

1 UNIVERSITY LEGAL  
2 ASSISTANCE  
3 Larry A. Weiser, Attorney at Law  
4 Jacob White, Legal Intern  
5 Kristine Olmstead, Legal Intern  
6 Tamerton Vernon-Grandos, Law  
7 Clerk  
8 721 North Cincinnati Street  
9 P.O. Box 3528  
10 Spokane, Washington 99220  
11 (Tel.) 509.323.5791  
12 (Fax) 509.323.5805

Ryan P. Haygood , *pro hac vice*  
Theodore M. Shaw  
*Director-Counsel*  
Norman J. Chachkin  
Debo P. Adegbile  
NAACP Legal Defense  
& Educational Fund, Inc.  
99 Hudson Street, Suite 1600  
New York, NY 10013-2897  
(Tel.) 212.965.2235  
(Fax) 212.226.7592

9 *Attorneys for Plaintiffs*

10  
11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF WASHINGTON**

13 MUHAMMAD SHABAZZ FARRAKHAN )  
14 et al., )  
15 )  
16 Plaintiffs, )  
17 v. )  
18 )  
19 CHRISTINE O. GREGOIRE, et al., )  
20 )  
21 Defendants. )

**NO. CV-96-076-RHW**  
**PLAINTIFFS' STATEMENT**  
**OF MATERIAL FACTS IN**  
**SUPPORT OF MOTION**  
**FOR SUMMARY**  
**JUDGMENT**

21 Plaintiffs, by and through their attorneys, LARRY WEISER and RYAN

22 HAYGOOD, submit the following Statement of Material Facts in support of their  
23 Motion for Summary Judgment.

24 PLAINTIFFS' STATEMENT OF MATERIAL  
25 FACTS IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT  
Page 1 of 54

UNIVERSITY LEGAL ASSISTANCE  
721 North Cincinnati Street - PO Box 3528  
Spokane, WA 99220-3528  
(509)323-5791 Telephone  
(509)323-5805 Facsimile  
(509) 323-3796 TTY

1 **I. INTRODUCTION**

2 1. Plaintiffs, on August 1, 2000 previously filed their original Statement  
3 of Material Facts pursuant to their Motion for Summary Judgment. Said Statement  
4 of Material Facts is incorporated into this Statement of Material Facts in support of  
5 Plaintiffs' Motion for Summary Judgment and is attached hereto. *See Attachment*

6 1.  
7

8 **PLAINTIFFS**

9  
10 2. Plaintiff Muhammad Shabazz Farrakhan (aka Ernest S. Walker) is a  
11 former Washington state prisoner who was released from state confinement in  
12 1997. Defendants' Exhibit 1, Declaration of Leaora McDonald.

13  
14 3. Plaintiff Marcus L. Price was release from prison in Washington State  
15 in 1998. Having satisfied the requirements of his sentence within the State of  
16 Washington, Mr. Price received a Certificate and Order of Discharge from  
17 Spokane County Superior Court on May 31, 2001. (Cause No. 95-1-016902-3 and  
18 97-1-01326-8). Defendants' Exhibit 3, Certificate and Order of Discharge.

19  
20 4. Plaintiffs Al-Kareem Shadeed, Timothy Schaaf, Clifton Briceno, and  
21 Ramon Barrientes are currently incarcerated in Washington State under judgments

1 and sentences entered by Superior Courts of the State of Washington. Defendants’  
2 Exhibit 2, Declaration of Carol A. Murphy.

3  
4 5. Plaintiffs Farrakhan, Shadeed, Schaff, and Price are African  
5 American; Plaintiff Briceno is Native American; and Plaintiff Barrientes is Latino  
6 Latino. Defendants’ Exhibit 2, Attachments 1 through 1E.

7  
8 **DEFENDANTS**

9 6. Defendant Christine Gregoire is the Governor of the State of  
10 Washington. Defendant Sam Reed is Secretary of State of the State of  
11 Washington. Defendant Harold Clark is the Secretary of the Department of  
12 Corrections of the State of Washington.

13  
14 **SECTION 2 OF THE VOTING RIGHTS ACT OF 1965**

15 **SENATE FACTOR 5**

16 7. Senate Factor 5 inquires into “the extent to which members of the minority  
17 group in the state or political subdivision bear the effects of discrimination in such  
18 areas as education, employment and health, which hinder their ability to participate  
19 effectively in the political process.”  
20

**Deposition Testimony of Anne Fiala, Department of Corrections Exhibit 1**

8. The deposition of Anne L. Fiala was taken on November 17, 2005 in Olympia, Washington at the offices of the Attorney General (hereinafter referred to as Exhibit 1, Depo. Fiala).

9. Anne Fiala is the regional administrator with the Department of Corrections, Division of Community Corrections. Exhibit 1 at 61, 62.

10. Ms. Fiala is responsible for the oversight of all community corrections for the southwest region of Washington, which includes 11 different counties, from Pierce County down through Skamania County. Exhibit 1 at 62, lines 9-14.

11. Community Corrections is the supervision of offenders in the community on supervision and in work release. Exhibit 1 at 62, lines 15-17.

12. Attached to Mr. Fiala's deposition are the following six documents: Facility Report Offender Characteristics Population Movement and Custody for Fiscal Year 2004, Distribution of Resident Inmates By Race And Hispanic Origin Within Institutions And Inmate Work Release as of June 30, 1996, Releases By Type of Release, Race, And Hispanic Origin For Fiscal Year 1996- 2005, Plaintiffs' First Set of Interrogatories And Requests For Production Of Documents for *Madison v. Locke*, and 5990 Notice to Offender, documents to which

1 Defendants stipulated as being true and accurate copies prepared by the State of  
2 Washington, Department of Corrections, Adult Corrections Facilities. Exhibit 1, at  
3 58 & Attachments 1-6). Attachments 1 – 6 are as follows:  
4

5 Attachment 1 contains information of the total number of each race and  
6 Latino origin as well being broken down by institution.

7 Attachment 2 is the Distribution Of Resident Inmates By Race And Hispanic  
8 Origin Within Institutions And Inmate Work Release for the years 1996 to 2005.  
9

10 Attachment 3 is Admissions By Age At Admission, Race, Hispanic Origin  
11 And Sex.

12 Attachment 4 is Releases By Type of Release, Race And Hispanic Origin  
13 For Fiscal Years 1996-2005. This table is broken down by race and release type.  
14

15 Attachment 5 is the Plaintiffs' First Set Of Interrogatories And Request For  
16 Production Of Documents Objections And Answers Thereto for *Madison v. State*,  
17 King County, Washington, No. 04-2-33414-4SEA, which the parties stipulated  
18 were true & correct.  
19

20 13. For each year between 1996 and 2005, the percentage of African  
21 Americans, Native Americans, and Latinos in Department of Corrections' facilities  
22 and work release were as follows:  
23

**RACE**

<b>YEAR</b>	<b>BLACK</b>	<b>NATIVE AMERICAN</b>	<b>LATINO</b>
1996	22.7%	2.9%	15.1%
1997	22.9%	3.2%	14.7%
1998	NOT GIVEN		
1999	NOT GIVEN		
2000	22.3%	3.5%	12.3%
2001	22.0%	3.5%	11.9%
2002	21.5%	3.9%	11.2%
2003	21.1%	3.6%	11.0%
2004	20.8%	3.9%	9.6%
2005	19.9%	3.9%	9.8%

## Exhibit 1, Attachment 2

14. For each year between 1996 and 2005, the percentage of African Americans, Native Americans, and Latinos who were released from the Department of Corrections' facilities were as follows:

**RACE**

<b>YEAR</b>	<b>BLACK</b>	<b>NATIVE AMERICAN</b>	<b>LATINO</b>
1996	27.6%	2.7%	16.4%
1997	26.8%	2.9%	16.5%
1998	25.2%	3.1%	16.7%
1999	24.0%	2.8%	14.0%
2000	23.5%	3.5%	13.3%
2001	22.9%	3.7%	12.4%
2002	20.6%	3.5%	11.0%
2003	19.5%	4.0%	9.6%
2004	19.6%	4.3%	9.3%
2005	24%	4.7%	7.4%

Exhibit 1, Attachment 4.

15. Prior to the 2003 Amendments to the Washington State Sentencing Reform Act, RCW 9.94A, the Department of Corrections had the supervisory duty of collecting legal financial obligations from released offenders. Exhibit 1, at 84, lines 6-11.

