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EASTERN DISTRICT OF WASHINGTON

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

MUHAMMAD SHABBAZ FARRAKHAN,  
et. al.,

Plaintiffs,

v.

GARY LOCKE, et. al.,

Defendants.

CASE NO. CS-96-76-RHW

**PLAINTIFFS' LR 56.1  
STATEMENT OF  
MATERIAL FACTS**

**A. PRELIMINARY MATTERS**

1. Plaintiff Muhammad S. Farrakhan is an African American residing in King County. Defendant's First Set of Interrogatories to Plaintiff Farrakhan Nos. 10, 11, 19 (TAB 5). Plaintiff Farrakhan was previously under the custody of the Washington State Department of Corrections serving a sentence of confinement, and has since been released. Defendant's First Set of Interrogatories to Plaintiff Farrakhan No. 2. Plaintiff Farrakhan is currently under the supervision of the Department of Corrections as he has a remaining monetary obligation of about \$20,000 under his sentence. Reynolds Depo. at 18 (TAB 23).

2. Plaintiff Marcus X. Price is an African American residing in Spokane County. Defendant's First Set of Interrogatories to Plaintiff Price Nos. 10, 11, 19 (TAB 6). Plaintiff Price was previously under the custody of the Washington State Department of

1 Corrections serving a sentence of confinement, and has since been released. Defendant's  
2 First Set of Interrogatories to Plaintiff Price No. 2. Plaintiff Price is currently under the  
3 supervision of the Department of Corrections. Defendant's First Set of Interrogatories to  
4 Plaintiff Price No. 3.

5 3. Plaintiff Al-Kareem Shadeed is an African American currently under the custody  
6 of the Washington State Department of Corrections serving a sentence of confinement in  
7 the Washington State Reformatory in Monroe, Washington. Defendant's First Set of  
8 Interrogatories to Plaintiff Shadeed Nos. 1, 10, 11 (TAB 7).

9 4. Plaintiff Ramon Barrientes is a Mexican American Hispanic currently under the  
10 custody of the Washington State Department of Corrections serving a sentence of  
11 confinement in the Washington State Penitentiary in Walla Walla, Washington.  
12 Defendant's First Set of Interrogatories to Plaintiff Barrientes Nos. 1, 10, 11 (TAB 8).

13 5. Plaintiff Clifton Briceno is a Native American currently under the custody of the  
14 Washington State Department of Corrections serving a sentence of confinement in the  
15 Washington State Reformatory in Monroe, Washington. Defendant's First Set of  
16 Interrogatories to Plaintiff Briceno Nos. 1, 10, 11 (TAB 9).

17 6. Plaintiff Timothy Schaaf is a Native American currently under the custody of the  
18 Washington State Department of Corrections serving a sentence of confinement in the  
19 Washington State Reformatory in Monroe, Washington. Defendant's First Set of  
20 Interrogatories to Plaintiff Schaaf Nos. 1, 10, 11 (TAB 10).

## 21 **B. SUBSTANTIVE MATERIAL FACTS**

### 22 **(1) The historical use of criminal disenfranchisement laws as a means to** 23 **discriminate against blacks**

24 7. Criminal disenfranchisement laws were one of the numerous voting devices  
25 utilized by Southern states following the Civil War to deny the franchise to blacks.  
26 Andrew L. Shapiro, Challenging Criminal Disenfranchisement Under the Voting Rights  
27 Act: A New Strategy, 103 Yale L.J. 537, 538 (1993) (TAB 31).

1 8. When enacted in 1889, Washington State's felon disenfranchisement statute was  
2 practically a verbatim replication of Wisconsin's Article 3 Section 2, one of the twenty-nine  
3 criminal disenfranchisement laws enacted prior to the adoption of the Fourteenth and  
4 Fifteenth Amendments. The Journal of the Washington State Constitutional Convention  
5 1889 v-vi, 638-9 (Beverly Paulik Rosenow, ed., Book Publishing Co. 1962) (TAB 32).

