AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Northern California

April 14, 2025

Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *R.D. v. Superior Court of Sacramento County*, No. S290023
Letter of Amici Curiae in Support of Petition for Review

Dear Chief Justice Patricia Guerrero and Associate Justices:

Amici curiae civil rights and indigent defense organizations urge this Court to grant review for the second time in *R.D. v. Superior Court of Sacramento County*, No. S290023 (original No. S284862). This case presents critical questions of first impression: whether some remedy is always required for a violation of the California Racial Justice Act (RJA), and further, what remedies are available. The Court previously granted review to compel a written decision in this matter. Now, the Court of Appeal has answered both questions incorrectly, holding it permissible to provide no remedy at all in prospective cases, and limiting available remedies to those specifically enumerated by statute. These holdings are contrary to the text and purpose of the RJA, which is to root out racial bias in the criminal law. The decision below will thus enable discrimination in myriad circumstances to go unchecked.

Moreover, the decision below is fractured and inconsistent with other cases holding that the RJA *requires* a remedy. It will accordingly engender confusion among the lower courts regarding precisely what the RJA requires. For this reason as well, this Court should grant review.

I. *Interests of Amici Curiae*[1]

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan, non-profit organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU of Northern California and the ACLU of Southern California are regional affiliates of the national ACLU. For decades, these affiliates have advocated to advance racial justice for all Californians. These affiliates have participated in cases, both as direct counsel and as *amicus curiae*, involving the enforcement of constitutional guarantees of equal protection and due process for people of color, including in connection with harms resulting from their involvement with the criminal legal system. These affiliates were major supporters of the RJA. Since the enactment of the RJA, they have been actively involved in litigation, legislative advocacy, and other work to ensure the effective implementation of the RJA. The ACLU of Northern California and of Southern California have a vested interest in ensuring that the RJA is applied in a manner consistent with its purpose of addressing and ameliorating systemic racial disparities in the criminal legal system.

The Office of the State Public Defender (OSPD) represents indigent people in their appeals from criminal convictions in both capital and non-capital cases. The Legislature has instructed OSPD to "engage in related efforts for the purpose of improving the quality of indigent defense." (Gov. Code, § 15420, subd. (b).) It has also "authorized [OSPD] to appear as a friend of the court[.]" (Gov. Code, § 15423.) OSPD has a longstanding interest in the fair and uniform administration of California criminal law generally and in application of the Racial Justice Act codified in Penal Code section 745. OSPD is particularly concerned with ensuring that the RJA is implemented broadly, as the Legislature intended, to eradicate racial disparities in the criminal legal system. (Stats. 2020, ch. 317, § 2, subd. (i).)

The California Public Defenders Association (CPDA) is the largest association of criminal defense attorneys, public defenders, and associated professionals in the State of California. With a membership exceeding 4,000 professionals, CPDA is an important voice for the criminal defense bar. The collective experience of CPDA attorneys across California, in fighting persistent racial injustice that has gone

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[1] Pursuant to Rule 8.520(f)(4), *amici* states that no counsel for a party authored this brief in whole or in part, and no other person or entity, other than *amici curiae*, its members, or its counsel, made any monetary contribution to the preparation or submission of this brief.

unaddressed for too long, places CPDA in a unique position to assist the court in this case. Courts have granted CPDA leave to appear as *amicus curiae* in nearly 50 California cases resulting in published opinions. CPDA was a major supporter of the RJA, Assembly Bill 2542 (effective January 1, 2021), which enacted Penal Code section 745, to eliminate explicit and implicit racial bias from every stage of a criminal case and to remedy the harms caused by racial bias.

The Pacific Juvenile Defender Center (PJDC) is a recognized authority on juvenile justice issues. It helped develop and enact Proposition 57 that reformed transfer procedures and Senate Bill No. 1391 that eliminated the transfer of 14- and 15-year-olds to adult criminal court. PJDC sponsored Assembly Bill No. 624 that created a right to appeal transfer decisions and Assembly Bill No. 2361 that codified the principle that young people who are amenable to the rehabilitative services of the juvenile court must be saved from a lifetime of incarceration. PJDC has also been at the forefront of California's monumental juvenile justice realignment efforts and provided important information and input to legislative staff. PJDC has submitted amicus curiae briefs before this Court in *People v. Contreras* (2018) 4 Cal.5th 349, *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, *O.G. v. Superior Court* (2021) 11 Cal.5th 82, and *People v. Padilla* (2022) 13 Cal.5th 152.