16. After the 2003 Amendments to the Washington State Sentencing Reform Act, RCW 9.94A, the Department of Corrections no longer supervised

1 released offenders to collect legal financial obligations. Pursuant to said act, the  
2 county clerks in the county where the offender was convicted, now monitor the  
3 offenders to make sure that payment of legal financial obligations occurs. Exhibit  
4 1, at 84, lines 6-11.  
5

6 17. An offender cannot receive a discharge from supervision until they  
7 pay all of their legal financial obligations, including charges for supervision.  
8 Exhibit 1, at 85, lines 9-16.  
9

10 18. Since the Sentencing Reform Act went into effect in 1984, the  
11 Department of Corrections does not provide offenders with information on how to  
12 restore their voting rights. Exhibit 1, at 100, lines 14-22.  
13

14 **Expert Report of Professor Robert D. Crutchfield, Ph.D.**

15 19. Attached as Exhibit 2 is the report of Robert D. Crutchfield, Ph.D.,  
16 Crutchfield, Professor of Sociology at the University of Washington. Dr.  
17 Crutchfield is also the acting Associate Dean of the Graduate School at the  
18 University of Washington. Plaintiffs presented Dr. Crutchfield's report to  
19 demonstrate evidence of the existence of unwarranted racial disparity in  
20 Washington State's criminal justice system. Exhibit 2, at 244.  
21  
22  
23

1 20. Dr. Crutchfield has conducted extensive research on racial disparity in  
2 the Washington State criminal justice system. Exhibit 2, at 244.

3  
4 21. Dr. Crutchfield has reviewed and critiqued the research on racial  
5 differences in the processing of cases in the criminal justice system of Washington  
6 State. Considerable research has been done in Washington State through the  
7 sponsorship of the Washington State Minority and Justice Commission, an entity  
8 of the Washington State Supreme Court. Exhibit 2, at 243.

9  
10 22. Dr. Crutchfield indicates that members of the Washington Legislature  
11 became concerned with racial disparities in imprisonment within the state after a  
12 study by Christianson concluded that Washington State led the nation in the over  
13 imprisonment of African Americans. This study reported that African Americans  
14 in Washington State were imprisoned at a 9.33 to 1 ratio. That is, the share of the  
15 imprisoned population that was African American in Washington State was 28  
16 percent, but Blacks comprised 3 percent of the State's population. This contrasts  
17 with the national average where African Americans were imprisoned at a ratio of 4  
18 to 1. No other state, according to this study, had as high of a ratio as Washington.  
19 Exhibit 2, at 245.

1 23. Dr. Crutchfield, Bridges and Pitchford published a paper in 1994 to  
2 study the proportion of racial disproportionality in imprisonment in each state to  
3 determine how much of the Black/White difference in each state was warranted,  
4 and what proportion was unwarranted by the measurable legally relevant factor of  
5 higher criminal involvement by Blacks. They report that an African American in  
6 Washington State was slightly more than nine times more likely to be in prison  
7 than a White American in that state. But, the ratio of Black to White arrest for  
8 violent offences was only 3.72 to 1, which means that that substantially more than  
9 one half of Washington State's racial disproportionality cannot be explained by  
10 higher levels of criminal involvement as measured by violent crime arrest  
11 statistics. Exhibit 2, at 250.

15 24. Dr. Crutchfield reviewed studies performed in Washington State of  
16 racial differences at decision points of the criminal justice processing in the state.  
17 Those studies were Klement and Siggins (2001); Loverich, Gaffney, Mosher,  
18 Pickerill and Lutz (2002); Loverich, Gaffney, Mosher, Pickerill, and Smith (2003);  
19 Mosher (2003); Beckett, Nyrop, Pfingst, and Bowen (2005) who each studied  
20 police agencies. Hewitt (1977) and Crutchfield, Wies, Engen, and Gainey (1995)  
21 studied prosecution decisions. Bridges (1977) examined bail decisions. Fernandez

1 and Bowman (2004) studied Latino sentencing. Crutchfield, Weis, Engen, and  
2 Gainey (1993) studied exceptional sentencing. Crutchfield and Bridges (1986)  
3 studied sentencing, considering earlier decision points. Engen, Gainey, and Steen  
4 (1999) studied specifically drug case handling by prosecutors and judges at  
5 sentencing. Exhibit 2, at 255.

6  
7 25. Dr. Crutchfield indicates the Klement and Siggins' study found a  
8 relationship between race and the Seattle Police Department's enforcement  
9 practices. The study concludes that the relationship is due to the police  
10 department's focus on observable street level drug markets. Street marketing in  
11 Seattle has a much more "minority flavor" than does the general population.  
12 Klement and Siggins indicate that Seattle's street level drug markets are heavily  
13 composed of African American and Latino sellers. Whites were reported to be  
14 actively involved in drug trafficking in Seattle, but their marketing tends not to  
15 take place on city streets, but away from law enforcement. Exhibit 2, at 256, 257.

16  
17 26. Dr. Crutchfield considered Loverich et al.'s (2003) study of  
18 Washington State Patrol (WSP) officers. Dr. Crutchfield warns that Loverich et  
19 al. presume that the I-5 corridor (running from the Canadian border to the Oregon  
20 border), which is patrolled by the WSP, is heavily trafficked by out-of-state  
21  
22  
23

1 drivers. Loverich further presumes that these drivers are “more likely to be  
2 members of racial minority groups than resident in-state drivers.” Dr. Crutchfield  
3 believes that just the opposite is the case. He indicates that the corridor of which  
4 they speak runs from one area populated by a nearly all White population, Canada,  
5 to another very White population state, Oregon, so there is little if any reason to  
6 believe that the racial composition of out of state I-5 drivers will more likely be of  
7 racial minority groups than in-state drivers. Dr. Crutchfield further observes that it  
8 is quite likely that members of racial and ethnic minority groups in Washington  
9 probably drive fewer miles on interstate highways than do Whites because these  
10 groups are disproportionately impoverished and live mostly in urban areas.  
11 Consequently, they are less likely to own cars, are less likely to be driving. Dr.  
12 Crutchfield suggests, therefore, that Loverich’s study indicates that the WSP only  
13 has minimal contact with minority populations, and is therefore only minimally  
14 using racial profiling. Exhibit 2, at 261-263.

15  
16  
17  
18  
19 27. Dr. Crutchfield found evidence of unwarranted racially  
20 disproportionate handling by WSP troopers when he considered Loverich et. al’s  
21 2003 study. Native Americans were more than twice as likely to be searched as  
22

1 Whites, African Americans were more than seventy percent more likely, and  
2 Latinos more than fifty percent more likely to be searched than Whites. *Id.* at 259.

3  
4 28. Dr. Crutchfield considered Mosher's 2003 study of the Vancouver  
5 Washington Police Department. That study indicated that among those stopped for  
6 traffic violations by the VPD, African Americans are nearly twice as likely to be  
7 searched as Whites, and Latinos are nearly three times more likely to be searched.  
8  
9 Regarding seizure of items, searches of Whites were the most likely to result in a  
10 seizure (18.4 percent), then Latinos (15.4 percent) and then Blacks (7.1 percent).  
11 Dr. Crutchfield indicates that these findings suggest that Blacks and Latinos are at  
12 greater risk for searches that could lead to felony charges, but since these searches  
13 are less productive than searches of Whites, it is likely that minorities are being  
14 placed at greater risk for no legitimate purpose. Exhibit 2, at 264.

15  
16 29. Dr. Crutchfield reviewed the Beckett et al.'s (2005) study of drug  
17 enforcement patterns of the Seattle Police Department (SPD). That study found  
18 that Black and Latino arrests for possession are disproportionate and White arrests  
19 for possession are significantly lower than their proportion among users. Dr.  
20 Crutchfield indicates that the study found that the SPD's focus on crack cocaine is  
21  
22

1 the most significant cause of racial disparity in Seattle drug arrests. Exhibit 2, at  
2 265.

