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

JUN 26 2000

JAMES R. LARSEN, CLERK
______ DEPUTY
SPOKANE, WASHINGTON

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

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

Plaintiffs,

v.

GARY LOCKE, et al.,

Defendants.

NO. CS-96-076-RHW

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO FILE AN AMENDED ANSWER

Defendants, by and through their attorneys, CHRISTINE O. GREGOIRE, Attorney General, and JEFFREY T. EVEN and DANIEL J. JUDGE, Assistant Attorneys General, submit the following Memorandum in Support of Defendants' Motion For Leave To File An Amended Answer to Plaintiffs' Fourth Amended Complaint.

I. STATEMENT OF THE CASE

Plaintiffs bring this matter as a civil rights action under 42 U.S.C. § 1983 and other federal statutes, alleging that the federal Voting Rights Acts prohibits the states from denying the right to vote to convicted felons. There are six plaintiffs in this matter. They are Plaintiffs Muhammad S. Farrakhan, Marcus L.

1 Price, Al-Kareem Shadeed, Clifton Briceno, Timothy Schaaf, and Ramon
2 Barrientes. All plaintiffs are Washington state prisoners serving judgments and
3 sentences on felony convictions except Plaintiffs Farrakhan and Price, who have
4 since been released from custody.

5 Plaintiffs allege that Aritcle VI, § 3 of the Washington State Constitution,
6 and RCW 29.01.080, which exclude from the elective franchise all persons
7 convicted of crimes punishable by imprisonment in a state correctional facility,
8 violate the Voting Rights Act, 42 U.S.C. §1973. Plaintiffs further allege that the
9 state disenfranchisement law violates the Constitution because of its
10 disproportionate application to minorities who are sentenced to prison in
11 Washington State.

12 The parties are required to submit dispositive motions on or by August 1,
13 2000. In preparing their summary judgment arguments, Defendants have
14 discovered in their research that this Court lacks subject matter jurisdiction under
15 the Rooker-Feldman doctrine. See District of Columbia Court of Appeals v.
16 Feldman, 460 U.S. 462, 482, 103 S.Ct. 1303, 1314, 75 L.Ed.2d 206 (1983);
17 Rooker v. Fidelity Trust Co., 263 U.S. 413, 416, 44 S.Ct. 149, 150, 68 L.Ed. 362
18 (1923). However, Defendants' Answer to Plaintiffs' Fourth Amended Complaint
19 does not challenge this Court's subject matter jurisdiction. Therefore,
20 Defendants bring this motion.

21 **II. ARGUMENT**

22 Defendants motion for leave to file an amended answer to Plaintiffs Fourth
23 Amended Complaint should be granted. A motion for leave to amend a pleading
24 must begin with consideration of Rule 15 of the Federal Rule of Civil Procedure.
25
26

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1 "Whenever it appears by suggestion of the parties or otherwise that the
2 court lacks jurisdiction of the subject matter, the court shall dismiss this action."
3 Fed. R. Civ. P. 12(h)(3). Rule 15(a) states in pertinent part that:

4 > A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one
5 > to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time
6 > within twenty days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the
7 > adverse party; and leave shall be freely given when justice so requires.

8
Fed.R.Civ.P. 15(a).
9
10 The federal courts have established the Rooker-Feldman doctrine, named
11 after two U.S. Supreme Court cases decided 60 years apart, which precludes a
12 federal court from entertaining and reviewing claims adjudicated in state courts
13 or to evaluate any constitutional claims that are inextricably intertwined with the
14 state court's decision. See District of Columbia Court of Appeals v. Feldman,
15 supra; Rooker v. Fidelity Trust Co., supra.
16 Rooker-Feldman is theoretically derived from 28 U.S.C. § 1257 which
17 states that "Final judgments or decrees rendered by the highest court of a state in
18 which a decision could be had, may be reviewed by the Supreme Court . . . ." In
19 Rooker, 263 U.S. 413, and Feldman, 460 U.S. 462, the Supreme Court
20 interpreted 28 U.S.C. §1257 as providing the exclusive means for review of final
21 adjudications of a state's highest court.
22 A district court engages in impermissible appellate review when it
23 entertains a claim that the litigants did not argue in the state court, but is
24 inextricably intertwined in the state court judgment. Feldman, 460 U.S. at 483 n.
25 16, 103 S.Ct. at 1316 n. 16. The Rooker-Feldman doctrine applies as long as the
26 party had a reasonable opportunity to raise his federal claims in the state court

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1 proceedings. Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983). If
2 the party had no reasonable opportunity, the federal court considers "that the
3 federal claim was not 'inextricably intertwined' with the state court's judgment."
4 Powell v. Powell, 80 F.3d 464, 467 (11th Cir. 1996).
5 In this case, Defendants wish to contend that this Court lacks jurisdiction
6 in this matter under the Voting Rights Act are barred under Rooker-Feldman.
7 Plaintiffs all allege that they have been denied the vote based on their race. In
8 denying in part Defendants' dismissal motion, this Court has allowed the
9 Defendants to proceed on the allegation or theory that they were denied the right
10 to vote based on race. See Farrakhan v. Locke, et al., 987 F.Supp. 1304 (E.D.
11 Wash. 1997). In response to this theory, Defendants will argue that Plaintiff's
12 disenfranchisement is controlled by the state courts. The superior court enters the
13 judgment and sentence which disenfranchises; the superior court retains the
14 jurisdiction to enter the order that reinstates one's civil rights. Therefore, by
15 Plaintiffs action, they seek review of their judgment and sentence in federal court.
16 The Voting Rights Act, however, contains no explicit authority that allows
17 the federal court to review state court judgments, unlike the federal habeas corpus
18 laws. Like the ADA, the Voting Rights Act "does not have an independent
19 source of federal court jurisdiction that overrides the application of the Rooker-
20 Feldman doctrine." Dale, 121 F.3d at 627-28. Therefore, this Court lacks subject
21 matter jurisdiction under Rooker-Feldman. Defendants' answer must be
22 amended to present this defense.
23 Leave to amend would not prejudice Plaintiffs because Defendants could
24 raise this argument at summary judgment under Rule 12(h)(3). Furthermore, this
25 motion gives Plaintiffs notice in advance of the August 1, 2000 summary
26 judgment deadline. This issue is a legal issue, not a factual one. Defendants are

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aware of no additional discovery necessary for the argument for or opposition to dismissal based on subject matter jurisdiction under Rooker-Feldman.

III. CONCLUSION

For all of the foregoing reasons, this Court should grant defendants' motion for leave to file an amended answer.

DATED this 23rd day of June, 2000.

Respectfully submitted,

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