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10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF WASHINGTON**

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

14 Plaintiffs,

15 v.

16 CHRISTINE O. GREGOIRE, et
17 al.,

18 Defendants.

NO. CV-96-076-RHW

DEFENDANTS'
MEMORANDUM OF
AUTHORITIES IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT
AND DISMISSAL

19 **I. STATEMENT OF THE CASE**

20 The sole remaining claim in this case is the Plaintiffs' assertion that
21 Washington's felon disenfranchisement law constitutes race-based vote denial
22 in violation of the Voting Rights Act (VRA), 42 U.S.C. § 1973. Because there

DEFENDANTS'
MEMORANDUM OF
AUTHORITIES IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT AND DISMISSAL

1 are no issues of material fact remaining as to that sole claim, the Defendants are
2 entitled to dismissal as a matter of law.

3 This Court previously dismissed Plaintiffs' constitutional and vote
4 dilution claims. However, this Court allowed Plaintiffs to proceed under a vote
5 denial theory. *Farrakhan v. Locke (Farrakhan I)*, 987 F. Supp. 1304, 1312,
6 1313 (E.D. Wash. 1997). The operative complaint before this Court is the
7 Plaintiffs' Fourth Amended Complaint, which alleged vote denial on account of
8 race in violation of the VRA and also challenged Washington's procedures to
9 restore civil rights to previously disenfranchised felons. Pls.' 4th Am. Compl.
10 ¶¶ 31-37.

11 This Court, ruling on cross-motions for summary judgment after deciding
12 that the VRA applies to felon disenfranchisement, found that the Plaintiffs
13 failed to present a triable issue of fact as to whether the Plaintiffs were denied
14 the right to vote on account of race under the VRA, and granted summary
15 judgment for the Defendants. With regard to the Plaintiffs' challenge to the
16 procedures to restore civil rights, this Court dismissed the claim based upon
17 lack of standing because none of the Plaintiffs attempted to have their civil
18 rights restored and because they failed to present any evidence of
19 discrimination.

20 The Plaintiffs appealed to the Ninth Circuit Court of Appeals. The Court
21 of Appeals affirmed this Court's holding that the VRA applies to felon
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1 disenfranchisement and reversed this Court's holding that the Plaintiffs failed to
 2 establish a claim for vote denial as a matter of law. *Farrakhan v. Washington*
 3 (*Farrakhan II*), 338 F.3d 1009 (9th Cir. 2003).¹ The Court of Appeals held that
 4 evaluation of an alleged violation of Section 2 of the VRA is determined by the
 5 totality of circumstances and requires consideration of factors external to the
 6 challenged voting mechanism itself. *Id.* at 1011-12. Because the Court of
 7 Appeals determined, based upon the wording of this Court's ruling granting
 8 summary judgment,² that evidence of discrimination was improperly
 9 disregarded, the case was remanded back to this Court to evaluate the totality of
 10 the circumstances, including evidence of racial bias in Washington's criminal
 11 justice system. *Farrakhan II*, 338 F.3d at 1020.³

12
 13 ¹ The Court of Appeals for the Ninth Circuit also affirmed this Court's
 14 dismissal of the challenge to Washington's procedures to restore civil rights
 15 based upon the Plaintiffs' lack of standing. *Farrakhan II*, 338 F.3d at 1022.
 16 Additionally, the Court of Appeals concluded that the Plaintiffs failed to
 17 produce evidence that minorities are less able to meet the requirements for
 18 restoration. *Id.* at 1021-22.

19 ² *Farrakhan II*, 338 F.3d at 1013 n.7.

20 ³ Although this Court is bound by the holding of the Court of Appeals,
 21 the Defendants' position remains that, in light of rulings in other circuits, the
 22 VRA does not apply to felon disenfranchisement. *See Farrakhan v.*

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II. QUESTIONS PRESENTED

Have Plaintiffs failed to show, based on the totality of circumstances, that article VI, section 3 of the Washington Constitution constitutes denial of their right to vote on account of race in violation of Section 2 of the VRA?

III. LEGAL STANDARD

Judgment in favor of the moving party is appropriate when, viewing the evidence and inferences arising therefrom in the light most favorable to the nonmoving party, there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Semegen v. Weidner*, 780 F.2d 727 (9th Cir. 1985).

