

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OCT 26 1999

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DEPUTY
SPOKANE, WASHINGTON

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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In re:)
12 MUHAMMAD SHABBAZ FARRAKHAN,)
13 et al.,)
14 Plaintiffs,)
15)
16 GARY LOCKE, et al.,)
17 Defendants.)

NO. CS-96-76-RHW
PLAINTIFFS' FOURTH
AMENDED COMPLAINT
ADDING NEW
CAUSES OF ACTION

18 Plaintiffs, Muhammad Shabazz Farrakhan, Al-Kareem Shaheed, Marcus X.
19 Price, Ramon Barrientes, Timothy Schaaf, Clifton Briceno, by and through their
20 attorneys, D. C. Cronin of Maxey Law Offices, P.S., and Larry A. Weiser of
21 University Legal Assistance, for their complaint, allege and reallege the prior pro se
22 complaint as amended and filed herein and further allege and reallege as follows:

23 I. JURISDICTION

24 1. Jurisdiction: This Court has jurisdiction over this action under 42
25 U.S.C. 1971 and 1973. Plaintiffs' request for declaratory relief is authorized by 28
26 U.S.C. 2201.
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II. VENUE

2. Venue is proper under 28 U.S.C. 1391(b) because a substantial part of the events giving rise to the claims occurred in this district.

III. PARTIES

Plaintiffs:

3. Plaintiff Muhammad Shabazz Farrakhan: At all times herein mentioned, Plaintiff, Muhammad Shabazz Farrakhan, was a citizen of the United States of America, residing in the State of Washington. Plaintiff Farrakhan is also a convicted felon. Plaintiff is also an African-American. At all times material, Plaintiff has wished to vote and has requested registration as a voter in the State of Washington. Plaintiff has been denied the right to vote and participate in the electoral process due to his status as a convicted felon, herein after referred to as "offender". Plaintiff is over the age of eighteen. Plaintiff, Muhammad Shabazz Farrakhan, was in prison at the commencement of this litigation and has since been released. Plaintiff Farrakhan has fulfilled all conditions of his sentence except for his financial legal obligation.

4. Plaintiff Al-Kareem Shaheed: At all times mentioned, Plaintiff, Al-Kareem Shaheed, was and is a citizen of the United States of America, residing at the Washington State Penitentiary in Walla Walla, Washington. Plaintiff is a convicted felon. Plaintiff is also an African-American. At all times material, Plaintiff has wished to vote and has requested registration as a voter in the State of Washington. Plaintiff has been denied the right to vote and participate in the electoral process due to his status as a convicted felon. Plaintiff is over the age of eighteen. Plaintiff, Al-Kareem Shaheed was in prison at the commencement of this litigation.

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5. Plaintiff Marcus X. Price: At all times mentioned, Plaintiff Marcus X. Price, was and is a citizen of the United States of America, residing at the Washington State Penitentiary in Walla Walla, Washington. Plaintiff is a convicted felon. Plaintiff is also an African-American. At all times material, Plaintiff has wished to vote and has requested registration as a voter in the State of Washington. Plaintiff has been denied the right to vote and participate in the electoral process due to his status as a convicted felon. Plaintiff is over the age of eighteen. Plaintiff Marcus X. Price was in prison at the commencement of this litigation.

6. Plaintiff Ramon Barrientes: At all times mentioned, Plaintiff Ramon Barrientes, was and is a citizen of the United States of America, residing at Washington State Penitentiary in Walla Walla, Washington. Plaintiff is a convicted felon. Plaintiff is also a Hispanic American. At all times material, Plaintiff has wished to vote and has requested registration as a voter in the State of Washington. Plaintiff has been denied the right to vote and participate in the electoral process due to his status as a convicted felon. Plaintiff is over the age of eighteen. Plaintiff Ramon Barrientes was in prison at the commencement of this litigation.