The Los Angeles County Public Defenders Union, Local 148, is a union representing over 600 attorneys at the Los Angeles County Public Defender's Office. Its members proudly represent people accused of crimes in the 26 criminal courthouses throughout Los Angeles County. Many of its members also handle clients' post-conviction RJA cases.

The San Francisco Public Defender's Office (SF PDO), which annually represents over 20,000 indigent accused individuals, strongly supported the passage of the RJA, enacted to combat and remedy the systemic and persistent racial bias that harms those, in particular from the Black and Latino communities, in the criminal legal system. The SF PDO has emerged as a state leader in implementing the RJA, including litigating the case that led to the published appellate decision, *Finley v. Superior Court* (2023) 95 Cal.App.5th 12, establishing the prima facie standard to obtain an evidentiary hearing under the RJA.

II. *Background*

This case involves a clear and egregious violation of the RJA. During a pretrial hearing, a judge sitting by temporary assignment denied release to a juvenile defendant on the grounds that he was a

"serious gang banger" with criminality "in his blood," and "in his culture" who "can't get it out of his system." A different judge later granted release. The judge who granted release also found that the prior court had violated section 745, subdivision (a)(2) as it "reflected the potential bias or animus that the Legislature intended to address" through the Act. (*R.D. v. Sup. Ct. of Sac. Cnty.* (2025) 108 Cal.App.5th 1227 [330 Cal.Rptr.3d 155, 161] (*R.D.*).)[2] The new judge declined to impose any remedy, however, on the bases that the prior court was no longer presiding, the requested release had been granted (albeit for other reasons), and the remedies requested by the petitioner (dismissal or a reduction in charges) were, respectively, statutorily unavailable and inappropriate. (*Id.* at p. 158.)

Petitioner filed a petition for writ of mandate which the Court of Appeal summarily denied. This Court then granted review and directed the Court of Appeal to enter an order to show cause. After briefing and argument, the panel issued a fractured decision. Two judges agreed, albeit for different reasons, that the plain text of the RJA limited remedies to those specifically enumerated in section 745, subdivision (e)(1) and (2), and therefore that no remedy was available in certain cases. (*Id.* at pp. 166-69; *id.* at pp. 169-70 (conc. opn. of Renner, J.).) The third panel member dissented, writing that the text and purpose of the statute compelled a remedy in all circumstances, and that permissible remedies include those available under any provision of law in California. (*Id.* at pp. 170-73 (dis. opn. of Mesiwala, J.).)

III. *The Lead Opinion Below Misinterpreted the RJA's Plain Text*

A robust interpretation of the RJA's remedy provision is necessary to ensure compliance with the statutory language. The RJA's remedy provision, subdivision (e) of section 745, provides:

> Notwithstanding any other law, except as provided in subdivision (k), or for an initiative approved by the voters, if the court finds, by a preponderance of evidence, a violation of subdivision (a), the court shall impose a remedy specific to the violation found from the following list:

(§ 745, subd. (e).) The list includes four subdivisions. Subdivision (e)(1) concerns pre-judgment remedies, at issue here, stating:

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[2] All undesignated statutory references in this letter are to the Penal Code.

(1) Before a judgment has been entered, the court may impose any of the following remedies:

(A) Declare a mistrial, if requested by the defendant.

(B) Discharge the jury and empanel a new jury.

(C) If the court determines that it would be in the interest of justice, dismiss enhancements, special circumstances, or special allegations, or reduce one or more charges.

(See *id.*, subd. (e)(1).) Subdivision (e)(2) lists remedies for post-judgment violations. (*Id.*, subd. (e)(2).) Subdivision (e)(3) provides that a death sentence is unavailable in cases where a court finds a violation of the RJA. (*Id.*, subd. (e)(3).) Finally, subdivision (e)(4) states:

> The remedies available under this section do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law.

(*Id.*, subd. (e)(4).)

Under established principles of construction, this text compels a reading that some remedy is mandatory for any pre-judgment violation of the statute, and that remedies include those available under any provision of law in California.

