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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

AUG 11 2000

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

MUHAMMAD S.  
FARRAKHAN, (aka ERNEST S.  
WALKER), et al.,

Plaintiffs,

v.

GARY LOCKE, et al.,

Defendants.

NO. CS-96-076-RHW

DEFENDANTS'  
COUNTERSTATEMENT OF  
MATERIAL FACTS RE:  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

Defendants, by and through their attorneys, CHRISTINE O. GREGOIRE, Attorney General, and DANIEL J. JUDGE and JEFFREY T. EVEN, Assistant Attorneys General, submit the following Counterstatement of Material Facts In Response to Plaintiffs' Motion for Summary Judgment. Each paragraph below corresponds by number to Plaintiffs' Statement of Material Fact.

DEFENDANTS'  
COUNTERSTATEMENT OF  
MATERIAL FACTS RE:  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

1           1.       While it is true that Plaintiff Farrakhan had a remaining monetary  
2 obligation balance of over \$20,000 under his sentences in November of 1997,  
3 as of July 2000, he still owes \$28,406.21 in court ordered monetary obligations  
4 plus interest, which also includes restitution. Defendants' Statement of  
5 Material Facts, ¶ 17 (Defendants' Exhibit<sup>1</sup> 10). This paragraph also lacks  
6 further details regarding Mr. Farrakhan's criminal history and his criminal  
7 proceedings in state court. See Defendants' Statement of Material Facts, ¶¶ 6-

8           2.       Defendants admit the facts stated in paragraph 2. However, this  
9 paragraph lacks further details regarding Mr. Price and his criminal proceedings  
10 in state court. See Defendants' Statement of Material Facts, ¶¶ 27-35.

11           3.       Defendants admit the facts stated in paragraph 3. However, this  
12 paragraph lacks further details regarding Mr. Shadeed and his criminal  
13 proceedings in state court and his habeas corpus proceedings in federal court.  
See Defendants' Statement of Material Facts, ¶¶ 21-25.

14           4.       Defendants admit the facts stated in paragraph 4. However, this  
15 paragraph lacks further details regarding Mr. Barrientes and his criminal  
16 proceedings in state court. See Defendants' Statement of Material Facts, ¶¶ 36-

17           5.       Defendants admit the facts stated in paragraph 5. However, this  
18 paragraph lacks further details regarding Mr. Briceno and his criminal  
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20           <sup>1</sup> References herein to "Defendants' Exhibit" will refer to the exhibits  
21 filed in support of Defendants' Statement of Material Fact in support of their  
22 motion for summary judgment, unless otherwise indicated.

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proceedings in state court and before the Washington Indeterminate Sentence Review Board (ISRB). See Defendants' Statement of Material Facts, ¶¶ 46-52.

6. Defendants admit the facts stated in paragraph 6. However, this paragraph lacks further details regarding Mr. Schaaf and his criminal proceedings in state court. See Defendants' Statement of Material Facts, ¶¶ 41-45.

7. Contrary to Plaintiffs' statement, felon disenfranchisement dates further back than the Reconstruction era. States have disenfranchised felons throughout our country's history, as recognized by the United States Supreme Court in Richardson v. Ramirez, 418 U.S. 24, 48, n. 14 (1974)(citing 29 states throughout the union that disenfranchise felons before adoption of the Fourteenth Amendment). Defendants object to Plaintiff's Paragraph 7 because citation to a law review article is not adequate foundation to support it.

8. Defendants admit the facts stated in Paragraph 8.

9. Defendants admit the facts stated in Paragraph 9. However, Defendants add that these provisions have been repealed following the 1970 study chaired by Secretary of State Kramer in 1970. See Defendants' Statement of Material Facts, ¶¶ 107-08; see Wash. Const. Amendment 63 Art. 6 §1 (ratified 1974); Defendants' Exhibit 59, Declaration of Donald F. Whiting.

10. Defendants admit the facts stated in paragraph 10. But see, Paragraphs 15 and 16 below.

11. Defendants admit the facts stated in paragraph 11. But see, Paragraph 15 and 16 below.

12. Defendants admit the facts stated in paragraph 12. But see, Paragraph 15 and 16 below.

1 13. Defendants admit the facts stated in Paragraph 13. But see,  
2 Paragraph 15 and 16 below.

3 14. Defendants admit the facts stated in Paragraph 14. But see,  
4 Paragraph 15 and 16 below.