6 9. When enacted in 1889, Article 6 Section 1 of the Washington State Constitution  
7 contained provisions similar to those found in the voting qualifications used in the South,  
8 like lengthy residency requirements and the requirement to "be able to read and speak the  
9 English language," a form of literacy test. It also singled out "Indians not taxed" to be  
10 denied the franchise The Journal of the Washington State Constitutional Convention 1889  
11 633-4 (Beverly Paulik Rosenow, ed., Book Publishing Co. 1962).

12 **(2) Historical discrimination against minorities in Washington State**

13 10. Washington's criminal disenfranchisement law was not designed to  
14 disenfranchise blacks specifically in the state at the time of its enactment in 1889. Taylor  
15 Depo. at 38 (TAB 11).

16 11. Unlike in the South where blacks were essentially the only non-white segment  
17 of the population, there were a number of other groups of color present in the Pacific  
18 Northwest in the late nineteenth century. Taylor Aff. at 7 (TAB 12).

19 12. Generally, white racial attitudes toward blacks are shaped by the perceptions  
20 about the danger or desirability of other groups of color in the population; the theory is  
21 that white prejudice and fear is directed toward the largest minority population. Taylor  
22 Aff. at 7.

23 13. In the 1860s and 1870s, Native Americans were the largest group of color in the  
24 Pacific Northwest; by the 1870s, the Chinese had become the largest minority of color.  
25 Taylor Depo. at 81.

26 14. "Negative and stereotypical attitudes" about Native Americans developed  
27 during the settlement of the state. Taylor Aff. at 8.

1 15. A general prejudice against blacks in the Pacific Northwest during the latter  
2 nineteenth century can be observed, from the anti-black laws enacted in the Oregon  
3 Territory during the 1840s and 1850s, the imposition of school segregation in Oregon,  
4 Montana and Idaho following the Civil War, and the anti-miscegenation laws of those  
5 same states and territories in the 1880s and 1890s. Taylor Aff. 3.

6 16. The four states of the Pacific Northwest where these laws were enacted  
7 represent a unit with a common history, geography, and economic development, though  
8 Washington's slowly growing black population did not face the same types of  
9 discriminatory laws found in other Pacific Northwest states in the late nineteenth century.  
10 Taylor Aff. at 4, 6.

11 17. Blacks in Washington became the target of white prejudice and fear, particularly  
12 after World War II when the black population became significant within the urban areas of  
13 the state. Taylor Depo. at 81.

14 **(3) Social factors that contribute to racial disparities in Washington State's**  
15 **criminal justice system**

16 18. Dr. George S. Bridges, Ph.D., a sociologist and criminologist, has studied  
17 Washington State's treatment of minorities throughout the justice system as a member of  
18 the Washington State Minority and Justice Commission. Bridges Depo. at 67-68 (TAB  
19 13).

20 19. Dr. Bridges has authored a number of studies on racial disparities in the criminal  
21 justice system in general, and in Washington State specifically. See Bridges Depo.  
22 Exhibits 2-5.

23 20. For example, in a 1997 study of bail and pre-trial detention practices by  
24 Washington Superior Courts, Dr. Bridges found that, when comparing equally situated  
25 black and white defendants (same crime, same offense), black defendants in Washington  
26 State are less likely to get released on their own recognizance and more likely to have  
27 some amount of bail set than whites. Bridges Depo. at 15; Exhibit 2.

1 21. Dr. Bridges has found that blacks will be disadvantaged by inequality in rates of  
2 imprisonment in a state when three factors are present: (1) the black population, as a  
3 percentage of the total state population, is low; (2) there is extreme economic inequality  
4 between blacks and whites; and (3) blacks are concentrated in small numbers in urban  
5 areas. Bridges Depo. at 32.

6 22. In states where blacks live primarily in urban areas in relatively small numbers,  
7 disparity in incarceration rates is high. Bridges Depo. at 39-40. Dr. Bridges has found that  
8 this occurs because under these conditions, the white rate of imprisonment is decreasing  
9 rather than the black rate increasing. Bridges Depo. at 41. Dr. Bridges interprets this  
10 finding as demonstrating that states that have these characteristics impose  
11 disproportionately less severe sentences on whites. Bridges Depo. at 41.

