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10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF WASHINGTON**

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

14 Plaintiffs,

15 v.

16 CHRISTINE O. GREGOIRE, et  
17 al.,

18 Defendants.

NO. CV-96-076-RHW

DEFENDANTS'  
STATEMENT OF  
MATERIAL FACTS IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT  
AND DISMISSAL

19 Defendants, by and through their attorneys, ROB MCKENNA, Attorney  
20 General, and DANIEL J. JUDGE, JEFFREY T. EVEN, and CAROL A.  
21 MURPHY, Attorneys for Defendants, submit the following statement of material  
22 facts in support of their motion for summary judgment.

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**I. INTRODUCTION**

The Plaintiffs

1. Plaintiff Muhammad Shabazz Farrakhan (aka Ernest S. Walker) is a former Washington state prisoner who was released from state confinement in 1997. Exhibit 1, Declaration of Leora McDonald.

2. Plaintiff Marcus L. Price (DOC #742754) is also a former Washington state prisoner who was released from confinement in 1998. Marcus L. Price has satisfied the requirements of his sentence within the State of Washington and received a Certificate and Order of Discharge from Spokane County Superior Court on May 31, 2001. (Cause No. 95-1-016902-3 and 97-1-01326-8). Exhibit 3, Certificate and Order of Discharge (certified copy).

Marcus X. Price (DOC #915686), previously identified by the parties as a Plaintiff, is incarcerated within the State of Washington serving a sentence of life without parole. Exhibit 1.

3. Plaintiffs Alkareem Shadeed, Tim Schaaf, Clifton Briceno, and Ramon Barrientes are Washington state prisoners who are still incarcerated under valid judgments and sentences entered in Superior Courts of the State of Washington. Exhibit 2, Declaration of Carol A. Murphy, Attachments 1A through 1E.

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1 4. Plaintiffs Farrakhan, Shadeed, Schaaf, and Price are African-  
2 American. Plaintiff Briceno is Native American. Plaintiff Barrientes is  
3 Hispanic-American. Exhibit 2, Attachments 1 through 1E.

4 5. None of the Plaintiffs have invalidated their judgments and  
5 sentences through either direct appeal in state court, collateral review in state  
6 court, or collateral review in Federal court.

7 6. Under Washington law, the Plaintiffs are or were not eligible to  
8 vote because they have been convicted of crimes punishable by incarceration in  
9 a state correctional facility. Washington has maintained such laws since before  
10 statehood.

11 The Defendants

12 7. Defendant Christine Gregoire is the Governor of the State of  
13 Washington. Defendant Sam Reed is Secretary of State of the State of  
14 Washington. Defendant Harold Clark is the Secretary of the Department of  
15 Corrections of the State of Washington.

16 Washington's Felon Disenfranchisement Law

17 8. A person convicted of an "infamous crime" is ineligible to vote.  
18 Wash. Const. art. VI, §§ 1, 3. "An 'infamous crime' is a crime punishable by  
19 death in the state penitentiary or imprisonment in a state correctional facility."  
20 Wash. Rev. Code § 29.01.080. Throughout its history, the State of Washington  
21 has maintained laws that have disenfranchised convicted felons. *See State v.*  
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1 | *Collins*, 69 Wash. 268, 270-72, 124 P. 903 (1912); Territorial Law of 1866  
2 | (Rem. & Bal. Code, § 4755). Additionally, Washington has provided for other  
3 | forms of civil punishment. *See, e.g.*, Wash. Const. art. III, § 25, art. II, § 7;  
4 | Wash. Rev. Code § 42.04.020 (A person must be an elector to run for public  
5 | office); Wash. Rev. Code § 2.36.070 (A person must be eligible to vote to serve  
6 | on a jury); Wash. Rev. Code § 11.36.010 (A convicted felon may not serve as a  
7 | personal representative in a probate matter).