Washington (Farrakhan III), 359 F.3d 1116 (9th Cir. 2004) (Kozinski, J., dissenting from denial of rehearing en banc); *Wesley v. Collins*, 791 F.2d 1255 (6th Cir. 1986); *Muntaqim v. Coombe*, 366 F.3d 102 (2d Cir. 2004); *Johnson v. Governor of Florida*, 405 F.3d 1214 (11th Cir. 2005). The Defendants also continue to assert that this Court lacks subject matter jurisdiction because Plaintiffs seek this Court’s review of the state judgments and sentences that caused their disenfranchisement under Washington law. *See Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-83 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

1 The party seeking summary judgment bears the initial burden of
 2 demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v.*
 3 *Catrett*, 477 U.S. 317, 324 (1986). There is no requirement that the moving
 4 party negate elements of the non-movant's case. *Lujan v. Nat'l Wildlife Fed'n*,
 5 497 U.S. 871 (1990). Once the moving party has met its burden, the non-
 6 movant must then produce concrete evidence, without merely relying on
 7 allegations in the pleadings, that there remain genuine factual issues. *Anderson*
 8 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

9 If the nonmoving party fails to produce enough evidence to create a
 10 genuine issue of material fact, the moving party prevails and summary
 11 judgment is granted. *See Celotex Corp.*, 477 U.S. at 322 ("Rule 56(c) mandates
 12 the entry of summary judgment, after adequate time for discovery and upon
 13 motion, against a party who fails to make a showing sufficient to establish the
 14 existence of an element essential to that party's case, and on which that party
 15 will bear the burden of proof at trial.").

16 **IV. SUMMARY OF THE ARGUMENT**

17 Plaintiffs fail to demonstrate that Washington's disenfranchisement law
 18 violates their rights under the Voting Rights Act. Consistent with the Court of
 19 Appeals' remand of this matter, the Plaintiffs must provide admissible evidence
 20 that Washington's facially neutral voting requirements interact with external
 21 factors to result in the denial of the right to vote on account of race. Statistics
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1 alone remain insufficient to establish a violation of Section 2 of the VRA.
2 Furthermore, Washington's rich history of promoting voting rights belies
3 Plaintiffs' claims that the totality of the circumstances warrants the return of
4 their voting rights by this Court. The remaining claims in the Plaintiffs' Fourth
5 Amended Complaint have been previously dismissed and, therefore, the
6 Defendants are entitled to judgment as a matter of law.

7 **V. ARGUMENT**

8 **BASED UPON THE TOTALITY OF CIRCUMSTANCES, THE**
9 **PLAINTIFFS HAVE FAILED TO SHOW THAT WASHINGTON'S**
10 **FELON DISENFRANCHISEMENT LAW CONSTITUTES DENIAL OF**
11 **THE RIGHT TO VOTE ON ACCOUNT OF RACE.**

12 **1. The Plaintiffs Have The Burden To Show A Violation Of**
13 **Section 2 Of The VRA Based Upon A Totality Of**
14 **Circumstances.**

15 Plaintiffs bring these claims under 42 U.S.C. §§ 1971 and 1973.
16 Section 1971 protects the right to vote of "[a]ll citizens . . . who are otherwise
17 qualified by law to vote." Section 1973(a) protects against "denial or
18 abridgement of the right of any citizen of the United States to vote on account
19 of race or color." Section 1973(b), which provides for a violation of subsection
20 (a) based on the totality of the circumstances, protects "members of a class of
21 citizens protected by subsection (a)." Throughout this case, the Defendants
22 have asserted that the VRA was never intended to prohibit felon

1 disenfranchisement, citing to the Congressional Record as well as case law. *See*
2 Defs.’ Mem. Supp. Mot. Summ. J. Dismissal (July 31, 2000).

3 A plaintiff establishes a violation of Section 2 of the VRA, “if, based on
4 the totality of the circumstances, it is shown that the political processes leading
5 to nomination or election in the State or political subdivision are not equally
6 open to participation by members of a [protected] class . . . in that its members
7 have less opportunity than other members of the electorate to participate in the
8 political process and to elect representatives of their choice.” 42 U.S.C.
9 §1973(b). Typical factors that may be relevant in analyzing the totality of the
10 circumstances include the following:

11 (1) the extent of any history of official discrimination in the
12 state or political subdivision that touched the right of the members
of the minority group to register, to vote, or to otherwise
13 participate in the democratic process;

