ironically, researchers have found that being presented with evidence of extreme racial disparities in the criminal justice system can cause the public to become more, not less, supportive of the punitive criminal justice policies that produce those disparities.").

[11] See generally Khoshkhoo et al., T*oward Evidence-Based Antiracist Policymaking: Problems and Proposals for Better Racial Data Collection and Reporting* (May 2022) <https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=4410&context=faculty_scholarship> [as of Sept. 20, 2025].

interrogate individualized motives or impacts.[12] Appellant's evidence here warranted a hearing under the RJA.

As Retired Judge J. Richard Couzens observed, the "similarly situated" standard does not "require absolute equality," but rather requires consideration of variables that are material to the analysis. (Couzens et al., Cal. Practice Guide: Sentencing California Crimes (The Rutter Group 2025) ch. 28, § 28:5; see also Assem. Com. on Pub. Safety, Hearing on Assem. Bill No. 256 (2021-2022 Reg. Sess.) (Mar. 23, 2021), at 3:45:40, <https://www.assembly.ca.gov/media/assembly-public-safety-committee-20210323> [as of Sept. 19, 2025] [citing Judge Couzens's analysis].) Likewise, the statutory definition of "similarly situated" states that the term means "that factors that are relevant in charging and sentencing are similar" not "that all individuals in the comparison group are identical." (Pen. Code, § 745, subd. (h)(6).) This statutory definition comports with accepted social science methodology.

Importantly, social science requires comparative analysis to consider material confounding variables, not every possible variable that may distinguish the comparators. Social science researchers commonly evaluate the comparative treatment of racial groups without accounting for every minor factual

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[12] Thaxton, *Disentangling Disparity: Exploring Racially Disparate Effect and Treatment in Capital Charging* (2018) 45 Am. J. Crim. L. 95, 101-102 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3710318> [as of Sept. 19, 2025].

distinction among cases used as data points.[13] In fact, using too many variables relative to the number of observations in a dataset can lead to a statistical concept called overfitting.[14] Models that are overfit can appear to show significant patterns in a population, when such patterns do not exist, and can fail to replicate.[15] The solution then is high-quality design and the leveraging of expertise to isolate a set of theoretically meaningful

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[13] Grosso et al., *Death by Stereotype: Race, Ethnicity, and California's Failure to Implement Furman's Narrowing Requirement* (2019) 66 UCLA L.Rev. 1394, 1433-1440 (engaging a logistic regression model to demonstrate the racially disparate application of special circumstances enhancements by accounting for several material variables, but not factual circumstances unrelated to the charges); Judicial Council of Cal., Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant (2019) p. 12 <https://www.courts.ca.gov/documents/lr-2019-JC-disposition-of-criminal-cases-race-ethnicity-pc1170_45.pdf> [as of Sept. 19, 2025] (using statistical methods to control for age, gender, and other legal factors available in the data to compare outcomes for similarly situated defendants); Ayres, *Outcome Tests of Racial Disparities in Police Practices* (2002) 4 Justice Research & Policy 131.

[14] Ridgeway & MacDonald, *Doubly Robust Internal Benchmarking and False Discovery Rates for Detecting Racial Bias in Police Stops* (2009) 104 J. Am. Stat. Assn. 661 <https://www.rand.org/pubs/reprints/RP1394.html> [as of Sept. 19, 2025].

[15] See Babyak, *What You See May Not Be What You Get: A Brief, Nontechnical Introduction to Overfitting in Regression-Type Models* (2004) 66 Psychosomatic Medicine 411, 414 <https://journals.lww.com/bsam/fulltext/2004/05000/what_you_see_may_not_be_what_you_get__a_brief,.21.aspx> [as of Sept. 19, 2025] (presenting a simulation showing that a model filled with random noise can prove out with good r-squared values even when no true pattern can possibly be present).

covariates—not forcing a giant universe of variables into an increasingly complex model.[16]

As we explain next, the regression analyses offered in the trial court controlled for relevant variables and reached a well-supported conclusion that there is more than a "mere possibility" that racial bias influences decisions to charge defendants with special circumstances.

B. Dr. Petersen's studies employed regression analysis that controlled for relevant factors and established that Black defendants are 2.98 times as likely to be charged with special circumstances than similarly situated White defendants.