3  
4 30. Dr. Crutchfield's summary of the police studies indicates that there  
5 are substantial reasons to believe that Native Americans, Blacks, and Latinos are at  
6 an elevated risk of racial profiling that cannot be justified by differential  
7 involvement in crimes that are likely to lead to arrests. That evidence, Dr.  
8 Crutchfield reports, is in the findings of Mosher (2003) and Loverich et al. (2005)  
9 that police stops of Native Americans, Blacks and Latinos are more likely to result  
10 in searches, and in the Klement and Siggins' (2001) and Beckett et al.'s (2005)  
11 findings that drug enforcement patterns disparately affect these groups in ways that  
12 cannot be justified by drug use or distribution patterns. Dr. Crutchfield indicates  
13 that this is credible evidence of significant racial disparities that are not fully  
14 warranted by race or ethnic differences in illegal behavior. Exhibit 2, at 266.  
15  
16

17  
18 31. Dr. Crutchfield, Weis, Engen, and Gainey (1995) also studied  
19 prosecutorial discretion in the King County Prosecuting Attorney's Office, which  
20 was sponsored by the Washington State Minority Justice Commission. A major  
21 finding in that study was that, even with well-developed statutory standards to  
22 reduce the need for prosecutorial discretion, there were significant racial  
23

1 disparities in case processing. For instance, Whites are less likely to have charges  
2 filed against them than racial minorities (60% of White cases filed compared to  
3 65% of minority cases). Moreover, bail was recommended more often for Blacks  
4 as compared to Whites, who were released on their own recognizance more often  
5 than Blacks. Further, Blacks are recommended to spend about one *half of a day*  
6 *more* for each day that a White defendant is recommended to be confined to prison.  
7  
8 Finally, African Americans were much less likely to be recommended for an  
9 alternative sentence (75% less likely than for Whites). In sum, Black defendants in  
10 Washington State are less likely than Whites to be released on their own  
11 recognizance, more likely to receive higher rates of confinement than Whites, less  
12 likely to have their sentence converted to alternative sentences than Whites, and  
13 more likely that Whites to receive longer sentences. Exhibit 2, at 266-270.

16 32. Dr. Crutchfield considered the Bridges (1997) study of racial  
17 disparities in bail and pre-trial release. Bridges found that minority defendants and  
18 men were less likely to be released on their own recognizance than others even  
19 after adjusting for differences among defendants in the severity of their crimes,  
20 prior criminal records, ties to the community and the prosecuting attorney's  
21 recommendation. Exhibit 2, at 271.

1 33. Dr. Crutchfield and Bridges (1986) analyzed a sample of 889 felony  
2 arrests drawn from five Washington counties with substantial minority  
3 populations: King, Franklin, Pierce, Spokane, and Yakima. The major findings of  
4 the analyses of the 889 felony arrests are: (1) racial differences in case outcomes  
5 could not be accounted for by taking into account legally relevant factors (offense  
6 severity, criminal history of the offender, and use of a weapon in the commission  
7 of the offense); (2) racial disparities in the processing of criminal cases can be  
8 observed in different decision points in different counties within the state; and (3)  
9 interviews with criminal justice actors uncovered direct racial prejudice among  
10 some, but more frequently the research team found evidence of more subtle, less  
11 obvious racially prejudiced attitudes. Exhibit 2, at 277.

12 **Expert Report of Professor Katherine A. Beckett, Ph.D.**

13 34. Regarding racial disparity in the Washington State criminal justice  
14 system, Plaintiffs presented the testimony of Katherine Ann Beckett, Professor of  
15 Sociology at University of Washington. Professor Beckett conducted a 2004 study  
16 entitled *Race and Drug Law Enforcement in Seattle*. Exhibit 3.

17 35. Professor Beckett's study was commissioned by the Defender  
18 Association's *Racial Disparity Project*, and it analyzed a wide range of data

1 sources to assess whether Blacks and Latinos are over-represented among those  
2 arrested for possessing and delivering serious drugs in Seattle, and, if so, why.  
3 Exhibit 3, at 312.  
4

5 36. Professor Beckett found that Blacks are significantly over-  
6 represented, and Whites under-represented, among those arrested for delivering  
7 serious drugs (ecstasy, methamphetamine, heroin, crack cocaine, and powder  
8 cocaine) in Seattle. Exhibit 3, at 313.  
9

10 37. Professor Beckett's key findings include: (Exhibit 3, at 313-314.)

- 11 • In Seattle, a majority of recent users of serious drugs, with the possible  
12 exception of crack cocaine, are White.
- 13 • In Seattle, a majority of those who deliver serious drugs, with the possible  
14 exception of crack cocaine, are White.
- 15 • By contrast, 52.2% of those arrested for possessing serious drugs, and 64.2%  
16 of those arrested for delivery of serious drugs in Seattle from January 1999-  
17 April 2001 were black. Blacks are thus over-represented among drug  
18 possession and drug delivery arrestees as compared with the actual offender  
19 population.  
20  
21  
22  
23

1 • Latinos are also over-represented among those arrested for drug possession.  
2 Whites are under-represented among both drug possession and drug delivery  
3 arrestees.  
4

5 • The over-representation of blacks and Latinos among drug possession  
6 arrestees and of blacks among drug delivery arrestees is largely the result of  
7 three factors:  
8

9 ○ Law enforcement's concentration on those enmeshed in the crack  
10 cocaine market (as opposed to those involved in the powder cocaine,  
11 methamphetamine, and heroin markets).

12 ○ Law enforcement's concentration on outdoor drug venues in general,  
13 although this practice was not as important (in numerical terms) as the  
14 focus on crack users and dealers.  
15

16 ○ In addition, the geographic focus on outdoor drug venues in the  
17 downtown area is an important cause of the over-representation of  
18 blacks among drug delivery arrestees.  
19

20 ○ None of these three organizational practices are explicable in race-  
21 neutral terms.  
22  
23

- 1 • The focus on crack offenders is not explicable in terms of the legal status of  
2 these drugs: each of these substances is classified by the state legislature at  
3 Level 8 of Washington's felony sentencing grid. Nor is this focus on the  
4 crack market a consequence of the degree to which the various drug markets  
5 are associated with violence or public health problems.
- 6 • The focus on outdoor venues is not explained by a) citizen complaints; b)  
7 organizational/personnel constraints; or c) volume productivity (i.e. the  
8 amount of drugs or cash yielded per officer hour invested).
- 9 • The majority of Seattle needle exchangers surveyed obtained their drugs  
10 from a White person; much smaller percentages reported obtaining those  
11 substances from a Black person.
- 12 • 64.2% of those purposefully arrested (resulting from buy-bust operations,  
13 reverse buy-bust operations, search warrants, and other narcotics  
14 investigations) for delivery of serious drugs in Seattle from January 1999-  
15 April 2001 were Black.
- 16 • Approximately one-third of Seattle's outdoor drug transactions involve  
17 crack cocaine.
- 18
- 19
- 20
- 21
- 22
- 23

- 1 • The vast majority (over 74%) of purposeful drug delivery arrests involved  
2 crack cocaine, and 79% of those purposefully arrested for delivering crack  
3 cocaine were Black.
- 4 • This focus on crack is thus a leading cause of racial disparity in drug  
5 delivery arrests. Exhibit 3, at 313-314.

6  
7 38. Professor Beckett's research indicates that the majority of those who  
8 deliver serious drugs in Seattle are White. Her research also indicates that 64.2% of  
9 those purposefully arrested for this crime from January 1999-April 2001 were  
10 Black, 14.1% were Latino, and 17.6% were White. Exhibit 3, at 328.

11  
12 39. Professor Beckett's analysis of the Seattle Police Department's (SPD)  
13 practices and arrest outcomes indicates that this disparity is the result of several  
14 inter-related factors. First, the SPD focuses overwhelmingly on racially diverse  
15 drug venues downtown where crack is more likely to be sold than on other  
16 markets, focuses on crack within those markets, and largely ignores predominantly  
17 White outdoor drug market venues where heroin dominates. In addition, Blacks are  
18 disproportionately arrested in both outdoor and indoor settings. Exhibit 3, at 313.

