

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

Ryan P. Haygood, *Pro Hac Vice*  
Theodore M. Shaw  
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

Attorneys for Plaintiffs

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

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

**NO. CV-96-076-RHW**  
**PLAINTIFFS' RESPONSES**  
**TO DEFENDANTS'**  
**SUPPLEMENTAL**  
**STATEMENT OF**  
**MATERIAL FACTS**  
**(LR 56.1(b))**

20 Plaintiffs, by and through their attorneys, LARRY J. WEISER and RYAN P.  
21 HAYGOOD, attorneys for Plaintiffs, submit the following Responses to  
22

24 **PLAINTIFFS' RESPONSES TO**  
25 **DEFENDANTS' SUPPLEMENTAL**  
**STATEMENT OF MATERIAL FACTS**

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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 Defendants' Supplemental Statement of Material Facts in opposition to  
2 Defendants' Motion For Summary Judgment, pursuant to E.D.Wash. LR 56.1(b):

3  
4 1. Plaintiffs do not object to Defendants' Supplemental Statement of  
5 Material Facts Nos. 3-5, 12-14, 16, 18, 20, 22, 24-25, 29, 31, 33-46, 48-49, 51-53,  
6 56-57.

7  
8 2. Plaintiffs object to Defendants' Supplemental Statement of Material  
9 Fact No. 2 because it mischaracterizes the scope of research Professor Crutchfield  
10 was asked by Plaintiffs to perform. In fact, Professor Crutchfield was asked to  
11 research race and ethnicity in the United States generally, and in Washington State  
12 specifically. *See* Pls.' Summ. J Ex. 2 (Crutchfield Report at 184).

13  
14 3. Plaintiffs object to Defendants' Supplemental Statement of Material  
15 Facts No. 6, which mischaracterizes Professor Crutchfield's findings as "statistics  
16 drawn from selected studies with some notable exclusion." Professor Crutchfield's  
17 conclusions were not, in fact, based on "selected studies," but rather on  
18 comprehensive research and review of available studies of Washington State.

19  
20 4. Plaintiffs object to Defendants' Supplemental Statement of Material  
21 Facts No. 7, because it mischaracterizes Professor Crutchfield's findings. In fact,  
22 Professor Crutchfield articulated in his deposition a reasoned explanation for  
23

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1 questioning the Loverich's illogical conclusions. Crutchfield Dep., at 67, ln. 8 &  
2 68, ln. 15.

3  
4 5. Plaintiffs object to Defendants' Supplemental Statement of Material  
5 Facts No. 8 because it does not fairly characterize Professor Crutchfield's  
6 deposition testimony. In fact, Professor Crutchfield explained that factors other  
7 than offense and offender criminal history influence whether and when police  
8 decide to make an arrest. Crutchfield Dep., at 73, lns. 4-8.

9  
10 6. Plaintiffs object to Defendants' Supplemental Statement of Material  
11 Facts No. 9 because it inaccurately states that Professor Crutchfield's Expert  
12 Report in this case did not involve any original research. In fact, Professor  
13 Crutchfield's Expert Report in this action *is based* on original research.  
14 Crutchfield Dep., at 122, lns. 8-12.

15  
16 7. Plaintiffs object to Defendants' Supplemental Statement of Material  
17 Facts No. 10 because it is inaccurate. *See* Crutchfield Dep., at 120, lns. 11-16.

18  
19 8. Plaintiffs object to Defendants' Supplemental Statement of Material  
20 Facts No. 11 insofar as it suggests that "further study" in any way compromises  
21 Professor Crutchfield's comprehensive research and reliable conclusions. Solid  
22 research, by design, is incremental and cumulative.

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1 9. Plaintiffs object to Defendants' Supplemental Statement of Material  
2 Facts No. 14 because it inaccurately states that Professor Beckett's Expert Report  
3 is "limited to findings of prior studies conducted only in Seattle." *See* Pls.' Summ.  
4 J. Ex. 3 (Beckett Report).

6 10. Plaintiffs object to Defendants' Supplemental Statement of Material  
7 Facts No. 15 because it incorrectly states that Professor Beckett "attempts to rebut  
8 the findings" of other studies. In fact, Professor Beckett sought to improve the  
9 understanding of the extent and causes of racial disparity in drug arrests by  
10 considering numerous data sources. Professor Beckett's study stands alone as the  
11 *only* comprehensive study of racial disparities in Seattle's drug arrests. Professor  
12 Beckett's study was recently published in *Criminology*, a highly respected journal.