(a) <u>The text mandates a remedy.</u>

The text of the RJA remedy provision makes a remedy compulsory. The remedy provision states that a "court *shall* impose a remedy specific to the violation" if the "court finds, by a preponderance of evidence, a violation" of the RJA. (§ 745, subd. (e), italics added.) Thus, in *People v. Simmons* (2023) 96 Cal.App.5th 323 (*Simmons*), the Court held that "[t]he plain language of the statute [] mandates that a remedy be imposed without requiring a show of prejudice." (*Id.* at p. 337; accord, *People v. Stubblefield* (2024) 107 Cal.App.5th 896, 924, review granted Mar. 12, 2025, S289152.) This accords with the principle that "[u]se of the mandatory language 'shall' indicates a legislative intent to impose a mandatory duty; no discretion is granted." (*In re Luis B.* (2006) 142 Cal.App.4th 1117, 1123; see also *Sanchez v. Superior Court* (2024) 106 Cal.App.5th 617, 632-633 [the RJA imposes an affirmative "duty" on trial courts "to ensure a proceeding free from racial bias or animus," which cannot be obviated by private agreement or waived by actions of the parties].)

The text also specifically identifies violations in retroactive RJA petitions as the only kind of RJA violation that may, in some circumstances, permit of no remedy. Subdivision (e) provides that a court "shall" impose a remedy "[n]otwithstanding any other law, *except*

as provided in subdivision (k)." (§ 745, subd. (e), italics added.) Subdivision (k), enacted by amendment, provides that in retroactive petitions (judgment entered before January 1, 2021), "the petitioner shall be entitled to relief as provided in subdivision (e), unless the state proves beyond a reasonable doubt that the violation did not contribute to the judgment." (*Id.*, subd. (k).) Inclusion of the language "except as provided in subdivision (k)" within subdivision (e) signifies that retroactive petitions are the *only* instances in which harmless error permits withholding any remedy. (*Francis v. Sup. Ct. of L.A. Cnty.* (1935) 3 Cal.2d 19, 28 ["[W]ell recognized in the construction of [] a statute is that whether a statute is mandatory or directory depends upon the legislative intent as ascertained from the consideration of the whole act."].) In all prospective cases, some remedy is required.

The lead opinion reached a different conclusion. Because subdivision (e)(1) states that a court "*may* impose any of the following remedies," (§ 745, subd. (e)(1), italics added), and (e)(1)(C) similarly authorizes remedies "*[i]f* the court determines that it would be in the interest of justice," (*id.*, subd. (e)(1)(C), italics added), the Court concluded that "the statute is permissive, not mandatory." (*R.D.*, *supra*, 330 Cal.Rptr.3d at p. 167, citation and quotation marks omitted.) Based on this grant of "discretion" within subdivision (e)(1), the majority interpreted the word "shall" in the first sentence of (e) to mean, alternatively, that *if* a remedy is imposed, it must be "specific to the violation," (*id.* at pp. 167-68 (maj. opn. of Duarte, J.)), or "found from the following list" (*id.* at p. 169 (conc. opn. of Renner, J.)).

But these strained readings rest on a faulty premise: that the language of subdivision (e)(1) and (e)(1)(C) grants discretion regarding whether to impose *any remedy at all*. Rather, the discretionary language in (e)(1) and (e)(1)(C) gives courts discretion as to whether to impose remedies listed *under those subdivisions*, where the umbrella paragraph in (e) requires that *some* remedy be imposed any time a violation is found. The (e)(1) and (e)(1)(C) remedies are thus a subset of the available remedies provided by the statute. As discussed *ante*, courts are also authorized to impose non-enumerated remedies under (e)(4). The meaning of "shall" is thus not modified by that subtext; instead, the word "shall" makes clear that where courts exercise discretion to impose no remedy under (e)(1), they must impose some remedy under (e), with (e)(4) providing a vehicle for other remedies not enumerated in (e)(1) or (e)(2).

Nor is the lead opinion's reasoning tenable that "shall" in (e)(1) mandates only that the remedy imposed be "specific to the violation." Subdivision (e)(3), included in the list of remedies that must be "specific to the violation," prohibits the death penalty in any case with

a proven RJA violation—a remedy that will extend beyond the "specific violation" in many cases. (See § 745, subd. (e)(3).) The majority's reading of (e)(1) is thus not only unnatural but contrary to the text of the whole act.

The lead opinion ignored subdivision (k) entirely. Subdivision (k) defines the limited circumstances under which a proven violation of the RJA may be met with no remedy—retroactive petitions. In this and other prospective matters, the plain text compels a remedy.