19 40. Professor Beckett's report concludes that SPD's organization  
20 practices are not explicable in race neutral terms. These racially neutral  
21

1 explanations include the comparative frequency and location of crack transactions,  
2 any unique association of the crack trade with violence, and public health  
3 considerations. Exhibit 3, at 328-336.  
4

5 41. With respect to community concern about outdoor possession and sale  
6 of drugs, Professor Beckett's research indicates that citizen complainants are far  
7 more concerned about suspected narcotics activity in residences (63%) than in  
8 open-air markets (10%). Exhibit 3, at 331.  
9

10 42. With respect to crime rates, Professor Beckett's research indicates that  
11 the downtown and Pioneer Square area of Seattle experience a significantly greater  
12 number of purposeful drug delivery arrests than would be predicted on the basis of  
13 the number of crimes known to the police in those areas. Conversely, significantly  
14 fewer purposeful drug delivery arrests take place in the University District and the  
15 Capitol Hill area than would be predicted on the basis of the number of crimes  
16 known to the police. Professor Beckett concludes that the concentration of police  
17 activity in the different Seattle districts is not a function of the number of crimes  
18 known to the police in those areas. Exhibit 3, at 332.  
19  
20

21 43. With respect to the degree to which violence is associated with crack  
22 cocaine, Professor Beckett's evidence indicates that Seattle's crack market is not  
23

1 more violent than other illegal drug markets. The data indicates that only 2.3% of  
2 crack (only) arrests involved guns, whereas 25.9% of heroin (only) arrests involved  
3 guns. Exhibit 3, at 330.  
4

5 44. With respect to public health concerns, Professor Beckett indicates  
6 that there is some evidence that those who use cocaine (in any form) are less likely  
7 to report being unable to stop using the drug than users of most other drugs.  
8 Professor Beckett indicates that the public health consequences of intravenous drug  
9 use — primarily associated with heroin — are greater than those posed by crack  
10 cocaine use. Exhibit 3, at 330-331.  
11

12 **Expert Report of Professor J. Morgan Kousser**  
13

14 45. Regarding Senate Factor 5 Plaintiffs presented the expert report  
15 Morgan Kousser, Ph.D., Professor of History and Social Science at the California  
16 Institute of Technology. Exhibit 4 (Kousser Report) to the Plaintiffs' Opposition  
17 to Defendants' Motion for Summary Judgment and in Favor of Plaintiffs' Motion  
18 for Summary Judgment.  
19

20 46. Dr. Kousser's report explains that in an effort to spell out for courts  
21 the way it wished cases to be analyzed under section 2 of the Voting Rights Act,  
22 the U.S. Senate listed seven principal factors in its authoritative Report # 417 in  
23

1 1982. Among them was “the extent to which members of the minority group in the  
2 state or political subdivision bear the effects of discrimination in such areas as  
3 education, employment and health, which hinder their ability to participate  
4 effectively in the political process.” In an accompanying footnote, it noted that “no  
5 further casual nexus” need be shown, once conditions of deprivation are shown and  
6 there is disproportionately low minority political participation. Exhibit 4, at 347.  
7  
8

9 47. Dr. Kousser’s report explains that the Senate Factor 5 is relevant to  
10 the particular case of felon disfranchisement because in Washington State, the  
11 process of regaining suffrage is particularly complicated, requiring considerable  
12 skills in negotiating two separate bureaucracies and perhaps the money to hire a  
13 lawyer who specializes in such matters. If minorities are particularly likely to be  
14 convicted of felonies, and if they are more likely than Whites to be disadvantaged  
15 in education and economic well-being, they will be at a disadvantage in education  
16 and economic well-being, they will be at a disadvantage in regaining the suffrage,  
17 as well. If, in addition to these conditions, it can be shown that there was  
18 discrimination in education and employment in the past, then Senate Factor 5  
19 should be adequately addressed. Exhibit 4, at 348.  
20  
21  
22  
23

1 48. As the *Seattle Times* remarked on May 22, 2005, after a series of  
2 interviews with state and local officials growing out of the Gregoire/Rossi  
3 contested election, the system is so “bewildering that almost nobody negotiates it  
4 well,” or as one official told the paper, “You need a degree in government to figure  
5 it out.” Exhibit 4, at 348.  
6

7 49. Dr. Kousser’s report explains that from the 1981 passage of the  
8 Sentencing Reform Act to 1984, the state DOC had no procedure for informing the  
9 local sentencing court, the court responsible for issuing the certificate of discharge,  
10 that the individual’s sentence had been completed. Exhibit 4, at 348.  
11

12 50. Dr. Kousser’s report explains that the whole petitioning process would  
13 almost certainly require hiring an attorney, another bar to the enjoyment of a right  
14 by racial minorities in Washington State. Exhibit 4, at 349.  
15

16 51. Dr. Kousser’s report explains that because criminal disfranchisement  
17 laws vary widely across states and are administered differently even within states,  
18 it is almost impossible for a local registrar in Washington State to know enough to  
19 be able to administer this facet of the law. Exhibit 4, at 349.  
20  
21  
22  
23

1 52. Dr. Kousser's report explains that if the disfranchising laws and the  
2 administration of these and other laws are discriminatory in the other states, that  
3 discrimination will be carried over to Washington. Exhibit 4, at 349.  
4

5 53. Dr. Kousser's report explains that Washington State does not collect  
6 statistics on the educational attainments of its prison population, the U.S.  
7 Department of Justice does publish national statistics on state and federal  
8 prisoners. There is no reason to believe that Washington differs from the national  
9 pattern of severe educational disparities for incarcerated persons, compared to the  
10 general population, and within prisons, disparities by race and ethnicity. *Id.* at 351.  
11

12 54. Dr. Kousser's report explains that in 1997, the most recent year for  
13 which statistics are available, 81.6 percent of the non-institutional population 18  
14 years old or older had completed high school or attended or graduated from  
15 college. In state prisons, the comparable figure was 31.9 percent. Among Whites  
16 in state prisons, the percentage completing high school or above was 37.7; among  
17 African-Americans, 31; among Latinos, 22.3. Exhibit 4, at 351.  
18

19 55. Dr. Kousser's report explains that the 2000 U.S. Census provides  
20 numerous statistics indicating that African-Americans, Latinos, and Native  
21 Americans in Washington State suffer from the effects of past and continuing  
22  
23

1 discrimination. Of those Washingtonians over 25, 90 percent of non-Latino  
2 Whites have at least a high school education, but the comparable figure for  
3 African-Americans, 77.4 percent, and for Latinos, 53 percent. Exhibit 4, at 351.  
4

5 56. Dr. Kousser's report explains that all five indices of well-being show  
6 that the three minority groups are at a considerable disadvantage in Washington  
7 State, compared to non-Latino Whites. Exhibit 4, at 353.  
8

9 57. Dr. Kousser's report explains that Washington has a geographically  
10 mobile population, especially its minority population. The implication of this fact  
11 in this case is that discrimination and racial attitudes in other states, and not just in  
12 Washington State, are relevant to current disparities in education and economic  
13 well-being. Among non-Latino Whites in Washington in 2000, only 50.4 percent  
14 were born in the state. 21.4 percent were born in other western states, 12.5 percent  
15 in the Midwest, and 6 percent in the South. Native Americans were even more  
16 likely to have been born in Washington, 63.4 percent. But African Americans and  
17 Latinos were predominantly immigrants. Only 36.1 percent of Black  
18 Washingtonians in 2000 had been born in the state, and only 34.1 percent of  
19 Latinos. The South was the birthplace of 27.7 percent of African-Americans in  
20 Washington, and 38.5 percent of Latinos were foreign born. Exhibit 4, at 353.  
21  
22  
23

1 58. Dr. Kousser's report explains that Washington State has had no non-  
2 White ethnic group large enough to pose any social, economic or political threat to  
3 Whites until at least the Second World War. Thus, it is not surprising that the  
4 number of discriminatory laws that Washington State passed was minimal. There  
5 were *de facto* restrictions on racial intermarriage, some exclusion of Blacks from  
6 juries, and the enforcement of racially restrictive covenants. But the proportion of  
7 Whites was so overwhelming that there was no movement in Washington State to  
8 restrict the suffrage (except for Native Americans) or to segregate the schools  
9 formally. Until 1940, the largest minority group in Washington was Asian-  
10 American, primarily of Japanese origin, a group that is not part of the plaintiff  
11 class in the *Farrakhan* case. Exhibit 4, at 356.

15 59. Dr. Kousser's report explains that according to Quintard Taylor,  
16 "Asians and Native Americans . . . were the objects of virulent hatred and  
17 sometimes even organized violence" in that city in the 19<sup>th</sup> century, and "the small  
18 black population was insulated from the more virulent expressions of racial  
19 prejudice by the presence of large numbers of Chinese immigrants and American  
20 Indians who throughout the nineteenth-century bore the brunt of discrimination  
21 from the White population." Thus concentrating on African Americans will

1 understate the amount of discrimination against minorities in Washington Territory  
2 and state. Exhibit 4, at 356.