15 11. Plaintiffs' object to Defendants' Supplemental Statement of Material  
16 Facts No. 17 because it mischaracterizes Professor Beckett's role in *Johnson v.*  
17 *Washington*. Professor Beckett was not hired to analyze data to "show racial  
18 disproportionality in drug arrests in Seattle," but rather to analyze the Seattle  
19 Police Department records and other data sources, and to offer an analysis of what  
20 those data revealed regarding racial disproportionality in drug arrests in Seattle. *See*  
21 Beckett Dep., at 34, Ins. 18-23.

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1 12. Plaintiffs object to Defendants' Supplemental Statement of Material  
2 Facts No. 19, which mischaracterizes the ethnographic observations in Professor  
3 Beckett's report as based only on the observations of two intersections in Seattle.  
4 To the contrary as stated in her expert report this observation was correlated with  
5 factors and studies. *See* Pls.' Summ. Judg. Ex. 3 (Beckett Report, at 274).  
6

7 13. Plaintiffs object to Defendants' Supplemental Statement of Material  
8 Facts No. 20 insofar as it suggests that one cannot distinguish between the felony  
9 and misdemeanor offenses in Table 1 of Professor Beckett's Expert Report. In  
10 fact, 84.4 percent of the arrestees were felony arrestees. *See* Pls.' Summ. Judg. Ex.  
11 3 (Beckett Report, at 268).  
12

13 14. Plaintiffs object to Defendants' Supplemental Statement of Material  
14 Facts No. 22 because it inaccurately describes the basis of Professor Beckett's  
15 conclusions. For example, Professor Beckett, among other things, examined data  
16 regarding weapons retrieved from various types of drug offenders among drug  
17 arrestees. *See* Pls.' Summ. Judg. Ex. 3 (Beckett Report, at 271).  
18

19 15. Plaintiffs object to Defendants' Supplemental Statement of Material  
20 Facts No. 23 because it is incorrect. In fact, Professor Becket considered and  
21 rejected the following *five* race-neutral hypotheses: 1) That the focus on crack  
22

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1 offenders was a function of weapons possession; 2) That the focus on crack  
2 offenders was a function of the frequency with which crack is exchanged,  
3 particularly outdoors; 3) That the focus on crack is a function of public health  
4 concerns; 4) That the focus on the downtown area is a function of crime rates; and  
5 5) That the focus on the downtown area is a function of citizen complaints. Pls.’  
6 Summ. Judg. Ex. 3 (Beckett Report, at 269 – 272).  
7  
8

9 16. Plaintiffs object to Defendants’ Supplemental Statement of Material  
10 Facts No. 26 because it erroneously characterizes Professor Kousser’s initial  
11 inquiry into the history of voting discrimination in Washington as “unproductive.”  
12 In fact, Professor Kousser’s initially conducted research into Washington State’s  
13 history of *explicit, state-sponsored* voting discrimination against racial minorities.  
14 Professor Kousser’s research of Washington State’s history of racial discrimination  
15 in voting more broadly produced findings. *See Kousser Dep.*, at 24, ln. 4.  
16  
17

18 17. Plaintiffs object to Defendants’ Supplemental Statement of Material  
19 Facts No. 27 because it is inaccurate. The Defendants’ have no basis to allege that  
20 the report, that was the basis of Prof. Kousser’s opinion on the restoration of rights,  
21 is not valid. *See Kousser Dep.*, at 44, lns. 5-19.  
22  
23

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1 18. Plaintiffs object to Defendants' Supplemental Statement of Material  
2 Facts. No 28 because it fails to provide proper authority for the propositions  
3 therein, and instead cites to a portion Professor Kousser's deposition transcript that  
4 says: "my report is focused on the re-enfranchisement process."

6 19. Plaintiffs object to Defendants' Supplemental Statement of Material  
7 Facts No. 30 because it is inaccurate. Defendants' have no basis to allege that the  
8 report, that was the basis of Kousser's opinion on the DOC's procedures, is not  
9 valid.

11 20. Plaintiffs object to Defendants' Supplemental Statement of Material  
12 Facts No. 32 because it mischaracterizes Professor Kousser's findings. In fact,  
13 Professor Kousser found that "there is no reason to believe that Washington differs  
14 from the national pattern of severe educational disparities for incarcerated persons,  
15 compared to the general population, and within prisons, disparities by race and  
16 ethnicity." Pls.' Summ. Judg. Ex. 4 (Kousser Report at 299.)