The prosecution argues: "absent case-specific evidence regarding facts underlying the reviewed offenses" underlying the statistical analysis, statistical evidence cannot establish a prima facie case that Black defendants in Riverside County are more likely to be charged with felony special circumstances murder than defendants of other races. (RB 27.) The prosecution maintains that the details of other cases are required to demonstrate that "similarly situated" individuals who engaged in "similar conduct" were treated differently. (RB 17.) But regression analysis is designed precisely to identify and account for such similarities in reaching a conclusion about the impact of

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[16] See Freedman, *Statistical Models and Shoe Leather* (1991) 21 Sociological Methodology 291, 291 (noting that "statistical technique can seldom be an adequate substitute for good design, relevant data, and testing predictions against reality in a variety of settings").

the defendant's race on the likelihood of being charged with special circumstances.

In support of his RJA motion, appellant submitted two separate regression analyses to support his prima facie case. The first examines the full *population* of court cases resulting from murders committed in Riverside County from 2006 through 2019, a pool that includes nearly 900 defendants. (5 CT 1456-1484.) The second analyzed a sample of 113 probation/presentence reports produced under court order. (8 CT 2322-2335.) The prosecution largely ignores the former and misinterprets the latter. Both analyses amply satisfy appellant's burden to establish "more than a mere possibility" of racial bias.

The first regression analysis seeks to model whether a special circumstance was charged, as a function of: (1) the defendant's race being Black or White, and (2) control variables representing legally relevant facts (e.g., crime severity, prior record, jurisdiction). The model produces a coefficient for each variable, which represents the association between that variable and being charged with special circumstances. The key feature of this association is that this relationship the regression ultimately seeks to ascertain—"the outcome of interest" between the defendant's race and whether a special circumstance was changed—is the statistical result after accounting for the effect of the other variables.

To illustrate, Table 2 in Dr. Petersen's September 24, 2022 report contained the following regression analysis of all charged

murders in Riverside Count with a resulting special circumstances felony murder charge:

Logistic Regressions Predicting Felony-murder special circumstances in Riverside County.	
	Odds Ratio (SE)[17]
Defendant demographics:	
Black defendant	2.98** (1.27)
Hispanic defendant	1.13 (0.41)
Victim demographics:	
Black victim	0.38* (0.19)
Hispanic victim	0.60 (0.23)
Victim age	1.00 (0.01)
Male victim	0.90 (0.34)
Case characteristics:	
Multiple victims	0.78 (0.36)
Multiple defendants	3.63*** (0.85)
Special circumstance eligible felony	8.89*** (3.45)
Pending case	2.93** (1.30)
Weapon: Firearm	0.62 (0.20)
Weapon: Knife	0.56 (0.27)
Victim-defendant relationship: stranger	5.52*** (3.59)

[17] "SE" stands for "standard error."

Victim-defendant relationship: other	4.74*** (2.79)
Victim-defendant relationship: unknown	2.31 (1.62)
Prior criminal history enhancement	0.51* (0.20)
log # non-murder charges	1.41* (0.27)
Location: residence	2.10* (0.80)
Location: street	0.90 (0.42)
Observations	894

(5 CT 1475.)

The outcome of interest in this analysis is the odds of being charged with a special circumstance and the variable of interest is the defendant being Black. However, the table accounts for a host of control variables: prior criminal history enhancement, Black victim, Hispanic victim, victim age, male victim, multiple victims, multiple defendants, death-eligible felony, case involving a firearm, case involving a knife, victim relationship to the defendant, number of murder charges, and location of the crime. These control variables account for the myriad potential alternative and race-neutral considerations in choosing to charge the special circumstance at hand.

By including those control variables, the model evaluates the degree by which the defendant being Black versus White is associated with an increase in the odds of being charged with a special circumstance—while holding all of these other potential contributions constant. It does so by accounting for the control

variables: The regression model measures the association between the defendant being Black and the outcome, *all else being equal*. Meaning, if prior criminal history enhancement *and* whether the victim were Black *and* whether the victim were Hispanic *and* the victim's age *and* whether the victim were male *and* whether there were multiple victims *and* whether there were multiple defendants *and* whether the felony were death-penalty-eligible *and* whether the crime involved a firearm *and* whether the crime involved a knife *and* the victim's relationship to the defendant *and* the number of murder charges *and* the location of the crime were all the same. In so doing, the model is able to make comparisons of how criminal defendants are treated in cases with similar circumstances along all of these additional factors, *except for the single factor of interest*, the race of the defendant.