5 15. Defendants dispute the facts stated in Paragraph 15. Defendants  
6 misstates Dr. Taylor's testimony. Dr. Taylor testifies that Washington  
7 "developed a reputation among the nation's African-Americans as a 'liberal'  
8 state in terms of race issues affecting African-Americans." Taylor Affidavit, ¶  
9 14 (Defendant's Exhibit 47). Defendants' rendition of Dr. Taylor's testimony  
10 reflects only the exceptions, and not Dr. Taylor's general conclusions.  
11 Additionally, Defendants' erroneously intermix Dr. Taylor's testimony  
12 regarding other Northwest states with his testimony regarding Washington,  
13 even though Dr. Taylor clearly distinguished Washington's history from that of  
14 the other states in the region, and did so in a positive manner. See, paragraph  
15 16 below. Most significantly for the issues raised in this case, Dr. Taylor  
16 testified that in his opinion, there has never been any organized effort in  
17 Washington to disenfranchise African-Americans or to deny voting rights to  
18 African-Americans. Defendants' Statement of Material Facts, ¶ 68. Indeed,  
19 African-Americans in this state have enjoyed significant electoral success. Id.,  
20 at ¶¶ 69-71. A more complete discussion of the history of African-Americans  
21 in Washington is set forth in the Defendants' Statement of Material Facts, at ¶¶  
22 63-71.

23 16. Paragraph 16 misstates Dr. Taylor's testimony. Dr. Taylor's  
24 testimony establishes that the history of African-Americans in the four states of  
25 the Northwest (Washington, Oregon, Idaho, and Montana) cannot simply be

1 viewed as a homogeneous unity. The laws referenced in Paragraph 15 provide  
2 a contrast between Washington and other Northwestern states, not a basis for  
3 similarity. In particular, anti-black laws enacted in Oregon and school  
4 desegregation laws and anti-miscegenation laws in Oregon, Idaho and Montana,  
5 provide contrast with Washington's relatively tolerant and racially inclusive  
6 history; they do not support the notion that Washington's history is one of  
7 "general prejudice." Washington's history is different from that of the other  
8 Northwest states. Dr. Taylor testified that the history of the Northwest states is  
9 common in many respects, and therefore African-American experiences were  
10 often similar. Despite these similarities, the history of African-American  
11 experience in Washington has been strikingly different than in the other three  
12 states. These differences, and not the commonalities, constitute the main thrust  
13 of Dr. Taylor's testimony. Plaintiffs err in emphasizing the exceptions rather  
14 than the general theme of Dr. Taylor's testimony. See Defendants' Statement  
15 of Material Facts, ¶¶ 63-71. See also, Paragraph 15 above.

16 17. While Defendants' agree with the statement in paragraph 17,  
17 Plaintiffs' reference does not support the statement. But see, Paragraphs 15 and  
18 16 above.

19 18. Defendants admit that Dr. George C. Bridges, Ph.D., is a  
20 sociologist and criminologist who has been commissioned by the Washington  
21 State Minority and Justice Commission to conduct studies. However, his  
22 studies have related to Washington State's treatment of minorities in specific  
areas of the Washington superior courts. Dr. Bridges is not currently a member  
of the Commission. Defendants' Statement of Material Facts, ¶ 83 (Defendants'  
Exhibit 55 pp. 18-19).

1 19. Dr. Bridges has authored a number of studies regarding racial  
2 disparities and the criminal justice system, but not in general. His studies have  
3 focused within specific aspects of the criminal justice system. For example, his  
4 1997 study pertained to pretrial detention practices in King County. None of  
5 his studies have pertained to any of the Plaintiffs in this matter. He is a  
6 sociologist, not an attorney. His studies have not pertained to the objections  
7 and the quality of rulings made in cases or the quality of decisions made on  
8 appellate review. See Defendants' Exhibit 64, Deposition of Bridges; see  
generally, Bridges Deposition, Exhibits 2-5.

9 20. Plaintiffs correctly recite Dr. Bridges's opinion in this paragraph.  
10 However, this study pertained to King County Superior Court. Bridges  
11 Deposition, Exhibit 2. This study did not pertain to Plaintiffs. Defendants  
12 object to this statement as irrelevant and lacking foundation.

13 21. This study did not pertain to Plaintiffs. Defendants object to this  
14 statement as irrelevant and lacking foundation.

15 22. This study did not pertain to Plaintiffs. Defendants object to this  
16 statement as irrelevant and lacking foundation.

17 23. Defendants admit the facts stated in Paragraph 23. But see, ¶¶ 15-  
18 16, *supra*.