14 (2) the extent to which voting in the elections of the state or
political subdivision is racially polarized;

15 (3) the extent to which the state or political subdivision has
used unusually large election districts, majority vote requirements,
16 anti-single shot provisions, or other voting practices or procedures
that may enhance the opportunity for discrimination against the
minority group;

17 (4) if there is a candidate slating process, whether the
members of the minority group have been denied access to that
process;

18 (5) the extent to which members of the minority group in the
state or political subdivision bear the effects of discrimination in
19 such areas as education, employment and health, which hinder
their ability to participate effectively in the political process;

20 (6) whether political campaigns have been characterized by
overt or subtle racial appeals;

21 (7) the extent to which members of the minority group have
22 been elected to public office in the jurisdiction;

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(8) whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;

(9) whether the policy underlying the state or political subdivision’s use of such voting qualification, prerequisite to voting, or standard, practice, or procedure is tenuous.

Farrakhan II, 338 F.3d at 1015 (quoting S. Rep. No. 97-417, 97th Cong., 2d Sess. at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07).

This Court has already viewed the above factors in light of the evidence the Plaintiffs presented in 2000 and ruled that the evidence was insufficient. However, the Court of Appeals has directed that this Court “make any requisite factual findings following an appropriate evidentiary hearing, if necessary, and assess the totality of the circumstances, including Plaintiffs’ evidence of racial bias in Washington’s criminal justice system.” *Farrakhan II*, 338 F.3d at 1020. The Court of Appeals did not direct that this Court hold a trial or evidentiary hearing. Rather, it identified the Plaintiffs’ burden, and specifically stated, “[w]e . . . express no opinion on the merits of Plaintiffs’ claim and leave that determination to the district court in the first instance.” *Id.* at 1020. The Plaintiffs have not and cannot meet their burden to establish a violation of the VRA, and the Defendants are entitled to judgment as a matter of law.

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1 **2. The Plaintiffs Have Not Presented Evidence Showing That The**
2 **History And Practices Surrounding Felon Disenfranchisement**
3 **In Washington Reflect Racial Bias.**

4 **a. Historical basis for felon disenfranchisement in**
5 **Washington.**

6 With regard to the first four factors previously articulated as relevant in
7 the totality of circumstances test, there is no evidence in Washington’s history
8 that its felon disenfranchisement law was a result of racial bias.

9 “Lawful incarceration brings about the necessary withdrawal or
10 limitation of many privileges and rights, a retraction justified by the
11 considerations underlying our penal system.” *Sandin v. Conner*, 515 U.S. 472,
12 485 (1995). The Constitution permits states to disenfranchise persons convicted
13 of “participation in rebellion, or other crime”. U.S. Const. Amend. XIV.
14 Accordingly, a state may disenfranchise convicted felons. *Richardson v.*
15 *Ramirez*, 418 U.S. 24, 55-56 (1974).

16 Throughout our country’s history, felon disenfranchisement has been the
17 norm; states allowing felons to vote have been the exception. Clearly, our
18 country’s legal traditions have not encompassed the right of felons to vote. *See*
19 *Harmelin v. Michigan*, 501 U.S. 957, 982-83 (1991) (disenfranchisement is not
20 an unusual punishment, but the consequence of certain criminal offenses, and
21 the legislature, has discretion to extend that punishment to other offenses); *see*
22 *also Romer v. Evans*, 517 U.S. 620, 634 (1996).

1 Under the Washington Constitution, a person convicted of an “infamous
2 crime” is ineligible to vote. Wash. Const. art. VI, §§ 1, 3. Washington laws
3 further defines an “infamous crime” as “punishable by death in the state
4 penitentiary or imprisonment in a state correctional facility”. Wash. Rev. Code
5 § 29A.04.079. Disenfranchised felons remain ineligible to vote until their civil
6 rights are restored, typically through certificates of discharge under Wash. Rev.
7 Code § 9.94A.637. *See* Wash. Rev. Code § 9.94A.637(4).

8 Throughout its history, the state of Washington has maintained laws that
9 have disenfranchised convicted felons. *See State v. Collins*, 69 Wash. 268,
10 270-72 (1912); Territorial Law of 1866 (Rem. & Bal. Code § 4755).
11 Additionally, Washington has provided for other limitations based on the lack
12 of qualification to vote. *See, e.g.*, Wash. Const. art. III, § 25; Wash. Const. art.
13 II, § 7; Wash. Rev. Code § 42.04.020; Wash. Rev. Code § 2.36.070; Wash. Rev.
14 Code § 11.36.010.