3  
4 60. Dr. Kousser's report explains that given the minuscule percentages of  
5 African-Americans in the state before the defense-related employment boom of  
6 World War II, it is shocking that there was already so much anti-Black  
7 employment discrimination before 1940. In the 19<sup>th</sup> century, "the most prestigious  
8 employment" for Black males in Seattle was work as barbers or porters, while  
9 "African-American women fared worse. Almost without exception they were  
10 confined to jobs as maids." Between 1910 and 1940, from 43 to 56 percent of  
11 Black males and from 79 to 84 percent of Black females in Seattle were domestic  
12 servants. Despite the integrated school system, prominent Black graduates from  
13 the University of Washington were forced to take jobs as YWCA staffers or  
14 waitresses. At least partly as a consequence of such employment discrimination,  
15 many Blacks foresaw no payoff in college attendance, and the proportion of Blacks  
16 in Seattle in 1940 with four years or more of college was 2.7 percent, compared to  
17 8.3 percent for the city population as a whole. As the Great Depression ended, "it  
18 was almost impossible for blacks to find employment at any level beyond menial  
19 service." Exhibit 4, at 357.

1           61. Dr. Kousser's report explains that between 1900 and 1940, movie  
2 theaters in Seattle were extra-legally segregated and department stores and many  
3 restaurants turned Blacks away. Housing segregation was rife, and even the richest  
4 Black leaders felt its sting. Segregated neighborhoods began to be established in  
5 Seattle as soon as there were enough Blacks to populate them. *Id.* at 357,358.

7           62. Dr. Kousser's report explains that between 1940 and 1950, the black  
8 population in Seattle tripled. At the largest employer Boeing Aircraft, the Aero-  
9 Mechanics local reluctantly allowed Blacks to be hired only under heavy federal  
10 government pressure, insisted on segregated lunch rooms and toilets, and refused  
11 to allow African-Americans to participate in union meetings, although it required  
12 them to pay union dues. The same familiar patterns of discrimination against  
13 Blacks in employment and public accommodations were seen in Spokane. In  
14 Walla Walla, 95 percent of restaurants refused to serve Black soldiers during  
15 World War II, and in Bremerton, 80 percent. "In Both large and small  
16 communities" in Washington State, African-Americans, "lured by labor recruiters  
17 to jobs in defense industries, were unceremoniously swept aside when war's end  
18 made their labor no longer necessary." Exhibit 4, at 358.

1           63. Dr. Kousser’s report explains that in the 1950s in Seattle, most unions  
2 “either disallowed black membership or limited it to a token number of workers,”  
3  
4 and such large employers as Bethlehem Steel confined African-Americans to  
5 cleanup jobs. They were excluded from working in the electronics and chemical  
6 industries, retail sales, health care, and banking. In 1969, only 29 of the 14,850  
7 building trades union members in Seattle were Black. In 1970, Blacks constituted  
8  
9 7.1 percent of the city’s population, but only 1.4 percent of Boeing’s employees.  
10 Exhibit 4, at 358.

11           64. Dr. Kousser’s report explains that summarizing race relations in the  
12 region as a whole through the 1960s, Quintard Taylor declared that “the type of  
13 racism they [Blacks] experienced in the Pacific Northwest differed only in  
14 intensity from the situation faced by Afro-Americans in the South. Exhibit 4, at  
15  
16 359.

17           65. Dr. Kousser’s report explains that housing discrimination and school  
18 segregation were interrelated. If African Americans had been able to move  
19 anywhere they could buy or raise the necessary money for rent in Seattle, then  
20 neighborhood schools would have been naturally integrated. Instead, there was a  
21  
22  
23

1 decades-long struggle to provide integrated, equal primary and secondary  
2 education, a struggle that continues today. Exhibit 4, at 359.

3  
4 66. Dr. Kousser's report explains that in 1960, 75 percent of Seattle's  
5 Blacks lived in four census tracts in the Central District, an area with the highest  
6 dropout rate, the highest percentage of single-parent families, and over 40 percent  
7 of the city's welfare spending. Exhibit 4, at 359.

8  
9 67. Dr. Kousser's report explains that during the 1960s, the city's largest  
10 newspaper, the *Seattle Times*, refused to run ads for a real estate broker who sold  
11 homes to Blacks in "white" areas. A 1957 state law against housing discrimination  
12 was declared unconstitutional by a King County judge, on the grounds that it  
13 infringed on the property owner's "complete freedom of choice in selecting those  
14 with whom he will deal." His decision was upheld on appeal to the state Supreme  
15 Court. An open housing ordinance passed by the Seattle City Council was  
16 overturned in a 1964 referendum claimed that requiring non-discrimination would  
17 lead to a police state. As a consequence of such discrimination, 75 percent of  
18 Black high school students in Seattle in 1962 went to just one of the city's 11 high  
19 schools, and 6 of the city's 86 elementary schools were over 75 percent Black.  
20 Exhibit 4, at 360.

1 68. Dr. Kousser's report explains that by 1970, in the words of Quintard  
2 Taylor, "Deteriorating buildings and rigidly segregated housing practices, crime,  
3 drugs, de facto school segregation, chronic intergenerational poverty, and welfare  
4 dependency all increasingly characterized the Pacific Northwest's largest African  
5 American community, and generated growing alienation, despair, and anger among  
6 black Seattleites." Although some middle-class Blacks managed to scatter into  
7 other areas during the 1970's, most moved only short distances into the Rainer  
8 Valley, adjoining the Central District. Exhibit 4, at 360.

9  
10  
11 69. Dr. Kousser's report explains that when the Seattle School Board  
12 attempted to desegregate in the early 1970s, "Citizens Against Mandatory Busing"  
13 tried to recall the integrationists, only to be stopped by the State Supreme Court,  
14 which ruled that attempted integration was not a recallable offense. (*State ex rel.*  
15 *Citizens Against Mandatory Busing v. Brooks*, 80 Wash. 2d 121 (1972)) Repeated  
16 efforts to desegregate the schools were met by lawsuits and initiatives, culminating  
17 in the anti-affirmative action initiative, I-200, in 1998, and subsequent lawsuits  
18 challenging the city school board's race conscious open enrollment program.  
19 Housing discrimination still lies at the heart of educational discrimination in  
20 Seattle. As the Washington Supreme Court recently noted, "About 66 percent of

1 all Caucasian students live on the waterfront or north of downtown and 84 percent  
2 of all African American students live south of the Seattle downtown area. Were  
3 geography alone used to determine school assignment, the different schools in the  
4 district would be racially segregated. Exhibit 4, at 360.

6 **SENATE FACTOR 9**

7 70. Regarding Senate Factor 9, “whether the policy underlying the state of  
8 political subdivision’s use of such voting qualification, prerequisite to voting, or  
9 standard, practice or procedure is tenuous,” Plaintiffs have presented the expert  
10 report of Alec Ewald, Ph.D., Assistant Professor of Political Science at Union  
11 College in New York. Dr. Ewald has studied and written extensively on the topic  
12 of felon disfranchisement. Exhibit 6 (Ewald Report) to the Plaintiffs’ Opposition  
13 to Defendants’ Motion for Summary Judgment and in Favor of Plaintiffs’ Motion  
14 for Summary Judgment.  
15  
16

17 71. Dr. Ewald’s Report explains that an inquiry into whether a challenged  
18 policy and its justifications are tenuous should pose the following, simple  
19 questions: Does the policy aim to improve or correct a specific social problem?  
20 Does it plausibly link means and ends? Does the state clearly articulate the  
21 policy’s aim and purpose? Exhibit 6, at 412.  
22  
23

1 72. Dr. Ewald's Report explains that the State of Washington has not  
2 identified any specific problem its disfranchisement policy is designed to address  
3 or rectify. Exhibit 6, at 413.  
4

5 73. Instead, Dr. Ewald's report explains that when asked in Plaintiffs'  
6 discovery request whether "your office maintain[s] that an important governmental  
7 interest is served by disqualifying from voting those individuals convicted of  
8 felony offenses," Defendant said: "The legislature has determined that the  
9 disfranchisement of felons who have not completed all terms and conditions of  
10 their judgments and sentences limits the participation in the political process by  
11 those who have proven themselves unwilling to abide by the laws that result from  
12 that process." Exhibit 6, at 413.  
13  
14