To answer the question posed, the table lists numerical values that correspond to a "point estimate" for each variable. These estimates are termed "coefficients" because, in the mathematical equation through which they are derived, they modify the relevant variable. In effect, these values represent the relative strength of the association between the variable (whether the variable of interest or a control variable) and the outcome. And the caption notes that the coefficients have been exponentiated. This is a mathematical convenience that allows for more natural interpretation, in that the results can now be directly interpreted as relative increases or decreases in odds.

In the table above, the coefficient of interest is for Black defendants. The value of 2.98** (1.27) is a short-hand way to express three ideas. The first is the point estimate (2.98). This is the best summary of the value of the estimate of the coefficient. The second value in parentheses (1.27) is the standard error of the estimate of the coefficient, which indicates how precise the estimate is. The larger this second number (especially relative to the first), the less precise the estimate. This is often summarized by the third idea contained here, which is the asterisk (*). This indicates whether the precision is sufficient to provide relative confidence as to whether this estimate is greater (or less than) zero. The more asterisks, the more confident we can be that this estimate is actually indicating an association.

Thus, Dr. Petersen's regression analysis established that the odds of a felony-murder special circumstance filing in Riverside County are 2.98 times as great for Black defendants, net of a co-occurring special circumstance eligible felony charge and other factors. (5 CT 1474.) Or put another way, comparing a Black defendant and a White defendant, while controlling for every single one of the control factors listed in Table 2, a Black defendant has a 198% increase in the odds of being charged with a special circumstance.

As for Dr. Petersen's second regression analysis, it was based on materials produced by the prosecution, a sample of probation and presentencing reports for 113 defendants charged with murder in Riverside County. (8 CT 2332.) The second analysis was not independent of the first but confirmed that

"racial disparities persist in Riverside County special circumstance filings from 2006 to 2019." (8 CT 2323.) It found the odds of a Black defendant being charged with a special circumstance are 3.10 to 4.44 times as great as the odds of a similarly-situated White defendant being charged with a special circumstance and 4.62 to 3.66 times as great as the odds of a similarly-situated White defendant being charged with a felony-murder special circumstance. (8 CT 2332.) Other factors considered—"measuring mitigators, aggravators, criminal history, and evidence from the probation reports"—"do not explain the racial disparities in special circumstances identified" in the prior analysis. (8 CT 2335.) Dr. Petersen concluded that his prior conclusions "still hold when utilizing more robust logistic regression models with a host of novel variables," bolstering "the accuracy and robustness" of the findings in the first analysis. (8 CT 2335.)

The prosecution focuses entirely on the second analysis's statement that the racial disparities identified in that report are " 'not statistically significant' " (RB 26, quoting 8 CT 2323, 2332, italics omitted), but Dr. Petersen explained that was likely "due to the smaller sample size." (8 CT 2332-2333 ["Analyses with a smaller number of cases will necessarily have greater sampling variability" and "the sample may be too small to detect statistically significant relationships[.]"].) The prosecution completely omits Dr. Petersen's actual conclusion:

> Notwithstanding the small sample size, my results reveal practically/legally significant findings that mirror statistically significant Black-White racial

> disparities in special circumstance filings documented in my previous reports and other published research. [Footnote] Given the consistency of the extant results with my prior conclusions and the fact that the Racial Justice Act (RJA) does not require statistical significance, these findings are still of considerable importance. [Footnote]

(8 CT 2333.) In short, even with a small sample size, the second regression analysis confirmed racial disparities in charging special circumstances.

The prosecution's arguments to this court demonstrate a major flaw in how this case was handled by the trial court. Their attack on Dr. Petersen's analysis goes to the weight the studies should be given, which should be decided at the evidentiary hearing. Here, at the prima facie stage, the studies must be accepted as true. (*Finley*, *supra*, 95 Cal.App.5th at p. 23.) And the studies, when accepted as true, establish racial disparities in charging Black defendants with special circumstances. Under established social science standards, the regression analyses satisfied the RJA's low threshold for an evidentiary hearing.