15 There is no dispute that all Plaintiffs are or were disenfranchised because
16 of their status as convicted felons.⁴ There is also no dispute that the Plaintiffs
17 have ever asserted racial bias as a cause of their felony convictions.

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20 ⁴ Because the Plaintiffs’ valid felony convictions provide the basis for
21 their disenfranchisement, the Defendants continue to assert that the Plaintiffs
22 are not “otherwise qualified” under 42 U.S.C. § 1971.

1 **b. Washington enjoys a rich history in which it has**
2 **promoted voters' rights.**

3 The record in this case belies any assertion by Plaintiffs that
4 Washington's disenfranchisement law has had any significant impact on voting
5 in the state as discussed in the factors outlined above. Despite attempts by the
6 Defendants to obtain materials through discovery, the Plaintiffs have failed to
7 produce evidence of racial bias in Washington's criminal justice system which
8 results in denial of the right to vote on account of race. *See* Statement of
9 Material Fact, Exhibit 2, Declaration of Carol A. Murphy.

10 The record in this case fails to demonstrate a history within the state of
11 Washington of racial discrimination in voting. Neither Washington State nor
12 any of its political subdivisions have ever been a "covered jurisdiction"⁵ under
13 the Voting Rights Act. The record does not demonstrate efforts within this state
14 to use unusually large voter districts⁶ or other tactics to enhance opportunities
15 for discrimination against minority groups. The record does not demonstrate
16 that African Americans, Native Americans, or Hispanics are hindered in their

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18 ⁵ *See* 42 U.S.C. §1973b(b) (referring to geographical areas that have
19 used voting procedures or other devices found by the Attorney General to deny
20 individuals access to voting based on race).

21 ⁶ *See* Wash. Rev. Code § 44.07D (describing voter districts by census
22 blocks).

1 ability to participate in the electoral process because of discrimination in
2 employment, education, or health.

3 Washington's disenfranchisement laws date back to territorial days. *See*
4 Territorial Law of 1866 (Rem. & Bal. Code § 4755). Washington's laws
5 predate even the Civil War amendments. Plaintiffs' equal protection challenges
6 against felon disenfranchisement have already been dismissed. There is no
7 record that these laws were intended to disenfranchise African Americans,
8 Native Americans, or Hispanics. There is no record that these statutes were
9 devised as a pretext to racial discrimination. *Jones v. Edgar*, 3 F. Supp. 2d.
10 979, 981 (1998) (noting the absence of any "taint of historical rooted
11 discrimination"). Instead, the record only demonstrates that Washington's
12 disenfranchisement laws have been a permissible exercise of state power under
13 Section 2 of the Fourteenth Amendment, validated by the United States
14 Supreme Court in *Richardson* and further re-affirmed by Congress under the
15 National Voter Registration Act. *See* 42 U.S.C. § 1973 gg-6(a)(3).

16 The record in this case demonstrates Washington's progressive historical
17 record in the voting arena; Washington has not been hostile territory to
18 members of minority groups. Defendants Statement of Material Fact in support
19 of Motion for Summary Judgment Dismissal filed July 31, 2000, Exhibit 47,
20 Affidavit of Dr. Quintard Taylor at 10.

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1 **3. As A Matter Of Law, Plaintiffs' Evidence Of Racial Disparity**
 2 **Alone In Washington's Criminal Justice System Is Inadequate**
 3 **To Meet Their Burden To Show Discrimination "On Account**
 4 **Of Race" Under Section 2 Of The Voting Rights Act.**

5 The Court of Appeals remanded Plaintiffs' Section 2 claim based on its
 6 belief that this Court had not considered circumstances external to
 7 Washington's felon disenfranchisement law itself - alleged racial discrimination
 8 in Washington's criminal justice system - in evaluating the "totality of the
 9 circumstances". Specifically, the Court of Appeals reads this Court's prior
 10 decision granting summary judgment to the Defendants on Plaintiffs' Section 2
 11 claim as ignoring alleged race discrimination in Washington's criminal justice
 12 system. Defendants believe that this Court undertook the very inquiry that the
 13 Court of Appeals identifies and properly found the Plaintiffs' evidence—
 14 evidence of statistical disparity—legally inadequate. The Court's written
 15 decision simply is ambiguous in this respect.