7. Plaintiff Timothy Schaaf: At all times mentioned, Plaintiff Timothy Schaaf was and is a citizen of the United States of America, residing at the Washington State Reformatory in Monroe, Washington. Plaintiff is a convicted felon. Plaintiff is also an American Indian. At all times material, Plaintiff has wished to vote and has requested registration as a voter in the State of Washington. Plaintiff has been denied the right to vote and participate in the electoral process due to his status as a convicted felon. Plaintiff is over the age of

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2 eighteen. Plaintiff Timothy Schaaf was in prison at the commencement of this
3 action.

4 8. Plaintiff Clifton Briceno: At all times mentioned, Plaintiff Clifton
5 Briceno was and is a citizen of the United States of America, residing at the
6 Washington State Reformatory in Monroe, Washington. Plaintiff is a convicted
7 felon. Plaintiff is also an American Indian. At all times material, Plaintiff has
8 wished to vote and has requested registration as a voter in the State of
9 Washington. Plaintiff has been denied the right to vote and participate in the
10 electoral process due to his status as a convicted felon. Plaintiff is over the age of
11 eighteen. Plaintiff Clifton Briceno was in prison at the commencement of this
12 action.

13 Defendants:

14 9. State of Washington: At all times herein mentioned, Defendant, State
15 of Washington, was/is a governmental entity and member of the Republic known
16 as the United States of America. Defendant, State of Washington, is a party
17 defendant to this litigation pursuant to Chapter 20 of 42 U.S.C. subsecs. 1971 et
18 seq. Defendant, State of Washington, is also a party defendant because Defendant,
19 State of Washington, lacks immunity from suit in Federal Court by a resident of
20 the State of Washington pursuant to federal and state law.

21 10. Defendant Gary Locke: At all times material, Defendant, Gary
22 Locke, was/is a citizen of the United States of America and a resident of the State
23 of Washington. Defendant Locke, at all times material, was/is also the Governor
24 of the State of Washington and a person subject to suit in his official capacity
25 within the meaning of 42 U.S.C. sec. 1983, and Monell v. Dept. of Social
26 Services, 435 US 658 (1978), and its progeny. As Governor, Defendant Locke is
27 the chief executive officer of the State of Washington, responsible for, among
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2 other duties, supervision of all executive and ministerial offices; issuance and
3 transmission of all electoral proclamations prescribed by law; and vested with the
4 power to pardon convicted felons.

5 11. Defendant Ralph Munro: At all times material, Defendant, Ralph
6 Munro, was and is a citizen of the United States of America and a resident of the
7 State of Washington. Defendant Munro, at all times material, was/is also the
8 Secretary of the State of Washington and a person subject to suit in his official
9 capacity within the meaning of 42 U.S.C. sec. 1983, and Monell v. Dept. of Social
10 Services, 435 US 658 (1978), and its progeny. At all times material, as Secretary
11 of State, Defendant Munro is/was responsible, among other things, for certifying
12 the election returns for all officers required by the constitution to be so certified
13 and to certify to the Governor the names of all other persons who have received at
14 any election the highest number of votes for any office the incumbent of which is
15 to be commissioned by the Governor. As Secretary of State, Ralph Munro, was/is
16 also responsible for overview and supervision of election registration, specifying
17 by rule the form of the voter registration records required under RCW 29.07.070
18 and RCW 29.07.260; producing and furnishing the registration forms required
19 under RCW 29.07.070 and RCW 29.07.260; producing and distributing
20 instructional material and other supplies needed to implement RCW 29.07.260
21 through RCW 29.07.300 and RCW 46.20.155. At all times material, as Secretary
22 of State, Ralph Munro is/was through the Election Division, the Chief Election
23 Officer for all federal, state, county, city, town, and district elections with the duty
24 to keep records of such elections held in the State of Washington and to coordinate
25 those state election activities required by federal law.