Separately, the lead opinion attempted to rebut the contention that the trial court's finding amounted to harmless error, emphasizing that the trial court found no remedy appropriate, "not that the violation itself was harmless." (*R.D.*, *supra*, at p. 168.) But this elevates form over substance—with the trial court free to exercise its discretion to find an RJA violation and not impose *any* remedy in the "interest of justice." (*Id.*) Despite its protestations, the lead opinion adopted a rule indistinguishable in effect from harmless error analysis: "The minor was released one week later; thus, he achieved the outcome he had sought at the hearing where the violation occurred." (*Id.* [noting also that the proceedings were otherwise arguably "race-neutral" and not "tainted," with the harm confined to a single hearing].) In short, per the lead opinion, no lasting harm, no meaningful remedy. This interpretation of (e) is inconsistent with the statutory text.

(b) <u>The text permits any remedy available under California law.</u>

The plain text also authorizes courts to impose any remedy available in California. The Legislature provided in subdivision (e)(4) that the expressly delineated remedies "do not foreclose any other remedies available under the United States Constitution, the California Constitution, or any other law." (§ 745, subd. (e)(4).) And subdivision (e)(4) is explicitly included among the list of remedies available for an RJA violation; the statute plainly envisions that trial courts can exercise discretion to order additional remedies not among those expressly enumerated in the prior provisions of the same section, so long as they are authorized by law. (See *Moore v. Cal. State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1011-12 [canons "*ejusdem generis* and *noscitur a sociis* . . . . [hold] that when a statute contains a list or catalogue of items, a court should determine the meaning of each by reference to the others, giving preference to an interpretation that uniformly treats items similar in nature"].)

Moreover, subdivision (e)(4) must incorporate non-enumerated remedies within the RJA to give effect to the mandatory "shall" of (e)(1). As discussed below, in many circumstances, a violation of the RJA will permit of no specifically enumerated remedy. If (e)(4) does not

provide an outlet in such cases, the legislative mandate that every prospective violation receive some remedy is subverted.

Nonetheless, the lead opinion interpreted (e)(4) to mean "that the remedies available under the RJA do not prevent or preclude . . . other remedies available under any other law," rather than that "all remedies provided for by law have been specifically incorporated as remedies under the RJA." (*R.D.*, *supra*, 330 Cal.Rptr.3d at p. 163.) In other words, per the lead opinion, (e)(4) is simply a reminder that other statutory or constitutional provisions external to the RJA may permit other remedies; it does not make those remedies available for a violation of the RJA itself. Any alternative, the lead opinion reasoned, "would render the limited remedies provided for in subdivisions (e)(1) and (e)(2) superfluous." (*Id.* at p. 164.)

But subdivisions (e)(1)-(3) provide remedies not available under other provisions of law. For example, the lead opinion cited Welfare and Institutions Code section 700.3, and Penal Code section 17, subdivisions (b) and (d), as providing for reduction of charges, allegedly rendering that remedy redundant under subdivision (e)(1)(C). (*Id.* at p. 165.) Welfare and Institutions Code section 700.3, however, authorizes a court in the case of a juvenile to treat a wobbler as a misdemeanor—much narrower relief than subdivision (e)(1)(C)'s authority to reduce any charge in the case of any defendant. (Welf. & Inst. Code, § 700.3.) Nor does Penal Code section 17 provide the broad reduction authority available under the RJA. (§ 17, subd. (b) [listing penalties that classify offense as a misdemeanor]; *id.*, subd. (d) [listing circumstances classifying offense as an infraction].) Sections (e)(1) and (2) thus provide remedies distinct from those otherwise available under different statutes or constitutional provisions. By incorporating non-enumerated remedies available under other provisions of law, therefore, subdivision (e)(4) does not render enumerated remedies redundant.

IV. *The Lead Opinion Misconstrued and Undermined the Legislative Purpose*

Even if the text of the RJA were ambiguous, the lead opinion's decision regarding both the requirement of some remedy and the scope of available remedies contradicts the Legislature's intent as established by legislative history. Recognizing that racial discrimination in the criminal law is a "miscarriage of justice" that injures both "the defendant's case" and "the integrity of the judicial system," the Legislature enacted the RJA to provide remedies beyond those available under constitutional precedents. (Assem. Bill No. 2542 (2019–2020 Reg. Sess.) §§ 2(c), 2(i), 2(j) [pre-existing law "generally only address[ed] racial bias in its most extreme and blatant forms"];

see *Simmons*, *supra*, 96 Cal.App.5th at p. 337.) To effectuate this purpose, the RJA must provide a remedy for every prospective violation as both a deterrent and a salve. And courts must have authority to provide the remedy most capable of redressing harm to the defendant and the judicial system. Since the enumerated remedies of subdivision (e)(1)-(3) are ill-fitted for certain circumstances, and sometimes practically unavailable, authority to impose any remedy is essential to fulfilling the statutory purpose.