8 |       9. Washington law provides several methods by which an ex-felon's  
9 | civil rights can be restored, which has the effect of restoring voting rights. If he  
10 | has been convicted of a crime in a Washington state court after July 1, 1984, a  
11 | convicted felon may seek restoration of these rights through the issuance of a  
12 | final discharge as entered by the sentencing court. Wash. Rev. Code §  
13 | 9.94A.220. Civil rights are restored under that statute when the sentencing  
14 | court issues a certificate of discharge. If the certificate is not otherwise issued  
15 | through routine process, the convicted felon can petition the sentencing court  
16 | for discharge at any time. *Id.* For crimes committed prior to July 1, 1984, a  
17 | convicted felon's civil rights may be restored by petition to the Indeterminate  
18 | Sentencing Review Board. The issuance of a certificate of discharge by the  
19 | board restores voting rights. *See* Wash. Rev. Code § 9.96.050 (A person  
20 | released on parole may obtain a certificate of discharge from the Indeterminate  
21 | Sentencing Review Board (ISRB)); Wash. Rev. Code § 9.92.066 (A person  
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1 given probation or a suspended sentence may have his civil rights restored by  
2 the sentencing court); Wash. Rev. Code § 9.95.240 (A person who has  
3 successfully completed probation may request the sentencing court to withdraw  
4 a plea or verdict of guilty, which releases the person from the impairments of  
5 his judgment and sentence). Additionally, a pardon by the governor has the  
6 effect of restoring civil rights, including the right to vote. Wash. Rev. Code §  
7 9.96.010.

8 If the conviction was entered by a federal court, or the court of a  
9 jurisdiction other than Washington, then civil rights can be restored either by  
10 the sentencing jurisdiction, or by a petition to the Washington Clemency and  
11 Pardons Board. The board may issue a certificate of restoration of civil rights,  
12 which is limited to the restoration of the right to vote and run for office. Wash.  
13 Rev. Code § 9.94A.260.

14 10. Under Wash. Rev. Code § 29A.08.220, an applicant for voter  
15 registration must swear under the penalty of perjury: “I am not presently denied  
16 my civil rights as a result of being convicted of a felony.”

17 The History Of African-Americans In Washington State

18 11. Regarding the history of African-Americans in Washington state,  
19 Defendants have presented the testimony of Quintard Taylor, Ph.D., Professor  
20 of History at the University of Washington in Seattle. Prior to the University of  
21 Washington, he was on the faculty of the University of Oregon in Eugene. Dr.

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1 Taylor has conducted extensive research on the history of African Americans in  
2 the Pacific Northwest Region. Exhibit 47 (Taylor Aff.) and Exhibit 48 (Taylor  
3 Dep.) to the Defendants Statement of Material Fact in support of Motion for  
4 Summary Judgment Dismissal filed July 31, 2000.<sup>1</sup>

5 12. Dr. Taylor has published a number of books on this subject. In his  
6 doctoral dissertation entitled, "A History of Blacks in the Pacific Northwest,  
7 1788-1970", he presents a study of race relations in the region, and an historical  
8 comparison between the states of Washington, Idaho, and Oregon regarding the  
9 political status of African-Americans in this region and the climate of racial  
10 discrimination during this period. It also explores the positions taken by these  
11 states regarding their efforts to extend the right to vote to African-Americans,  
12 Asians, Hispanics, and Native-Americans. *Id.*

13 13. Dr. Taylor testified that historically African Americans in this  
14 region successfully fought vigorous campaigns against racial discrimination.  
15 Washington also presented African Americans an area of economic opportunity  
16 that lacked features of racial discrimination present elsewhere in the country.  
17 He testified that unlike Oregon (which became a state 30 years earlier),  
18 Washington does not have a history of laws that were designed to discriminate  
19 against African Americans. Washington was the only state in the Pacific  
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21 <sup>1</sup> Court Docket No. 129 is the Defendants Statement of Material Fact in  
22 support of Motion for Summary Judgment Dismissal filed July 31, 2000 and  
Court Docket No. 132 contains the exhibits thereto.

