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PERSPECTIVE

AB 2773: A California bill aimed at curbing pretextual stops

By K. Chike Odiwe

California Assembly Bill (2773), signed by Governor Gavin Newsom in September of 2022, requires peace officers to state the purpose of a traffic stop before asking drivers other questions. Under the legislation, officers are not permitted to start the interaction by asking the driver if they know why they were pulled over.

AB-2773 also instructs officers against asking a stopped person their race, ethnicity, or gender. These factors are to be determined from the basis of the officer's observation and perception.

The well-thought-out objective of the bill is to reduce pretextual stops, which permits an officer to stop a car or pedestrian for a minor charge and then search for evidence of a larger crime. The bill also aims to de-escalate police interactions that may lead to further conflicts.

It is important to understand the role that pretextual stops have played in the American Justice System. In 1996, Brown and Whren appealed a pretextual stop. Hall, J.C. (1996, November). "Pretext traffic stops: *Whren v. United States*." *FBI Law Enforcement Bulletin*, 65(11), 28-32. Retrieved on Dec. 29, 2022, from <https://www.ojp.gov/ncjrs/virtual-library/abstracts/pretext-traffic-stops-whren-v-united-states>; Hayden, S. D. (2019, October 1). "Parking while black": Pretextual stops, racism, parking, and an alternative approach." *Southern Il-*



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linois University Law Journal, 44, 107-144.;Stuart,J.E.B.,VI.(2022,June). "Pretextual stops: The rest of the story." *University of Richmond Law Review*, 56(1), 1-18.; U.S. Department of Justice. (2023). Brown and Whren charged that it was discriminatory and that it did not meet the standard of probable cause (Hall, 1996; Stuart, 2022). Three years prior, in 1993, James Lester Brown and Michael Whren were seen by two plain clothes officers from vice in a "high drug area" in the Southeastern area of Washington, D.C. (Stuart, 2022). The officers saw the two civilians stopped at an intersection for over twenty seconds (Stuart, 2022). Upon closer inspection, the defendants sped off and

broke a traffic law (Stuart, 2022). Eventually, the police officers stopped them and saw two bags of a substance that appeared to be drugs (Stuart, 2022). They were then arrested and processed. (Stuart, 2022).

Justice Scalia noted in his opinion that, regardless of what other motivations may lead a police officer to stop a car, it was ultimately immaterial if it is objectively legal. Stuart, 2022; U.S. Department of Justice. In other words, after Whren, the Fourth Amendment analysis of the legality of a stop was either objectively justified, or it was not. (Stuart, 2022, p. 4).

In fact, Stuart (2022) states that Whren permits police officers to exercise substantial discretion in

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deciding which cars to stop (p. 6). Due to that substantial discretion, it is possible for a police officer to give a reason that meets the standard of probable cause to appear to exercise substantial discretion other than exercising their true motive. The amount of criminal and traffic codes affords law enforcement officers in many jurisdictions a lot of discretion to stop cars on the road. (Stuart, 2022, p. 6).

A true pretextual stop occurs when the police use a legal justification to make the stop to search a person or place, or to interrogate a person, for an unrelated serious crime for which they do not have the reasonable suspicion necessary to support a stop.

The classic example occurs when an officer stops a driver for a minor

traffic violation to investigate a hunch that the driver is engaged in illegal drug activity. Hayden, S. D. (2019, October 1). "Parking while black": Pretextual stops, racism, parking, and an alternative approach. *Southern Illinois University Law Journal*. Southern Illinois University at Carbondale. *School of Law*, 44, 107-144.

When Whren was rendered, it appeared that the U.S. Court System had rendered an undisclosed policy when it came to stops that may appear to be racially motivated. Many people believe that police officers are still given a wide window of discretion. Casiano, L. (2022, March 2). LAPD officers now required to explain 'pretextual' stops on cameras. Retrieved on Feb. 2, 2023 from <https://www.foxnews.com/us/los-angeles-lapd-police-officers-pretextual-stops>. Nonetheless, some states have specifically addressed the continued injustice after Whren (Casiano, 2022).

However, with the passage of AB 2773, advocates argue that the new law will help protect citizens who are disproportionately impacted by minor traffic violations, such as Black drivers in California.

According to a 2021 report by the Public Policy Institute of California (PPIC), which analyzed data from nearly four million stops by California's 15 largest law enforcement agencies, Black Californians were twice as likely to be searched during police stops than white citizens. "California Days Away From Changing How Police Pull Drivers Over." Black Californians are also

more likely than whites to face arrest during stops, at 9.5 percent compared to 5.6 percent, respectively. *Id.*

Blacks and Latinos from California are also far more likely to face invasive action from law enforcement, which the PPIC defines as instances where police officers use force during the stop or stopped citizens are asked to step out of a car or face some sort of physical interaction. *Id.* The California Public Defenders Association believes that the new law would raise transparency and public confidence in law enforcement by requiring an officer to immediately reassure the individual of the specific reason for the stop and in turn, dramatically increase the safety aspects of these stops.