12 23. African Americans have tended to concentrate as a group in Seattle, Tacoma,  
13 Vancouver, and, to a lesser extent, Spokane. Taylor Depo. at 83. Dr. Bridges points out  
14 that during World War II, half of Washington's African American population was found  
15 in Seattle. Taylor Aff. at 7. Racial tensions led to race riots at the Seattle shipyards. Taylor  
16 Depo. at 84.

17 24. A 1987 study conducted in part by Dr. Bridges (Bridges Depo. Exhibit 4) found  
18 that, in the counties of Washington where the relative percentage of nonwhite minorities  
19 was high, and where urban concentration of nonwhite minorities is relatively high, harsher  
20 sentences were imposed on blacks (adjusting for factors like crime rate, arrest rate, and  
21 other factors). Bridges Depo. at 43-44. Even though the study is thirteen years old, Dr.  
22 Bridges believes that these trends remain constant over time. Bridges Depo. at 51.

23 25. Overall, Dr. Bridges estimates that only about 30 to 40 percent of race  
24 disparities in imprisonment are caused by racial differences in criminal behavior; the  
25 remaining estimated 60 to 70 percent is attributed to factors like higher rates of arrest,  
26 higher rates of detention, lower rates of pre-trial release, and higher rates of prosecution.  
27 Bridges Depo. at 36.

1 26. Dr. Bridges' analysis of the differential treatment of minorities within the  
2 criminal justice system has led him to the conclusion that "[l]aw is an institution that  
3 reacts to deviance produced by structural conditions within communities. Law is also a  
4 tool used by the state to control problem populations, especially in urban areas where  
5 those populations are perceived to threaten public order and legal authority, independent  
6 of the crimes they commit, or the threats that are actually realized. Bridges Depo. at 53;  
7 Exhibit 4; see also Declaration of Ramon Barrientes at 2 (TAB 30).

8 **(4) Minority representation within Washington's prison population**

9 27. According to reports prepared by Dr. Peggy Smith, a planning and research  
10 administrator for the DOC, during the first half of fiscal year 2000 (through December 31,  
11 1999), the resident prison population, including those within the institution, pre-release,  
12 and work release, was 14,280 inmates, of which 71.1% were white, 22.4% were black,  
13 3.6% were Native American, and 2.3% were Asian. Declaration of Peggy Smith at 2 (TAB  
14 14); Smith Depo. I, Exhibit 4, Table 2A. (TAB 18).

15 28. The black prison population in Washington State remained virtually unchanged  
16 from fiscal year 1999's 22.7%. Smith Depo. I, Exhibit 3, Table 2A (TAB 18).

17 29. This is reflected in the admission rate for minorities into the prison system.  
18 During the first half of fiscal year 2000, of the 3,319 persons admitted, 71.1% were white,  
19 22.7% were black, 4.2% were Native American, and 1.7% were Asian. Smith Depo. I,  
20 Exhibit 4, Table 3D (TAB 18).

21 30. Again, the black admission rate remained virtually unchanged from fiscal year  
22 1999's 24%. Smith Depo. I, Exhibit 3, Table 3D (TAB 18).

23 31. Overall, the admission and incarceration rate for minorities has remained  
24 consistent, albeit exceedingly disparate with the population in general, over the years,  
25 while the overall admission rate and resident population rate has steadily increased.  
26 Declaration of Peggy Smith at 2-3; Smith Depo. I, Exhibit 3, Charts 2-1 through 2-5 and  
27 Charts 3-1 through 3-5 (TAB 17).

1 32. Offenders in Washington State may be released from incarceration without  
2 having fully completed their sentence; those who are released with remaining obligations  
3 under their sentence, including those owing only repayment of a monetary debt to the  
4 court, are deemed to be under Department of Corrections supervision. Smith Depo. I at 22-  
5 24, 26-27 (TAB 15).

6 33. The DOC tracks release type by race; of the categories of release, "discharge" is  
7 the only category in which offenders may be released not owing any further obligations  
8 under their sentences, though many may still owe monetary obligations. Smith Depo. II at  
9 63 (TAB 16).

10 34. During the first half of fiscal year 2000, there were a total of 3,272 individuals  
11 released, and 1,110 were discharged. Smith Depo. I, Exhibit 4, Table 4B (TAB 18).