1 Northwest to pass a civil rights law before 1950. Washington's first state  
2 legislature in 1890 enacted a statute prohibiting discrimination in areas of  
3 public accommodation. Washington's population of African Americans grew  
4 rapidly due to job opportunities created by aviation and shipyards in Western  
5 Washington. He testified that despite that growth in the African-American  
6 population, Washington did not have the same kind of discrimination noted in  
7 other major metropolitan areas such as Chicago, Cleveland, or New York City.  
8 Dr. Taylor testified Washington lacks a history of blatant anti-Black violence.  
9 *Id.*

10 14. Dr. Taylor testified that the Black experience in the Pacific  
11 Northwest, which spans nearly two centuries, reflects the incessant search for  
12 an area of this nation where Afro-Americans could live without social and  
13 political restrictions based on race. *Id.* He testifies that during every era of the  
14 region's history Afro-American migration was accompanied and, until recently,  
15 overshadowed by white migration to the area. Whites often brought their fear  
16 and prejudice against non-whites with them. That prejudice was reflected in  
17 other Northwest states, but not in Washington, in a series of Black exclusion  
18 laws during the 1840s, in the imposition of school segregation and anti-  
19 miscegenation laws in the 1940s and 1950s. *Id.*

20 15. During this period Afro-Americans were not subjected to  
21 comparable attacks as those directed at other non-white groups in the region.  
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1 Blacks did, of course, face general racial restrictions as did the other non-white  
2 groups, but except in the case of the Black exclusion laws of Oregon, they were  
3 usually not singled out for special legislation proscription. In addition Afro-  
4 Americans protested against racial restrictions much more frequently and  
5 articulately than the other groups and were able to overturn or at least nullify  
6 some of the more blatant measures. *Id.*

7 16. Dr. Taylor testified that in his opinion, from an historical  
8 perspective, there has not been any organized efforts to disenfranchise African-  
9 Americans or deny voting rights to African-Americans based on race in the  
10 State of Washington. He notes that the Territorial Suffrage Act of 1867 was  
11 passed by Congress. This was the federal law that extended voting rights to  
12 African-Americans in the territories. The Fifteenth Amendment, extending  
13 voting rights in the states, was not ratified until 1870. This means that voting  
14 rights of African-Americans were protected in Washington for 3 years before  
15 they were similarly protected in the states of the union. He also testified that  
16 this is not to say that there has not been or still exists forms of racial  
17 discrimination not only in the State of Washington but the entire region. *Id.*

18 17. Dr. Taylor testified that throughout its statehood, African  
19 Americans have played key political roles in Washington. For example,  
20 William Owen Bush was elected from the Olympia area and was elected to  
21 Washington state's first Legislature. Dr. Taylor credits Bush with introducing  
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1 the 1890 Washington civil rights law. *Id.*; *see also* Exhibit 48 to Defendants’  
2 Statement of Material Fact in Support of Motion for Summary Judgment  
3 Dismissal filed July 30, 2000 at pp. 103,104, 112-14.

4 18. The Court can take judicial notice that elected officials throughout  
5 the State of Washington, including members of the Legislature, the judiciary,  
6 Governor, and top local officials, have included members of classes protected  
7 by 42 U.S.C. § 1973(a).

8 The Washington State Minority And Justice Commission

9 19. The Washington Supreme Court formed the Minority and Justice  
10 Commission in 1990 as a successor to the Washington State Minority and  
11 Justice Task Force, “established by the Washington State Supreme Court in  
12 1987 in response to legislation which sought to improve the treatment of racial  
13 and ethnic minorities in courts and the legal system throughout the State of  
14 Washington.” Exhibit 54 to Defendants’ Statement of Material Fact in Support  
15 of Motion for Summary Judgment Dismissal filed July 30, 2000, Washington  
16 State Minority and Justice 1995-96 Report, p. 1.

17 20. The Task Force recommended establishment by the Washington  
18 Supreme Court of a permanent Minority and Justice Commission. In October  
19 1990, the Supreme Court established the Commission for a period of five years  
20 “to identify problems and make recommendations to ensure fair and equal  
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1 treatment in the state courts for all parties, attorneys, court employees and other  
2 persons.” *Id.* Since that time, the commission has been continuously extended.