19 21. Plaintiffs object to Defendants' Supplemental Statement of Material  
20 Facts No. 47 because it mischaracterizes the research conducted by Professor  
21 Ewald. In fact, Professor Ewald, among other things, researched the history and  
22 origins of Washington State's constitution, referred to secondary sources, studied

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1 each court decision in this action, reviewed press accounts about the disputed  
2 gubernatorial election, and revisited his previous publications and research, as well  
3 as the many sources he cited in that research. *See Ewald Deposition, 12-13., Ins.*  
4 *23-7.*

6 22. Plaintiffs object to Defendants' Supplemental Statement of Material  
7 Facts No. 50 because it is incorrect. In fact, Professor Ewald, among other things,  
8 researched the history and origins of Washington State's constitution, referred to  
9 secondary sources, studied each court decision in this action, reviewed press  
10 accounts about the disputed gubernatorial election, and revisited his previous  
11 publications and research, as well as the many sources he cited in that research.  
12 *See Ewald Deposition, 12-13, Ins. 23-7.*

15 23. Plaintiffs object to Defendants' Supplemental Statement of Material  
16 Facts No. 54 because it is inaccurate. In fact, Professor Ewald utilized the courts'  
17 interpretation and definition of "tenuous" in *United States v. Blaine County*, 363  
18 F.3d 897 (9th Cir. 2004), and *Mississippi State Chapter, Operation Push v. Allain*,  
19 674 F. Supp. 1245 (N.D. Miss. 1987), and the plain definition of the word, to  
20 define the term. *See Ewald Deposition, at 46, ln. 19 & 48, ln. 2; see also Ewald*  
21 *Report, at 3-4.*

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(509)323-5791 Telephone  
(509)323-5805 Facsimile  
(509) 323-3796 TTY

1 Dated: March 22, 2006.

2 UNIVERSITY LEGAL ASSISTANCE

3 s/ Larry A. Weiser, WSBA#: 6865

4 Larry A. Weiser, WSBA#: 6865

5 Jacob B. White WSBA# 92162, Legal Intern

6 Kristine K. Olmstead WSBA# 9088688

7 Legal Intern

8 Tamerton Vernon-Grandos, Law Clerk

9 University Legal Assistance

10 721 North Cincinnati Street

11 P.O. Box 3528

12 Spokane, Washington 99220-3528

13 (509)323-5791 Telephone

14 [lweiser@lawschool.gonzaga.edu](mailto:lweiser@lawschool.gonzaga.edu)

15 s/ Ryan P. Haygood

16 Ryan P. Haygood, *Pro Hac Vice*

17 Theodore M. Shaw

18 *Director-Counsel*

19 Norman J. Chachkin

20 Debo P. Adegbile

21 NAACP Legal Defense

22 & Educational Fund, Inc.

23 99 Hudson Street, Suite 1600

24 New York, NY 10013-2897

25 (Tel.) 212.965.2235

(Fax) 212.226.7592

[rhaygood@naacpldf.org](mailto:rhaygood@naacpldf.org)

*Attorneys for Plaintiffs*

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(509)323-5791 Telephone

(509)323-5805 Facsimile

(509) 323-3796 TTY

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Jeffrey T. Even [jeffe@atg.wa.gov](mailto:jeffe@atg.wa.gov)

Dennis Cronin [dcc99208@yahoo.com](mailto:dcc99208@yahoo.com)

Ryan P. Haygood [rhaygood@naacpldf.org](mailto:rhaygood@naacpldf.org)

Daniel J. Judge [DanielJ@atg.wa.gov](mailto:DanielJ@atg.wa.gov); [CJDOLyEF@atg.wa.gov](mailto:CJDOLyEF@atg.wa.gov);

[JudythL@atg.wa.gov](mailto:JudythL@atg.wa.gov)

Carol A. Murphy [CarolM@atg.wa.gov](mailto:CarolM@atg.wa.gov)

/s/ Larry A. Weiser, WSBA#:6865

LARRY A. WESIER

University Legal Assistance

721 North Cincinnati Street

P.O. Box 3528

Spokane, Washington 99220

(509)323-5791 Telephone

(509)323-5805 Facsimile

[lweiser@lawschool.gonzaga.edu](mailto:lweiser@lawschool.gonzaga.edu)

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