IV. The trial court's requirement of specific examples of factually similar cases involving charging disparities would impose an impermissible and often insurmountable barrier to proving racial disparities under the RJA.

In rejecting the statistical data, the trial court held that this data did not show "any similarly situated individuals who committed similar conduct that were subject to different treatment[.]" (26 RT 7512:19-20.) Instead, it seemed to conclude that a defendant must do what the *Mosby* defendant did—provide

specific examples of "similar" cases where White defendants were treated differently from Black defendants.[18] For the reasons discussed above, that is not required under the RJA because statistical evidence alone can prove "more than a mere possibility" of racially disparate charging of special circumstances. Moreover, the trial court's requirement ignores the practical barrier this imposes—a barrier that many criminal defendants will be unable to overcome.

As appellant's counsel argued below, the *Mosby* defendant was represented by public defenders who identified similar cases from files in cases they had previously litigated. (26 RT 7513:20-23.) But many counsel are unlikely to have access to such records. The ability to meet the requirements of the RJA should not depend on the identity of the defendant's counsel, let alone on the chance that their records will include cases with similar facts.

This case illustrates the problem with a requirement to prove that similarly situated defendants were treated differently based on race. In the second regression analysis, appellant was forced to rely upon the 113 probation and sentencing reports from 2006 through 2019 produced by the prosecution. Yet there were nearly 900 murder cases in Riverside County during that period. Data for most of those cases either did not exist or was not

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[18] In *Mosby*, the defendant produced "factual examples of nonminority defendants who committed murder but were not charged with the death penalty in cases involving similar conduct and who were similarly situated, e.g. had prior records or committed multiple murders[.]" (*Mosby*, *supra*, 99 Cal.App.5th at pp. 113, 129.)

produced. Thus, it is pure chance that any relevant records exist and pure happenstance that those records would provide sufficiently similar facts to make the showing the trial court required.

The absence of systematic record-keeping by prosecutors makes the trial court's standard untenable.[19] If records containing the type of details the trial court seems to require do not exist, it will be nearly impossible for many defendants to make the requisite showing for a prima facie case. Requiring a criminal defendant to identify specific examples of disparate charging decisions at the prima facie stage ignores this practical reality and creates a bar that will be insurmountable for many defendants.

Moreover, the trial court's ruling provides no clear sense of what similarities would satisfy the RJA. The prosecution seems to demand that appellant make a showing of charging in murder cases on all fours with the instant case. But in *Mosby*, the defendant merely showed differential charging in cases where the defendant "had prior records or committed multiple murders[.]"

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[19] Glass et al., *Prosecutorial Data Transparency and Data Justice* (2024) 119 Nw.U. L.Rev. 193, 202 ("because prosecutors do not systematically document or publish data on the bases for their charges, declinations, plea bargains, or recommended sentences, a complete understanding of precisely where and how racial bias manifests and accumulates in the interstice between arrest and trial remains elusive"); Metcalfe & Chiricos, *Race, Plea, and Charge Reduction: An Assessment of Racial Disparities in the Plea Process* (2018) 35 Justice Quarterly 223, 224 (attributing the lack of research on plea bargaining to the "difficulty of collecting or accessing data requisite to the task").

(*Mosby*, *supra*, 99 Cal.App.5th at pp. 113, 129.) Those types of factors are contemplated in Dr. Petersen's first regression analysis. He controlled for multiple victims and prior criminal history, as well as numerous other factors including the race of the victim, weapon used, and the relationship of defendant to victim. Given the regression analysis controlled for those factors, imposing an added burden of providing the facts from specific cases is unnecessary. There is simply no basis to impose such a requirement to satisfy the low bar for obtaining an evidentiary hearing—"more than a mere possibility" of racial bias in charging appellant with special circumstances.

Similarly, the prosecution argues that appellant failed to identify non-Black defendants who committed "similarly heinous" crimes who were not charged with special circumstances. (RB 28.) "Heinous" is purely subjective and creates no administrable standard. The prosecution would require such extreme factual similarity that the number of comparator cases would be too small to allow for meaningful statistical analysis.[20] Moreover, attempts to compare the instant case to others using an amorphous standard like "heinous" will invariably be countered by the prosecution identifying differences in the cases that surely would exist.