12 35. Of those released, 2,305, or 70.4%, were white, and of those being discharged,  
13 835, or 75.2%, were white. Smith Depo. I, Exhibit 4, Table 4B (TAB 18).

14 36. In contrast, of those released, 782, or 23.9%, were black, while of those being  
15 discharged, only a mere 202, or 18.2%, were black. Smith Depo. I, Exhibit 4, Table 4B  
16 (TAB 18).

17 37. Minorities in Washington State, such as Plaintiffs, are less likely to be  
18 discharged and thereby continue to be denied the right to vote on the basis of color. (mith  
19 Depo. I, Exhibit 4, Table 4B (TAB 18).

20 **(5) The relationship between the disparate treatment of minorities in the**  
21 **Washington criminal justice system, and disenfranchisement on the basis of race**

22 38. Marc Mauer, Assistant Director of the Sentencing Project, a non-profit  
23 organization based in Washington, D.C., has studied racial disparities in the criminal  
24 justice system and its relationship to the voting rights of minorities in the United States.  
25 Mauer Depo. at 8, 11, 18 (TAB 19).

26 39. The results of Mr. Mauer's research, based on state-by-state data provided by  
27 the Department of Justice's Bureau of Justice Statistics, looked at the disenfranchised  
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1 population in Washington State and the racial composition thereof. Mauer Depo. 55-56.

2 40. In a 1997 study, Mr. Mauer compared Washington incarceration rates in 1988  
3 and 1994. Mauer Depo. at 59. He found that, in 1988, 856 per 100,000 blacks were  
4 incarcerated compared to 88 per 100,000 whites. Mauer Depo. at 59. In 1994, 1,392 per  
5 100,000 blacks were incarcerated compared to 161 per 100,000 whites. Mauer Depo. at  
6 60. These numbers demonstrate that, in 1988, an individual black man in Washington  
7 State was 9.97 times more likely to be incarcerated than a white man; in 1994, an  
8 individual black man was 8.65 times more likely to be incarcerated. Mauer Depo. at 59-  
9 60.

10 41. Even though there was a slight decline during this time frame, Washington's  
11 ratio of incarceration of blacks to whites is still above the national average. Mauer Depo.  
12 at 63.

13 **(6) The process for removal of convicted felons from the voter rolls and the**  
14 **process for registration following reinstatement of civil rights.**

15 42. For the majority of felons currently incarcerated in Washington state, the dates  
16 of the imposition of their sentences fell after the effective date of the SRA. Smith Depo. I,  
17 Exhibit 3, Charts 3.1 - 3.6 (TAB 17).

18 43. Federal courts send reports of felony convictions weekly to the Secretary of  
19 State's office, who then forwards the information to the appropriate county; state courts  
20 report felony convictions directly to the county auditor. Elliott Depo. at 19 (TAB 20).

21 44. The receipt of this report by the county triggers the removal of the offender's  
22 name from the voter roles, provided the individual was a registered voter. Elliott Depo. at  
23 19.

24 45. A subsequent application for voter registration submitted by a person whose  
25 registration has been canceled for any reason, including, but not limited to, a felony  
26 conviction, is treated as a new application for voter registration and not as a reinstatement  
27 of a previous registration. DOC's Response to Plaintiffs' First Set of Interrogatories, Fiala  
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1 at 9 (TAB 29).

2 46. If a released offender wants to regain their ability to vote, they carry the burden  
3 of reapplying to vote; there is no automatic reinstatement of registration. Elliott Depo. at  
4 24.

5 47. The Secretary of State's Office has no formal program or method for informing  
6 released offenders of their ability (or inability) to register to vote. Elliot Depo. at 11.

7 48. When voter registration forms are received by the appropriate county  
8 department of elections, they are reviewed only to ensure that the required for items of  
9 information are filled out on the form: name, date of birth, address, and signature. Elliot  
10 Depo. at 18, 44.

11 49. There is no requirement or process in place to verify whether any of the  
12 information provided by the applicant on a voter registration form is valid. Elliot Depo. at  
13 18-19.

14 50. An offender who should otherwise be disenfranchised under Article 6 § 3 could  
15 conceivably register to vote under a different name or address. Elliot Depo. at 19.