16 Plaintiffs still have brought forward no evidence of discrimination "on
 17 account of race" in Washington's criminal justice system, despite discovery
 18 requests from the Defendants seeking such evidence. *See* Statement of Material
 19 Fact, Exhibit 2. Rather, Plaintiffs continue to rely only on statistical racial
 20 disparity. Such statistical disparity is inadequate as a matter of law to establish
 21 discrimination "on account of race" under section 2 of the VRA. This is clear
 22 from the Court of Appeals decision in this case, the decision in *Smith v. Salt*
River Project Agric. Improvement & Power Dist., 109 F. 3d 586 (9th Cir.

1 1997), to which the Court of Appeals repeatedly refers, and the language and
2 history of the Act.

3 The Court of Appeals' opinion in this case reaffirms that (1) to establish
4 a Section 2 claim, Plaintiffs "must prove that the challenged voter qualification
5 denies or abridges their right to vote *on account of race*", and that (2) factors
6 external to the challenged voter qualification "can contribute to [its] . . .
7 disparate impact when those factors involve *race discrimination*". *Farrakhan*
8 *II*, 338 F.3d at 1019 (emphasis added). The Court of Appeals' opinion further
9 explains that such external factors have a sufficient causal connection to the
10 alleged discriminatory impact of the challenged voting practice when that
11 discriminatory impact "is attributable to *racial discrimination* in the
12 surrounding . . . circumstances". *Id.* In short, then, the Court of Appeals'
13 decision holds that where a Section 2 claim is based on factors external to the
14 challenged voting qualification, those factors must involve *discrimination on*
15 *account of race*, and the alleged discriminatory impact of the voting
16 qualification must be *attributable to such discrimination*.

17 The Court of Appeals refers to *Salt River* to explain how a plaintiff must
18 prove alleged race discrimination based on external factors. In *Salt River*, the
19 Court of Appeals rejected a Section 2 claim that a special purpose district's land
20 ownership voting qualification resulted in discrimination on account of race
21 based on statistical disparity in land ownership between minorities and non-

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1 minorities. In *Salt River*, “we considered the external factors, but ultimately
2 concluded that the statistics evidencing the disproportionate percentage of white
3 landownership did not reflect racial discrimination and so failed to satisfy the
4 ‘on account of race’ requirement of the results test”. *Farrakhan II*, 338 F.3d at
5 1019. The *Salt River* plaintiffs’ Section 2 claim failed because they had made
6 “only a bare statistical showing of disparate impact[.]” *Id.* (citation omitted).
7 As the Court of Appeals explained on appeal in the instant case, “*Salt River*
8 made clear that ‘a bare statistical showing of disproportionate *impact* on a racial
9 minority does not satisfy the [Section] 2 ‘results’ inquiry’ because causation
10 cannot be inferred from impact alone”. *Id.*

11 Similarly, the *Salt River* Court cited with approval decisions of the Third,
12 Fourth, Fifth, and Sixth Circuit Courts of Appeal as standing for “the principle
13 that a bare statistical showing of disproportionate *impact* on a racial minority
14 does not satisfy the Section 2 results inquiry”. *Salt River*, 109 F.3d at 595.
15 Notably, among the decisions *Salt River* cites with approval for this principle is
16 *Wesley v. Collins*, 791 F.2d 1255 at 1262, which rejected a Section 2 challenge
17 to Tennessee’s felon disenfranchisement law resting primarily on the statistical
18 difference between minority and white felony conviction rates.

19 In sum, just as race discrimination cannot be inferred from
20 disproportionate racial impact alone when a voting requirement itself is alleged
21 to discriminate on account of race, race discrimination cannot be inferred from
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1 disparate racial impact alone when the discrimination allegedly is attributable to
 2 external factors. *Salt River*, 109 F.3d at 595. Statistical disparity, without a
 3 showing that the disparity is caused by treatment on account of race would read
 4 out of Section 2, the requirement of unequal political opportunity on “account
 5 of race”.