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[20] See Deziel, *The Effects of a Small Sample Size Limitation* (Mar. 23, 2022) Sciencing <https://sciencing.com/effects-small-sample-size-limitation-8545371.html> [as of Sept. 20, 2025] (stating that smaller sample sizes reduce the power of a study by increasing the margin of error, reducing the confidence level of the study).

Instead, statistical methods like Dr. Petersen's regression analyses are useful for identifying patterns across a universe of information and often allow statisticians to draw conclusions about how particular phenomena influence outcomes. In terms of causality and even correlation, the charging decision in a single case—or even a couple of cases—involving "heinous" conduct would neither prove nor disprove the validity of the larger pattern. As an example, imagine students in a class are given a very unfair exam that covers material they were not taught. Perhaps a few students still pass the exam. That does not make the exam fair. Applied to the present analysis, anecdotal counter-examples do not overcome the weight of appellant's statistical studies demonstrating "more than a mere possibility" of racial bias.

Requiring anecdotal examples also contravenes the Legislature's decision to reject *McCleskey*. As one commentator has explained, RJA "disparity claims do not require comparisons between or among *individuals* but rather between or among *groups* of people."[21] The RJA "would not act as a countermeasure to *McCleskey* if a person needed to prove that they were *actually* treated more harshly than one or more similarly situated people

[21] Romo, *The Disparity in Litigating Racial Disparity Claims: The Need for California Courts to Articulate a Framework for Assessing Racial Justice Act Challenges to Charging, Conviction, and Sentencing* (2025) 65 Santa Clara L.Rev. 229, 242, italics added. In the interest of full disclosure, the author of this article served as defense counsel below.

of another race who had engaged in similar conduct."[22] "That would amount to a showing of prejudice, which the legislative history for both A.B. 2542 and 256 expressly recognize is *not* required."[23] Thus, in the face of statistical evidence that controls for similar facts, requiring the defendant to provide examples of a specific case or cases with factual similarities is wholly unnecessary.

In sum, the inability to point to a particular case involving similar facts where a White defendant was not charged with special circumstances is not a bar to relief under the RJA. The prosecution's proposed interpretation of the statute would impose an unreasonably high burden on appellant. This result would frustrate the stated purpose of the Act, which is to eliminate racial bias in California courts by making it no longer "impossible to establish" that racial bias exists. (AB 2542, § 2(c).) In accordance with this purpose, concerns about the methodological comparison of similarly situated groups are not appropriate at the prima facie stage of litigation, and instead should be reserved for an evidentiary hearing.

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[22] *Ibid*.

[23] *Id.* at pp. 242-243.

Conclusion

For the reasons set forth above, accepted principles of social science support a finding that appellant's proffered statistics satisfied his prima facie burden under the California Racial Justice Act. Accordingly, this court should reverse appellant's conviction and direct the trial court to conduct an evidentiary hearing on appellant's RJA petition.

Respectfully Submitted,

September 25, 2025

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Certificate of Word Count

(Cal. Rules of Court, rule 8.204(c)(1))

The text of this brief consists of 8,875 words as counted by the Microsoft Word program used to generate this brief.

Dated: September 25, 2025

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Proof of Service

I, Stacey Schiager, declare as follows:

I am over the age of eighteen years, and am not a party to this action. My business address is 96 Jessie Street, San Francisco, CA 94105. On September 25, 2025, I served the following document:

Brief of Amici Curiae Fred T. Korematsu Center for Law and Equality; Six Additional Centers for Race, Inequality, and the Law; and Twelve Individual Professors and Scholars in Support of appellant

On September 25, 2025, I caused the above-identified document to be electronically served on all parties and the California Supreme Court via TrueFiling, which will submit a separate proof of service.

Additionally, on September 25, 2025, I served the above-identified document by mail. I enclosed a copy of the document in an envelope and deposited the sealed envelope with the U.S. Postal Service, with the postage fully prepaid. The envelope was addressed as follows:

Hon. Timothy Hollenhorst
Riverside County Superior Court
4100 Main Street
Riverside, CA 92501

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 25, 2025.

/s/ Stacey Schiager
Stacey Schiager