16 51. "Not presently denied civil rights due to a felony conviction" is not a stated  
17 qualification to register to vote in the informational portion of the mail-in voter  
18 registration form designed by the Secretary of State. Elliott Depo. at 14. The stated reason  
19 for this is that the Secretary of State wanted the form to "be clear for the majority of  
20 voters." Elliott Depo. at 14.

21 **(7) The process under which convicted criminal offenders may serve out the**  
22 **remainder of their sentences outside of prison under the supervision of the**  
23 **Department of Corrections (DOC).**

24 52. Prior to receiving a certificate of discharge and the restoration of voting rights,  
25 an offender may serve the remainder of his sentence outside of prison. Smith Depo. I at 22  
26 (TAB 15).

27 53. The DOC implements its statutory responsibilities in supervising released  
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1 offenders through internal departmental policies and procedures documented in "Policy  
2 Directives," "Division Directives," and "Field Directives," which delineate the process  
3 used by the DOC to administer the supervision of released offenders. See e.g. RFP 194-  
4 196, RFP 205-208, and RFP 5-12 (TABS 25, 27, 28).

5 54. Upon being released from prison to post-incarceration supervision, offenders are  
6 assigned a Community Corrections Officer (CCO), according to their places of residence  
7 or the location of the sentencing court. Wallace Depo. at 9 (TAB 21).

8 55. It is a DOC policy that CCO's are responsible for the monitoring of Legal  
9 Financial Obligations and Cost of Supervision payments while an offender is on work  
10 release or active supervision within the community. Reynolds Depo. at 8 (TAB 22);  
11 Diffley Depo. at 15 (TAB 23) Referring to RFP 194, DOC Policy Directive 200.380,  
12 "Legal Financial Obligations and Cost of Supervision." Policy Section (TAB 25).

13 56. The CCO conducts an intake interview with the released offender, at which time  
14 the conditions of the offenders' release are explained. Reynolds Depo. at 9. At this  
15 meeting, the offender is given a DOC document titled, "Conditions, Requirements, and  
16 Instructions." Reynolds Depo. at 9, referring to RFP 197 (TAB 26). Though the offender is  
17 asked to sign under the statement, the signature is only a formality; the offender will still  
18 be held to the obligations within the document. Diffley Depo. at 19. This document  
19 outlines instructions related to the period during which the offender remains under the  
20 legal custody of the DOC. RFP 197-199. It lists the remaining legal financial obligations  
21 of the offender and any other requirements such as community service. RFP 197.  
22 A payment schedule is established for the offender to pay outstanding legal financial  
23 obligations. RFP 197. The "Conditions, Requirements, and Instructions" document makes  
24 no mention of the offender's inability to vote, the process for the restoration of civil rights,  
25 or how successful completion will restore eligibility to register to vote. RFP 197-199. It  
26 does not explain the meaning of the term "discharge." nor does it explain the associated  
27 process for obtaining a discharge. RFP 197-199.

1 57. Mr. Rick Diffley, a CCO, has stated that he orally informs an offender under his  
2 supervision who has complied with court and DOC requirements that the offender will  
3 have their civil rights restored upon receipt of a certificate of discharge. Diffley Depo. at  
4 18.

5 58. Plaintiff Muhammad S. Farrakhan has completed the terms of his court-imposed  
6 sentence with the exception of the repayment of monies owing the court. Reynolds Depo.  
7 at 18. Though he has completed all other obligations, owns a business and pays taxes, he  
8 cannot vote. Declaration of Muhammad Shabazz Farrakhan at 2 (TAB 30).

9 59. Plaintiff Farrakhan is currently under monetary supervision, the minimum level  
10 of supervision in the minimum management unit (OMMU). Reynolds Depo. at 18;  
11 Wallace Depo. at 9.

12 60. If, upon a yearly review of the file, Plaintiff Farrakhan is to be determined by  
13 the DOC to be in compliance with 50% of his payment requirements, he will not have any  
14 further contact with the DOC between the time of his intake and the ultimate disposition of  
15 the case. Wallace Depo. at 10.

