87R2666 JRR-D

By:  Menéndez S.B. No. 2034

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting seeking or imposing the death penalty on the basis of a person's race or ethnicity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Article 11.071, Code of Criminal Procedure, is amended by adding Section 10A to read as follows:

Sec. 10A.  CLAIM INVOLVING RACE OR ETHNICITY. Notwithstanding any other provision of this article, a defendant who is raising a habeas corpus claim involving racial or ethnic bias or discrimination or other impermissible use of race or ethnicity in the defendant's case may present any evidence authorized for use under Article 53.02, including statistical evidence derived from this state or from the county where the defendant was convicted, in support of the claim. The convicting court shall hold a hearing on the claim in the same manner as a hearing is held under Article 53.02.

SECTION 2.  Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.26 to read as follows:

Art. 44.26.  CLAIM INVOLVING RACE OR ETHNICITY IN CAPITAL CASE. (a) This article applies only to an appeal in a capital case in which the defendant was sentenced to death.

(b)  Notwithstanding any other law, a defendant who has raised a claim involving racial or ethnic bias or discrimination or other impermissible use of race or ethnicity in the defendant's case may present any evidence authorized for use under Article 53.02, including statistical evidence derived from this state or from the county where the defendant was convicted, in support of the claim.

SECTION 3.  Title 1, Code of Criminal Procedure, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. PROCEDURE IN CERTAIN DEATH PENALTY CASES

Art. 53.01.  RACIAL OR ETHNIC DISCRIMINATION PROHIBITED. No person shall be subject to or given a sentence of death or executed under any judgment that was sought or obtained on the basis of race or ethnicity.

Art. 53.02.  PROOF OF RACIAL OR ETHNIC DISCRIMINATION; PROCEDURE. (a) To be eligible to file a motion under this chapter, the defendant must knowingly and voluntarily waive any objection to the imposition of a sentence to life imprisonment without parole based on any common law, statutory law, or provision of the federal or state constitution that would otherwise require that the defendant be eligible for parole. The waiver must be in writing, signed by the defendant, and included in the motion seeking relief under this article.

(b)  If the court determines that a hearing is required under Subsection (h), the court shall make an oral inquiry of the defendant on the record to confirm the defendant's waiver to the imposition of a sentence to life imprisonment without parole. If the court grants relief under this article, the judgment must include the finding that the defendant waived any objection to the imposition of a sentence of life imprisonment without parole.

(c)  The defendant has the burden of proving by a preponderance of the evidence that race or ethnicity was a significant factor in the decision to seek or impose the sentence of death in the county at the time the death sentence was sought or imposed. For the purposes of this article, "the time the death sentence was sought or imposed" is the period from 10 years before the date of the commission of the offense to the date that is two years after the date the death sentence is imposed.

(d)  The state may offer evidence in rebuttal of the defendant's claims or evidence, including statistical evidence. The court may consider evidence of the impact on the defendant's trial of any program the purpose of which is to eliminate race or ethnicity as a factor in seeking or imposing a sentence of death.

(e)  Evidence to establish a finding that race or ethnicity was a significant factor in the decision to seek or impose the sentence of death in the county at the time the death sentence was sought or imposed may include:

(1)  statistical evidence derived from this state or from the county where the defendant was sentenced to death; or

(2)  other evidence specific to the defendant's case showing that the race or ethnicity of the defendant was a significant factor in the decision to seek or impose the sentence of death, including:

(A)  evidence showing that race or ethnicity was a significant factor in the decision to exercise peremptory challenges during jury selection; or

(B)  evidence of discriminatory sentiments from any participant in the trial, including a juror, the judge, or a prosecutor.

(f)  The evidence under Subsection (e)(2) may include sworn testimony of an attorney, prosecutor, law enforcement officer, judicial official, juror, or other person involved in the criminal justice system. Testimony by a juror under this subsection must comply with Rule 606(b), Texas Rules of Evidence.

(g)  Statistical evidence alone is not sufficient to establish that race or ethnicity was a significant factor in the decision to seek or impose the sentence of death.

(h)  A motion filed under this article must state with particularity how the evidence supports a claim that race or ethnicity was a significant factor in the decision to seek or impose the sentence of death in the defendant's case in the county at the time the death sentence was sought or imposed. The claim must be raised by the defendant at the pretrial conference or hearing under Article 28.01 or in any postconviction proceeding. If the court finds that the defendant's motion fails to state a sufficient claim under this article, the court shall dismiss the claim without an evidentiary hearing. If the court finds that the defendant's motion states a sufficient claim under this article, the court shall set a hearing on the claim and may prescribe a time before the hearing for each party to present a summary of the evidence the party intends to introduce.

(i)  If the court finds that race or ethnicity was a significant factor in a decision to seek or impose the sentence of death in the defendant's case at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(j)  Filing a motion under this article does not limit or restrict the adjudication of any future constitutional claims made by the defendant or limit or restrict the defendant's eligibility for any other postconviction procedure authorized by this code, including another action under this chapter. The provisions of Article 28.01 prohibiting further adjudication of certain matters not raised at a pretrial hearing do not apply to matters related to a defendant's motion under this article.

SECTION 4.  The change in law made by this Act applies to a defendant alleged to have committed a capital offense regardless of whether the alleged offense was committed before, on, or after the effective date of this Act.

SECTION 5.   This Act takes effect September 1, 2021.