26 12. Defendant Joseph Lehman: At all times material, Defendant, Joseph
27 Lehman, was and is a citizen of the United States of America and a resident of the
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2 State of Washington. Defendant Lehman, at all times material, was/is the director
3 of the Washington State Department of Corrections and subject to suit in his
4 official capacity as a person within the meaning of Monell v. US, 658 (1978), and
5 its progeny.

6 IV. STATEMENT OF FACTS

7 13. This is an action at law for declaratory and injunctive relief, arising
8 under Title, 42 U.S.C. subsec. 1971; and 42 U.S.C. subsec. 1973, and, the laws of
9 the State of Washington, and common law principles to redress a deprivation
10 under color of state law, of rights, privileges, and immunities secured to Plaintiffs
11 by said statutes.

12 14. The events, acts, and omissions herein complained of concerning
13 Plaintiffs, and each of them, began when Plaintiffs Muhammad Shabazz
14 Farrakhan, Al Kareem Shaheed, Marcus X. Price, Ramon Barrientes, Timothy
15 Schaaf, and Clifton Briceno were denied the right to vote by operation of Article 6
16 sec. 3 of the Washington State Constitution and operation of RCW 29.01.080;
17 RCW 29.07.080; RCW 29.07.260, and other statutes and case law including
18 Fernande v. Kiner, 36 Wn.App. 210, 673 P.2d 191 (1983), review denied. As
19 stated at Article 6 sec. 3 of the Washington State Constitution, "All persons
20 convicted of infamous crime unless restored to their civil rights and all persons
21 while they are judicially declared mentally incompetent are excluded from the
22 elective franchise." According to RCW 26.01.080, "Infamous Crime" is any crime
23 punishable by death in the state penitentiary or imprisonment in a state
24 correctional facility." As convicted felons, Plaintiffs Farrakhan, Shaheed, Price,
25 Barrientes, Schaaf, and Briceno were denied the elective franchise in Washington
26 State. For, as stated at RCW 29.07.070. the registrant shall sign the following
27 oath: "I declare that the facts on this voter registration form are true. I am a
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2 citizen of the United States, I am not presently denied my civil rights as a result of
3 being convicted of a felony, I will have lived in Washington at this address for
4 thirty days immediately before the next election at which I vote and I will be at
5 least eighteen years old when I vote." See also, RCW 29.07.269(3)-(4); RCW
6 29.10.097.

7 15. Plaintiffs Farrakhan, Shaheed, Price, Barrientes, Schaaf, and Briceno
8 are eligible to vote but for their "status" as felons in the State of Washington who
9 have not had their civil rights, including voting rights, restored to them. Plaintiffs
10 are denied the right to vote even though 42 U.S.C. 1971(a)(1) states all citizens of
11 the United States who are otherwise qualified by law to vote at any election shall
12 be entitled and allowed to vote at all such elections without distinction of race,
13 color, or previous condition of servitude; any constitution, law, custom, or usage
14 or regulation of any state to the contrary notwithstanding. Plaintiffs are further
15 denied the right to vote even though 42 U.S.C. 1973(a) states no voting
16 qualification or prerequisite to voting or standing, practice, or procedure shall be
17 imposed or applied by any state or political subdivision in any manner which
18 results in a denial or abridgement of the right to vote on account of race or color.
19 Plaintiffs allege and thereupon firmly believe Article 6 sec. 3 of the Washington
20 State Constitution and the laws of the State of Washington violate these two
21 federal statutes under any analysis of the total circumstances.

22 16. As indicated above, Plaintiffs Farrakhan and Shaheed, Price, are
23 African Americans. As indicated in the previously filed report from the
24 Washington State Minority and Justice Commission, African Americans sentenced
25 for serious crimes are more likely than Whites sentenced for serious crimes to be
26 given aggravated sentences by the Superior Courts of the State of Washington.
27 Further, as indicated therein, the population of African, Hispanic, and Native
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Americans (and other minority prisoners) in state and federal correctional facilities are disproportionately large given their number in the general population. As indicated in the report, Washington State is no exception to this general rule. (The contents of the report, previously filed, are incorporated herein by this reference as though fully set forth).