15 74. Dr. Ewald's Report explains that Defendants' response is just a  
16 restatement of the policy, is not a conclusion based on premises, does not explain  
17 what interest it purports to serve, and is not a clear statement of a governmental  
18 interest, rational or otherwise. The State of Washington has not identified any  
19 interest that it seeks to achieve with this policy. This, Dr. Ewald's Report explains,  
20 strongly suggests that Washington State's policy or rationale for its felon  
21 disfranchisement laws is tenuous. Exhibit 6, at 413.  
22  
23

1 75. Dr. Ewald's conclusion that the policy underlying Washington State's  
2 felon disfranchisement laws is tenuous is based upon Defendants' response to  
3 Plaintiffs' discovery requests in this case, as well as his review of other public  
4 documents and materials, including Washington State's constitution, statutes, bill  
5 reports and on-line election materials. Exhibit 6, at 413.  
6

7 76. Dr. Ewald's Report explains that Washington State's long historical  
8 tradition of disfranchisement for crime, and support for the policy, does not render  
9 the policy sound today. Stating that Washington State's policy is old does not,  
10 when assessing whether the policy is tenuous, assist in answering what problem, if  
11 any, the felon disfranchisement scheme is intended to address. *Id.* at 413 -414.  
12

13 77. Dr. Ewald's Report explains that Washington State's felon  
14 disfranchisement laws do not serve any legitimate goals of punishment:  
15 incapacitation, deterrence, rehabilitation and retribution. These four purposes aim  
16 to *reduce* crime, which is not a justification articulated by the Defendants for its  
17 felon disfranchisement law. Exhibit 6, at 416-417.  
18

19 78. Dr. Ewald's Report explains that the idea of the "purity of the ballot  
20 box" is a "quasi-metaphysical" piece of reasoning, which does not describe what  
21  
22  
23

1 practical problem the State of Washington aims to solve with its disfranchisement  
2 policy. Exhibit 6, at 420-422.

3  
4 79. Dr. Ewald's Report explains that difficulties in administering  
5 Washington State's felon disfranchisement law underscore the apparent lack of a  
6 practical purpose underlying the policy. The 2004-2004 Washington State  
7 gubernatorial recount made clear that the state's felony disfranchisement policy is  
8 unevenly enforced, as both Republicans and Democrats alleged that ineligible  
9 felons voted in the election. Exhibit 6, at 422.

10  
11 80. Dr. Ewald's Report explains that the restoration process in  
12 Washington State is poorly-understood by state and local officials, and that the  
13 present system intended to restore voting rights to those eligible while preventing  
14 illegal votes is "so bewildering that almost nobody negotiates it well," requiring a  
15 degree in government to understand the process. Exhibit 6, at 422-423.

16  
17 81. Dr. Ewald's Report explains that Washington State does not currently  
18 maintain lists of voters ineligible because of felony convictions. Even after  
19 implementing HAVA-mandated reforms beginning in 2006, Washington State  
20 acknowledges that it still will have no way of knowing about whether new arrivals  
21 to the state have felony convictions in their former state(s) of residence. HAVA-

1 mandated changes in administration constitute a tacit acknowledgment that the  
2 current procedures for administering the policy are flawed. Exhibit 6, at 422.

3  
4 82. Dr. Ewald's Report explains that, in the absence of a national criminal  
5 database, Washington State cannot enforce its disfranchisement law consistently,  
6 no matter how well it trains state and local elections officials and administers its  
7 new statewide voter database. Current gaps in enforcement undercut the state's  
8 argument for the sanction. If this policy were actually directed at rectifying any  
9 specific social problem, Washington would have devoted more resources to  
10 administering this voting restriction accurately, evenly, and comprehensively.  
11 Exhibit 6, at 422.

12  
13  
14 83. Dr. Ewald's Report explains that disfranchisement for a criminal  
15 conviction is not the democratic norm and that many democracies refuse to strip  
16 voting rights even from *incarcerated* offenders. Where courts have inquired into  
17 the purpose of the policy, governments have failed to demonstrate that  
18 disfranchisement is necessary to address any social need or problem. In at least  
19 eighteen European countries, *prisoners* retain the right to vote without any  
20 restrictions. The courts of Israel, South Africa, and Canada, as well as the  
21 European Court of Human Rights, have struck down disfranchisement laws. These

1 decisions support the conclusion that the policies underlying felon  
2 disfranchisement are tenuous, since they are neither aimed at nor likely to  
3 accomplish any specific objective. Exhibit 6, at 424-426.  
4

5 84. Dr. Ewald's Report explains that where European countries  
6 disfranchise people convicted of crime, they do so in narrow, targeted, public way.  
7 In Germany, for example, disfranchisement never occurs automatically, may only  
8 be applied by the sentencing judge for certain serious infractions, and can last for  
9 only a limited time. While still vulnerable to criticism, such a narrow, publicly  
10 imposed voting sanction explicitly identifies disfranchisement as punitive in  
11 nature, and gains a measure of plausibility. By contrast, Washington State's  
12 disfranchisement policy is invisible, general, and automatic. Exhibit 6, at 425-426.  
13  
14

15 85. Dr. Ewald's Report explains that Washington State's felon  
16 disfranchisement law is a counterproductive policy, since voting is an inherently  
17 *conservative* thing to do. By casting a ballot, citizens express a commitment to the  
18 legitimacy of the political system. Voting cannot, by definition, be subversive,  
19 since each ballot legitimates the status quo. Exhibit 6, at 426.  
20

21 86. Dr. Ewald's Report explains that striking evidence of the felon  
22 disfranchisement policy's disproportionate racial impact intensifies the need to ask  
23

1 what important objective Washington State's disfranchisement law pursues. As of  
2 1998, nearly one-quarter of Black men in Washington State — or 24% — were  
3 disfranchised. While about 3.64% of Washington State's total voting-age  
4 population was disfranchised as of 2000, 14.33% of its African American  
5 population was disfranchised. While Latinos comprise 3.85% of Washington  
6 State's citizen voting age population, they represent 9.89% of the disfranchised  
7 population. Exhibit 6, at 427-428.  
8  
9

10 87. Dr. Ewald's Report explains that Washington State's Sentencing  
11 Guidelines Commission recently found that "the over-representation of people of  
12 color is a system-wide problem within the criminal justice system." The  
13 Commission found that although African Americans made up just 3% of the state's  
14 adult population in 2002, they accounted for 21.3% of the state prison population.  
15 Latinos accounted for 7% of the state population, but 11% of the prison population.  
16 Native Americans were also over-represented in the prison population, sentenced  
17 at 1 ½ times their proportion in the population. Together, all non-white groups  
18 made up about 19% of the overall state population in 2002, but about 39% of the  
19 Washington state prison population. Exhibit 6, at 427.  
20  
21  
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23

1 88. Dr. Ewald's Report explains that the history of discrimination in the  
2 criminal justice system and electoral process, together with disproportionate  
3 impact of disfranchisement on racial minorities today, ought to induce a sharp  
4 skepticism about the wisdom of disfranchisement, which exacerbates the racial  
5 fault lines in American democracy. Exhibit 6, at 428.

7 89. Dr. Ewald's Report concludes by explaining that the policy  
8 underlying Washington State's felon disfranchisement scheme is tenuous because  
9 the Defendants have not demonstrated that it fulfills a specific, important  
10 governmental purpose, is applied in a nondiscriminatory manner, or that it  
11 strengthens Washington State's democratic character. Exhibit 6, at 428.