The lead opinion resisted these conclusions, holding that "the legislative intent to ensure . . . proceedings occur on a race-neutral basis . . . [was meant to be accomplished] by remedying the specific harm the violation caused to the defendant's case." (*R.D.*, *supra*, 330 Cal.Rptr.3d at p. 167.) But as the dissent emphasized, in cases like the one at bar, this would leave unremedied the harm to integrity of the judicial system, *i.e.* the stain of a judge having castigated a defendant on the basis of racial stereotypes would remain, undermining public confidence in the fairness of the criminal legal system. (*Id.* at p. 173 (dis. opn. of Mesiwala, J.).) Far from eradicating racial discrimination in the criminal legal system, the decision below would offer safe harbor, effectively entrenching bias in many contexts as irremediable.

The lead opinion also cited earlier versions of Assembly Bill 2542, which became the RJA, as evidence that the Legislature considered but rejected the specific remedy of dismissal. (*R.D.*, *supra*, 330 Cal.Rptr.3d at pp. 165-66.) But as the dissent noted, "the Legislature's failure to enact a particular provision in a bill is 'of little assistance in determining the intent of the Legislature.'" (*Id.* at p. 172, quoting *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1261-1262.) And omission of dismissal under subdivision (e)(1)(C) is easily explained, as that remedy, unlike reduction of charges, *is* broadly available under other law and therefore under subdivision (e)(4).

The lead opinion's cramped view of the Legislature's intent is thus untenable. The Legislature intended nothing less than to remove the scourge of racial bias from criminal law enforcement. Only the imposition of the most appropriate remedy available under any provision of law can meet this purpose.

V. *The Decision Below Will Cause Significant Harm*

Under the lead opinion's interpretation, there would be only four available remedies for pre-judgment violation of the RJA, and only two available post-judgment. This would exclude from available remedies, for instance, the removal of a judge or prosecutor, prohibiting or striking certain language or testimony, and compelling certain jury

instructions.[3] This would also eliminate as a possible remedy the dismissal of counts where the offense was found to be charged or sentenced disproportionately against individuals of a particular race, ethnicity or national origin, in violation of subdivisions (a)(3) or (a)(4) of section 745—even though this remedy may be (and often will be) the most appropriate remedy in certain such instances.

Moreover, defendants would lack *any* available relief in instances where the remedies enumerated in subdivisions (e)(1) or (e)(2) were unavailable in light of the procedural posture of the case or the charges filed. The pre-judgment remedies in subdivision (e)(1) are unavailable, for instance, where a trial has not yet begun; a jury is not yet empaneled; and where there are no enhancements, special circumstances, or special allegations charged, or lesser offenses available. This would leave a significant swath of pre-trial proceedings effectively beyond the reach of the RJA.

The decision below thus stands to enable significant and widespread harm to numerous defendants and the legal system generally. The RJA was supposed to fix that problem, and accordingly, it now falls to this Court to timely interpret the statute.

VI. *Conclusion*

For the foregoing reasons, *amici curiae* respectfully urge this Court to grant the petition for review.

Dated: April 14, 2025

Sincerely,

/s/ Avi Frey

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[3] For instance, in the instant case, neither pretrial release of the Defendant nor substitution of the judge would have been available under the RJA—fortunately, those essential outcomes came to pass in the ordinary course.

PROOF OF SERVICE

I, Kassie Dibble, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is kdibble@aclunc.org. On April 14, 2025, I served the attached:

Letter of Amici Curiae in Support of Petition for Review in *R.D. v. Superior Court of Sacramento County*, No. S290023

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

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BY MAIL: I mailed a copy of the document identified above to the following case participants by depositing the sealed envelope with the U.S. Postal Service, with the postage fully prepaid:

Clerk of the Superior Court
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For: Hon. Joginder Dhillon
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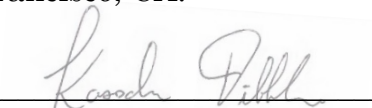
Sacramento, CA 95827
Trial Court, Case No. JV140057

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 14, 2025 in San Francisco, CA.



Kassie Dibble, Declarant