3 21. The commission is composed of a number of sub-committees. A  
4 workforce diversity subcommittee has developed a work force diversity  
5 education program to assist “court personnel [to] learn strategies for increasing  
6 the racial and ethnic diversity of their professional staff.” *Id.* As a result of  
7 their work, training programs have taken place throughout the State of  
8 Washington. An Education sub-committee has focused on educating court  
9 personnel on “tools and strategies for increasing cultural awareness and mutual  
10 respect among those persons who deliver court services.” *Id.*

11 22. The Minority and Justice Commission submitted another report in  
12 1998. The report opened with the following statement of purpose:

13 The Minority and Justice Commission pursues its mandate to  
14 determine whether racial and ethnic bias exists in the courts of the  
15 State of Washington. To the extent that such bias exists, we are  
16 charged with taking creative steps to overcome it. To the extent  
17 that such bias does not exist, we are charged with taking creative  
18 steps to prevent it.

17 Exhibit 55 to Defendants’ Statement of Material Fact in Support of Motion for  
18 Summary Judgment Dismissal filed July 30, 2000, 1998 Report, Minority and  
19 Justice Commission.

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1 Changes To Voting Laws And Practices In Washington State

2 23. Washington state has never enacted Jim Crow laws or other forms  
3 of de jure discrimination during its statehood. Washington state has not enacted  
4 any barriers designed or intended to exclude voters from the polls based on  
5 race. Washington has never been considered a “covered state” under the Voting  
6 Rights Act.

7 24. Defendants are not aware of any case in Washington state in which  
8 a criminal defendant alleged and argued that he was being prosecuted so that he  
9 would be convicted and disenfranchised because of his or her race.

10 25. Defendants are not aware of any instance in which a candidate was  
11 elected or a measure was passed or defeated because of Washington’s felon  
12 disenfranchisement laws.

13 26. Defendants are aware of no historical record indicating that  
14 Washington’s felon disenfranchisement laws were intended to result in  
15 disenfranchisement of African Americans, Hispanics, or Native Americans.

16 27. Defendants are not aware of any proposal made to the Washington  
17 State Legislature modifying voting rights laws based on allegations of  
18 disproportionality of racial or ethnic groups of those convicted under judgments  
19 and sentences.

20 28. Defendants are not aware of any historical, statistical, or other  
21 factual data indicating the presence of any of the following factors:

- 1 a. That Washington has any history of official discrimination  
2 affecting African Americans, Hispanics, or Native Americans to  
register, vote, or otherwise participate in the democratic process.
- 3 b. That voting in Washington state is racially polarized.
- 4 c. That Washington state has ever used unusually large election  
5 districts, majority voter requirements, anti-single shot provisions,  
6 or other voting practices or procedure that may enhance the  
opportunity for discrimination in the state against African  
Americans, Hispanics, or Native Americans.
- 7 d. That Washington state has ever denied African American,  
8 Hispanic, or Native American voters access to any candidate  
slating process.
- 9 e. That African Americans, Hispanics, or Native Americans have  
10 been hindered in their ability to participate in the electoral process  
because of discrimination in education, employment, and health.
- 11 f. That political campaigns in Washington state have been  
characterized by overt and subtle racial appeals.
- 12 g. That there is any significant lack of responsiveness by elected  
13 officials to the particularized needs of minority groups.

14 29. The Plaintiffs have provided the reports of five individuals whom  
15 they identify as expert witnesses. Exhibit 2, Declaration of Carol A. Murphy,  
16 Attachments B through F. Those reports contain all of the opinions of the  
17 individuals that the Plaintiffs have identified as expert witnesses. None of the  
18 Plaintiffs' expert witnesses performed any tests or surveys other than reviewing

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literature, including academic publications and case law. None of the Plaintiffs' experts has formulated an opinion as to whether Washington's criminal justice system interacts with racial bias to deny Plaintiffs the right to vote.

RESPECTFULLY SUBMITTED this 13th day of December, 2005.

ROB MCKENNA  
Attorney General

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