13  
14 **IMPLICIT BIAS**

15 Dr. Katherine Beckett's Paper *Understanding The Role of Race in the Criminal*  
16 *Justice System: Structure, Discrimination, and 'Implicit Bias'* (Exhibit 3)

17  
18 90. Regarding the theory of Implicit Bias, Plaintiffs have presented the  
19 paper titled *Understanding The Role of Race in the Criminal Justice System:*  
20 *Structure, Discrimination, and 'Implicit Bias'* by Katherine Beckett, Ph.D.,  
21 Associate Professor in the Department of Sociology and the Law, Societies &  
22 Justice Program at the University of Washington. Exhibit 3 to the Plaintiffs'

1 Opposition to Defendants’ Motion for Summary Judgment and in Favor of  
2 Plaintiffs’ Motion for Summary Judgment.

3  
4 91. Dr. Beckett’s paper states that racial differences in legal outcomes and  
5 other institutional processes may not reflect intentional, purposeful, conscious and  
6 willful racial discrimination. However, she states that this should not lead to the  
7 conclusion that the processes by which racial differences are produced are race-  
8 neutral, for two reasons. First, “structural” factors are sometimes better understood  
9 as policy choices, some of which are known to produce racially unequal outcomes.  
10 Some analysts have conceptualized organizational practices that conform to this  
11 description as “institutional racism.” Second, a number of studies have found that  
12 many people who do not harbor overt racial animus and do not intend to  
13 discriminate are nonetheless influenced by unconscious and widespread racial  
14 stereotypes. Exhibit 3, at 340.  
15  
16

17  
18 92. Dr. Beckett’s paper states that studies have found that this kind of  
19 “implicit bias” shapes both perceptions of the severity of social problems such as  
20 drug use, crime, and disorder and fuels support for more punitive responses to  
21 those problems. Exhibit 3, at 340.  
22  
23

1 93. Dr. Beckett’s paper concludes that while research to date has not  
2 documented the existence of implicit bias among legal authorities and  
3 practitioners, the fact that implicit bias has been shown to be quite widespread,  
4 even among those who value racial equality, suggests that this form of racism may  
5 help to explain evidence of racial inequality in legal settings. Exhibit 3, at 340.  
6

7 94. Dr. Beckett’s paper explains that theorists of “implicit bias” suggest  
8 that widespread yet unconscious racial stereotypes shape perceptions of the  
9 seriousness and/or dangerousness of particular situations or problems. The role of  
10 race in these processes is called “implicit” to differentiate these unconscious  
11 perceptual processes from more overt and conscious expressions of racial animus.  
12 Exhibit 3, at 338.  
13

14 95. Dr. Beckett’s paper explains that race scholars have documented that  
15 intentional, conscious and willful racism — racial animus — has declined in the  
16 post-Civil rights era. At the same time, there is overwhelming evidence that  
17 Blacks and other people of color are disproportionately and unfairly associated  
18 with social problems such as crime, welfare and drugs. Exhibit 3, at 338.  
19

20 96. Dr. Beckett’s paper cites Robert Sampson and Stephen Raudenbush’s  
21 report which finds that resident perceptions of neighborhood disorder are  
22

1 significantly affected by the racial, ethnic and class composition of the  
2 neighborhood in which it occurs (controlling for the actual level of disorder in each  
3 neighborhood). Exhibit 3, at 339.  
4

5 97. Dr. Beckett's paper states that researchers have also found evidence  
6 that implicit bias assess perceptions of the dangerousness of situations. *Id.* at 339.

7 98. Dr. Beckett's paper states that the effects of racial context and cues on  
8 perceptions of crime, disorder, and danger described above are presumed to reflect  
9 widespread and unconscious reliance upon racial stereotypes in cognitive  
10 processes. Exhibit 3, at 339.  
11

12 99. Dr. Beckett's paper states that researchers have found that racial  
13 stereotypes exert powerful normative/attitudinal effects. For example, research  
14 indicates that the cultural association of Blacks with crime and welfare has  
15 enhanced white support for "tough" policy approaches to crime and poverty.  
16 Similarly, research indicates that television viewers are much less sympathetic to  
17 welfare recipients (with identical situations) who are Black than white, and that  
18 this appears to reflect the widespread stereotype of Blacks as lazy. *Id.* at 339.  
19  
20  
21  
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23

1 100. Dr. Beckett concludes that it appears that repeated exposure to  
2 racialized images and associations (“cultural scripts”) become common  
3 knowledge, which then shapes attitudes and policy preferences. *Id.* at 339,340.  
4

5 101. Dr. Beckett’s paper states that support for “get tough” crime and drug  
6 policies may also reflect the existence of overt racial prejudice or animus  
7 theoretical perspectives on race and studies documenting implicit bias indicate that  
8 unconscious racial stereotypes also shape the cognitive processes of individuals  
9 who exhibit little or no overt racial prejudice, including, to some extent, those of  
10 people of color. From this perspective, then, unconsciously but widely shared  
11 racial stereotypes operate at a very general level and influence a wide range of  
12 actors. Exhibit 3, at 340.  
13  
14

15 102. Dr. Beckett concludes in her paper that implicit bias may help to  
16 explain that race matters in a variety of criminal justice settings, such as with the  
17 over representation of Blacks and Latinos among drug arrestees in Seattle. Dr.  
18 Beckett states that this disparity reflects the fact that race shapes police perceptions  
19 of drug offenders in Seattle. In support of implicit bias toward drug users, Dr.  
20 Beckett cites a study, which found that over 95 percent of survey respondents  
21  
22  
23

1 pictured an African-American when asked to imagine a typical drug user. Exhibit  
2 3, at 340.

3  
4 **Dr. Anthony Greenwald's Report**

5 103. Regarding the theory of Implicit Bias, Plaintiffs have presented the  
6 expert report Anthony Greenwald, Ph.D., Professor, University of Washington,  
7 Department of Psychology. Exhibit 5 to the Plaintiffs' Opposition to Defendants'  
8 Motion for Summary Judgment and in Favor of Plaintiffs' Motion for Summary  
9 Judgment.  
10

11 104. Dr. Greenwald's report explains that a substantial and actively  
12 accumulating body of research evidence establishes that implicit race bias is  
13 pervasive and that implicit race bias is associated with discrimination against  
14 African Americans. Exhibit 5, at 401.  
15

16 105. Dr. Greenwald's report explains that implicit memory research  
17 conducted in the 1980s led researchers to develop measures of implicit mental  
18 phenomena. Two of these – implicit attitudes and implicit stereotypes – are  
19 especially relevant to bias and discrimination. Exhibit 5, at 373.  
20

21 106. Dr. Greenwald's report defines *implicit biases* as discriminatory  
22 biases based on implicit attitudes or implicit stereotypes. Dr. Greenwald further  
23

1 states that implicit biases are especially intriguing, and also especially problematic,  
2 because they can produce behavior that diverges from one's avowed or endorsed  
3 beliefs or principles. Exhibit 5, at 375.  
4

5 107. Dr. Greenwald's report explains that the mere existence of implicit  
6 bias poses a challenge to legal theory and practice, because discrimination doctrine  
7 is premised on the assumption that, barring insanity or mental incompetence,  
8 human actors are guided by their avowed (explicit) beliefs, attitudes, and  
9 intentions. Exhibit 5, at 378.  
10

11 108. Dr. Greenwald's report explains that the recent development of the  
12 Implicit Association Test (IAT) has noticeably accelerated research on implicit  
13 bias. The IAT's general method can be readily adapted to measure a wide variety  
14 of the group-valence and group-trait associations that underlie attitudes and  
15 stereotypes. The most widely used IAT measure assesses implicit attitudes toward  
16 African Americans (AA) relative to European Americans (EA). Exhibit 5, at 380.  
17  
18

19 109. Dr. Greenwald's report states that within the critical group of studies  
20 that focused on prejudicial attitudes and stereotypes — in other words, studies of  
21 implicit bias — predictive validity was significantly greater for the IAT measures.  
22 Exhibit 5, at 383.  
23

1 111. Dr. Greenwald’s report states that the argument that implicit bias is a  
2 probable cause of race discrimination sometimes requires inference by a process of  
3 elimination. This is a reasoning device endorsed by the United States Supreme  
4 Court, in *Furnco v. Waters* 438 U.S. 567 (1978). Exhibit 5, at 399.

6 112. Whether adjudicating an individual allegation of discrimination, or  
7 attempting to understand broad patterns of disadvantage in society more generally,  
8 if one finds evidence of disparate impact — for example, in the form of  
9 systematically disadvantageous outcomes to African Americans in health care,  
10 education, employment, housing, or criminal justice — one may begin the process  
11 of identifying and eliminating plausible causes. Conceivable explanations that  
12 cannot be eliminated remain worth considering. Exhibit 5, at 400.

15 113. Dr. Greenwald’s report offers a hypothetical situation in which  
16 implicit bias should be regarded as the most probable cause of a racial disparity.  
17 The hypothetical states that in attempting to understand whether racial bias has  
18 played a role in probation recommendations in a particular criminal court system,  
19 all conceivable non-race-related (“racially neutral”) explanations have been  
20 eliminated through sound research evidence. The hypothetical states that none of  
21 the relevant decision makers have reported consciously holding negative racial  
22  
23

1 attitudes or stereotypes. Finally, the hypothetical tells us to assume that no test of  
2 implicit bias has been administered to these decision makers. With this set of  
3 assumptions, Dr. Greenwald concludes that implicit bias should be regarded as the  
4 most probable cause of the racial disparity. Exhibit 5, at 400.