19 24. Regarding Paragraph 24, Defendants do not dispute Plaintiffs'  
20 summary of Dr. Bridges' study from 1987. Defendants object to this Paragraph  
21 as irrelevant. Defendants also object to the last sentence of this paragraph as  
22 lacking foundation. Defendants also dispute this paragraph based on the study  
completed for the Minority and Justice Commission dated December 1999. See  
Defendants' Statement of Material Facts, ¶¶ 90-94.

1 25. Regarding Paragraph 25, Plaintiffs have accurately stated Dr.  
2 Bridges' opinions from his deposition. Defendants object based on relevance  
3 and lack of foundation.

4 26. Regarding Paragraph 26, Plaintiffs have accurately stated Dr.  
5 Bridges' opinions from his deposition. Defendants object based on relevance  
6 and lack of foundation.

7 27. Defendants admit the facts stated in Paragraph 27.

8 28. Defendants admit the facts stated in Paragraph 28.

9 29. Defendants admit the facts stated in Paragraph 29.

10 30. Defendants admit the facts stated in Paragraph 30, except that  
11 Washington's fiscal year 1999 population was 22.7%, not 24%. See Plaintiff's  
12 submissions, Smith Deposition I, Exhibit 3, Table 3D (Tab 18).

13 31. Regarding Plaintiffs' Paragraph 31, Defendants admit that  
14 although the Washington prison populations have increased, the percentages of  
15 Whites, Blacks, and Native Americans have remained stable. As of December  
16 31, 1999, the DOC prison population was 14,280. Defendants' Statement of  
17 Material Facts, ¶ 77 (referencing Defendants' Exhibit 52). In fiscal year 1994,  
18 the Washington prison population was 10,641. In fiscal year 1996, the  
19 Washington prison population was 12,108. Plaintiffs' Exhibits (TAB 29), p. 3.

20 32. Defendants admit the facts stated in Paragraph 32, except to clarify  
21 that, following release from prison, DOC supervision may terminate if, after a  
22 period of time the offender has failed to pay his or her legal financial  
obligations. See RCW 9.94A.142(1).

1 33. Defendants admit Paragraph 33 except to clarify that an individual  
2 may be discharged if they have completed the requirements of their sentence.  
3 See RCW 9.94A.220.

4 34. Defendants admit the facts stated in Paragraph 34.

5 35. Defendants admit the facts stated in Paragraph 35.

6 36. Defendants admit the facts stated in Paragraph 36.

7 37. Defendants object to Paragraph 37 as not a proper statement, as  
8 argumentative, and lacking foundation.

9 38. Defendants admit the facts stated in Paragraph 38. Defendants  
10 would add, however, that: (1) Mr. Mauer has a Masters Degree in Social Work;  
11 he is not a sociologist or an attorney; and (2) The Sentencing Project is also an  
12 advocacy group for alternatives to prison sentences. The Sentencing Project  
13 compiles and reports on data collected from the Federal Bureau of Statistics and  
14 other sources. His report discusses incarceration and post-release supervision  
15 rates among racial minorities, based on information obtained from the  
16 Department of Justice's Bureau of Justice Statistics and other sources.  
17 Defendants' Exhibit 65, Deposition of Mauer; see also, Plaintiffs' Tertiary  
18 Sources (TAB 20) ("Losing the Vote"). Mr. Mauer has conducted no review  
19 involving Plaintiffs' criminal proceedings. Exhibit 65 at 34-35.

20 39. Regarding Paragraph 39, Mr. Mauer restated and provided written  
21 commentary regarding the data provided him by the Department of Justice's  
22 Bureau of Justice Statistics and other sources on prison and post-release  
supervision populations and their racial compositions, including statistics from  
the state of Washington and from other sources. Defendants' Exhibit 65 Mauer  
Deposition; see also, Plaintiffs' Tertiary Sources (TAB 20) ("Losing the Vote").

1           40. Regarding Paragraph 40, Defendants admit that Mr. Mauer  
2 calculates an incarceration rate by computing the numbers of incarcerated  
3 Blacks per every 100,000 Blacks in the state population. In similar fashion, Mr.  
4 Mauer computes the incarceration rate for Whites. See Defendants' Exhibit 65  
5 and Plaintiffs' Tertiary Sources (TAB 20). Defendants would agree that the  
6 mathematics used are correct. However, the incarceration rate only reports raw  
7 numbers in a different way. Defendants are not aware of any study giving the  
8 "incarceration rate" scientific validity beyond basic mathematics. Furthermore,  
9 these studies have no relevance to Plaintiffs' claims that they have been denied  
10 the vote based on race. See Defendants' Exhibit 65 at 34-35. Therefore,  
11 Defendants object to this as lacking foundation and irrelevance.