16 **(8) The process by which a Certificate of Discharge is issued to a convicted**  
17 **criminal offender.**

18 61. The procedure used by the DOC to request that an offender be released from  
19 supervision by discharge or termination is delineated by DOC Division Directive  
20 DIR-771-F, "SRA Termination/Discharge" RFP 206 (TAB 27). The Directive states that  
21 CCO's are to submit a Request for Discharge to the court when all sentence requirements  
22 (including sex offender registration and financial obligations) have been successfully  
23 completed. RFP 206.

24 62. If the offender has completed all of the terms of his sentence, he must either  
25 initiate the process of discharge, or it may be initiated by their CCO. Wallace Depo. at  
26 12-13.

27 63. The CCO will then submit a request to the deputy prosecuting attorney in the  
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1 jurisdiction where the offender was sentenced, who then forwards it to the sentencing  
2 judge. Wallace Depo. at 14. The prosecutor has the discretion to reject the request for  
3 discharge, which is done on occasion. Wallace Depo. at 14, 17.

4 **(9) The process by which the DOC terminates supervision of an offender.**

5 64. DOC Division Directive DIR-771-F instructs the CCO to submit a Request for  
6 Termination to the Court if the sentence has expired and the sentencing requirements have  
7 not been met. RFP 206.

8 65. If ten years have passed since an offender has been released from incarceration  
9 and the offender has only a minimal amount of money owing (in King County it is less  
10 than \$500), the DOC's jurisdiction ends and the CCO will submit a request for termination  
11 to the court of conviction that returns jurisdiction over the case to the court; at the granting  
12 of the request, the DOC ceases supervision of the offender. Diffley Depo. at 10, 16-17; see  
13 also Wallace Depo. at 25, 26-27.

14 66. The act of termination ends the DOC's supervision of the case. Wallace Depo. at  
15 27. There is no further contact between the offender and the DOC after the issuance of the  
16 Certificate of Termination. Wallace Depo. at 27.

17 67. If, at some point beyond termination, an offender wishes to repay his obligation  
18 and have his voting rights restored, a terminated offender must have the knowledge and  
19 ability to petition the appropriate parties in the sentencing court for a certificate of  
20 discharge. Wallace Depo. at 32-34.

21 **(10) The effect of payment of supervision fees on the restoration of civil rights.**

22 68. Monthly supervision fees are assessed by the DOC for the period of community  
23 supervision, community placement, community service, parole, supervision "from other  
24 states," and gross misdemeanor/misdemeanant supervision. RFP 194, DOC Policy  
25 Directive 200.380, "Legal Financial Obligations and Cost of Supervision," Directives IV;  
26 Supervision Fees (TAB 25).

27 69. Offenders who remain under the supervision of the DOC are obligated to make  
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1 monthly payments towards these costs in order to qualify for receipt of a Certificate of  
2 Discharge. Reynolds Depo. at 21.

3 70. These "cost of supervision fees" are different than the legal financial obligation  
4 imposed by the sentencing court to pay restitution, costs, fines and other assessments.  
5 Reynolds Depo. at 19.

6 71. Cost of Supervision fees, which are a standard twenty dollars per month, are  
7 assessed without regard to the offender's capacity to pay, and require payment on a  
8 monthly basis. Reynolds Depo. at 20-22.

9 72. A certificate of discharge will not be granted to an offender if he fails to pay this  
10 fee, regardless of the reason, even if they pay all of their legal financial obligation. DOC's  
11 Response to Plaintiffs' First Set of Interrogatories, Diffley at 13 (TAB 29). There is no  
12 policy of waiver of the payment of these fees. Reynolds Depo. at 21; Fiala Depo. at 23  
13 (TAB 24).

14 73. If all sentencing conditions are met by an offender, but the offender has not met  
15 full payment of supervision fees to the Department, it is DOC policy that a  
16 recommendation of unsuccessful termination be made to the Court 90 days prior to the  
17 end of the 10-year monetary supervision period. RFP 194, 196, DOC Policy Directive  
18 200.380, "Legal Financial Obligations and Cost of Supervision;" Directives VI, "Failure to  
19 Pay Cost of Supervision.

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DATED this 31<sup>ST</sup> day of July, 2000

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