17. In addition, as indicated by previously filed statistics gleaned from a case review, it is also clear the chance the Spokane Prosecuting Attorney's office will seek the death penalty against an eligible black person is 100% compared to a 21% chance if the eligible individual is white. Similarly, as indicated by the previously filed declaration of Judy Ottoson, "historically, the Spokane County list of candidates summoned for jury duty has been overwhelmingly Caucasian and at present is still at least 75% Caucasian." (The statistical report and declarations were previously filed and are incorporated herein by this reference as though fully set forth).

18. It is also known the Spokane County Judiciary has no members of the African-American community. Although the office of Spokane County Prosecutor and the Spokane county judicial bench are elected positions, there has never been an elected Native-American or African-American for any of the over twenty-five judicial positions on the State Superior and District Courts in and for Spokane County.

19. As also indicated in the previously filed report "Racial Disproportionality in the Juvenile Justice System," although persons of color constituted approximately 11% of the State of Washington's total population in 1989, they made up approximately 31% of all persons referred to juvenile court, nearly 30% of all persons adjudicated in juvenile court, and approximately 37% of all persons committed to Division of Juvenile Rehabilitation facilities. (The

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contents of this previously filed report are incorporated herein by this reference as though fully set forth).

20. As also indicated in the above-referenced report, African American youth were almost twice as likely to be arrested as whites and approximately five times more likely to be "referred" than whites; and five times more likely to be detained than whites. Indeed, the State of Washington's own memorandum of authorities filed herein on June 6, 1996, states that although 1.7% of the state population counted in the 1990 census is black, 22.8% of the Washington prison population is black. Plaintiffs Farrakhan, Shaheed, and Price contend and believe these racial disparities result in the disenfranchisement of a disproportionately large segment of the minority voting population.

21. The racial disparities noted in the preceding paragraphs, are the result, at least in part, of racial discrimination within the criminal justice systems of Washington, the United States, and other states, that cause higher rates of arrest, higher conviction rates, longer sentences, and fewer suspended sentences for African, Hispanic, and Native Americans and other minorities than for other similarly situated individuals.

22. Defendants and the State of Washington have failed to take any action to mitigate the racially disparate impact of Article 6 sec. 3 despite reports by local, state, and national agencies and courts documenting the racial discrimination within Washington's criminal justice system.

23. Also, in order for an offender to regain his civil rights he must complete the requirements of the sentence. RCW 9.94A.220.

24. Requirements of the sentence include payment of any fines due and owing under the sentence.

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3 25. The Department of Corrections, herein after referred to as DOC,
4 supervises all payments of an offender's legal financial obligations and
5 restitutionary obligations. RCW 9.94A.120.

6 26. Further, it is understood that the DOC will not notify the sentencing
7 court to issue a certificate of discharge, which allows the restoration of a
8 offender's civil rights, unless all requirements of the sentence are met, including
9 legal financial obligations and restitutionary obligations.

10 27. Plaintiff Farrakhan, a previously incarcerated minority, has attempted
11 to have his voting rights restored. He has completed his sentencing requirements
12 except for the payment of his legal financial obligation and is not obligated to do
13 community supervision. When Plaintiff Farrakhan contacted Dale B. Ramerman,
14 Presiding Judge for the King County Superior Court and asked how to get his
15 voting rights restored, Judge Ramerman replied in a letter in pertinent part: "the
16 King County Superior Court judges as a whole have no particular policies,
17 regulation, procedures, customs or practices re: informing criminal defendants on
18 restoration of civil rights . . ."