6 The only “evidence” submitted by the Plaintiffs are recent reports of
 7 expert witnesses that have reviewed others’ research and developed limited
 8 conclusions. *See* Statement of Material Fact, Exhibit 2, Attachments B through
 9 F. Such evidence fails to show that a racially disproportionate rate of felony
 10 convictions or other statistical racial disparities are caused by discrimination
 11 based on race, rather than other causes. Such statistical disparity is insufficient
 12 as a matter of law to demonstrate discrimination “on account of race” under
 13 Section 2 of the VRA.⁷ For these reasons, to the extent Plaintiffs’ Section 2
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15 ⁷ Statistical disparity also has been rejected in habeas corpus claims.
 16 The federal courts have repeatedly denied racial discrimination claims by
 17 minority defendants in capital cases who have argued that they have been
 18 targeted because of their race and have sought to prove their allegations by use
 19 of statistical evidence of disparity. *See, e.g., McCleskey v. Kemp*, 481 U.S. 279,
 20 297-98 (1987) (recognizing the limited value of disparity studies because of the
 21 many variables associated with any case in which an accused is charged, tried,
 22 convicted, and sentenced).

1 claim is based on alleged discrimination in Washington's criminal justice
2 system, it does not survive summary judgment.

3 **4. While There Is No Evidence Of Racial Bias In Washington's**
4 **Criminal Justice System Interacting With The Washington**
5 **Criminal Justice System To Deny The Vote Based On Race,**
6 **The Record Shows That Washington Supports Equal Access**
7 **To The Justice System.**

8 Washington's history shows responsiveness to the needs of racial
9 minorities to participate in the political process, which relates to factors six
10 through eight in analyzing the totality of the circumstances. *Farrakhan II*, 338
11 F.3d at 1015. There is no evidence in the record that political campaigns have
12 been characterized by overt or subtle racial appeals. To the contrary, racial
13 minority candidates have historically successfully been elected to public office.
14 *See* Statement of Material Fact ¶¶ 17, 18. The Washington State Minority and
15 Justice Commission, established in 1990 and continuously renewed since then,
16 exists to prevent racial bias in the justice system. *See* Statement of Material
17 Fact ¶¶ 19-22. There is no evidence of a lack of responsiveness on the part of
18 elected officials to the particularized needs of the members of racial minority
19 groups. The Plaintiffs have failed to come forward with evidence showing that,
20 under a totality of the circumstances, the Plaintiffs were denied the right to vote
21 on account of race. Rather, they have been denied the right to vote based upon
22 a felon disenfranchisement law.

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1 The final factor articulated by the Court of Appeals is “whether the
2 policy underlying the state or political subdivision’s use of such voting
3 qualification, prerequisite to voting, or standard, practice or procedure is
4 tenuous.” *Farrakhan II*, 338 F.3d at 1015. There is no evidence of a racial
5 motive in Washington’s felon disenfranchisement law. Racial bias played no
6 part in the enactment of the article VI, section 3 of the Washington
7 Constitution. The constitutional framers and state Legislature merely decided
8 as a matter of policy to limit participation in the political process by those who
9 have proven that they are unwilling to abide by the laws created by that process.
10 The implementation of the state’s policy concerning sanctions for the failure to
11 abide by criminal laws is valid unless it violates the Constitution or federal law.
12 *See Johnson v. Arizona*, 462 F.2d 1352, 1353-54 (9th Cir. 1972)(rules of
13 sentencing adopted by a state do not raise constitutional questions which may
14 be reached by the federal habeas corpus proceedings); *Souch v. Schaivo*, 289
15 F.3d 616, 623 (9th Cir. 2002)(alleged state law errors in the application of a
16 sentencing law are not reviewable in federal habeas proceedings).
17 Washington’s policy which results in felon disenfranchisement is a valid
18 exercise of state powers. Even a 1965 Senate Report recognized that the
19 language of the VRA “would not result in the proscription of frequent
20 requirement of States and political subdivisions that an applicant for voting or
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1 registration for voting be free of conviction of a felony or mental disability.”
2 1965 Senate Report reprinted in 1965 U.S.C.C.A.N., p. 2562.

3 **VI. CONCLUSION**

4 For all of the foregoing reasons, Defendants respectfully request this
5 Court grant their Motion For Summary Judgment and dismiss Plaintiffs’
6 remaining claim with prejudice.

7 RESPECTFULLY SUBMITTED this 13th day of December, 2005.

8 **ROB MCKENNA**
9 Attorney General

10
11 /s/ DANIEL J. JUDGE, WSBA #17392
12 /s/ JEFFREY T. EVEN, WSBA #20367
13 /s/ CAROL A. MURPHY, WSBA #21244
14 Attorneys for Defendants
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