12           41. Defendants assert the same objection to Paragraph 41 as with  
13 Paragraph 40.

14           42. Defendants admit the facts stated in Paragraph 42.

15           43. Defendants admit the facts stated in Paragraph 43. Defendants add  
16 that this procedure is mandated under the National Voters Registration Act, 42  
17 U.S.C. § 1973 gg.

18           44. Defendants admit the facts stated in Paragraph 44, referring to  
19 procedural steps following entry of the judgment and sentence. These  
20 procedural steps are required under Washington statute following passage of the  
21 NVRA. See RCW 29.10.097; RCW 10.64.021; Laws of 1994 c. 57 §§ 1, 42.

22           45-46. Regarding Paragraphs 45 and 46, defendants admit that an  
individual who has been discharged from his or her judgment and sentence  
must register to vote in order to return to the voter rolls. Defendants add that  
Washington law requires that voter registration be available in many public

1 locations, including all state offices convenient to the public. See Defendants'  
2 Statement of Material Facts, ¶¶ 97-102.

3 47. Defendants admit to the facts stated in Paragraph 47. Defendants  
4 point out that Secretary of State employees routinely refer such inquiries to the  
5 Department of Corrections, the Indeterminate Sentence Review Board, per the  
6 Court. See Defendants' Exhibit 66, Elliott Deposition at 11-12.

7 48. Defendants admit the facts stated in Paragraph 48. Defendants add  
8 that the review of the document for completeness would include making sure  
9 that the oath or affirmation section has been completed. See Defendants'  
10 Statement of Material Facts, ¶ 56 (citing RCW 29.07.080).

11 49. Defendants dispute Paragraph 49. Individuals registering to vote  
12 are required to complete an oath or affirmation under penalty of perjury. RCW  
13 29.07.080. Unlawful voter applications are subject to challenge under RCW  
14 29.10.125-140.

15 50. In addition to the facts alleged in Paragraph 50, any individual who  
16 attempted to register to vote while disenfranchised would have to sign an oath  
17 under penalty of perjury in order to do so. Defendants' Statement of Material  
18 Facts, ¶ 56. An individual who takes the actions suggested in Paragraph 50,  
19 knowing that his or her civil rights have not been restored would commit a  
20 felony in the process. RCW 29.07.410. Additionally, any individual who votes  
21 while knowing that he or she does not possess the legal qualifications to do so  
22 also commits a felony. RCW 29.85.260.

23 51. Defendants admit that paragraph 51 accurately describes one  
24 portion of the application for voter registration, but it does not accurately  
25 describe the form in its entirety. An applicant for voter registration must swear

1 under penalty of perjury: "I am not presently denied my civil rights as a result  
2 of being convicted of a felony." Defendants' Statement of Material Facts, ¶ 56.  
3 The form also contains a warning that providing false information on the form  
4 is a felony offense. RCW 29.07.070.

5 52. Defendants admit the facts stated in Paragraph 52.

6 53. Defendants admit the facts stated in Paragraph 53. In addition,  
7 DOC policies and procedures are governed by state statutes and administrative  
8 rules enacted by DOC. RCW 72.09.050.

9 54. Defendants admit the facts stated in Paragraph 54.

10 55. Defendants admit that CCO's are responsible for monitoring the  
11 payment of legal and financial obligations and cost of supervision while an  
12 offender is on work release or active supervision in the community.

13 56. Defendants admit the facts stated in Paragraph 56. While the  
14 forms provided do not explain the process for obtaining certificates of  
15 discharge, CCO's can explain this process orally. See Paragraph 57.  
16 Additional DOC forms, not cited in this paragraph, can be used to request a  
17 discharge. Defendant's Exhibit 8, Attachment C.

18 57. Defendants admit the facts stated in Paragraph 57.

19 58. Mr. Farrakhan registered to vote in 1998 and appeared on the  
20 ballot as a candidate for office, but did not cast a ballot. Defendants' Statement  
21 of Material Facts, ¶¶ 19-20.

22 59. Defendants admit the facts stated in Paragraph 59.