19 28. Upon notification from the secretary of the Department of
20 Corrections to the sentencing court that the offender has completed the
21 requirements of their sentence, the sentencing court shall discharge the offender
22 and provide the offender with a certificate of discharge. RCW 9.94A.220

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24 V. FIRST CAUSE OF ACTION
Denial of the Right to Vote
42 USC 1971

25 29. Plaintiffs repeat and reallege the allegations of paragraphs 1 through
26 28 above as if fully set forth herein.
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2 30. Washington election law and Article 6 sec. 3 of the Washington State
3 Constitution denies Plaintiffs Farrakhan, Shaheed, Price, Barrientes, Schaaf, and
4 Briceno the right to vote on account of their race in violation of 42 USC 1971.

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6 VI. SECOND CAUSE OF ACTION
7 Denial of the Right to Vote
8 42 USC 1973

9 31. Plaintiffs repeat and reallege the allegations of paragraphs 1 through
10 28 above as if fully set herein.

11 32. Washington election law and Article 6 sec. 3 of the Washington State
12 Constitution denies Plaintiffs Farrakhan, Shaheed, Price, Barrientes, Schaaf, and
13 Briceno the right to vote on account of their race in violation of 42 U.S.C. 1973.

14 VII. THIRD CAUSE OF ACTION
15 Denial of the Right to Vote
16 42 U.S.C. 1971

17 33. Plaintiffs repeat and reallege the allegations of paragraphs 1 through
18 28 above as if fully set forth herein.

19 34. If Plaintiff Farrakhan was allowed to make a good faith effort and be
20 provided with a payment plan in regard to his legal financial obligations, which in
21 turn would be interpreted by the Defendant as completing the requirements of his
22 sentence, then offender Farrakhan would be eligible for restoration of his civil
23 rights.

24 35. Plaintiff Farrakhan is being denied the right to vote based on his
25 previous condition of servitude pursuant to and in violation of 42 U.S.C. 1971.

26 VIII. FOURTH CAUSE OF ACTION
27 Denial of the Right to Vote
28 42 U.S.C. 1971

36. Plaintiffs repeat and reallege the allegations of paragraphs 1 through
28 28 above as if fully set herein.

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37. The process set forth for restoration of an offender's civil rights in the State of Washington is vague, unclear, and unduly burdensome. As a result, it is in violation of 42 U.S.C. 1971.

IX. EQUITABLE RELIEF REQUESTED

38. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 28 above as if fully set forth herein.

39. There is a real and actual controversy between the parties and Plaintiffs have no complete and adequate remedy of law other than this action for declaratory and injunctive relief. Plaintiffs are suffering irreparable injury as a result of the violations complained of herein and that injury will continue unless declared to be unlawful and enjoined by this court.

X. REQUEST FOR RELIEF
AS TO EACH CAUSE OF ACTION APPLICABLE

1. For the Court to take jurisdiction of this case;
2. For the Court to declare that Washington election law and Article 6 sec. 3 of the Washington State Constitution violate 42 U.S.C. 1971;
3. For the Court to declare Washington election law and Article 6 sec. 3 of the Washington State Constitution, violate 42 U.S.C. 1973;
4. For the Court to declare Washington Restoration of Civil Rights law RCW 9.94A.220 violates 42 U.S.C. 1971;
5. For the Court to issue a permanent and preliminary injunction preventing defendants and each of them, their officers, agents, employees, and successors in office and all people in active concert or participation with them from enforcing Article 6 sec. 3 of the Washington State Constitution or otherwise

1 preventing convicted felons from voting or registering to vote on the basis of their
2 felony convictions;

3 6. For attorneys' fees pursuant to 42 U.S.C. sec. 1988, and/or other
4 applicable statutes;

5 7. Damages in an amount to be determined at trial;

6 8. For costs of suit pursuant to applicable statutes;

7 9. For such other and further relief as the Court may deem proper.

8 DATED this ____ day of October, 1999.

9 UNIVERSITY LEGAL ASSISTANCE

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11 
12 LAWRENCE A. WEISER, WSBA #6865
13 Attorney for Plaintiffs

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17 Attorney for Plaintiffs