6 **Deposition of Pamela Floyd, Secretary of State**

7 114. The deposition of Pamela Floyd was taken on November 17, 2005 in  
8 Olympia, Washington at the law offices of the Attorney General (hereinafter  
9 referred to as Exhibit 7, Depo. Floyd).

11 115. Pamela Floyd is the assistant director of elections for the Secretary of  
12 State in Washington. She has held this position since January of 2004. Exhibit 7,  
13 at 442, line 9-10.

15 116. Washington State is composed of 38 counties with county auditors  
16 responsible for elections, filing of records, and licensing. The 39<sup>th</sup> county, King  
17 County, does not have an elected auditor, because they are a charter county. The  
18 elections official there is appointed, and is called the director of records, elections,  
19 and licensing services. Exhibit 7, at 449-450, lines 4-9.

21 117. The recordkeeping practices and procedures promulgated by the  
22 Secretary of State for the county auditors are in the Washington Administrative  
23

1 Code. If the Secretary of State feels that a statute is unclear, he will promulgate a  
2 rule to clarify it. Another procedure is orientation training for all election  
3 administrators whereby they are certified by the Secretary of State's office in  
4 election administration. Exhibit 7, at 451, lines 12-19.

6 118. As of the date this deposition was taken, the Secretary of State did not  
7 keep track of each person who applied to register to vote. *Id.* at 453, lines 21-23.

8  
9 119. As of the date this deposition was taken, the Secretary of State did not  
10 maintain a statewide database of registered voters. Exhibit 7, at 454, lines 12-14.

11 120. As of the date this deposition was taken, counties kept their own  
12 registration databases, and biannually send a copy of it to the Secretary of State so  
13 that the office could verify signatures on ballots. *Id.* at 454-455, lines 14-25 & 1-7.

14  
15 121. This biannual document is a static picture of the voters registered at  
16 that moment in time, rather than a dynamic database. Exhibit 7, at 454,455, lines  
17 23-25 & 1-11.

18  
19 122. As of January 1, 2006 a change was due to take effect to implement a  
20 statewide voter registration database. Exhibit 7, at 455,456, lines 24-25 & 1-3.

1 123. The January 1, 2006 statewide voter registration database is supposed  
2 to be dynamic, updating and recording new registrations virtually in real time.  
3 Exhibit 7, at 456, lines 10-11.  
4

5 124. The January 1, 2006 statewide voter registration database is supposed  
6 to work by the county entering the data into the county database which is  
7 immediately sent to the State's database which will run verification comparisons  
8 against it with Department of Licensing information and for duplicates in the state.  
9 Then the record will either be returned to the county as active or, if it fails  
10 verification, it will be kept in pending, and the elections officials at the county  
11 level will contact the voter. Exhibit 7, at 456, lines 11-24.  
12  
13

14 125. The likelihood that all 39 counties will be up and active on this new  
15 system as of January 1, 2006 is probably about 90 percent. *Id.* at 458, lines 1-2.  
16

17 126. List maintenance (i.e. clearing duplicates between counties) will have  
18 to take place during the first quarter of 2006. Exhibit 7, at 458, lines 8-17.  
19

20 127. Neither the Secretary of State nor the county auditors keep  
21 information regarding a voter's racial or ethnic identity. *Id.* at 460, lines 10-13).  
22

23 128. The characteristics that the Secretary of State and county auditors  
24 keep are: gender, age, and home address. Exhibit 7, at 460, line 14-17.  
25

1 129. The Secretary of State does not maintain any data relating to the  
2 number or ethnicity of individuals who are disfranchised by Washington's felony  
3 disfranchisement law. Exhibit 7, at 465, lines 6-10.  
4

5 130. The Secretary of State does not know the number of people that  
6 cannot vote because of felony convictions. Exhibit 7, at 466, lines 19-20.  
7

8 131. The Secretary of State knows the number of felony convictions in the  
9 Washington State Patrol database. This database is historical, and includes felons  
10 who have multiple convictions, and felons who have restored their right to vote, or  
11 who have died. Exhibit 7, at 466, 467, lines 20-22, 4-25.  
12

13 132. At some time during the first quarter of 2006, the state's database,  
14 consisting of all 39 counties, will be compared against the Washington State Patrol  
15 database for felony convictions. Exhibit 7, at 474, line 1-4.  
16

17 133. The process of comparing these records for felony convictions will  
18 begin with a comparison of name, date of birth, and cause number between the  
19 voter registration database and the Washington State Patrol database. This will  
20 generate a list of possible matches. That list, in turn, will be compared against the  
21 discharge certificates. Discharge certificates include information from the  
22 administrator of the courts, information from the governor's Pardons and  
23

1 Clemency Board, and information from the Indeterminate Sentencing Review  
2 Board. The cause number will be used to verify that the certificate is for the same  
3 cause number as the felony conviction. That person will also be flagged so the  
4 cause number does not trigger another match in the future. A letter will be sent out  
5 to anyone left on the list who is a registered voter with a felony conviction that  
6 does not have a discharge recorded. They have 30 days to respond and resolve the  
7 issue if they have they have paperwork, otherwise they will be canceled. Exhibit 7,  
8 at 474 & 475, lines 5-18; 24-25 & 1-19.

11 134. The process by which individuals convicted of a felony lose their  
12 voting rights is upon conviction of the felony, the administrator of the courts, sends  
13 a notice to the county auditor's office. If that person is registered, then he is  
14 canceled and a notification of cancellation is sent out. Exhibit 7, at 479, lines 2-6.

16 135. Information about the restoration of voting rights process is published  
17 on the Secretary of State's website. Exhibit 7, at 486, lines 20-22.

19 136. The restoration of rights process in Washington is when a person is  
20 discharged from the Department of Corrections, and has met all of their sentencing  
21 requirements, including the financial obligations, the county clerk issues a  
22 certificate of discharge. It is supposed to be automatic, but in many cases people

1 have to fill out paperwork with the county clerk's office. Exhibit 7, at 486, 487,  
2 lines 22-25 & 1-4.

3  
4 137. Having automatic restoration of the right to vote would make the  
5 system easier to navigate. Exhibit 7, at 489, lines 6-11.

6 138. As of the date the deposition was taken, the Secretary of State did not  
7 receive any information from county auditors regarding the restoration process.  
8 Exhibit 7, at 491, lines 10-12.

9  
10 139. Currently, there is no method in place to identify convicted felons  
11 who have not completed their obligations for their convictions in another state to  
12 prevent them from registering to vote in Washington. Exhibit 7, at 494, 495, lines  
13 21-25 & 1-3.

14  
15 140. Prior to the 2002, 2003, and 2005 changes in the law, the system for  
16 determining whether somebody was eligible to vote was based on the honor system  
17 of the registration application. Exhibit 7, at 501, lines 8-12.

18  
19 141. As of the date the deposition was taken, the Secretary of State had not  
20 been involved in prosecuting individuals who registered to vote but were  
21 ineligible. Exhibit 7, at 501, 13-15.

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Dated this \_\_\_\_ day of January, 2006.

UNIVERSITY LEGAL ASSISTANCE

s/ Larry A. Weiser, WSBA#: 6865  
Larry A. Weiser, WSBA#: 6865  
*Attorney for Plaintiffs*  
University Legal Assistance  
721 North Cincinnati Street  
P.O. Box 3528  
Spokane, Washington 99220-3528  
(509)323-5791 Telephone  
[lweiser@lawschool.gonzaga.edu](mailto:lweiser@lawschool.gonzaga.edu)

s/ Ryan P. Haygood  
Ryan P. Haygood,  
*Pro Hac Vice*  
*Theodore M. Shaw*  
*Director-Counsel*  
Norman J. Chachkin  
Debo P. Adebile  
NAACP Legal Defense  
& Educational Fund, Inc.  
99 Hudson Street, Suite 1600  
New York, NY 10013-2897  
(Tel.) 212.965.2235  
(Fax) 212.226.7592  
[rhaygood@naacpldf.org](mailto:rhaygood@naacpldf.org)

Attorneys for Plaintiffs