60. The statements contained in Paragraph 60 do not apply to Mr.  
Farrakhan, who continues to owe over \$28,000 in legal financial obligations,  
and has paid only \$805 against those obligations. Defendants' Statement of

1 Material Facts, ¶¶ 14-17. Additionally, the file of an offender, including Mr.  
2 Farrakhan, will continue to be reviewed annually, even if he or she met 50% of  
3 his or her payment requirements in a prior year. Wallace Deposition at 10 (Tab  
4 21 to Plaintiffs' Statement of Material Facts). It is therefore untrue that an  
5 offender who makes 50% of his or her required payments in a particular year  
6 will not be contacted again until the ultimate disposition of the case.  
Defendants' Exhibit 67, Supplemental Declaration of Virgil Wallace.

7 61. Defendants admit the facts stated in Paragraph 61.

8 62. The procedure for initiating a request for a certificate of discharge  
9 is also described in Paragraphs 57-59 of Defendants' Statement of Material  
10 Facts. Additionally, DOC policy requires that a Community Corrections  
11 Officer initiate a request for discharge when an offender has completed all of  
12 his or her sentencing requirements. Affidavit of Phil Reynolds, ¶ 4  
13 (Defendant's Exhibit 8). Neither Mr. Farrakhan nor Mr. Price, the only  
14 Plaintiffs who are not currently incarcerated, has completed all the terms and  
15 conditions of their judgments and sentences. Defendants' Statement of Material  
16 Facts, ¶ 14 (Farrakhan), ¶¶ 31-32 (Price); RFP 206 (Tab 27 to Plaintiffs'  
Statement of Material Facts).

17 63. Prosecutors do not reject many requests for discharge. Wallace  
18 Deposition at 14 (Tab 21 to Plaintiffs' Statement of Material Facts). No  
19 discretion is involved, because the offender may obtain a certificate of  
20 discharge upon completion of all terms of the judgment and sentence. RCW  
9.94A.220(1). See also, Defendants' Statement of Material Facts, ¶¶ 57-59.

21 64. Defendants admit the facts stated in Paragraph 64.

22 65. Defendants admit the facts stated in Paragraph 65.

1 66. Defendants admit the facts stated in Paragraph 66. While no  
2 further contact is required by the CCO under the described circumstances,  
3 nothing precludes the offender from contacting the CCO after termination.

4 67. Any offender who wants his or her sentencing court to issue a  
5 certificate of discharge can request that the court issue a discharge, using forms  
6 developed by DOC. Defendants' Statement of Material Facts, ¶¶ 58-79.

7 68. Defendants admit the facts stated in Paragraph 68.

8 69. Paragraph 69 misstates the cited testimony. While costs of  
9 supervision are assessed on a monthly basis, and must be paid at some point  
10 prior to the issuance of a certificate of discharge, there is no preclusion against  
11 issuing a certificate of discharge merely because the payments were not made  
12 every month, provided that the terms of the offender's judgment and sentence  
13 are satisfied. Reynolds Deposition at 20-21 (Tab 22 to Plaintiffs' Statement of  
14 Material Facts). See also, Reynolds Deposition at 13 (Defendant's Exhibit 9).  
Once the terms and conditions have been satisfied, the CCO automatically  
prepares a request for a certificate of discharge. Id.

15 70. Costs of supervision are included within the legal definition of  
16 legal financial obligations, and therefore are not legally distinct from legal  
17 financial obligations. RCW 72.11.010(1). They are assessed "as a result of a  
18 felony conviction." Id. The costs are a direct result of conviction, which DOC  
19 is authorized by statute to assess. RCW 9.94A.270. Costs of assessment are  
20 dedicated to the costs assumed by DOC in collecting legal financial obligations.  
RCW 72.11.040. Defendants' paragraph 70 is therefore incorrect.

21 71. Defendants admit the facts stated in Paragraph 71. But see,  
22 Defendants' Statement of Material Facts at ¶ 57.

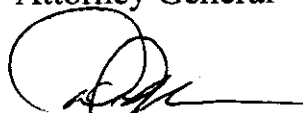
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72. The sentencing court can also issue a certificate of discharge upon motion by the offender, with or without approval of DOC. Defendants' Statement of Material Facts, ¶ 58. This is not an issue for either Plaintiffs Farrakhan or Price, both of whom owe money beyond the costs of supervision. Defendants' Statement of Material Facts, ¶¶ 17, 32. Defendants are not aware of any effort by any of the Plaintiffs to request a waiver of the costs of supervision.

73. Defendants admit the facts stated in Paragraph 73. But see, Paragraph 72 above. See also Defendants' Statement of Material Facts, ¶¶ 57-59.

RESPECTFULLY SUBMITTED this 10 day of August, 2000.

CHRISTINE O. GREGOIRE  
Attorney General



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Assistant Attorney General  
JEFFREY T. EVEN, WSBA #20367  
Assistant Attorney General